



TD 96/37 - Income tax: foreign income: is foreign tax payable by a controlled foreign entity (CFE) under an accruals tax law of a broad-exemption listed country within the meaning of section 456A if, under the tax law of the country, no tax is required to be paid?

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 This document has changed over time. This is a consolidated version of the ruling which was published on 17 December 1997

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).

[Note: This is a consolidated version of this document. Refer to the Tax Office Legal Database (<http://law.ato.gov.au>) to check its currency and to view the details of all changes.]

Taxation Determination

Income tax: foreign income: is foreign tax payable by a controlled foreign entity (CFE) under an accruals tax law of a broad-exemption listed country within the meaning of section 456A if, under the tax law of the country, 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 foreign tax is payable under an accruals tax law of certain broad-exemption listed countries. The laws of a broad-exemption listed country that are declared to be an accruals tax law are set out in Income Tax Regulation 152HA. The test to determine whether the income has been accruals taxed in the broad-exemption listed country is set out in paragraph 456A(1)(c).

2. Paragraph 456A(1)(c) provides that 'foreign tax is payable by the CFE under an accruals tax law of a broad-exemption listed country in respect of an amount that is calculated by reference to an item of net income or net profit of the CFC, where the amount is taxed in the broad-exemption 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. The Commissioner considers that foreign tax is payable by a CFE under an accruals tax law of a broad-exemption listed country on an amount that is calculated by reference to an item of net income or net profit of the CFC within the meaning of section 456A:

- (a) where:

- (i) a credit or rebate allowable under the tax law of that country against tax payable under that law on the amount, for tax paid in another country on the item of net income or net profit of the CFC, has the effect that no tax is required to be paid; or
- (ii) a reduction of the amount by deductions that are allowable under the tax law of that country has the effect that no tax is required to be paid; and

- (b) where, if not for the credit, rebate or deduction, tax would have been paid in that country on the amount.

4. In relation to a particular type of entity, deductions referred to in paragraph 3 must be of the kind which are available, under the tax law of the broad-exemption listed country, to all other entities of that type that are subject to the tax jurisdiction of the broad-exemption listed country. For example, in the case of a company, deductions would include expenses incurred in deriving the particular amount, prior year carry forward losses, amortisation expenses and losses transferred within the company group.

5. The Commissioner further considers that foreign tax is payable by a CFE under an accruals tax law of a broad-exemption listed country on an amount within the meaning of paragraph 456A(1)(c) where:

- (a) the entity is a resident of a broad-exemption listed country which permits a group of companies to return income or profits, as the case may be, for tax purposes on a consolidated basis; and
- (b) deductions from the amount that are allowable to the consolidated group have the effect that no tax (or a lesser amount of tax than if the company returned its income or profits on a non-consolidated basis) is required to be paid; and
- (c) if not for those deductions, tax (or a higher amount of tax) would have been paid in that country on the amount.

Note: The Addendum to this Determination that issued on 17 December 1997 amends the Determination, with effect for statutory accounting periods of controlled foreign companies commencing after 30 June 1997.

Commissioner of Taxation

18 September 1996

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Related Determinations:

Related Rulings:

Subject Ref: foreign source income

Legislative Ref: ITAA 456A; ITR 152HA

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