IT 2527 - Income tax : foreign tax credit system - procedures in relation to claims for foreign tax paid

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TAXATION RULING NO. IT 2527

INCOME TAX : FOREIGN TAX CREDIT SYSTEM - PROCEDURES IN RELATION TO CLAIMS FOR FOREIGN TAX PAID

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OTHER RULINGS ON TOPIC : IT 2437 IT 2498 IT 2507 IT 2508 IT 2528 IT 2529

PREAMBLE The primary purpose of this Ruling is to set out rules for the practical administration of the requirement of subsection 160AF(1) of the Income Tax Assessment Act ("the Assessment Act") that foreign tax claimed as a credit must have been paid before it may be offset against the Australian tax payable on the foreign income. It should be read in conjunction with Taxation Rulings Nos. IT 2528 and IT 2529 which address other aspects of the practical administration of that requirement.

2. These Rulings have been developed after extensive examination and review of the issues involved in the light of comments and suggestions received from various professional bodies and interested parties. Many of those comments and suggestions have been accommodated within the Rulings. While this process has delayed the issue of these Rulings, it has nevertheless assisted greatly in finalisation of the rules and approaches reflected in them.

3. Subsection 160AF(1) is the main operative provision of the general foreign tax credit system (FTCS) of unilateral double tax relief which has applied from the commencement of the 1987-88 year of income. Under this subsection, Australian resident taxpayers are entitled to claim credit for foreign tax paid on foreign income against the Australian tax payable on that income. An Australian company which receives a dividend from a related foreign company (in terms of section 160AFB) may also be entitled to a credit for underlying foreign tax paid by the foreign company on the profits out of which the dividend is paid (section 160AFC). In all cases, the amount of credit to be allowed for foreign tax paid is limited by subsection 160AF(1) to the Australian tax payable on the relevant foreign income. That income is taken, for the purposes of the Assessment Act, to

be the amount of such income received as grossed-up, where appropriate, by the foreign tax paid in respect of that income (section 6AC).

4. When determining the amount of foreign tax eligible for credit relief in terms of subsection 160AF(1), regard must be had to subsection 160AF(2). That subsection ensures that if a taxpayer is entitled to have any foreign tax that was deducted at source reduced by electing to have tax determined on an assessment basis, then, even if the taxpayer has not taken advantage of that reduction, credit will be allowed only for the notional reduced foreign tax.

5. Where the amount of foreign tax paid in respect of foreign income that is included in assessable income of a year of income exceeds the Australian tax payable on that income, the excess foreign tax cannot be carried forward or carried back for foreign tax credit relief purposes to other years of income. However, such excess foreign tax credits arising in a year of income are transferable within wholly-owned company groups for set-off against Australian tax payable on other foreign income by other Australian resident companies in the group in the same income year (section 160AFE).

6. Subsection 160AF(1) specifies two basic tests that must be satisfied before any credit for foreign tax paid can be allowed. These tests are:

(a) that the assessable income of a year of income of a resident taxpayer includes foreign income (as defined by subsection 6AB(1)); and

(b) that the taxpayer has paid foreign tax (as defined by subsection 6AB(2)) in respect of that foreign income, being tax for which the taxpayer was personally liable.

It is important to note in this context that in the situations of "indirect payment" of foreign tax described in subsection 6AB(3), e.g., where foreign withholding tax applies, the taxpayer is deemed to have been personally liable for, and to have paid, the foreign tax.

7. Where both of these tests are met, a credit for the foreign tax paid is authorised to the extent of the amount of Australian tax payable on the foreign income. This amount is calculated - in accordance with the formula set out in subsection 160AF(3) - by applying the "average rate of Australian tax" to the "adjusted net foreign income" (both terms being defined in subsection 160AF(8)), and deducting from the resultant amount any rebates relating exclusively to the foreign income to which the taxpayer is entitled, other than a rebate allowable under a Rates Act for the year of tax. The determination of the average rate of Australian tax takes into account the Medicare levy (by reason of subsection 251R(7) of the Assessment Act), and the "exemption with progression" measures contained in subsections 23AF(17A) and 23AG(4) in cases where those provisions of the Assessment Act apply to foreign

earnings.

8. Other measures contained in section 160AF modify this general formula to meet the special circumstances of private companies remaining subject to any additional tax under Division 7, and of persons liable to pay tax under section 94 on uncontrolled partnership income, on income of revocable trusts and of certain trusts for minors.

9. In the case of foreign earnings subject to partial exemption from Australian tax under subsection 23AG(2), subsection 160AF(6) ensures that the amount of credit to be allowed under subsection 160AF(1) is pro-rated in the same proportion as the amount of assessable foreign earnings income bears to the total foreign earnings. By this means a foreign tax credit will be given only in respect of that portion of the foreign tax paid that is attributable to the foreign earnings included in assessable income.

