



TD 1999/37 - Income tax: does section 103-20 of the Income Tax Assessment Act 1997 apply in determining the capital gain or loss content of attributable income of a controlled foreign company?

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 This document has changed over time. This is a consolidated version of the ruling which was published on *7 March 2007*

Taxation Determination

Income tax: does section 103-20 of the *Income Tax Assessment Act 1997* apply in determining the capital gain or loss content of attributable income of a controlled foreign company?

Preamble

This Taxation Determination is a 'public ruling' for the purposes of Part IVAAA of the *Taxation Administration Act 1953* and is legally binding on the Commissioner. Taxation Rulings TR 92/1 and TR 97/16 together explain how a Determination is legally or administratively binding.

Date of Effect

This determination applies to years commencing both before and after its date of issue. However, this Determination does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Note 1: The Addendum to this Ruling that issued on 7 March 2007 applies on or after 1 July 2003.

[Note 2: This is a consolidated version of this document. Refer to the Tax Office Legal Database (<http://law.ato.gov.au>) to check its currency and to view the details of all changes.]

1. Yes.
2. A controlled foreign company (CFC) is required to determine its attributable income in relation to the calculation of a capital gain or loss, for the purposes of Part 3-1 and Part 3-3 of the *Income Tax Assessment Act 1997* (ITAA 1997) as modified by Part X of the *Income Tax Assessment Act 1936* (ITAA 1936), by using the currency conversion rules set out in section 103-20 of the ITAA 1997.

Note 3: References to section 103-20 of the ITAA 1997 in this Determination need to be read against the background that the *New Business Tax System (Taxation of Financial Arrangements) Act (No. 1) 2003*, which replaced section 103-20 with a similar translation rule in table item 5 of subsection 960-50(6) of the ITAA 1997, provided that section 103-20 of the ITAA 1997 continues to apply despite its repeal in relation to a transaction, event or thing that involves an amount in a foreign currency to which section 960-50 of the ITAA 1997 does not apply.

3. Subdivision C of Division 7 of Part X of the ITAA 1936 sets out modifications relating to capital gains and CFCs. Section 103-20 of the ITAA 1997 has not been modified by this Subdivision C and is the relevant provision for determining the currency conversion rules in calculating the capital gains or losses of a CFC.
4. Section 103-20 of the ITAA 1997 provides that if any amount of money, or the market value of other property is to be taken into account at a particular time under Parts 3-1 or 3-3, and is

expressed in a foreign currency, it is to be converted into the equivalent amount of Australian currency at that time.

Example 1

5. Assume a CFC resident in Hong Kong acquires shares for HK\$100 on 10 July 1998 and this converts to A\$20 on that date. Assume then that the CFC sells these shares on 30 June 1999 for HK\$100, and this converts to A\$30 on that date.

6. The relevant details would be:

| | HK\$ | A\$ |
|------------------------------|------|-----|
| Shares acquired 10 July 1998 | 100 | 20 |
| Shares sold 30 June 1999 | 100 | 30 |

7. If the CFC fails the active income test, an attributable capital gain of \$10 arises in relation to a 'disposal of a tainted asset'.

Example 2

8. Assume a CFC resident in Hong Kong acquires shares for HK\$100 on 10 July 1998 and this converts to A\$20 on that date. Assume that the CFC then sells these shares on 30 June 1999 for HK\$110, and this converts to A\$20 on that date.

9. The relevant details would be:

| | HK\$ | A\$ |
|------------------------------|------|-----|
| Shares acquired 10 July 1998 | 100 | 20 |
| Shares sold 30 June 1999 | 110 | 20 |

10. In this example, no attributable capital gain or loss arises in relation to the disposal of the tainted asset, even though the CFC has made a gain in its local currency.

Commissioner of Taxation

21 July 1999

Previous draft:

Previously issued as draft Taxation Determination TD 98/D12

Related Rulings/Determinations:

Subject references:

Capital gains; controlled foreign companies; foreign currency; currency conversion; foreign attributable income; tainted foreign income

Legislative references:

- ITAA 1936 Pt X

- ITAA 1936 Pt X Div 7 Subdiv C
- ITAA 1997 103-20
- ITAA 1997 Pt 3-1
- ITAA 1997 Pt 3-3
- ITAA 1997 960-50
- ITAA 1997 960-50(6)
- New Business Tax System (Taxation of Financial Arrangements) Act (No. 1) 2003

Case references:

ATO references:

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