


TR 2005/8A2 - Addendum - Income tax: the meaning of particular terms in the Government Service Articles of Australia's tax treaties

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Addendum

Taxation Ruling

Income tax: the meaning of particular terms in the Government Service Articles of Australia's tax treaties

This Addendum is a public ruling for the purposes of the *Taxation Administration Act 1953*. It amends Taxation Ruling TR 2005/8 to reflect the revised German treaty which came into force on 7 December 2016 and to remove outdated guidance in relation to section 23AG. The addendum also removes Attachments 1 to 4 which are out of date.

TR 2005/8 is amended as follows:

1. Paragraph 1

- (a) In subparagraph a. after the words '(or salaries, wages and other similar remuneration),' insert footnote A1:

^{A1}This wording is consistent with the GSA in the OECD Model Tax Convention as at November 2017.

- (b) In footnote 1 omit 'at Schedule 2 of the'; substitute ', given the force of law by the'.
- (c) Omit subparagraph c. (excluding footnote 1); substitute:

c. the term 'Wages, salaries and similar remuneration including pensions, paid from funds of one of the Contracting States, of a state or other political subdivision thereof or of an agency or authority of any of the foregoing for labour or personal services performed as an employee of any of the above in the discharge of governmental functions to a citizen of that State' as it appears in the United States Convention.

- (d) Omit subparagraph d. including footnote 2.

2. Paragraph 2

- (a) Omit the paragraph; substitute:

2. Those tax treaties that use the terms in paragraph 1.a. and 1.b. in their GSAs are described as Category 1 and Category 2 tax treaties respectively.^{2A} For the purposes of this Ruling, those tax treaties which contain similar words in their GSAs to those in the terms stated at paragraphs 1.a. and 1.b are included within the Category 1 and 2 tax treaties.

- (b) At the end of the first sentence, insert footnote 2A:

^{2A} **Note:** some treaties use Category 1 wording in the first paragraph of the GSA and Category 2 wording in a later paragraph of the GSA, (for example, the

treaties with Austria and China). For the purposes of this Ruling, a treaty is categorised according to the wording used in the first paragraph of the GSA.

3. Paragraph 9

- (a) In footnote 3, omit 'France,'.
- (b) In the second sentence, omit 'as can be seen in the attachments,'.

4. Paragraph 11

Omit the last sentence; substitute 'In addition, the GSA in other tax treaties, most notably the US Convention, rely on other forms of words.'.

5. Paragraph 14

Omit the paragraph; substitute:

14. This Ruling applies 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 75 and 76 of Taxation Ruling TR 2006/10 *Public Rulings*).

6. Paragraph 15

- (a) In the first sentence, omit ', listed at Attachment 1,'.
- (b) In footnote 4 omit 'at Schedule 46 of'; substitute ', given the force of law by'.

7. Paragraph 16

In the first sentence, omit ', listed at Attachment 2,'.

8. Paragraph 18

Omit the paragraph and heading.

9. Paragraph 25

Omit the word 'four'.

10. Paragraph 29

Omit the first sentence.

11. Paragraph 33

In footnote 9 omit 'at Schedule 38 of'; substitute ', given the force of law by'.

12. Paragraph 34

Omit 'July 2010'; substitute 'November 2017'.

13. Paragraph 35

Omit the paragraph; substitute:

35. Paragraphs 35 and 36 of the Introduction to the OECD Model and Commentary as at November 2017 states that amendments 'intended to simply clarify, not change the meaning of the Articles or the Commentaries' are 'normally applicable to the interpretation and application of conventions concluded before their adoption, because they reflect the consensus of the OECD member countries as to the proper interpretation of existing provisions and their application to specific situations. As specified in paragraph 108 of TR 2001/13, this type of change is intended to reflect the fact that the Commentaries are usually expressed as reflecting a common view as to what the meaning is and has always been.

14. Paragraph 36

Omit 'July 2010'; substitute 'November 2017'.

15. Paragraph 37

(a) Omit the last sentence; substitute 'A current example of the other Articles specified is the Income From Employment Article (IFEA).'

(b) At the end of the last sentence insert footnote 9A:

^{9A} Before 2000, the IFE Article was titled 'Dependent Personal Services'. The title was changed to reflect the elimination of Article 14, which referred to 'Independent Personal Services', the deletion of which had the intended effect of income from professional services or other activities of an independent character being dealt with under Article 7.

16. Paragraph 38

(a) Omit the paragraph (excluding footnote 10); substitute:

38. Although other Articles are specified, there is no reference in that part of the GSAs in Australia's tax treaties dealing with the trade or business exception to the Business Profits Articles (BPA).¹⁰ The same applies to Article 19(3) of the OECD Model GSA. The absence of such an ordering rule in the GSAs with respect to the BPA indicates that amounts paid by a government to persons who are not employees were not intended to fall within the scope of the GSA.

(b) In footnote 10 omit 'at Schedule 47 of the Agreements Act' and 'the IPSA or'.

17. Paragraph 39

(a) In the first sentence omit 'DPSAs'; substitute 'IFEAs'.

