


***TR 2002/3A1 - Addendum - Income Tax: whether the holding of pre-emptive rights, call options and put options constitute a contingent entitlement to acquire for controlled foreign company (CFC) and foreign investment fund (FIF) purposes***

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## Addendum

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### Taxation Ruling

Income tax: whether the holding of pre-emptive rights, call options and put options constitute a contingent entitlement to acquire for controlled foreign company (CFC) and foreign investment fund (FIF) purposes

This Addendum amends Taxation Ruling TR 2002/3 to reflect the repeal of the FIF provisions in Part XI of the *Income Tax Assessment Act 1936* (ITAA 1936).

The FIF provisions in Part XI, incorporating sections 469 to 624 of the ITAA 1936, have been repealed by the *Taxation Laws Amendment (Foreign Source Income Deferral) Act (No. 1) 2010* (114 of 2010).

The repeal of the FIF provisions is generally applicable in relation to the 2010-11 and later income years.

#### TR 2002/3 is amended as follows:

**1. Subject Heading**

Omit the heading; substitute:

Income tax: whether the holding of pre-emptive rights, call options and put options constitute a contingent entitlement to acquire for controlled foreign company (CFC) purposes

**2. Paragraph 1**

(a) First dot point, omit 'and section 475 of Part XI of the ITAA 1936 (dealing with foreign investment funds (FIFs))'.

(b) Third dot point, omit 'and FIF measures'; substitute 'measure'.

**3. Paragraph 2**

Omit 'sections 322 or 475'; substitute 'section 322'.

## 4. Paragraph 5

Omit the paragraph; substitute:

5. Section 317 of the ITAA 1936 defines 'entity' to mean a company, a partnership, a person in the capacity of trustee, or any other person. In determining an entity's interest in a company or trust, an entity's actual interests as well as an entitlement to acquire an interest are to be taken into account.

## 5. Paragraph 7

Omit the paragraph.

## 6. Paragraph 8

At the end of the last sentence, insert: 'subsection 351(1) of the ITAA 1936.'

## 7. Paragraph 9

Omit the paragraph.

## 8. Paragraph 10

Omit 'sections 322 and 475'; wherever occurring.

## 9. Paragraph 12

Omit the paragraph; substitute:

12. Section 322 of Part X refers to a contingent entitlement to acquire. Section 322 makes it clear that a contingent entitlement or right is to be counted towards the computation of a taxpayer's interest and attribution percentage.

## 10. Paragraph 13

Omit the paragraph; substitute:

13. Contingent entitlement is not defined in Part X and the Explanatory Memorandum to the Taxation Laws Amendment (Foreign Income) Bill 1990 does not contain much guidance on its scope.

## 11. Paragraph 18

Omit 'sections 322 or 475'; substitute 'section 322'.

**12. Paragraph 28**

Omit 'sections 322 and 475 apply'; substitute 'section 322 applies'.

**13. Paragraph 30**

Omit the paragraph; substitute:

30. The Commissioner's view is that section 322 could be wide enough to capture even options over unissued shares. However, for the purpose of section 350 of the ITAA 1936, the calculation of the percentage of the relevant ownership interest refers to entitlement to acquire at a particular measurement point in time. In the case of section 350, the entitlement is measured with respect to paid-up share capital. Therefore, at this point, the entitlement can only relate to issued shares, or other rights or interests over shares in existence at that particular measurement time. Thus, no actual attribution will occur in option situations where the entitlements, contingent or otherwise, relate solely to unissued shares.

**14. Paragraph 31**

Omit 'Parts X and XI'; substitute 'Part X'.

**15. Related Rulings/Determinations**

Omit 'TR 91/1'; substitute 'TR 92/1'.

**16. Subject References**

Omit 'foreign investment funds'

**17. Legislative References**

Omit:

- ITAA 1936 Part XI
- ITAA 1936 470
- ITAA 1936 475
- ITAA 1936 483
- ITAA 1936 581

**18. Other References**

Insert:

**Other References:**

- Explanatory Memorandum to the Taxation Laws Amendment (Foreign Income) Bill 1990

This Addendum applies on and from 14 July 2010.

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**Commissioner of Taxation**

3 April 2013

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ATO references

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