10. Subsection 160AF(7) requires that the foreign tax credit be determined (on a world-wide basis) separately in relation to all foreign income of a taxpayer that is interest income (as defined in subsection 160AE(3)), offshore banking income (as defined in subsection 160AE(4)) and all other foreign income respectively. Each of these categories of foreign income are referred to as a "class of income" for those purposes, which also accords with their classification respectively as a "single class of income" for various other purposes of the foreign tax credit system (see subsection 51(6), section 79D, and section 160AFD).

11. The foreign tax paid requirement of subsection 160AF(1) and other matters concerning the administration of section 160AF are discussed in this Ruling under the following headings:

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RULING FOREIGN TAX MUST BE PAID AND NOT JUST ACCRUED

12. The governing factor underlying this Ruling is the fundamental requirement of subsection 160AF(1) that the foreign tax must have been paid before it is eligible for consideration for credit relief under that provision of the Assessment Act. Prior to this point in time the question of relief does not arise because double taxation of the foreign income will not have occurred until the foreign tax is, in fact, paid.

13. Regardless of when the foreign tax is paid, credit for such tax will only be allowed in terms of subsection 160AF(1) in relation to the year of income in which the foreign income giving rise to that tax has been brought to account as assessable income for Australian tax purposes. This result is consistent with the double tax relief purpose of subsection 160AF(1) and the requirement of section 6AC that the foreign income in respect of which the foreign tax credit is allowed is the gross amount of that income before payment of that foreign tax.

APPORTIONMENT OF FOREIGN TAX AND FOREIGN INCOME

14. Taxation Ruling No. IT 2498 provides detailed guidelines as to the acceptable methods of declaring foreign income in Australian income tax returns. It addresses the particular problems encountered with foreign tax years being generally on a different basis to that of the normal Australian fiscal year ended 30 June. In situations in which the special rules relating to the returning by individual taxpayers of foreign income for Australian tax purposes on the basis of the foreign income year, as outlined in that Ruling, apply, there will be no need to dissect the foreign tax paid between more than one Australian tax year. Likewise, taxpayers who have been granted leave to adopt a substituted accounting period which mirrors that of the foreign country or countries in which they derive foreign income should also experience little difficulty in claiming credits for foreign taxes paid on this basis.

15. However, taxpayers who are required by that Ruling to make a dissection of their foreign income derived during a foreign tax year between two Australian tax years must apportion the foreign tax relating to that foreign income on the same basis as that used for dissecting the income between the various years concerned. For example, if a gross income basis is used for determining the amount of foreign income related to each Australian tax year, then the same method must also be used to dissect the foreign tax paid. Dissection of income on a gross earnings basis but dissection of the tax paid on a days basis will not be acceptable. Dissection on a days basis will generally only be appropriate in cases where the foreign income is being derived at roughly equal amounts throughout the year, such as income earned in overseas employment.

16. The net amounts on which tax is assessed (or levied) for Australian and foreign tax purposes will not always be the same. For instance, certain deductions may be allowable under

the Assessment Act which are not deductible under the income tax law of the country of source. The reverse may also be the case. Irrespective of whether this situation occurs, the foreign tax credit to be allowed is to be the actual amount of foreign tax paid in respect of the foreign income included in the taxpayer's assessable income for the year of income subject, of course, to the limitation provided by paragraphs (c) and (d) of subsection 160AF(1). The following examples illustrate the treatment to be adopted in the above circumstances:

EXAMPLE 1

Foreign country assessment

Gross foreign branch profits		$100
less deductions allowable under foreign law		10
Net income		90
Foreign tax (33%)	$29.70	

Australian assessment

Gross foreign branch profits		$100
less deductions allowable under Australian law		20
Net income		80
Australian tax (39%)	$31.20	
less foreign tax credit	29.70	
Net Australian tax payable	1.50	

EXAMPLE 2

Foreign country assessment

Gross foreign branch profits		$100
less deductions allowable under foreign law		20
Net Income		80
Foreign tax (33%)	$26.40	

Australian assessment

Gross foreign branch profits		$100
less deductions allowable under Australian law		10
Net income		90
Australian tax (39%)	$35.10	
less foreign tax credit	26.40	
Net Australian tax payable	8.70	

17. Subsections 20(2) and 20(4) require that any amount of foreign tax paid in respect of certain categories of foreign income shall be expressed in Australian currency at the exchange rate applicable at the time when the tax is paid. That rate will normally be the rate applicable at the time of payment of the relevant foreign assessment. (See Taxation Ruling No. IT 2498 and paragraph 44 of this Ruling). For other foreign income and foreign tax, subsection 20(3) requires the currency translation to be based on the exchange rate on the day of remittance to Australia of the relevant foreign income or, for such income that is not remitted to Australia during the year,

the last day in the year of income during which the income was derived. This requirement does not alter the fact that credit for foreign tax paid is to be allowed in relation to the Australian year of income for which the taxpayer's assessable income includes the foreign income in respect of which the foreign tax has been paid.

