



# FINANCIAL SERVICES

## - Insurance Tax Bulletin

PRICEWATERHOUSECOOPERS 

### Australian Tax Office Addresses Nonresident Insurers

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The Australian Taxation Office has determined in ATO ID 2008/83 that a nonresident syndicate associated with Lloyd's insurance in London that has a dependent agent in Australia, lacks a principal office or branch in Australia under section 142 of the Income Tax Assessment Act 1936.

A syndicate in the Lloyd's insurance market in London provides underwriting for general insurance in Australia. The syndicate members are residents of the United Kingdom. The syndicate does not occupy premises or carry on activities in Australia. The syndicate does not have any employees in Australia. An Australian resident company acts as a cover holder on behalf of the underwriting members of the syndicate. The Australian resident company has a binding authority to write business and conclude contracts on behalf of the underwriting members of the syndicate for contracts of insurance in respect of property. The Australian resident company carries out this function in the capacity as an agent for the syndicate.

Division 15 of Part III of the ITAA 1936 sets out certain taxation consequences for non resident insurers. Prior to the introduction of the ITAA 1936 the income tax provisions relating to non resident insurers were contained in section 28B of the *Income Tax Assessment Act 1922* (ITAA 1922). The terms 'principal office' and 'branch' were originally used in section 28B of the ITAA and Division 15 of Part III of the ITAA 1936 however these terms were not defined. As there is no statutory definition of the terms 'principal office' or 'branch' in Division 15 of the ITAA 1936 or else where in the ITAA 1936 and *Income Tax Assessment Act 1997* or other related Acts, the Taxation Office relied on the common dictionary usage of those words. According to Taxation Office, *The Macquarie Dictionary* 2001, rev. 3rd edn, defines the word 'principal' as 'first or highest in rank importance, value, etc ; chief foremost.' The term 'principal office' is often interchanged with the term 'head office' or 'main office'. The word 'branch' is defined as 'a local operating division of a company, chain store or the like'.

Moreover, the Explanatory Memorandum (EM) to the Income Tax Assessment Bill 1935 preserves a common usage of the terms. The terms 'principal office' or 'branch' within the EM refers to a non-resident insurer who carries on insurance business or transacts insurance business directly either by means of a principal office or a local branch established in Australia, and not of insurance business effected through an agent on behalf of the non resident insurer.

The Australian Taxation Office found that the syndicate does not carry on insurance business or transact insurance business directly either by means of a principal office or branch established in Australia. Rather, the syndicate carries on insurance business through the activities of its agent in Australia. Accordingly the syndicate is not considered to have a principal office or branch established in Australia for the purposes of Division 15 of Part III of the ITAA 1936.

**PwC Observes:** This case is interesting because it indicates how another country's tax laws operate to determine whether a Lloyd's syndicate is engaged in a trade or business in that country. It should be noted, however, that Lloyd's has an income tax closing agreement with the IRS, and that all members of Lloyd's are bound by it. The closing agreement dictates the amount of income that is taxed as U.S. connected business.

For additional information please call Anthony DiGilio at (202) 414-1702 or contact your local insurance tax professional. Please visit us at: <http://www.pwc.com/us/insurance/tax>

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