

This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVA 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: compliance with Taxation Ruling TR 92/7 Life Assurance Companies - Total Income: application of section 170AA and the former section 223.

1. Taxation Ruling TR 92/7 sets out the amounts derived by a life assurance company which are to be included in 'total income' for the purposes of sections 111C, 113 and 116CF of the *Income Tax Assessment Act 1936* (ITAA).

2. Life assurance companies which, prior to the ruling, may have taken a different view on some aspects of TR 92/7 may be liable for interest under section 170AA or penalties under the former section 223. Guidelines have been published for the remission of interest and for concessional treatment for taxpayers who voluntarily disclose underpayments of tax. These guidelines are not intended to restrict Deputy Commissioners and authorising officers in the exercise of the discretion to remit, as remission powers need to be exercised independently in each case according to its merits. Following discussions between the ATO's Insurance Industry Cell and the Life Insurance Federation of Australia Inc. (LIFA) the following arrangements will apply in respect of the application of TR 92/7 to the assessments of life assurance companies subject to the requirement that officers must not be restricted in the exercise of their discretion to remit either penalties under Section 227 or interest on underpayments tax under Subsection 170AA(11).

3. Companies which lodge amended returns in accordance with TR 92/7 by 31 May 1993 accompanied by payment for outstanding tax, will also be required at the same time, to pay an amount representing interest under section 170AA or penalty as provided by the former section 223. Section 223 can only apply where a false and misleading statement has been made. Under IT 2517 the Commissioner may impose a culpability component and a per annum component. There will be no culpability component of any penalty imposed under Section 223. In accordance with the general principles in IT 2444 and IT 2517 the more specific provisions below will apply:

- (a) for each of the years of income or substituted accounting period (SAP) in lieu of the years ended 30 June 1988, 1989, 1990 and 1991 5% p. a. (under either Section 170AA or Section 223) subject to section 170.
Adjustments required to be made will apply in respect of amendments to Division 8 pursuant to the *Taxation Laws Amendment (Superannuation) Act 1989* and the *Taxation Laws Amendment Act (No. 2) 1989*. Interest or penalty will be calculated from the day on which the tax becomes due and payable under each assessment up to the date of disclosure under this offer.

(b) for the year of income ended 30 June 1992 or SAP in lieu, 10% p. a.

4. For companies which have lodged section 169A requests in relation to total income, interest should be calculated at the statutory rate that applied for the relevant income year i.e. 14.026% p.a. (refer IT 2593 para. 30). In relation to IT 2593 interest in this case is for a maximum of 3 months. Where companies have lodged a section 169A request in respect of one year in terms of IT 2593 and it remained unanswered, it will be treated as though a request was made for subsequent years. The request will be taken to apply to the whole of the items to be included in 'total income' provided that the request was of a substantive nature.

5. This proposal only applies in relation to 'total income' and not to other outstanding issues. Where companies may have outstanding issues in relation to the income years referred to above, and those issues have not been resolved by 31 May 1993, then an amended return should be lodged only in relation to the calculation of total income. Issues other than total income will be dealt with on their merits and on a case by case basis.

6. This proposal will also apply to companies which are currently subject to audit examination or have otherwise made voluntary disclosures in respect of TR 92/7.

7. Amended returns lodged in accordance with TR 92/7 and this Determination should be lodged with the Assistant Deputy Commissioner Compliance Improvement of the office where the life assurance company lodges its income tax returns. Companies which are presently subject to audit examination should lodge with the relevant Audit Case Manager. Amended returns should clearly indicate that the voluntary disclosure is being made in accordance with TR 92/7 and this Determination.

8. Companies which do not lodge amended details by 31 May 1993 will be subject to interest and penalties in accordance with the general principles in IT 2444 and IT 2517.

Commissioner of Taxation

25/3/93

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Related Determinations:

Related Rulings: TR 92/7; IT 2444; IT 2517; IT 2593

Subject Ref: life assurance companies; total income; additional tax; penalties

Legislative Ref: ITAA 111C; ITAA 113; ITAA 116CF; ITAA 169A; ITAA 170AA; ITAA 223

Case Ref:

ATO Ref: Insurance Industry Cell

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