


TD 95/D19 - Income tax: general insurance: what obligations does an Australian insurer have under the Income Tax Assessment Act 1936 ('the Act') when an election is made under subsection 148(2) of the Act?

 This cover sheet is provided for information only. It does not form part of *TD 95/D19 - Income tax: general insurance: what obligations does an Australian insurer have under the Income Tax Assessment Act 1936 ('the Act') when an election is made under subsection 148(2) of the Act?*

This document has been finalised by TD 96/11.

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: general insurance: what obligations does an Australian insurer have under the *Income Tax Assessment Act 1936* ('the Act') when an election is made under subsection 148(2) of the Act?

1. Under subsection 148(4) of the Act an Australian insurer, as agent for a non-resident reinsurer, must lodge a taxation return in respect of each year of income to which the subsection 148(2) election applies. Subsection 148(7) requires the Commissioner to issue a separate notice of assessment.
2. Subject to paragraphs 4 and 6 below, the Australian insurer will be liable to pay tax as agent of the non-resident reinsurer under subsection 148(3), at the rate applicable to non-resident companies for that year, on an amount equal to 10% of the gross premiums paid or credited to the non-resident reinsurer in the particular year of income.
3. By the combined operation of subsection 148(9) and section 254 the Australian insurer is required to retain sufficient monies from the gross premiums paid or credited to the non-resident during a year of income to meet the tax liability under subsection 148(3). To enable the Australian insurer to meet this tax liability, monies are required to be retained from the gross premiums paid or credited at the rate applicable to non-resident companies pertaining to the year of income in which the premiums were paid or credited. Where an insufficient amount is retained to pay the amount of tax calculated under subsection 148(3) at the company rate applicable for that year, the Australian insurer shall be liable, as agent for the non-resident, to pay the whole amount of the tax assessed, including any shortfall in the amount retained.
4. The retention of monies by the Australian insurer, as agent for the non-resident, to pay any tax calculated under subsection 148(3) is only required from those reinsurance premiums which are applicable to contracts commencing on or **after** the election. An election under subsection 148(2) operates from the date of the commencement of the year of income to which the election applies, not the date on which the election is made.
5. Adjustment premiums are further premiums which may become payable or refundable under a reinsurance contract depending upon the level of the premium income and/or level of loss experience of the reinsured. A detailed explanation of adjustment premiums is to be found in Taxation Ruling TR 95/5 at paragraphs 64-77.
6. The amount of premiums upon which tax assessed is calculated under subsection 148(3) excludes any adjustment premiums that become **payable or refundable** in respect of contracts commencing **before** the election.

7 However, adjustment premiums paid or credited to a non-resident in respect of contracts commencing on or **after** the election, will form part of the premiums upon which the tax assessed to the Australian insurer as agent is calculated under subsection 148(3). In accordance with paragraph 3 above, the Australian insurer should retain sufficient monies from the total premiums, including adjustment premiums, to meet the tax liability calculated under subsection 148(3).

8. Refunds of adjustment premiums **received** by an Australian insurer from a non-resident reinsurer under contracts commencing on or **after** the election will, in the year they are received, reduce the amount of premiums upon which tax assessed is calculated under subsection 148(3).

Commissioner of Taxation

11/10/95

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Related Determinations:

Related Rulings: TR 95/5

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