# IT 2437 - Income tax : foreign tax credit system foreign taxes eligible for credit against australian income tax

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### TAXATION RULING NO. IT 2437

INCOME TAX : FOREIGN TAX CREDIT SYSTEM - FOREIGN TAXES ELIGIBLE FOR CREDIT AGAINST AUSTRALIAN INCOME TAX

F.O.I. EMBARGO: May be released

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	I 1218651	FOREIGN TAX CREDIT SYSTEM - CREDITABLE FOREIGN TAXES	6AB(2) 6AB(6) 160AF

PREAMBLE New Division 18 of the Income Tax Assessment Act (inserted by the Taxation Laws Amendment (Foreign Tax Credits) Act 1986 and first applicable to assessments for the year of income commencing 1 July 1987) provides for the granting of credits in respect of foreign tax. Subsection 160AF(1) provides that a resident taxpayer, whose assessable income includes foreign income on which the taxpayer has paid foreign tax, is entitled to a credit against the Australian tax payable of the amount of that foreign tax, up to the amount of Australian tax payable on the foreign income.

2. Subsection 6AB(2) specifies in general terms the nature of the foreign taxes for which credit is allowable. First, the tax must be imposed by the law of a foreign country, whether it be at national, state, local or other government level (subsection 6AB(6)). Secondly, it must be either :

- . a tax imposed upon income or upon profits or gains, whether of an income or capital nature;
- . a tax deemed, under section 160AFC, to have been paid in respect of a dividend (i.e., underlying foreign company tax on profits out of which a dividend is paid by a related foreign company to an Australian resident company); or
- . a tax subject to a comprehensive taxation agreement to which Australia is a party and having the force of law under the Income Tax (International Agreements) Act 1953.

3. However, the subsection specifically excludes from its ambit a foreign tax that is a unitary tax, as defined in subsection 6AB(6). (A further Ruling concerning unitary taxes is proposed.)

4. The law does not identify specific taxes of particular countries as being either creditable or not creditable; that has been left to be determined by the application of the above criteria on a case by case basis.

5. Essentially, foreign tax must be imposed on a basis substantially equivalent to that on which the Income Tax Assessment Act operates. That is, it must be imposed on the basis of a taxpayer's net income or gains, whether of an income or capital nature, or be a withholding tax on outgoing payments (imposed as a final tax and not be later creditable against the ultimate foreign tax liability of the taxpayer) similar to the Australian withholding tax on the gross amount of outgoing dividends and interest payments. This has been the basis which has been used in the past to measure whether a foreign tax qualifies as a tax that would render an Australian resident recipient of the income upon which it is imposed eligible for the exemption from Australian tax provided by paragraph 23(q) of the Assessment Act.

6. In order to assist taxpayers to more readily understand which foreign taxes are creditable for purposes of the foreign tax credit system a list of creditable foreign taxes is set out in this Ruling. The taxes included in the list will be creditable whether imposed on an assessment basis or by way of a final withholding tax.

7. The list is not exhaustive and will be revised when enquiries in relation to the nature of certain other foreign taxes presently under examination have been finalised and in the light of experience gained in administration of the new provisions. The list will also need to be updated periodically as a consequence of changes in other countries' taxes and as other foreign taxes are admitted as creditable taxes. Future Rulings to be issued on this basis will be in the form of an updated consolidated list of creditable taxes (rather than a series of lists to supplement that set out in this Ruling). It will, however, contain the usual reference to earlier Rulings on the topic. Consideration is to be given to the inclusion in the future Rulings of further points of principle which may clarify the status of particular types of foreign taxes and the development of a list of non-creditable taxes so as to assist taxpayers where the creditability of a particular tax is doubtful.

