


TD 2006/6 - Income tax: if an 'attributable taxpayer' makes a choice under item 4 of the table in subsection 960-60(1) of Subdivision 960-D of the Income Tax Assessment Act 1997, to use the 'applicable functional currency', will this choice apply to its calculation of 'attribution surplus' under section 370 of Part X of the Income Tax Assessment Act 1936?

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Taxation Determination

Income tax: if an ‘attributable taxpayer’ makes a choice under item 4 of the table in subsection 960-60(1) of Subdivision 960-D of the *Income Tax Assessment Act 1997*, to use the ‘applicable functional currency’, will this choice apply to its calculation of ‘attribution surplus’ under section 370 of Part X of the *Income Tax Assessment Act 1936*?

❶ This Ruling provides you with the following level of protection:

This publication (excluding appendices) is a public ruling for the purposes of the *Taxation Administration Act 1953*. A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes. If you rely on this ruling, we must apply the law to you in the way set out in the ruling (or in a way that is more favourable for you if we are satisfied that the ruling is incorrect and disadvantages you, and we are not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any under-paid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

Ruling

1. No. If an ‘attributable taxpayer’ (within the meaning of Part X of the *Income Tax Assessment Act 1936* (ITAA 1936)) of a controlled foreign company (CFC), makes a choice under item 4 of the table in subsection 960-60(1) of Subdivision 960-D of the *Income Tax Assessment Act 1997* (ITAA 1997) to use the ‘applicable functional currency’, this choice will not apply to its calculation of ‘attribution surplus’ under section 370 of Part X of the ITAA 1936.
2. The ‘attribution surplus’ and all amounts included in the attribution account of the ‘attributable taxpayer’ should be in Australian currency.

Date of effect

3. This Determination applies to years commencing both before and after its date of issue. However, it 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 the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

TD 2006/6

Commissioner of Taxation

8 March 2006

Appendix 1 – Explanation

① *This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.*

Explanation

4. Under item 4 of the table in subsection 960-60(1) of the ITAA 1997, an 'attributable taxpayer' of a CFC can make a choice to use the 'applicable functional currency'. This choice allows the 'attributable taxpayer' to work out the 'attributable income' (within the meaning given by Division 7 of Part X of the ITAA 1936) of the CFC for the 'statutory accounting period' in the 'applicable functional currency' – prior to translating the result into Australian currency (refer to item 4 of subsection 960-80(1) of the ITAA 1997).

5. 'Attributable income' is a notional amount. It is the amount that would be the taxable income of a CFC, if certain assumptions were made. Section 456 of Part X of the ITAA 1936 includes in the assessable income of an 'attributable taxpayer', the attributable taxpayer's 'attribution percentage' (or share) of the 'attributable income' of a CFC. The 'attributable income' of the CFC is calculated separately for each 'attributable taxpayer'.

6. An 'attributable taxpayer' can establish an attribution account in relation to a CFC when an amount of the CFC's 'attributable income' is included in the attributable taxpayer's assessable income. Attribution accounts are a key element in the operation of section 23A1 of the ITAA 1936, in preventing double Australian taxation in relation to the subsequent payment of dividends by the CFC to an 'attributable taxpayer' out of previously attributed income. Attribution accounts trace the extent to which the dividends paid by the CFC to the 'attributable taxpayer' represent amounts previously attributed. Section 23A1 makes non-assessable and non-exempt certain attribution account payments (including dividends) made to the 'attributable taxpayer' of a CFC.

7. Thus attribution accounts are notional accounts prepared and kept for income tax purposes, by each 'attributable taxpayer' in respect of each CFC in which that taxpayer holds an 'attribution account percentage' – and in respect of each interposed entity through which dividends pass en route to the taxpayer. Attribution accounts are not involved in the calculation of the 'attributable income' of a CFC.

8. When income is attributed to an Australian 'attributable taxpayer' pursuant to the CFC rules, the taxpayer is entitled to an 'attribution credit' which shelters future dividends from being assessable in Australia where an attribution surplus exists in the taxpayer's attribution account. The 'attributable taxpayer' makes an 'attribution credit' entry determined in accordance with section 371 of Part X of the ITAA 1936 – which, in general, represents the amount of the 'attributable income' included in the taxpayer's assessable income (per subsection 371(2) of the ITAA 1936). This is subject to the application of subsections (2A), (2B), (3) and (4) of section 371 of the ITAA 1936 where appropriate.

