

TD 93/D155 - Income tax: foreign income - do the FIF measures apply to an attributable taxpayer of a CFC where the CFC and an FIF are the same entity?

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This document has been finalised by TD 93/167.

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Draft Taxation Determination

Income tax: foreign income - do the FIF measures apply to an attributable taxpayer of a CFC where the CFC and an FIF are the same entity?

1. No. The FIF measures do not include FIF income in the assessable income of a taxpayer who is an attributable taxpayer of a CFC where the CFC and FIF are the same entity.
2. There are two tests under section 494 for determining whether the FIF measures apply to a taxpayer's interest in a CFC where section 456 applies to that interest.
3. The first test is used where the statutory accounting period of the CFC coincides with the notional accounting period of the FIF. In this case, no amount will be included in respect of the taxpayer's interest in the CFC under the FIF measures if section 456 applies to the interest at the end of that period.
4. This exemption will not apply where, at the end of the company's statutory accounting period, the company ceases to be a CFC or if the taxpayer ceases to be an attributable taxpayer of the CFC. The exemption would, however, apply where a company became a CFC during its notional accounting period for the purposes of the FIF measures.
5. The second test is used where the statutory accounting period of the CFC does not coincide with the notional accounting period of the FIF. In this case, no amount will be included in respect of the taxpayer's interest in the CFC under the FIF measures if section 456 applies to that interest at the end of both of the CFC's statutory accounting periods which overlap the FIF's notional accounting period, that is, the statutory accounting period of the CFC which ends and the period which commences during the notional accounting period of the FIF.
6. Both of the tests require that section 456 applies to the taxpayer. For the purposes of these tests, the Commissioner will accept that section 456 applies to the attributable taxpayer, for the relevant year of income, in circumstances where no amount of attributable income is included in the assessable income of the taxpayer under section 456 because, in relation to the relevant statutory accounting period, the CFC:
 - (a) has passed the active income test; or
 - (b) the amount of notional assessable income of the CFC does not exceed its notional allowable deductions; or
 - (c) subsection 385(4) applies to the CFC.
7. However, under the CFC measures, where a CFC has an interest in an FIF, and that FIF is not a CFC, paragraphs 384(2)(ca) and 385(2)(ca) will include FIF income in the notional assessable income of the CFC.

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Related Determinations:

Related Rulings:

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