

TR 92/D26 - Income tax: Taxation privileges and immunities of prescribed International Organisations and their staff



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DRAFT TAXATION RULING TR 92/D26

We invite you to comment on this Draft Taxation Ruling. We are allowing six weeks for comments before we finalise the Ruling. If you want your comments considered, please get them to us within this period.

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TITLE Income tax: Taxation privileges and immunities of prescribed International Organisations and their staff.

LAST DAY FOR
COMMENTS : 1 October 1992

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NOTE:

- . Draft Taxation Rulings (DTRs) represent the preliminary, though considered, views of the Australian Taxation Office.
- . Draft Taxation Rulings may not be relied on by taxation officers, taxpayers and practitioners. It is only final Taxation Rulings which represent authoritative statements by the Taxation Office of its stance on the particular matters covered in the Ruling.

COMMISSIONER OF TAXATION

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Draft Taxation Ruling

Income tax: taxation privileges and immunities of prescribed
International Organisations and their staff

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What this Ruling is about

1. This Ruling describes the operation of privileges and immunities relating to taxation that apply to International Organisations and persons working for these organisations. International Organisations include the United Nations organisations, the OECD, the International Court of Justice and the International Atomic Energy Agency.
2. The privileges and immunities law is administered by the Department of Foreign Affairs and Trade (DFAT), and in this regard this Ruling reflects the views of both the DFAT and the Australian Taxation Office (ATO).

Ruling

A. The International Organisation

3. An International Organisation may be accorded privileges and immunities in the nature of exemption from income tax to the extent described in the First Schedule to the *International Organizations (Privileges and Immunities) Act 1969* (IO(P+I)A). Exemption from liability to tax (other than importation or exportation duties) may be provided for the organisation, its income, property, assets and transactions and the organisation may be exempt from the liability to collect taxes¹. Exemption

¹ Paragraph 7 of the First Schedule of the IO(P+I)A.

from taxes may also be provided for obligations and securities issued or guaranteed by the organisation, and interest and dividends on such obligations and securities².

4. To determine whether and to what extent exemptions may apply to a particular International Organisation, it is necessary to examine the regulations for that organisation made under the IO(P+I)A. For example, while the exemption from liability to tax is available to a number of organisations, including the United Nations organisations and Specialised Agencies, it is restricted³ or not available at all to other organisations. In this regard, a comprehensive list of organisations and their related regulations is attached to this Ruling.

5. The exemption in respect to taxes of obligations and securities and related interest and dividends has generally not been made available to International Organisations⁴.

B. Persons engaged by the organisation

6. Persons engaged by an International Organisation may be accorded privileges and immunities in the nature of exemption from taxation as described in the Second, Third, Fourth and Fifth Schedules to the IO(P+I)A. Tax exemptions may be available to a High Officer, Representative, Officer, or expert or consultant. As with the organisation itself, it is necessary to examine the regulations of the particular International Organisation to ascertain what taxation exemptions, if any, a person may be entitled to.

Holder of a High Office

² Paragraph 8 of the First Schedule of the IO(P+I)A.

³ eg, the regulations for the Bank of International Settlement provide exemption from tax on income or gains the Bank derives from investments in Australia, if that income or gain would be subject to withholding tax under section 128B(5) of the Income Tax Assessment Act 1936 (ITAA) if it were not so exempt or would be included in the assessable income of the Bank under sections 26BB or 26C of the ITAA.

⁴ An exception is the Common Fund for Commodities where exemption is provided under regulation 5 of Statutory Rules 1985 No 20. However, the exemption is restricted under subregulation 7(4) to taxes:

- that apply only because the obligations or securities are issued or guaranteed by the Fund; and
- that would not apply but for the location of an office or other place of business of the fund or the place at which, or the currency in which, the obligations or securities were issued, made payable or paid.

7. This phrase usually refers to the senior officer and his or her deputy, i.e., the Secretary-General, Director, etc., of the organisation. This person may have the privileges and immunities equivalent to those of a diplomatic agent⁵ - i.e., a diplomatic agent under the Vienna Convention on Diplomatic Relations. These privileges and immunities include exemption from all dues and taxes, personal or real, national, regional or municipal, subject to a number of exceptions including taxes on private immovable property in Australia, private income sourced in Australia and investments in commercial undertakings in Australia⁶.

Representative

8. A representative accredited to, or attending a Conference convened by an International Organisation may also be accorded like privileges and immunities of a diplomatic agent, including those relating to taxation as referred to in the preceding paragraph⁷.

Holder of an office

9. A holder of an office in an International Organisation may have exemption from tax on salaries and emoluments received from the organisation⁸.

10. However it is usual to provide in the regulations relating to that particular organisation that in the case of an official who is a resident of Australia, the remuneration received by that person is not, to the extent to which they are for services rendered in Australia, exempt from taxation unless the person is not an Australian citizen and came to Australia solely for the purpose of performing the duties of the office in the Agency held by him or her. This requirement does not apply in respect of all prescribed International Organisations.

