TD 93/223 - Income tax: are non-resident students who are in Australia on short-term vocational experience entitled to a tax-free threshold?

This cover sheet is provided for information only. It does not form part of *TD 93/223 - Income tax: are non-resident students who are in Australia on short-term vocational experience entitled to a tax-free threshold?*

This document has changed over time. This is a consolidated version of the ruling which was published on *25 November 1998*

Australian Taxation Office

Taxation Determination TD 93/223

This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVAAA of the *Taxation Administration Act 1953*, is a public ruling for the purposes of that Part . Taxation Ruling TR 92/1 explains when a Determination is a public ruling and how it is binding on the Commissioner. Unless otherwise stated, this Determination applies to years commencing both before and after its date of issue. However, this Determination does 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 the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

[Note: This is a consolidated version of this document. Refer to the Tax Office Legal Database (http://law.ato.gov.au) to check its currency and to view the details of all changes.]

Taxation Determination

Income tax: are non-resident students who are in Australia on short-term vocational experience entitled to a tax-free threshold?

Scope of this Determination

1. This Determination does not attempt to resolve whether or not a short-term vocational experience student is a non-resident. That fact must be determined before applying this Determination. Taxation Ruling TR 98/17 sets out guidelines on applying the residency tests in subsection 6(1) of the *Income Tax Assessment Act 1936* to visitors to Australia. Section 995-1 of the *Income Tax Assessment Act 1997* refers to the same tests.

Answer

2. Non-resident students who are in Australia on short-term vocational experience are not entitled to a tax-free threshold. The definition of prescribed non-resident in subsection 3(1) of the *Income Tax Rates Act 1986* does not distinguish between non-residents who are students and non-residents who are not students. The rates of tax for all prescribed non-residents are based on the rates set out in Part II of Schedule 7 of the *Income Tax Rates Act 1986*. These rates of tax do not allow any tax free threshold.

3. Some of Australia's international tax agreements have provisions that specifically relate to students, but these provisions only refer to income derived from outside Australia. There are no provisions in Australia's international tax agreements that provide students with a tax-free threshold for income derived within Australia.

Note 1: In this Determination the phrase 'short-term vocational experience' refers to overseas students who are not actually studying in Australia, but are present in Australia for periods of 12 months or less on work experience that is related to their overseas course of study. This may also be combined with a holiday in Australia.

Note 2: Deleted

Example

Kim, a UK geology student, is in Australia on a vocational exchange scheme. Kim is working in paid employment for four months at a large mine. At the end of this period, Kim spends a further three months holidaying in Australia before going home. As Kim is not residing in Australia in the ordinary sense, and Kim does not intend to take up permanent residence in Australia, Kim is not an Australian resident. Accordingly, Kim will be taxed at non-resident rates from the first dollar of income derived in Australia, i.e. no tax-free threshold applies.

Commissioner of Taxation
4/11/93

FOI INDEX DETAIL: Reference No. I 1216597 Previously issued as Draft TD 92/D187
Related Rulings: TR 98/17
Subject Ref: non-residents; overseas students; short-term vocational experience; tax-free threshold
Legislative Ref: ITAA 6(1); Income Tax Rates Act 1986 Schedule 7, Part II
ATO Ref:TOW 6

ISSN 1038 - 8982