IT 2441 - Income tax : section 23AG : foreign service period that commenced before 1 July 1987 or straddles more than one income year : determination of period of foreign service

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TAXATION RULING NO. IT 2441

INCOME TAX : SECTION 23AG : FOREIGN SERVICE PERIOD THAT COMMENCED BEFORE 1 JULY 1987 OR STRADDLES MORE THAN ONE INCOME YEAR : DETERMINATION OF PERIOD OF FOREIGN SERVICE

F.O.I. EMBARGO: May be released

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REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1218722	EXEMPTION OF INCOME EARNED DURING A CONTINUOUS PERIOD OF FOREIGN SERVICE	23AG

PREAMBLE Section 23AG provides that earnings derived by an Australian resident individual from a continuous period of foreign service (as the holder of an office or as an employee) are, depending on the length of the foreign service, fully or proportionately exempt from Australian income tax, provided the foreign earnings are not exempt from income tax in the country of source and any tax liability has been or will be paid. The section is first applicable to assessments for the year of income commencing on 1 July 1987.

2. A full exemption applies where a continuous period of foreign service is not less than 365 days (subsection 23AG(1)) and a proportionate exemption applies where a continuous period of foreign service is less than 365 days but not less than 91 days (subsection 23AG(2)). However, the exempted foreign earnings are required to be taken into account in determining the rate of Australian income tax on the recipient's other income (subsection 23AG(4)).

3. Foreign earnings derived by a resident of Australia prior to 1 July 1987 and in respect of which tax has been, or will be, paid in the country of source would, under paragraph 23(q) or 23(qa), normally be fully exempt from Australian income tax irrespective of the length of the continuous period of foreign service. In respect of a period of foreign service that commenced in the 1986/87 or an earlier income year (i.e., prior to the commencement of section 23AG) and concludes in the 1987/88 income year, advice has been requested regarding the continuous period of foreign service to be taken into account for the purpose of determining the exempt amount of foreign earnings derived in the 1987/88 income year. Confirmation has also been sought that, where a continuous period of foreign service commences in the 1987/88 income year or a later income year and terminates in another income year, the entire period of that service is to be taken into account

for the purposes of determining the application of section 23AG in each income year.

4. Clarification has also been sought as to whether the approach reflected in Taxation Ruling IT 2015 (concerning the application of section 23AF) would also apply in relation to section 23AG. That Ruling deals with the position for purposes of section 23AF of an employee engaged to work on an oil drilling project outside Australia - being an approved project under that section - on the basis of cycles of 5 weeks work on site and 5 weeks leave in Australia. It determines that such an employee will be taken to have been engaged on an approved project for a period of qualifying service equal to the total number of days that employee is engaged under the 5 weeks cyclical arrangement.

RULING Position where period of service commenced before 1 July 1987 or straddles more than one income year

5. There is nothing in section 23AG which requires measurement of a continuous period of foreign service from a time commencing on or after 1 July 1987 or on a year of income basis. Accordingly, where such a period of foreign service that commenced before 1 July 1987 continues into and concludes during the 1987/88 income year, the total period of foreign service (i.e., inclusive of the period completed in the 1986/87 income year) is to be taken into account in determining the exempt amount of foreign earnings derived in the 1987/88 income year. Similarly, the entire period of foreign service is to be taken into account in determining the application of section 23AG in relation to each income year when a continuous period of foreign service that commences in the 1987/88 income year or a later year overlaps into another income year.

6. The following examples illustrate the application of this Ruling. The examples assume a rate of remuneration of $2,000 per month under a continuous period of foreign service that :

(a) commenced on 1 April 1987 and concludes on 31 October 1987 (i.e., 214 days).

1986-87 Income Year

Foreign Income	$ 6,000
Amount exempt under paragraph 23(q)or (qa)	$ 6,000
Assessable foreign income	Nil

Foreign Income	$ 8,000
Amount exempt under section 23AG (214/365 x $8,000)	$ 4,690
Assessable foreign income	$ 3,310

(b) commences on 1 May 1988 and concludes on 31 January 1989 (i.e., 276 days)

1987-88 Income Year

Foreign Income	$ 4,000
Amount exempt under section 23AG (276/365 x $4,000)	$ 3,025
Assessable Foreign Income	$ 975

1988-89 Income Year

Foreign Income	$14,000
Amount exempt under section 23AG (276/365 x $14,000)	$10,586
Assessable Foreign Income	$ 3,414

Determination of period of foreign service

7. Consistent with the approach adopted in Taxation Ruling IT 2015, section 23AG will be applied to an Australian resident employed on an oil drilling or other project in a foreign country so as to treat leave taken in circumstances similar to those outlined in IT 2015 as recreation leave to which paragraph 23AG(6)(a) refers - thus forming part of a period of foreign service.

8. Accordingly, an employee who is engaged to work in a foreign country on the basis of an uninterrupted cyclical arrangement of the type described in Taxation Ruling IT 2015 will be taken to have been engaged in foreign service for the purposes of section 23AG for a period equal to the total number of days the employee is engaged under the cyclical arrangement.

COMMISSIONER OF TAXATION
13 August 1987