IT 2437 - Income tax : foreign tax credit system - foreign taxes eligible for credit against australian income tax

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TAXATION RULING NO. IT 2437

INCOME TAX : FOREIGN TAX CREDIT SYSTEM - FOREIGN TAXES ELIGIBLE FOR CREDIT AGAINST AUSTRALIAN INCOME TAX

F.O.I. EMBARGO: May be released

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REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1218651	FOREIGN TAX CREDIT SYSTEM - CREDITABLE FOREIGN TAXES	6AB(2) 6AB(6) 160AF

PREAMBLE New Division 18 of the Income Tax Assessment Act (inserted by the Taxation Laws Amendment (Foreign Tax Credits) Act 1986 and first applicable to assessments for the year of income commencing 1 July 1987) provides for the granting of credits in respect of foreign tax. Subsection 160AF(1) provides that a resident taxpayer, whose assessable income includes foreign income on which the taxpayer has paid foreign tax, is entitled to a credit against the Australian tax payable of the amount of that foreign tax, up to the amount of Australian tax payable on the foreign income.

2. Subsection 6AB(2) specifies in general terms the nature of the foreign taxes for which credit is allowable. First, the tax must be imposed by the law of a foreign country, whether it be at national, state, local or other government level (subsection 6AB(6)). Secondly, it must be either :

- a tax imposed upon income or upon profits or gains, whether of an income or capital nature;
- a tax deemed, under section 160AFC, to have been paid in respect of a dividend (i.e., underlying foreign company tax on profits out of which a dividend is paid by a related foreign company to an Australian resident company); or
- a tax subject to a comprehensive taxation agreement to which Australia is a party and having the force of law under the Income Tax (International Agreements) Act 1953.

3. However, the subsection specifically excludes from its ambit a foreign tax that is a unitary tax, as defined in subsection 6AB(6). (A further Ruling concerning unitary taxes is proposed.)

4. The law does not identify specific taxes of particular countries as being either creditable or not creditable; that has been left to be determined by the application of the above criteria on a case by case basis.

5. Essentially, foreign tax must be imposed on a basis substantially equivalent to that on which the Income Tax Assessment Act operates. That is, it must be imposed on the basis of a taxpayer's net income or gains, whether of an income or capital nature, or be a withholding tax on outgoing payments (imposed as a final tax and not be later creditable against the ultimate foreign tax liability of the taxpayer) similar to the Australian withholding tax on the gross amount of outgoing dividends and interest payments. This has been the basis which has been used in the past to measure whether a foreign tax qualifies as a tax that would render an Australian resident recipient of the income upon which it is imposed eligible for the exemption from Australian tax provided by paragraph 23(q) of the Assessment Act.

6. In order to assist taxpayers to more readily understand which foreign taxes are creditable for purposes of the foreign tax credit system a list of creditable foreign taxes is set out in this Ruling. The taxes included in the list will be creditable whether imposed on an assessment basis or by way of a final withholding tax.

7. The list is not exhaustive and will be revised when enquiries in relation to the nature of certain other foreign taxes presently under examination have been finalised and in the light of experience gained in administration of the new provisions. The list will also need to be updated periodically as a consequence of changes in other countries' taxes and as other foreign taxes are admitted as creditable taxes. Future Rulings to be issued on this basis will be in the form of an updated consolidated list of creditable taxes (rather than a series of lists to supplement that set out in this Ruling). It will, however, contain the usual reference to earlier Rulings on the topic. Consideration is to be given to the inclusion in the future Rulings of further points of principle which may clarify the status of particular types of foreign taxes and the development of a list of non-creditable taxes so as to assist taxpayers where the creditability of a particular tax is doubtful.

8. Taxpayers who seek credit for foreign taxes not identified in the following list (or in the subsequent Rulings) should supply details of those taxes in the relevant income tax returns. The details to be provided should include :

- the precise title of the tax;
- the title of the law under which the tax is imposed;
- whether the tax is levied by a national, state or local authority and the name of that authority; and
- a description of the nature of the tax and the basis for its implementation.

9. Return forms for the 1987/88 and subsequent years of

income, or accompanying instructions, will also provide information concerning the details to be supplied. Decisions as to whether particular foreign taxes not included in this Ruling (or in subsequent Rulings) are creditable taxes under the foreign tax credit system will be taken in National Office. Branch Offices should therefore refer enquiries received, or claims in returns, in relation to such taxes to National Office for consideration and advice. It would assist with the processing of returns if taxpayers were to supply relevant details to National Office as soon as a liability to pay such a foreign tax becomes apparent.

