


TD 2006/5 - Income tax: is the 'applicable functional currency' choice relevant for the purpose of applying the Fringe Benefits Tax, Goods and Services Tax, Superannuation Guarantee Charge and Pay As You Go withholding provisions?

 This cover sheet is provided for information only. It does not form part of *TD 2006/5 - Income tax: is the 'applicable functional currency' choice relevant for the purpose of applying the Fringe Benefits Tax, Goods and Services Tax, Superannuation Guarantee Charge and Pay As You Go withholding provisions?*



Taxation Determination

Income tax: is the ‘applicable functional currency’ choice relevant for the purpose of applying the Fringe Benefits Tax, Goods and Services Tax, Superannuation Guarantee Charge and Pay As You Go withholding provisions?

❶ This Ruling provides you with the following level of protection:

This publication (excluding appendices) is a public ruling for the purposes of the *Taxation Administration Act 1953*. A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes. If you rely on this ruling, we must apply the law to you in the way set out in the ruling (or in a way that is more favourable for you if we are satisfied that the ruling is incorrect and disadvantages you, and we are not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any under-paid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

Ruling

1. No. The ‘applicable functional currency’ choice is not relevant for the purpose of applying the Fringe Benefits Tax (FBT), Goods and Services Tax (GST), Superannuation Guarantee Charge (SGC) and Pay As You Go (PAYG) withholding provisions.
2. This does not mean, however, that none of the amounts calculated under these provisions will be affected by a choice to use a particular foreign currency as the ‘applicable functional currency’.
3. For example, for an entity (or part of an entity) which has made such a choice under either of items 1 or 2 of subsection 960-60(1) and which can deduct an amount of FBT or FBT instalments – the amount of deduction for FBT or FBT instalments will need to be translated into the ‘applicable functional currency’ for the purpose of working out the taxable income or tax loss of the entity (or part of an entity) – in accordance with subsection 960-80(1) of the *Income Tax Assessment Act 1997* (ITAA 1997).

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4. Note that Division 27 of the ITAA 1997 sets out the effect of the GST in working out deductions from assessable income. Generally speaking, input tax credits, GST and adjustments under the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) are to be disregarded and are not deductible. Note also that subsection 51(9) of the *Income Tax Assessment Act 1936* (ITAA 1936) provides that a deduction is not allowable under section 8-1 of the ITAA 1997, in respect of a charge imposed by the *Superannuation Guarantee Charge Act 1992*.

Date of effect

5. This Determination applies to years commencing both before and after its date of issue. However, it 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).

Commissioner of Taxation

8 March 2006

Appendix 1 – Explanation

❶ ***This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.***

Explanation

6. The functional currency provisions are contained in Subdivision 960-D of the ITAA 1997. These provisions are designed to allow certain entities or parts of entities that keep their accounts solely or predominantly in a particular foreign currency, to choose that foreign currency as their 'applicable functional currency' to work out certain annual net amounts (such as taxable income or tax loss), which are then translated into Australian currency.

7. Specifically, subsection 960-60(1) of Subdivision 960-D of the ITAA 1997 provides that the taxable income or tax loss, total 'assessable OB income' and total 'allowable OB deductions' (within the meaning of Division 9A of Part III of the ITAA 1936) or 'attributable income' (as the case may be) of any of the following entities (or parts of entities) that keep their accounts solely or predominantly in a particular foreign currency can be worked out in that currency:

- (a) an Australian resident who is required to prepare financial reports under section 292 of the *Corporations Act 2001*;
- (b) a permanent establishment;
- (c) an offshore banking unit;
- (d) a controlled foreign company; and
- (e) a transferor trust.

8. The calculation of amounts of FBT, GST, SGC and of amounts withheld under the PAYG withholding system, are not calculated by reference to or for the purpose of working out any of the net amounts referred to in subsection 960-60(1) of the ITAA 1997. Accordingly, the 'applicable functional currency' choice is not relevant for the purpose of the FBT, GST, SGC and PAYG withholding system provisions. These provisions contain their own rules for expressing amounts in Australian currency.