ELIGIBILITY OF FOREIGN TAXES FOR FTCS PURPOSES

18. Under subsection 6AB(2), foreign taxes for which credit will be allowed will be those taxes imposed on income and gains that are basically similar in nature to the Australian income tax. A credit is not to be allowed pursuant to that subsection for unitary or credit absorption taxes. (See also Taxation Rulings Nos. IT 2437 and IT 2507 concerning creditable foreign taxes).

19. Consistent, however, with the governing factor underlying this Ruling referred to in paragraph 12 above, and in recognition that many foreign tax jurisdictions require progressive tax payments, a credit may be allowed for creditable foreign taxes that can be demonstrated as having been paid by a taxpayer in respect of foreign income prior to the raising of an assessment in respect of that income. Subject to other parts of this Ruling, e.g. paragraphs 28 to 31 concerning the application of subsection 160AF(2) and paragraphs 37 and 38 regarding taxes withheld or imposed by a foreign tax jurisdiction in excess of a relevant tax treaty rate - this position may apply notwithstanding that the payments might not represent the taxpayer's final foreign tax liability in relation to that income.

20. Accordingly, subject to the availability of evidence of the payments (see paragraphs 42-57 below), advance or instalment payments, including a provisional tax payment of foreign creditable taxes made up to the time of lodgment of the relevant Australian income tax return may be the subject of a credit determination.

21. An amended credit determination would be required pursuant to section 160AK of the Assessment Act (and an amended assessment pursuant, normally, to subsection 170(3) or 170(4), where necessary to increase or decrease the assessable amount of the foreign income in accordance with section 6AC) in the event of any subsequent foreign tax payments being made by the taxpayer in respect of the relevant foreign income for that year, or a determination by the foreign revenue authorities which results in a refund of some portion of the advance or instalment payments (see further paragraph 54 below concerning amended assessments and Taxation Ruling No. IT 2529 concerning the limitations applicable in relation to amended credit determinations).

22. However, compensatory taxes paid by a foreign company at the time of payment of a dividend under an imputation system of another country, such as United Kingdom advance corporation tax, do not qualify for consideration when determining foreign underlying tax in respect of dividends distributed from a

related foreign company unless and until taken into account for the purposes of discharge of the company's foreign corporate tax liability on its profits, eg., where the foreign corporation tax liability as finally determined by assessment is offset by compensatory tax credits. At that time, the full amount of the foreign corporation tax will qualify for underlying tax credit purposes, i.e., both the compensatory tax credits and the net amount paid on the assessment.

23. The relevance of the United Kingdom advance corporation tax and its dividend imputation system generally to the treatment for FTCS purposes of dividends received from a United Kingdom resident company by an Australian resident individual shareholder is primarily governed by the terms of Article 8 of the comprehensive taxation agreement with the United Kingdom. That Article was substituted for the former Article 8 by Article II of the Protocol to that agreement - see Schedule 1A of the Income Tax (International Agreements) Act 1953 - and its overall effect is broadly described in paragraph 33 of Taxation Ruling No. IT 2498.

24. The introduction of the FTCS does not alter the practical effects of Article 8 for Australian tax purposes. The key elements for present purposes are that the United Kingdom may tax an Australian individual shareholder on the sum of the dividend received and the United Kingdom advance corporation tax, but at a rate not exceeding 15 percent. (To the extent that the advance corporation tax credit available in the United Kingdom to the Australian shareholder exceeds that of the treaty rate of tax, he or she may seek a refund from the U.K. tax authorities of the excess credit.)

25. Against that background, the effect for Australian tax purposes is that the shareholder is assessable in Australia on the sum of the amount of the dividend received as grossed-up by the amount of United Kingdom advance corporation tax, with the shareholder's foreign tax credit entitlement being determined on the basis of the United Kingdom treaty rate limit of 15 percent of that sum.

26. Foreign "taxes" which represent amounts paid to a foreign government to satisfy a liability for interest, fines, penalties or any other similar obligations are not income taxes and do not qualify for credit relief. That principle is recognised internationally and is reflected in Australia's current comprehensive taxation agreements. Each of those agreements specifically deny "tax" status to any amounts which represent a penalty or interest imposed under the law in force in Australia or in the treaty partner country relating to the taxes to which the agreement applies, thereby preventing such amounts from being eligible for credit relief under the respective treaties.

