



***TR 2005/3 - Income tax: attributed personal services income that is foreign income - allowance of a foreign tax credit to an individual where foreign tax paid by a personal services entity***

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 This document has changed over time. This is a consolidated version of the ruling which was published on 9 February 2005



## Taxation Ruling

Income tax: attributed personal services income that is foreign income – allowance of a foreign tax credit to an individual where foreign tax paid by a personal services entity

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### *Preamble*

*The number, subject heading, **What this Ruling is about** (including **Class of person/arrangement** section), **Date of effect**, and **Ruling** parts of this document are a 'public ruling' for the purposes of **Part IVAAA of the Taxation Administration Act 1953** and are legally binding on the Commissioner. Taxation Rulings TR 92/1 and TR 97/16 together explain when a Ruling is a 'public ruling' and how it is binding on the Commissioner.*

## What this Ruling is about

### **Class of person/arrangement**

1. This Ruling applies to:
  - individuals who have provided personal services, through a resident company that is a personal services entity, in a foreign country and foreign tax has been paid by the personal services entity on the individual's personal services income; and
  - personal services entities referred to above.
2. This Ruling addresses the following:
  - whether personal services income assessable to the individual under subsection 86-15(1) of the *Income Tax Assessment Act 1997* (ITAA 1997), being statutory income of the individual, qualifies as foreign income under subsection 6AB(1) of the *Income Tax Assessment Act 1936* (ITAA 1936);
  - the circumstances under which the individual is taken to have paid and have been personally liable for any foreign tax paid by the personal services entity under subsection 6AB(3) of the ITAA 1936; and
  - whether section 23AG of the ITAA 1936 applies to amounts included in an individual's assessable income under subsection 86-15(1) of the ITAA 1997.

3. This Ruling does not deal with the tax treaty implications for the persons/arrangements covered.

## Date of effect

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4. This Ruling applies to years of income commencing both before and after its date of issue. However, the Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Ruling (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

## Related Rulings

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5. The following are related rulings:

- Taxation Ruling TR 2005/2: Income tax: the meaning of 'foreign income' in subsection 6AB(1) of the Income Tax Assessment Act 1936 – inclusion of statutory income.
- Taxation Ruling TR 2003/6, Income tax: attribution of personal services income.

## Ruling

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6. An amount included in an individual's assessable income under subsection 86-15(1) of the ITAA 1997 (attributed personal services income) will be foreign income if it is derived from sources in a foreign country.<sup>1</sup>

7. An Australian resident company that is a personal services entity may pay foreign tax either directly or by deduction (withholding). If such tax is properly imposed<sup>2</sup> by a foreign jurisdiction on foreign income that is an individual's personal services income, the individual will be deemed to have been liable for, and to have paid that foreign tax under subsection 6AB(3) to the extent that it is in respect of his or her attributed personal services income. This will be the case provided that foreign tax, as defined in subsection 6AB(2), has been paid in respect of the attributed personal services income in the manner prescribed in paragraphs 6AB(3)(a) or (b).

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<sup>1</sup> An explanation of how subsection 86-15(1) of the ITAA 1997 applies to include an amount in an individual's assessable income is explained in Taxation Ruling TR 2003/6.

<sup>2</sup> This ruling does not deal with whether or not a tax treaty may limit a country's right to tax under its domestic law, or whether the foreign country tax administration has correctly applied the foreign tax law. It is assumed for the purposes of this ruling that the foreign tax paid is properly payable in the foreign country.

8. The effect of subsection 6AB(3) is that the individual taxpayer may be entitled to a foreign tax credit, under Division 18 of Part III of the ITAA 1936, on the foreign tax paid in respect of the attributed personal services income.

9. However, subsection 6AB(3) will not operate to allow a foreign tax credit to an individual in respect of foreign tax paid by a personal services entity on personal services income that is paid out to the individual as salary or wages in accordance with subsection 86-15(4).

10. An amount that is included in an individual's assessable income under subsection 86-15(1) is not exempt from tax under subsection 23AG(1) of the ITAA 1936. This is because the amount does not constitute 'foreign earnings' as defined in subsection 23AG(7).

