IT 2528 - Income tax : foreign tax credit system - extensions of time for payment of tax and related matters

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TAXATION RULING NO. IT 2528

INCOME TAX : FOREIGN TAX CREDIT SYSTEM - EXTENSIONS OF TIME FOR PAYMENT OF TAX AND RELATED MATTERS

F.O.I. EMBARGO: May be released

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F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1011179	FOREIGN TAX CREDIT SYSTEM	160AF(1)
		206
	EXTENSIONS OF TIME FOR PAYMENT OF TAX	207(1)
		207(1A)
		221AE(2) and (3)

OTHER RULINGS ON TOPIC IT 2091 IT 2527 IT 2529

PREAMBLE This Ruling addresses the situations under which extensions of time to pay Australian tax attributable to foreign income of Australian resident taxpayers and remissions of additional (penalty) tax for late payment of such tax will be considered, within the general guidelines set down in Taxation Ruling No. IT 2091.

2. The comments in this ruling reflect decisions taken with respect to those aspects as part of the practical administration of the requirement of subsection 160AF(1) of the Income Tax Assessment Act ("the Assessment Act") that foreign tax claimed as a credit must have been paid before it may be offset against the Australian tax payable on the foreign income. It should be read in conjunction with Taxation Rulings Nos IT 2527 and IT 2529 which address other aspects of the practical administration of that requirement of the foreign tax credit system (FTCS).

3. The Ruling is issued against the background that section 206 of the Assessment Act authorises the Commissioner to grant extensions of time for payment of tax or to permit payments to be made by instalments, and that sub-section 207(1A) allows the Commissioner to remit the statutory penalty for unpaid tax payable under subsection 207(1) in certain circumstances. Taxation Ruling No. IT 2091 provides guidelines for the exercise of the Commissioner's powers under both of these sections.

Extensions of time and remissions of additional tax in respect of foreign income

RULING 4. To generally permit taxpayers who have derived foreign income and who have not paid foreign tax on that income to defer part, or all, of their Australian tax liability (despite their ultimate desire to claim a credit for such taxes when paid at a

later but unknown date) would confer on such taxpayers an unwarranted tax advantage over those taxpayers who have earned a similar amount of assessable income from Australian sources but who are expected, in the normal course of events, to pay the amounts owing on their assessments by the due dates. To grant such a request would mean, in effect, that until the foreign tax was ultimately paid, no tax would be imposed on such income in either country.

5. Accordingly, requests for the grant of extensions of time pursuant to section 206 to pay Australian tax due and payable in relation to foreign income included in assessable income of a year of income and not yet the subject of a foreign tax credit determination pursuant to subsection 160AF(1) will be primarily limited to where a creditable foreign tax has been paid on the foreign income. Some flexibility in the application of that primary rule is recognised as appropriate, however, in certain situations where a final tax liability has yet to be determined.

6. More specifically, consideration of requests for extensions of time to pay will be restricted to cases in which:

(a) although a creditable foreign tax has been paid, a claim for credit under subsection 160AF(1) has not been processed or was unable to be made or determined prior to an assessment for that year being issued (examples of the latter situation might be where foreign tax, which was not due to be paid by that time, has subsequently fallen due and been paid prior to the due date of the assessment, or where it had been paid but sufficient documentary evidence had not been received from overseas prior to the assessment issuing or prior to the due date of the assessment which would confirm payment of the foreign tax);

(b) the taxpayer has been assessed on the basis of the foreign income derived net of payment of foreign tax because of difficulties in quantifying the amount of foreign tax paid, as provided for in paragraph 51 of Taxation Ruling No. IT 2527; or

(c) although the final foreign tax liability has yet to be determined, the taxpayer has been assessed on the basis of the gross amount of the foreign income derived for the year and it can be demonstrated that:

(i) payment of the Australian tax assessed in respect of the foreign income in advance of payment of the anticipated foreign tax liability and the making of a credit determination in respect of that foreign tax will result in serious cash-flow or other hardship for the taxpayer; and

(ii) the grant of an extension of time to pay the Australian tax assessed in respect of the foreign income will have only a limited

effect on Australian revenue collections.

