


TD 2003/D17 - Income tax: Is a dividend exempt under section 23 A1 of the Income Tax Assessment Act 1936 if paid: by a Controlled Foreign Company (CFC) to an attributable taxpayer; out of income or profits derived by the CFC during a statutory accounting period (SAP) that is subject to attribution; and after the end of that SAP but before the end of the attributable taxpayer's year of income.

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This document has been finalised by TD 2003/27.

Draft Taxation Determination

Income tax: Is a dividend exempt under section 23 AI of the *Income Tax Assessment Act 1936* if paid:

- **by a Controlled Foreign Company (CFC) to an attributable taxpayer;**
- **out of income or profits derived by the CFC during a statutory accounting period (SAP) that is subject to attribution; and**
- **after the end of that SAP but before the end of the attributable taxpayer's year of income.**

Preamble

*This document is a draft for industry and professional comment. As such, it represents the preliminary, though considered views of the Australian Taxation Office. This draft may not be relied on by taxpayers and practitioners as it is not a ruling for the purposes of Part IVAAA of the **Taxation Administration Act 1953**. It is only final Taxation Determinations that represent authoritative statements by the Australian Taxation Office.*

1. Yes, to the extent of the attribution debit.
2. In order to prevent double taxation, section 23AI of the ITAA 1936 broadly exempts dividends paid to an attributable taxpayer out of CFC income and profits that have been previously subject to tax on attribution. For a dividend to be exempt under section 23AI several requirements must be satisfied:
 - there needs to be an 'attribution account entity';
 - the attribution account entity must make an 'attribution account payment'; and
 - an 'attribution debit' must arise for the attribution account entity making the payment.

An *attribution account entity* is a company (that is not a Part X Australian resident), a partnership or a trust. This entity makes the payment to the attributable taxpayer. See section 363. In this Determination, the attribution account entity is the CFC.

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An **attribution account payment** includes a dividend, a share of partnership net income, a share of the net income of a trust estate and a distribution from a trust estate. See section 365. In this Determination, the attribution account payment is a dividend.

An **attribution debit** arises when an attribution account entity makes an attribution account payment and there is an attribution surplus. The amount of the debit cannot exceed the attribution surplus. See section 372.

An **attribution surplus** is the excess of the attribution account entity's attribution credits arising in relation to the attributable taxpayer over attribution debits arising in relation to the attributable taxpayer at a given time. See section 370.

An **attribution credit** arises for an attribution account entity in relation to the attributable taxpayer where, broadly, an amount is included in the assessable income of the taxpayer by virtue of it being attributed to the taxpayer under Part X. See section 371.

3. Therefore, for a dividend payment to be wholly or partly exempt under section 23AI of the ITAA 1936 when received by the attributable taxpayer, there must be an attribution surplus for the CFC at the time of the payment in relation to that taxpayer. For there to be any attribution surplus, there must be an earlier credit to the attribution account for the CFC in relation to the attributable taxpayer.

4. Paragraph 371(1)(a) states that an attribution credit arises for a CFC where an amount is included in the assessable income of a taxpayer in respect of the attributable income of the CFC. Paragraph 371(5)(a) states that for the purposes of paragraph (1)(a), an attribution credit arises at the end of the CFC's statutory accounting period ('SAP'). Note the timing of the credit to the attribution account- it arises at the end of the CFC's SAP and not at the end of the attributable taxpayer's year of income. Accordingly, as the credit gives rise to an attribution surplus, any subsequent payment of a dividend to the attributable taxpayer (assuming there are no other attribution account payments) made after the end of that CFC's SAP but before the end of the attributable taxpayer's year of income, will be exempt under section 23AI to the extent of that surplus.

5. In cases where a dividend is paid to an attributable taxpayer before the end of the CFC's SAP, that is out of current-year profits and the whole or part of the dividend is included in the assessable income of the attributable taxpayer, the attributable income of the CFC is reduced by the amount of the dividend that is assessable to the attributable taxpayer. See section 387. This provision is designed to prevent the attributable taxpayer being taxed twice on the same amount, that is, firstly on the assessable dividend and again on attribution.

Examples

7. *Ausco, an Australian company, owns 100% of the shares in Forco (a CFC) which is resident in an unlisted country. Forco's SAP runs from 1 January to 31 December and this is the eligible period during which the attributable income of the CFC is calculated. Ausco's year of income runs from 1 July to 30 June. Forco's first year as a CFC is the SAP ending 31 December 2002 (i.e. it has no attribution account balance prior to that time).*

8. *During that period, Forco has attributable income and as a result an amount of \$10,000 is attributed to Ausco and included in Ausco's assessable income for the year*

ending 30 June 2003. By virtue of paragraph 371(5)(a), an attribution credit arises in Forco's attribution account on 31 December 2002 in relation to Ausco for an amount of \$10,000, being the amount to be included in Ausco's assessable income for the 2003 year of income.

9. *On 2 January 2003, Forco-the attribution account entity- pays a dividend of \$10,000 to Ausco out of the income derived during its SAP.*

10. *Immediately before the time that Forco pays a dividend to Ausco (i.e. 2 January 2003), there is an attribution surplus of \$10,000 in the attribution account. The payment of the dividend of \$10,000 is therefore an attribution account payment which gives rise to an attribution debit for the same amount.*

11. *As the dividend payment of \$10,000 gives rise to an attribution debit to the attribution account of Forco in relation to Ausco, the entire dividend of \$10,000 received by Ausco is exempt under section 23AI.*

Date of Effect

12. When the final Determination is issued, it is proposed to apply to 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 (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Your comments

13. We invite you to comment on this draft Taxation Determination. We are allowing 4 weeks for comments before we finalise the Determination. If you want your comments considered, please provide them to us within this period.

Comments by Date: 12 September 2003

Contact Officer: Stuart Ducat

E-mail address: stuart.ducat@ato.gov.au

Telephone: (02) 6216 1380

Facsimile: (02) 6216 2362

Address: Mr. Stuart Ducat

Australian Taxation Office

PO Box 900

Civic Square 2608

Commissioner of Taxation

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Previous Draft:

Not previously issued in draft form.

Related Rulings:

TR 92/20

Subject references:

- controlled foreign corporations
- exempt dividends
- attributable income

Legislative references:

- ITAA 1936 23 AI
- ITAA 1936 363
- ITAA 1936 365
- ITAA 1936 370
- ITAA 1936 371
- ITAA 1936 371(1)(a)
- ITAA 1936 371(5)(a)
- ITAA 1936 372
- ITAA 1936 387
- TAA 1953 Pt IVAAA

ATO references

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