


***CR 2004/18 - Income tax: assessability of income:
Department of Treasury and Australian Office of
Financial Management employees deployed to the
Solomon Islands***

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Class Ruling

Income tax: assessability of income:
Department of Treasury and Australian Office
of Financial Management employees deployed
to the Solomon Islands

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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.

Tax law(s)

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

Class of persons

3. The class of persons to which this Ruling applies is Department of Treasury (Treasury) and Australian Office of Financial Management (AOFM) employees who are deployed to the Solomon Islands Economic Stabilisation Team and are residents of Australia for tax purposes.

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 actually carried out is carried out in accordance with the arrangement described below at paragraphs 9 to 18 of this Ruling.

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

- (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- (b) this Ruling may be withdrawn or modified.

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Date of effect

8. This Ruling applies from 1 July 2003. However, the Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Ruling (see paragraphs 21 to 22 of Taxation Ruling TR 92/20). Furthermore, the Ruling only applies to the extent that:

- it is not later withdrawn by notice in the *Gazette*;
- it is not taken to be withdrawn by an inconsistent later public ruling; or
- the relevant tax laws are not amended.

Arrangement

9. The arrangement that is the subject of this 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 a Class Ruling dated 28 October 2003;
- Treasury (including AOFM) Terms and Conditions for deployment to the Solomon Islands Economic Stabilisation Team; and
- further information provided by the applicant.

10. As part of the Regional Assistance Mission to the Solomon Islands (RAMSI), the Australian Government has decided to send an Economic Stabilisation Team (the Team) to the Solomon Islands to develop sustainable economic and budget processes for that country's Government. The initial period of deployment of the Team will be up to 16 months, but it is likely to extend beyond that period. The Team includes officers from the Treasury and the AOFM and is integral to the Australian Government's effort to provide security, law enforcement and economic stabilisation to the Solomon Islands.

11. Treasury and AOFM officers will be deployed to the Team for a period specified by the Secretary to the Treasury (the Secretary) and those officers will continue to be employees of the Treasury and the AOFM during that period. The period of deployment will be at least 91 days with an expected average of approximately 6 months.

12. The Secretary may at any time direct an employee to return to Australia. If such a direction is given, the employee must comply with it immediately. An employee returning to Australia on compassionate grounds may be redeployed at a later date, after the reason for the employee's return no longer exists. An employee may elect to return from the posting prior to the agreed date following an application to that effect from the employee being considered by the Secretary.

13. Salary and other remuneration entitlements will continue to be paid to the Treasury and AOFM employees on a fortnightly basis during deployment. Officers on posting will be paid a higher duties allowance for a level one above their substantive classification.

14. Treasury and AOFM employees will also be entitled to:

- a Meals and Incidentals Allowance of \$63 per day; and
- a Hardship Allowance of \$100 per day.

These allowances are consistent with the schedule of allowances as determined by the Department of Foreign Affairs and Trade.

15. In addition, on deployment to the Solomon Islands, Treasury and AOFM employees are entitled to a Composite Allowance comprising a Basic Equipment Allowance and a Clothing Allowance. Each employee is only entitled to these allowances once, regardless of subsequent additional deployments to the Solomon Islands or other

overseas destinations. In exceptional circumstances, and at the discretion of the Secretary, officers may receive at any time additional monetary or other benefits to supplement the salary and benefits provided above.

16. Each employee is entitled to a stand-down or reunion visit every 6 weeks while on deployment to the Solomon Islands, subject to agreement by the Under-Secretary of the Team (the Under-Secretary). The stand-down will be for a period of up to 5 days (depending on flight availability) and is designed for personal recreation and professional purposes. The project will meet the cost of a Canberra-return economy class trip as part of this arrangement. Whilst in Australia the employee will usually be required to attend a debriefing session or conduct a presentation on the project. Allowances will not be paid while the employee is on stand-down in Australia. Alternatively the employee may use this entitlement to pay for a person to visit them in Honiara. In either circumstance, only the travel or compulsory stopover costs will be met by the project, all other costs will be the employee's responsibility.