Experts/consultants

⁵ Part 1 of the Second Schedule of the IO(P+I)A.

⁶ see Article 34 of the Vienna Convention on Diplomatic Relations.

⁷ Paragraph 7 of Part 1 of the Third Schedule of the IO(P+I)A.

⁸ Paragraph 2 of Part 1 of the Fourth Schedule of the IO(P+I)A.

11. Persons serving on a Committee or participating in the work of, or performing a Mission on behalf of an International Organisation may be accorded exemption from tax on salaries and emoluments received from the organisation⁹.

12. This usually covers experts and consultants engaged by the organisation. Generally, Australia's policy is that experts and consultants are not exempt from tax in Australia. However, limited exemption has been provided under regulations in the following cases - Asian Development Bank¹⁰, Common Fund for Commodities,¹¹ Customs Cooperation Council and the International Court of Justice.

Pensions

13. A pension received from a prescribed International Organisation is not exempt from tax in Australia as the IO(P+I)A does not extend tax exemptions to a former officer of an International Organisation.

14. The assessability of pensions paid by an International Organisation came before the Board of Review¹² where a pension recipient sought exemption from tax under former paragraph 23(y) of the *Income Tax Assessment Act 1936* (ITAA). The Board dismissed the taxpayer's claim that the pension was an emolument of an official of a prescribed organisation, holding that the term 'emolument' related to a monetary benefit paid to a serving officer, rather than as including pension payments to a former official. Consequently, the pension received as a result of former employment with the United Nations was not exempt under former paragraph 23(y).

Exemption with progression

15. Salaries or emoluments that are exempt from Australian tax under the privileges and immunities legislation are not taken into account in calculating the Australian tax on other assessable

⁹ Paragraph 2A of Part 1 of the Fifth Schedule of the IO(P+I)A.

¹⁰ The exemption is denied if the person is an Australian resident and the services are rendered in Australia, unless the person is not an Australian citizen and came to Australia solely to perform his or her duties.

¹¹ The exemption is denied if the person is an Australian citizen.

¹² Case 1990, 80 ATC 648, 24CTBR(NS) Case 65.

income derived by the person. This is in contrast to foreign earnings of a person working overseas that are exempt from Australian tax under sections 23AF or 23AG of the ITAA. These earnings are subject to what is generally referred to as 'exemption with progression', where they are taken into account in calculating the Australian tax on other assessable income the person has derived.

Date of effect

16. This Ruling (that is, the final Taxation Ruling based on this Exposure Draft Taxation Ruling) sets out the current practice of the Australian Taxation Office and is not concerned with a change in interpretation. Consequently, it applies (subject to any limitations imposed by statute) for years of income commencing both before and after the date on which it is issued.

Explanations

Background

17. Under its domestic law Australia declares its right to impose income tax generally on the world-wide income of Australian residents (as defined in the ITAA) and on the Australian source income of non-residents. Departure from these principles, in the form of privileges and immunities, are contained in specific provisions of Australia's domestic law.

18. Prior to 1988, Income Tax Regulation 4AB prescribed for the purposes of the application of paragraphs 23(x) and (y) of the ITAA, those organisations which were to be exempted from Australian income tax liability and the extent to which officials of such organisations were also to be exempt from Australian income tax on their official salaries and emoluments. Income Tax Regulation 4AB and paragraphs 23(x) and (y) of the ITAA were repealed in 1988 because their application was duplicated in regulations made under the IO(P+I)A.

19. With this repeal, all privileges and immunities of International Organisations and their staff are now governed by the IO(P+I)A and the regulations of the particular International Organisation made under that Act. As a consequence,

administration of privileges and immunities in relation to International Organisations was passed from the ATO to the DFAT.

Set up of current law

20. The legal framework for providing privileges and immunities in respect of International Organisations generally consists of three parts:

- (a) **an international obligation.** Generally, Australia may enter an international obligation in the form of an international agreement (usually a convention) or undertake to accept arrangements provided in the Articles of Association of a particular organisation. An example of the former is, in the case of Specialised Agencies of the United Nations, the Convention on Privileges and Immunities of Specialised Agencies of the United Nations. An international agreement establishes an international obligation to give internal effect to the terms of the agreement through the legislative process, but usually does not in itself provide enforceable rights.
- (b) **the relevant Act** The IO(P+I)A is the legislative vehicle for the privileges and immunities of International Organisations. The Act provides a broad framework for the privileges and immunities that may be accorded and a basis and power for regulations to be made. The Act has five Schedules stating the type and extent of privileges and immunities that may be granted to the organisation, a high office, a person attending conferences as a representative, a holder of an officer, and a person attending committees or participating in the work of or performing a mission on behalf of the organisation.
- (c) **enabling regulations.** Privileges and immunities generally do not arise unless and until enabling regulations are made (e.g., Specialised Agencies (Privileges and Immunities) regulations). Not all the privileges and immunities contained in the Act, or in the respective Convention or Articles of Association, are necessarily granted under the regulations. To determine whether income tax exemptions apply, and what those exemptions are, it is necessary to

examine the regulations of the particular International Organisation.

