

# Taxation Determination 2020/07

**The Commissioner has finalised the ATO's view in Taxation Determination 2020/7 confirming that capital gains are not included when calculating the Foreign Income Tax Offset (FITO) limit.**

23 September 2020

## Application of the law

The FITO limit is determined by section 770-70 of the ITAA 1997, requiring a comparison between Australian tax payable and Australian tax that would be payable if certain income and deductions related to that income were disregarded. Disregarded income is stated in subsection 770-75(4)(a) to include:



- I. so much of any amount included in your assessable income as represents an amount in respect of which you paid \*foreign income tax that counts towards the \*tax offset for the year; and
- II. any other amounts of \*ordinary income or \*statutory income from a source other than an \*Australian source ...

TD 2020/7 sets out that the Commissioner's view that a taxpayer's net capital gain is considered to be relevant statutory income without a source. The view is that the provision does not allow for the disaggregation of a net capital gain to identify specific foreign sourced capital gains.

## What is required?

Review FITO limit positions and ensure compliance going forward.



## Who does it impact?

All taxpayers that have foreign capital gains.

## Important dates

TD 2020/7 applies both before and after the date of issue, being the 26 August 2020.

## How can we assist?

ShineWing Australia can assist in preparing Australian tax returns and/or analysing foreign taxes paid and calculating the FITO limit.



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