[2019] NZSSAA 18

Reference No. SSA 028/17

IN THE MATTER	of the Social Security Act 2018
AND	
IN THE MATTER	of an appeal by **XXXX** of XXXX against a decision of a Benefits Review Committee

BEFORE THE SOCIAL SECURITY APPEAL AUTHORITY

Mr G Pearson - Chairperson

Mr K Williams Member

Appearances

The appellant in person

For Chief Executive of the Ministry of Social Development: Barnett (counsel)

DECISION

Background

[1] This appeal concerns a point of law. XXXX was entitled to Jobseeker Support, the level is affected by his income. The only contentious element is the amount of his income from dividends on company shares. The amount of the dividends, and how they are calculated and paid was not contentious.

[2] The dispute arises solely due to the regime for taxing company dividends in the hands of shareholders in New Zealand, which involves tax credits. The essential features are:

(a) Companies pay income tax at the appropriate corporate rate in New Zealand on the company's profits.

(b) When those profits are distributed as dividends the shareholder is taxed on the distribution as income, however the recipient may receive a tax credit given for the tax the company paid on those profits (imputation credits and resident withholding tax).

(c) In this case, XXXX says the tax credits are not income for the purpose of calculating his Jobseeker Support, only the money he received as cash counts for that calculation.

[3] We must determine whether the tax credits do form part of XXXX's income when calculating his entitlements to Jobseeker Support.

The legislation

[4] Section 3 of the Social Security Act 1964 (the Act) defines "income" as money received, or value in "money's worth" "before income tax".

[5] There is a mechanism for calculating the effect of income on Jobseeker Support in s 88M, Schedule 9 and the definition of "Income Test 3" in s 3 of the Act. However, it is not necessary to consider that as it is not contentious. The dispute turns on what income XXXX received from his dividends, before tax.

[6] It is of course necessary to consider the Income Tax Act 2007 (the ITA) to determine what XXXX did receive in money or money's worth before tax. The key provisions are:

(a) Subpart OB of the ITA contains the regime for imputation credits. Section OB 1 of the ITA provides New Zealand resident companies must establish and maintain an imputation credit account. It is not contentious that we are considering dividends where imputation credits were correctly attached. Section OB 60 provides for attaching imputation credits to dividends.

(b) Section OB 60 provides a formula which limits the value of the tax credit that may be attached to the net dividend paid.[1]

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1 Section OB(3) and (4) of the ITA establish the formula, and s OA 18(2) contains the ratio.

(c) The maximum imputation credit that may be attached is essentially the amount of tax the company paid on the income distributed (s OA 18(2) and (3)). Typically, the tax rate will be $0.28 per $1, accordingly a company may distribute a net dividend of $0.72, and attach an imputation credit of $0.28, thereby distributing $1 in value ($0.72 in cash and a tax credit to the value of $0.28). Of course, if the company does not have enough imputation credits in its account, it may only be able to attach an imputation credit of a lesser value, the ratio restricts the maximum value.

(d) The next issue is to consider how the shareholder deals with the net dividend and the imputation credit. The first point is that when paying the dividend with the imputation credit, the company making the payment is obliged to deduct resident withholding tax at the rate of 33 per cent. That calculation is applied to the net dividend plus the imputation credit (if any), which is the gross dividend. Inland Revenue provides a worked example, that is a convenient illustration of the relevant legislation:[2]

> **Example of imputed dividend and RWT**
> Noah received an imputed net dividend of $402. On his dividend statement Noah finds this was made up of:
>
> - gross dividend $600
> - cash value of dividend $500
> - imputation credits $100
> - RWT $98, and
> - net dividend $402.
>
> Because the imputation credit and RWT has to total 33% of the gross dividend, we need to work out how much RWT to deduct.
>
> 1. Work out the total RWT on the gross dividend.
> 33% of $600 = $198

[2] Inland Revenue "IR274 Imputation — A guide for New Zealand Companies" (November 2018) <www.ird.govt.nz> contains a convenient summary of the imputation credit regime. We have not set out all the provisions in the ITA that establish the details of the imputation credit and withholding tax regimes, as they are not contentious and would serve to do no more than introduce distracting and irrelevant complexity.