Regulations

21. A list of all organisations and their related regulations prescribed under the IO(P+I)A is attached.

Commissioner of Taxation

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ATO references

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- consultants
- exemption with progression
- experts
- high officials
- holders of an office
- international organisations
- officials
- pensions
- privileges and immunities
- regulations
- representatives

legislative references

- International Organisations (Privileges and Immunities) Act 1963
- ITAA 23AF; ITAA 23AG

case references

- Case M90 80 ATC 648, 24CTBR(NS) Case 65.

ATTACHME

Regulations prescribed under the IO(P+I) Act 1963

<u>Title</u>	<u>Statutory Rul</u>	
	<u>Year</u>	<u>N</u>
Asian Development Bank	1986	7
	1983	1
	1972	1
	1969	5
	1967	1
Asia-Pacific Telecommunity	1981	6
Asian and Pacific Development Centre	1983	1
Association of Iron Ore Exporting Countries	1982	1
Association of Tin Producing Countries	1984	8
Australia-Indonesia Zone of Cooperation	1991	4
	1990	2
Bank for International Settlements	1989	2
CAB International	1990	2
Commission for the Conservation of Antarctic Marine Living Resources (*repealed by S.R. 1985 No. 327)	1985	3
	1984	1
	1983	2
	1982	1
	1981	2
Common Fund for Commodities	1985	2
Commonwealth Secretariat (*repealed by S.R. 1972 No. 175)	1986	7
	1982	1
	1972	1
	1971	7
Customs Cooperation Council	1979	7

European Bank for Reconstruction and
Development

1992

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<u>Title</u>	<u>Statutory Rules</u>	
	<u>Year</u>	<u>No.</u>
European Economic Community (Declaration as an Overseas Organisation)	1986	184
European Launcher Development Organisation (*repealed by S.R. 1978 No. 215)	1978 1968	215 158*
INTELSAT	1984	283
International Organisation for Migration (*repealed by S.R. 1991 No. 457)	1991 1990 1986	457 143* 69*
International Atomic Energy Agency	1986 1986 1871	72 68 30
International Bauxite Association	1976	251
International Centre for Settlement of Investment Disputes	1991	42
International Cocoa Organisation (*repealed by S.R. 1991 No. 260)	1991 1973	260 198*
International Coffee Organisation (*repealed by S.R. 1991 No. 259)	1991 1978	259 214*
International Court of Justice	1986 1967	73 80
International Exhibitions Bureau	1989 1986 1973	339 239 174
International Jute Organisation	1984	52
International Lead and Zinc Study Group	1982	151
International Maritime Satellite Organisation	1982	210

<u>Title</u>	<u>Statutory Rul</u>	
	<u>Year</u>	<u>N</u>
International Organisations (Declaration)(Repeal) (*repealed by S.R.1986 No.65)	1986	6
	1982	1
	1981	3
International Organisations (Privileges and Immunities)(Repeal) (#repealed by S.R.1986 No.63)	1986	6
	1963	1
International Organisations (Privileges and Immunities of Specialised Agencies)(Repeal) (*repealed by S.R.1986 No.64)	1986	6
	1962	1
International Sugar Organisation	1984	4
	1982	1
	1978	2
International Tin Council (*repealed by S.R.1991 No. 261)	1991	2
	1982	1
International Tropical Timber Organisation	1984	4
International Wheat Organisation	1982	1
Organisations associated with the Asian and Pacific Council (*repealed by S.R.1986 No.111) (#repealed by S.R.1972 No. 52)	1986	6
	1972	3
	1968	8
	1969	1
	1968	5
Organisation for Economic Cooperation and Development	1983	7
SITA (Societe Internationale de Telecommunications Aeronautiques)	1989	2
South East Asia Treaty Organisation (Repeal) (*repealed by S.R.1986 No.57)	1986	5
	1967	5
South Pacific Bureau for Economic	1986	7

Cooperation

1973

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<u>Title</u>	<u>Statutory Rules</u>	
	<u>Year</u>	<u>No.</u>
South Pacific Commission	1986	75
	1970	171
South Pacific Forum Fisheries Agency	1984	476
South Pacific Nuclear Free Zone Consultative Committee	1986	359
Specialised Agencies	1991	319)
	1989	341
	1986	240
	1986	67)
Tuvalu Trust Fund	1987	241
Twelfth Antarctic Treaty Consultative Meeting (Repeal) (*repealed by S.R.1986 No.56) (#repealed by S.R.1986 No. 55)	1986	56
	1986	55
	1983	151*
	1983	32#
United Nations	1986	241
	1986	66
World Tourism Organisation (Repeal) (*repealed by S.R.1989 No.340)	1989	340)
	1984	276*)