

TD 92/103 - Income tax: foreign income: could the Commissioner provide general guidelines on the application of the transfer pricing provisions of Division 13 to non arm's length loans provided by a controlled foreign company (CFC) resident in a listed country to another CFC resident in the same listed country?

 This cover sheet is provided for information only. It does not form part of *TD 92/103 - Income tax: foreign income: could the Commissioner provide general guidelines on the application of the transfer pricing provisions of Division 13 to non arm's length loans provided by a controlled foreign company (CFC) resident in a listed country to another CFC resident in the same listed country?*

 This document has changed over time. This is a consolidated version of the ruling which was published on 1 July 1992

This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVAAA of the *Taxation Administration Act 1953*, is a public ruling for the purposes of that Part. Taxation Ruling TR 92/1 explains when a Determination is a public ruling and how it is binding on the Commissioner. Unless otherwise stated, the Determination applies to transactions entered into both before and after its date of issue.

Taxation Determination

Income tax: foreign income: could the Commissioner provide general guidelines on the application of the transfer pricing provisions of Division 13 to non arm's length loans provided by a controlled foreign company (CFC) resident in a listed country to another CFC resident in the same listed country?

1. Generally, we will not apply the transfer pricing provisions if:
 - (a) a CFC that is a resident of a listed country provides a non arm's length loan to another CFC that is also a resident of that country;
 - (b) both of the CFCs are controlled by the same Australian resident taxpayers; and
 - (c) the non arm's length loan does not result in the reduction of any designated concession income (DCI) or other amount that would have been taken into account in calculating the attributable income of either CFC.
2. The transfer pricing provisions may be applied if any non arm's length loan arrangement has the effect of reducing the profits of a non-resident entity which would otherwise have been included in the assessable income of a taxpayer. For example, Division 13 may be applied in circumstances where an excessive amount of interest is charged on a loan and this has the effect of reducing DCI or other income that would have been attributed to a resident taxpayer.
3. However, where an interest free loan is made between two CFCs (resident in the same listed country and controlled by the same Australian resident taxpayers), we will not apply Division 13 to the loan to create an amount of interest income unless the loan results in a reduction of another amount, in relation to either CFC, which would be DCI or an amount to which subparagraph 385(2)(a)(ii) applies.

Commissioner of Taxation

01/07/92

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