TD 93/D221 - Income tax: does the definition of "United States" in the Australia-United States Double Tax Convention include United States possessions?

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This document has been finalised by TD 93/221.

Australian Taxation Office

Taxation Determination TD 93/D221

Draft Taxation Determinations (TDs) represent the preliminary, though considered, views of the ATO. Draft TDs may not be relied on; only final TDs are authoritative statements of the ATO.

Draft Taxation Determination

Income tax: does the definition of "United States" in the Australia-United States Double Tax Convention include United States possessions?

1. No. Article 3(1)(j) of the Australia-United States Double Tax Convention defines United States as follows:

"(i) the term "United States" means the United States of America; and
"(ii) when used in a geographical sense, the term "United States" means the states thereof and the District of Columbia and also includes:
(A) the territorial waters thereof; and
(B) the sea-bed and the subsoil of the submarine areas adjacent to the coast thereof, but beyond the territorial waters, over which the United States exercises rights, in accordance with international law, for the purposes of exploration for, or exploitation of, the natural resources of those areas."

2. The term United States of America, as used in subparagraph (i), was not intended to include US possessions. The Technical Explanation of the treaty prepared for the US Senate Committee on Foreign Relations confirms that the term United States of America "does not include Puerto Rico, the Virgin Islands, Guam or any other United States possession ".

3. Subparagraph (ii) of the definition makes it clear that "United States", when that term is used in a geographical sense, does not extend to the possessions or territories. It applies to the States, the District of Columbia, the territorial sea and the adjacent continental shelf.

4. The Internal Revenue Service has listed United States' possessions for the purposes of section 274(h) of the United States' Internal Revenue Code. Revenue Ruling 87-95 lists the following as possessions of the United States: American Samoa, Baker Island, Guam, Howland Island, Jarvis Island, Johnston Island, Kingman Reef, Midway Islands, Northern Mariana Islands, Palmyra, Puerto Rico, Virgin Islands and Wake Islands.

Commissioner of Taxation
26/8/93

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