

TA 2003/4 - Assignment of Australian Copyright on Articles Prepared by Non-Resident Authors

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Taxpayer Alert

TA 2003/4

The Tax Office view on the arrangement considered in this Taxpayer Alert is set out in Taxation Determination TD 2006/10.

FOI status: may be released

Taxpayer Alerts are intended to be an "early warning" of significant new and emerging higher risk tax planning issues or arrangements that the ATO has under risk assessment.

Taxpayer Alerts will provide information that is in the interests of an open tax administration to taxpayers. Taxpayer Alerts are written principally for taxpayers and their advisers and they also serve to inform ATO officers of new and emerging higher risk tax planning issues. Not all potential tax planning issues that the ATO has under risk assessment will be subject of a Taxpayer Alert, and some arrangements that are the subject of a Taxpayer Alert may on further examination be found not to be of concern to the ATO.

Taxpayer Alerts will give the title of the issue (which may be a scheme, arrangement or particular transaction), briefly describe the issue and will highlight the features which the ATO considers give rise to taxation issues. These issues will generally require more detailed analysis to provide an ATO view to taxpayers.

Taxpayers who have entered into or are contemplating entering into an arrangement similar to that described in this Taxpayer Alert can seek a formal determination of the ATO's position through a Private Ruling. Such taxpayers might also contact the ATO officer named in the Alert and/or obtain their own advice.

This Taxpayer Alert is issued under the authority of the Commissioner.

TITLE: Assignment of Australian Copyright on Articles Prepared by Non-Resident Authors

This Taxpayer Alert describes an arrangement involving a purported assignment of Australian copyright on articles prepared by non-resident authors. It is argued that the payments made to the non-resident authors are not subject to Royalty Withholding Tax (RWT).

DESCRIPTION

The alert applies to arrangements having the following features:

1. A non-resident writes an article which is submitted to an Australian publisher for publication.
2. After publication the non-resident author sends an invoice to the Australian publisher.
3. The invoice is endorsed with words to the effect that the non-resident author assigns the Australian copyright in the article to the Australian publisher for a short period of time, say three months.

4. The non-resident author and the Australian publisher also agree that no RWT will be deducted from the payment to the author as they argue that the payment is for the assignment of the ownership of the copyright in the article rather than for the use of that copyright.
5. The Australian publisher makes payment to the non-resident author for the purported purpose of acquiring the copyright in the article, rather than as a royalty for its use, and does not deduct and remit RWT.

FEATURES WHICH THE ATO CONSIDERS GIVE RISE TO TAXATION ISSUES

The ATO considers that the arrangement outlined above gives rise to taxation issues which include:

- a) The validity of the copyright assignment;
- b) Whether the payment for the purported assignment of copyright falls within the definition of a royalty in subsection 6(1) of the *Income Tax Assessment Act 1936* ('ITAA 1936');
- c) Whether the failure to deduct and remit RWT results in a liability for the Australian publisher; and
- d) Whether Part IVA of the ITAA 1936 applies as it appears the dominant purpose of entering the arrangement is to obtain a tax benefit through avoiding RWT.

The Australian Taxation Office is examining these arrangements.

subject references: Assignment, Copyright, Double Tax Agreements, Royalty, Royalty Withholding Tax.

legislative references: ITAA 1936 Subsection 6 (1)
ITAA 1936 Section 128B
ITAA 1936 Part IVA
ITAA 1997 Section 15-20
ITAA 1997 Section 995-1
TAA 1953 Section 16-25
TAA 1953 Section 16-30

related tax rulings: IT 2660

related practice statements: PS LA 2008/15

related media releases:

file references:

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