7. Evidence of payment of the foreign taxes referred to in subparagraphs (a) and (b) of paragraph 6 will need to be supplied by the taxpayer to support a request for the grant of an extension of time. However, this evidentiary requirement need not be as stringently enforced as that required to support a claim for a foreign tax credit (see Taxation Ruling No. IT 2527). Satisfactory evidence for this purpose, and the hardship cases qualifying for consideration under subparagraph (c) of paragraph 6, would be a matter for determination by the relevant Deputy Commissioner on a case by case basis. However, particular considerations in favour of the grant of an extension of time in the hardship cases referred to would be if the anticipated foreign tax liability is likely to be paid within a comparatively short period of time of the due date for payment of the Australian tax and the anticipated foreign tax liability is likely to eliminate or substantially reduce the Australian tax assessed in respect of the foreign income.

8. Where an extension of time is granted to a taxpayer (in accordance with this Ruling) to pay Australian tax assessed in relation to foreign income, an appropriate remission under subsection 207(1A) of additional tax payable under subsection 207(1) with respect to the tax the subject of the extension of time, should also be granted on the basis that "special circumstances" exist by reason of which it would be fair and reasonable to remit the additional tax.

9. Those "special circumstances" would be that the factors that gave rise to the grant of the extension of time to pay the relevant amount of assessed tax indicate that it is most likely that the amount of that tax will be eliminated or reduced by the grant in due course of a foreign tax credit pursuant to subsection 160AF(1). Taxation Ruling No. IT 2091 should be read as varied accordingly.

Companies - Variations of Instalments

10. With respect to company taxpayers, income tax is generally collected by quarterly instalments which are paid during the financial year following the year during which the income is derived. Each instalment represents one-quarter of the "notional tax" - i.e., the tax calculated at the rate of tax applicable to the year of income and based on the taxable income of the previous year. Amounts paid by instalments are credited against the total tax payable and any balance remaining is payable when the company's normal assessment issues.

11. Under that arrangement, a company is required to pay its tax on the income of the year of income that commenced on 1 July 1987 during the financial year 1988/89. The first three instalments of that tax will normally be based on the tax assessed in respect of income of the income year 1986/87, which (because of the operation of former paragraph 23(q) of the Assessment Act) would normally not have included foreign income first brought within the scope of Australian taxation with the

commencement of the FTCS. Tax will therefore be payable in Australia on that foreign income only after the issue of the notice of assessment for the income year 1987-88 (i.e., generally by April 1989).

12. For later years of income, variations of company instalments under section 221AG may be effected in situations in which a claim for credit for foreign tax is to be made in the same year to which the instalments of company tax relate, but for which the "notional tax" base for instalment purposes is higher due to no such claim being made in the earlier year of income.

13. Alternatively, the Commissioner is authorised by subsections 221AE(2) and (3) of the Assessment Act to determine that instalments of tax calculated as a proportion of the income tax assessed to a company should be reduced or waived on account of foreign tax credits available for application in payment of that income tax under Division 18 of Part III of the Assessment Act or of the Income Tax (International Agreements) Act 1953. Thus, a company may approach the relevant Deputy Commissioner for such a determination.

Provisional Taxpayers

14. A taxpayer whose assessment in respect of income of the 1986-87 year of income includes provisional tax payable in respect of the 1987-88 year, would normally have had the amount of provisional tax payable determined on the basis of the assessable income of the 1986-87 year, which would normally not include foreign income first subject to Australian tax in the 1987-88 year under the FTCS. Australian tax will be payable in respect of that foreign income only after the issue of the assessment notice for the income year 1987-88 (e.g., by February 1989 for taxpayers subject to the quarterly instalment system of payment of provisional tax or 31 March 1989 for other taxpayers covered by the provisional tax system). In later years a reduction of provisional tax may be requested if taxpayers wish to make a claim for a credit for foreign tax in the previous year of income but were unable to do so prior to the assessment being issued.

COMMISSIONER OF TAXATION
4 May 1989