


***TD 2005/D33 - Income tax: is the 'applicable functional currency' choice relevant for the purpose of applying the Fringe Benefits Tax, Goods and Services Tax, Superannuation Guarantee Charge and Pay As You Go withholding provisions?***

 This cover sheet is provided for information only. It does not form part of *TD 2005/D33 - Income tax: is the 'applicable functional currency' choice relevant for the purpose of applying the Fringe Benefits Tax, Goods and Services Tax, Superannuation Guarantee Charge and Pay As You Go withholding provisions?*

This document has been finalised by TD 2006/5.



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## Draft Taxation Determination

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Income tax: is the ‘applicable functional currency’ choice relevant for the purpose of applying the Fringe Benefits Tax, Goods and Services Tax, Superannuation Guarantee Charge and Pay As You Go withholding provisions?

### **Preamble**

*This document is a draft for industry and professional comment. As such, it represents the preliminary, though considered views of the Australian Taxation Office. This draft may not be relied on by taxpayers and practitioners as it is not a ruling for the purposes of Part IVA of the **Taxation Administration Act 1953**. It is only final Taxation Determinations that represent authoritative statements by the Australian Taxation Office.*

1. No. The ‘applicable functional currency’ choice is not relevant for the purpose of applying the Fringe Benefits Tax (FBT), Goods and Services Tax (GST), Superannuation Guarantee Charge (SGC) and Pay As You Go (PAYG) withholding provisions.
2. This does not mean, however, that none of the amounts calculated under these provisions will be affected by a choice to use a particular foreign currency as the ‘applicable functional currency’.
3. For example, for a taxpayer who has made such a choice and who can also deduct an amount of FBT or FBT instalments; the amount of deduction for FBT or FBT instalments will need to be translated into the ‘applicable functional currency’ – for the purpose of working out the taxable income of the taxpayer – in accordance with subsection 960-80(1) of the *Income Tax Assessment Act 1997* (ITAA 1997).
4. Note that Division 27 of the ITAA 1997 sets out the effect of the GST in working out deductions from assessable income. Generally speaking, input tax credits, GST and adjustments under the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) are to be disregarded and are *not* deductible. Note also that subsection 51(9) of the *Income Tax Assessment Act 1936* (ITAA 1936) provides that a deduction is *not* allowable under section 8-1 of the ITAA 1997, in respect of a charge imposed by the *Superannuation Guarantee Charge Act 1992*.

## Explanation

5. The functional currency provisions are contained in Subdivision 960-D of the ITAA 1997. These provisions are designed to allow certain entities or parts of entities that keep their accounts solely or predominantly in a particular foreign currency, to choose that foreign currency as their 'applicable functional currency' to work out certain annual net amounts (such as taxable income or tax loss), which are then translated into Australian currency.

6. Specifically, subsection 960-60(1) of Subdivision 960-D of the ITAA 1997 provides that the taxable income or tax loss, 'assessable offshore banking income' (within the meaning of Division 9A of Part III of the ITAA 1936) or 'attributable income' (as the case may be) of any of the following entities (or parts of entities) that keep their accounts solely or predominantly in a particular foreign currency can be worked out in that currency:

- (a) an Australian resident who is required to prepare financial reports under section 292 of the *Corporations Act 2001*;
- (b) a permanent establishment;
- (c) an offshore banking unit;
- (d) a controlled foreign company; and
- (e) a transferor trust.

7. The calculation of amounts of FBT, GST and SGC and of amounts withheld under the PAYG withholding system, are not calculated by reference to or for the purpose of working out any of the net amounts referred to in subsection 960-60(1) of the ITAA 1997. Accordingly, the functional currency choice is not relevant for the purpose of the FBT, GST, SGC and PAYG withholding system provisions. These provisions contain their own rules for expressing amounts in Australian currency.

8. Section 146 of the *Fringe Benefits Tax Assessment Act 1986* states that:

For the purposes of this Act, all amounts and values shall be expressed in terms of Australian currency.

