IT 2638 - Income tax: foreign tax credit system - taxation of Australian resident members of Lloyd s of London

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TAXATION RULING IT 2638

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Reference no.:	Subject refs:	Legislative refs:
I 1012685	**FOREIGN TAX CREDIT SYSTEM LLOYD'S OF LONDON**	**6(1), 19; former 51(6); 79D, 160AF, 160AFD, 221YDA**

OTHER RULINGS ON THIS TOPIC: IT 2610

TITLE: **INCOME TAX: FOREIGN TAX CREDIT SYSTEM - TAXATION OF AUSTRALIAN RESIDENT MEMBERS OF LLOYD'S OF LONDON**

TE: . Income Tax Rulings do not have the force of law.

. Each decision made by the Australian Taxation Office is made on the merits of each individual case having regard to any relevant Ruling.

PREAMBLE

The following amplifications of Taxation Ruling IT 2610 have been prepared after further discussions with Lloyd's official agents in Australia in order to assist Australian resident Names in the preparation of their Australian income tax returns for the years of income ended 30 June 1988, 1989 and 1990.

2. This Ruling largely confirms the advice contained in an Explanatory Memorandum issued by Lloyd's of London to all Australian resident Names on 8 November 1990.

3. Consistent with IT 2610, this Ruling reflects the legislation governing the foreign tax credit system (FTCS) as the FTCS operated as at 30 June 1990.

RULING

Date of distribution (Paragraphs 10 and 12 of IT 2610)

4. The objective of paragraph 10 of IT 2610 is to ensure that the income derived from underwriting at Lloyd's is to be treated as derived upon the income becoming available to the Name. Accordingly, the date upon the letter/document which

notifies the Name of the availability of this income will be taken to be the date of derivation for the purposes of section 19 of the Income Tax Assessment Act 1936 (the Assessment Act). A corresponding rule will apply in relation to loss notifications. The references in paragraph 10 of IT 2610 to the date of a distribution statement and in paragraph 12 to receipt by a Name of notification from his or her agent of a loss from carrying on business at Lloyd's are to be read accordingly.

5. For example, assume that a Name who has been a member of Lloyd's for some years is, for the 1986 Lloyd's year of account, a member of 10 syndicates. Due to the nature of syndicate operations, it is likely that each syndicate agent will report the syndicate's results to the member's agent on different dates. It is not until the member's agent has been notified of the last of the syndicate results and has obtained all relevant audit and other clearances that the agent is in a position to notify the Name of the result for the 1986 Lloyd's year of account and distribute the available funds (if any) to the Name. In this example, if the actual notification of a profit to the Name took place on 5 July 1989, the relevant date for the purposes of paragraph 10 of IT 2610 would be 5 July 1989 and the Lloyd's income would be returned as assessable income in the Name's Australian income tax return for the 1989/90 year of income.

Other Interest and Capital Gains derived from Deposits and Reserve Funds (Paragraph 22)

6. Paragraph 22 of IT 2610 arises from the provisions of subsection 160AF(2) of the Assessment Act. Interest/gains derived through Lloyd's membership and subjected to a foreign tax assessment will qualify for the foreign tax credit. Thus such interest/gains are to be included in the Australian income tax return as part of the total of the United Kingdom determined Lloyd's income/gains for the year of income that is co-terminous for United Kingdom tax purposes, e.g., the 1987 year of account results are assessed to United Kingdom income tax for the year ended 5 April 1988 although that return cannot be finalised until sometime after 31 December 1989 when the year of account closes. Thus interest or gains derived on these funds for the period 1 July 1987 to 5 April 1988 will be included with the 1987 account results and returned in accordance with paragraphs 10 and 12 of IT 2610, as the case may be. Interest and earnings earned from 6 April 1988 through to 5 April 1989 (i.e. not only to 30 June 1988) will be included in the Australian income tax return with the 1988 year of account results.

7. As net income/gains from these sources derived prior to 1 July 1987 were exempt under paragraph 23(q) of the

Assessment Act, they are not to be included in calculating the income as described in paragraph 22 of IT 2610, in relation to the 1985 and 1986 years of account. The income exempt from United Kingdom tax e.g., the 3.5% War Loan Stock, is assessable income for Australian tax purposes both pre and post FTCS and should therefore be included as assessable income in the year of income in which it is derived.

