


***CR 2005/25 - Income tax: assessable income:
members of the Australian Federal Police -
International Deployment Group deployed to the
Solomon Islands under the Instrument of
Determination dated 10 December 2004***

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Class Ruling

Income tax: assessable income:
 members of the Australian Federal Police
 – International Deployment Group
 deployed to the Solomon Islands under
 the Instrument of Determination dated
 10 December 2004

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Preamble

*The number, subject heading, **What this Class Ruling is about** (including **Tax law(s)**, **Class of persons** and **Qualifications** sections), **Date of effect**, **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(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 23AG of the *Income Tax Assessment Act 1936* (ITAA 1936) and section 6-5 of the *Income Tax Assessment Act 1997* (ITAA 1997).

Class of persons

3. The class of persons to which this Ruling applies is members of the Australian Federal Police (AFP) who are deployed to the Solomon Islands under the Agreement between the Solomon Islands, Australia, New Zealand, Fiji, Papua New Guinea, Samoa and Tonga concerning the operations and status of the police and armed forces and other personnel deployed to the Solomon Islands to assist in the restoration of law and order and security (the Agreement) and who remain Australian residents throughout the period of deployment. The AFP members are deployed under an Instrument of Determination dated 10 December 2004 to the Regional Assistance Mission to Solomon Islands (RAMSI).

4. The class of persons includes AFP members who while on deployment to the Solomon Islands return to Australia for a period during which they utilise leave that has wholly accrued from their service in the Solomon Islands.

5. The class of person does not include AFP members while on deployment to the Solomon Islands return to Australia for a period during which they utilise leave that has wholly or partly accrued from service in Australia.

Qualifications

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

7. 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 in paragraphs 11 to 23.

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

- 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
- this Ruling may be withdrawn or modified.

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Date of effect

10. This Ruling applies from 1 July 2004. However, the Ruling 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 Ruling (see paragraphs 21 and 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.

Arrangement

11. The arrangement that is the subject of the Ruling is described below. This description is based on the following documents which are attached to the file record maintained by the Australian Tax Office for this Ruling. 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:

- Application for Class Ruling (dated 14 February 2005) received 21 February 2005 including copy of Instrument under section 7 of Determination No. 4 of 2004 dated 10 December 2004;
- Guide to Conditions of Employment – AFP – Short Term – Overseas Conditions of Service – Determination No. 2 of 2002 (provided in a facsimile sent by the applicant and received on 3 March 2005);
- Guide to Conditions of Employment – AFP – International Deployment Group – Determination No. 4 of 2004 – Short Term Deployment Variation to Determination 2 of 2002 (provided in a facsimile sent by the applicant and received on 3 March 2005);
- Summary of Terms & Conditions – Attachment 1 (provided in a facsimile sent by the applicant and received on 2 March 2005); and
- Copy of the Agreement between the Solomon Islands, Australia, New Zealand, Fiji, Papua New Guinea, Samoa and Tonga concerning the operations and status of the police and armed forces and other personnel deployed to the Solomon Islands to assist in the restoration of law and order and security (the Agreement) provided in a facsimile sent by the applicant received 3 March 2005.

12. AFP members who are employees under the *Australian Federal Police Act 1979* will be deployed to the Solomon Islands under the terms of the Agreement which was signed on 24 July 2003. The deployment is integral to the Australian Government's effort to provide security, law enforcement and economic stabilisation to the Solomon Islands.

13. The first AFP members deployed to the Solomon Islands under this arrangement, left Australia on 19 December 2004.

14. The periods of deployment of AFP members in the Solomon Islands will be a rolling deployment of 14 weeks (98 days) consisting of 8 weeks in mission with 6 weeks compensating recreation leave in lieu of extreme working conditions. After completing a 14 week deployment cycle, AFP members will be available for re-deployment subject to operational priorities and fitness for duties.

15. AFP members will be on a shift roster and are required to work eleven hours per day, for six days out of every seven days while in mission. AFP members while not 'rostered on', will be on close-call 24 hours per day, seven days per week while in mission. AFP members will be confined to base, in readiness for an immediate response should the need arise. Given rostered time and close-call requirements, members do not have 'free time' while in the Solomon Islands.

16. Additional AFP members may replace current deployed members under rotational arrangements on completion of their time in the Solomon Islands. The term of deployments will be for a period of six months or less. While they are stood down for six weeks recreation leave, the AFP members are returned to Australia for this time.

17. On completion of the mission and the recreation leave attributable to the time in the Solomon Islands, the AFP member may return immediately to the Solomon Islands for a further AFP deployment or may resume AFP duties in Australia with the AFP.

18. Salary and other allowances will continue to be paid into the AFP member's nominated bank account on a fortnightly basis.