9. Subsection 9-85(1) of the GST Act provides that the value of a taxable supply is to be expressed in Australian currency for the purposes of the GST Act. Subsection 9-85(2) of the GST Act allows the Commissioner to determine the manner in which consideration in a foreign currency is to be converted into Australian currency to work out the value of a taxable supply.

10. With regard to PAYG withholding amounts, paragraph 960-55(1)(c) of the ITAA 1997, provides that section 960-50 of the ITAA 1997 applies to an amount that Division 12 of Part 2-5 in Schedule 1 to the *Taxation Administration Act 1953* (TAA) requires to be withheld from a payment – if the time when the amount is required to be withheld occurs on or after 1 July 2003. Paragraph 960-55(1)(d) of the ITAA 1997 provides that section 960-50 of the ITAA 1997 applies to a payment that Part 5-30 in Schedule 1 to the TAA requires to be reported, if the amount is paid on or after 1 July 2003.

11. Therefore an amount (being a PAYG withholding amount) that is required to be withheld from a payment by Division 12 of Part 2-5 in Schedule 1 to the TAA, and which is in a foreign currency – must now be translated into Australian currency at the exchange rate applicable at the time when the amount is required to be withheld – in accordance with the core currency translation rules in section 960-50 of the ITAA 1997.

12. Note also that the former requirements that PAYG withholding amounts in a foreign currency, are to be expressed in Australian currency, were contained in *former* sections 12-15 and 425-30 in Schedule 1 to the TAA. However, despite the repeals of former sections 12-15 and 425-30 of the TAA, those sections continue to apply, in relation to an amount:

- (a) that is in a foreign currency; and
- (b) to which section 960-50 of the ITAA 1997 does not apply;

as if those repeals had not happened.

13. However, as mentioned previously, an amount of FBT or FBT instalments is an allowable deduction from assessable income, where it is incurred in gaining or producing your assessable income. Accordingly, for the purpose of calculating the taxable income of a taxpayer which has made an 'applicable functional currency' choice, the amount of FBT or FBT instalments which was previously calculated in Australian currency will need to be translated into the 'applicable functional currency'.

#### **Date of Effect**

14. When the final Determination is issued, it is proposed to apply both before and after its date of issue. However, the Determination will not apply to taxpayers to the extent that it conflicts with the terms of 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).

#### **Your comments**

15. We invite you to comment on this draft Taxation Determination. Please forward your comments to the contact officer by the due date.

**Due date:** 16 September 2005

**Contact officer:** Andrew Peake

**E-mail address:** [andrew.peake@ato.gov.au](mailto:andrew.peake@ato.gov.au)

**Telephone:** (08) 8208 1839

**Facsimile:** (08) 8208 1198

**Address:** GPO Box 800  
ADELAIDE SA 5001

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**Commissioner of Taxation**

17 August 2005

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# TD 2005/D33

*Previous draft:*

Not previously issued as a draft

- ITAA 1936 51(9)
- ITAA 1936 Pt III Div 9A
- ITAA 1997 8-1

*Related Rulings/Determinations:*

TR 92/20

- ITAA 1997 Div 27
- ITAA 1997 Subdiv 960-D
- ITAA 1997 960-50

*Subject references:*

- foreign currency transactions
- foreign currency translations

- ITAA 1997 960-55(1)(c)
- ITAA 1997 960-55(1)(d)
- ITAA 1997 960-60(1)
- ITAA 1997 960-80(1)

*Legislative references:*

- TAA 1953 Pt IVA
- TAA 1953 Sch 1 Pt 2-5 Div 12
- TAA 1953 Sch 1 12-15
- TAA 1953 Sch 1 Pt 5-30
- TAA 1953 Sch 1 425-30

- ANTS(GST)A 1999 9-85(1)
  - ANTS(GST)A 1999 9-85(2)
  - Corporations Act 2001 292
  - FBTAA 1986 146
  - SGCA 1992
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ATO references

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Income Tax ~ Foreign exchange gains and losses