



# ***CR 2003/61 - Income tax: Assessability of income: Australian Federal Police (AFP) and Australian Protective Service (APS) employees deployed to the Solomon Islands***

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 This document has changed over time. This is a consolidated version of the ruling which was published on *12 January 2005*



## Class Ruling

### Income tax: Assessability of income: Australian Federal Police (AFP) and Australian Protective Service (APS) employees deployed to the Solomon Islands

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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**, **Arrangement**, **Ruling** parts and **paragraphs 46 to 55** 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.*

*[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.]*

## What this Class Ruling is about

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

#### **Tax law(s)**

2. The tax laws dealt with in this Ruling are section 6-5 of the *Income Tax Assessment Act 1997* and section 23AG of the *Income Tax Assessment Act 1936* (ITAA 1936).

#### **Class of persons**

3. The class of persons to whom this Ruling applies are:

- Australian Federal Police (AFP) employees;
- Australian Protective Service (APS) employees;
- Persons seconded to the AFP under section 69D of the *Australian Federal Police Act 1979* for the purposes of

deployment as part of the International Deployment Group (IDG), for the period of their deployment; and

- Persons appointed to the AFP as Special Members of the AFP under section 40E of the *Australian Federal Police Act 1979* for the purposes of deployment as part of the IDG, for the period of their deployment,

who are Australian residents for tax purposes and deployed to the Solomon Islands as part of the Regional Assistance Mission Solomon Islands (RAMSI).

4. Reference to the AFP includes the APS unless specifically differentiated.

## Qualifications

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

6. The class of persons defined in this Ruling may rely on its contents provided the arrangement actually carried out is carried out in accordance with the arrangement described below at paragraphs 10 to 25 in this Ruling.

7. 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

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9. This Ruling applies to years commencing 1 July 2003. 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 to 22 of Taxation Ruling TR 92/20). Furthermore, the Ruling only applies to the extent that:

- it is not later withdrawn by notice in the *Gazette*;
- it is not taken to be withdrawn by an inconsistent later public ruling; or
- the relevant tax laws are not amended.

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## Arrangement

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10. The arrangement that is the subject of this Ruling is described below. The description of the arrangement is based on the *Australian Federal Police (RAMSI – Overseas) Determination (No) 7 of 2003*.

### *Mission*

11. AFP employees will be deployed on the Regional Assistance Mission Solomon Islands (RAMSI) to provide assistance to the people of the Solomon Islands by stabilising the current law and order environment. They will also seek to bolster and assist the Royal Solomon Islands Police capacity to address the significant law enforcement issues it faces through the longer-term development of policing and specialist support skills. Some members may be deployed to Provincial policing duties. The APS staff are to provide security and guarding for individuals and property as part of a broader protective security operation undertaken by elements of the Protection and Guarding Portfolio.

### *Pre-deployment training*

12. The AFP will be engaged in a pre-deployment training program of up to one week duration before embarkation. The training program will likely be conducted immediately prior to deployment overseas.

## *Period of deployment*

13. AFP deployment will be for a period specified by the Commissioner of the AFP and is expected to be generally six months in duration. APS deployment will be for a period of up to four months.

## *Other conditions of the posting*

14. The Commissioner of the AFP may at any time direct an employee to return to Australia. If such a direction is given, the employee must comply with it immediately. An employee returning to Australia on compassionate grounds may be redeployed at a later date, after the reason for the employee's return no longer exists. If further deployments of AFP detachments are considered, the employee will not normally be considered for deployment for more than 190 days within a twelve-month period.

15. AFP employees deployed on the RAMSI for a period of six months, but less than nine months, will be required, on a rostered basis, to take a stand down of ten days. This stand down period must be taken away from the Solomon Islands. An employee will be provided with a return economy air ticket equal in value to the cost of a ticket from the Solomon Islands to the employee's home city.

## **Income and Allowances**

### *Pre-deployment composite*

16. AFP employees will receive a composite payment during the pre-deployment training.

### *Annual Salary upon posting on the RAMSI*

17. While deployed on the RAMSI, an employee will be paid an annual salary according to the role undertaken while over there, in accordance with amounts prescribed by the Commissioner of the AFP. The salaries will vary to reflect AFP wide wage increases in accordance with the provisions of any industrial agreements existing at the time. Employees appointed, whose normal salary is within the specified range for the role undertaken, will be paid at current rates. Employees whose normal salary is below the AFP grade will be remunerated at the lowest salary point in the grade. Employees of a higher AFP grade who accept deployment at a lower grade will be paid at the highest pay point in the grade.