2. Minus the imputation credit from the total RWT.
$198 - $100 = $98

Because of the imputation credit, Noah only pays RWT of $98 and gets a net dividend of $402.

(e) The second issue for the shareholder is that they can offset the imputation credit they receive against their income tax. If they receive more than the amount of income tax they have to pay in the year of receipt, they can carry them forward to offset against income in a following year. There are complexities that apply to some taxpayers, but we are concerned with an individual, and it is sufficient to observe that as Jobseeker Support payments and dividends are taxed in the ordinary course of events XXXX can use tax credits to offset his tax liabilities on his Jobseeker Support payments, and his dividend income. He can carry them forward for use in a future year, if he does not use them in the year of receipt.

Discussion

XXXX's position

[7] XXXX's key contention is that under the Act the extent of the income he receives from dividends is the money he receives. He says the imputation credits are only taken into account in the next tax year. He also relies on paragraph (f) of the definition of "income" in s 3 of the Act. It excludes various types of receipts. He particularly refers to subparagraph (x), which states that income does not include "any amount of output tax charged in respect of a supply of goods and services made by that person", and says that applies to him.

[8] He also says that by including imputation credits as income he is being triple taxed, contending imputation credits are conceptual monetary amounts only and they have no cash value.

The Ministry's position

[9] The key element in the Ministry's reasoning is that the gross dividend is taxable, and it also described imputation credits as income as money's worth.

Our approach

[10] In our view, we must apply the definition of "income" in s 3 of the Act. To do so there are three elements:

(a) How much "money" before tax did XXXX receive?

(b) Was there, before tax, any "value in money's worth" he received?

(c) Were any such receipts excluded from being recognised as income under s 3 of the Act?

[11] In our view, the amount of money XXXX received was the net dividend, that is the money he received from the company.

[12] We consider both withholding tax paid on his behalf, and imputation credits are value in money's worth under the definition of "income", in respect of the interest he received from the dividends issued to him. XXXX questioned the word "interest", but in this context it means no more than the rights he acquired, it does not refer to interest earned on capital.

[13] We do not consider any of the exclusions in the definition relevant. The provision XXXX relied on relates to output tax for GST purposes. It has no relevance to imputation credits and is an unsurprising provision that calculates income for registered persons making taxable supplies on a basis that disregards GST. It is essentially a universal approach used for calculating income, for income tax and other purposes.

[14] We have considered XXXX's argument that he cannot immediately or necessarily convert imputation credits into cash. However, that does not necessarily deprive them of being "money's worth". There are two reasons, first the imputation credits and withholding tax payments have money's worth as they relieve XXXX of having to pay tax of equal value. He would otherwise have to pay tax using money of that value. Further, as Jobseeker Support and other benefits are taxable there is no apparent reason why XXXX could not gain the benefit in the same tax year he receives them. Regardless, the imputation credits can be carried forward at their full face value.

Example

[15] We have examples of the statements XXXX received from the companies issuing dividends to him, one of them contained the following information:

Gross Dividend	**$2,343.75**
Net Dividend	$1,570.31
Withholding tax	$117.19
Imputation credits	$656.25
	$2,343.75

[16] In our view, the gross dividend is the amount of income, as that is the share of profits distributed to XXXX as a dividend. However, the full analysis is that he has received $1,570.31 in the form of money, and the balance is in money's worth. The character of the dividend is tax paid on his behalf, and he gets the full benefit of those payments, so they are "money's worth".

Decision

[17] The appeal is dismissed.

[18] We reserve leave to deal with any issues relating to calculation of the amount of income XXXX received.

Dated at **Wellington** this 29th day of March 2019

G Pearson
Chairperson

K Williams
Member