


TD 98/20 - Income tax: foreign income: is a lump sum payment received by a controlled foreign company (CFC), as consideration for the assignment of an interest stream, passive income for the purposes of Part X of the Income Tax Assessment Act 1936 (the Act)?

 This cover sheet is provided for information only. It does not form part of *TD 98/20 - Income tax: foreign income: is a lump sum payment received by a controlled foreign company (CFC), as consideration for the assignment of an interest stream, passive income for the purposes of Part X of the Income Tax Assessment Act 1936 (the Act)?*

Taxation Determination

Income tax: foreign income: is a lump sum payment received by a controlled foreign company (CFC), as consideration for the assignment of an interest stream, passive income for the purposes of Part X of the *Income Tax Assessment Act 1936* (the Act)?

Preamble

The number, subject heading, date of effect and paragraphs 1 to 3 of this Taxation Determination are a 'public ruling' for the purposes of Part IVAAA of the *Taxation Administration Act 1953* and are legally binding on the Commissioner. Taxation Rulings TR 92/1 and TR 97/16 together explain when a Determination is a public ruling and how it is binding on the Commissioner.

Date of effect

Unless otherwise stated, 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 issue of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

1. Yes. Where a CFC (assignor) assigns an interest stream in return for a lump sum payment, the payment falls within the definition of passive income under subsection 446(1) of the Act. The lump sum payment is tainted interest income as defined in section 317, and therefore constitutes passive income under paragraph 446(1)(d). Tainted interest, as defined, includes interest or a payment in the nature of interest.
2. Where the assignor assigns his mere right to interest, and receives compensation from the assignee in the form of a lump sum in lieu of periodic interest payments, the assignor simply converts the future interest stream into present income. The payment received from the assignee is a receipt having the same character as the payments the assignor would have received under a loan or similar indebtedness. Accordingly, the lump sum payment is regarded as being interest or a payment in the nature of interest. Authority for this proposition is found in the cases of *Re Hawkins (deceased) Hawkins v. Hawkins and anor* [1972] 3 All ER 386 and *Westminster Bank Executor and Trustee Co (Channel Islands) Ltd v. National Bank of Greece, SA* [1969] 3 All ER 504. The lump sum payment is therefore passive income.
3. Alternatively, the disposal of a right to receive interest (a chose in action) constitutes the disposal of a tainted asset as defined in section 317. The lump sum payment received in respect of the disposal of the tainted asset is passive income under either paragraph 446(1)(j) or (k).

Commissioner of Taxation

19 August 1998

FOI INDEX DETAIL: Reference No. I 1017688

Previously issued as Draft TD 93/D229

Related Determinations:

Related Rulings:

Subject Ref: controlled foreign companies; passive income; tainted interest

Legislative Ref: ITAA 317; ITAA 446(1); ITAA 446(1)(d); ITAA 446(1)(j); ITAA 446(1)(k)

Case Ref: Re Hawkins (deceased) Hawkins v. Hawkins and anor [1972] 3 All ER 386; Westminster Bank Executor and Trustee Co (Channel Islands) Ltd v. National Bank of Greece, SA [1969] 3 All ER 504

ATO Ref: 97/1647-5; MPO ITD/MP66

ISSN 1038 - 8982