

Draft Taxation Determinations (TDs) represent the preliminary, though considered, views of the ATO. Draft TDs may not be relied on; only final TDs are authoritative statements of the ATO.

Draft Taxation Determination

Income tax: foreign income: are income or profits which are assessable in a listed country considered to be subject to tax in the listed country within the meaning of section 324 if, after the recoupment of prior year losses and other deductions, it is determined by the country that no tax is required to be paid ?

1. Subsection 324(1) of the *Income Tax Assessment Act 1936* provides that 'a particular item of income or profits derived by an entity is taken to be subject to tax in a listed country ... if ... foreign tax (other than a withholding-type tax) is payable under a tax law of the listed country in respect of the item because the item is included in the tax base of that law '.

2. We accept that a particular item of income or profits is subject to tax in a listed country within the meaning of section 324 where:

- (i) deductions from the income or profits that are allowable under the tax law of that country have the effect that no tax is required to be paid; and
- (ii) if not for those deductions, tax would have been paid in that country on income or profits.

3. In relation to a particular type of entity e.g., a company, deductions referred to in paragraph 2 are to be of the type which are available, under the tax law of the listed country, to all other companies that are subject to the tax jurisdiction of the listed country, for example, deductions for expenses incurred in deriving the particular item of income or profits, carried forward losses, amortisation expenses.

4. We do not accept that a particular item of income or profits is subject to tax if the deduction is provided to the company by way of a concession, e.g., a listed country may grant a tax holiday to a company by way of a deduction from the income or profits derived by the company.

5. This determination replaces Taxation Determination TD92/107. That Taxation Determination is now withdrawn.

Commissioner of Taxation

26/8/93

FOI INDEX DETAIL: Reference No.

Related Determinations:

Related Rulings:

Subject Ref: Foreign source income; CFCs; listed country; subject to tax; prior year losses; deductions

Legislative Ref: ITAA 324

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