



Taxation Determination

Income tax: for the purposes of Division 775 of the *Income Tax Assessment Act 1997*, what forex realisation events happen to a creditor and a debtor, on the effective assignment by the creditor to a third party of a presently existing right to receive an amount under a foreign currency-denominated debt?

1 This Ruling provides you with the following level of protection:

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*. A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes. If you rely on this ruling, we must apply the law to you in the way set out in the ruling (or in a way that is more favourable for you if we are satisfied that the ruling is incorrect and disadvantages you, and we are not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

Ruling

1. The effective assignment of a presently existing right to receive an amount under a foreign currency-denominated debt from a creditor to a third party will result in forex realisation event 1 (FRE 1) happening to that creditor if that assignment results in a change in beneficial ownership of the debt. In such a situation there is a disposal of a right to receive foreign currency under paragraph 775-40(1)(b) of the *Income Tax Assessment Act 1997* (ITAA 1997).
2. Where an effective assignment conveys the beneficial ownership of the presently existing debt, forex realisation event 2 (FRE 2) will not happen to the creditor as the cessation of the right occurred because of a disposal of a right to receive foreign currency and consequently, paragraph 775-45(1)(c) of the ITAA 1997 is not satisfied.
3. Regardless of whether the assignment conveys the beneficial ownership in the foreign currency-denominated debt to a third party, there is no forex realisation event that happens to the debtor as its obligation to pay foreign currency subsists.

Example

4. *On 1 July 2003, Delta Ltd, an Australian resident, obtains an interest-free loan of US\$100,000 from Cappa Ltd. The loan is to be repaid in two years' time.*
5. *On 30 June 2004, Cappa Ltd makes a legally effective assignment of the right to receive the repayment of this loan to Alpha Ltd. The assignment changes the beneficial ownership of the right to receive the repayment. This assignment does not constitute a new contract between Delta Ltd and Alpha Ltd.*
6. *The assignment results in the cessation of Cappa Ltd's right to receive foreign currency of US\$100,000 from Delta Ltd. Consequently, FRE 1 happens under subsection 775-40(1) of the ITAA 1997 when Cappa Ltd assigns its right to receive foreign currency to Alpha Ltd.*
7. *As Delta Ltd's obligation to pay foreign currency of US\$100,000 is not extinguished under the assignment, Delta Ltd does not cease to have an obligation to pay foreign currency. Forex realisation event 4 (FRE 4) does not happen under subsection 775-55(1) of the ITAA 1997 as a consequence of the assignment.*

Date of effect

8. 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 settlement of a dispute agreed to before the date of issue of the Determination.

Commissioner of Taxation

5 April 2006

Appendix 1 – Explanation

❶ *This Appendix is provided as information to help you understand how the Commissioner’s view has been reached. It does not form part of the binding public ruling.*

Explanation

9. Where a presently existing debt is denominated in a foreign currency, the creditor will have a right to receive foreign currency and the debtor will have an obligation to pay foreign currency. For example, under a loan of money, the lender, as creditor, has the right to repayment of the amount advanced, and the borrower, as debtor, has an obligation to repay the amount advanced.

10. An effective assignment results in ‘the immediate transfer of an existing proprietary right, vested or contingent, from the assignor to the assignee’ (*Norman v. FCT* (1963) 109 CLR 9 at 26 per Windeyer J). Under a legal assignment, a creditor assigns a right to a third party by complying with the statutory requirements of the relevant State or Territory.¹ Under an equitable assignment, the transferee’s right to receive foreign currency is enforceable in equity though the assignment may not comply with the relevant statutory requirements.

The creditor

11. FRE 1 happens if you dispose of foreign currency or a right, or a part of a right, to receive foreign currency (subsection 775-40(1) of the ITAA 1997). Subsection 775-40(2) of the ITAA 1997 provides that for the purposes of this section, subsection 104-10(2) of the ITAA 1997 (which deals with the happening of CGT event A1) is used to work out whether you have disposed of the right to receive foreign currency.

