


TD 2006/8 - Income tax: can a 'small proprietary company', not required to prepare reports under section 292 of the Corporations Act 2001 , make a choice to use the 'applicable functional currency' under item 1 of the table in subsection 960-60(1) of the Income Tax Assessment Act 1997 ?

 This cover sheet is provided for information only. It does not form part of *TD 2006/8 - Income tax: can a 'small proprietary company', not required to prepare reports under section 292 of the Corporations Act 2001 , make a choice to use the 'applicable functional currency' under item 1 of the table in subsection 960-60(1) of the Income Tax Assessment Act 1997 ?*



Taxation Determination

Income tax: can a ‘small proprietary company’, not required to prepare reports under section 292 of the *Corporations Act 2001*, make a choice to use the ‘applicable functional currency’ under item 1 of the table in subsection 960-60(1) of the *Income Tax Assessment Act 1997*?

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. A small proprietary company, not required to prepare reports under section 292 of the *Corporations Act 2001*, cannot make a choice to use the ‘applicable functional currency’, as defined in section 960-70 of the *Income Tax Assessment Act 1997* (ITAA 1997), under item 1 of the table in subsection 960-60(1) of the ITAA 1997.
2. However, if the small proprietary company carries on an activity or business at or through an ‘overseas permanent establishment’ (as defined in subsection 995-1(1) of the ITAA 1997), or it is an ‘attributable taxpayer’ of a controlled foreign company (CFC) within the meaning of Part X of the *Income Tax Assessment Act 1936* (ITAA 1936); then it may be eligible to choose to use an ‘applicable functional currency’ for the specific purposes set out in items 2(a) or 4 in the table in subsection 960-60(1) of the ITAA 1997.¹

¹ The specific purposes are: item 2 – working out the taxable income or tax loss derived from the activity or business carried on at or through the permanent establishment; and item 4 – working out the ‘attributable income’ of the CFC.

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Date of effect

3. 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

① *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

4. Item 1 of the table in subsection 960-60(1) of the ITAA 1997 enables an 'Australian resident' (as defined in subsection 995-1(1) of the ITAA 1997), to choose to use the 'applicable functional currency' where the Australian resident is required to prepare financial reports under section 292 of the *Corporations Act 2001*. This choice allows the resident to use the 'applicable functional currency' to calculate its taxable income or tax loss, and then translate that result into Australian currency (see subsection 960-80(1) of the ITAA 1997). The extent to which it can do this may be affected by other choices it may make under other items, 2 to 5 in subsection 960-60(1).

5. Under section 292 of the *Corporations Act 2001*, small proprietary companies (as defined in subsection 45A(2) of that Act), are exempt from having to prepare a financial report and a directors' report unless subsection 292(2) applies. In this regard, subsection 292(2) of that Act states:

A small proprietary company has to prepare the financial report and directors' report only if:

- (a) it is directed to do so under section 293 or 294; or
- (b) it was controlled by a foreign company for all or part of the year and it is not consolidated for that period in financial statements for that year lodged with ASIC by:
 - (i) a registered foreign company; or
 - (ii) a company, registered scheme or disclosing entity.

6. A small proprietary company to which the reporting requirements in section 292 of the *Corporations Act 2001* do not apply is not an entity that comes within item 1 of the table in subsection 960-60(1) of the ITAA 1997, even if it is a subsidiary of a company to which these reporting requirements do apply. It cannot, therefore, make a choice to use the 'applicable functional currency' under that item.

7. If the small proprietary company is a subsidiary member of a consolidated group for any period then, for the purposes of working out income tax liability or losses, it will be deemed to be part of the head company of that group during that period (per section 701-1 of the ITAA 1997). As a consequence of this, while it remains a subsidiary member, the small proprietary company will not have to calculate its own taxable income or tax loss as envisaged by section 960-80 of the ITAA 1997 in relation to the use of the 'applicable functional currency'. The calculation of taxable income or tax loss will be one that the head company will need to perform.²

² Note also section 715-660 of the ITAA 1997 which provides that an 'applicable functional currency' choice made by a head company, overrides the entry history rule (contained in section 701-5 of the ITAA 1997) in relation to a valid 'applicable functional currency' choice *previously* made under item 1 of the table in subsection 960-60(1), by an entity joining the consolidated group. Therefore such a *prior* choice is not inherited by the head company under the entry history rule – and nor is the failure or inability to make such a choice inherited by the head company.

References

Previous draft:

TD 2005/D36

Related Rulings/Determinations:

TR 92/20

Subject references:

- foreign currency transactions
- foreign currency translations

Legislative references:

- TAA 1953
- ITAA 1936 Pt X
- ITAA 1997 701-1

- ITAA 1997 701-5
- ITAA 1997 715-660
- ITAA 1997 960-60(1)
- ITAA 1997 960-70
- ITAA 1997 960-80
- ITAA 1997 960-80(1)
- ITAA 1997 995-1(1)
- Corporations Act 2001 45A(2)
- Corporations Act 2001 292
- Corporations Act 2001 292(2)
- Corporations Act 2001 293
- Corporations Act 2001 294

ATO references

NO: 2005/10590

ISSN: 1038-8982

ATOlaw topic: Income Tax ~~ Assessable income ~~ foreign currency
Income Tax ~~ Foreign exchange gains and losses