


***TD 93/D277 - Income tax: is income to which Australia has no taxing right, because of a double tax agreement but which is also exempt from tax under sections 23AF or 23AG of the Income Tax Assessment Act 1936, included in the "exempt amount" for the purpose of the exemption with progression calculation?***

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This document has been finalised by [TD 94/58](#).



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.

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## Draft Taxation Determination

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**Income tax: is income to which Australia has no taxing right, because of a double tax agreement but which is also exempt from tax under sections 23AF or 23AG of the *Income Tax Assessment Act 1936*, included in the "exempt amount" for the purpose of the exemption with progression calculation?**

1. No. The references in subsections 23AF(17A) and 23AG(3) to "an amount that is exempt from tax under this section" apply in respect of income that only qualifies for exemption by reason of sections 23AF or 23AG and not for any other reason.

*Example*

*An Australian resident renders service to the Swedish Government. The service is performed in Sweden. The service constitutes "foreign service for a continuous period of not less than 91 days" as required by subsection 23AG(1). Article 19 of the Sweden/Australia Double Tax Agreement allocates to Sweden the sole taxing right over any remuneration received in respect of this service. This remuneration will not be taken into account for the purposes of the calculation of Australian tax payable on other income.*

**Commissioner of Taxation**

11/11/93

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FOI INDEX DETAIL: Reference No.

Related Determinations: TD 93/D176

Related Rulings: IT 2563

Subject Ref: double tax agreements; exempt income; foreign source income; overseas employment income

Legislative Ref: ITAA 23AF; ITAA 23AG

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