


TD 94/D84 - Income tax: foreign income: does a voluntary payment made to a taxing authority exclude income from designated concession income as described in Income Tax Regulation 152D?

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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: does a voluntary payment made to a taxing authority exclude income from designated concession income as described in Income Tax Regulation 152D?

1. No. A voluntary payment made to a taxing authority is not regarded as a payment of tax. This matter was considered in *Matthews v. Chicory Marketing Board (Vict)* (1938) 60 CLR 263; 12 ALJ 187 which states that a tax is a compulsory extraction of money. This was confirmed in *Australian Tape Manufacturers v. Cth* (1993) 112 ALR 53; 67 ALJR 315.

2. Income or profits which are subject to a 'concessional rate of tax' within the meaning of Regulation 152C are regarded as being 'subject to a reduction of tax' despite the making of a voluntary payment to a taxing authority. Those income or profits are 'subject to a reduction of tax' irrespective of whether the total payment made to a taxing authority is calculated by reference to the normal rate of tax.

Example

The normal company rate of tax in a listed country is 30%. A CFC is resident in that listed country and derives income of a kind specified in Regulation 152D which is subject to a rate of tax of 10%.

The CFC derives \$100 of income. Assume in this example, there are no deductions. This income is taxed at 10%, that is the company is required to pay \$10 under the tax laws of the listed country. Thus, the income is subject to a concessional rate of tax within the meaning of Regulation 152C. The CFC enters into an arrangement with the local taxing authority to pay an additional \$20 which results in a total payment (\$10 tax + \$20 additional amount) which reflects an amount as though it were calculated by reference to the normal company rate of tax.

This additional amount is a voluntary payment and not a payment of tax. The \$100 income remains designated concession income for the purposes of Regulation 152D notwithstanding the voluntary payment of \$20.

Commissioner of Taxation

4/8/94

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