

TR 2014/7PW - Notice of Partial Withdrawal - Income tax: foreign currency hedging transactions - applying the foreign income tax offset limit under section 770-75 of the Income Tax Assessment Act 1997 and determining the source of foreign currency hedging gains

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Partial Withdrawal

Taxation Ruling

Income tax: foreign currency hedging transactions - applying the foreign income tax offset limit under section 770-75 of the *Income Tax Assessment Act 1997* and determining the source of foreign currency hedging gains

This Partial Withdrawal, excluding this paragraph, is a public ruling for the purposes of the *Taxation Administration Act 1953*. This Partial Withdrawal updates TR 2014/7 to remove the references to how the source of a foreign currency hedging gain is determined. The Commissioner's view is that, while source is always a practical matter of fact, the place where the hedge contract is formed is likely to be the most important factor in determining source for such gains. Subject to express or implied terms to the contrary, the place where the contract is formed will be the place where the acceptance is communicated to. Industry has advised the Commissioner that the administrative approach set out in paragraphs 13 and 14 of the original ruling has been understood as being an interpretative view, rather than an alternative administrative approach, and has raised a number of concerns in relation to the administrative approach. As a consequence, the parts of the Ruling addressing source have been removed. Further industry consultation on the alternative administrative approach is being conducted.

TR 2014/7 is partially withdrawn as follows:

1. Title

Omit 'and determining the source of foreign currency hedging gains'.

2. Paragraph 2

Omit the paragraph; substitute:

2. This Ruling deals with when losses from foreign currency hedging transactions will be reasonably related to income that is covered by paragraph 770-75(4)(a) (disregarded income) for the purposes of subparagraph 770-75(4)(b)(ii).

3. Paragraph 3

Omit the paragraph.

4. Paragraph 6

Omit the last sentence.

5. Paragraphs 13 to 15 (including heading)

Omit the paragraphs including the heading.

6. Paragraphs 25 to 33 (including heading)

Omit the paragraphs including the heading.

7. Paragraph 34, heading

Omit the heading; substitute 'Example 1'.

8. Paragraph 45, heading

Omit the heading; substitute 'Example 2'.

9. Paragraphs 45 to 47

Omit all occurrences 'Example 2'; substitute 'Example 1'.

10. Paragraph 48, heading

Omit the heading; substitute 'Example 3'.

11. Paragraph 55, heading

Omit the heading; substitute 'Example 4'.

12. Paragraph 57

Omit the paragraph.

13. Paragraph 59

Omit the paragraph; substitute:

59. *The Fund determines that 20% of the hedging gains made under the foreign currency hedging strategy are from an Australian source.*

14. Paragraph 63

Omit the paragraph; substitute:

63. This Ruling was issued in different form in December 2014. Those parts of the Ruling addressing source have been removed. Those parts of the Ruling which address what is 'reasonably related' are unchanged. Therefore, as the remaining part of the Ruling continues unchanged, the date of effect of the Ruling as originally issued remains appropriate.

15. Paragraphs 95 to 122 (including heading)

Omit the paragraphs including the heading.

16. Paragraph 167

Omit 'Example 5'; substitute 'Example 4'.

17. Paragraph 175

Omit 'in accordance with the position in paragraphs 95 to 122 of this Ruling'.

18. Paragraph 182

Omit 'Example 5'; substitute 'Example 4'.

19. Paragraphs 184 to 193 (including heading)

Omit the paragraphs including the heading.

20. Paragraph 201

Omit:

Source of foreign currency hedging gains	13
Example 1	25
Example 2	34
Example 3	45
Example 4	48
Example 5	55
Source of foreign currency hedging gains	95
Addressing practical compliance issues	117
Source of foreign currency hedging gains	184

Insert:

Example 1	34
Example 2	45
Example 3	48
Example 4	55

21. Legislative references

Omit:

- ITAA 1997 770-75(4)(a)(ii)

22. Case references

Omit:

- Aktiebolaget Volvo v. Federal Commissioner of Taxation 78 ATC 4316; (1978) 8 ATR 747
- Australian Machinery & Investment Co Ltd v. Deputy Commissioner of Taxation (1946) 180 CLR 9; [1946] HCA 65; (1946) 8 ATD 81; (1946) 3 AITR 359
- Cliff's International, Inc v. Federal Commissioner of Taxation 85 ATC 4374; (1985) 16 ATR 601
- Commissioner of Inland Revenue v. Hang Seng Bank Ltd [1991] AC 306
- Deputy Commissioner of Taxation v. Kirk [1900] AC 588
- Deputy Commissioner of Taxation (N.S.W.) v. Hillsdon Watts Ltd (1937) 57 CLR 36; [1937] HCA 13; (1937) 4 ATD 199; (1937) 1 AITR 42
- Commissioner of Taxation (WA) v. D & W Murray Ltd (1929) 42 CLR 332; [1929] HCA 21
- Esquire Nominees Ltd (Trustee of Manolas Trust) v. Federal Commissioner of Taxation (1972) 129 CLR 177; 72 ATC 4076; (1972) 3 ATR 105
- Esquire Nominees Ltd as Trustee of Manolas Trust v. Federal Commissioner of Taxation (1972) 129 CLR 208; 73 ATC 4114; (1973) 4 ATR 75
- Federal Commissioner of Taxation v. Efsthakis [1979] FCA 28; 79 ATC 4256; (1979) 9 ATR 867
- Federal Commissioner of Taxation v. Mitchum [1965] HCA 23; (1965) 113 CLR 401; (1965) 13 ATD 497; (1965) 9 AITR 559
- Federal Commissioner of Taxation v. Spotless Services Limited & Anor. (1995) 62 FCR 244; 95 ATC 4775; (1995) 32 ATR 309
- Federal Commissioner of Taxation v. United Aircraft Corporation (1943) 68 CLR 525; [1943] HCA 50; (1943) 7 ATD 318; (1943) 2 AITR 458
- Malayan Shipping Co. Ltd v. Federal Commissioner of Taxation (1946) 71 CLR 156; (1946) 3 AITR 258; (1946) 8 ATD 75
- Nathan v. Federal Commissioner of Taxation (1918) 25 CLR 183; [1918] HCA 45
- Premier Automatic Ticket Issuers Ltd. v. Federal Commissioner of Taxation (1933) 50 CLR 268
- Powercor Australia Ltd v. Pacific Power [1999] VSC 110

- Re Thorpe Nominees Pty Limited v. the Commissioner of Taxation of the Commonwealth of Australia [1988] FCA 387; 88 ATC 4886; (1988) 19 ATR 1834
- Spotless Services Limited v. Federal Commissioner of Taxation 93 ATC 4397; (1993) 25 ATR 344
- Tallerman & Co Pty Ltd v. Nathan's Merchandise (Victoria) Pty Ltd (1957) 98 CLR 93
- Tariff Reinsurances Ltd v. Commissioner of Taxes (Vic) (1938) 59 CLR 194; [1938] HCA 21; (1938) 4 ATD 498

23. ATOLaw topic

Omit the ATOLaw topic; substitute 'International issues ~~ Foreign income tax offset'.

This Partial Withdrawal applies on and from 1 July 2015.

Commissioner of Taxation24 June 2015

ATO references

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ATOLaw topic: International issues ~~ Foreign income tax offset

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