

TR 2000/16A - Addendum - Income tax: international transfer pricing - transfer pricing and profit reallocation adjustments, relief from double taxation and the Mutual Agreement Procedure

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Addendum

Income tax: international transfer pricing – transfer pricing and profit reallocation adjustments, relief from double taxation and the Mutual Agreement Procedure

Taxation Ruling TR 2000/16 is amended with effect from today.

This addendum gives effect to the revised ATO policy on debt collection for Transfer Pricing MAP cases.

Omit paragraphs 4.50 to 4.53 and substitute:

Payment of tax during mutual agreement procedure

4.50 This Addendum applies to cases formally accepted into Mutual Agreement Procedure ('MAP') – also see paragraphs 4.12 to 4.15 of this Ruling. It is recognised that the collection of tax during MAP cases will in most instances impose temporary double taxation on the taxpayer whilst the MAP is in progress because the same profits have been subject to tax in both jurisdictions. Where such double taxation arises the ATO will agree to defer recovery action under section 255-5 of the *Taxation Administration Act 1953* ('TAA 1953'), including the recovery of any General Interest Charge ('GIC') until an agreed future date, which will usually be the date that the MAP process is concluded, unless:

- (a) there is a risk to the revenue,⁴ or
- (b) the taxpayer has other liabilities unpaid after the due date; or
- (c) the taxpayer has failed to meet other tax obligations when required.

Where there is no deferment due to the above factors (a)-(c) the ATO Receivables Policy and practice applies. A taxpayer may still request

⁴ Refer to *ATO Receivables Policy* on the ATO website at www.ato.gov.au for guidance on circumstances where the Commissioner may require security.

to pay a tax-related liability by an instalment arrangement under section 255-15 of the TAA 1953.⁵

4.51 Under section 204 of the TAA 1953 any GIC or other relevant penalty, if applicable for any unpaid amount of the liability, begins to accrue when the liability becomes due and payable under the relevant taxation law.

4.52 Where the ATO has deferred recovery until the completion of the MAP, the GIC which has accrued during the MAP will be remitted under section 8AAG of the TAA 1953 in respect of the tax actually paid on the profits which both countries claim to tax, provided this policy does not result in a windfall gain to the global Multinational Enterprise group (see paragraph 4.62 for the general principle of what a windfall gain is). One such windfall gain arises where the other tax authorities may pay interest on overpayments of tax in cases where correlative relief is granted.

4.53 GIC will also be remitted in recognition of unreasonable delays caused by either taxing authority in the resolution of the MAP. The internal benchmark for the ATO to resolve transfer pricing MAP cases is 2 years. This remission policy recognises financial disadvantage that may be suffered by the taxpayers subject to the MAP.

Commissioner of Taxation

24 July 2002

ATO references:

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⁵ See *ATO Receivables Policy*.