RULING 10. Subject to the provisions of Division 18 of Part III of the Income Tax Assessment Act, a taxpayer will be entitled to a credit against Australian tax payable on foreign income for the following foreign taxes paid in respect of that income :

ARGENTINA

Income tax (Impuesto a las ganancias)
Tax on casual gains (Impuesto sobre los beneficios eventuales)

AUSTRIA

Income tax (Einkommensteuer)
Corporation tax (Korperschaftsteuer)
Tax on Interest Yields (Zinserstragsteuer)
Directors' tax (Aufsichtsratsabgabe)
Tax on commercial and industrial enterprises (Gewerbesteuer), only where levied on a basis other than capital or the sum of wages

BANGLADESH

Income tax

BELGIUM

Individual income tax (impot des personnes physiques/personen belasting)
Corporate income tax (impot des societes/ vennootschapsbelasting)
Income tax on legal entities (impot des personnes morales/rechtspersonenbelasting)
Income tax on non-residents (impot des non-residents/belasting der nietverb- lijfhouders)

including the prepayments, the surcharges on these taxes and prepayments, and the communal supplement to the individual income tax.

BRAZIL

Income tax (Imposto de renda)
Withholding tax on pure income, e.g. interest

or dividends
Supplementary tax (Imposto suplementar), where charged on dividends or branch profits arising in Brazil
Payments to the development funds PIN and PIS (programa de integracao nacional/social) and MOBRAL (Fundacao moviments brasileiro de alfabetizacao)

BRUNEI

Income tax
Petroleum income tax

BURMA

Income tax

CANADA

Federal: Income taxes imposed by the Government of Canada

Provincial:

ALBERTA
Provincial income tax

BRITISH COLUMBIA
Provincial income tax
Mining tax
Mineral resource tax
Logging tax

MANITOBA
Provincial income tax

NEW BRUNSWICK
Provincial income tax
Mining tax

NEWFOUNDLAND
Provincial income tax
Mining tax

NOVA SCOTIA
Provincial income tax
Mining tax

ONTARIO
Provincial corporation tax on company profits
Provincial income tax on individuals
Mining tax

PRINCE EDWARD ISLAND
Provincial income tax

QUEBEC

Provincial corporation tax on company profits
Provincial income tax on individuals
Mining tax
Logging tax

SASKATCHEWAN
Provincial income tax
Mining royalty tax

CHILE

Income tax (Impuesto a la renta)
Additional tax (Impuesto adicional)
Additional tax (Tasa adicional)

CHINA

Individual income tax
Income tax concerning joint ventures with Chinese and foreign investment
Income tax concerning foreign enterprises
Local income tax

CYPRUS

Income tax
Special contributions under Law 55 of 1974 and subsequent annual extensions

CZECHOSLOVAKIA

Tax on profits (Dan ze zisku)
Artists' tax (Dan z prijmu literarni a umelecke cinnosti)

DENMARK

Income taxes to the State and to the municipalities (indkomstskatterne til staten og til kommunerne)

FINLAND

State income tax
Communal tax
Church tax
Tax withheld at source from non-residents' income

FRANCE

Income tax and corporation tax including any withholding tax, prepayment (precompte) or advance payment with respect to the aforesaid taxes.

FRENCH POLYNESIA (TAHITI)

Corporation tax (Impot sur les benefices

des societes)
Territorial solidarity tax (Prelevement territorial de solidarite)
Extraordinary solidarity tax (Prelevement exceptionnel de solidarite)

FIJI

Income tax (including basic tax and normal tax)
Non-resident dividend withholding tax
Interest withholding tax
Royalty withholding tax
Dividend tax
Land sales tax

GERMAN DEMOCRATIC REPUBLIC

Corporation tax (korperschaftsteuer)
Trade tax (Gewerbesteuer) to the extent that it is computed by reference to trading profits
Wages tax (Lohnsteuer)

GERMANY (FEDERAL REPUBLIC)

Income tax (Einkommensteuer) including the surcharge (Erganzungsabgabe) thereon
Corporation tax (korperschaftsteuer) including the surcharge (Erganzungsabgabe) thereon
Trade tax (Gewerbesteuer) only where it is levied on a basis other than capital or pay-roll

GREECE

Income tax, including schedular or analytical tax

HONG KONG

Tax on earnings, profits and interest, comprising:
- salaries tax
- profits tax
- interest tax

HUNGARY

Income taxes (a jovedelemadok)
Profit taxes (a nyeresegadok)
Enterprises special tax (a vallalati kulonado)
Contribution to communal development (a kozsegf-ejlesztesi hozzajarulas)
Levy on dividends and profit distributions of commercial companies (a kereskedelmi tarsasagok osztalek es nyereseg kifizetesei utani illetek)

INDIA

Income tax, including any surcharge thereon

Income tax and super tax levied by States on agricultural income
Surtax imposed on chargeable profits of companies

INDONESIA

Income tax (pajak pendapatan)
Company tax (pajak perseroan)
Withholding tax on interest, dividends and royalties (pajak atas bunga, dividen dan royalty)

IRELAND

Income tax
Corporation tax
Capital gains tax

ITALY

Individual income tax (Imposta sul reddito delle persone fisiche
Corporate income tax (Imposta sul reddito delle persone giuridiche) even if they are collected by withholding taxes at source
Local tax on income (Imposta locale sui redditi)
Communal tax on capital appreciation of real property (Imposta comunale sull incremento di valore degli imm (INVIM)), where charged on a capital gain also chargeable in Australia.

