


TR 98/21A2 - Addendum - Income tax: withholding tax implications of cross border leasing arrangements

 This cover sheet is provided for information only. It does not form part of *TR 98/21A2 - Addendum - Income tax: withholding tax implications of cross border leasing arrangements*

 View the [consolidated version](#) for this notice.



Addendum

Taxation Ruling

Income tax: withholding tax implications of cross border leasing arrangements

This Addendum is a public ruling for the purposes of the *Taxation Administration Act 1953*. It amends Taxation Ruling TR 98/21 to update the treatment of cross-border leasing arrangements in accordance with current legal principles.

TR 1998/21 is amended as follows:

1. Paragraph 8

Omit the paragraph; substitute:

8. 'Conversely, where the main object of the transaction in the context of cross border leases is hire, even where the hirer has an option to purchase the equipment, royalty withholding tax under subsection 128B(5A) of the Act applies. However subsection 17A(5) of the *International Agreements Act 1953* (Cth) provides that section 128B of the Act (which deals with liability for withholding tax) does not apply to the payment of a royalty as defined in subsection 6(1) of that Act if:

- (a) the royalty is paid to a person who is a resident of a Contracting State or territory (other than Australia) for the purposes of an agreement, and
- (b) the agreement does not treat the amount paid as a royalty.

8A. Therefore the withholding tax will not apply where there is no mismatch between the international agreement and subsection 6(1) of the Act. Another situation where this arises is when the international agreement expressly excludes royalty treatment because the equipment is classed as 'substantial equipment' which gives rise to a permanent establishment and in turn, Australia has taxing rights. This issue is dealt with further in Taxation Ruling TR 2007/11 and Taxation Ruling TR 2007/10.

2. Paragraph 15

Omit the paragraph.

3. Paragraph 16

Omit the paragraph.

4. Paragraph 17

Omit the paragraph.

5. Paragraph 18

After 'non-resident' omit 'during the 1993-1994 year of income or a later year of income and'.

6. Paragraph 19

Omit 'exempt income'; substitute 'non-assessable non-exempt income'.

7. Paragraph 21

Omit 'Although the current withholding tax regime for royalties is of recent origin, the definition of royalty traces back to amendments made to the Act in 1968 by the *Income Tax Assessment Act 1968*.'; substitute 'The relevant definition of royalty traces back to amendments made to the Act in 1968 by the *Income Tax Assessment Act 1968*'.

8. Paragraph 29

Omit '; compare current OECD Commentary on Article 12 at paragraphs 12-14'.

9. Paragraph 36

Omit 'eg Article 5(4)(b) of the tax treaty with Spain'; substitute 'e.g., Article 5(4)(b) of the Spanish agreement'.

10. Paragraph 41

Omit 'exempt income'; substitute 'non-assessable non-exempt income'.

11. Paragraph 42

Omit '...an agreement entered into after 16 December 1984, being:'

12. Paragraph 70

Omit '(e.g., subsection 51AD(1) and section 42A-115 of Schedule 2E)'.

13. Paragraph 75

Omit 'Recent'; substitute 'Later'.

14. Paragraph 76

Omit 'recent'.

15. Paragraph 93

Omit '(see Australian Accounting Standards AAS17 (superseded by Accounting Standard AASB 117), major elements of which are adopted in Part III Division 16D of the Act)'; substitute '(see Australian Accounting Standards AASB 117)'.

16. Paragraph 105

Omit 'The *Taxation Laws Amendment Act (No 2) 1997* extends the application of Part IVA to schemes aimed at avoiding withholding tax. '.

This Addendum applies on and from 29 March 2017.

Commissioner of Taxation

29 March 2017

ATO references

NO: 1-A8ODO8A

ISSN: 2205-6211

**© AUSTRALIAN TAXATION OFFICE FOR THE
COMMONWEALTH OF AUSTRALIA**

You are free to copy, adapt, modify, transmit and distribute this material as you wish (but not in any way that suggests the ATO or the Commonwealth endorses you or any of your services or products).