



***TD 2001/D14 - Income tax: which country is for the purposes of Part X of the Income Tax Assessment Act 1936 (the Act) the country of residence of a UK Limited Partnership (LP), a US LP, a UK Limited Liability Partnership (LLP) and a US LLP being a non-resident corporate limited partnership within Part III Division 5A of the Act?***

 This cover sheet is provided for information only. It does not form part of *TD 2001/D14 - Income tax: which country is for the purposes of Part X of the Income Tax Assessment Act 1936 (the Act) the country of residence of a UK Limited Partnership (LP), a US LP, a UK Limited Liability Partnership (LLP) and a US LLP being a non-resident corporate limited partnership within Part III Division 5A of the Act?*

This document has been finalised by TD 2004/31.

 Note: the Minister for Revenue and Assistant Treasurer, Senator Coonan, issued Press Release C026/03, Taxation of Foreign Hybrids, on 8 April 2003. The Press Release proposes to introduce legislation that, if enacted, will impact on this Taxation Determination.

## Draft Taxation Determination

**Income tax: which country is for the purposes of Part X of the *Income Tax Assessment Act 1936* (the Act) the country of residence of a UK Limited Partnership (LP), a US LP, a UK Limited Liability Partnership (LLP) and a US LLP being a non-resident corporate limited partnership within Part III Division 5A of the Act?**

### *Preamble*

*Draft Taxation Determinations (DTDs) present the preliminary, though considered, views of the Australian Taxation Office. DTDs should not be relied on; only final Taxation Determinations represent authoritative statements by the Australian Taxation Office.*

1. A non-resident corporate limited partnership which is an LP or LLP formed in the UK or US will be a resident of the UK or US (as the case may be) for purposes of Part X of the Act if it is subject to tax on its worldwide income in the UK or US. In all other cases, a UK or US LP or LLP will be, for Part X purposes a resident of no particular unlisted country.
2. An LP or an LLP that is a corporate limited partnership within Part III Division 5A of the Act is treated as a company for the purposes of the Act (other than Part III Division 5A) (“a relevant partnership”).
3. A relevant partnership which is not a resident (section 94T of the Act) is not a Part X Australian resident (section 317 of the Act).
4. If a relevant partnership is, as an entity, subject to a worldwide source tax base in the UK or the US pursuant to a tax law (as defined in section 317 of the Act) of the UK or the US (as the case may be) it will be a resident of that country by reason of sections 331 and 332 of the Act. By way of an example, a US LP which pursuant to the Internal Revenue code ‘check the box’ regulations is treated as a domestic US corporation, is subject to worldwide source taxation. It is a resident of the US for the purposes of section 332 of the Act.
5. On the other hand, the fact that a relevant partnership is formed under or pursuant to a law of the UK or the US (as the case may be) is not relevant in determining in which country the relevant partnership is resident for the purposes of section 332 of the Act. By way of example, a UK LLP is formed pursuant to the *Limited Liability Partnership Act* (UK) and is subject to corporation and insolvency laws. However, the LLP is transparent for the purposes of the UK tax laws with each member being taxable on his/her share of the profit.

6. A relevant partnership which falls outside paragraph 4 above, is a resident of no particular unlisted country (section 333(1) of the Act).

7. Subject to satisfying one of the tests contained in section 340 of the Act, a relevant partnership may be a controlled foreign company.

**Your comments**

8. We invite you to comment on this Draft Taxation Determination. We are allowing several for comments before we finalise the Determination. If you want your comments considered, please provide them to us within this period.

**Comments date:** 31 January 2001

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**Commissioner of Taxation**

12 December 2001

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*Previous draft:*

Not previously released in draft form

*Subject references:*

- limited partnerships
- controlled foreign companies
- resident of a listed or unlisted country

*Legislative references:*

- ITAA 1936 Part X
- ITAA 1936 Div 5A
- ITAA 1936 94T
- ITAA 1936 317
- ITAA 1936 331
- ITAA 1936 332
- ITAA 1926 333(1)
- ITAA 1936 340
- *Limited Liability Partnership Act* (UK)

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*ATO references:*

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