


TD 2004/31 - 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 2004/31 - 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?*



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

*The number, subject heading, date of effect and paragraph 1 of this document are a 'public ruling' for the purposes of Part IVAAA of the **Taxation Administration Act 1953** and are legally binding on the Commissioner.*

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.

TD 2004/31

6. A relevant partnership which falls outside paragraph 4 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.

Date of effect

8. Note: Division 830 of the *Income Tax Assessment Act 1997* and Division 830 of the *Income Tax (Transitional Provisions) Act 1997* impacts on this Taxation Determination. The legislation applies to assessments for the 2003-2004 income year and retrospectively (at the taxpayer's election) to assessments for the 2002-2003 income years. The legislation also allows taxpayers to amend their returns or self assess on an alternative basis up to the period allowed for amendments (4 years).

9. This Determination applies to non-resident corporate limited partnerships which are LPs or LLPs formed in the UK or US to the extent they fall outside of the new legislation. However, it does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Commissioner of Taxation

14 July 2004

Previous draft:

TD 2001/D14

Related Rulings/Determinations:

TR 92/1; TR 92/20; TR 97/16

Subject references:

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

Legislative references:

- TAA 1953 Pt IVA
- ITAA 1936 Pt III Div 5A
- ITAA 1936 94T
- ITAA 1936 Pt X
- ITAA 1936 317
- ITAA 1936 331
- ITAA 1936 332
- ITAA 1926 333(1)
- ITAA 1936 340
- ITAA 1997 Div 830
- IT(TP)A 1997 Div 830
- Limited Liability Partnership Act (UK)

ATO references

NO: T2001/09217

ISSN: 1038-8982