Stop Loss Insurance Recoveries (Paragraphs 23 and 24)

8. In order to be consistent with the principles laid down in paragraph 13 of IT 2610 (it being expected that the recoveries would be shown on the final LL9 or other United Kingdom Inland Revenue determination), the final sentence of paragraph 24 of IT 2610 would, in practical terms, apply as follows:

> (a) When a stop/loss recovery is received in respect of a loss of a closed account, or for the loss of an unclosed account which ordinarily would have closed but has not done so (i.e. it has become a run-off account), the year of account to which the stop/loss recovery relates is to be adjusted to take into the computation of profit or loss that recovery.
>
> (b) When a stop/loss recovery (not within (a) above) is received in respect of a loss of a running off account, that recovery shall be taken into the computation of the profit or loss of the year of income that the result is included in the relevant distribution statement from the Name's agent, i.e., the year identified in paragraph 23 of IT 2610.

Carry forward of losses (whether pre FTCS or not) (Paragraphs 13 and 35)

9. Net losses incurred from membership of Lloyd's under the Australian legislation applicable to the 1987/88 to 1989/90 years of income are quarantined losses (only available for offsetting against subsequent assessable income arising from membership of Lloyd's, including interest and gains referred to in paragraph 22 of IT 2610). Given the principles stated in paragraph 13 of IT 2610 and in light of the manner in which Lloyd's losses are treated for United Kingdom income tax law purposes, it has been agreed that net losses incurred by a Name from membership at Lloyd's may be accounted for in Pounds Sterling for loss quarantining purposes. Only in the year in which brought forward losses have been recouped, will the balance (reduced by those losses) of the Sterling denoted Lloyd's income of that year be returned as Australian income at exchange rates and with foreign tax credits determined in accordance with IT 2610.

Foreign Tax Credits (Paragraph 39)

10. It is confirmed that the reference to foreign taxes in subparagraph 39(a) of IT 2610 includes United States and Canadian as well as other foreign taxes.

Provisional Tax (Paragraph 43)

11. As set out in paragraph 43 of IT 2610, credit will be allowed in calculating provisional tax for all foreign taxes paid or withheld that have been disclosed in the Name's Australian income tax return for that year (indexed by the provisional tax uplift factor). In addition, Names can also have provisional tax, if any, further reduced, pursuant to Taxation Ruling IT 2528, by notifying the Commissioner of any further foreign taxes paid subsequent to the lodgment of the return in respect of Lloyd's income included in that Australian income tax return. If an assessment has issued for that year, an application for variation of provisional tax would be required in accordance with section 221YDA of the Assessment Act.

Residence

12. The assessability to Australian income tax of income derived from membership of Lloyd's for taxpayers taking up residence in Australia will be ascertained pursuant to the principles set out in Taxation Ruling IT 2607.

Lodgment and basis of returns for the years ended 30 June 1988, 1989 and 1990

13. Following the release of IT 2610, Names were given until 30 November 1990 to lodge their Australian income tax returns for the years ended 30 June 1988 and 30 June 1989 before incurring additional tax for late lodgment.

14. However, because in the event final LL9 and LL200 forms were not issued by the United Kingdom Inland Revenue by this date, Names were authorised to submit returns for those years using only the provisional LL9 forms already issued by the Inland Revenue. This authorisation was on the basis that amendments to those returns would be affected once the final LL9 and LL200 forms were issued and that no penalty or interest would accrue to the Names as a result of any adjustments that became necessary as a result of those amendments.

15. The Explanatory Memorandum issued to Names by Lloyd's of London on 8 November 1990 gave detailed advice on the preparation of those returns and subsequent amendments that would be required at a later date.

16. In addition, it was subsequently agreed with Lloyd's of London that income tax returns of Names for the year ended 30 June 1990 would be accepted for lodgment until 15 April 1991 without penalty. As no LL9 forms for the relevant Lloyd's year(s) of account became available by this date, the Names were authorised to submit their Australian returns for that income year on the basis of their non-Lloyd's income. Amendments to those returns were to be made later to take into account the Lloyd's income once the quantum of such income (or loss) became known to the Name through issue by the United Kingdom Inland Revenue of the relevant forms LL9 and LL200 or any other determination. Again, it was agreed in the circumstances that no penalty or interest would be applied in this case in respect of any adjustments that might arise as a result of those amendments.

COMMISSIONER OF TAXATION
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