12. Under subsection 104-10(2) of the ITAA 1997, a taxpayer disposes of a CGT asset if a change of beneficial ownership occurs from that taxpayer to another entity. Where there is an effective assignment (whether legal or equitable) that results in a change in the beneficial ownership of a presently existing right to receive an amount under a foreign currency-denominated debt, FRE 1 happens to the assignor under subsection 775-40(1) of the ITAA 1997 as the original right to receive foreign currency is disposed of at the time of the assignment.

13. However, FRE 1 will not happen to the creditor where it has assigned only the legal ownership of the debt to the assignee but the beneficial ownership has not changed. This is because under subsection 104-10(2) of the ITAA 1997 a disposal will not occur for the purposes of FRE 1 where the beneficial ownership of the debt has not changed.

14. FRE 2 will not happen to the creditor where it has assigned the beneficial ownership of the debt, as the right to receive foreign currency ceased because of a disposal of that right and so paragraph 775-45(1)(c) of the ITAA 1997 is not satisfied.

¹ *Conveyancing Act 1919* (NSW), section 12; *Property Law Act 1974* (Qld), sections 199, 200; *Law of Property Act 1936* (SA), section 15; *Conveyancing and Law of Property Act 1884* (Tas), section 86; *Property Law Act 1958* (Vic), section 134; *Property Law Act 1969* (WA), section 20; *Conveyancing Act 1919* (ACT), section 12; *Law of Property Act* (NT), section 182.

The debtor

15. FRE 4 happens if 'you cease to have an obligation, or part of an obligation, to pay foreign currency' (paragraph 775-55(1)(a) of ITAA 1997) and you incurred that obligation, or part of the obligation, in return for the receipt of currency (subparagraph 775-55(1)(b)(ix) of the ITAA 1997) or for the creation or acquisition of a right to receive currency (subparagraph 775-55(1)(b)(x) of the ITAA 1997).

16. The assignment, whether legal or equitable, is not a transaction between the creditor and the debtor. It is a transaction between the creditor and the assignee to which the consent of the debtor is not needed. The debtor is not a party to the transaction (*Olsson v. Dyson* (1969) 120 CLR 365 at 388 per Windeyer J). It does not result in the debtor ceasing to have that obligation to repay foreign currency.

17. Whether the debtor's obligation to repay the debt is to the creditor (as trustee for the assignee) or to the assignee directly, the debtor continues to be subject to a subsisting obligation to repay the debt. Consequently, FRE 4 does not happen to a debtor under paragraph 775-55(1)(a) of the ITAA 1997 when a debt is assigned.

References

Previous draft:

TD 2006/D6

Subject references:

- assignment of rights & entitlements
- foreign currency obligations
- foreign currency rights
- foreign exchange gains and losses
- forex realisation event

Legislative references:

- TAA 1953
- ITAA 1997 104-10(2)
- ITAA 1997 Div 775
- ITAA 1997 775-40(1)
- ITAA 1997 775-40(1)(b)
- ITAA 1997 775-40(2)
- ITAA 1997 775-45(1)(c)
- ITAA 1997 775-55(1)

- ITAA 1997 775-55(1)(a)
- ITAA 1997 775-55(1)(b)(ix)
- ITAA 1997 775-55(1)(b)(x)
- Conveyancing Act 1919 (ACT) 12
- Conveyancing Act 1919 (NSW) 12
- Conveyancing and Law of Property Act 1884 (Tas) 86
- Law of Property Act (NT) 182
- Law of Property Act 1936 (SA) 15
- Property Law Act 1958 (Vic) 134
- Property Law Act 1969 (WA) 20
- Property Law Act 1974 (Qld) 199
- Property Law Act 1974 (Qld) 200

Case references:

- Norman v. FCT (1963) 109 CLR 9
- Olsson v. Dyson (1969) 120 CLR 365

ATO references

NO: 2005/16006
ISSN: 1038-8982
ATOlaw topic: Income Tax ~ Foreign exchange gains and losses