## Explanation

### Background

11. Subsection 160AF(1) in Division 18 of Part III of the ITAA 1936 provides that an Australian resident taxpayer is entitled to a credit for foreign tax paid in respect of foreign income that is included in the taxpayer's assessable income in a year of income.

12. To be entitled to a credit under subsection 160AF(1) an Australian resident must have:

- included foreign income in their assessable income;<sup>3</sup>
- paid foreign tax in respect of the foreign income; and
- been personally liable for the foreign tax.

13. In situations where the foreign tax is paid by another party, the second and third conditions will not be satisfied. Subsection 6AB(3) was enacted contemporaneously with subsection 160AF(1) to ensure that a taxpayer could be entitled to a credit under subsection 160AF(1) notwithstanding that those conditions were not met.

14. Subsection 6AB(3) provides:

Where a taxpayer has derived an amount of foreign income and:

- (a) foreign tax has been paid in respect of that income:
  - (i) by or through another person under an arrangement with the taxpayer or under the law relating to that tax;
  - (ii) by a trust estate in which the taxpayer is a beneficiary;

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<sup>3</sup> Note, amendments to subsection 160AF(1) in 2003 allow for a credit against income, profits or gains derived from a source in an area covered by an international tax sharing treaty to the extent that the income, profit or gain is taxed in Australia. Such amounts are not considered to be foreign income.

- (iii) by a partnership in which the taxpayer is a partner;  
or
- (iv) by deduction; or
- (b) ...

the taxpayer shall be deemed, for the purposes of the Act, to have been personally liable for, and to have paid, that foreign tax in respect of that income.

15. The Explanatory Memorandum to the Taxation Laws Amendment (Foreign Tax Credits) Bill 1986 explains that subsection 6AB(3) was intended to apply to a taxpayer who has derived foreign income and who has clearly borne the burden of the foreign tax that has been paid in respect of that income but had not actually paid the foreign tax.

### **Can subsection 6AB(3) apply to an individual in respect of attributed personal services income?**

16. An individual will only be entitled to a foreign tax credit under subsection 160AF(1) in respect of an amount of attributed personal services income if certain conditions are satisfied. Firstly, the attributed personal services income must be foreign income, as defined, and foreign tax, as defined, must have been paid in respect of the income. Secondly, subsection 6AB(3) must apply to deem the individual to have been personally liable for the foreign tax paid in respect of the foreign income.

### ***Attributed personal services income can be foreign income***

17. Given that the definition of foreign income in subsection 6AB(1) includes statutory income,<sup>4</sup> an amount of attributed personal services income that is included in an individual's assessable income under subsection 86-15(1) will be foreign income as defined when it is derived from sources in a foreign country.

18. Whether or not income is derived from 'sources in a foreign country' is a practical, hard matter of fact.<sup>5</sup> However, an amount that is included in an individual's assessable income under subsection 86-15(1) when it is attributable to personal services performed in a foreign country, will generally be income derived from sources in that country: see *FCT v. French*<sup>6</sup> where Williams J. stated at CLR 414; AITR 85 that:

...the locality of the source of income derived from personal exertion in the capacity of employee or in relation to any services rendered surely must be where such personal exertion took place, and the locality of the source of the proceeds of any business where the activities of the business are carried on.

<sup>4</sup> See Taxation Ruling TR 2005/2: Income tax: the meaning of 'foreign income' in subsection 6AB(1) of the *Income Tax Assessment Act 1936* – inclusion of statutory income.

<sup>5</sup> See *Nathan v. Federal Commissioner of Taxation* (1918) 25 CLR 183 at 189-190.

<sup>6</sup> (1957) 98 CLR 398; 7 AITR 76; 11 ATD 288.

See also *C of T (NSW) v. Cam and Sons Ltd* (1936) 36 SR (NSW) 544; (1936) 4 ATD 32; *Mitchum v. FCT* (1965) 113 CLR 401; (1965) 13 ATD 497.

