


TD 2009/18A1 - Addendum - Income tax: does the term 'real property' in paragraph 855-20(a) of the Income Tax Assessment Act 1997 include a leasehold interest in land?

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Addendum

Taxation Determination

Income tax: does the term 'real property' in paragraph 855-20(a) of the *Income Tax Assessment Act 1997* include a leasehold interest in land?

This Addendum amends the date of effect of Taxation Determination TD 2009/18 to reflect an amendment to paragraph 855-20(a) of the *Income Tax Assessment Act 1997* (ITAA 1997) made by the *Tax Laws Amendment (2009 Measures No. 4) Act 2009*. The amendment puts beyond doubt that a lease of land, if the land is situated in Australia, is 'real property situated in Australia' for the purposes of paragraph 855-20(a) of the ITAA 1997. The amendment applies in relation to CGT events happening on or after 20 May 2009. The amendment is to be disregarded for the purposes of interpreting Subdivision 855-A of the ITAA 1997 as in force before the commencement of the amendment. The effect of this is that no inference can be drawn from the amendment that the law operated differently before the amendment.

TD 2009/18 is amended as follows:

1. Paragraph 2

Omit the paragraph; substitute:

2. This Determination applies to years of income commencing both before and after its date of issue. However, this Determination will not apply in relation to CGT events happening on or after 20 May 2009. For such CGT events, an amendment to paragraph 855-20(a) of the ITAA 1997 made by the *Tax Laws Amendment (2009 Measures No. 4) Act 2009* puts beyond doubt that a lease of land, if the land is situated in Australia, is 'real property situated in Australia' for the purposes of paragraph 855-20(a) of the ITAA 1997. This Determination will also 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 this Determination (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

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3. Legislative references

Insert:

- Tax Laws Amendment (2009 Measures No. 4) Act 2009

This Addendum applies on and from 18 September 2009 (the date of commencement of the amendment to paragraph 855-20(a) of the ITAA 1997 made by the *Tax Laws Amendment (2009 Measures No. 4) Act 2009*).

Commissioner of Taxation

21 October 2009

ATO references

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