TD 93/89 - Income tax: does section 129 of the Income Tax Assessment Act 1936 (ITAA) operate to deem 5% of shipping freight payments to be taxable income where: (a) the payments were made by an Australian resident to an Italian shipping enterprise, (b) the payments were made for the carriage by ship of passengers, livestock, mail, goods or merchandise from Australia for discharge at an overseas port, and (c) the place of effective management of the Italian shipping enterprise is in Italy?

This cover sheet is provided for information only. It does not form part of *TD 93/89 - Income tax: does section 129 of the Income Tax Assessment Act 1936 (ITAA) operate to deem 5% of shipping freight payments to be taxable income where: (a) the payments were made by an Australian resident to an Italian shipping enterprise, (b) the payments were made for the carriage by ship of passengers, livestock, mail, goods or merchandise from Australia for discharge at an overseas port, and (c) the place of effective management of the Italian shipping enterprise is in Italy?*

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: does section 129 of the *Income Tax Assessment Act 1936* (ITAA) operate to deem 5% of shipping freight payments to be taxable income where:

(a) the payments were made by an Australian resident to an Italian shipping enterprise,
(b) the payments were made for the carriage by ship of passengers, livestock, mail, goods or merchandise from Australia for discharge at an overseas port, and
(c) the place of effective management of the Italian shipping enterprise is in Italy?

1. No. Although the requirements of section 129 are satisfied, under the terms of section 4 of the Income Tax (International Agreements) Act 1953 [IT(IA)A], where the application of the ITAA (other than section 160AO or Part IVA) would produce a result that is inconsistent with the provisions of the IT(IA)A, the treaty provisions will prevail.

2. Article 8(1), Schedule 21 IT(IA)A (Australia - Italy Double Tax Convention) states that "*Where profits are derived by a resident of one of the Contracting States from the operation of ships and the place of the effective management of the shipping enterprise is situated in that State, those profits shall be taxable only in that State.*".

3. Therefore, section 129 of the ITAA does not apply.

Commissioner of Taxation
20/5/93

FOI INDEX DETAIL: Reference No. I 1214934 Previously issued as Draft TD93/D84
Related Determinations:
Related Rulings: IT 2270, CITCM 563.
Subject Ref: shipping; double taxation
Legislative Ref: ITAA 129; IT(IA)A 4
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