


# ***TD 92/104 - Income tax: foreign income: how are elections to be made by a controlled foreign company (CFC)?***

 This cover sheet is provided for information only. It does not form part of *TD 92/104 - Income tax: foreign income: how are elections to be made by a controlled foreign company (CFC)?*

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.

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## Taxation Determination

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### Income tax: foreign income: how are elections to be made by a controlled foreign company (CFC)?

1. A number of provisions relating to CFCs require that they make elections. For example, elections are required to be made by a CFC in relation to:

- (a) capital gains tax (CGT) roll-over relief (sections 421 and 438 of the *Income Tax Assessment Act 1936* (ITAA)); and
- (b) statutory accounting periods (section 319).

2. Taxation Ruling IT 2624 deals with the making of elections under the self assessment system. However, that Ruling only applies to Australian taxpayers and not to CFCs. This Determination will deal with elections made by CFCs.

#### *Elections to be lodged with the Australian Taxation Office (ATO)*

3. Elections and requests for the extension of time to make elections, are to be lodged with the Branch ATO where the largest attributable taxpayer's return is lodged. If this is not readily apparent, the request can be lodged at any ATO at which an attributable taxpayer's return is lodged.

#### *Who may make the election?*

4. The person who may make the election for the CFC will be the person who is authorised - whether under the foreign law or, if no law governs this, under the constituent document of the CFC - to act for the CFC.

#### *Election by agent in Australia*

5. The requirement that a CFC makes an election is also satisfied if an agent makes the election for or on behalf of the CFC, provided the person is authorised by the CFC to do so. For example, the Australian parent of the CFC or the CFC's tax agent, if authorised by the CFC, could make the election.

#### Commissioner of Taxation

01/07/92