### ***Tax paid on personal services income can be foreign tax***

19. The term 'foreign tax' in subsection 6AB(3) is defined in subsection 6AB(2). The broad definition of 'foreign tax' would cover any tax properly imposed by the law of a foreign country upon personal services income derived by a personal services entity.<sup>7</sup>

### ***The application of subsection 6AB(3)***

20. Leaving to one side subparagraphs 6AB(3)(a)(ii) and (iii) which do not apply in the present context,<sup>8</sup> for paragraph 6AB(3)(a) to apply a taxpayer must have derived an amount of foreign income and foreign tax must have been paid, by another person or by deduction, **in respect of that income**. That is, it must be the case that the foreign tax paid by the personal services entity (either directly or by deduction) is foreign tax that has been paid 'in respect of' the individual's foreign income.

21. The High Court considered the phrase in *Technical Products Pty. Limited v. State Government Insurance Office (Queensland)*.<sup>9</sup> Dawson J, who was part of the majority in that case, explained that:

... the words 'in respect of' may have a wide meaning but it is not correct to say that they extend to any relationship, however tenuous: see *Workers' Compensation Board (Q.) v. Technical Products Pty Ltd*.<sup>10</sup> The words take their colour from the context in which they are found.....The words 'in respect of' require some material connexion between the two matters referred to.<sup>11</sup>

22. The phrase 'in respect of' in the context of subsection 6AB(3) requires that the foreign tax paid, either by another party or by deduction, have some material connection with the taxpayer's foreign income. In other words, there must be a link between the foreign tax paid and the income included in the taxpayer's assessable income.

23. Subsection 86-15(1) provides that the personal services income is included in the individual's assessable income unless:

- the company is conducting a personal services business;

<sup>7</sup> For further guidance on amounts covered by the definition of 'foreign tax', refer to Taxation Ruling IT 2507 and Taxation Ruling IT 2437.

<sup>8</sup> These subparagraphs apply when a trust estate or a partnership pays foreign tax in respect of income derived by a beneficiary or a partner respectively.

<sup>9</sup> (1989) 167 CLR 45 per Brennan, Deane and Gaudron JJ at 47.

<sup>10</sup> (1988) 165 CLR at pp 653-655.

<sup>11</sup> (1989) 167 CLR 45 at 51.

- the personal services income has been paid to the individual as salary or wages within the requisite period; or
- the personal services income is not assessable income of the company (other than because of section 86-30).

24. As a result of the operation of the alienation of personal services income provisions, there is a direct link between the individual's attributed personal services income and the foreign tax paid by the personal services entity. The Commissioner accepts that the foreign tax paid by the personal services entity is foreign tax paid in respect of the individual's foreign income, being the attributed personal services income, by another person under the law relating to that tax or by deduction. As such, the individual is deemed, for the purposes of subsection 160AF(1), to have been personally liable for, and to have paid, the relevant foreign tax.

25. The Commissioner's view is consistent with the object of subsection 6AB(3). It is the individual, and not the personal services entity, that bears the burden of the foreign tax imposed on the personal services income. The personal services entity is not assessed on the income because section 86-30 of the ITAA 1997 ensures that attributed personal services income is excluded from the company's assessable income. Therefore, the personal services entity derives no foreign income that is assessable income and, as such, is not entitled to a foreign tax credit within the meaning of section 160AF of Division 18 of the ITAA 1936.

### **Can subsection 6AB(3) apply to an individual in respect of salary and wage income received from a personal services entity?**

26. Where foreign tax has been properly levied and paid on personal services income derived by the personal services entity and that personal services income is included in the assessable income of the individual as salary or wages, subsection 6AB(3) will not apply to deem the individual to have paid and been personally liable for that foreign tax. Although the salary or wages derived by the individual may constitute foreign income,<sup>12</sup> there is no material connection between the salary or wage income and the foreign tax paid by the personal services entity. This is because the amount is not attributed to the individual under subsection 86-15(1), and therefore no direct link exists between that income upon which tax has been paid and the foreign income that has been derived by the individual. It is assumed in this and the two following paragraphs that the salary or wages is paid to the employee within the period referred to in subsection 86-15(4).