*Extended Unaccompanied Overseas Service Allowance*

17A. On completion of an employee's nominated Term of Deployment, an employee will accrue an additional entitlement, the Extended Unaccompanied Overseas Service Allowance (EUOSA). EUOSA is provided in recognition of an employee's completion of a period of overseas duty with the IDG, and the challenges involved in performing duty in overseas locations.

*Composite allowance upon posting*

18. While deployed on the RAMSI, an employee is entitled to a composite allowance. The composite allowance will commence at the time of arrival in the Solomon Islands and will cease at the departure of the employee from the Solomon Islands, at the completion of the employees deployment. This composite will be paid during the mandatory stand down period. The composite allowances replace employees' entitlements to all allowances including on call, restricted duty, time off in lieu, overtime, public holidays, nightshift premiums and the provisions of the Health and Safety Principles.

*Fortnightly call allowance*

19. An employee will receive a payment of \$40 AUD per fortnight to cover the costs of telephone calls/electronic communication to Australia

*Payment in advance - optional*

20. An employee may elect before departure to be paid an Outlay Advance of \$2, 600 for a 6 month deployment. The amount paid to the employee as outlay advance must be paid back by means of equal fortnightly deductions from the employee's salary during the course of their deployment. If the deployment lasts for a period less than that specified, the amount outstanding must be reimbursed as soon as possible after the employee's return to Australia.

*Transport to and from the employees home base and to the Solomon Islands*

21. AFP employees will be provided with transport from their home base to Townsville as per the AFP's Travel Policy and to the Solomon Islands by either Australian Defence Force (ADF) transportation or economy class airfares by commercial aircraft.

## *Transfer allowance within Australia*

22. An employee is entitled to a transfer allowance in compensation for unreimbursed expenditure associated with movement to and from the Solomon Islands. The allowance is payable before departure and again on return to Australia. The rate of the transfer allowance is \$500 on departure and \$275 on return to Australia at the end of the deployment.

## *Incidental allowance*

23. Meals and accommodation will be provided to the employee for the period of their deployment. A daily incidental allowance of \$15 will be paid to each employee to cover any miscellaneous in-country expenses.

## *Mission allowance*

24. An employee is entitled to a mission allowance at a pre-determined rate. This allowance is payable while the employee is deployed.

## *Recreation leave*

25. An employee will not be able to take recreation leave while deployed on the RAMSI. All recreation leave accrued by an employee while deployed on the RAMSI will be taken by the employee at the end of their deployment. Leave taken at the end of the deployment will be paid at the composite rate applicable to the RAMSI deployment only if it is taken immediately after the deployment.

## **Ruling**

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26. The income and allowances derived by an employee of the AFP from their foreign service are exempt from income tax under section 23AG of the ITAA 1936 where the employee has been engaged in service in the Solomon Islands for a continuous period of not less than 91 days.

27. Income and allowances derived by an employee before and after their foreign service are not exempt from income tax.

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## Explanation

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28. 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.

29. Section 23AG of the ITAA 1936 provides a general exemption from income tax for the foreign earnings of an Australian resident taxpayer who works overseas for a continuous period of not less than 91 days.

30. 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.

31. 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’.

32. 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.

33. ‘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)).

34. Deployment on the RAMSI constitutes ‘foreign service’ as those employees are undertaking ‘*service in a foreign country 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.

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

36. Each contingent of AFP employees deployed on the RAMSI 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.

37. 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 to Taxation Ruling TR 96/15).

38. 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.

39. 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.

40. The remuneration of posted AFP employees takes the form of an annual salary entitlement and the payment of various allowances.

41. Salary and allowances are specifically included in the subsection 23AG(7) definition of 'foreign earnings'.

42. Whilst the salary of AFP employees may be 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).

### **Certain foreign earnings which are not exempt**

43. The subsection 23AG(1) of the ITAA 1936 exemption from Australian tax will not apply in certain circumstances. Subsection 23AG(2) of the ITAA 1936 provides that, foreign earnings that are

exempt from tax overseas will also be exempt in Australia except where they are exempt only because of any of the following:

- 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)); or
- 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)).

44. The privileges and immunities of persons connected with an international organisation do not apply to the situation in the Solomon Islands.

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

**Application of the section 23AG of the ITAA 1936 exemption to specific attributes of the arrangement (outlined in paragraphs 10 to 25)**

*Pre-deployment composite*

46. The pre-deployment composite paid during the pre-deployment training is not exempt from income tax as it is derived prior to foreign service commencing.

*Annual salary upon posting to the RAMSI*

47. The annual salary paid to an employee for service while deployed on the RAMSI is exempt from income tax where the employee has been engaged in service in the Solomon Islands for a continuous period of not less than 91 days. Salary paid for recreation leave accrued while on deployment to the RAMSI during the period of 91 continuous days or more foreign service is exempt from income tax as it is derived from the foreign service.