ISRAEL

Income tax (including capital gains tax)
Company tax
Tax on gains from the sale of land under the Land Appreciation Tax Law

JAPAN

Income tax
Corporation tax
Enterprise tax, so far as payable on profits or income
Local (Prefectural or municipal) inhabitant taxes, so far as payable on profits, income or chargeable gains from sources in Japan

KENYA

Income tax

REPUBLIC OF KOREA

Income tax
Corporation tax
Inhabitant tax
Defence tax, where charged by reference to income

tax or corporation tax.

LUXEMBOURG

Income tax on individuals (Impot sur le revenu des personnes physiques)
Tax on fees of directors of companies (Impot sur les tantiemes)
Corporation tax (Impot sur le revenu des collectivites)
Tax on the total amount of wages and salaries (Impot commercial communal Y compris limpot sur le total des salaries), except in so far as it is computed on a basis other than profits.

MACAU

Complementary tax on income (Imposto complementar de rendimentos)

MALAYSIA

Income tax and excess profit tax
Supplementary income taxes (i.e. tin profits tax, development tax and timber profits tax)
Petroleum income tax
Real property gains tax

MALTA

Income tax, including prepayments of tax, whether made by deduction at source or otherwise

MEXICO

Income tax
Federal District tax on income from capital (Impuesto sobre productos de capitales)
Federal District surcharge, in so far as charged on the tax above

MONACO

Tax on profits (Impot sur les benefices)

NETHERLANDS

Income tax (Inkomstenbelasting)
Wages tax (Loonbelasting)
Corporation tax (vennootschapsbelasting)
Dividend tax (Dividend belasting)

NEW ZEALAND

Income tax
Excess retention tax

NORWAY

National tax on income (Inntektsskatt til staten)
County municipal tax on income (Inntektsskatt til fylkeskommunen)
Municipal tax on income (Inntektsskatt til kommunen)
National contributions to the Tax Equalisation Fund (Fellesskatt til Skattefordelingsfondet)
National tax relating to income from the exploration for and the exploitation of submarine petroleum resources and activities and work relating thereto, including pipeline transport of petroleum produced
National dues on remuneration to non-resident artistes (Skatt til staten vedrorende inntekt og formue i forbindelse med undersokelse etter og utnyttelse av undersjoiske petroleumsforekomster og dertil knyttet virksomhet og arbeid, herunder rorledningstransport av utvunnet petroleum) (avgift til staten av honorarer som tilfaller kunstnere bosatt i utlandet)
Seamen's tax (Sjomannsskatt)

PAKISTAN

Income tax
Super tax

PAPUA NEW GUINEA

The Income tax imposed under the law of Papua New Guinea, including:

- salary or wages tax;
- additional profits tax upon taxable additional profits from mining operations;
- additional profits tax upon taxable additional profits from petroleum operations;
- specific gains tax upon taxable specific gains; and
- dividend withholding tax upon taxable dividend income.

PHILIPPINES

Income tax imposed by the Government of the Republic of the Phillipines

POLAND

Income tax (podatek dochodowy)
Tax on wages and salaries (podatek ad wynagrodzen)
Surcharge on the income tax or on the tax on wages or salaries (podatek wyrownawczy)

PORTUGAL

Agricultural tax (Imposto sobre a industria agricola)
Industrial tax (Contribuicao industrial)
Tax on income from capital (Imposto de capitais)
Professional tax (Imposto profissional)

Complementary tax (Imposto complementar)
Tax on capital gains (Imposto de mais-valias)
Any surcharges on the preceding taxes

ROMANIA

Tax on incomes derived by individuals and corporate bodies (Impozitul pe veniturile realizate de persoane fizice si juridice)
Tax on the profits of joint companies constituted with the participation of some Romanian economic organisations and some foreign partners (Impoz-itul pe beneficiile societatilor mixte constituite cu participare romana si straina)
Tax on income realised from agricultural activities (Impozitul pe veniturile realizate din activitati agricole)

SINGAPORE

Income tax

SOLOMON ISLANDS

Income tax

SOUTH AFRICA

Normal tax (the general income tax)
Non-resident shareholders' tax
Undistributed profits tax
Non-residents' tax on interest

SPAIN

Individual income tax (Impuesto sobre la renta de las personas fisicas)
Company tax (Impuesto sobre sociedades)
Local taxes on income