8. Taxpayers who seek credit for foreign taxes not identified in the following list (or in the subsequent Rulings) should supply details of those taxes in the relevant income tax returns. The details to be provided should include :

- . the precise title of the tax;
- . the title of the law under which the tax is imposed;
- . whether the tax is levied by a national, state or local authority and the name of that authority; and
- . a description of the nature of the tax and the basis for its implementation.
- 9. Return forms for the 1987/88 and subsequent years of

income, or accompanying instructions, will also provide information concerning the details to be supplied. Decisions as to whether particular foreign taxes not included in this Ruling (or in subsequent Rulings) are creditable taxes under the foreign tax credit system will be taken in National Office. Branch Offices should therefore refer enquiries received, or claims in returns, in relation to such taxes to National Office for consideration and advice. It would assist with the processing of returns if taxpayers were to supply relevant details to National Office as soon as a liability to pay such a foreign tax becomes apparent.

RULING 10. Subject to the provisions of Division 18 of Part III of the Income Tax Assessment Act, a taxpayer will be entitled to a credit against Australian tax payable on foreign income for the following foreign taxes paid in respect of that income :

## ARGENTINA

Income tax (Impuesto a las ganancias)
Tax on casual gains (Impuesto sobre los beneficios
 eventuales)

## AUSTRIA

Income tax (Einkommensteuer) Corporation tax (Korperschaftsteuer) Tax on Interest Yields (Zinserstragsteuer) Directors' tax (Aufsichtsratsabgabe) Tax on commercial and industrial enterprises (Gewerbesteuer), only where levied on a basis other than capital or the sum of wages

## BANGLADESH

Income tax

#### BELGIUM

Individual income tax (impot des personnes
 physiques/personen belasting)
Corporate income tax (impot des societes/
 vennootschapsbelasting)
Income tax on legal entities (impot des
 personnes morales/rechtspersonenbelasting)
Income tax on non-residents (impot des
 non-residents/belasting der nietverb lijfhouders)

including the prepayments, the surcharges on these taxes and prepayments, and the communal supplement to the individual income tax.

#### BRAZIL

Income tax (Imposto de renda) Withholding tax on pure income, e.g. interest

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or dividends
Supplementary tax (Imposto suplementar), where
charged on dividends or branch profits arising
in Brazil
Payments to the development funds PIN and PIS (programa
de integracao nacional/social) and MOBRAL (Fundacao
moviments brasileiro de alfabetizacao)
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## BRUNEI

Income tax Petroleum income tax

## BURMA

Income tax

## CANADA

Federal: Income taxes imposed by the Government of Canada Provincial: ALBERTA Provincial income tax BRITISH COLUMBIA Provincial income tax Mining tax Mineral resource tax Logging tax MANITOBA Provincial income tax NEW BRUNSWICK Provincial income tax Mining tax NEWFOUNDLAND Provincial income tax Mining tax NOVA SCOTIA Provincial income tax Mining tax ONTARIO Provincial corporation tax on company profits Provincial income tax on individuals Mining tax PRINCE EDWARD ISLAND Provincial income tax

## QUEBEC

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Provincial corporation tax on company profits
Provincial income tax on individuals
Mining tax
Logging tax
SASKATCHEWAN
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Provincial income tax Mining royalty tax

#### CHILE

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Income tax (Impuesto a la renta)
Additional tax (Impuesto adicional)
Additional tax (Tasa adicional)
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## CHINA

Individual income tax
Income tax concerning joint ventures with Chinese and
foreign investment
Income tax concerning foreign enterprises
Local income tax

#### CYPRUS

Income tax
Special contributions under Law 55 of 1974 and
 subsequent annual extensions

## CZECHOSLOVAKIA

Tax on profits (Dan ze zisku)
Artists' tax (Dan z prijmu literarni a
 umelecke cinnosti)

## DENMARK

Income taxes to the State and to the municipalities
 (indkomstskatterne til staten og til kommunerne)

## FINLAND

State income tax Communal tax Church tax Tax withheld at source from non-residents' income

## FRANCE

Income tax and corporation tax including any withholding tax, prepayment (precompte) or advance payment with respect to the aforesaid taxes.