9. Section 146 of the *Fringe Benefits Tax Assessment Act 1986* states that:

For the purposes of this Act, all amounts and values shall be expressed in terms of Australian currency.

10. Subsection 9-85(1) of the GST Act provides that the value of a taxable supply is to be expressed in Australian currency for the purposes of the GST Act. Subsection 9-85(2) of the GST Act allows the Commissioner to determine the manner in which consideration in a foreign currency is to be converted into Australian currency to work out the value of a taxable supply.¹

¹ Refer to Goods and Services Tax Ruling GSTR 2001/2.

11. With regard to PAYG withholding amounts, paragraph 960-55(1)(c) of the ITAA 1997, provides that section 960-50 of the ITAA 1997 applies to an amount that Division 12 of Part 2-5 in Schedule 1 to the *Taxation Administration Act 1953* (TAA 1953) requires to be withheld from a payment – if the time when the amount is required to be withheld occurs on or after 1 July 2003. Paragraph 960-55(1)(d) of the ITAA 1997 provides that section 960-50 of the ITAA 1997 applies to a payment that Part 5-30 in Schedule 1 to the TAA 1953 requires to be reported, if the amount is paid on or after 1 July 2003.

12. Therefore an amount (being a PAYG withholding amount) that is required to be withheld from a payment by Division 12 of Part 2-5 in Schedule 1 to the TAA 1953, and which is in a foreign currency – must be translated into Australian currency at the exchange rate applicable at the time when the amount is required to be withheld – in accordance with the core currency translation rules in section 960-50 of the ITAA 1997.

13. Note also that the former requirements that PAYG withholding amounts in a foreign currency, are to be expressed in Australian currency, were contained in former sections 12-15 and 425-30 in Schedule 1 to the TAA 1953. However, despite the repeal of former sections 12-15 and 425-30 of the TAA 1953, those sections continue to apply, in relation to an amount:

- (a) that is in a foreign currency; and
- (b) to which section 960-50 of the ITAA 1997 does not apply;²

as if the repeal of those provisions had not happened.³

14. An amount of FBT or FBT instalments is an allowable deduction from assessable income, where it is incurred in gaining or producing assessable income. Accordingly, for the purpose of calculating the appropriate net amount of an entity (or part of an entity) which has made an 'applicable functional currency' choice, the amount of FBT or FBT instalments which was previously calculated in Australian currency will need to be translated into the 'applicable functional currency'.

² Per subsection 960-55(1) paragraphs (c) & (d) respectively, section 960-50 does not apply if:

- (i) the time when the amount which Division 12 of Part 2-5 in Schedule 1 to the TAA 1953 required to be withheld, occurred before 1 July 2003; or
- (ii) the payment that Part 5-30 in Schedule 1 to the TAA 1953 required to be reported, was made before 1 July 2003.

³ Refer also Taxation Ruling IT 2498A – Addendum.

References

Previous draft:

TD 2005/D33

Related Rulings/Determinations:

TR 92/20; IT 2498A

Subject references:

- foreign currency transactions
- foreign currency translations

Legislative references:

- TAA 1953
- TAA 1953 Sch 1 Pt 2-5 Div 12
- TAA 1953 Sch 1 12-15
- TAA 1953 Sch 1 Pt 5-30
- TAA 1953 Sch 1 425-30

- ITAA 1936 51(9)
- ITAA 1936 Pt III Div 9A
- ITAA 1997 8-1
- ITAA 1997 Div 27
- ITAA 1997 Subdiv 960-D
- ITAA 1997 960-50
- ITAA 1997 960-55(1)(c)
- ITAA 1997 960-55(1)(d)
- ITAA 1997 960-60(1)
- ITAA 1997 960-80(1)
- ANTS(GST)A 1999 9-85(1)
- ANTS(GST)A 1999 9-85(2)
- Corporations Act 2001 292
- FBTAA 1986 146
- SGCA 1992

ATO references

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