

TD 92/109 - Income tax: foreign income: does a controlled foreign company (CFC) which conducts its business on a cyclical basis satisfy the active income test?

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 This document has changed over time. This is a consolidated version of the ruling which was published on *17 December 1997*

This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVAAA of the *Taxation Administration Act 1953*, is a public ruling for the purposes of that Part. Taxation Ruling TR 92/1 explains when a Determination is a public ruling and how it is binding on the Commissioner. Unless otherwise stated, the Determination applies to transactions entered into both before and after its date of issue.

[Note: 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.]

Taxation Determination

Income tax: foreign income: does a controlled foreign company (CFC) which conducts its business on a cyclical basis satisfy the active income test?

1. Section 432 of the *Income Tax Assessment Act 1936* provides an active income test to determine whether the income of a CFC will be exempt from attribution to resident shareholders. Under paragraph 432(1)(e), the active income test is only passed by a CFC which 'at all times during the statutory accounting period when the company was in existence and was a resident of a particular broad-exemption listed country, or of a particular non-broad-exemption listed country ... carried on business in that country at or through a permanent establishment of the company in that country;'.

2. We accept that a CFC can still pass the requirement in paragraph 432(1)(e) that at all times during the statutory accounting period it carried on business, even though it closes down operations for part of the statutory accounting period, if the CFC's business is a cyclical one and it is normal for a business of the type carried on by the CFC to be conducted on a cyclical basis.

Example:

Downhill Pty Ltd carries on business as a ski resort and closes down operations for 6 months of the year after the skiing season is over. It is normal for this type of business to be conducted on a cyclical basis. In this case, the company satisfies the requirement in paragraph 432(1)(e) that, at all times during the statutory accounting period, it carried on business as a ski resort.

Note: The Addendum to this Determination that issued on 17 December 1997 amends the Determination with effect for statutory accounting periods of controlled foreign companies commencing after 30 June 1997.

Commissioner of Taxation

01/07/92

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