27. It follows from the "class of income" basis for the allowance of foreign tax credits (see paragraph 10 above), that where creditable foreign tax has not been paid in respect of a particular class of foreign income, credit will not be allowed

against the Australian tax payable on that income, even though creditable foreign tax may have been paid in respect of foreign income of another class. However, where creditable foreign tax has been paid in respect of part (but not all) of the foreign income of a particular class, the taxed and untaxed foreign income of that class will be combined and credit will be allowed for the amount of the foreign tax paid against, and up to the amount of, the Australian tax payable on that class of foreign income - Taxation Ruling No. IT 2508 refers.

28. As mentioned in paragraph 4 above, subsection 160AF(2) deals with the situation where foreign tax has been deducted from the income of a taxpayer derived from sources in a foreign country and the taxpayer could have elected, under the law of that country, to have the taxpayer's liability to tax in that country determined on an assessment basis. Where this occurs, the subsection requires that the taxpayer be treated, for the purposes of paragraph 160AF (1)(c), as being entitled to foreign tax credit relief in respect of the foreign income equal to the amount (if any) by which the liability to foreign tax on that income would have been reduced if the liability had been so determined.

29. An example of such a situation has arisen in the case of a non-resident of the United States (an Australian resident taxpayer) deriving income from real property from sources within the United States. An election available to such non-residents under the United States law permitted the taxpayer to have tax applied on a net basis rather than being taxed on a gross (withholding) basis. It was ruled in that case that although the taxpayer had not filed an American income tax return to obtain the advantage of a lesser rate of United States tax, the taxpayer would only be entitled to a foreign tax credit in the Australian tax assessment at the reduced rate of United States tax, determined on the basis of a notional estimate of the United States tax that would have been payable under the United States law if a return had been lodged.

30. In other cases in which subsection 160AF(2) is applicable, it is consistent with that approach that the taxpayer need not file an income tax return in the foreign country in order to determine the amount of foreign tax payable on the foreign income on an assessment basis. Such a requirement could be seen to be placing an unnecessary burden on the taxpayer and lead to undue delays in determining the amount of foreign tax properly creditable pursuant to subsection 160AF(2) in respect of the foreign income.

31. Accordingly, a notional estimate submitted by the taxpayer of the foreign tax payable on an assessment basis, together with details of the basis for that estimate, could be accepted as sufficient for purposes of determination of the foreign tax properly creditable provided the basis for the estimate appears to substantially accord with the relevant provisions of the tax laws of the foreign country concerned.

FOREIGN TAXES IN EXCESS OF LIMITED RATES OF TAX SPECIFIED IN

AUSTRALIA'S COMPREHENSIVE TAXATION AGREEMENTS

32. In general, Australia's comprehensive taxation agreements specify a limit on the rate of tax that each Contracting State is authorised to impose on most income consisting of interest, dividends and royalties flowing between the two treaty countries. However, despite rate limitations being imposed on these particular classes of income, certain foreign tax jurisdictions require that they sight a certificate of residence or taxable status in Australia, issued by the Australian Taxation Office, prior to the income remittance being made.

33. The certificate would confirm, for the purposes of the relevant treaty, that the person stated in the certificate is entitled to the treaty rate of tax by virtue of being a resident of Australia. Production of such a certificate will enable the reduced (treaty) rate of tax to be applied to the remittance rather than the higher source country rate. Where an Australian resident is not entitled to a reduced rate of foreign tax (see for example, Article 9(3) of the New Zealand comprehensive taxation agreement), the taxpayer's foreign tax credit entitlement will, of course, be determined on the basis of the full amount of foreign tax paid.

34. Some foreign tax jurisdictions apply, as a matter of course, their higher domestic rate of tax to all remittances but then allow the non-resident recipient to claim a refund of the excess over the treaty rate at a later date, provided the person claiming the refund can provide proof of Australian resident status for Australian income tax purposes.

35. To facilitate this process, many of these countries have designed special claim forms (stocks of most of which are held by the various branch Taxation Offices) which must be completed in order to obtain the benefit of the treaty rate. It is important to note that certification of such forms prior to their being on-forwarded to the relevant foreign tax authority is necessary. Such certification should be carried out by the relevant branch Taxation Office at which taxpayers submit their annual income tax returns. Taxpayers should also supply their Australian income tax file number when making requests for certification of the foreign claim forms.

