


TD 94/D37 - Income tax: what should an actuary take into account in certifying, for the purposes of subsection 112C(1), that the assets of a life insurance company's permanent establishments in foreign countries are not excessive in relation to liabilities referable to policies issued in the course of carrying on those permanent establishments?

 This cover sheet is provided for information only. It does not form part of *TD 94/D37 - Income tax: what should an actuary take into account in certifying, for the purposes of subsection 112C(1), that the assets of a life insurance company's permanent establishments in foreign countries are not excessive in relation to liabilities referable to policies issued in the course of carrying on those permanent establishments?*

This document has been finalised by TD 96/29.

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: what should an actuary take into account in certifying, for the purposes of subsection 112C(1), that the assets of a life insurance company's permanent establishments in foreign countries are not excessive in relation to liabilities referable to policies issued in the course of carrying on those permanent establishments?

1. Section 112C was introduced by *Taxation Laws Amendment Act (No. 2) 1992* to exempt from Australian tax the foreign income applicable to eligible non-resident policies issued by an Australian life company in the course of carrying on a business of life insurance at or through a permanent establishment in a foreign country. In this Determination the policies issued by the permanent establishment are referred to as 'foreign policies'. Subsection 112C(1) provides that the amount of income to which the section applies does not extend to income arising from assets which were not held to cover liabilities referable to foreign policies.

2. In determining whether assets of the foreign operations exceed those required to cover liabilities of foreign policies, the *Explanatory Memorandum to the Taxation Laws Amendment Bill (No. 2) 1992* states:

'A statement from a professionally qualified actuary setting out the calculated liabilities in relation to the life policies issued by the permanent establishments, and certifying that the assets shown in the financial statements of the permanent establishments are not excessive in relation to those liabilities, would generally be accepted in this regard.'

The purpose of this Determination is to set out the Commissioner's view of which assets are not considered to be assets held to cover liabilities referable to foreign policies for section 112C purposes

3. It is considered that only assets held to cover liabilities referable to foreign policies are **not** taken into account in reducing the amount of income of a permanent establishment for the purposes of section 112C.

4. The following are not considered to be assets held to cover liabilities referable to foreign policies and should not be taken into account by an actuary in determining the value of such assets for 112C purposes:

- i) funds to enable new business to be generated
- ii) funds to provide initial capital
- iii) funds for special contingencies

- iv) capital adequacy reserves
- v) prudential requirements of foreign regulatory authorities
- vi) reserves held for any capital guaranteed commitments or for terminal bonus commitments in relation to those foreign policies.

5. Where an actuary has determined that the assets held by the permanent establishment are **not** in excess of those required to cover liabilities referable to foreign policies, the actuary should certify accordingly. Where the actuary has determined that the assets are excessive, he should ascertain the assets of the permanent establishment held to cover liabilities referable to foreign policies, and certify accordingly.

Commissioner of Taxation

7/4/94

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Related Determinations:

Related Rulings:

Subject Ref: Assets of foreign permanent establishments

Legislative Ref: ITAA 112C, ITAA 112A(5).

Case Ref:

ATO Ref: Insurance Industry Cell

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