



DAVEY'S Locker



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August 2013

Tax exceptions becoming the rule

A proliferation of special rules overwhelms tax principles

by Tony Davey

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In the 80s when I read for an HDip Tax at Wits, supervised by adv Eddie Broomberg, of *Tax Strategy* fame, we were taught tax principles—as expanded upon and amplified by tax court and higher court decisions.

Naturally, tax, being based on statutory law, included a few exceptions from principle but these usually proved the rule of general principles.

Nowadays, as my bookcases full of old tax cases gather dust from lack of relevance, I consider a course in exceptions rather than the rule might better equip you for a tax-consulting career.

Income-protection policies

For example, insurance compensation, arising in lieu of a self-employed person's earnings, which are taxable, would be of a revenue nature. To quote the classic case of *Burmah Steamships Co Ltd*, the test is whether the compensation fills a hole in the recipient's profits (revenue) or assets (capital).

The general deduction, s 11(a), provides a tax deduction for 'expenditure incurred in the production of income'. It follows that, since insurance compensation is of a revenue nature, the deduction of premiums is allowed under s 11(a).

Not any more, according to the draft Taxation Laws Amend-

ment Bill, 2013, intended to be effective as from 1 March 2014. Such premiums will not be deductible (the new s 23(r)) but the proceeds will be tax free (new s 10(1)(gl)).

Existing policies will also become subject to this new tax treatment (including payments made under existing policies currently subject to tax relief), but the good news is that all insurance income-protection claim amounts paid after 1 March

2014 will be tax free.

Debt financing—s 240

Then something that is already in the tax law.

It has always been a vexed issue whether interest charges on moneys borrowed by a company to buy shares is tax deductible.

The classic case, disallowing such a deduction (on the rationale that the interest expenditure was incurred not in the production of income but of tax-ex-

empt dividends) was *Shapiro v CIR*, followed by many ITC cases, confusingly, both for and against the rationale.

Courtesy of s 240, effective as from 1 January 2013, such interest is deemed to be incurred in the production of income in circumstances in which the target company is an operating company of the acquirer, which must be a controlling group company. **tsn**