



TD 2013/14 - Income tax: what is the meaning of 'deployment' in paragraph 23AG(1AA)(d) of the Income Tax Assessment Act 1936?

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 This document has changed over time. This is a consolidated version of the ruling which was published on *26 June 2013*



Taxation Determination

Income tax: what is the meaning of 'deployment' in paragraph 23AG(1AA)(d) of the *Income Tax Assessment Act 1936*?

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This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

Ruling

1. A person is 'deployed' within the meaning of paragraph 23AG(1AA)(d) of the *Income Tax Assessment Act 1936* (ITAA 1936) if, and only if, they have been directed to perform duties overseas by the Commonwealth, a State or a Territory or an authority thereof in their capacity as a member of a disciplined force. This includes the member being sent overseas to undertake or participate in study or training activities in their capacity as a member of the relevant disciplined force.

Example 1

2. *Kylie, a resident of Australia for income tax purposes, is a member of the Australian Defence Force (ADF) within the meaning of the Defence Act 1903. Kylie receives a posting order to relocate to Country A in order to support a project between Australia and Country A.*

3. *Kylie is sent to Country A for 12 months commencing 1 July 2012.*

4. *As a member of the ADF, Kylie is a member of a disciplined force. As Kylie has been directed to perform duties overseas by the ADF in her capacity as a member of the ADF, she has been deployed by the Commonwealth for the purposes of paragraph 23AG(1AA)(d) of the ITAA 1936.*

5. *Note, Kylie's foreign earnings are exempt only if all the remaining conditions in section 23AG of the ITAA 1936 are met. This includes considering whether, and why, her foreign earnings are exempt from tax in the foreign country: see subsection 23AG(2) of the ITAA 1936.*

Example 2

6. *Tim, a resident of Australia for income tax purposes, is a member of the Australian Federal Police (AFP) within the meaning of the Australian Federal Police Act 1979 and is sent to Country B by the AFP as part of the United Nations (UN) Mission (UN Mission) in Country B.*

7. *Tim and other UN Mission members provide support in a number of areas including delivering training to assist in building a professional police service.*

8. *Tim is sent to Country B for 12 months commencing 1 July 2012. As a member of the AFP, Tim is a member of a disciplined force.*

9. *As Tim has been directed to perform duties overseas by the AFP in his capacity as a member of the AFP, he has been deployed by the Commonwealth for the purposes of paragraph 23AG(1AA)(d) of the ITAA 1936.*

10. *Note, Tim's foreign earnings are exempt only if all the remaining conditions in section 23AG of the ITAA 1936 are met. This includes considering whether, and why, his foreign earnings are exempt from tax in the foreign country: see subsection 23AG(2) of the ITAA 1936.*

Example 3

11. *Mark is a resident of Australia for income tax purposes and a member of the ADF within the meaning of the Defence Act 1903.*

12. *He is sent to Country C for 16 months for full-time advanced language studies. His study is to be undertaken at Country C's Navy Command and Staff College.*

13. *During this time he has no official duties other than to study while in Country C. He continues to receive his salary and allowances, including an overseas living allowance.*

14. *As Mark has been directed to perform duties overseas by the Royal Australian Navy in his capacity as a member of the Royal Australian Navy, he has been deployed as a member of a disciplined force by the Commonwealth for the purposes of paragraph 23AG(1AA)(d) of the ITAA 1936.*

15. *Note, Mark's foreign earnings are exempt only if all the remaining conditions in section 23AG of the ITAA 1936 are met. This includes considering whether, and why, his foreign earnings are exempt from tax in the foreign country: see subsection 23AG(2) of the ITAA 1936.*

Date of effect

16. This Determination applies to years of income commencing both before and after its date of issue. However, this Determination will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Determination (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Commissioner of Taxation

26 June 2013

Appendix 1 – Explanation

❶ *This Appendix is provided as information to help you understand how the Commissioner’s view has been reached. It does not form part of the binding public ruling.*

Explanation

17. Subsection 23AG(1) of the ITAA 1936 provides that, if Australian resident individuals are engaged in certain types of foreign service for a continuous period of no less than 91 days, foreign earnings derived from this foreign service are exempt from Australian tax.

18. Foreign service is defined in subsection 23AG(7) of the ITAA 1936 as:

foreign service means service in a foreign country as the holder of an office or in the capacity of an employee.

