


***TD 95/D20 - Income tax: general insurance: when an election is made under subsection 148(2) of the Income Tax Assessment Act 1936 ('the Act'), are all amounts paid or credited or received or debited in respect of reinsurance contracts made prior to the making of the election, deductible or assessable respectively to the Australian insurer?***

 This cover sheet is provided for information only. It does not form part of *TD 95/D20 - Income tax: general insurance: when an election is made under subsection 148(2) of the Income Tax Assessment Act 1936 ('the Act'), are all amounts paid or credited or received or debited in respect of reinsurance contracts made prior to the making of the election, deductible or assessable respectively to the Australian insurer?*

This document has been finalised by TD 96/10.

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.

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## Draft Taxation Determination

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**Income tax: general insurance: when an election is made under subsection 148(2) of the *Income Tax Assessment Act 1936* ('the Act'), are all amounts paid or credited or received or debited in respect of reinsurance contracts made prior to the making of the election, deductible or assessable respectively to the Australian insurer?**

1. No. The effect of making the election under subsection 148(2) of the Act on the Australian insurer is that all amounts paid or credited or received or debited in respect of the business of reinsurance with a non-resident applicable to contracts commencing **prior** to the election date, will be neither deductible nor assessable to the Australian insurer under subsection 148(1).
2. 'Amounts paid or credited or received or debited' in the context of this Determination, include reinsurance premiums paid, return reinsurance premiums, reinsurance recoveries and reinsurance commissions (apart from overriding or other forms of profit commission for the provision of services - Taxation Ruling IT 2367 refers).
3. An election under subsection 148(2) operates from date of the commencement of the year of income to which the election applies, not the date on which the election is made.
4. Accordingly, it is only amounts paid or credited or received or debited with a non resident that are applicable to contracts commencing on or after the election date which will be either deductible or assessable.
5. There is no change in the basis of accounting when an election is made under subsection 148(2). All adjustments to outstanding claims and unearned premiums provisions applicable to reinsurance contracts commencing prior to the commencement of the election are non-assessable and non-deductible. In this context, the opening balance in the election year for both unearned premiums and outstanding claims provisions must equal the closing balance in the previous year. It follows that the balance of the outstanding claims provision at the end of each year after the election takes effect would continue to include the gross liability for pre-election risks (less local reinsurance), with no offset for related recoveries from non-resident reinsurers.

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FOI INDEX DETAIL: Reference No.

Related Determinations:

Related Rulings: IT 2367

Subject Ref:

Legislative Ref: ITAA 148(1); ITAA 148(2)

Case Ref:

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