*Extended Unaccompanied Overseas Service Allowance*

47A. The Extended Unaccompanied Overseas Service Allowance (EUOSA) entitlement is accrued when the employee's nominated Term of Deployment is completed. EUOSA paid to an employee for service while deployed on the RAMSI is exempt from income tax where the employee has been engaged in service in the Solomon Islands for a continuous period of not less than 91 days. EUOSA paid for the purpose of recreation leave accrued while on deployment on the RAMSI, where the employee has been engaged in service in the Solomon Islands for a continuous period of not less than 91 days, is exempt from income tax as it is derived from the foreign service.

*Composite allowance upon posting*

48. The composite allowance entitlement starts when the AFP employee arrives on the Solomon Islands and finishes at the completion of their deployment. Composite allowance paid to an employee for service while deployed on the RAMSI is exempt from income tax where the employee has been engaged in service in the Solomon Islands for a continuous period of not less than 91 days. Composite allowance paid for the purpose of recreation leave accrued while on deployment on the RAMSI, where the employee has been engaged in service in the Solomon Islands for a continuous period of not less than 91 days, is exempt from income tax as it is derived from the foreign service.

*Motor vehicle allowance*

49. Motor vehicle allowance paid to an employee for service while deployed on the RAMSI will be exempt from income tax where the employee has been engaged in service in the Solomon Islands for a continuous period of not less than 91 days.

*Fortnightly call allowance*

50. The call allowance paid to an employee for service while deployed on the RAMSI will be exempt from income tax where the employee has been engaged in service in the Solomon Islands for a continuous period of not less than 91 days.

*Payment in advance – optional*

51. An outlay advance which by election of an employee is received prior to their deployment and is required to be repaid is not income.

*Transfer allowance within Australia*

52. The transfer allowance is not exempt as it is not derived from foreign service.

*Meals and accommodation*

53. Meals and accommodation provided to an employee on the RAMSI will be exempt from tax.

*Incidental Allowance*

54. The incidental allowance paid to an employee while deployed on the RAMSI will be exempt from income tax where the employee has been engaged in service in the Solomon Islands for a continuous period of not less than 91 days.

*Mission Allowance*

55. The mission allowance paid to an employee while deployed on the RAMSI will be exempt from income tax where the employee has been engaged in service in the Solomon Islands for a continuous period of not less than 91 days.

**General Deductions**

56. The exempt income is taken into account in calculating the tax payable on non-exempt income. When this occurs, any deductions that relate to the exempt income are allowed as if the exempt income was assessable income. That is, expenses which relate directly to earning income in the Solomon Islands are deductible from exempt income.

57. Some examples of allowable deductions are:

- The cost of purchasing protective clothing for work;
- The cost of buying, renting, repairing or cleaning any occupational specific clothing.

**Other considerations**

58. The tax payable on non-exempt income is calculated by using the notional average rate of tax payable (including the Medicare levy and Medicare levy surcharge but excluding any tax offsets) on the sum of the exempt income and non-exempt income. That is, for the

purposes of calculating the tax payable on the non-exempt income, the exempt income is treated as if it was assessable income.

### ***Example***

59. In the 2003 - 2004 income year, Dale, an AFP employee derived the following types of income:

- Australian employment income after deductions of \$45,000;
- Overseas employment income after deductions of \$15,000.

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

$$(\text{Notional gross tax} / \text{Notional gross taxable income}) \times \text{Other taxable income}$$

#### ***Step 1***

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

#### ***Step 2***

The ***notional gross tax*** is \$16,032 (the normal Australian income tax and Medicare levy payable on a taxable income of \$60,000 – this does not include Medicare levy surcharge as Dale has appropriate private patient hospital cover).

#### ***Step 3***

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

#### ***Step 4***

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

$$(\$16,032 / \$60,000) \times \$45,000 = \$12,024.00$$

## **Detailed contents list**

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

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**Commissioner of Taxation**

30 July 2003

*Previous draft:*

Not previously released in draft form

- ITAA 1936 23AG(7)
- ITAA 1936 23AG(7) of Subdiv AA Div 2

*Related Rulings/Determinations:*

CR 2001/1; CR 2001/33; TR 97/16;  
TR 96/15; TR 92/20; TR 92/1

- 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)

*Subject references:*

- exempt foreign income

- ITAA 1936 27A(1)(n)
- ITAA 1936 27A(1)(p)
- ITAA 1997 6-5

*Legislative references:*

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

- TAA 1953 Pt IVAAA
- Copyright Act 1968
- AFP Act 1979 40E
- AFP Act 1979 69D

*Case References:*

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

## ATO References

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