


TD 2005/37A1 - Addendum - Income tax: does section 23AG of the Income Tax Assessment Act 1936 exempt foreign earnings derived by a member of the Australian Defence Force engaged in foreign service for a continuous period of at least 91 days as part of certain United Nations operations?

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Addendum

Taxation Determination

Income tax: does section 23AG of the *Income Tax Assessment Act 1936* exempt foreign earnings derived by a member of the Australian Defence Force engaged in foreign service for a continuous period of at least 91 days as part of certain United Nations operations?

This Addendum amends Taxation Determination TD 2005/37 to reflect the insertion of section 1AA of *Income Tax Assessment Act 1936* which took effect from 1 July 2009.

TD 2005/37 is amended as follows:

1. Title

Omit the title; substitute:

Income tax: does subsection 23AG(2) of the *Income Tax Assessment Act 1936* apply where a member of the Australian Defence Force is engaged in foreign service for a continuous period of at least 91 days as part of certain UN operations conducted under a UN agreement with a 'host country' which exempts from taxation in that country, the pay and emoluments received from the UN or from a participating State and on any income received from outside the host country?

2. Paragraph 1

(a) Omit 'Yes.'; substitute 'No.'.

(b) Omit 'Australia deploys Australian Defence Force (ADF) personnel as part of the UN Operation'; substitute 'Australia deploys members of the Australian Defence Force (ADF) as part of the UN Operation'.

3. Paragraph 3

After the paragraph; insert:

3A. Note, subsection 23AG(1AA) of the ITAA 1936, which took effect from 1 July 2009, and applies to foreign earnings derived on or after 1 July 2009 from foreign service performed on or after 1 July 2009, provides that foreign earnings will not be exempt under section 23AG of the ITAA 1936 unless the continuous period of foreign service is directly attributable to, amongst other things, the individual's deployment outside Australia as a member of a disciplined force. A disciplined force includes persons performing defence, policing and peacekeeping functions and also those accompanying and providing assistance and support to those so engaged, provided they are subject to the same or similar command structure and rules of conduct as those performing the primary functions of that 'disciplined force'.

4. Paragraph 4

Omit the heading; substitute:

Procedure for deployment of members of the ADF to UN Operations

5. Paragraph 8

Omit 'where Australian Defence Force (ADF) personnel serve'; substitute 'where members of the ADF serve'.

6. Paragraph 13

Omit the second sentence; substitute:

Consequently, all foreign earnings of members of the ADF earned as a result of deployments under the process described in paragraphs 5 to 8 of this Determination, are exempt from tax in Australia under subsection 23AG(1) of the ITAA 1936 (provided the other requirements of section 23AG of the ITAA 1936 are satisfied).

7. Paragraph 16

After 'taxpayer,'; insert ' and member of the ADF'.

8. Paragraph 18

After the paragraph; insert:

18A. Note, subsection 23AG(1AA) of the ITAA 1936, which took effect from 1 July 2009, and applies to foreign earnings derived on or after 1 July 2009 from foreign service performed on or after 1 July 2009, provides that foreign earnings will not be exempt under section 23AG of the ITAA 1936 unless the continuous period of foreign service is directly attributable to, amongst other things, the individual's deployment outside Australia as a member of a disciplined force.

9. Legislative references

Insert:

- ITAA 1936 23AG(1AA)

This Addendum applies on and from 1 July 2009.

Commissioner of Taxation

17 August 2011

ATO references

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ATOlaw topic: Income Tax ~~ Assessable income ~~ employment income - foreign sourced