

Document 17

Comments on

letter dated 30 July 2001

General comment

It was recognised in drafting the proposed legislation that given the complexity and evolving range of financial arrangements that it would not be possible to draft legislation that provided the correct tax treatment in all cases and that it would be necessary to supplement the legislation with regulations.

The comment re “the lack of certainty as to treatment of equity type debt instruments” is not elucidated. It is presumed that RU is referring to hybrids that are debt in legal form such as convertible notes and income securities and the deductibility of returns under proposed section 25-85.

Section 22

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Section 22

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Section 25-85

It is accepted that section 25-85 as currently drafted will not work as intended and that amendments are necessary to clarify its intended operation.

contends that it is not clear "a dividend at a fixed rate from a company with accumulated prior year profits where the share on which the dividend is paid is an extremely short term manditorily redeemable share". It is assumed that this is the same as that example contained in his paper titled "When might dividends be deductible?" In that paper RU argued that such dividends would be deductible under section 8-1 as the dividends were a return on the short term funding of working capital and thus an outgoing in gaining or producing assessable income and lacking the characteristics of capital. At a practical level this would seem to be extremely unlikely to occur given that the pre-tax cost of equity is at least twice that of the pre-tax cost of debt.

Section 22