

ภาคผนวก ๖.

บทบัญญัติทั่วไปเพื่อป้องกันการหลบหลีกภาษีอากร
ของประเทศไทย

Income Tax Act, R.S.C. 1985, c. 1 (5th Supp.)

PART XVI: TAX AVOIDANCE

Definitions

245. (1) In this section,

“tax benefit”

“tax benefit” means a reduction, avoidance or deferral of tax or other amount payable under this Act or an increase in a refund of tax or other amount under this Act, and includes a reduction, avoidance or deferral of tax or other amount that would be payable under this Act but for a tax treaty or an increase in a refund of tax or other amount under this Act as a result of a tax treaty;

“tax consequences”

*attribut
fiscal*

“tax consequences” to a person means the amount of income, taxable income, or taxable income earned in Canada of, tax or other amount payable by or refundable to the person under this Act, or any other amount that is relevant for the purposes of computing that amount;

“transaction”

operation

“transaction” includes an arrangement or event.

General avoidance provision

anti-

(2) Where a transaction is an avoidance transaction, the tax consequences to a person shall be determined as is reasonable in the circumstances in order to deny a tax benefit that, but for this section, would result, directly or indirectly, from that transaction or from a series of transactions that includes that transaction.

Avoidance transaction (3) An avoidance transaction means any transaction

- (a) that, but for this section, would result, directly or indirectly, in a tax benefit, unless the transaction may reasonably be considered to have been undertaken or arranged primarily for *bona fide* purposes other than to obtain the tax benefit; or
- (b) that is part of a series of transactions, which series, but for this section, would result, directly or indirectly, in a tax benefit, unless the transaction may reasonably be considered to have been undertaken or arranged primarily for *bona fide* purposes other than to obtain the tax benefit.

Application of subsection (2) (4) Subsection (2) applies to a transaction only if it may reasonably be considered that the transaction

- (a) would, if this Act were read without reference to this section, result directly or indirectly in a misuse of the provisions of any one or more of
 - (i) this Act,
 - (ii) the *Income Tax Regulations*,
 - (iii) the *Income Tax Application Rules*,
 - (iv) a tax treaty, or
- (v) any other enactment that is relevant in computing tax or any other amount payable by or refundable to a person under this Act or in determining any amount that is relevant for the purposes of that computation; or

(b) would result directly or indirectly in an abuse having regard to those provisions, other than this section, read as a whole.

Determination of tax consequences (5) Without restricting the generality of subsection (2), and notwithstanding any other enactment,

- (a) any deduction, exemption or exclusion in computing income, taxable income, taxable income earned in Canada or tax payable or any part thereof may be allowed or disallowed in whole or in part,
- (b) any such deduction, exemption or exclusion, any income, loss or other amount or part thereof may be allocated to any person,
- (c) the nature of any payment or other amount may be recharacterized, and
- (d) the tax effects that would otherwise result from the application of other provisions of this Act may be ignored,

in determining the tax consequences to a person as is reasonable in the circumstances in order to deny a tax benefit that would, but for this section, result, directly or indirectly, from an avoidance transaction.

Request for adjustments (6) Where with respect to a transaction

- (a) a notice of assessment, reassessment or additional assessment involving the application of subsection 245 (2) with respect to the transaction has been sent to a person, or
- (b) a notice of determination pursuant to subsection 152 (1.11) has been sent to a person with respect to the transaction,

any person (other than a person referred to in paragraph 245 (6) (a) or

245 (6) (b)) shall be entitled, within 180 days after the day of mailing of the notice, to request in writing that the Minister make an assessment, reassessment or additional assessment applying subsection 245 (2) or make a determination applying subsection 152 (1.11) with respect to that transaction.

Exception

(7) Notwithstanding any other provision of this Act, the tax consequences to any person, following the application of this section, shall only be determined through a notice of assessment, reassessment, additional assessment or determination pursuant to subsection 152 (1.11) involving the application of this section.

Duties
Minister

of (8) On receipt of a request by a person under subsection 245 (6), the Minister shall, with all due dispatch, consider the request and, notwithstanding subsection 152 (4), assess, reassess or make an additional assessment or determination pursuant to subsection 152 (1.11) with respect to that person, except that an assessment, reassessment, additional assessment or determination may be made under this subsection only to the extent that it may reasonably be regarded as relating to the transaction referred to in subsection 245 (6).

NOTE: Application provisions are not included in the consolidated text; see relevant amending Acts. R.S., 1985, c. 1 (5th Supp.), s. 245; 2005, c. 19, s. 52.

Benefit
conferred on a
person

246. (1) Where at any time a person confers a benefit, either directly or indirectly, by any means whatever, on a taxpayer, the amount of the benefit shall, to the extent that it is not otherwise included in the taxpayer's income or taxable income earned in Canada under Part I

and would be included in the taxpayer's income if the amount of the benefit were a payment made directly by the person to the taxpayer and if the taxpayer were resident in Canada, be

(a) included in computing the taxpayer's income or taxable income earned in Canada under Part I for the taxation year that includes that time; or

(b) where the taxpayer is a non-resident person, deemed for the purposes of Part XIII to be a payment made at that time to the taxpayer in respect of property, services or otherwise, depending on the nature of the benefit.

Arm's length

(2) Where it is established that a transaction was entered into by persons dealing at arm's length, *bona fide* and not pursuant to, or as part of, any other transaction and not to effect payment, in whole or in part, of an existing or future obligation, no party thereto shall be regarded, for the purpose of this section, as having conferred a benefit on a party with whom the first-mentioned party was so dealing.