

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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