36. In cases where proof of residential status is required but no specific form exists, application should be made to the relevant branch Taxation Office for either a certificate of residency (for individuals, including partners and beneficiaries) or a certificate of taxable status (for companies and superannuation funds). These one-off official certificates will enable taxpayers to prove to the relevant foreign tax authority that they are entitled to the treaty rate of tax.

37. The foreign tax jurisdictions involved in such procedures are not technically authorised to withhold or impose tax at a rate higher than that specified in the relevant treaty. Accordingly, credit for such foreign tax in Australia will only be allowed up to the extent of that specified in the treaty, in

accordance with the provisions of paragraph 160AF(1)(c). Relief for the purposes of that paragraph is defined in subsection 160AE(1) to mean, in relation to foreign tax, relief in the nature of a credit, rebate, remission or deduction.

38. By way of example, if country A has concluded a comprehensive taxation agreement with Australia stating that its tax on interest remittances to Australia for the purposes of the Agreement is to be limited to 10 percent, but country A in fact imposes a domestic tax rate of 25 percent upon such a remittance, a credit for the foreign tax will be allowed only up to a maximum of 10 percent (being the treaty rate limit). Country A's tax authorities would be obliged to grant a refund to the taxpayer of the excess over this rate (i.e. 15 percent in this case).

39. In the majority of cases the taxation treatment of foreign pensions received by Australian residents is governed by the terms of an existing comprehensive taxation agreement. This position is not altered by the FTCS. The FTCS will therefore usually only apply to foreign pension income in the limited number of cases where such pensions are derived from non-treaty countries (i.e. all countries not listed in paragraph 60 below).

40. This is because most of the comprehensive taxation agreements provide for the taxation of pension income to be restricted to the country of residence of the pension recipient (although there are some exceptions to this rule). Accordingly, where a treaty provides that a particular foreign source pension shall be taxable only in Australia, credit for foreign tax cannot be allowed, even if it has been imposed at source. The question of relief from the imposition of foreign tax or a refund of the foreign tax imposed in such cases must be pursued by the taxpayer with the relevant foreign authorities in accordance with procedures of the type outlined at paragraphs 32 to 36.

41. The issue of the amount of foreign tax to be recognised for foreign tax credit purposes in relation to foreign pension income to which a treaty applies, or other foreign income subject to a limited foreign tax rate under a treaty, may be subject to further review, of course, in the event of any dispute over the applicability of the treaty in the case of a particular taxpayer. Such a case might arise, for example, should the treaty partner country not accept that the taxpayer is a resident of Australia, or for some other reason consider that the taxpayer is not entitled to the treaty tax rate limit.

DOCUMENTARY EVIDENCE TO SUPPORT CLAIMS FOR FOREIGN TAX CREDITS AND RELATED MATTERS

GENERAL ISSUES

42. Subject to the special rules outlined in paragraphs 58 to 69 of this Ruling, documentary evidence that the foreign tax has been paid will be required to be submitted where a claim is made for a foreign tax credit. It would assist for this purpose if

claims for foreign tax credits and supporting documentary evidence show the following details:

- the amount of foreign income in the foreign currency;
- the foreign tax year to which the income relates;
- the nature and amount of foreign tax levied on the foreign income;
- the date upon which the foreign tax was paid;
- whether the tax paid represents an advance, instalment, or final, foreign tax payment in relation to the foreign income concerned.

Where a taxpayer can demonstrate that it is not practicable or possible to obtain all of that information, a decision as to whether the information provided is sufficient to allow the claim for credit will need to be made in the relevant branch Taxation Office on a case by case basis (see also paragraph 10 of Taxation Ruling No. IT 2529).

43. The best form of documentary evidence would be a receipted notice of assessment or similar official receipt or other document evidencing payment of the foreign tax. If the foreign notice has no provision for a cash register receipt, taxpayers will be required to provide a separate receipt to indicate that the foreign tax liability has been paid. A notice of assessment that does not show that the foreign tax has been paid will not constitute sufficient proof that the tax shown on such a notice has been paid.

44. Depending on the type of income involved, subsections 20(2) and (4) require that all foreign taxes paid in foreign currencies be translated to Australian dollars on the day the relevant foreign tax was paid. That rate will normally be the rate applicable at the time of payment of the relevant assessment. Accordingly, all documentary evidence (especially receipts) will need to indicate the day upon which the foreign tax liability was paid. Taxation Ruling No. IT 2498 provides that where tax paid by instalments or on account is credited against or offset against an ultimate or final assessed tax liability, the rate to apply in respect of the instalments or amounts paid on account may be that applicable at the date of issue of the relevant final assessment. In this circumstance, documentary evidence will need to indicate the date of issue of the assessment. The balance would be translated at the date of payment pursuant to the final assessment.

