


TD 96/10 - Income tax: general insurance: when an election is made under subsection 148(2) of the Income Tax Assessment Act 1936 ('the Act'), are all amounts paid or credited or received or debited in respect of reinsurance contracts made prior to the making of the election, deductible or assessable respectively to the Australian insurer?

 This cover sheet is provided for information only. It does not form part of *TD 96/10 - Income tax: general insurance: when an election is made under subsection 148(2) of the Income Tax Assessment Act 1936 ('the Act'), are all amounts paid or credited or received or debited in respect of reinsurance contracts made prior to the making of the election, deductible or assessable respectively to the Australian insurer?*

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: general insurance: when an election is made under subsection 148(2) of the *Income Tax Assessment Act 1936* ('the Act'), are all amounts paid or credited or received or debited in respect of reinsurance contracts made prior to the making of the election, deductible or assessable respectively to the Australian insurer?

1. The effect of making the election under subsection 148(2) of the Act on the Australian insurer is that all amounts paid or credited or received or debited in respect of the business of reinsurance with a non-resident applicable to contracts commencing **prior** to the making of the election, will be neither deductible nor assessable to the Australian insurer under subsection 148(1).
2. 'Amounts paid or credited or received or debited' in the context of this Determination, include reinsurance premiums paid, return reinsurance premiums, reinsurance recoveries and reinsurance commissions (apart from overriding or other forms of profit commission for the provision of services - Taxation Ruling IT 2367 refers).
3. An election under subsection 148(2) operates from date of the commencement of the year of income to which the election applies, not the date on which the election is made.
4. Accordingly, it is only amounts paid or credited or received or debited with a non resident that are applicable to contracts commencing on or after the commencement of the year of income to which the election applies that will be either deductible or assessable.
5. There is no change in the basis of accounting when an election is made under subsection 148(2). All adjustments to outstanding claims and unearned premiums provisions applicable to reinsurance contracts commencing prior to the commencement of the election are non-assessable and non-deductible. In this context, the opening balance in the election year for both unearned premiums and outstanding claims provisions must equal the closing balance in the previous year. It follows that the balance of the outstanding claims provision at the end of each year after the election takes effect would continue to include the gross liability for pre-election risks (less local reinsurance), with no offset for related recoveries from non-resident reinsurers.

Commissioner of Taxation

14 February 1996

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