FRENCH POLYNESIA (TAHITI)

Corporation tax (Impot sur les benefices

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des societes)
Territorial solidarity tax (Prelevement
territorial de solidarite)
Extraordinary solidarity tax (Prelevement
exceptionnel de solidarite)
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#### FIJI

Income tax (including basic tax and normal tax) Non-resident dividend withholding tax Interest withholding tax Royalty withholding tax Dividend tax Land sales tax

GERMAN DEMOCRATIC REPUBLIC

Corporation tax (korperschaftsteuer) Trade tax (Gewerbesteuer) to the extent that it is computed by reference to trading profits Wages tax (Lohnsteuer)

#### GERMANY (FEDERAL REPUBLIC)

Income tax (Einkommensteuer) including the surcharge
 (Erganzungsabgabe) thereon
Corporation tax (korperschaftsteuer) including the
 surcharge (Erganzungsabgabe) thereon
Trade tax (Gewerbesteuer) only where it is levied
 on a basis other than capital or pay-roll

## GREECE

Income tax, including schedular or analytical tax

## HONG KONG

Tax on earnings, profits and interest, comprising: - salaries tax - profits tax - interest tax

## HUNGARY

Income taxes (a jovedelemadok)
Profit taxes (a nyeresegadok)
Enterprises special tax (a vallalati kulonado)
Contribution to communal development (a kozsegfejlesztesi hozzajarulas)
Levy on dividends and profit distributions of
 commercial companies (a kereskedelmi tarsasagok
 osztalek es nyereseg kifizetesei utani illetek)

## INDIA

Income tax, including any surcharge thereon

Income tax and super tax levied by States on agricultural income Surtax imposed on chargeable profits of companies

## INDONESIA

Income tax (pajak pendapatan)
Company tax (pajak perseroan)
Withholding tax on interest, dividends and royalties
 (pajak atas bunga, dividen dan royalty)

#### IRELAND

Income tax Corporation tax Capital gains tax

## ITALY

Individual income tax (Imposta sul reddito delle
 persone fisiche
Corporate income tax (Imposta sul reddito delle
 persone giuridiche) even if they are collected
 by withholding taxes at source
Local tax on income (Imposta locale sui redditi)
Communal tax on capital appreciation of real property
 (Imposta comunale sull incremento di valore degli
 imm (INVIM)), where charged on a capital gain also
 chargeable in Australia.

## ISRAEL

Income tax (including capital gains tax)
Company tax
Tax on gains from the sale of land under the
Land Appreciation Tax Law

### JAPAN

Income tax Corporation tax Enterprise tax, so far as payable on profits or income Local (Prefectural or municipal) inhabitant taxes, so far as payable on profits, income or chargeable gains from sources in Japan

## KENYA

Income tax

## REPUBLIC OF KOREA

Income tax Corporation tax Inhabitant tax Defence tax, where charged by reference to income tax or corporation tax.

#### LUXEMBOURG

Income tax on individuals (Impot sur le revenu des personnes physiques) Tax on fees of directors of companies (Impot sur les tantiemes) Corporation tax (Impot sur le revenu des collectivites) Tax on the total amount of wages and salaries (Impot commercial communal Y compris limpot sur le total des salaries), except in so far as it is computed on a basis other than profits.

## MACAU

Complementary tax on income (Imposto complementar de rendimentos)

#### MALAYSIA

Income tax and excess profit tax
Supplementary income taxes (i.e. tin profits tax,
 development tax and timber profits tax)
Petroleum income tax
Real property gains tax

#### MALTA

Income tax, including prepayments of tax, whether made by deduction at source or otherwise

## MEXICO

Income tax
Federal District tax on income from capital (Impuesto
 sobre productos de capitales)
Federal District surcharge, in so far as charged
 on the tax above

## MONACO

Tax on profits (Impot sur les benefices)

#### NETHERLANDS

Income tax (Inkomstenbelasting)
Wages tax (Loonbelasting)
Corporation tax (vennootschapsbelasting)
Dividend tax (Dividend belasting)

