


TD 94/36 - Income tax: thin capitalisation by non-residents: is the retrospective creation, or amendment, of an asset revaluation reserve allowed for the purposes of Division 16F of the Income Tax Assessment Act 1936 ?

 This cover sheet is provided for information only. It does not form part of *TD 94/36 - Income tax: thin capitalisation by non-residents: is the retrospective creation, or amendment, of an asset revaluation reserve allowed for the purposes of Division 16F of the Income Tax Assessment Act 1936 ?*

This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVAAA of the *Taxation Administration Act 1953*, is a public ruling for the purposes of that Part. Taxation Ruling TR 92/1 explains when a Determination is a public ruling and how it is binding on the Commissioner. Unless otherwise stated, this Determination applies to years commencing both before and after its date of issue. However, this Determination does not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Taxation Determination

Income tax: thin capitalisation by non-residents: is the retrospective creation, or amendment, of an asset revaluation reserve allowed for the purposes of Division 16F of the *Income Tax Assessment Act 1936*?

1. No. In measuring foreign equity, section 159GZG requires an asset revaluation reserve to be in place in the company's accounting records at the beginning of the relevant year of income.
2. If a company holds information which supports a revaluation of any assets in its accounts, but does not formalise the revaluation by placing an entry into an asset revaluation reserve, then the company is precluded from retrospectively creating or amending an asset revaluation reserve.

Commissioner of Taxation
5/5/94

FOI INDEX DETAIL: Reference No. I 1217313

Previously issued as Draft TD 93/D232

Related Determinations:

Related Rulings: IT 2479

Subject Ref: thin capitalisation; asset re-valuation

Legislative Ref: ITAA 159GZG(1); ITAA 159GZG(2)

Case Ref:

ATO Ref: CAS AUD 15

ISSN 1038 - 8982