



CR 2001/42 - Income tax: exempt income: approved projects: MH Matrix

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Class Ruling

Income tax: exempt income: approved projects: MH Matrix

Contents	Para
What this Class Ruling is about	1
Date of effect	8
Arrangement	9
Ruling	13
Explanations	14
Detailed contents list	24

Preamble

*The number, subject heading, and the **What this Class Ruling is about** (including **Tax law(s)**, **Class of persons** and **Qualifications** sections), **Date of effect**, **Arrangement** and **Ruling** parts of this document are a ‘public ruling’ in terms of Part IVAAA of the **Taxation Administration Act 1953**. CR 2001/1 explains **Class Rulings** and **Taxation Rulings** TR 92/1 and TR 97/16 together explain when a Ruling is a public ruling and how it is binding on the Commissioner.*

What this Class Ruling is about

1. This Ruling sets out the Commissioner’s opinion on the way in which the ‘tax law(s)’ identified below apply to the defined class of persons, who take part in the arrangement to which this Ruling relates. Broadly, it confirms that income derived by residents engaged in providing personal services in an approved project is exempt from tax.

Tax law(s)

2. The tax law dealt with in this Ruling is section 23AF of the *Income Tax Assessment Act 1936* (‘ITAA 1936’).

Class of persons

3. The class of persons to whom this Ruling applies are Australian resident individuals engaged or contracted by MH Matrix in projects described in the arrangement part of this Ruling.

Qualifications

4. The Commissioner makes this Ruling based on the precise arrangement identified in this Ruling.

5. The class of persons defined in this Ruling may rely on its contents provided the arrangement described below at paragraphs 9 to 12 is carried out in accordance with the details of the arrangement provided in this Ruling.

6. If the arrangement described in this Ruling is materially different from the arrangement that is actually carried out:

- (a) this Ruling has no binding effect on the Commissioner because the arrangement entered into is not the arrangement on which the Commissioner has ruled, and
- (b) this Ruling may be withdrawn or modified.

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The Manager
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Date of effect

8. This ruling applies to years commencing both before and after its date of issue.

Arrangement

9. The arrangement that is the subject of the Ruling is described below. This description is based on the following documents. These documents, or relevant parts of them, as the case may be, form part of and are to be read with this description. The relevant documents or parts of documents incorporated into this description of the arrangement are:

- Application for Class Ruling dated 26 June 2001;
- Correspondence from the Australian Trade Commission ('Austrade') to MH Matrix confirming approved project status for the following projects:
 - ♦ King Fahad National Guard Hospital – Riyadh 91/109
 - ♦ S.A.R.A. Clinics 97/8
 - ♦ King Fahd Military Medical 97/9

Complex – Dhahran

♦ Shaikh Khalifa Medical Centre – Abu Dahbi	2000/161
♦ Airbase Hospital - Dhahran	2001/183
♦ Armed Forces Hospital – Tabuk	2001/180
♦ King Khaled Airport – Riyadh	2001/175
♦ King Fahad Armed Forces Hospital – Jeddah	2001/176
♦ King Khaled National Guard Hospital – Jeddah	2001/181
♦ Riyadh Kharj Hospital – Riyadh	2001/178
♦ King Faisal Military Hospital – Khamis	2001/182
♦ Armed Forces Hospital – Taif	2001/177
♦ Al Ain Hospital – Tawam	2001/179

10. MH Matrix engages Australian residents to perform personal services on projects held overseas. These projects, as listed in paragraph 9, have been granted ‘approved project status’ by the Minister of Trade or the Minister’s delegate under subsections 23AF(11) to (14) of the ITAA 1936.

11. From time to time, MH Matrix requests the Minister of Trade to grant ‘approved project status’ for new projects. These approved projects will also be considered arrangements to which this ruling will apply.

12. This ruling does not apply to:

- projects where the approval has expired and has not been renewed by the Minister of Trade; or
- projects where the Minister of Trade has withdrawn the approval,

from the time the approval expired or was withdrawn.

Ruling

13. Eligible foreign remuneration derived by an Australian resident who is a natural person engaged on qualifying service by MH Matrix in accordance with the arrangements set out in this ruling

is exempt under Section 23AF of the ITAA 1936, if the engagement was for a continuous period not less than 91 days.

Explanations

14. Section 23AF provides that the eligible foreign remuneration derived by a resident is exempt from tax where a person is engaged on qualifying service on an approved project for a continuous period not less than 91 days.

Eligible foreign remuneration

15. Eligible foreign remuneration includes income that is directly attributable to qualifying service by the taxpayer on an approved project. Examples include salary, wages, commission, bonuses, or allowances.

16. It does not include the following:

- Income from overseas employment that is exempt from Australian tax due to the application of section 23AG;
- Income from a superannuation, termination of employment or kindred payment or, an amount that is excluded from the definition of eligible termination payment;
- Income that is derived in a foreign country and is exempt from income tax in that country but would not have been exempt if not for the operation of a double tax agreement;
- Payments in lieu of long service leave; or
- Payment by way of superannuation or pension.

Qualifying service

17. Qualifying service includes:

- the periods during which the person is outside Australia and engaged in performing services on the project, it also includes days where the person is not performing services, for example on a weekend or public holiday.
- travelling time to and from the foreign country, provided the Commissioner considers the time taken as being reasonable;

- absence from work due to accident or illness occurring while the person was on qualifying service;
- leave, such as recreational leave that accrued in respect of period of qualifying service, but does not include long service leave.

Continuous period

18. If during the period when service was performed, a person returns to Australia for an intervening period of short duration, for reasons other than those mentioned in paragraph 17, the person may remain eligible for exemption from Australian tax on the income derived from the approved project.

19. The intervening period must not exceed one-sixth of the total number of days during the total project period during which the person was engaged in qualifying service.

Substituted person

20. If a person (substituted person) replaced another person engaged by MH MATRIX whose qualifying service was prematurely terminated for unforeseen reasons, special rules apply to work out the qualifying service period.

21. The substituted person's period of qualifying service will include the period of the person originally assigned to the project and the period in which he or she was actually engaged on the project. If the sum of these periods is not less than 91 days, the substituted person will be eligible for the exemption of eligible foreign remuneration.

22. It is only the eligible foreign remuneration that the substituted person derives while engaged on qualifying service from the time when the substitution commences that is exempt from tax.

Other Income

23. Eligible foreign remuneration is taken into account when calculating the tax payable on other income. Taxpayers are required to advise the Australian Taxation Office of any eligible foreign remuneration at the time of lodging their tax returns.

Detailed contents list

24. Below is a detailed contents list for this Class Ruling:

CR 2001/42

	Paragraph
What this Class Ruling is about	1
Tax law(s)	2
Class of persons	3
Qualifications	4
Date of effect	8
Arrangement	9
Ruling	13
Explanations	14
Eligible foreign remuneration	15
Qualifying service	17
Continuous period	18
Substituted person	20
Other Income	23
Detailed contents list	24

Commissioner of Taxation

5 September 2001

Previous draft:

Not previously issued in draft form

Related Rulings/Determinations:

CR 2001/1; TR 92/1; TR 97/16

Subject references

- exempt income

- approved overseas projects

Legislative references:

- ITAA 1936 23AF

- ITAA 1936 23AF(11)

- ITAA 1936 23AF(12)

- ITAA 1936 23AF(13)

- ITAA 1936 23AF(14)

- ITAA 1936 23AG

- TAA 1953 Part IVAAA

ATO References

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