

TD 2012/8A1 - Addendum - Income tax: what types of temporary absences from foreign service form part of a continuous period of foreign service under section 23AG of the Income Tax Assessment Act 1936?

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Addendum

Taxation Determination

Income tax: what types of temporary absences from foreign service form part of a continuous period of foreign service under section 23AG of the Income Tax Assessment Act 1936?

This Addendum is a public ruling for the purposes of the *Taxation Administration Act 1953*. It amends Taxation Determination TD 2012/8 to clarify that short unexpected work-related absences from the foreign country for reasons related to that foreign service where the person returns to Australia are not to be treated as part of the person's continuous foreign service by the Commissioner.

TD 2012/8 is amended as follows:

1. Preamble

Omit 'appendixes'; substitute 'appendix'.

2. Table of Contents

After the preamble, insert Table of Contents:

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3. Paragraph 1

- (a) Omit footnote 1.
- (b) After 'see Examples 5 and 6', insert 'of this Determination'.
- (c) Omit the dot points; substitute:
 - in accordance with the terms and conditions of that foreign service (that is, the absence is permitted by the employer, whether in an employment contract or under a separate arrangement); and
 - for any of the following reasons
 - recreation leave on full pay that is attributable to the period of foreign service;²
 - because of an accident or illness of the taxpayer; or
 - because of an accident or illness of a person other than the taxpayer, including the death of another person.
- (d) After the paragraph, insert new paragraphs 1A and 1B:

1A. To fall within the definition of 'foreign service', the service must be performed in a foreign country outside Australia. Service on international waters or in international airspace will not count as foreign service.

1B. All further legislative references in this Determination are to the ITAA 1936, unless otherwise indicated.

4. Paragraph 2

- (a) After 'paragraph 1', insert 'of this Determination'.
- (b) After 'Examples 1 and 5', insert 'of this Determination'.

5. Paragraph 3

Omit 'see Explanation at paragraphs 55 and 57 to 59'; substitute 'see paragraphs 55 and 57 to 59 of this Determination'.

6. Paragraph 5

- (a) Omit '1/6'; substitute 'one-sixth'.
- (b) Omit 'see Explanation at paragraphs 74 to 77'; substitute 'see paragraphs 74 to 77 of this Determination'.

7. Paragraph 6

- (a) Omit the first sentence (excluding footnotes); substitute:

A person is not treated as absent from foreign service on days such as weekends, public holidays, rostered days off, days off due to part-time arrangements, flex-days, 'compulsory lay off or lay over days'³, 'grounded days'⁴ and days off in lieu where those days are part of the normal working conditions for the foreign service (see paragraphs 68 to 70 of this Determination).
- (b) In footnote 3, omit 'Compulsory lay off/over days'; substitute 'Compulsory lay off or lay over days'.

8. Paragraph 7

After 'Example 2', insert 'of this Determination'.

9. Paragraph 8

Omit 'and Explanation at paragraphs 78 to 81'; substitute 'and paragraphs 78 to 81 of this Determination'.

10. Paragraph 9

Insert new heading '**Examples**'.

11. Paragraph 12

Omit the wording of the paragraph; substitute:

However, under the one-sixth legislative rule in subsection 23AG(6A) (see paragraphs 74 to 77 of this Determination) the periods of foreign service before and after this one-day break can be added together and treated as a continuous period of foreign service.

12. Paragraph 22

Omit 'see Explanation at paragraphs 78 to 81'; substitute 'see paragraphs 78 to 81 of this Determination'.

13. Paragraphs 34 to 37

Omit the paragraphs, including headings.

14. Paragraph 38

In the heading, omit '1/6'; substitute '**one-sixth**'.

15. Paragraph 39

Omit '*subsection 23AG(6B)– see Explanation at paragraph 75*'; substitute '*subsection 23AG(6B) – see paragraph 75 of this Determination*'.

16. Paragraph 41

Omit the wording of the paragraph; substitute:

This Determination applies both before and after its date of issue.

17. Paragraph 45

Omit the wording of the paragraph; substitute:

This was made clear by Graham J in *Overseas Aircrew Basing Limited v Commissioner of Taxation* [2009] FCA 7 (*Overseas Aircrew Basing*). At [92] of the decision, Graham J pointed out that service *in a foreign country* is not synonymous with service *outside Australia*, and went on to say:

... Section 23AG is directed at, relevantly, exempting from tax in Australia, salaries derived in a foreign country in which those salaries are taxed. It is not directed at exempting from tax in Australia salaries derived in Australia, in Australian airspace, in international airspace, in the airspace of other countries of the world or in other countries to which and from which their employer directs them to fly aircraft.

