IT 2508 - Income tax : foreign tax credit system - foreign income to be taken into account when determining foreign tax credits

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Generated on: 23 November 2026, 04:00:33 AM

TAXATION RULING NO. IT 2508

INCOME TAX : FOREIGN TAX CREDIT SYSTEM - FOREIGN INCOME TO BE TAKEN INTO ACCOUNT WHEN DETERMINING FOREIGN TAX CREDITS

F.O.I. EMBARGO: May be released

REF N.O. REF: L87/3251-5 DATE OF EFFECT: Immediate

B.O. REF: DATE ORIG. MEMO ISSUED:

F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1211481	FOREIGN TAX CREDIT SYSTEM - AGGREGATION OF FOREIGN INCOME FOR CREDIT PURPOSES	6AB(1) 160AE 160AF

PREAMBLE A question has been raised about the foreign income to be taken into account when determining a taxpayer's foreign tax credit entitlement under section 160AF of the Income Tax Assessment Act ("the Assessment Act"). The advice sought concerns the position that applies where the taxpayer derives several amounts of foreign income in the one income year, only some of which is subject to foreign tax.

2. This question has been asked against the background of the general world-wide scheme of the foreign tax credit provisions, and the specific terms of subsections 6AB(1) and 160AF(1) of the Assessment Act.

RULING 3. The reference to "foreign income" in paragraph (a) of subsection 160AF(1), when read with the definition in subsection 6AB(1) of that term for the purposes of the Assessment Act, is intended to be comprehensive in its application. Specifically, it requires that all foreign income that is included in the assessable income of a taxpayer for a year of income - whether subject to foreign tax or not and whether derived from sources in one or more countries - is to be aggregated for the purposes of determining the taxpayer's foreign tax credit entitlement for that year under subsection 160AF(1). Paragraph (b) of that subsection operates similarly to aggregate all foreign taxes paid in respect of foreign income so included in the assessable income.

4. However, by subsection 160AF(7) of the Assessment Act, foreign tax credits are determined under subsection 160AF(1) separately for 3 classes of foreign income - interest income as defined in subsection 160AE(3) (later referred to as "quarantined interest income"), offshore banking income as defined in subsection 160AE(4) and other income. Accordingly, all foreign income that is included in assessable income and is quarantined interest income, and foreign taxes paid in respect of that income, are aggregated for purposes of the application

of subsection 160AF(1) in respect of that class of income. All offshore banking income included in assessable income and attributable foreign taxes paid are likewise aggregated when applying subsection 160AF(1) in respect of that class of income. All other foreign income that is included in the assessable income of the taxpayer, and the foreign taxes paid in respect of that income, are similarly aggregated for purposes of the separate application of subsection 160AF(1) to that class of income.

5. This result is consistent with the world-wide basis of the foreign tax credit system, which does not permit the carry-back or carry-forward of excess foreign tax credits arising in a year of income.

COMMISSIONER OF TAXATION
17 November 1988