

This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVAAA of the *Taxation Administration Act 1953*, is a public ruling for the purposes of that Part. Taxation Ruling TR 92/1 explains when a Determination is a public ruling and how it is binding on the Commissioner. Unless otherwise stated, this Determination applies to years commencing both before and after its date of issue. However, this Determination does not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Taxation Determination

Income tax: a taxpayer earns income to which Australia has no taxing right because of a Double Tax Agreement (DTA). This income is also exempt from tax under sections 23AF or 23AG of the *Income Tax Assessment Act 1936*. Is this income included in the 'exempt amount' for the purpose of the exemption with progression calculations in those sections?

1. No. The references in subsections 23AF(17A) and 23AG(3) to 'an amount that is exempt from tax under this section' apply in respect of income that only qualifies for exemption from tax in Australia because of section 23AF or 23AG respectively, and not for any other reason.

Examples

*An Australian resident renders service to the Swedish Government. The service is performed in Sweden. The service constitutes 'foreign service for a continuous period of not less than 91 days' as required by subsection 23AG(1). Article 19 of the Sweden/Australia Double Tax Agreement provides that any remuneration paid by Sweden in respect of this service **shall be taxable only** in Sweden. Regardless of the fact that this income may meet all the criteria for exemption from Australian tax under section 23AG, it will not be taken into account as an exempt amount for the purposes of the calculation in subsection 23AG(3). This is because Australia is not permitted to tax the income by the provisions of the Double Tax Agreement.*

*An Australian resident gains employment as an accountant with a United Kingdom resident company. The employment is performed in the United Kingdom. Article 12 of the United Kingdom/Australia Double Tax Agreement provides that income in respect of this employment **may** be taxed in the United Kingdom. No provision of the Double Tax Agreement states that Australia may not tax the income. Assuming the income from this service meets all the requirements for exemption from tax in Australia under section 23AG, and is not exempt for any other reason, the income received will be treated as an 'exempt amount' under subsection 23AG(3).*

Commissioner of Taxation

30/06/94

FOI INDEX DETAIL: Reference No. I 1217591

Previously issued as Draft TD 93/D277

Related Determinations:

Related Rulings: IT 2563

Subject Ref: double tax agreements; exempt income; foreign source income; overseas employment income

Legislative Ref: ITAA 23AF; ITAA 23AG

ATO Ref: CHMTD013

ISSN 1038 - 8982