18. Paragraph 46

(a) Omit 'paragraphs 93 and 94'; substitute '[93] and [94]'.

(b) In the quote, omit 'who are 'actually on the job' in the'; substitute 'who are "actually on the job" in the'.

(c) After the paragraph, insert new paragraph 46A:

46A. The meaning of foreign country in the context of section 23AG was also considered in *Chaudhri v Commissioner of Taxation* [2001] FCA 554^{5A} where Hill, Drummond and Goldberg JJ explained that the term did not include the ocean or any part of it, saying:

11 It may be noted at the outset that the expression "foreign country" is defined, subject to any contrary intention, in s 22(1)(f) of the *Acts Interpretation Act* 1901 (Cth) to mean:

"any country (whether or not an independent sovereign state) outside Australia and the external Territories"

12 We can see nothing in the context which would displace this definition. Indeed, it was not suggested otherwise. But, that still leaves for decision the meaning of the word "country", for it was the meaning of this word which was the focus of the submissions for Mr Chaudhri.

...

29 Ultimately, we think that we should return to the ordinary English use of the word "country" in the context of that being a place where personal service such as employment may be engaged in and where income may be derived. In that context, ordinary usage would

not suggest that the high seas, or for that matter some parts of them, were in a composite sense to be regarded as a country, or for that matter a series of countries. Rather the ordinary meaning of the expression "foreign country" in modern usage looks to a political entity, be that a tract of land, a district, or a group of islands. It does not extend to an ocean or region of the sea.

- (d) In new paragraph 46A, after '*Chaudhri v Commissioner of Taxation* [2001] FCA 554', insert new footnote 5A:

^{5A} At [11–12] and [29].

19. Paragraph 47

After 'paragraphs 49 to 73', insert 'of this Determination'.

20. Paragraph 48

- (a) Omit '1/6'; substitute 'one-sixth'.
- (b) After 'paragraphs 74 to 77', insert 'of this Determination'.

21. Paragraph 61

After 'relevantly defined as', insert new footnote 5B:

^{5B} Macmillan Publishers Australia (2026) *The Macquarie Dictionary* online, www.macquariedictionary.com.au, accessed 29 May 2026.

22. Paragraph 62

- (a) Omit the second sentence; substitute:
- The definition of 'maternity leave' given in *The Macquarie Dictionary*^{5C} is 'leave of absence taken by a female employee, usually with pay, shortly before and after the birth or adoption of her child'.

- (b) After '*The Macquarie Dictionary*', insert new footnote 5C:

^{5C} Macmillan Publishers Australia (2026) *The Macquarie Dictionary* online, www.macquariedictionary.com.au, accessed 29 May 2026.

23. Paragraph 64

After 'defines 'illness' as', insert new footnote 5D:

^{5D} Macmillan Publishers Australia (2026) *The Macquarie Dictionary* online, www.macquariedictionary.com.au, accessed 29 May 2026.

24. Paragraph 65

After 'defines 'accident' as', insert new footnote 5E:

^{5E} Macmillan Publishers Australia (2026) *The Macquarie Dictionary* online, www.macquariedictionary.com.au, accessed 29 May 2026.

25. Paragraph 68

- (a) In heading, omit 'etcetera'; substitute 'and other non-leave days'.
- (b) Omit 'paragraph 96'; substitute '[96]'.

26. Paragraph 69

Omit the wording of the paragraph; substitute:

A person is treated as being engaged in foreign service on days such as weekends, public holidays, rostered days off, days off due to part-time arrangements, flex-days, 'compulsory lay off or lay over days', 'grounded days' and days off in lieu where those days are part of the normal working conditions for the foreign service. On such days, a person is either not required to work (in the case of weekends, public holidays and days off due to part-time arrangements) or is absent due to having already worked their required hours.

27. Paragraphs 71 and 72

Omit the paragraphs, including heading.

28. Paragraph 73

Omit the final sentence.

29. Paragraph 74

- (a) In the heading, omit '1/6'; substitute 'one-sixth'.
- (b) Omit '1/6'; substitute 'one-sixth'.

30. Paragraphs 76 and 77

Omit all instances of '1/6'; substitute 'one-sixth'.

31. Paragraph 80

After 'Example 5', insert 'of this Determination'.

This Addendum applies to the 2026–27 income year and later income years.

Commissioner of Taxation
7 October 2026

ATO references

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