(b) In the third and fourth sentences omit 'IPSA'; substitute 'BPAs'.

- (c) In footnote 11 omit 'DPSAs'; substitute 'IFEAs'.

18. Paragraph 40

Omit the last sentence of footnote 12; substitute 'There is no heading to the GSA in the Singapore Agreement that names the Article.'.

19. Paragraph 47

- (a) In the second sentence, omit 'July 2010'; substitute 'November 2017'.
(b) In the indented statement, omit 'Member'; substitute 'member'.

20. Paragraph 51

In the first sentence:

- (a) Omit 'The Commentary'; substitute 'Paragraph 1 of the OECD Model Commentary on the GSA'.
(b) Omit 'July 2010'; substitute 'November 2017'.
(c) Omit 'on the OECD Model GSA'.

21. Paragraph 57

Omit the last sentence.

22. Paragraph 76

In the first sentence omit ', which is set out at Attachment 2,'.

23. Paragraph 80

- (a) Omit the introductory sentence; substitute 'Paragraph 5 of the OECD Model of the Commentary on Article 19 as at November 2017 states:'.
(b) In the indented statement, after 'Some', insert 'OECD'.

24. Paragraph 82

Omit 'five tax treaties specified at Attachment 2'; substitute 'Category 2 tax treaties'.

25. Paragraph 84

Omit ', which is set out at Attachment 3,'.

26. Paragraph 89

Omit footnote 25.

27. Paragraph 90

In footnote 26:

- (a) Omit 'Attachment 1 and'.
- (b) Insert '(b)' after the words 'Articles 19(1)'.
- (c) Omit '19(3)'; substitute '19(2)(b)'
- (d) Omit the words 'July 2010'; substitute 'November 2017'.

28. Paragraphs 92 to 96

Omit the paragraphs and headings.

29. Paragraph 104

Omit the last sentence.

30. Paragraphs 105 and 106

Omit paragraphs and heading.

31. Detailed contents list

Omit:

- | | | |
|-----|---|------|
| (a) | 'Article 17 of the German Agreement | 18' |
| (b) | 'Article 17 of the German Agreement | 92' |
| (c) | 'Employees and office holders | 93' |
| (d) | ' <i>The meaning of 'in respect of an employment'</i> | 95' |
| (e) | 'Example 5 – Contractor – German Agreement | 105' |

32. Subject references

Omit all subject references and heading.

33. Related Rulings/Determinations

- (a) Omit 'TR 92/20;' and 'TR 2004/10'.
- (b) After 'TR 2001/13;' insert 'TR 2006/10'.

34. Legislative references

- (a) Omit:
 - '- ITAA 1936 23AG(1)'

‘- International Tax Agreements Act 1953 Sch 1’ to ‘International Tax Agreements Act 1953 Sch 49’.

(b) Insert:

‘ – Agreement between Australia and the Republic of Austria for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income [1988] ATS 21

- Agreement between the Government of Australia and the Government of the United Mexican States for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income [2004] ATS 4

- Agreement between the Government of the Commonwealth of Australia and the Government of the Republic of Singapore for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income [1969] ATS 14, as amended by the Singaporean protocol (No. 1) [1990] ATS 3 and the Singaporean protocol (No. 2) [2010] ATS 26

- Agreement between the Government of Australia and the Government of the People's Republic of China for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income [1990] ATS 45

- Agreement between the Government of Australia and the Government of the Kingdom of Denmark for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income [1981] ATS 26

- Agreement between the Government of Australia and the Government of the Russian Federation for the avoidance of Double Taxation and the prevention of Fiscal Evasion with respect to Taxes on income, and Protocol [2003] ATS 23

- Agreement between the Government of Australia and the Government of the Socialist Republic of Vietnam for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income [1992] ATS 44

- Agreement between the Government of Australia and the Government of the Republic of the Philippines for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income [1980] ATS 16

- Convention between Australia and the Republic of Italy for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, and Protocol [1985] ATS 27

- Agreement between the Government of Australia and the Government of the People's Republic of China for the Avoidance of Double Taxation of Income and Revenues derived by Air Transport Enterprises from International Air Transport [1986] ATS 31

- Agreement between the Government of the Commonwealth of Australia and the Government of Italy for the Avoidance of Double Taxation of Income derived from International Air Transport [1976] ATS 7

- Agreement between the Government of Australia and the Government of the Hellenic Republic for the Avoidance of Double Taxation of Income derived from International Air Transport [1981] ATS 10

- Vienna Convention on the Law of Treaties 31

- Vienna Convention on the Law of Treaties 32'

35. Other references

Omit ‘- OECD, OECD Model Tax Convention on Income and Capital, 1963, 1977 and the Condensed Version as at July 2010’; substitute:

- OECD, OECD Model Tax Convention on Income and Capital, 1963, 1977 as at November 2017.

36. Attachments 1 to 4

Omit Attachments and headings.

This Addendum applies on and from 27 June 2018.

Commissioner of Taxation

27 June 2018

ATO references

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