

FROM: Head of Taxation
LOCATION: G4/441
EXTENSION: 5228
DATE: 24 March 2003
REFERENCE: TAX/MCM/Y3016
SUBJECT: **TAXATION OF AUSTRALIAN RESIDENT MEMBERS**
ATTACHMENTS: None
ACTION POINTS: **To note**
DEADLINE: **Effective immediately**

1. Introduction

- 1.1 On 28 February 2003 the Australian Taxation Office (ATO) withdrew four rulings that have for some years set out how Australian resident members are taxed in Australia on their Lloyd's income. The withdrawals are with immediate effect.
- 1.2 The ATO withdrew the rulings because they no longer represent the way all Australian members of Lloyd's are treated for Australian income tax purposes. Members should therefore consider their tax position. However, the ATO has indicated that for all practical purposes members who wish to continue to deal with their tax affairs along the lines of those rulings are likely to be able to do so.

2. Detail

- 2.1 The four rulings are IT 2610, IT 2638, TR 93/5 and TR 93/41 on "Foreign Tax Credit System – Taxation of Australian Resident Members of Lloyd's of London". Among other things, these rulings had the effect of precluding members from relieving Lloyd's losses against Australian income.
- 2.2 We understand from the ATO that the withdrawals followed a decision by the Australian Administrative Appeals Tribunal in which a member had losses and deductions relating to his Lloyd's business allowed in full for three income years. There were then discussions between some Lloyd's members and the ATO during which the ATO accepted that, having regard to their individual circumstances, some members carry on a business activity in Australia.

- 2.3 Following the withdrawal of the public rulings, members should consider their tax reporting position with their Australian tax advisers and should ensure they comply with legal requirements.
- 2.4 We have, in this regard, raised with the ATO the concern that the 400 or so existing Australian members of Lloyd's will lose certainty of tax treatment as a result of the withdrawal of the public rulings. In response, the Assistant Commissioner, International Strategy and Operations, David Walker, told us:
- “Under Australia’s self assessment system it will be up to individual members to determine their taxation position and lodge their income tax returns accordingly. If they wish they can request a legally binding private ruling from the Australian Taxation Office. I would expect that requests would generally only be made where a Name was trying to claim that the business was carried on in Australia...
- “For all practical purposes, I can confirm that Australian resident members may continue to deal with their Lloyd’s tax affairs in accordance with the terms of the withdrawn rulings as long as their future Lloyd’s underwritings do not substantially change.”
- 2.5 In the light of this it is intended that Lloyd’s Members’ Services Unit will continue to issue members with Australian tax advices, computed on the same lines as previously, so that members who wish to use this data in reporting their Lloyd’s results for Australian tax purposes may do so.
- 2.6 Finally, although the ATO withdrawal notices state that all individual members will cease to be members from 2005 this is not correct, and we have informed the ATO of this fact. The ATO did not consult us before withdrawing the rulings. However, we understand that this misunderstanding was not a determining factor in its decision to withdraw the rulings.

3. Readership and contact details

- 3.1 This bulletin, which has been seen by the ATO, is being sent to all members’ agents, recognised auditors, personal accountants and Australian resident members.
- 3.2 If you have any questions, please telephone Maureen McLeod on 020 7327 6860 or e:mail maureen.c.mcleod@lloyds.com.

David Clissitt
Head of Taxation