17. Treasury and AOFM employees, while deployed to the Team, will be able to take recreation leave only at the discretion of the Under-Secretary. In general, employees will not be expected to take recreation leave. However, short absences may be agreed by the Under-Secretary as part of a Time Off in Lieu of overtime arrangement (TOIL) where hours in excess of expected have been worked.

18. Article 16.6 of the 'Agreement between Solomon Islands, Australia, New Zealand, Fiji, Papua New Guinea, Samoa and Tonga concerning the operations and status of the police and armed forces and other personnel deployed to Solomon Islands to assist in the restoration of law and order and security' (the RAMSI Agreement) provides that members of the visiting contingent to the Solomon Islands as part of RAMSI shall be exempt from taxation by the Solomon Islands government on their pay and other emoluments. The Solomon Islands' *Facilitation of International Assistance Act 2003* gives legal effect to Article 16.6 of the RAMSI Agreement.

Ruling

19. The salary and allowances referred to at paragraphs 13, 14, and 15 of this ruling, derived by an employee of the Treasury or AOFM described in paragraph 3 of this ruling deployed to the Solomon Islands as part of RAMSI, are exempt from income tax under section 23AG of the ITAA 1936 where:

- the employee has been engaged, or is taken to have been engaged, in service in the Solomon Islands for a continuous period of not less than 91 days; and
- the salary and allowances are derived from that foreign service.

Explanation

20. As there is no double taxation agreement between Australia and the Solomon Islands, the taxation consequences of this arrangement need only be considered with reference to the domestic tax law of Australia.

21. Section 23AG of the ITAA 1936 provides a general exemption from income tax on the foreign earnings derived from foreign service by an Australian resident taxpayer who has been engaged in that foreign service continuously for 91 days or more.

22. Subsection 23AG(1) states:

Where a resident, being a natural person, has been engaged in foreign service for a continuous period of not less than 91 days, any foreign earnings derived by the person from that foreign service is exempt from tax.

23. The basic tests for the exemption of foreign employment income in subsection 23AG(1) are:

- the taxpayer must be a ‘resident of Australia’;
- be engaged in ‘foreign service’;
- for a continuous period of not less than 91 days; and
- derive ‘foreign earnings’ from that ‘foreign service’.

However, certain foreign earnings that meet these tests may not be exempt (see paragraph 45).

Resident of Australia

24. The determination of a person’s residency status depends on that person’s circumstances and is a determination made in relation to each year of income. For further information see Income Tax Ruling IT 2650. This Class Ruling only applies to the class of persons described in paragraph 3 who remain Australian residents for tax purposes during their deployment to the Solomon Islands.

25. However, it is expected that Treasury and AOFM employees deployed to the Solomon Islands as part of RAMSI will remain

residents of Australia for tax purposes throughout the period of their deployment.

Engaged in Foreign Service

26. 'Foreign service' is defined as '*service in a foreign country as a holder of an office or in the capacity of an employee*' (subsection 23AG(7)).

27. The term 'employee' is defined within subsection 23AG(7) to include '*a person employed by a government or an authority of a government or by an international organisation*'.

28. Treasury or AOFM employees referred to in paragraph 3 of this ruling are considered to meet the above definition of an 'employee'.

29. Deployment to the Team constitutes 'foreign service' as those employees are undertaking '*service in a foreign country as a holder of an office or in the capacity of an employee*'.

Continuous period of not less than 91 days

30. Each Treasury and AOFM employee deployed to the Team is expected to serve continuously in the Solomon Islands for a period of at least 91 days. These periods of 'foreign service', if met, meet the test that Australian residents working overseas must be engaged 'for a continuous period of not less than 91 days'.

31. Should an employee depart the Solomon Islands prior to the completion of 91 days of continuous service, that employee will normally be ineligible for the exemption.

