



21 December 2011

Mr Brandon Sloan
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Inland Revenue Department
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Dear Brandon,

General and non-life insurance transferred to another insurer part way through an income year

Thank you for your letter dated 18 October 2011 and for the opportunity to comment on this issue. I did distribute your letter to the members of the ISI Tax Committee on receipt, apologies for the delay in providing this response.

ISI agrees with the “comment” section of the attachment to your letter that overall the transferor should get the deduction for outstanding claims transferred when incurred rather than the transferee.

ISI addresses each of the questions asked in the attachment to our letter below.

Should the Income Tax Act 2007 expressly provide for the tax treatment of the OCR when there is a transfer of business part year through an income year?

If the current sections CR 4(2) and DW 4(3) remain, an amendment is required to provide the outcome referred to above.

Do you foresee any problems with the suggested solution?

The suggested solution will have some complexity from a compliance perspective as the analogy with section EY 5 suggests it will require part year calculations. Ultimately ISI will need to see how it is drafted to provide specific feedback on compliance considerations.

A point raised by one member was in relation to differences that arise with the accounting treatment where post transfer, the transferee may determine the outstanding claims acquired have a different value and make a fair value adjustment for accounting purposes. ISI understands however such fair value adjustments, and the resulting tax and accounting differences, are not unique to insurance reserves and provisions transferred.

Are there alternative solutions that should be considered?

In the absence of sections CR 4 and DW 4 being repealed, the other solution is to allow the transferor a deduction for the payment made or other consideration provided to the transferee for the outstanding claims transferred. This could be achieved by amending section DW 4(5) to allow such a deduction.

If the Income Tax Act is amended, when should the solution apply?

Any amendment must be prospective given reliance that has been placed and tax positions taken on the current law to date.

ISI recommends any amendment apply from the beginning of the calendar year following enactment which it expects would be 1 January 2013. Having the amendment apply on a prospective income year equivalent basis does not appear workable where a transferor and transferee have different balance dates for income tax purposes.

Thank you again for the opportunity to provide these comments. Please do contact us if you wish to discuss them. ISI request the opportunity to review any resulting draft legislation.

Yours sincerely

Deborah Keating

EXECUTIVE OFFICER