9. When the CFC pays a dividend or makes any other 'attribution account payment' within the meaning of section 365 of Part X of the ITAA 1936, the 'attributable taxpayer' makes an 'attribution debit' entry to the attribution account.

10. A resident taxpayer who is an 'attributable taxpayer' of a CFC under Part X of the ITAA 1936, is eligible to choose to use a functional currency under item 4 of the table in subsection 960-60(1) of Subdivision 960-D of the ITAA 1997; if the CFC's accounts are solely or predominantly kept in that particular foreign currency. If an 'attributable taxpayer' of a CFC chooses to use a foreign currency as the 'applicable functional currency' for the CFC, the following has effect in accordance with item 4 in subsection 960-80(1) of the ITAA 1997:

- (a) firstly in working out the 'attributable income' of the CFC, all amounts that are not expressed in the 'applicable functional currency' (including those in Australian currency) must be translated into the 'applicable functional currency'; and
- (b) secondly the 'attributable income' expressed in the 'applicable functional currency' is translated into Australian currency.

11. So under the functional currency rules within Subdivision 960-D of the ITAA 1997, the 'attributable income' of the CFC is worked out in the 'applicable functional currency' and then translated into Australian currency. As the 'attributable income' of the CFC is required to be translated into Australian currency, the related 'attribution credit' entry is also made in Australian currency.

12. Any dividend from the CFC will be translated into Australian currency in accordance with the special translation rules¹ contained in Subdivision 960-C of the ITAA 1997. An 'attribution debit' arising from the dividend is therefore also made in Australian currency.

13. Section 370 of Part X of the ITAA 1936 provides that an 'attribution surplus' in relation to an 'attributable taxpayer' exists at a particular time if the CFC's total attribution credits arising before that time in relation to the taxpayer, exceed the total attribution debits arising before that time. Thus, in the circumstances in question, the fact that the entries to the attribution account comprise amounts already in Australian currency, or that have been required to be translated into Australian currency, means that any 'attribution surplus' is calculated in this currency.

14. The calculation by an 'attributable taxpayer' of the 'attribution surplus', in relation to its attribution account for each CFC, is something that takes place separately and independently from (and occurs after) the working out of the 'attributable income' of the CFC – and is relevant only to the calculation of the attributable taxpayer's taxable income rather than the CFC's 'attributable income'. Thus the 'attribution surplus' in the attribution account is not translated into the 'applicable functional currency'.

15. It is important to note that the 'attribution surplus' should not be calculated only at year end. An 'attribution surplus' is relevant to determining the extent of an 'attribution debit', in that an 'attribution debit' cannot exceed the 'attribution surplus'. Thus an attribution debit will arise only where there is an attribution surplus in relation to the CFC immediately prior to the attribution account payment being made (per subsection 372(1) of the ITAA 1936). This is to ensure that relief under section 23A1 of the ITAA 1936 is limited only to income that has been attributed. Accordingly, an 'attributable taxpayer' will need to constantly monitor both the amount of attribution credits and attribution debits – in Australian currency – as they arise.

¹ Note that the special translation rules in the table in subsection 960-50(6) of Subdivision 960-D of the ITAA 1997 were materially modified by the Income Tax Assessment Amendment Regulations 2005 (No. 2) (75 of 2005). Regulation 960-50.01 (dealing with the translation of foreign currency amounts into Australian currency) of the Income Tax Assessment Regulations 1997 specifically modifies the table in subsection 960-50(6) of the ITAA 1997.

References

Previous draft:

TD 2005/D34

Related Rulings/Determinations:

TR 92/20

Subject references:

- foreign currency transactions
- foreign currency translations

Legislative references:

- TAA 1953
- TAA 1953 Pt IVAAA
- ITAA 1936 23AI
- ITAA 1936 Pt X Div 7
- ITAA 1936 365
- ITAA 1936 370
- ITAA 1936 371
- ITAA 1936 371(2)

- ITAA 1936 371(2A)
- ITAA 1936 371(2B)
- ITAA 1936 371(3)
- ITAA 1936 371(4)
- ITAA 1936 372(1)
- ITAA 1936 456
- ITAA 1997 Subdiv 960-C
- ITAA 1997 Subdiv 960-D
- ITAA 1997 960-50(6)
- ITAA 1997 960-60(1)
- ITAA 1997 960-70
- ITAA 1997 960-80(1)
- ITAR 1997 960-50.01
- Income Tax Assessment Regulations 1997
- Income Tax Assessment Amendment Regulations 2005

ATO references

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