



CR 2001/33 - Income tax: exempt foreign employment income: Australian Federal Police employees stationed in the Solomon Islands as members of the International Peace Monitoring Team

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 This document has changed over time. This is a consolidated version of the ruling which was published on *15 October 2001*



Class Ruling

Income tax: exempt foreign employment
income: Australian Federal Police employees
stationed in the Solomon Islands as members
of the International Peace Monitoring Team

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Preamble

*The number, subject heading, and the **What this Class Ruling is about** (including **Tax law(s)**, **Class of persons** and **Qualifications** sections), **Date of effect**, **Withdrawal**, **Arrangement** and **Ruling** parts of this document are a 'public ruling' in terms of Part IVAAA of the **Taxation Administration Act 1953**. CR 2001/1 explains **Class Rulings** and **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 Class Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the 'tax law' identified below applies to the defined class of persons, who take part in the arrangement to which this Ruling relates.

Tax law

2. The tax law dealt with in this Ruling is section 23AG of the *Income Tax Assessment Act 1936*.

Class of persons

3. The class of persons to whom this Ruling applies are the Australian Federal Police employees deployed in the Solomon Islands as members of the International Peace Monitoring Team who are residents of Australia.

Qualifications

4. The Commissioner makes this Ruling based on the precise arrangement identified in this Ruling.

5. The class of persons defined in this Ruling may rely on its contents provided the arrangement described below at paragraphs

10 to 21 is carried out in accordance with the details of the arrangement provided in this Ruling.

6. If the arrangement described in this Ruling is materially different from the arrangement that is actually carried out:

- (a) this Ruling has no binding effect on the Commissioner because the arrangement entered into is not the arrangement on which the Commissioner has ruled, and
- (b) this Ruling may be withdrawn or modified.

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Date of effect

8. This Ruling applies from 15 October 2000. 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).

Withdrawal

9. This Class Ruling is withdrawn and ceases to have effect after 15 October 2002. The Ruling continues to apply, in respect of the tax law ruled upon, to all persons within the specified arrangement during the term of the Ruling. Thus, the Ruling continues to apply to those persons, even following its withdrawal, for arrangements entered into prior to withdrawal of the Ruling. This is subject to there being no change in the arrangement or in the persons' involvement in the arrangement.

Arrangement

10. The arrangement that is the subject of the Ruling is described below. This description is based on the following documents. These documents, or relevant parts of them, as the case may be, form part of and are to be read with this description. The relevant documents or parts of documents incorporated into this description of the arrangement are:

- The Townsville Peace Agreement (*dated 15 October 2000*);
- Australian Federal Police (Overseas Conditions of Service) Determination No 11 of 2000.

The Townsville Peace Agreement and the International Peace Monitoring Team

11. The International Peace Monitoring Team ('IPMT') was created under the authority of The Townsville Peace Agreement, an agreement for the cessation of hostilities between the Malaita Eagle Force and the Istabu Freedom Movement and for the restoration of peace and ethnic harmony in the Solomon Islands.

12. The parties to The Townsville Peace Agreement established a neutral and impartial IPMT, stationed and performing its tasks within the Solomon Islands. The team is composed of unarmed military personnel and civilian police experienced in peace monitoring, assisted by civilians.

13. The terms of reference for the IPMT are to:

- Monitor, observe and report on acts that constitute crimes and breaches of human rights;
- Identify and report on resources required by the parties in order to liaise, prepare for and participate in peace negotiations;
- Assess the needs to re-establish the rule of law;
- Conduct police training and advice on related organisation and human resource matters;
- Maintain safe custody and inventory of arms howsoever surrendered or returned to the government;
- Report objectively to all the parties, to the Peace Monitoring Council, to participating or sponsoring states and to the public at least every 14 days on the incidents, progress and developments in policing, law

and order, restoration of justice and resolving ethnic tension.

14. The IPMT is authorised to carry out its tasks from the signing of the agreement and shall continue that function for no less than two years unless all the parties agree otherwise.

15. The parties to the agreement requested the government of the Solomon Islands to advise Australia, New Zealand and the United Nations of the agreement and to encourage regional nations to participate and assist in the implementation of the peace agreement.

Australian Federal Police

16. A number of contingents of Australian Federal Police ('AFP') employees have served, are serving or will serve as monitors with the IPMT in the Solomon Islands.

17. AFP employees are required to be deployed in the Solomon Islands for a period specified by the Commissioner of Australian Federal Police. Members of all contingents have served or are expected to serve more than 91 days in the Solomon Islands.

18. The Commissioner of Australian Federal Police may:

- At any time direct an employee to return to Australia;
- Redeploy at later date, an employee that has returned to Australia on compassionate grounds; and
- If further deployments are considered, an employee will not normally be considered for deployment for more than 190 days within a 12 month period.