32. In certain instances, an employee who departs the Solomon Islands prior to serving the necessary number of days, may still qualify for exemption if they return to continue their posting at a later date (refer to Taxation Ruling TR 96/15).

Temporary Absences

33. Subsection 23AG(6) and paragraph 11 of TR 96/15 treat certain temporary absences from foreign service as forming part of the period of foreign service.

34. This includes absences on recreation leave, other than:

- leave wholly or partly attributable to a period of service or employment other than the foreign service;
- long service leave, furlough, extended leave or leave of a similar kind (however described); or

- leave without pay or on reduced pay.

35. Where a Treasury or AOFM employee is temporarily absent from foreign service due to any of the absences referred to in paragraph 34, these absences will be taken to form part of the period of foreign service.

36. In respect of periods spent by Treasury and AOFM employees on stand-downs and TOIL entitlements, these periods are temporary absences from duty authorised by the terms and conditions of the employee's foreign service and are taken to form part of the employee's foreign service period.

Foreign Earnings

37. The definition of 'foreign earnings' is also contained in subsection 23AG(7), which provides that:

foreign earnings means income consisting of earnings, salary, wages, commission, bonuses or allowances but does not include any payment, consideration or amount that:

- (a) is included in assessable income under Subdivision AA of Division 2; or
- (b) is excluded from the definition of '**eligible termination payment**' in subsection 27A(1) because of paragraph (ja), (k), (ka), (m), (ma), (n) or (p) of that definition.

38. The exclusions to the definition of 'foreign earnings' at paragraphs (a) and (b) above are not relevant to this arrangement as they relate to pensions, annuities, eligible termination payments and other similar amounts.

39. The remuneration of deployed Treasury and AOFM officers takes the form of an annual salary entitlement and the payment of various allowances (see paragraphs 13, 14 and 15 of this ruling).

40. These salary and allowances are specifically included in the subsection 23AG(7) definition of 'foreign earnings'.

41. Whilst the salary of Treasury and AOFM employees may be paid into financial institutions in Australia, those 'earnings' are still considered '...foreign earnings'.

From that foreign service

42. To qualify for the exemption the 'foreign earnings' must be derived from that 'foreign service'. That does not mean that the foreign earnings need to be derived at the time of engaging in foreign service. The important test is that the foreign earnings, when derived,

need to be derived as a result of the undertaking of that foreign service.

43. In the case of allowances paid after a person returns to Australia that relate to the period of foreign service, such allowances are treated as foreign earnings derived from that foreign service. Also, any advances against salary or allowances paid to a taxpayer prior to the undertaking of foreign service arising from the undertaking of that foreign service would be treated as foreign earnings from foreign service.

44. The salary that is paid when taking recreation leave that accrued during the period of foreign service is also considered to be foreign earnings from that foreign service, even though the recreation leave may be taken after the completion of the foreign service.

Certain foreign earnings which are not exempt

45. Subsection 23AG(2) of the ITAA 1936 provides that no exemption is available under subsection 23AG(1) in circumstances where an amount of foreign earnings derived from service in a foreign country is exempt from tax in the foreign country solely because of:

- a double tax agreement or a law of a country that gives effect to such an agreement (paragraphs 23AG(2)(a) and (b));
- the law of a foreign country generally exempts from, or does not provide for the imposition of income tax on income derived in the capacity of an employee, income from personal services or any other similar income (paragraphs 23AG(2)(c) and (d)); or
- a law or international agreement dealing with privileges and immunities of diplomats or consuls or of persons connected with international organisations applies (paragraphs 23AG(2)(e),(f) and (g)).

46. The privileges and immunities of persons connected with an international organisation do not apply to the situation in the Solomon Islands.

47. The foreign earnings derived by Treasury and AOFM employees in the Solomon Islands are not caught by subsection 23AG(2) as employee earnings are not exempt, under a general provision from income tax in the Solomon Islands.

