TD 92/D187 - Income tax: are overseas students who are in Australia on short-term vocational experience entitled to a tax-free threshold?

This cover sheet is provided for information only. It does not form part of *TD 92/D187 - Income tax: are overseas students who are in Australia on short-term vocational experience entitled to a tax-free threshold?*

This document has been finalised by TD 93/223.

Draft Taxation Determinations (TDs) represent the preliminary, though considered, views of the ATO. Draft TDs may not be relied on; only final TDs are authoritative statements of the ATO.

Draft Taxation Determination

Income tax: are overseas students who are in Australia on short-term vocational experience entitled to a tax-free threshold?

1. As non-residents, overseas students who are in Australia on short-term vocational experience are not entitled to a tax-free threshold. Although each case must be decided on its merits these students are almost always non-residents. Only rarely would a vocational experience student meet the tests of residency set out in subsection 6(1) of the *Income Tax Assessment Act 1936*. Guidelines on applying these residency tests are set out in IT 2607.

2. Some of Australia's international tax agreements have provisions that specifically relate to students, but these provisions only refer to income derived outside of Australia. There are no provisions in Australia's international tax agreements that provide vocational experience students with a tax-free threshold.

3. As non-residents the vocational experience students have no tax-free threshold and are taxed from the first dollar of income derived in Australia. (*Income Tax Rates Act 1986*)

Note 1: In this Determination the phrase 'short-term vocational experience' refers to overseas students who are in Australia for periods of 12 months or less on work experience that is related to their overseas course of study. This may also be combined with a holiday in Australia.

Note 2: IT 2268 sets out a general rule to be applied to students attending courses in Australia that extend beyond six months. Although they are studying overseas, these vocational experience students are not studying in Australia. Therefore IT 2268 cannot be applied. Accordingly, even if their stay extends beyond six months these students could not be considered to be residing in Australia under the general rule set out in IT 2268.

Example

> *Kim, a UK geology student, is in Australia on a vocational exchange scheme. Kim is working in paid employment for three months at a large mine. At the end of this period, Kim spends a further four months holidaying in Australia before going home. As Kim is not residing in Australia in the ordinary sense, Kim is not an Australian resident. Accordingly, Kim will be taxed at non-resident rates from the first dollar of income derived in Australia, i.e. no tax-free threshold applies.*

Commissioner of Taxation
29/10/92

FOI INDEX DETAIL: Reference No.

Related Rulings: IT 2268; IT 2607

Subject Ref: short-term vocational experience; overseas students; non-residents; tax-free threshold

Legislative Ref: ITAA 6(1); Income Tax Rates Act 1986 Schedule 7, Part II

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