19. On posting to the IPMT, AFP employees remain entitled to annual salary.

20. In addition, but prior to deployment to the Solomon Islands, an AFP employee is entitled to an 'initial composite allowance'. This composite allowance is a fixed percentage of the employee's salary.

21. On deployment to the Solomon Islands, an employee is entitled to a 'further composite allowance'. The amount of this composite allowance is commensurate with the employee's Grade and duties. It is only payable while the employee is located in the Solomon Islands. Both allowances replace all entitlement to other allowances, time off in lieu and overtime.

Ruling

22. Section 23AG of the *Income Tax Assessment Act 1936* provides an exemption from Australian income tax of income earned in overseas employment, where certain requirements including that an Australian resident has been engaged in foreign service for a continuous period of not less than 91 days are met. The exempt income from overseas employment is taken into account however, when calculating the Australian tax payable on the assessable income of the taxpayer.

23. Salary (paragraph 19 of this ruling) and the ‘further composite allowance’ (paragraph 21 of this ruling) derived by Australian Federal Police employees whilst deployed as members of the International Peace Monitoring Team, are exempt from tax where those employees have been engaged in service in the Solomon Islands for a continuous period of not less than 91 days.

24. However, the ‘initial composite allowance’ (paragraph 20 of this ruling) paid after posting but prior to deployment is not exempt from tax as it constitutes an allowance or earnings derived prior to the period of foreign service.

Explanations

25. As there is no double taxation agreement between Australia and the Solomon Islands, the taxation consequences of this arrangement need only be considered with reference to the domestic tax law of Australia, specifically the *Income Tax Assessment Act 1936* (ITAA 1936).

26. Section 23AG (ITAA 1936) provides an exemption from Australian tax of income earned in overseas employment, where an Australian resident has been working overseas continuously for 91 days or more.

27. Subsection 23AG(1) states:

‘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.’

28. The basic tests for the exemption of foreign employment income in subsection 23AG(1) are:

- the taxpayer must be a ‘resident of Australia’;
- be engaged in ‘foreign service’;

- for a continuous period of not less than 91 days; and
- derive ‘foreign earnings’ from that ‘foreign service’.

29. If an AFP employee was a resident of Australia prior to their deployment, the deployment is not sufficient in itself to establish a non-Australian residence.

30. ‘Foreign service’ is defined as ‘*service in a foreign country as a holder of an office or in the capacity of an employee*’ (subsection 23AG(7)).

31. Deployment as a member of the IPMT in the Solomon Islands constitutes ‘foreign service’ as those employees are undertaking ‘*service in a foreign country (the Solomon Islands) as a holder of an office or in the capacity of an employee*’. Furthermore, the term ‘employee’ is defined within subsection 23AG(7) to include:

- (a) a person employed by a government or an authority of a government or by an international organisation; or
- (b) a member of a disciplined force’.

An AFP employee is considered to meet both of the above definitions of an ‘employee’.

32. Each contingent of AFP employees deployed to the Solomon Islands are expected to serve continuously in the Solomon Islands for a period of at least 91 days. Therefore, these periods of ‘foreign service’ meet the test that Australian residents working overseas must be engaged ‘*for a continuous period of not less than 91 days*’. Should an employee of the AFP depart the Solomon Islands prior to the completion of 91 days of continuous service, that employee will normally be ineligible for the exemption .

33. In certain instances, an employee who departs the Solomon Islands prior to serving the necessary number of days, may still qualify for exemption if they return to continue their posting at a later date (refer paragraphs 9 to 16 of Taxation Ruling TR 96/15).

34. The definition of ‘foreign earnings’ is also contained in subsection 23AG(7), which provides that:

‘ **“foreign earnings”** means income consisting of earnings, salary, wages, commission, bonuses or allowances but does not include any payment, consideration or amount that:

- (a) is included in assessable income under Subdivision AA of Division 2 ; or
- (b) is excluded from the definition of **“eligible termination payment”** in subsection 27A(1) because of paragraph (ja), (k), (ka), (m), (ma), (n) or (p) of that definition.’

35. The exclusions to the definition of ‘foreign earnings’ at paragraphs (a) and (b) above are not relevant to this arrangement as they relate to pensions, annuities, eligible termination payments and other similar amounts.

36. The remuneration of posted AFP employees takes the form of a continuation of an annual salary entitlement and the payment of various allowances (including two composite allowances).

