Stephen Larsen and Co
TAX AND BUSINESS ACCOUNTANTS

Fact sheet: Foreign Investment Fund short version

Foreign Investment Fund (FIF) Tax Rules — Individuals & Trusts

Investors who have certain types of overseas investments may have foreign investment fund (FIF) income and this is subject to specific tax rules.

What is an FIF?

A Foreign Investment Fund or FIF is a foreign company, foreign superannuation scheme or a non-resident insurer under a life insurance policy.

An investment in a foreign investment fund is an offshore investment held by a New Zealand resident taxpayer who holds:

- Less than 10% of the shares in a foreign company
- Less than 10% of the units in a foreign unit trust
- 10% or more of the shares in a foreign company which is not a 'Controlled Foreign Company'
- An interest in a life insurance policy where an FIF is the insurer and the policy is not offered or entered into in New Zealand
- An interest in a foreign superannuation scheme

Do the rules apply to me?

If you…	And	Then
Have shareholding of less than 10% in a foreign company or foreign unit trust	It is an attributing interest	YES, the FIF rules apply
	It is not an attributing interest	NO, the FIF rules do not apply
Hold interests in FIFs with a total amount of NZ$50,000 or less	You are an individual investor or an eligible trust	NO, the FIF rules do not apply
	You are any other type of investor	Yes, the FIF rules apply
Have a shareholding of 40% or more in an offshore company	You are any type of investor	No, the rules do not apply. The controlled foreign company (CFC) rules apply.[1]

FIF income — it needs to be 'attributing'

FIF income will only arise for a NZ tax resident where they have an interest in an FIF that is an 'attributing interest' and not subject to any exemption.

The attribution of FIF income effectively means that income and any increases in value from the FIF are taxable even though income may not have been received by the investor.

The attributable FIF income calculation looks at passive income (generally dividends, interest, royalties, rent and income from insurance). If the non-portfolio FIF has a ratio of passive income to gross ratio of less than 5% then no income will be attributed under the FIF rules. If the passive income ratio is higher than 5%, then the passive income will be attributed and become taxable.

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Minimum threshold on cost of the investment

The FIF rules will not apply to individual investors if the original cost of their investment is NZ$50,000 or less. These investors continue to pay tax only on dividends if they hold the shares on capital account and are not required to calculate income under the FIF rules.

This minimum threshold does not apply to family trusts. However, it is extended to eligible trusts that:

- Arise out of a Court order, or
- Are estates but only for the first five income tax years after death, or
- Have ACC as the Settlor

It is important to note that this NZ$50,000 rule is a threshold rather than an exemption. This means that if the cost of a person's offshore shares exceeds $50,000 all their shares are then subject to the new rules and not just the excess costing more than $50,000.

Exemptions

The FIF rules will not apply to:

- FIF interests of less than $50,000 held by individuals or eligible trusts (as mentioned above)
- Certain Australian resident companies listed on the ASX
- 10% or more interests in an Australian company
- Most regulated Australian superannuation schemes
- Certain employment-related superannuation schemes or pension schemes
- Shares in a company that is resident in a grey list country held by a natural person under an employee share plan where there are restrictions on the sale of shares

Investors who fall under the threshold of $50,000 can still elect to return FIF income or losses. However, if they do this, they must then continue to apply the FIF rules.

Summary of how FIF rules are applied

There are five methods available for calculating FIF income. Taxpayers can choose which method to use, to an extent, but the nature of the investment will also affect which rules can and can't be used:

Less than 10% interest in FIF (portfolio FIF)	10% or more interest in FIF (non-portfolio FIF)
Calculate FIF income using either: • Fair Dividend Rate Method (FDR) • Comparative Value Method (CV) • Cost Method • Deemed Rate of Return Method (DRR)	Calculate FIF income using: • Fair Dividend Rate Method (FDR) • Comparative Value Method (CV) • Cost Method • Deemed Rate of Return Method (DRR • Attributable FIF income method

There are also rules designed for taxing shares that are bought and sold within the same income year.

Our recommendation

This is a complex technical area. Depending on your circumstances, the number and type of shares you have, different rules and calculation methods apply.

We'd be happy to talk you through how it affects your business if you'd like further information.

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Footnotes

1 The CFC rules will apply where a single NZ resident controls more than 40% of an offshore company and there is no other foreign shareholder with a greater interest. Otherwise, the CFC rules will apply where 5 or fewer NZ residents control more than 50% of an offshore company.

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