27. The personal services entity would be entitled to a foreign tax credit in respect of the foreign tax paid in accordance with subsection

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<sup>12</sup> See *Federal Commissioner of Taxation v. French* (1957) 98 CLR 398; (1957) 7 AITR 76; (1957) 11 ATD 288).

160AF(1) to the extent that the personal services income was not attributed personal services income. That is because the foreign tax paid is in respect of the personal services entity's foreign income that is included in its assessable income.

28. If the personal services entity chooses to pay all its fees for the provision of personal services to the individual as salary or wages and that is the only class of foreign assessable income it derives during the income year, it may result in the personal services entity carrying forward excess foreign tax credits in accordance with section 160AFE of Division 18 of the ITAA 1936 (to the extent that foreign tax is payable on the foreign income derived by the personal services entity).

**What amount of foreign tax credit is an individual entitled to where the individual has attributed personal services income and salary or wage income?**

29. A question arises as to the amount of foreign tax that can be claimed as a credit by an individual taxpayer and claimed by a personal services entity under subsection 160AF(1) in situations where the personal services entity has paid foreign tax (either directly or by deduction) on its personal services income and a portion of that amount has been paid to the individual taxpayer as salary or wages and another portion is attributed to the individual under subsection 86-15(1).

30. The amount of foreign tax that can be claimed by the personal services entity or the individual as a foreign tax credit depends on whether such an amount is paid 'in respect of' the foreign assessable income of the personal services entity or the individual, as the case may be. As both the personal services entity and the individual have derived foreign assessable income, each may potentially be entitled to a slice of foreign tax as a foreign tax credit. However, the same slice of foreign tax could not be said to have been paid 'in respect of' both taxpayers' foreign assessable income.

31. A personal services entity that pays and is personally liable for foreign tax on an amount of personal services income, may qualify for a foreign tax credit where that personal services income is included in its foreign assessable income, to the extent that the foreign tax paid is 'in respect of' its foreign assessable income.

32. Alternatively, an individual whose foreign assessable income includes an amount of attributed personal services income may also be entitled to a foreign tax credit where foreign tax has been paid by the personal services entity. Subsection 6AB(3) can apply to deem the individual to have paid and been personally liable for foreign tax paid by the personal services entity. The individual may therefore be entitled to a foreign tax credit under subsection 160AF(1) to the extent that the foreign tax paid by the personal services entity is 'in respect of' the attributed personal services income included in the individual's foreign assessable income.

33. Example 2 below provides an illustration of how foreign tax is applied in the circumstances outlined in paragraph 29, where the



personal services entity pays the foreign tax on a 'net tax' or assessment basis.

### **No exemption under section 23AG for attributed personal services income**

34. Subsection 23AG(1) provides the following:

Where a resident, being a natural person, has been engaged in foreign service for a continuous period of not less than 91 days, any foreign earnings derived by the person from that foreign service is exempt from tax.

35. Subsection 23AG(7) defines the term 'foreign earnings' for the purposes of the section to mean income consisting of earnings, salary, wages, commission, bonuses or allowances. Attributed personal services income cannot be characterised as salary, wages, commission, a bonus or an allowance.

36. The word 'earnings' is defined in the Macquarie Dictionary as 'money earned; wages; profits'. The Commissioner's view is that 'earnings' in the context of section 23AG, means money obtained by an individual in return for labour or services. An individual's attributed personal services income cannot be characterised as such. Rather, the income is included in the assessable income of the individual under statute and is not paid to the individual as a reward for the individual's services. Accordingly, an amount attributed to an individual under subsection 86-15(1) does not satisfy the definition of foreign earnings and, as such, does not qualify for exemption under section 23AG.

37. The recent case of *Lopez v. Deputy Commissioner of Taxation* [2004] FCA 756 further supports the view that section 23AG cannot apply to attributed personal services income. The court in that case held that 'foreign service' as defined in subsection 23AG(7) is limited to service in the capacity of an employee, in a strict sense.<sup>13</sup> As attributed personal services income is derived by the operation of a statutory provision and not in an individual's capacity as an employee, such income cannot be characterised as foreign earnings derived from foreign service.

