


***TD 93/D215 - Income tax: foreign income: is foreign tax payable by a Controlled Foreign Entity (CFE) under an accruals tax law of a listed country, within the meaning of section 456A if, after the recoupment of prior year losses and other deductions, it is determined by the country that no tax is required to be paid ?***

 This cover sheet is provided for information only. It does not form part of *TD 93/D215 - Income tax: foreign income: is foreign tax payable by a Controlled Foreign Entity (CFE) under an accruals tax law of a listed country, within the meaning of section 456A if, after the recoupment of prior year losses and other deductions, it is determined by the country that no tax is required to be paid ?*

This document has been finalised by TD 96/37.

Draft Taxation Determinations (TDs) represent the preliminary, though considered, views of the ATO. Draft TDs may not be relied on; only final TDs are authoritative statements of the ATO.

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## Draft Taxation Determination

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**Income tax: foreign income: is foreign tax payable by a Controlled Foreign Entity (CFE) under an accruals tax law of a listed country, within the meaning of section 456A if, after the recoupment of prior year losses and other deductions, it is determined by the country that no tax is required to be paid ?**

1. Section 456A of the *Income Tax Assessment Act 1936* provides for a reduction of section 456 attributable income if it has been accruals taxed in certain listed countries. The test to determine whether the income has been accruals taxed in the listed country is set out in paragraph 456A(1)(c).

2. Paragraph 456A(1)(c) states that "foreign tax is payable by the CFE under an accruals tax law of a listed country in respect of an amount....where the amount is taxed in the listed country:

- (i) at that country's normal company tax rate; and
- (ii) in a tax accounting period commencing or ending:
  - (A) in the year of income of the attributable taxpayer; or
  - (B) in the statutory accounting period of the CFC".

3. We accept that foreign tax is payable by a CFE under an accruals tax law of a listed country on an amount within the meaning of paragraph 456A(1)(c) where:

- (a) deductions from the amount that are allowable under the tax law of the listed country have the effect that no tax is required to be paid; and
- (b) if not for those deductions, tax would have been paid in that country on the amount at the country's normal company tax rate.

4. In relation to a particular type of entity e.g., a company, deductions referred to in paragraph 3 are to be of the type which are available, under the tax law of the listed country, to all other companies that are subject to the tax jurisdiction of the listed country, for example, deductions for expenses incurred in deriving the particular item of income or profits, carried forward losses, amortisation expenses.

5. We do not accept that foreign tax is payable on an amount if the deduction is provided to the company by way of a concession, e.g., a listed country may grant a tax holiday to a company by way of a deduction from the income or profits derived by the company.

**Commissioner of Taxation**

26/8/93

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FOI INDEX DETAIL: Reference No.

Related Determinations:

Related Rulings:

Subject Ref: Foreign source income;

Legislative Ref: ITAA 456A

Case Ref:

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