

TECHNICAL DECISION SUMMARY > PRIVATE RULING**WHAKARĀPOPOTO WHAKATAU HANGARAU > WHAKATAUNGA
TŪMATAITI**

Restructure and transfer of shares

Decision date | Rā o te Whakatau: 18 July 2025

Issue date | Rā Tuku: 24 October 2025

TDS 25/25

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Subjects | Kaupapa

This item summarises a private ruling about the transfer of shares between companies within a group as part of a restructure and whether any future sale of the shares is taxable.

Taxation laws | Ture tāke

All legislative references are to the Income Tax Act 2007 unless otherwise stated.

Summary of facts | Whakarāpopoto o Meka

1. The Arrangement in this ruling involves the restructure of a group company to address issues with the current structure.
2. As part of the restructure plan, investment activities, such as minority shareholdings in companies, are transferred to other entities within the group. The Applicants stated this approach is administratively easier and a more efficient option for the restructure, involving fewer banking obligations and lower compliance costs.
3. To implement this plan, shares in a company (Company A) that the parent company holds as an investment (the Shares), along with the parent company's other investments, are sold to a wholly owned subsidiary.
4. Prior to the restructure, the possibility of the sale of Company A was signalled due to liquidity issues experienced by that company. However, a sale is not certain and there has been no commitment to sell. Whether or not Company A will be sold will depend on various factors outside of the group's control.

Issue | Take

5. The issue considered in this ruling was whether any future sale of the Shares held by the subsidiary would be taxable under s CB 4.

Decisions | Whakataua

6. The Tax Counsel Office (TCO) concluded that s CB 4 would not apply to any future sale of the Shares held by the subsidiary on the condition that the subsidiary's dominant purpose in acquiring the Shares must be a purpose other than to dispose of the Shares in the future.

Reasons for decisions | Pūnga o ngā whakataurua

Issue | Take: Section CB 4

7. Section CB 4 provides that an amount a person derives from disposing of personal property is income of the person if they acquired it for the purposes of disposing of it.
8. The term “personal property” is defined in s YA 1 for the purposes of s CB 4 as not including land. Because shares are not land, they are “personal property” for the purposes of s CB 4.
9. Case law has developed the following principles for determining the purpose of disposal in s CB 4:¹
 - The test to determine the purpose of disposal in s CB 4 is subjective, which requires consideration of the state of mind of the taxpayer at the time of acquisition.
 - Where there is more than one purpose, taxability turns on whether the dominant purpose was to sell the personal property or other disposition.
 - Where it is necessary to establish the subjective purpose(s) of a taxpayer, the statements of the taxpayer (or of someone on their behalf) are important evidence but must be assessed and tested in the totality of circumstances. These include the circumstances of the purchase, the number of similar transactions and the circumstances of the use and disposal of the property.
 - Actions speak louder than words and the totality of circumstances may negate the taxpayer’s asserted purpose of the acquisition.
 - The mere fact that at the time of acquisition, the taxpayer contemplated the possibility of sale does not amount to a dominant purpose of sale.
10. Based on the information provided, TCO considered there are factors that suggest the subsidiary’s dominant purpose of acquiring the Shares is for the benefit of the group structure, rather than to sell. These factors include:
 - It was asserted on behalf of the subsidiary that the dominant purpose of acquiring the Shares is to implement the restructure plan for the benefit of the group structure. The documentation on the restructure plans confirmed this assertion.

¹ *CIR v National Distributors Ltd* (1989) 11 NZTC 6,346 (CA).

- The Shares are sold to the subsidiary along with other investments of the parent company as part of implementing a wider restructure plan to address issues with the current structure.
 - The parent company chose to transfer the Shares to the subsidiary as it was considered the most efficient and cost-effective option for the restructure.
 - A future sale of the Shares, while contemplated, is not certain and depends on various external factors. The courts have said that a mere contemplation of the possibility of sale at the time of acquisition does not amount to a dominant purpose of sale.
11. However, as mentioned at [9], the test to determine “purpose” at the time of acquisition requires the assessment of the totality of the circumstances, including the circumstances of the acquisition and the sale of the property. Further, actions may speak louder than words such that the totality of circumstances (including the actions of the taxpayer) may negate the taxpayer’s asserted purpose of the acquisition.
12. Given that the sale of the Shares is a future event and the totality of the circumstances is unknown, the ruling that s CB 4 would not apply to any future sale of the Shares was made with the condition that the subsidiary’s dominant purpose in acquiring the Shares must be a purpose other than the disposal of the Shares in the future.