## **Examples**

### **Example 1**

38. Paul Martin is a business management expert who provides consulting services through an Australian resident company, Cranks Consultants Pty Ltd (Cranks). Mr Martin is an Australian resident. Mr Martin is the director and sole shareholder of the company. He is also the sole employee.

<sup>13</sup> *Lopez v. Deputy Commissioner of Taxation* [2004] FCA 756, at paragraphs 40-51

39. Cranks enters into a contract with a company, Helford Pty Ltd (Helford) to provide the services of Mr Martin. Helford operates in a country with which Australia does not have a tax treaty and all the services under the contract are performed in that country. Mr Martin performs the services for a total fee of \$A100,000, payable in monthly instalments.

40. Under the tax law of its country, Helford is required to deduct 12 per cent foreign contractor withholding tax from fees owing to Cranks. Helford then pays the net amount to Cranks.

41. The \$A100,000 income derived by Cranks under the contract with Helford is the personal services income of Mr Martin.<sup>14</sup> Accordingly, unless the company can satisfy one of the personal services business tests,<sup>15</sup> the provisions in Part 2-42 of the ITAA 1997 will apply. It is assumed that the company does not satisfy any of the tests.

42. At the end of the income year, Cranks reconciles its accounts and finds that the company has \$A100,000 of personal services income. This amount must be attributed to Mr Martin and thus included in his assessable income under subsection 86-15(1) of the ITAA 1997.<sup>16</sup> The amount attributed to Mr Martin is specifically excluded from the assessable income of Cranks under section 86-30.

***Is Mr Martin entitled to a credit for the withholding tax paid by Helford in respect of his attributed personal services income?***

43. Yes. Mr Martin is entitled to a foreign tax credit because:

- his attributed personal services income is foreign income; and
- he is deemed to have paid foreign tax (that is the withholding tax) in respect of the foreign income, being tax for which he was personally liable.<sup>17</sup>

44. Mr Martin's assessable income includes foreign income in the relevant income year, being the \$A100,000 attributed personal services income. That is because the provision of the personal services which gave rise to the inclusion of the amount of \$A100,000 in Mr Martin's assessable income took place in a foreign country and, as such, the amount of \$A100,000 is taken to be income derived from sources in a foreign country for the purposes of subsection 6AB(1). It is assumed that there are no facts which would suggest a source elsewhere.

45. The foreign contractor withholding tax imposed on the fees paid to Cranks is 'foreign tax' for the purposes of the definition in subsection 6AB(2).

<sup>14</sup> See section 84-5 of the ITAA 1997.

<sup>15</sup> See section 87-15 of the ITAA 1997.

<sup>16</sup> This is the total personal services income received by Cranks, assuming that no deductions are allowable to Cranks which would reduce the attributed amount under section 86-20. The attributed income is not reduced by the foreign tax paid.

<sup>17</sup> See section 160AF.

46. Mr Martin did not directly pay the foreign tax in respect of the foreign income, nor was he personally liable for tax in respect of the foreign income. However, subsection 6AB(3) applies to deem Mr Martin to have paid and been personally liable for foreign tax paid in respect of his foreign income because:

- Mr Martin derived foreign income in the relevant income year, being the attributed personal services income;
- Foreign tax has been paid 'in respect of' that foreign income. Helford paid foreign tax (in the form of a 12 per cent foreign contractor withholding tax) on the fees which were paid to Cranks, in respect of the personal services provided by Mr Martin. The fee income included in Mr Martin's assessable income is attributed personal services income. There is clearly a connection between the foreign tax and Mr Martin's income – see paragraph 26 of the explanation; and
- Foreign tax has been paid by deduction – see subparagraph 6AB(3)(a)(iv). That is, Helford was required to, and did pay the withholding tax pursuant to local tax law.

