

TAXATION RULING NO. IT 2586

INCOME TAX : WOUNDS AND DISABILITY PENSIONS PAID BY
FOREIGN GOVERNMENT: WHETHER EXEMPT

F.O.I. EMBARGO: May be released

REF N.O. REF: 88/9021-8 DATE OF EFFECT: Immediate

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F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1011909	EXEMPT INCOME WOUNDS AND DISABILITY PENSIONS FOREIGN PENSIONS	23AD(3) (c)

PREAMBLE This Ruling considers the application of paragraph 23AD(3) (c) of the Income Tax Assessment Act 1936 ("the Act") which exempts from Australian income tax wounds and disability pensions of the kinds specified in subsection 365(2) of the United Kingdom Income and Corporation Taxes Act 1970. Subsection 365(2) is reproduced at Attachment A.

2. The operation of paragraph 23AD(3) (c) was considered in the case of Goodfellow v. FCT 76 ATC 4199, (1976) 6 ATR 387 which involved an Australian DFRDB pension. In that case, Sheppard J said that paragraph 23(kab) (now repealed but which in all material respects is to the same effect as paragraph 23AD(3) (c)) embraced not only the specific pension exempt from English income tax under the Imperial Act, but also other wounds and disability pensions of the same kind payable from sources outside the United Kingdom. On appeal to the High Court (77 ATC 4086, 7 ATR 265) Jacobs J, the only Justice to consider the issue, expressed agreement with Sheppard J. More recently, in Melkman v. FCT 88 ATC 4468, 19 ATR 1391, which involved a pension paid by the Netherlands Government, the Full Federal Court did not find it necessary to decide the issue but made the following comments (ATC at pp. 4474-4475; ATR at pp. 1398-1399):

"At one end of the scale it is said that paragraph 23AD(3) (c) exempts only the pensions particularised in subsection 365(2)...This view gives an effect to the words 'of the kinds specified in' similar to that given to the words 'of a kind specified in' in section 30 of the Compensation (Commonwealth Government Employees) Act 1971...by Mason CJ, Brennan and Toohey JJ in Bird v. Commonwealth of Australia....The view is also supported by the use in paragraph 23AD(3) (b) of the different term 'of a similar nature to'. A wider view is that the exemption extends to pensions payable by governments other than the Government of the United Kingdom provided they answer the

description 'of the Crown' for the purposes of subsection 365(2). At the other end of the scale it is said that the exemption extends further to include similar pensions payable by any governments, including governments formerly at war with the United Kingdom and Australia."

3. In *FCT v. Verzyden* 88 ATC 4613, 19 ATR 1557, which also involved a pension paid by the Netherlands Government, the Full Federal Court said (ATC at p. 4618; ATR at pp. 1561-1562) that:

"Notwithstanding that paragraph 23AD(3)(c)...is an exempting provision in a taxing statute, the construction of the expression 'of the kinds specified in subsection 365(2) of the Imperial Act' in the context of payments of wounds and disability pensions to Australian residents calls for no narrow or pedantic approach. Plainly that expression envisages a wider class of pensions than those specified in subsection 365(2) of the Imperial Act."

RULING 4. In light of the comments made by the Courts in *Goodfellow*, *Melkman*, and *Verzyden* it is accepted by this Office that the exemption provided by paragraph 23AD(3)(c) applies to wounds and disability pensions payable by any government. Accordingly, wounds and disability pensions paid to Australian residents by a foreign government will be exempt from Australian income tax under paragraph 23AD(3)(c) of the Act if they fit into one of the categories of pensions described in section 365(2) of the United Kingdom Income and Corporation Taxes Act 1970.

5. Where a foreign wounds and disability pension falls within the operation of paragraph 23AD(3)(c) of the Act, it is exempt from Australian income tax irrespective of the age of the pensioner.

COMMISSIONER OF TAXATION
10 May 1990

APPENDIX

ATTACHMENT A

Sec. 365 of the United Kingdom Income and Corporation Taxes Act 1970 is as follows :

"365 (1) Income from wounds and disability pensions to which this subsection applies shall be exempt from income tax and shall not be reckoned in computing income for any of the purposes of the Income Tax Acts.

(2) Subsection (1) above applies to -

- (a) wounds pensions granted to members of the naval, military or air forces of the Crown,
- (b) retired pay of disabled officers granted on account

of medical unfitness
attributable to or
aggravated by naval,
military or air-force
service,

- (c) disablement or disability
pensions granted to
members, other than
commissioned officers, of
the naval, military or air
forces of the Crown on
account of medical
unfitness attributable to
or aggravated by naval,
military or air-force
service,
- (d) disablement pensions
granted to persons who have
been employed in the
nursing services of any of
the naval, military or air
forces of the Crown on
account of medical
unfitness attributable to
or aggravated by naval,
military or air-force
service, and
- (e) injury and disablement
pensions payable under any
scheme made under the
Injuries in War
Compensation Act 1914
(Session 2), and the
Injuries in War
(Compensation) Act 1915, or
under any War Risks
Compensation Scheme for the
Mercantile Marine:

Provided that where the amount of any retired pay or
pension to which subsection (1) above applies is not
solely attributable to disablement or disability, the
relief conferred by the said subsection (1) shall
extend only to such part as is certified by the
Secretary of State for Social Services, after
consultation with the appropriate Government
Department, to be attributable to disablement or
disability."