45. Alternatively, Taxation Ruling No. IT 2498 also provides that where it can be demonstrated that the final liability amount has been fully settled, the translation in respect of the sum of that liability could be made on the basis of the various exchange rates applicable at the date of each instalment payment and the payment of the final balance. Again suitable documentary evidence will need to be provided. That latter

basis of currency translation could also be used in respect of instalment payments of foreign tax of the type described in paragraphs 19 and 20 of this Ruling.

46. Unlike Australia, some countries do not issue notices of assessment. Therefore, taxpayers who claim a credit for a final foreign tax liability and are unable to provide a notice of assessment for this reason will be permitted to supply a copy of the foreign income tax return accompanied by a receipt verifying that the foreign tax as calculated on the basis of the return has been paid. Other suitable documentation would be a letter from the relevant foreign tax authority stating that all taxes for that year of income have been paid. Any adjustments which may have subsequently been made by the foreign tax authorities should also be included with the copy of the relevant foreign tax return in order that a proper reconciliation can be made between the return submitted and the foreign tax finally paid.

47. Clearly acceptable evidence to support a claim for a foreign tax credit would be duly certified or authenticated copies of original documents or legible photocopies. In the case of a photocopy of a notice of assessment, receipt or return, there must be kept readily available for comparison on request the original, a duplicate original, or a duly certified or authenticated copy. In all cases the original documents should be retained for 7 years from the date of payment of the foreign tax, as they will be required to be produced should an audit be conducted of the taxpayer's affairs at a later date.

48 If any of the documentary evidence submitted with the claim is in a foreign language, a translation of those details necessary to allow the taxpayer's foreign tax credit entitlement to be determined should be supplied by the taxpayer.

49. Where an amount of foreign tax payable in respect of foreign income has not been paid at the time of lodgment of the relevant Australian return of income, a statement to that effect should be included in the return. A claim for allowance of a credit in respect of that tax could be made subsequently when the tax is paid and the relevant documentary evidence becomes available. Similarly, a claim for credit in respect of foreign tax paid could be included in a return in advance of the relevant documentary evidence becoming available. If the foreign tax has not been paid or appropriate documentary evidence is still not available when the assessment is issued, an extension of time to pay the Australian tax assessed as payable in respect of the foreign income may be granted in certain circumstances (see Taxation Ruling No IT 2528).

50. In the case of most foreign income (including foreign branch or other trading operations, rental income and dividends, interest or royalties subject to a fixed rate of withholding tax), the gross amount of the foreign income would be known and is required to be included in assessable income pursuant to section 6AC and subsection 25(1) of the Assessment Act notwithstanding that a foreign tax credit determination cannot be made, by reason of circumstances described in this Ruling,

until after the assessment has issued. That position could also be expected to generally apply where a credit is claimed in respect of advance or instalment payments of creditable foreign taxes. However, it may only be possible in some cases to gross-up the foreign income at the time an assessment is raised by the then known amount of foreign tax paid, with an appropriate amended assessment possibly following later (see paragraphs 19 to 21 above).

51. However, cases may arise where foreign income is derived by a taxpayer net of foreign tax deductions during a year of income and it is not capable of being grossed-up by the amount of foreign tax paid in respect of that income until the amount of that tax can be accurately quantified. Returns of income containing a statement to that effect may be accepted in such cases and assessments raised on the basis of the foreign income derived net of foreign tax, as it would not be appropriate for lodgment of the Australian return of income, and the raising of the assessment, to be deferred indefinitely. An extension of time to pay the Australian tax assessed as payable in respect of the foreign income would also be available in those circumstances (see Taxation Ruling No. IT 2528).

52. An example of such a case would be periodical remittances during a year of income of foreign income after deduction of foreign tax at source and due to such matters as variations in the amounts of the periodical remittances, foreign tax charged or exchange rate variations, it is not practicable to determine the gross amount of the foreign income derived during the Australian year of income and the total foreign tax paid for that year until receipt by the taxpayer of an end of year statement from the foreign tax authorities or the remitter of the income (see also paragraph 73 below).

53. Foreign tax credit determinations (or amended determinations where applicable) should be promptly made subsequent to the issue of an assessment in the cases described in the preceding paragraphs upon production by the taxpayer of documentary evidence of payment of foreign tax and the amount of that tax (see also Taxation Ruling No. IT 2529). Where it is necessary to adjust taxable income, e.g. in the cases described in paragraph 51 because of having to gross-up the assessable amount of foreign income by the amount of foreign tax paid, an amended assessment will also need to be issued.

