Sean Butler

From: Brian Benari <bbenari@challenger.com.au>
Sent: Friday, 8 April 2011 2:43 PM
To: Sean Butler
Subject: RE: Light House Beach Hotel

Sensitivity: Confidential

Follow Up Flag: Follow up
Flag Status: Flagged

Sean

I think what Laurie is saying is he does not know your personal tax position. Remember, trusts pass income through themselves to beneficiaries. That is, the sale of property by the LBUT or indeed the sale of units in LBH, generates a profit which goes into the Cargill Trust and then goes to whoever it distributes profits to. That is, the ultimate beneficiary pays the tax. I don't believe Laurie has any line of sight as to the position of the Cargill trust nor its beneficiaries as he has never done their tax returns.

Can I suggest that we have a phone link up between your tax guy / Laurie (and if appropriate the two of us) and they walk through the workings. Its complex and needs good communication.

With respect to 7 weeks, we agreed the pricing and terms at the beginning of this process. 14 mio for the LBH and any structure should leave you in the same position as the BR offer and 5.5m for the National – nothing has changed. Any settlement is dependent on finance and in-line with this, absent a formal contract, I have had the Lighthouse valued (and hope to receive the val ASAP) and am seeking to finalise the purchase on the basis of our discussions. We have an obligation to Bankwest to settle this matter.

Finally, Bankwest called me yesterday advising that 58,000 is owing on interest. I note that all payments inc the full payment for the National has been made by me approx. 20 March. Can you shed some light on the quantum outstanding.

Regards

BB

Brian Benari
Tel: 02 9994 7025

From: Sean Butler [mailto:sbutler@iinet.net.au]
Sent: Friday, 8 April 2011 3:04 PM
To: Brian Benari
Cc: Robert Byatt at Bankwest
Subject: Light House Beach Hotel
Importance: High
Sensitivity: Confidential

Hi BB,

Laurie does act for me in regards to the lighthouse and always has so I am a bit surprised he is reluctant to advise giving a definite answer.

I will get advice from my accountant as advised however he has had no previous understanding of the Lighthouse Beach Unit Trust so it may take a while for him to go over the issues here.

As it took over seven weeks to get your offer prepared I hope you will understand I will need some time to go through it as well.

In simple terms your offer needs to give me the same net position as the one from Burgess Rawson. I Am sure you would agree that this is only fair.
Regards,

Sean

From: Laurie Lapsley [mailto:laurie@cspartners.com.au]
Sent: Friday, 8 April 2011 11:31 AM
To: sbutler@iinet.net.au; Brian Benari
Subject: FW: Light House Beach Hotel
Importance: High
Sensitivity: Confidential

Dear Sean and Brian,

Sean has asked me to comment on the proposal made to him by Brian and to comment on the tax implications of Brian's offer versus the cash offer received through Burgess Rawson. As I do not act for Sean and am not intimately familiar with his circumstances, I cannot give unequivocal advice as to the taxation implications of sale. Sean has advised that he has received advice from his tax advisor that he will be entitled to claim the small business active assets CGT concessions (SBAACs) in regard to the capital gain amounts arising from the sale or transfer of his interests in the Lighthouse. How and when these concessions can be applied for Sean, is for him to determine with his advisors. On the basis that Sean will be entitled to the SBAACs, I nonetheless provide below my understanding of the taxation implications of the transfer of Sean's interests in this enterprise.

There are, or were two options being considered:

1. The sale of the Hotel by the LHBUT (Option 1) or
2. the sale by Sean of his units in the LHBUT (Option 2).

In undertaking my analysis of these options, I have used the 30 June 2010 balance sheet of the trust, and the tax position as at that time. As these documents haven't yet been forwarded to you, I attach for your reference copies of the 2010 Financial Statements and Tax return of the trust. I have assumed that the SBAACs will be applicable as advised by Sean, and have analysed the projected tax consequences arising from the sale of the business undertaking for the agreed value of $14m. I have ignored the trading results of the entity for the financial year to date and any movements in the trust's liabilities. Accordingly, these calculations are not absolute but are designed to give a basis for comparison of options 1 and 2. The workings detailing my conclusions can be found in the attached workbook.

In Option 1, the assessable capital gain that Sean would be required to disclose in the 2011 return of the Cargill Trust would be $1,235,130. Option 2 would require the Cargill Trust to disclose an assessable capital gain of $1,669,324. The difference between the two ($434,194) can be explained as 50% of the carried forward revenue tax losses available in the trust ($1,737,110) reduced by the 50% general CG discount for assets held for more than 12 months. In both instances, the cash amount returned to the Cargill Trust would be the same. It should be noted that the tax losses accrued to the trust would be lost under option 2.

On the assumption that SBAACs apply, a further discount of the CG is available but it would be necessary to use the "retirement exemption" and contribute a significant sum to superannuation to eliminate entirely all tax liability arising from the transactions. Note that the CGT retirement exemption is subject to a $600,000 lifetime limit and hence, unless there is more than one "concession stakeholder" associated with the Cargill Trust on who's behalf a retirement exemption contribution could be made, some of the gain would become assessable. Also, CGT Small business concession amounts distributed from a unit trust will reduce the cost base of the unitholder's unit holdings under CGT Event E4 and, where the cost base is exhausted, the excess becomes an assessable capital gain. In the case of Option 1 this may mean that the distributed CGT concession amount becomes assessable as a capital gain on the Cargill Trust's units in LHBUT. Whilst it is possible that this assessable amount might also be subject to the SBAACs if the trust were to be wound up in the year in which the transaction was performed, unless this is done, Option 2 would give rise to a lower assessable CG.

In summary, assuming the SBAACs are available, Sean's ultimate tax liability will depend upon what choices Sean makes in dealing with the concessions, but could be as low as nil for either of the options being considered.

Once again I urge Sean to get his advice regarding the application of the SBAAC to his particular circumstances confirmed.

Kind regards

Laurie Lapsley

Partner

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