

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: for the purposes of subsection 112C(1), what should an actuary take into account in certifying that the assets of a life insurance company's permanent establishments in foreign countries are not excessive in relation to liabilities referable to policies issued in the course of carrying on those permanent establishments?

1. Section 112C of the *Income Tax Assessment Act 1936* was introduced by *Taxation Laws Amendment Act (No 2) 1992* to exempt from Australian tax the foreign income applicable to eligible non-resident policies issued by an Australian life company in the course of carrying on a business of life insurance at or through a permanent establishment ('PE') in a foreign country. In this Determination the policies issued by the PE are referred to as 'foreign policies'. Subsection 112C(1) provides that the amount of income to which the section applies does not extend to income arising from assets which were not held to cover liabilities referable to foreign policies.

2. In determining whether the assets of the PE exceed those required to cover liabilities of foreign policies, the Explanatory Memorandum to the *Taxation Laws Amendment Act (No 2) 1992* at page 142 states:

'A statement from a professionally qualified actuary setting out the calculated liabilities in relation to the life policies issued by the PE, and certifying that the assets shown in the financial statements of the PE are not excessive in relation to those liabilities, would generally be accepted in this regard.'

3. The following are considered not to be assets held to cover liabilities referable to foreign policies and should not be taken into account by an actuary in determining the value of such assets for section 112C purposes:

- i) funds to enable new business to be generated
- ii) funds to provide initial capital
- iii) funds for special contingencies
- iv) capital adequacy reserves
- v) assets to meet prudential requirements of foreign regulatory authorities
- vi) reserves held for any capital guaranteed commitments or for terminal bonus commitments in relation to those foreign policies.

4. Where an actuary has determined that the assets held by the PE are not in excess of those required to cover liabilities referable to foreign policies, the actuary should certify accordingly. Conversely, where the actuary has determined that the assets held by the PE are excessive, he/she should ascertain the assets that are held to cover liabilities referable to foreign policies, and certify accordingly.

Commissioner of Taxation

12 June 1996

FOI INDEX DETAIL: Reference No. I 1015090

Previously issued as Draft TD 94/D37

Related Determinations:

Related Rulings:

Subject Ref: assets of permanent establishments in foreign countries

Legislative Ref: ITAA 112C; ITAA 112C(1)

Case Ref:

ATO Ref: Insurance Industry Cell; NAT 96/900-1

ISSN 1038 - 8982