54. Such an amended assessment would technically increase the liability of the taxpayer under the assessment that was being amended, but the effect of the application of the foreign tax credit determination would be to result in an overall reduction in the amount of tax payable under the assessment. By reason of lodgment of a return of income on the basis described in paragraph 51, the taxpayer could also be treated, in the absence of evidence to the contrary, as having made a full and true disclosure of the facts known or capable of being known at the time of lodgment of the return with respect to the amount of foreign income derived. Accordingly, in cases of the type addressed in that paragraph, an amended assessment could be

treated as authorised by subsection 170(3) of the Assessment Act. (For similar reasons, subsection 170(3) could also normally be regarded as authorising an amended assessment in the case of an increase in taxable income as the result of a subsequent foreign tax payment in addition to or in adjustment of advance or instalment payments of foreign tax that are treated as creditable taxes - see paragraphs 19 to 21 above.)

55. The amendment of an assessment to increase the taxable income in the circumstances described would be restricted by subsection 170(3) to being made within 3 years of the date that the assessment became due and payable. This 3 year period coincides with the 3 years in which information necessary for a credit determination must be furnished under section 160AM. The assessment could normally be expected, therefore, to qualify for amendment within that 3 year period.

56. However, section 160AM authorises the Commissioner, in special circumstances, to determine a further period of up to 3 years for the furnishing of all the information necessary for a credit determination. Further consideration is being given to the situation where a credit determination is sought, and an associated amended assessment is required, outside the primary 3 year period referred to in section 160AM or in certain other circumstances.

57. Where an amended assessment is made because of the circumstances described in paragraphs 51 to 54 the taxpayer should normally, in the absence of evidence to the contrary, fall to be treated as having not made a false or misleading statement (with respect to the amount of the foreign income) attracting additional or penalty tax under Part VII of the Assessment Act. As the tax payable under the amended assessment (after taking into account the foreign tax credit determination) would be less than the tax payable under the assessment that was amended, nor would the taxpayer be liable to pay interest under section 170AA of the Assessment Act.

INDIVIDUAL TAXPAYERS

58. Claims by Australian resident individuals for credits for foreign tax paid on interest, dividends or royalties derived after the commencement of the 1987-88 year of income will generally be accepted without supporting documentary evidence of the tax paid, provided:

- the interest, dividend or royalty income has been derived from a country with which a comprehensive taxation agreement with Australia is in force and an Article of the agreement sets a limit on the source country tax that may be imposed in respect of the interest, dividend or royalty income, as the case may be; and

- the country of source of the interest, dividend or royalty payment imposes a tax on the respective interest, dividend or royalty income.

59. As indicated in paragraphs 32 to 38 of this Ruling, the taxpayer's eligibility for a credit for the foreign tax paid will be determined in those cases on the basis of the rate limit specified in the agreement. See also paragraphs 23 to 25 regarding the position of Australian resident individuals who derive dividends from United Kingdom resident companies.

60. Comprehensive taxation agreements presently exist with the following countries:

United Kingdom	Switzerland
United States of America	Malaysia
Canada	Sweden
New Zealand	Denmark
Singapore	Republic of Ireland
Japan	Italy
Federal Republic of Germany	Republic of Korea
The Netherlands	Norway
France	Malta
Belgium	Finland
Philippines	Austria
	The People's Republic of China (not yet in force)

61. Although most of those comprehensive agreements provide for a tax rate not exceeding 15 percent of the gross payment to be imposed by the source country on dividend income, some countries such as Singapore and Malaysia do not impose a dividend withholding tax at the present time. Tax that may be shown on company dividend advices as being withheld from the gross dividend is, in fact, tax paid by the company. It is not a tax for which the shareholder is personally liable to pay within the meaning of that expression as given by subsection 6AB(3). Australian individual resident recipients of dividends from these countries are to be assessed on the net dividend received with no credit being allowed. This practice accords with the previous treatment afforded to Singaporean and Malaysian dividends derived by Australian resident individuals in years prior to the commencement of the FTCS.

62. In all other cases, where the foreign tax paid in respect of foreign income derived by an individual taxpayer does not exceed A$1000, a statement from the taxpayer's tax agent or accountant that the overseas assessment or other documentary evidence has been sighted would be acceptable. Such a statement should normally accompany the return of income in which the relevant foreign income has been declared as assessable income.

63. Where the foreign tax credit claimed exceeds A$1000 or returns of income have been completed by taxpayers themselves without the assistance of a tax agent or accountant, documentary evidence should be furnished to support a claim for a credit in order that the credit may be allowed.

