

TR 93/41 - Income tax: foreign tax credit system: taxation of Australian resident members of Lloyd's of London

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Taxation Ruling

Income tax: foreign tax credit system: taxation of Australian resident members of Lloyd's of London

other Rulings on this topic

IT 2610; IT 2638; TR 93/5

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*This Ruling, 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 Ruling is a public ruling and how it is binding on the Commissioner.*

What this Ruling is about

1. Taxation Rulings Nos IT 2610 and 2638 clarified the operation of the foreign tax credit system as it applies to Australian resident members of Lloyd's of London (Names) for the income years 1987-88 to 1989-90. Taxation Ruling TR 93/5 clarifies taxation issues for Names for income years 1990-91 and 1991-92.
2. This Ruling clarifies the taxation requirements for Names for the 1992-93 and subsequent income years.

Ruling

3. The taxation of Lloyd's income of Lloyd's Names for the income year 1992-93 and subsequent income years is to be based on the requirements set out in TR 93/5, with two amendments.
4. The Foreign Investment Fund (FIF) measures will not apply to the interest held by a Lloyd's Name in assets forming part of the Lloyd's Premiums Trust Fund. The income and gains from the Premiums Trust Fund are to be treated as business profits from the Lloyd's business and included in assessable income in accordance with the guidelines set out in paragraphs 14 to 16 of TR 93/5.
5. The exemption from the FIF measures is not, however, applicable to interests held by a Lloyd's Name in assets held in the Lloyd's Deposit, Personal Reserves and Special Reserves.

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The FIF measures apply to these assets as they are held under trust deeds which come within the scope of the "foreign trust" definition stated in section 481 of the *Income Tax Assessment Act 1936* (the Act).

6. The foreign loss quarantining provisions of sections 79D and 160AFD of the Act, and the foreign tax credits provisions of Div 18 include income and gains from insurance business under the one class of income for the 1992-93 year of income and also in respect of all later years of income. Thus, the Lloyd's underwriting profits and other income and gains (including dividend income) from the Lloyd's Deposit, Personal Reserves and Special Reserves now fall to be treated as business profits from Lloyd's business for these purposes.

Date of effect

7. This Ruling applies to income years commencing on or after 1 July 1992.

Explanations

8. Section 527 of the Act provides a specific exemption from the FIF measures for the interest of a Lloyd's Name in assets forming part of the Premiums Trust Fund.

9. The treatment of income derived by a Lloyd's Name from Lloyd's business, including dividend income, as one class of income for foreign loss quarantining and foreign tax credit purposes results from a change to the definition of "passive income" in paragraph 160AEA(1)(p) of the Act. Following this change, passive income arising from assets treated as an essential part of a taxpayer's insurance business are treated as business profits for those purposes.

10. This change operates to require all such income to be treated as part of a Name's "all other assessable foreign income" class of foreign income for foreign loss quarantining purposes and "other income" class for foreign tax credit purposes.

11. This situation is to be compared with that applicable for the 1990-91 and 1991-92 years of income (as outlined in paragraph 6 of Taxation Ruling TR 93/5), where dividend income from this source was treated as forming part of a Name's "passive income" class for foreign tax credit purposes and "modified passive income" class for foreign loss quarantining purposes.

12. The above mentioned changes to the taxation treatment of Lloyd's income of Lloyd's Names for the 1992-93 and subsequent

years of income are a consequence of amendments made to provisions of the Act by the *Income Tax Assessment Amendment (Foreign Investment) Act 1992*.

Commissioner of Taxation**16 December 1993**

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subject references

- foreign tax credit system

ATO references

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legislative references

- ITAA 79D
- ITAA 160AFD
- ITAA 160AEA(1)(p)
- ITAA 526
- ITAA 527
- ITAA Pt 111 Div 18

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