TD 92/183W - Income tax: as a result of the New Zealand government's decision to impose a tax on the income of superannuation funds from 1 April 1990, what amount should be included as assessable income by an Australian resident in receipt of a pension paid out of these funds?

Notice of Withdrawal

Taxation Determination

Income tax: as a result of the New Zealand government's decision to impose a tax on the income of superannuation funds from 1 April 1990, what amount should be included as assessable income by an Australian resident in receipt of a pension paid out of these funds?

Taxation Determination TD 92/183 is withdrawn with effect from today.

1. Taxation Determination TD 92/183, which issued 5 November 1992, clarified that where New Zealand tax is imposed on the income of New Zealand superannuation funds:

(a) the total amount received by an Australian resident from the New Zealand superannuation fund should be included as assessable income under subsection 25(1) of the *Income Tax Assessment Act 1936* (ITAA 1936);

(b) the amount of pension received is not grossed-up under subsection 6AC(1) of the ITAA 1936; and

(c) the Australian recipient is not entitled to a foreign tax credit under section 160AF of the ITAA 1936.

2. Section 6AC of the ITAA 1936 and the foreign tax credit system contained in Division 18 of Part III of the ITAA 1936 were repealed, by the *Tax Laws Amendment (2007 Measures No. 4) Act 2007*, with effect from 24 September 2007, applicable in relation to income years, statutory accounting periods and notional accounting periods starting on or after 1 July 2008. In addition, subsection 25(1) of the ITAA 1936 ceased to apply from the 1997-98 year of income onwards when it was rewritten as sections 6-5 and 6-10 of the *Income Tax Assessment Act 1997* (ITAA 1997). Further, the New Zealand Agreement contained in Schedule 4 of the *Income Taxation (International Agreements) Act 1953* referred to in TD 92/183 was replaced by a new tax treaty with New Zealand by *Income Tax (International Agreements) Amendment Act 1995*, with effect from 29 March 1995.

3. With effect from 1 July 2008, the foreign tax credit system was replaced by the foreign income tax offset system, contained in Division 770 of the ITAA 1997. ATO Interpretive Decision ATO ID 2008/135, which issued on 3 October 2008, provides the Commissioner's view on a similar issue under current legislative provisions.

4. Accordingly, as TD 92/183 is no longer current, it is withdrawn.

Commissioner of Taxation
10 March 2010

ATO references

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