


TR 94/14A - Addendum - Income tax: application of Division 13 of Part III (international profit shifting) - some basic concepts underlying the operation of Division 13 and some circumstances in which section 136AD will be applied

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Addendum

Income tax: application of Division 13 of Part III (international profit shifting) - some basic concepts underlying the operation of Division 13 and some circumstances in which section 136AD will be applied

*Paragraphs 1 to 6 of this document, to the extent that they relate to paragraphs 10 to 153 of Taxation Ruling TR 94/14, are a 'public ruling' for the purposes of Part IVAAA of the **Taxation Administration Act 1953** and are binding on the Commissioner. Taxation Rulings TR 92/1 and TR 97/16 explain when a Ruling is a public ruling and how it is binding on the Commissioner.*

1. This Addendum alters TR 94/14 to ensure consistency with the later Taxation Rulings TR 97/20 and TR 98/11 in relation to the application of section 262A of the *Income Tax Assessment Act 1936*. References to record keeping requirements throughout TR 94/14 need to take account of the conclusion that section 262A does not impose an express legal obligation on taxpayers to create documentation demonstrating that their international dealings comply with the arm's length principle (paragraph 1.3 of TR 98/11).
2. Section 262A does, however, require taxpayers to retain documents created during the setting of transfer prices and used in calculating the appropriate amounts to be reported in tax returns (paragraph 2.4 of TR 98/11).
3. Notwithstanding these conclusions as to the scope of section 262A, references in TR 94/14 to the effect that the keeping of adequate contemporaneous documentation covering transfer pricing dealings will enable taxpayers to demonstrate to the ATO that dealings with associated enterprises comply with the arm's length principle for taxation purposes remain relevant (see also paragraph 1.3 of TR 98/11).

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4. Additionally, as pointed out at paragraphs 2.10 and 2.11 of TR 98/11, the maintenance of adequate contemporaneous documentation is an indicator that the efforts of a taxpayer are such that penalties should be remitted in the event of a transfer pricing adjustment.

5. The above interpretation regarding the application of section 262A has relevance to numerous paragraphs throughout TR 94/14 dealing with documentation, particularly paragraphs 60, 101, 102, 108, 110, 127(b), 299, 370 to 373, and 421(b), with the following amendments being required to paragraphs 101 and 371 in particular.

6. Paragraph 101

Omit the words ‘Taxpayers need to keep sufficient contemporaneous records to enable this evaluation to be done in the course of preparing their tax returns.’; insert in their place ‘Taxpayers are advised to create and keep contemporaneous records in order to demonstrate that their international dealings comply with the arm’s length principle. However, records created during the setting of transfer prices and used in preparing tax returns are required by section 262A to be retained.’

7. Paragraph 371

Omit the words ‘in the course of preparing their tax returns’ from the end of the first sentence; insert as the second sentence in that paragraph the words ‘While section 262A only requires those records created during the setting of transfer prices and used in the preparing of tax returns to be retained, taxpayers are nevertheless advised to keep contemporaneous documentation in order to demonstrate that their international dealings comply with the arm’s length principle.’

Commissioner of Taxation

14 April 1999

ATO Ref: 94/3601-0
98/12257-6

ISSN: 1039 - 0731