Inland Revenue
Te Tari Taake

TECHNICAL DECISION SUMMARY > PRIVATE RULING

WHAKARĀPOPOTO WHAKATAU HANGARAU > WHAKATAUNGA TŪMATAITI

Business Continuity Rules – transition to an exclusively online based retail model

Decision date | Rā o te Whakatau: 08 July 2026

Issue date | Rā Tuku: 10 November 2026

TDS 26/20

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This document is a summary of the original technical decision so it may not contain all the facts or assumptions relevant to that decision.

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Subjects | Kaupapa

This item summarises a private ruling about whether a taxpayer's transition to an online only sales model constitutes a "major change" in the nature of the business activities carried on by the taxpayer for the purposes of the Business Continuity Test rules (BCT) in subpart IB of the Income Tax Act 2007.

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 taxpayer is a New Zealand–based company that operates a retail and distribution business.
2. The taxpayer accumulated tax losses over the years. Following an ownership continuity breach, the taxpayer submitted a ruling application regarding its ability to carry those losses forward under the BCT rules.
3. In response to economic pressures, the taxpayer made the strategic decision to transition from selling and distributing through a mix of online and physical stores to an exclusively online-based retail model. The taxpayer did so in an effort to increase its operational and commercial efficiencies by leveraging the newer technologies.
4. The arrangement described in the ruling application involved the taxpayer closing all its physical stores and reducing any inventory on-hand while retaining its intangible assets such as its brand rights, registered trademarks and website domain.
5. During this transition process, there was no change to the taxpayer's suppliers, the products sold and distributed, or the taxpayer's customer demographic. The taxpayer continued to sell the same products to the same customer base in New Zealand.
6. The taxpayer did not cease its business operations at any point from when it was incorporated, including during the period when the ownership continuity breach occurred and during the business continuity period.[1]

[1] For the taxpayer, the business continuity period started immediately before the ownership continuity breach until the last day of the income year that falls five years after that date (s IB 4(1)(b)).

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Issues | Take

7. The main issues considered in this ruling were whether:

   - the arrangement is a major change in the nature of the business activities carried on by the taxpayer for the purposes of s IB 3(2)(c); and
   - ss GB 3BA, GB 3BAB and GB 3BAC apply to the arrangement.

Decisions | Whakatau

8. The Tax Counsel Office (TCO) decided:

   - the arrangement is not a major change in the nature of the business activities carried on by the taxpayer for the purpose of s IB 3(2)(c); and
   - ss GB 3BA, GB 3BAB and GB 3BAC do not apply to the arrangement.

Reasons for decisions | Pūnga o ngā whakatau

Issue 1 | Take tuatahi: Is the arrangement a "major change"?

Meaning of a "major change" in relation to the nature of the taxpayer's business activities

9. Section IB 3(2)(c) provides that, despite an ownership continuity breach occurring for a company, the company may carry forward its tax losses if no major change in the nature of the business activities carried on by the company occurs during the business continuity period.[2]

10. The main rule in s IB 3(2)(c) is concerned with the nature of the company's business activities. TCO considered "business activities" means actions taken in pursuit of one or more businesses that may be carried on by the company for income tax purposes, and that "nature" means "the basic or inherent features, qualities, or character of a person or thing". Therefore, the test is concerned with the basic or inherent features, qualities, or character of the company's business activities. For the purpose of the BCT rules, the nature of a company's business activities is determined with reference to:

[2] None of the restrictions in ss IB 3(2)(b) and IB 3(3) that would limit the taxpayer's ability to carry forward losses under the BCT rules applied to the taxpayer's arrangement.

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- its core business processes (eg, farming, manufacturing, development, construction, distribution, retailing and services);
- the type or category of products or services provided;
- the significant assets used to generate assessable income (eg, premises, plant and machinery, livestock, intellectual property and goodwill);
- the significant suppliers used;
- the scale (eg, approximate turnover or size); and
- the main markets supplied (eg, retail or wholesale, or local or national or specific territories).

11. Determining whether there has been a major change in the nature of a company's business activities requires consideration of whether there has been a change, and, if so, whether the change is major. The relevant factors to be considered and their weight depend on the particular facts in question. The change is major if it significantly changes the nature (ie, the basic or inherent features, qualities, or character of the business activities) of how the business generates assessable income (s IB 3(4)). The nature of the business activities before and after the ownership continuity breach is compared to determine whether there has been a major change.

12. Further, s IB 3(4) provides that the extent to which the assets used in deriving the company's assessable income have remained the same or similar over the business continuity period must be taken into account.

Application to the facts

13. Based on the facts of the taxpayer's arrangement, the reduction in the taxpayer's physical assets (ie, the reduction in physical stores and inventory on-hand) and transitioning to an exclusively online-only retail and distribution model does not constitute a major change as it had a minor influence in the nature of the taxpayer's business activities. TCO arrived at this conclusion for the following reasons:

- The taxpayer's core business remained the same, the arrangement consisted of a shift in sales and distribution channels rather than a change in the core business.
- The taxpayer continued to offer for sale the same products and services after the arrangement.
- The taxpayer retained the assets critical to generating its assessable income, such as the registered trademarks, brand rights and the digital systems. These remained the same or similar.

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- The taxpayer retained the same suppliers they used before the arrangement.
- There was no material change in the taxpayer's scale of operations.
- The taxpayer continues to provide goods and services to the same market demographic.
- The arrangement was motivated for economic reasons where the taxpayer sought commercial efficiencies through technological advancements.

14. Consequently, TCO concluded the arrangement is not a major change in the nature of the business activities carried on by the taxpayer for the purpose of s IB 3(2)(c).

Issue 2 | Take tuarua: Do the provisions in ss GB 3BA, GB 3BAB and GB 3BAC apply to the arrangement?

15. Sections GB 3BA, GB 3BAB and GB 3BAC are anti-avoidance provisions that were introduced along with the BCT. Broadly, they were introduced to achieve the purpose set out in s IB 1(b), which is "not to encourage tax avoidance arrangements involving the acquisition of ownership interests in companies".

16. TCO concluded none of the anti-avoidance provisions in ss GB 3BA, GB 3BAB and GB 3BAC applies to the arrangement for the following reasons:

- Section GB 3BA applies when a company pre-emptively changes the nature of its business activities in the two years prior to an ownership continuity breach in order to enable the business continuity test to be satisfied after the breach (s GB 3BA(1)(a)(ii)). The taxpayer has not changed the nature of its business activities since its incorporation.
- Section GB 3BAB applies when companies carry forward losses under the business continuity test and derive income that would otherwise have been derived by an associated person (such as another group company). While s GB 3BAC applies when an associated person of the company carries forward losses under the business continuity test (such as another group company) and incurs expenditure or loss that would otherwise have been incurred by the loss company. The arrangement does not involve associated persons.

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