## NEW ZEALAND

Income tax Excess retention tax

#### NORWAY

National tax on income (Inntektsskatt til staten) County municipal tax on income (Inntektsskatt til fylkeskommunen) Municipal tax on income (Inntektsskatt til kommunen) National contributions to the Tax Equalisation Fund (Fellesskatt til Skattefordelingsfondet) National tax relating to income from the exploration for and the exploitation of submarine petroleum resources and activities and work relating thereto, including pipeline transport of petroleum produced National dues on remuneration to non-resident artistes (Skatt til staten vedrorende inntekt og formue i forbindelse med undersokelse etter og utnyttelse av undersjoiske petroleumsforekomster og dertil knyttet virksomhet og arbeid, herunder rorledningstransport av utvunnet petroleum) (avgift til staten av honorarer som tilfaller kunstnere bosatt i utlandet) Seamen's tax (Sjomannsskatt)

#### PAKISTAN

Income tax Super tax

#### PAPUA NEW GUINEA

The Income tax imposed under the law of Papua New Guinea, including:

- . salary or wages tax;
- additional profits tax upon taxable additional profits from mining operations;
- . additional profits tax upon taxable additional profits from petroleum operations;
- . specific gains tax upon taxable specific gains; and
- . dividend withholding tax upon taxable dividend income.

#### PHILIPPINES

Income tax imposed by the Government of the Republic of the Phillipines

## POLAND

Income tax (podatek dochodowy)
Tax on wages and salaries (podatek ad wynagrodzen)
Surcharge on the income tax or on the tax on wages or
salaries (podatek wyrownawczy)

#### PORTUGAL

Agricultural tax (Imposto sobre a industria agricola) Industrial tax (Contribuicao industrial) Tax on income from capital (Imposto de capitais) Professional tax (Imposto profissional) Complementary tax (Imposto complementar) Tax on capital gains (Imposto de mais-valias) Any surcharges on the preceding taxes

#### ROMANIA

Tax on incomes derived by individuals and corporate bodies
 (Impozitul pe veniturile realizate de persoane fizice
 si juridice)
Tax on the profits of joint companies constituted with
 the participation of some Romanian economic
 organisations and some foreign partners (Impoz-

itul pe beneficiile societatilor mixte constituite cu participare romana si straina) Tax on income realised from agricultural activities (Impozitul pe veniturile realizate din activitati

#### SINGAPORE

Income tax

agricole)

#### SOLOMON ISLANDS

Income tax

#### SOUTH AFRICA

Normal tax (the general income tax) Non-resident shareholders' tax Undistributed profits tax Non-residents' tax on interest

#### SPAIN

Individual income tax (Impuesto sobre la renta de las personas fisicas) Company tax (Impuesto sobre sociedades) Local taxes on income

#### SRI LANKA

Income tax

#### SWEDEN

State income tax including sailors' tax and coupon tax Tax on undistributed profits of companies and the tax on distribution in connection with reduction of share capital or the winding-up of a company Tax on public entertainers Communal income tax

#### SWITZERLAND

The Federal, cantonal and communal taxes on income (total income, earned income, income from capital,

industrial and commercial profits and other items of income)

#### TAIWAN

Business income tax Personal income tax Withholding tax on interest Withholding tax on dividends

#### THAILAND

Income tax Petroleum income tax

## TURKEY

Income tax, including withholding or "stoppage"
 tax where charged on net profits
Corporation tax, where charged on net profits

## TUVALU

Income tax

#### UNITED KINGDOM

Income tax (including surtax) Corporation tax Capital gains tax

## UNITED STATES OF AMERICA

- Federal : Federal income taxes imposed by the Internal Revenue Code, but excluding the accumulated earnings tax and the personal holding company tax
- State : As detailed below, but note that any state tax which may be construed as a unitary tax (as defined by subsection 6AB(6) of the Australian Income Tax Assessment Act) is not creditable

