



TD 94/88 - Income tax: does Division 3B of Part III of the Income Tax Assessment Act 1936 (Division 3B) apply to ordinary shares denominated in foreign currency?

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 This document has changed over time. This is a consolidated version of the ruling which was published on *24 November 1994*

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, this Determination applies to years commencing both before and after its date of issue. However, this Determination does not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Taxation Determination

Income tax: does Division 3B of Part III of the *Income Tax Assessment Act 1936* (Division 3B) apply to ordinary shares denominated in foreign currency?

1. No. Division 3B allows income tax deductions for currency exchange losses of a capital nature and treats as assessable income currency exchange gains of a capital nature realised after 18 February 1986 under contracts entered into after that date. The losses are deductible and gains are assessable to the extent to which they relate to the production of assessable income or to the carrying on of a business for that purpose.
2. The general principles concerning the realisation of currency exchange gains or losses are stated in Taxation Ruling TR 93/8. If a currency exchange gain or loss arises from a liability in a foreign currency, the taxpayer realises the gain or loss when the liability is discharged by actual or constructive payment. Conversely, if a currency exchange gain or loss arises from a right to receive foreign currency, the taxpayer realises the gain or loss on the actual or constructive receipt.
3. The ownership of ordinary shares makes a shareholder a member of the company. Whilst each member has a contractual relationship with the company by virtue of the Memorandum and Articles of Association of the company, a currency exchange gain or a currency exchange loss cannot arise under that contract in the sense required by the terms of Division 3B.
4. For a currency exchange gain or a currency exchange loss to arise in the required sense the gain or loss must be attributable to a currency exchange rate fluctuation. When a share in a non-resident company denominated in a foreign currency is sold, or the company is wound up, any gain or loss in respect of the disposal is not attributable to a currency exchange rate fluctuation. The gain or loss is attributable to a change in the market value of the shares or a deficiency in shareholder funds as the case may be.
5. A currency exchange gain or loss may arise, however, in respect of a currency exchange rate fluctuation under a contract to acquire or dispose of shares denominated in a foreign currency in a non-resident company. See generally paragraphs 36-41 of Taxation Ruling TR 93/8.

6. We accept that a currency exchange gain or loss can also arise in respect of a change, in Australian dollar terms, that may occur between the time an entitlement to an amount of money denominated in a foreign currency arises upon the winding up of a company and the time the amount is actually paid if the difference results from a currency exchange fluctuation during that period.

Commissioner of Taxation

24/11/94

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