19. Subsection 23AG(1AA) of the ITAA 1936 specifies which types of foreign service qualify. Relevantly it provides:

(1AA) However, those foreign earnings are not exempt from tax under this section unless the continuous period of foreign service is directly attributable to...

(d) the person’s deployment outside Australia as a member of a disciplined force by:

- (i) the Commonwealth, a State or a Territory; or*
- (ii) an authority of the Commonwealth, a State or a Territory...*

20. The requirements in paragraph 23AG(1AA)(d) of the ITAA 1936 can be set out as follows:

- (a) the person engaged in foreign service must be ‘a member of a disciplined force’; and
- (b) that person must be deployed by the Commonwealth, a State or Territory or an authority thereof in their capacity as a member of a disciplined force.

21. The meaning of ‘member of a disciplined force’ is considered by the Commissioner in Draft Taxation Ruling TR 2013/D3, *Income tax: foreign employment income: interpretation of subsection 23AG(1AA) of the Income Tax Assessment Act 1936*.

22. The requirement for ‘deployment’ focuses on the actions of the Commonwealth, State or Territory or authority thereof. Thus, the deployment of the person as a member of a disciplined force must be ‘by’ the specified entity.

23. The term ‘deployment’ is not defined in the Act. The term ‘deploy’ is defined in the *Australian Oxford Dictionary (2nd ed)*, as:

1. *(Mil.) [tr.]* cause (troops) to spread out from a column into a line.
 - *[intr.]* (of troops) spread out in this way.
2. *[tr.]* bring (arguments, forces, etc.) into effective action.

24. So, according to the dictionary, the word ‘deploy’ has both a specific meaning, linked specifically to a military context, and a more general meaning.

25. The statutory context indicates that the more specific meaning of 'deployment', in the sense of the spreading out of troops by way of military manoeuvre, is not readily applicable to paragraph 23AG(1AA)(d) of the ITAA 1936. As established in TR 2013/D3, the provision is not limited to military personnel and can apply to a member of any disciplined force. Also, the provision contemplates that a single member of a disciplined force may be the subject of a 'deployment'.
26. In the context of paragraph 23AG(1AA)(d) of the ITAA 1936, a member of a disciplined force may be brought into effective action by being sent overseas to perform duties as directed by the Commonwealth, State or Territory, or authority thereof. It is in this sense of bringing into effective action that the word 'deployment' is to be understood.
27. Thus, a person has been subjected to a 'deployment' by the Commonwealth, a State or Territory or an authority thereof if they have been directed to perform duties overseas by that specified government or authority in their capacity as a member of a disciplined force.
28. Therefore, the term 'deployment' does not require a distinction to be made on the basis of the nature of the task the member is undertaking. Accordingly, a member who undertakes or participates in study or training activities in their capacity as a member of the relevant disciplined force can be said to be the subject of a 'deployment'.
29. The Explanatory Memorandum to the Tax Laws Amendment (2009 Budget Measures) No 1 Bill 2009 provides relevantly:
- 1.32 In a defence force context, the exemption would apply to a person's deployment outside Australia as part of a non-warlike operation. In a police force context, the exemption would apply to Australian Federal Police employees deployed on an International Deployment Group mission who are subject to Commanders Orders to achieve operational policing outcomes.*
30. These examples illustrate the more common types of activities intended to be covered by paragraph 23AG(1AA)(d) of the ITAA 1936, and are consistent with the view that 'deployment' does not take on a narrow meaning related to military usage only.

References

Previous draft:

TD 2013/D1

Related Rulings/Determinations:

TR 2006/10; TR 2013/D3

Subject references:

- exempt income
- foreign income
- foreign salary and wages
- foreign source income
- international tax

Legislative references:

- ITAA 1936 23AG
- ITAA 1936 23AG(1)

- ITAA 1936 23AG(1AA)
- ITAA 1936 23AG(1AA)(d)
- ITAA 1936 23AG(2)
- ITAA 1936 23AG(7)
- Australian Federal Police Act 1979
- Defence Act 1903

Other references:

- Explanatory Memorandum to the Tax Laws Amendment (2009 Budget Measures) No 1 Bill 2009
- The Australian Oxford Dictionary, 2004, rev. 2nd edn, Oxford University Press, Melbourne

ATO references

NO: 1-4OPEASW

ISSN: 1038-8982

ATOLaw topic: Income Tax ~ Exempt income ~ employment income – foreign sourced