



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: foreign income: are income or profits which are assessable in a listed country considered to be subject to tax in the listed country within the meaning of section 324 if, under the tax law of that country, no tax is required to be paid?

1. Subsection 324(1) of the *Income Tax Assessment Act 1936* provides (inter alia) that '...a particular item of income or profits derived by an entity is taken to be subject to tax in a listed country ... if ... foreign tax (other than a withholding-type tax) is payable under a tax law of the listed country in respect of the item because the item is included in the tax base of that law ...'.
2. The Commissioner considers that a particular item of income or profits is subject to tax in a listed country for the purposes of section 324:
 - (a) where:
 - (i) a credit or rebate allowable under the tax law of that country against tax payable under that law on the particular item of income or profits, for tax paid in another country on that item, has the effect that no tax is required to be paid; or
 - (ii) a reduction of the particular item of income or profits by deductions that are allowable under the tax law of that country has the effect that no tax is required to be paid; and
 - (b) where, if not for the credit, rebate or deduction, tax would have been paid in that country on the particular item of income or profits.
3. In relation to a particular type of entity, deductions referred to in paragraph 2 must be of the kind which are available, under the tax law of the listed country, to all other entities of that type that are subject to the tax jurisdiction of the listed country. For example, in the case of a company, deductions would include expenses incurred in deriving the particular item of income or profits, prior year carry forward losses, amortisation expenses and losses transferred within the company group.

4. The Commissioner further considers that a particular item of income or profits derived by a company is subject to tax in a listed country within the meaning of section 324 in circumstances where:

- (a) the company is a resident of a listed country which permits a group of companies to return income or profits, as the case may be, for tax purposes on a consolidated basis; and
- (b) deductions from income or profits that are allowable to the consolidated group have the effect that no tax is required to be paid; and
- (c) if not for those deductions, tax would have been paid in that country on the particular item of income or profits.

5. This Determination replaces Taxation Determination TD 92/107. That Taxation Determination is now withdrawn.

Commissioner of Taxation18 September 1996

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Related Determinations:

Related Rulings:

Subject Ref: CFCs; deductions; foreign source income; listed country; prior year losses; subject to tax

Legislative Ref: ITAA 324

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