47. Mr Martin would be entitled to a foreign tax credit of \$A12,000 (12 per cent of \$A100,000) for the relevant income year under subsection 160AF(1) (assuming that the amount is less than the Australian tax payable on the foreign income), given that he is an Australian resident and the amount of foreign income has been included in his assessable income for the relevant income year.

***Is Cranks entitled to a credit for the withholding tax paid by Helford?***

48. No. The fees that Cranks receives from Helford are treated as the personal services income of Mr Martin. Subsection 86-15(1) of the ITAA 1997 provides that the fees are to be included in the assessable income of Mr Martin. Concurrently, section 86-30 of the ITAA 1997 ensures that the fees are non assessable non exempt income of Cranks.

49. Cranks is not entitled to a credit under subsection 160AF(1) for the foreign tax (that is the withholding tax) paid because such amount is not in respect of foreign income included in Cranks' assessable income – see paragraph 25 of the ruling.

**Example 2**

50. Jane Scott is a civil engineer who provides consulting services through an Australian resident company, Jasco Pty Ltd (Jasco). Ms Scott is an Australian resident and the director and sole shareholder of the company. She is also the sole employee.

51. Jasco enters into a contract with a company, Belmont Pty Ltd (Belmont) to provide the services of Ms Scott in Belmont's country of

residence. Belmont is resident in a country with which Australia does not have a tax treaty. The fee for Jasco's services is \$A100,000 and is to be paid in monthly instalments.

52. Jasco pays Ms Scott a salary of \$A70,000.<sup>18</sup>

53. Under the tax law of Belmont's country, Jasco must pay tax on its income earned in that country, less deductions. Jasco has taxable income in that country of \$A30,000, being the \$A100,000 income paid under the contract with Belmont, minus a deduction for the salary of \$A70,000 paid to Ms Scott. Jasco files a tax return and pays income tax of \$A9,900, at the corporate tax rate in that country of 33 per cent of its net income.

54. At the end of the income year, Jasco reconciles its accounts and finds that the company has personal services income that must be included in Ms Scott's assessable income pursuant to subsection 86-15(1) of the ITAA 1997. The amount attributed is \$A30,000.<sup>19</sup> That amount is also expressly excluded from the assessable income of Jasco under section 86-30 in the relevant income year.

***Is Ms Scott entitled to a credit for the tax paid by Jasco in respect of her attributed personal services income?***

55. Yes. Ms Scott is entitled to a foreign tax credit because:

- her attributed personal services income is foreign income (assuming there are no facts to suggest otherwise); and
- she is deemed to have paid foreign tax (that is the income tax paid on assessment by Jasco) in respect of the foreign income, being tax for which she was personally liable.<sup>20</sup>

56. The amount of foreign tax that has been paid 'in respect of' the foreign assessable income derived by Ms Scott is \$A9,900. The foreign tax is levied on the \$A30,000 remaining after Ms Scott's salary is deducted from the fees paid by Belmont. This is the same amount that is included in Ms Scott's assessable income under subsection 86-15(1). The \$A9,900 foreign tax paid by Jasco is regarded as 'in respect of' the amount of foreign income (the attributed personal services income) included in Ms Scott's assessable income and not 'in respect of' any foreign income included in Jasco's assessable income.

57. Subparagraph 6AB(3)(a)(i) therefore applies to deem Ms Scott to have paid and been personally liable for the foreign tax paid by Jasco,

<sup>18</sup> The \$A70,000 salary is promptly paid in accordance with subsection 86-15(4). Note that the salary income of Ms Scott may potentially be exempt income under section 23AG, provided that the income is not exempt from tax in the foreign country because of any of the reasons listed in subsection 23AG(2).

<sup>19</sup> Total personal services income (\$A100,000) less the amount paid as salary to Ms Scott (\$A70,000) which is excluded from attribution under subsection 86-15(4).

<sup>20</sup> See subsection 6AB(3) and section 160AF.

and she is therefore able to claim a foreign tax credit of \$9,900 for the relevant income year under subsection 160AF(1) (assuming that the amount is less than the Australian tax payable on the foreign income).

