


TD 2005/D36 - Income tax: can a 'small proprietary company', not required to prepare reports under section 292 of the Corporations Act 2001, make a choice to use the 'applicable functional currency' under item 1 in the table in subsection 960-60(1) of the Income Tax Assessment Act 1997?

 This cover sheet is provided for information only. It does not form part of *TD 2005/D36 - Income tax: can a 'small proprietary company', not required to prepare reports under section 292 of the Corporations Act 2001, make a choice to use the 'applicable functional currency' under item 1 in the table in subsection 960-60(1) of the Income Tax Assessment Act 1997?*

This document has been finalised by TD 2006/8.



Draft Taxation Determination

Income tax: can a ‘small proprietary company’, not required to prepare reports under section 292 of the *Corporations Act 2001*, make a choice to use the ‘applicable functional currency’ under item 1 in the table in subsection 960-60(1) of the *Income Tax Assessment Act 1997*?

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. No. A small proprietary company, not required to prepare reports under section 292 of the *Corporations Act 2001*, can not make a choice to use the ‘applicable functional currency’, as defined in section 960-70 of the *Income Tax Assessment Act 1997* (ITAA 1997), under item 1 of the table in subsection 960-60(1) of the ITAA 1997.
2. However, if the small proprietary company carries on an activity or business through a permanent establishment, or is an ‘attributable taxpayer’ within the meaning of Part X of the *Income Tax Assessment Act 1936*, items 2 or 3 in the table in subsection 960-60(1) of the ITAA 1997 may apply.

Explanation

3. Item 1 in the table in subsection 960-60(1) of the ITAA 1997 enables an ‘Australian resident’ (as defined in subsection 995-1(1) of the ITAA 1997), to choose to use the ‘applicable functional currency’ where they are required to prepare financial reports under section 292 of the *Corporations Act 2001*. This choice allows the resident entity to calculate so much of its taxable income or tax loss not covered by a choice or choices under any other item in the table, in the ‘applicable functional currency’, prior to translating the result into Australian currency (refer generally to section 960-80 of the ITAA 1997).

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4. Generally, under section 292 of the *Corporations Act 2001*, small proprietary companies (as defined in subsection 45A(2) of that Act), are exempt from having to prepare a financial report and a directors' report: subsection 292(2) of that Act states:

A small proprietary company has to prepare the financial report and directors' report only if:

- (a) it is directed to do so under section 293 or 294; or
- (b) it was controlled by a foreign company for all or part of the year and it is not consolidated for that period in financial statements for that year lodged with ASIC by:
 - (i) a registered foreign company; or
 - (ii) a company, registered scheme or disclosing entity.

5. A small proprietary company to which the reporting requirements in section 292 of the *Corporations Act 2001* do not apply is not an entity that comes within item 1 of the table in subsection 960-60(1) of the ITAA 1997 even if it is a subsidiary of a company to which these reporting requirements do apply. It cannot therefore, make a choice to use the 'applicable functional currency' under that item.

6. If the small proprietary company is a member of a consolidated group for certain income tax purposes, then generally it will be deemed to be part of the head company of that group (section 701-1 of the ITAA 1997), and will not have to calculate its own taxable income or tax loss as envisaged by section 960-80 of the ITAA 1997 in relation to the use of the 'applicable functional currency'. The calculation of taxable income or tax loss will be one that the head company will need to perform.

Date of Effect

7. When the final Determination is issued, it is proposed to apply both before and after its date of issue. However, the Determination will 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

8. We invite you to comment on this draft Taxation Determination. Please forward your comments to the contact officer by the due date.

Due date:	16 September 2005
Contact officer:	Andrew Peake
E-mail address:	andrew.peake@ato.gov.au
Telephone:	(08) 8208 1839
Facsimile:	(08) 8208 1198
Address:	GPO Box 800 ADELAIDE SA 5001

Commissioner of Taxation

17 August 2005

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 92/20

Subject references:

- foreign currency transactions
- foreign currency translations

Legislative references:

- TAA 1953 Pt IVAAA
- ITAA 1936 Pt X
- ITAA 1997 701-1
- ITAA 1997 960-60(1)
- ITAA 1997 960-70
- ITAA 1997 960-80
- ITAA 1997 995-1(1)
- Corporations Act 2001 45A(2)
- Corporations Act 2001 292
- Corporations Act 2001 292(2)
- Corporations Act 2001 293
- Corporations Act 2001 294

ATO references

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Income Tax ~~ Foreign exchange gains and losses