

TR 96/14A2 - Addendum - Income tax: traditional securities

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Addendum

Taxation Ruling

Income tax: traditional securities

This Addendum amends Taxation Ruling TR 96/14 to reflect the views outlined in TD 2008/21 relating to paragraph (d) of the definition of 'security' in subsection 159GP(1) of the *Income Tax Assessment Act 1936*.

Taxation Ruling 96/14 is amended as follows:

1. Paragraph 4

- (a) Omit the second sentence from subparagraph (i); substitute:
Having regard to paragraphs (a), (b) and (c) of the definition, only those contracts that have debt like obligations will usually fall under paragraph (d) of the definition
- (b) Omit the second sentence from subparagraph (ii); substitute
There may be a contract between the manager and unit holder under which there is a liability to pay an amount. This contract will be a security by virtue of paragraph (d) of the definition if, on the facts, it is found to be debt like

2. Paragraph 30

- (a) Omit 'merely'.
- (b) Omit 'However, the'; substitute 'The'.
- (c) At the end of the paragraph, insert:
However, having regard to the discussion at paragraphs 22, 28 and 29 of this Ruling, and paragraphs (a), (b) and (c) of the definition of 'security' in subsection 159GP(1) only those contracts that have debt like obligations will usually fall under paragraph (d) of the definition of 'security'.

3. Paragraph 31

Omit 'the purposes of this Ruling'; substitute 'similar factual circumstances involving an implied contract of indemnity'.

4. Paragraph 37

Omit ' which is a security by virtue of the application of paragraph (d) of the definition of security'.

5. Paragraph 39

Omit the second sentence; substitute:

As that arrangement seems to be a contract under which there is a liability to pay an amount, it may satisfy the provisions of paragraph (d) of the definition, if, on the facts, it is found to be debt like.

6. Legislative references

(a) Omit:

- ITAA 159GP(1)(a)
- ITAA 159GP(1)(b)
- ITAA 159GP(1)(c)
- ITAA 159GP(1)(d)

(b) Insert:

- ITAA
- ITAA 26BB(2)
- ITAA 26BB(4)
- ITAA 26BB(5)
- ITAA 36
- ITAA 70B(2B)
- ITAA 70B(2C)
- Gift Duty Assessment Act 1941
- New Business Tax System (Taxation of Financial Arrangements) Act (No. 1) 2003
- Taxation Laws Amendment Act (No 3) 1989
- Taxation Laws Amendment Act (No 5) 1992
- TAA 1953 Pt IVAAA

7. Other Rulings on this topic

After 'IT 2517; IT 2643' insert 'TR 92/1; TR 92/10; TR 92/20'.

8. Other references

Insert after the case references:

other references

- Chitty on Contracts, 26th edition, 1989, Sweet and Maxwell
- Explanatory Memorandum to the Taxation Laws Amendment Act (No 2) 1986
- Halsbury's Laws of England, 4th edition, Volume 20
- 'Public Unit Trusts', in The Law of Public Company Finance, 1986, Law Book Company
- The Language of Money, 1987, Allen and Unwin

- The Law of Securities, 1993, 4th edition, Law Book Company
- The Law Relating To Banker and Customer in Australia, 1990, Law Book Company

This Addendum applies on and from 30 July 2008, the date on which TD 2008/21 issued.

Commissioner of Taxation

30 July 2008

ATO references

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