


# ***TD 93/D83 - Income tax: payment of 'equipment royalties' pursuant to a contract entered into prior to 8pm on 18 August 1992***

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This document has been finalised by TD 93/100.

Draft Taxation Determinations (TDs) represent the preliminary, though considered, views of the ATO. Draft TDs may not be relied on; only final TDs are authoritative statements of the ATO.

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## Draft Taxation Determination

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### **Income tax: payment of "equipment royalties" pursuant to a contract entered into prior to 8pm on 18 August 1992.**

1. *Taxation Laws Amendment Act (No. 5) 1992* amended the *Income Tax Assessment Act 1936* to substitute a final withholding tax on royalties paid or credited to non-residents in lieu of the normal assessment system.
2. However, "equipment royalties" (that is, royalties for the use of, or right to use, any industrial, commercial or scientific equipment) paid or credited under pre-18 August 1992 contracts will remain subject to the assessment system provided a variation of the contract does not occur. Any change whatsoever to a contract will attract the withholding tax provisions.
3. Where a variation to a contract does occur, all equipment royalties paid or credited after the variation will be subject to withholding tax. Royalty payments made prior to the variation will remain subject to the assessment system.

#### **Example**

*A contract is entered into on 1 August 1992 which involves the payment of 'equipment royalties' for leased aircraft. The contract is, therefore, excluded from the withholding tax provisions by virtue of section 81A of the Taxation Laws Amendment Act (No.5) 1992.*

*On 30 September 1993 the contract was varied to change the frequency of the royalty payments.*

*From 30 September 1993 all royalties will be subject to the withholding tax provisions.*

**Commissioner of Taxation**

1/4/93

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FOI INDEX DETAIL: Reference No.

Related Determinations:

Related Rulings:

Subject Ref: royalty withholding tax

Legislative Ref: ITAA Pt III Div 11A

Case Ref:

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