

TD 93/221 - Income tax: does the definition of "United States" in the Australia-United States Double Tax Convention include United States possessions?

 This cover sheet is provided for information only. It does not form part of *TD 93/221 - Income tax: does the definition of "United States" in the Australia-United States Double Tax Convention include United States possessions?*

FOI Status: may be released

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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: 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

4/11/93

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Related Rulings:

Subject Ref: Australia-United States Double Taxation Convention; United States possessions, 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

Legislative Ref: *Income Tax (International Agreements) Act 1953*, Section 6, Schedule 2

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