

TR 94/D39 - Income tax: foreign tax credit: taxation of Australian resident members of Lloyd's of London

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Draft Taxation Ruling

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

other Rulings on this topic

IT 2610; IT 2638; TR 93/5;
TR 93/41

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What this Ruling is about

1. Taxation Rulings IT 2610 and IT 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 the income years 1990-91 and 1991-92, with Taxation Ruling TR 93/41 covering the taxation requirements for Names for the 1992-93 and subsequent income years.

2. This ruling is complementary to Taxation Ruling TR 93/41. It covers items not specifically covered in the earlier rulings together with consequential amendments. Also covered are changes which result from the United Kingdom Inland Revenue ceasing to issue forms LL9 and LL200 for the Lloyd's years of account subsequent to the 1991 year of account.

Ruling

3. Lloyd's syndicates underwriting profits or losses for a deceased Lloyd's Name for Lloyd's years of account not previously notified before the commencement of the Australian year of income in which the Name died are to be included in the Australian income tax return lodged for the Name for the period from the commencement of that year of income until the date of death. Notification of those profits and losses for Australian income tax income derivation/loss incurred purposes will be deemed to be the date of death. This equates to the last day that Lloyd's business can be undertaken by the Name as the

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deceased Name's estate is not permitted to continue the Lloyd's business.

4. Where the final income or loss figure from Lloyd's underwriting business is not known at the lodgment date for that return, provisional or estimated figures should be included. An amendment request should be made as soon as final advice of that income or loss figure is received in order that the final tax liability from Lloyd's business can be determined.

5. United Kingdom Inland Revenue forms LL9 and LL200 will not be produced for Lloyd's years of account following the 1991 year of account. Therefore, in earlier rulings any reference to LL9 or LL200 should be taken for the years of account 1992 and onwards as a reference to the special advice produced by the Lloyd's Central Service Unit.

6. Taxation Ruling TR 93/5 covers the treatment of the 'accrued income adjustment scheme' and profits and losses arising from the 'realisation of securities' for the 1990-91 and 1991-92 income years. This treatment should also be taken as applicable for all income years covered by the earlier taxation rulings on Lloyd's Names.

Date of effect

7. This Ruling applies to years commencing both before and after its date of issue. However, the Ruling 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 Ruling (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Explanations

Date of death return

8. It is accepted that income and losses from Lloyd's business would normally be determined on an accruals basis. It is for Australian income tax purposes that syndicate income is deemed to be derived and losses incurred upon notification of the syndicate's result to the Name. This is not necessarily the same as the date of receipt of that income.

9. Treating the date of death as the date of notification for the previously undeclared underwriting years of account results means that all Lloyd's syndicate income/losses for those underwriting years of account will be returned in the Name's tax return for the period from

the commencement of the year of income during which the death occurs until the date of death. This is considered to be an appropriate basis of income determination in these circumstances and consistent with the principle enunciated in *Henderson v. FCT* (1970) 119 CLR 612 at 621, as the Name's Lloyd's business ceases upon the death of the Name. Section 101A of the *Income Tax Assessment Act 1936* (the Act) should not be regarded as operating to treat such syndicate income as income of the Name's estate. This treatment, while ensuring all of the relevant income is brought to account, will enable a more equitable matching of relevant expenses, including prior year losses, and the claiming of foreign tax credits in that return.

10. Where the final underwriting result from Lloyd's business for those years of account is not known at the time the return to the date of death is lodged and provisional or estimated figures are included in that return, section 170 of the Act allows four years in which an amendment request may be made. If, however, there was a run-off account which had not been determined within the four year limit, it is accepted that an amendment could still be made by virtue of subsection 170(9) of the Act, which provides for an assessment containing an estimated amount of income or capital gain from a series of incomplete operations extending over more than one year to be amended within four years of the Commissioner ascertaining the total profit or loss from the operations.

Reporting requirements

11. The United Kingdom Inland Revenue has announced that the 1991 year of account will be the last year for which they will produce forms LL9 and LL200. For the 1992 year of account onwards, Lloyd's Names will be required, with the assistance of Lloyd's Central Service Unit, to provide Inland Revenue with their own calculation of income/gains from Lloyd's syndicate business in accordance with self-assessment guidelines now applicable in the United Kingdom.

12. The Lloyd's Central Service Unit will produce consolidated United Kingdom tax advices for all Names and a special advice for Australian Names. The latter advice should be used by Australian resident Names as a replacement for the LL9 and LL200 when determining their income from Lloyd's business. Therefore, for the 1992 and later Lloyd's years of account, references in Taxation Rulings IT 2610, IT 2638, TR 93/5 and TR 93/41 to forms LL9 and LL200 should be taken as a reference to the special advice for Australian Names produced by Lloyd's Central Service Unit.

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Accrued income adjustment scheme

13. The references in Taxation Rulings IT 2610 and IT 2638 to the 'net profit figure' from the LL9s and LL200s being used as the basis of income determination was altered by paragraph 5 of Taxation Ruling TR 93/5. That paragraph stated that the reference now was to the amount determined for United Kingdom tax purposes 'before any adjustment for the accrued income or deductions included in this amount that are needed to take account of the special rules that apply in the United Kingdom to non United Kingdom residents'.

14. This change resulted from the United Kingdom Inland Revenue altering the format of the LL9 and LL 200 to include an adjustment for accrued income before determining net profit. The accrued income adjustment is for United Kingdom taxation purposes only. This amendment was not known at the time of drafting Taxation Rulings IT 2610 and IT 2638. Thus, for Australian tax purposes the alteration made by paragraph 5 of Taxation Ruling TR 93/5 correctly reflects the intention at the time of preparation of the earlier rulings. Because of this, the treatment stated in Taxation Ruling TR 93/5 for the income years 1990-91 and 1991-92 (which is also applicable for the 1992-93 and subsequent income years pursuant to Taxation Ruling TR 93/41) should be taken as also applicable to the earlier years that are the subject of Taxation Rulings IT 2610 and IT 2638.

Profits and losses from realisation of securities

15. The treatment for Australian tax purposes of profits derived or losses incurred on the realisation of securities held as part of a Name's Lloyd's Deposit, Personal Reserve or Special Reserve was specifically addressed in paragraphs 7 and 36 of Taxation Ruling TR 93/5. The treatment outlined there for the 1990-91 and 1991-92 income years (and for the 1992-93 and subsequent income years pursuant to Taxation Ruling TR 93/41) should be taken as also applicable for the earlier income years that are the subject of Taxation Rulings IT 2610 and IT 2638.

Commissioner of Taxation

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- ITAA 51(1)
- ITAA 79D
- ITAA 101A
- ITAA Pt 3 Div 18
- ITAA 160AFD
- ITAA 170
- ITAA 170(9)

case references

- Henderson v. FCT (1970) 119 CLR 612