

TR 92/11A1 - Addendum - Income tax: application of the Division 13 transfer pricing provisions to loan arrangements and credit balances

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Addendum

Taxation Ruling

Income tax: application of the Division 13 transfer pricing provisions to loan arrangements and credit balances

This Addendum amends Taxation Ruling TR 92/11 to remove the discussion regarding former paragraph 23(q) of the *Income Tax Assessment Act 1936* (ITAA 1936). Former paragraph 23(q) of the ITAA 1936 does not apply to years of income commencing on or after 1 July 1987 and therefore the discussion is now only remotely relevant. This is despite the fact that, subject to subsection 170(9C) of the ITAA 1936, assessments can be amended at any time for the purpose of giving effect to adjustments made under Division 13 of the ITAA 1936.

This Addendum also amends Taxation Ruling TR 92/11 to reflect:

- (a) changes to the law caused by the repeal of other inoperative provisions;
- (b) the change in title of the *Income Tax (International Agreements) Act 1953* to the *International Tax Agreements Act 1953*;
- (c) the withdrawal of Taxation Determination TD 92/103;
- (d) the withdrawal of Taxation Ruling IT 2311 and the release of Taxation Ruling TR 98/16;
- (e) changes to the United Kingdom and New Zealand tax treaties; and
- (f) a correction of typographical errors in paragraph 19.

TR 92/11 is amended as follows:

1. Contents

Omit 'associated enterprises articles of double tax agreements'; substitute 'Associated Enterprises articles of Australia's tax treaties'.

2. Paragraph 1

- (a) Omit '(ITAA)'; substitute '(ITAA 1936)'.
- (b) Omit subparagraph 1(d); substitute:
 - (d) the circumstances in which adjustments may be made under the Associated Enterprises articles of Australia's tax treaties, being schedules to the *International Tax Agreements Act 1953*, to impute interest income or to deny deductions for excessive interest payments (Part D);

3. Paragraph 4

Omit the second sentence; substitute:

Some of these issues were dealt with in Taxation Determination TD 92/103. TD 92/103 was withdrawn with effect for statutory accounting periods of controlled foreign companies commencing after 30 June 1997 following changes made by the *Taxation Laws Amendment (Foreign Income Measures) Act 1997* including the insertion of paragraph 400(aa) into the ITAA 1936.¹

4. Subparagraph 7(l)

Omit the subparagraph.

5. Paragraph 13

Omit '(Section 136AA(1))'; substitute '(Subsection 136AA(1).)'.

6. Paragraph 19

Omit '(Paragraphs 136AD(1)(c), (2)(c) and (3)(c))'; substitute '(Paragraphs 136AD(1)(b), 136AD(2)(b) and 136AD(3)(b).)'.

¹ Paragraph 400(aa) of the *Income Tax Assessment Act 1936*, inserted by the amending Act, had the same effect as TD 92/103 with respect to non arm's length loans involving CFCs resident in the same broad-exemption listed country. The Determination is, therefore, no longer required for CFCs in broad-exemption listed countries.

7. Paragraph 30

Omit the paragraph; substitute:

30. It must be emphasised that the legislation contains provisions that enable the Commissioner to reduce penalties in the appropriate circumstances. The ATO's guidelines on penalties in relation to adjustments made under Division 13 of the ITAA 1936 are set out in Taxation Ruling TR 98/16.

8. Paragraphs 37 to 40

Omit the heading and paragraphs.

9. Paragraph 62

Omit the heading; substitute:

Part D: circumstances in which adjustments may be made under the Associated Enterprises articles of Australia's tax treaties

10. Paragraph 62

(a) Omit 'associated enterprises article of a double tax treaty'; substitute 'Associated Enterprises article of a tax treaty'.

(b) Omit 'associated enterprises article of the double tax agreements'; substitute 'Associated Enterprises article of Australia's tax treaties'.

11. Paragraph 63

(a) Omit the heading; substitute:

Interaction between Division 13 and the tax treaties

(b) Omit 'double tax agreement'; substitute 'tax treaty'.

12. Paragraph 67

(a) Omit 'double tax agreements'; substitute 'tax treaties'.

(b) Omit last sentence; substitute 'An example of this type of adjustment is Article 22 of the Australia/United Kingdom Convention'.

13. Paragraph 68

Omit '*Income Tax (International Agreements) Act 1953*'; substitute: '*International Tax Agreements Act 1953*'.

14. Paragraph 71

Omit the paragraph; substitute:

71. This conclusion flows from the fact that section 4 of the *International Tax Agreements Act 1953* provides that the ITAA 1936 is incorporated and shall be read as one with that Act. This is subject only to the provisions of the *International Tax Agreements Act 1953* having effect notwithstanding anything contained in the ITAA 1936 (other than Part IVA) or in an Act imposing Australian tax.

15. Legislative references

Omit all the references; substitute:

- ITAA 1936 Div 13
- ITAA 1936 136AA(1)
- ITAA 1936 136AA(3)
- ITAA 1936 136AA(3)(a)
- ITAA 1936 136AA(3)(c)
- ITAA 1936 136AA(3)(d)
- ITAA 1936 136AC
- ITAA 1936 136AD
- ITAA 1936 136AD(1)
- ITAA 1936 136AD(1)(b)
- ITAA 1936 136AD(2)
- ITAA 1936 136AD(2)(b)
- ITAA 1936 136AD(3)
- ITAA 1936 136AD(3)(b)
- ITAA 1936 136AD(4)
- ITAA 1936 Pt IVA
- ITAA 1936 400(aa)
- International Tax Agreements Act 1953 3(2)
- International Tax Agreements Act 1953 Sch 1 Art 22
- Taxation Laws Amendment (Foreign Income Measures) Act 1997

16. Related Rulings/Determinations

Omit 'IT 2311'; substitute 'TR 98/16; TD 92/103'.

This Addendum applies on and from the date of issue.

Commissioner of Taxation

31 August 2011

ATO references

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