

# MARKET BULLETIN

**From** Tax Consultant Taxation (extn 6860)

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**Date** 22 December 2005

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**Reference** Y3713

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**Subject** **Taxation of Australian Resident Members**

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**Subject areas** Australian Tax

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**Attachments** None

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**Action points** To note

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**Deadlines** Effective Immediately

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## 1. Introduction

- 1.1 On 2<sup>nd</sup> November 2005 the Australian Taxation Office (ATO) issued a new ruling TR2005/18 which sets out the application of the “foreign loss quarantining” rules to Lloyd’s income and clarifies the operation of the foreign tax credit system as it interacts with these rules. It also withdrew an earlier ruling TR94/31 as it contained information which is now out of date.
  - 1.2 The ATO has also advised us that Australian resident members who wish to continue dealing with their tax affairs along the lines of the four rulings which were withdrawn on 28<sup>th</sup> February 2003 may do so to the extent that they do not conflict with the new ruling.
  - 1.3 This bulletin also explains planned legislative changes to the foreign loss quarantining rules.
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## 2 Detail

- 2.1 The new ruling TR2005/18 states that income from carrying on business at the Lloyd's insurance market has a foreign source for Australian tax purposes and that foreign loss quarantining rules applies to any losses from carrying on such business. For the purposes of the loss quarantining rules, the Lloyd's income will be classed as "all other assessable foreign income" and may only be used to offset foreign income that falls into the same class. It also provides that for the purpose of calculating foreign tax credits Lloyd's income falls within the class of "other income".

The full text of the ruling can be found on the ATO website [www.ato.gov.au](http://www.ato.gov.au).

- 2.2 The ruling applies from 28<sup>th</sup> February 2003 when an earlier ruling IT 2610, which also stated that Lloyd's losses were subject to foreign loss quarantining, was withdrawn. However it does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute which they may have already agreed with the ATO.

- 2.3 When four earlier rulings which governed the taxation of Lloyd's income in Australia were withdrawn with effect from 28<sup>th</sup> February 2003 the ATO confirmed that for practical purposes members who wished to continue dealing with their tax affairs along the lines of those rulings would be able to do so. As advised in the Market Bulletin dated 24<sup>th</sup> March 2003 (Y3016) the Assistant Commissioner, International Strategy and Operations, David Walker, confirmed that:

"Under Australia's Self Assessment System it will be up to individual members to determine their tax position and lodge their income tax returns accordingly. If they wish they can request a legally binding private ruling from the Australian Tax Office. 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 undertakings do not substantially change."

- 2.4 We asked the ATO for confirmation that this undertaking still applies following the issue of the new ruling and Kevin Carey, International Strategy and Operations, Large Business, has advised that:

"I confirm that the undertaking given by the Assistant Commissioner, International Strategy and Operations, David Walker still applies and members can continue to deal with their Lloyd's tax affairs in accordance with the withdrawn rulings to the extent that they do not conflict with TR2005/18, as long as their future Lloyd's undertakings do not substantially change."

The issues dealt with in the withdrawn rulings are currently being reviewed by the Australian Taxation Office and we will advise you of the outcome of that review as soon as possible."

- 2.5 Lloyd's Members Services Unit will, therefore, continue to issue members with Australian Tax Advices, computed on the same lines as previously, so that members that wish to use this data in reporting their Lloyd's results for Australian tax purposes may do so.

- 2.6 The new ruling applies to the income tax law as at 2 November 2005. There are proposals to abolish the foreign loss and foreign tax credit quarantining rules considered in the ruling. If enacted, these changes will allow members to offset Lloyd's losses against Australian income. Further information will be provided once details of the changes are made available, including the impact upon losses incurred prior to their commencement.

**3. Readership and Contact Details**

- 3.1 This bulletin, which has been seen by the ATO, is being issued to all members' agents, recognised auditors and Australian Resident Members.
- 3.2 If you have any questions please telephone:-

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