

TD 93/31 - Income tax: insurance: reinsurance: can an election be made under subsection 148(2) in respect of some, as against all, of the reinsurance premiums a resident insurer pays to non-resident reinsurers?

 This cover sheet is provided for information only. It does not form part of *TD 93/31 - Income tax: insurance: reinsurance: can an election be made under subsection 148(2) in respect of some, as against all, of the reinsurance premiums a resident insurer pays to non-resident reinsurers?*

This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVAAA of the *Taxation Administration Act 1953*, is a public ruling for the purposes of that Part. Taxation Ruling TR 92/1 explains when a Determination is a public ruling and how it is binding on the Commissioner. Unless otherwise stated, this Determination applies to years commencing both before and after its date of issue. However, this Determination does not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Taxation Determination

Income tax: insurance: reinsurance: can an election be made under subsection 148(2) in respect of some, as against all, of the reinsurance premiums a resident insurer pays to non-resident reinsurers?

1. No. The election provided for in subsection 148(2), in relation to an insurer who reinsures out of Australia, is 'that the provisions of subsection 148(1) shall not be applied in arriving at his taxable income'. Paragraph (a) of subsection 148(2) then provides that the provisions of subsection 148(1) 'shall not apply in arriving at his taxable income of a year of income to which the election applies'. These terms of subsection 148(2) makes it clear that, in relation to the insurer, either subsection 148(1) applies or subsection 148(2) applies, but not a mixture of both.

2. This is supported by the Explanatory Note to Clause 22 of *Income Tax Assessment Bill 1947* which introduced subsections 148(1) and 148(2). The Note stated:

"It is accordingly proposed to retain the present method of assessing in respect of profits from reinsurance out of Australia but, as an alternative, to permit insurance companies carrying on business in Australia to deduct reinsurance premiums paid overseas and include any recoveries as assessable income. Any company adopting this course will become liable to furnish returns and pay the tax as agent for the non-resident reinsurers."

The Explanatory Note went on to state, in relation to the election which was to be provided by sub-clause (2):

"Whether or not the election is made will depend solely upon the insurance company, but if it makes the election, the company will be responsible for furnishing returns and paying tax as agents for any non-resident reinsurers with whom it has effected reinsurance out of Australia."

Commissioner of Taxation

04/03/93