37. Salary and allowances are specifically included in the subsection 23AG(7) definition of ‘foreign earnings’.

38. Whilst the salary of AFP employees is paid into Australian financial institutions in Australia, those ‘earnings’ are still considered ‘...foreign earnings’. Subsection 23AG(1) provides an implicit connection between ‘foreign earnings’ and ‘foreign service’, that is, ‘*any foreign earnings derived by the person from that foreign service is exempt from tax*’. The direct linkage of earnings to service negates the need to consider any potential ‘source’ issues, notwithstanding that the source of remuneration under a normal contract of employment is generally regarded as the place where the duties are performed (*FC of T v French* (1957) 98 CLR 398).

39. However, the link between ‘foreign earnings’ and ‘foreign service’ is limited to those amounts derived whilst on ‘service in a foreign country’. While the salary component and the ‘further composite allowance’ are derived by AFP employees at a time they are actually serving in the Solomon Islands, the ‘initial composite allowance’ is derived prior to that period of ‘foreign service’.

40. As the ‘initial composite allowance’ is derived prior to foreign service, it is not considered to be ‘foreign earnings’ and is not exempt from income tax under subsection 23AG(1). Only salary and allowances derived whilst serving in the Solomon Islands constitute ‘*foreign earnings derived by that person from that foreign service*’ and are therefore exempt from income tax.

Certain foreign earnings not exempt

41. The subsection 23AG(1) exemption from Australian tax will not apply in certain circumstances. Subsection 23AG(2) provides that, foreign earnings that are exempt from tax overseas will also be exempt in Australia except where they are exempt solely because of:

- a double tax agreement or a law of a country that gives effect to such an agreement (paragraphs 23AG(2)(a) and (b));
- the law of a foreign country generally exempts from, or does not provide for the imposition of income tax on income derived in the capacity of an employee, income

from personal services or any other similar income (paragraphs 23AG(2)(c) and (d));

- a law or international agreement dealing with privileges and immunities of diplomats or consuls or of persons connected with international organisations applies (paragraphs 23AG(2)(e)(f) and (g)).

42. The foreign earnings derived by AFP employees in the Solomon Islands are not caught by subsection 23AG(2) as those earnings are not exempt, under a general or specific provision, from income tax in the Solomon Islands (subsection 23AG(3)).

Other relevant information

43. The 'foreign earnings' of deployed AFP employees that are exempt from Australian tax under section 23AG are nevertheless taken into account in calculating the Australian tax on other assessable income derived by the officer.

44. Tax will be calculated by applying to the non-exempt component (e.g., Australian salary, investment income), the notional average rate of tax payable on the sum of exempt income and non-exempt income.

Example

45. In the 2000 - 2001 income year, an AFP employee derived the following types of income:

Australian employment income of \$45 000

Overseas employment income of \$15 000

The total amount of Australian tax payable on the employee's income will be calculated with reference to the following formula:

$$\frac{\textit{Notional gross tax}}{\textit{Notional gross taxable income}} \times \textit{Other taxable income}$$

Step 1

The employee's **notional gross taxable income** is \$60 000 (\$45 000 + \$15 000)

Step 2

The **notional gross tax** is \$16 480 (the normal Australian income tax \$15 580 and Medicare levy \$900 payable on a taxable income of \$60,000).

Step 3

The *other taxable income* is \$45 000 (Australian employment income)

Step 4

The Australian tax payable (including Medicare levy) on the employee's Australian income is:

$$\begin{array}{r} \frac{\$16\,480}{\$60\,000} \quad \times \quad \$45\,000 \\ = \quad \$12\,360.00 \end{array}$$

Detailed contents list

46. Below is a detailed contents list for this Class Ruling:

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Previous draft:

Not previously issued in draft form

Related Rulings/Determinations:

CR 2001/1; TR 92/1; TR 92/20;
TR 96/15; TR 97/16

Subject references:

- foreign Income
- foreign Salary & Wages
- foreign Source Income
- International Tax
- overseas Countries
- overseas Tax Laws
- residence of Individuals
- Solomon Islands

- ITAA 1936 23AG(2)
- ITAA 1936 23AG(2)(a)
- ITAA 1936 23AG(2)(b)
- ITAA 1936 23AG(2)(c)
- ITAA 1936 23AG(2)(d)
- ITAA 1936 23AG(2)(e)
- ITAA 1936 23AG(2)(f)
- ITAA 1936 23AG(2)(g)
- ITAA 1936 23AG(7)
- ITAA 1936 27A(1)
- ITAA 1936 27A(1)(ja)
- ITAA 1936 27A(1)(k)
- ITAA 1936 27A(1)(ka)
- ITAA 1936 27A(1)(m)
- ITAA 1936 27A(1)(ma)
- ITAA 1936 27A(1)(n)
- ITAA 1936 27A(1)(p)

Legislative references:

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

Case references:

- FC of T v French (1957)
98 CLR 398
-

ATO References

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