## ALABAMA

Income tax on individuals General income tax

#### ALASKA

General income tax

## ARIZONA

General income tax

## ARKANSAS

Income tax

## CALIFORNIA Bank and corporation income tax

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Excise (income) tax, except where it represents
    a minimum levy
  Personal income tax
  Insurance companies tax on marine insurance
    companies
COLORADO
  General income tax
  Excise (income) tax
CONNECTICUT
  Corporation business tax where it is charged on
    income
DELAWARE
  Corporation income tax
  Personal income tax
DISTRICT OF COLUMBIA
  Individual and corporate income tax
FLORIDA
 Corporation income tax
GEORGIA
 General income tax
HAWAII
 General income tax
IDAHO
 General income tax
ILLINOIS
  Income tax
  Corporate replacement income tax (personal
    property replacement tax)
IOWA
 General income tax
KANSAS
 Income tax
KENTUCKY
 General income tax
LOUISIANA
 General income tax
MAINE
  Corporate income tax
  Personal income tax
MARYLAND
  Income tax
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MASSACHUSETTS
  Corporate excise (income) tax, where charged
    on net income
  Personal income tax
MICHIGAN
  Income tax
  Single business tax
MINNESOTA
  Income tax
MISSOURI
  Income tax
MONTANA
  Corporate income tax (licence)
  Personal income tax
NEBRASKA
 Personal income tax
NEW HAMPSHIRE
 Business profits tax
NEW JERSEY
  Corporation franchise tax except where it represents
    a minimum levy or is charged on amounts other than
    net income
  Insurance companies tax on marine insurance companies
  Personal income tax
NEW MEXICO
 Income tax
NEW YORK CITY
  Earnings tax on non-residents where it is charged on
    salaries
  Financial corporation tax where it is charged on
    income
  General corporate (income) tax, where charged on net
    income
  Personal income tax on residents where it is charged
   on salaries
NEW YORK STATE
  Personal income tax
  Unincorporated business tax
  Corporation franchise tax, except where it represents
    a minimum levy, is a charge based on capital, or is
    charged on amounts other than net income
NORTH CAROLINA
  General income tax
  Financial institutions excise tax, except where it
    represents a minimum levy
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NORTH DAKOTA
      General income tax
    OHIO
      Corporation franchise tax when charged on net
        income
      Income tax (Canton, Cincinatti, Cleveland,
        Columbus and Toledo)
      Net profits tax (Cleveland)
    OKLAHOMA
      General income tax
    OREGON
      Corporate (excise) income tax
      Personal income tax
    PENNSYLVANIA
      Corporate net income tax except where it is charged
        on amounts other than net income
      Personal income tax
      Philadelphia net profits and wages tax
      Philadelphia city tax
    RHODE ISLAND
      Business corporate tax where charged on net income
    SOUTH CAROLINA
      Income tax
    TENNESSEE
      Corporate excise (income) tax
    UTAH
      Corporation franchise tax when charged on net income
    VERMONT
      Corporate income tax
      Personal income tax
    VIRGINIA
      Direct corporate income tax
      Personal income tax
    WISCONSIN
      Corporate franchise tax
      Income tax
U.S.S.R.
      Income tax on foreign legal persons
      Income tax on the population
WESTERN SAMOA
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Income tax

## YUGOSLAVIA

Tax on income of a basic organisation of associated labour Tax on a worker's personal income Tax on personal income derived from independent exercise of agricultural activity Tax on personal income derived from independent exercise of economic activity Tax on personal income derived from independent exercise of professional activity Tax on personal income derived from copyrights, patents and technical innovations Tax on revenue derived from capital and capital rights Tax on total revenue of citizens Tax on income of a foreign person engaged in economic and professional activities Tax on compensation obtained by a foreign person from investments in a domestic organisation of associated labour Tax on income of a foreign person carrying out investment projects Tax on revenue of a foreign person carrying on passenger and cargo transport.

COMMISSIONER OF TAXATION 30 July 1987