



# ***TR 98/21A2 - Addendum - Income tax: withholding tax implications of cross border leasing arrangements***

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# Addendum

## Taxation Ruling

### Income tax: withholding tax implications of cross border leasing arrangements

This Addendum is a public ruling for the purposes of the *Taxation Administration Act 1953*. It amends Taxation Ruling TR 98/21 to update the treatment of cross-border leasing arrangements in accordance with current legal principles.

#### TR 1998/21 is amended as follows:

##### 1. Paragraph 8

Omit the paragraph; substitute:

8. 'Conversely, where the main object of the transaction in the context of cross border leases is hire, even where the hirer has an option to purchase the equipment, royalty withholding tax under subsection 128B(5A) of the Act applies. However subsection 17A(5) of the *International Agreements Act 1953* (Cth) provides that section 128B of the Act (which deals with liability for withholding tax) does not apply to the payment of a royalty as defined in subsection 6(1) of that Act if:

- (a) the royalty is paid to a person who is a resident of a Contracting State or territory (other than Australia) for the purposes of an agreement, and
- (b) the agreement does not treat the amount paid as a royalty.

8A. Therefore the withholding tax will not apply where there is no mismatch between the international agreement and subsection 6(1) of the Act. Another situation where this arises is when the international agreement expressly excludes royalty treatment because the equipment is classed as 'substantial equipment' which gives rise to a permanent establishment and in turn, Australia has taxing rights. This issue is dealt with further in Taxation Ruling TR 2007/11 and Taxation Ruling TR 2007/10.

##### 2. Paragraph 15

Omit the paragraph.

##### 3. Paragraph 16

Omit the paragraph.

**4. Paragraph 17**

Omit the paragraph.

**5. Paragraph 18**

After 'non-resident' omit 'during the 1993-1994 year of income or a later year of income and'.

**6. Paragraph 19**

Omit 'exempt income'; substitute 'non-assessable non-exempt income'.

**7. Paragraph 21**

Omit 'Although the current withholding tax regime for royalties is of recent origin, the definition of royalty traces back to amendments made to the Act in 1968 by the *Income Tax Assessment Act 1968*.'; substitute 'The relevant definition of royalty traces back to amendments made to the Act in 1968 by the *Income Tax Assessment Act 1968*'.

**8. Paragraph 29**

Omit '; compare current OECD Commentary on Article 12 at paragraphs 12-14'.

**9. Paragraph 36**

Omit 'eg Article 5(4)(b) of the tax treaty with Spain'; substitute 'e.g., Article 5(4)(b) of the Spanish agreement'.

**10. Paragraph 41**

Omit 'exempt income'; substitute 'non-assessable non-exempt income'.

**11. Paragraph 42**

Omit '...an agreement entered into after 16 December 1984, being:'

**12. Paragraph 70**

Omit ' (e.g., subsection 51AD(1) and section 42A-115 of Schedule 2E)'.

**13. Paragraph 75**

Omit 'Recent'; substitute 'Later'.

**14. Paragraph 76**

Omit 'recent'.

**15. Paragraph 93**

Omit '(see Australian Accounting Standards AAS17 (superseded by Accounting Standard AASB 117), major elements of which are adopted in Part III Division 16D of the Act)'; substitute '(see Australian Accounting Standards AASB 117)'.

**16. Paragraph 105**

Omit 'The *Taxation Laws Amendment Act (No 2) 1997* extends the application of Part IVA to schemes aimed at avoiding withholding tax. '.

This Addendum applies on and from 29 March 2017.

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**Commissioner of Taxation**

29 March 2017

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