48. However, if the foreign earnings are exempt from tax in the foreign country because of another reason (for example, a Memorandum of Understanding [MOU] and/or a specific exemption in the foreign country's tax law), subsection 23AG(2) will not apply to

deny the exemption under subsection 23AG(1). This is because the foreign earnings are not exempt in the foreign country **solely** because of events listed in that subsection – the foreign earnings are also exempt because of the MOU and/or specific exemption which is not a reason listed in subsection 23AG(2).

49. Article 16.6 of the RAMSI Agreement and the *Facilitation of International Assistance Act 2003* provide that personnel deployed to the Solomon Islands as part of RAMSI shall be exempt from taxation by the Solomon Islands government on their pay and other emoluments. Accordingly, the foreign earnings of Treasury and AOFM employees will be exempt in the Solomon Islands for a reason other than those listed in subsection 23AG(2). Therefore, subsection 23AG(2) will not apply to deny the exemption under subsection 23AG(1).

Exemption with progression

50. The ‘foreign earnings’ of employees that are exempt from Australian tax under section 23AG are nevertheless taken into account in calculating the Australian tax on other assessable income derived by the employee (subsection 23AG(3)).

51. Tax on other assessable income will be calculated by applying to the non-exempt income (for example, Australian salary, investment income), the notional average rate of tax payable on the sum of exempt income and non-exempt income.

52. Any deductions that relate to the exempt income are allowed as if the exempt income was assessable income. That is, expenses which relate directly to earning income in the Solomon Islands are deductible from exempt income.

Example

53. In the 2003 - 2004 income year, Ryan, a Treasury employee derived the following types of income:

- Australian employment income after deductions of \$45,000;
- Overseas employment income after deductions of \$15,000.

The total amount of Australian tax payable on Ryan's income will be calculated with reference to the following formula:

<i>Notional gross tax</i>	<i>x</i>	<i>Other taxable income</i>
<i>Notional gross taxable income</i>		

Step 1

Ryan's ***notional gross taxable income*** is \$60,000 (\$45,000 + \$15,000)

Step 2

The ***notional gross tax*** is \$16,032 (the normal Australian income tax and Medicare levy payable on a taxable income of \$60,000 – this does not include Medicare levy surcharge as Ryan has appropriate private patient hospital cover).

Step 3

The ***other taxable income*** is \$45,000 (Australian employment income)

Step 4

The Australian tax payable (including Medicare levy) on Ryan's Australian income is:

$$(\$16,032 / \$60,000) \times \$45,000 = \$12,024.00$$

Detailed contents list

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Commissioner of Taxation

25 February 2004

Previous draft:

Not previously released in draft form.

*Related Rulings/Determinations:*CR 2001/1, TR 97/16, TR 96/15,
TR 92/20, TR 92/1, IT 2650*Subject references:*

- Foreign exempt employment income
- foreign income
- foreign salary & wages
- foreign source income
- international tax
- overseas countries
- overseas tax laws
- residence of individuals
- Solomon Islands

Legislative references:

- ITAA 1936 23AG
- ITAA 1936 23AG(1)
- ITAA 1936 23AG(2)
- ITAA 1936 23AG(2)(a)
- ITAA 1936 23AG(2)(b)
- ITAA 1936 23AG(2)(c)

- ITAA 1936 23AG(2)(d)
- ITAA 1936 23AG(2)(e)
- ITAA 1936 23AG(2)(f)
- ITAA 1936 23AG(2)(g)
- ITAA 1936 23AG(3)
- ITAA 1936 23AG(6)
- ITAA 1936 23AG(7)
- ITAA 1936 27A(1)
- ITAA 1936 27A(1)(ja)
- ITAA 1936 27A(1)(k)
- ITAA 1936 27A(1)(ka)
- ITAA 1936 27A(1)(m)
- ITAA 1936 27A(1)(ma)
- ITAA 1936 27A(1)(n)
- ITAA 1936 27A(1)(p)
- TAA 1953 Pt IVA
- Copyright Act 1968
- Facilitation of International Assistance Act 2003 (SI)

ATO References

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