PARTNERSHIPS

64. All foreign income distributed or credited to an Australian partnership in its own right should be included in the calculation of the net income of that partnership if it would be assessable income if derived by a resident individual taxpayer. The rules outlined in paragraphs 58 to 63 concerning individual taxpayers also apply to individuals deriving foreign income through a partnership. The A$1000 limit referred to in paragraphs 62 and 63 is to be applied in respect of each partner in the partnership at any time during the year of income in which the partnership has derived foreign income.

65. In all other cases, documentary evidence will need to be furnished, preferably with the partnership return. As it is likely only one notice of assessment or receipt will be available as proof that the foreign tax has been paid, individual resident partners will need to indicate in their returns in such cases that the necessary documentary evidence is to be furnished with the relevant partnership return. This will avoid having the claim for credit disallowed.

66. In situations in which the individual partners are personally liable in their own right in the foreign country on their respective shares of the Australian partnership's foreign income, documentary evidence of the foreign tax paid should continue to be supplied in the individual resident partner's return of income in which the distribution has been declared as assessable income. (This has been the practice in the past with foreign partnership income liable to Australian tax under the former Division 18 relating to income derived from Papua New Guinea.) A statement should accompany the partnership distribution which clearly specifies the amount of the total distribution which consists of foreign income as well as the country of derivation of this income and the type of foreign income received.

TRUSTS

67. Public unit trusts which engage independent agents to act on their behalf to receive all the foreign income, pay all the appropriate foreign taxes and remit the net amount to the trust, will be permitted to use the statement of account supplied by the agent as proof of the overseas income having suffered foreign tax. Such statements will be acceptable documentary evidence upon which preparation of income tax returns may be made, provided copies of the same are lodged with the relevant trust returns.

68. Should the unit trust's affairs be subject to audit at a later stage, the statements previously used for return preparation purposes will need to be substantiated against the official documentary evidence issued by overseas tax administrations proving that the tax has been paid. All other trusts in receipt of foreign income and in respect of which claims for foreign tax credits will be made, either by the trustee or beneficiaries, will need to furnish with the trust return documentary evidence of payment of foreign tax as outlined in paragraphs 42 to 49 of this Ruling.

69. The foreign tax paid details shown in trust distribution advices provided by a trustee of a trust to beneficiaries or unitholders will normally suffice as sufficient evidence to support a claim for a relevant foreign tax credit where foreign income derived by the trust is assessable to beneficiaries or unitholders and they are entitled to relevant foreign tax credits, pursuant to section 6B and subsections 6AB(3) and (4) of the Assessment Act. Verification of those details, if required, should be obtained by reference to the evidence of foreign tax paid provided by the trustee in the trust return (as set out above), or from the trustee of the trust.

COMPANIES AND UNDERLYING TAX CREDITS

70. An Australian company which derives a dividend from a related foreign company, as determined in accordance with section 160AFB, will be entitled to a credit for the underlying foreign company tax paid by the company from which the dividend is received on that portion of the profits of that company from which the dividends are paid. That underlying tax credit is authorised by paragraph 6AB(2)(c) and section 160AFC in addition to a credit for the foreign withholding or other tax paid on the dividend. Section 160AFC also provides for the credit for underlying foreign company tax to be available in respect of unlimited tiers of related foreign companies.

71. Companies claiming underlying tax credits will generally be required to furnish a statement from each company in the chain that will demonstrate that the relevant profits from which dividend payments are made have, in fact, borne foreign income tax and the statement should make it clear that the foreign company has paid that amount of foreign tax. These statements will be required to be submitted with the relevant return in which a claim is being made for underlying tax credit.

72. The need for a separate statement may generally be dispensed with where the published accounts of the foreign company are supplied by the company claiming the underlying tax credit and those accounts contain sufficient details to indicate the foreign tax liability in respect of the relevant profits. Where, because of the operation of deferred tax accounting or some other reason, it is not possible to verify payment of the underlying tax from the tier company's financial statements, other details, such as of the current component (i.e. excluding deferred tax) of the income tax expense charge in the tier company's accounts, may be required.

73. It is acknowledged that in some circumstances an Australian resident company may be unable to ascertain whether it is entitled to a credit for underlying foreign company tax or the amount of the credit. In other cases, a company may not be able to obtain evidence of payment of underlying tax by a related foreign company. In these circumstances, it would be acceptable for the company to include any dividends received in its assessable income without grossing-up the dividends by the underlying foreign tax and without claiming the underlying

credit. This would, of course, increase the incidence of Australian taxation payable.

74. Where a company chooses this course, a statement to that effect should be included in the relevant return of income. Subject to the statutory limitations on amendment of assessments (see paragraphs 54 to 57 above) and credit determinations, an amended assessment and credit determination would normally be available at a later date should the company subsequently resolve those difficulties and request credit for the underlying tax.

COMMISSIONER OF TAXATION
4 May 1989