***Is Jasco entitled to a credit for the foreign tax paid?***

58. No. Jasco is not entitled to a foreign tax credit for the \$A9,900 foreign tax paid on its taxable income.

59. Jasco's assessable income in Australia does not include the personal services income that is attributed to Ms Scott because it is non assessable non exempt income of Jasco pursuant to section 86-30 of the ITAA 1997.

60. Consequently from an Australian perspective, Jasco's foreign assessable income is \$A70,000 (\$A100,000 less the \$A30,000 attributed personal services income). After allowing a \$A70,000 deduction for the salary paid to Ms Scott, Jasco's net foreign income is nil.

61. In the relevant income year, Jasco's assessable income includes an amount of foreign income. However, it cannot be said that Jasco has paid foreign tax 'in respect of' that income. The combined effect of subsection 160AF(1) and subsection 6AB(3) is that the foreign tax paid is 'in respect of' Ms Scott's foreign assessable income, and cannot also be 'in respect of' an amount of foreign income included in Jasco's assessable income.

## Definitions

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**Attributed personal services income**

62. Attributed personal services income is an individual's personal services income that has been included in the individual's assessable income for that year of income under subsection 86-15(1).

**Personal services income**

63. Personal services income is income which is mainly a reward for an individual's efforts or skills or would mainly be such a reward if it had been derived by the individual (see subsection 84-5(1)).

**Personal services entity**

64. A personal services entity is a company, partnership or trust whose ordinary income or statutory income includes the personal services income of one or more individuals (see subsection 86-15(2)).

## Detailed contents list

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## Commissioner of Taxation

9 February 2005

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*Previous draft:*

TR 2004/D14

*Related Rulings/Determinations:*

TR 92/20; TR 2003/6;  
TR 2005/2; IT 2057; IT 2437

*Subject references:*

- attributed personal services income
- foreign income
- foreign tax
- foreign tax credit
- personal services

*Legislative references:*

- TAA 1953 Pt IVAAA
- ITAA 1936 6AB(1)
- ITAA 1936 6AB(2)
- ITAA 1936 6AB(3)
- ITAA 1936 6AB(3)(a)
- ITAA 1936 6AB(3)(a)(i)
- ITAA 1936 6AB(3)(a)(ii)
- ITAA 1936 6AB(3)(a)(iii)
- ITAA 1936 6AB(3)(a)(iv)
- ITAA 1936 6AB(3)(b)
- ITAA 1936 Pt III Div 18
- ITAA 1936 23AG
- ITAA 1936 23AG(1)
- ITAA 1936 23AG(2)
- ITAA 1936 23AG(7)
- ITAA 1936 160AF
- ITAA 1936 160AF(1)
- ITAA 1936 160AFE
- ITAA 1997 Pt 2-42

- ITAA 1997 84-5

- ITAA 1997 84-5(1)

- ITAA 1997 86-15(1)

- ITAA 1997 86-15(2)

- ITAA 1997 86-15(4)

- ITAA 1997 86-20

- ITAA 1997 86-30

- ITAA 1997 87-15

*Case references:*

- C of T (NSW) v. Cam and Sons Ltd (1936) 36 SR (NSW) 544; (1936) 4 ATD 32
- FCT v. French (1957) 98 CLR 398; (1957) 7 AITR 76; (1957) 11 ATD 288
- Lopez v. Deputy Commissioner of Taxation [2004] FCA 756
- Mitchum v. FCT (1965) 113 CLR 401; (1965) 13 ATD 497
- Nathan v. Federal Commissioner of Taxation (1918) 25 CLR 183
- Technical Products Pty. Limited v. State Government Insurance Office (Qld) (1989) 167 CLR 45
- Workers' Compensation Board (Q.) v. Technical Products Pty Ltd (1988) 165 CLR

*Other references:*

- Explanatory Memorandum to the Taxation Laws Amendment (Foreign Tax Credits) Bill 1986
- Macquarie Dictionary

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ATO references

NO: 2004/8151

ISSN: 1039-0731