SRI LANKA

Income tax

SWEDEN

State income tax including sailors' tax and coupon tax
Tax on undistributed profits of companies and the tax on distribution in connection with reduction of share capital or the winding-up of a company
Tax on public entertainers
Communal income tax

SWITZERLAND

The Federal, cantonal and communal taxes on income (total income, earned income, income from capital,

industrial and commercial profits and other items of income)

TAIWAN

Business income tax
Personal income tax
Withholding tax on interest
Withholding tax on dividends

THAILAND

Income tax
Petroleum income tax

TURKEY

Income tax, including withholding or "stoppage" tax where charged on net profits
Corporation tax, where charged on net profits

TUVALU

Income tax

UNITED KINGDOM

Income tax (including surtax)
Corporation tax
Capital gains tax

UNITED STATES OF AMERICA

Federal : Federal income taxes imposed by the Internal Revenue Code, but excluding the accumulated earnings tax and the personal holding company tax

State : As detailed below, but note that any state tax which may be construed as a unitary tax (as defined by subsection 6AB(6) of the Australian Income Tax Assessment Act) is not creditable

ALABAMA
Income tax on individuals
General income tax

ALASKA
General income tax

ARIZONA
General income tax

ARKANSAS
Income tax

CALIFORNIA
Bank and corporation income tax

Excise (income) tax, except where it represents a minimum levy
Personal income tax
Insurance companies tax on marine insurance companies

COLORADO
General income tax
Excise (income) tax

CONNECTICUT
Corporation business tax where it is charged on income

DELAWARE
Corporation income tax
Personal income tax

DISTRICT OF COLUMBIA
Individual and corporate income tax

FLORIDA
Corporation income tax

GEORGIA
General income tax

HAWAII
General income tax

IDAHO
General income tax

ILLINOIS
Income tax
Corporate replacement income tax (personal property replacement tax)

IOWA
General income tax

KANSAS
Income tax

KENTUCKY
General income tax

LOUISIANA
General income tax

MAINE
Corporate income tax
Personal income tax

MARYLAND
Income tax

MASSACHUSETTS
- Corporate excise (income) tax, where charged on net income
- Personal income tax

MICHIGAN
- Income tax
- Single business tax

MINNESOTA
- Income tax

MISSOURI
- Income tax

MONTANA
- Corporate income tax (licence)
- Personal income tax

NEBRASKA
- Personal income tax

NEW HAMPSHIRE
- Business profits tax

NEW JERSEY
- Corporation franchise tax except where it represents a minimum levy or is charged on amounts other than net income
- Insurance companies tax on marine insurance companies
- Personal income tax

NEW MEXICO
- Income tax

NEW YORK CITY
- Earnings tax on non-residents where it is charged on salaries
- Financial corporation tax where it is charged on income
- General corporate (income) tax, where charged on net income
- Personal income tax on residents where it is charged on salaries

NEW YORK STATE
- Personal income tax
- Unincorporated business tax
- Corporation franchise tax, except where it represents a minimum levy, is a charge based on capital, or is charged on amounts other than net income

NORTH CAROLINA
- General income tax
- Financial institutions excise tax, except where it represents a minimum levy

NORTH DAKOTA
General income tax

OHIO
Corporation franchise tax when charged on net income
Income tax (Canton, Cincinatti, Cleveland, Columbus and Toledo)
Net profits tax (Cleveland)

OKLAHOMA
General income tax

OREGON
Corporate (excise) income tax
Personal income tax

PENNSYLVANIA
Corporate net income tax except where it is charged on amounts other than net income
Personal income tax
Philadelphia net profits and wages tax
Philadelphia city tax

RHODE ISLAND
Business corporate tax where charged on net income

SOUTH CAROLINA
Income tax

TENNESSEE
Corporate excise (income) tax

UTAH
Corporation franchise tax when charged on net income

VERMONT
Corporate income tax
Personal income tax

VIRGINIA
Direct corporate income tax
Personal income tax

WISCONSIN
Corporate franchise tax
Income tax

U.S.S.R.

Income tax on foreign legal persons
Income tax on the population

WESTERN SAMOA

Income tax

YUGOSLAVIA

Tax on income of a basic organisation of associated labour
Tax on a worker's personal income
Tax on personal income derived from independent exercise of agricultural activity
Tax on personal income derived from independent exercise of economic activity
Tax on personal income derived from independent exercise of professional activity
Tax on personal income derived from copyrights, patents and technical innovations
Tax on revenue derived from capital and capital rights
Tax on total revenue of citizens
Tax on income of a foreign person engaged in economic and professional activities
Tax on compensation obtained by a foreign person from investments in a domestic organisation of associated labour
Tax on income of a foreign person carrying out investment projects
Tax on revenue of a foreign person carrying on passenger and cargo transport.

COMMISSIONER OF TAXATION
30 July 1987