# *TD 93/D84 - Income Tax: does section 129 of the Income Tax Assessment Act 1936 (ITAA) operate to deem 5% of shipping freight payments to be taxable income where;(a) the payments were made by an Australian resident to an Italian shipping enterprise, (b) the payments were made for the carriage by ship of passengers, livestock, mail, goods or merchandise from Australia for discharge at an overseas port, and (c) the place of effective management of the Italian shipping enterprise is in Italy?*

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# Draft Taxation Determination

**Income Tax : does section 129 of the *Income Tax Assessment Act 1936* (ITAA) operate to deem 5% of shipping freight payments to be taxable income where;**

**(a) the payments were made by an Australian resident to an Italian shipping enterprise,**

**(b) the payments were made for the carriage by ship of passengers, livestock, mail, goods or merchandise from Australia for discharge at an overseas port, and**

**(c) the place of effective management of the Italian shipping enterprise is in Italy?**

1. No. Although the requirements of section 129 are satisfied, under the terms of section 4 of the *Income Tax (International Agreements) Act 1953* (IT(IA)A), where the application of the ITAA (other than Section 160AO or Part IVA) would produce a result that is inconsistent with the provisions of the IT(IA)A, the treaty provisions will prevail.

2. Article 8(1), Schedule 21 IT(IA)A (Australia-Italy Double Tax Convention) states that 'Where profits are derived by a resident of one of the Contracting States from the operation of ships and the place of the effective management of the shipping enterprise is situated in that State, those profits shall be taxable only in that State'.

3. Therefore, section 129 of the ITAA does not apply.

**Commissioner of Taxation**
1/4/93

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