



***TD 93/167 - Income tax: foreign income - when is Foreign Investment Fund (FIF) income not included in: (a) the assessable income of an attributable taxpayer of a Controlled Foreign Company (CFC); or (b) the notional assessable income of a CFC ?***

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 This document has changed over time. This is a consolidated version of the ruling which was published on *26 August 1993*



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).

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## Taxation Determination

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### **Income tax: foreign income - when is Foreign Investment Fund (FIF) income not included in:**

- (a) the assessable income of an attributable taxpayer of a Controlled Foreign Company (CFC); or**
- (b) the notional assessable income of a CFC ?**

1. Sections 431A and 494 of the *Income Tax Assessment Act 1936* (the 'Act') set out the circumstances where FIF income is not included in (a) or (b) above. This determination first deals with section 494, i.e., where a first tier FIF and CFC are the same entity.
2. There are two tests under section 494 for determining whether the FIF measures apply to a taxpayer's interest in a CFC where section 456 applies to that interest.
3. The first test is used where the statutory accounting period of the CFC coincides with the notional accounting period of the FIF. In this case, no amount will be included in respect of the taxpayer's interest in the CFC under the FIF measures if section 456 applies to the interest at the end of that period.
4. This exemption will not apply where, at the end of the company's statutory accounting period, the company ceases to be a CFC or if the taxpayer ceases to be an attributable taxpayer of the CFC. The exemption would, however, apply where a company became a CFC during its notional accounting period for the purposes of the FIF measures.
5. The second test is used where the statutory accounting period of the entity as a CFC does not coincide with the notional accounting period of the entity as a FIF. In this case, no amount will be included in respect of the taxpayer's interest in the CFC under the FIF measures if section 456 applies to that interest at the end of both of the CFC's statutory accounting periods which overlap the FIF's notional accounting period, that is, the statutory accounting period of the CFC which ends and the period which commences during the notional accounting period of the FIF.

6. Both of the tests require that section 456 applies to the taxpayer. For the purposes of these tests, the Commissioner will accept that section 456 applies to the attributable taxpayer, for the relevant year of income, in circumstances where no amount of attributable income is included in the assessable income of the taxpayer under section 456 because, in relation to the relevant statutory accounting period:

- (a) the CFC has no amounts of notional assessable income to which section 384 or 385 applies; or
- (b) the amount of notional assessable income of the CFC does not exceed its notional allowable deductions; or
- (c) subsection 385(4) applies to the CFC.

7. This ruling also applies to the provisions of section 431A where, at the end of the relevant statutory accounting period, the FIF referred to in section 431A is a CFC. Section 431A contains tests similar to those referred to above in section 494. For the purposes of section 431A, the Commissioner will accept that section 456 applies to the eligible taxpayer at the end of the relevant statutory accounting period of the FIF, in circumstances where no amount of attributable income is included in the assessable income of the eligible taxpayer under section 456 in relation to the FIF because, in relation to the relevant statutory accounting period:

- (a) the FIF has no amounts of notional assessable income to which section 384 or 385 applies; or
- (b) the amount of notional assessable income of the FIF does not exceed its notional allowable deductions; or
- (c) subsection 385(4) applies to the FIF.

8. It should be noted that where a CFC has an interest in a FIF, and that FIF is not a CFC, paragraphs 384(2)(ca) and 385(2)(ca) will include FIF income in the notional assessable income of the CFC.

### **Commissioner of Taxation**

26/8/93

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Related Determinations:

Related Rulings:

Subject Ref: Foreign Investment Funds

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