TD 93/D220 - Income tax: does the definition of "France" in the Protocol to the Australia-France Double Tax Agreement include the French Territories?

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Australian Taxation Office

Taxation Determination TD 93/D220

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Draft Taxation Determination

Income tax: does the definition of "France" in the Protocol to the Australia-France Double Tax Agreement include the French Territories?

1. No. Article 1(a) of the Protocol to the Australia-France Double Tax Agreement ("the Protocol") defines France as follows:

> "the term 'France' means the European and Overseas Departments of the French Republic and includes the territorial sea and, beyond that, those areas over which, in conformity with international law, the French Republic has sovereign rights with respect to the exploration and exploitation of the resources of the marine depths, their sea-bed and the overlying waters."

2. According to the *French Business Law Guide* (J C Newman, CCH Editions Ltd, 1984) Metropolitan France, consisting of continental France and Corsica, is divided into 96 geographic units called *départements.* In addition, there are four overseas departments: Guadeloupe, Martinique, Réunion and French Guiana.

3. The definition of France in the Protocol clearly does not include the overseas territories, which the *French Business Law Guide* lists as New Caledonia, French Polynesia, Wallis and Futuna Island, French Indian Ocean Islands, French Antarctica, Oceana Territories, Mayotte, St. Pierre and Miguelon.

4. Note that Article 27 of the Australia-France Double Tax Agreement ("the DTA") provides for Letters to be exchanged through diplomatic channels to extend the DTA to any Overseas Territory which imposes taxes substantially similar in character to those to which the DTA applies. To date no such Letters have been exchanged.

Commissioner of Taxation
26/8/93

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