19. The AFP member will be a member of either the Commonwealth Superannuation Scheme or the Public Sector Superannuation Scheme.

20. AFP members will be entitled to the following allowances:

- Mission allowance;
- Pre-deployment composite allowance;
- Deployment composite allowance paid during posting in lieu of all allowances from the Certified agreement, including overtime;
- Transfer allowance; and
- Incidentals allowance.

21. During the period of deployment, AFP members normal leave accruals for recreation leave and mandatory leave will be suspended. AFP members will be entitled to six weeks recreation leave for every eight weeks overseas service, in recognition of the extreme work conditions including the additional hours worked during the period of their overseas deployment.

22. Miscellaneous leave may be granted for limited circumstances (for example, death of close family member). Generally recreation and miscellaneous leave will not be approved during the period of overseas service.

23. Article 16.6 of the Agreement provides that AFP members deployed to the Solomon Islands shall be exempt from taxation by the Government of the Solomon Islands on their pay and other emoluments.

Ruling

24. Subject to paragraph 25, the salary and allowances referred to in paragraphs 18 and 20 of this Ruling, derived by AFP members described in paragraphs 3 and 4 of this Ruling deployed to the Solomon Islands are exempt from tax under section 23AG of the ITAA 1936 where:

- the member has been engaged, or is taken to have been engaged, in service in the Solomon Islands for a continuous period of not less than 91 days; and
- the salary and allowances are derived from that foreign service, including payments for recreation leave that has wholly accrued from the period of service in the Solomon Islands.

25. The pre-deployment composite allowance and transfer allowance referred to in paragraph 20 are not exempt from tax under subsection 23AG(1) of the ITAA 1936.

Explanation

26. Subsection 6-5(2) of the ITAA 1997 provides that the assessable income of a resident taxpayer includes ordinary income derived directly or indirectly from all sources, whether in or out of Australia, during the income year.

27. Salary and wages are ordinary income for the purposes of subsection 6-5(2) of the ITAA 1997.

28. Subsection 6-15(2) of the ITAA 1997 provides that if an amount is exempt income then it is not assessable income.

29. Section 11-15 of the ITAA 1997 lists those provisions dealing with income which may be exempt. Included in this list is section 23AG of the ITAA 1936 which deals with exempt foreign employment income.

30. Section 23AG of the ITAA 1936 provides an exemption from Australian tax on the foreign earnings derived by an Australian resident who has been engaged in foreign service continuously for 91 days or more.

31. Subsection 23AG(1) of the ITAA 1936 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.

32. The basic tests for the exemption of foreign employment income in subsection 23AG(1) of the ITAA 1936 are:

- the taxpayer must be a 'resident of Australia';
- the taxpayer must be engaged in 'foreign service';
- the foreign service must be for a continuous period of not less than 91 days; and
- the taxpayer must derive 'foreign earnings' from that 'foreign service'.

However, certain foreign earnings that meet these tests may not be exempt from tax (see paragraphs 64 to 69).

Resident of Australia

33. The determination of a person's residency status depends on that person's circumstances and is a determination made in relation to each year of income. For further information see Income Tax Ruling IT 2650. This Class Ruling only applies to the class of persons described in paragraph 3 of this Ruling who remain Australian residents for tax purposes during their deployment to the Solomon Islands.

34. This Ruling is based on the assumption that AFP members deployed to the Solomon Islands will remain Australian residents for tax purposes throughout the period of their deployment.

Engaged in foreign service

35. 'Foreign service' is defined as 'service in a foreign country as the holder of an office or in the capacity of an employee' (subsection 23AG(7) of the ITAA 1936).

36. The term 'employee' is defined within subsection 23AG(7) of the ITAA 1936 to include 'a person employed by a government or an authority of a government or by an international organisation'.

37. AFP members referred to in paragraph 3 of this Ruling are considered to meet the above definition of an 'employee'.

38. Deployment of AFP members to the Solomon Islands constitutes 'foreign service' as each employee is undertaking 'service in a foreign country as a holder of an office or in the capacity of an employee'.

For a continuous period of not less than 91 days

39. Each AFP member based in the Solomon Islands is expected to serve continuously in the Solomon Islands for a period of not less than 91 days. These periods of 'foreign service', if met, satisfy the test that Australian residents working overseas must be engaged 'for a continuous period of not less than 91 days'.

40. Should an AFP member depart the Solomon Islands prior to the completion of 91 days of continuous service, that employee will normally be ineligible for the exemption.

41. However, in certain instances, an AFP member 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).

Temporary absences

42. Subsection 23AG(6) of the ITAA 1936 and paragraph 11 of TR 96/15 treat certain temporary absences from foreign service as forming part of the period of foreign service.

43. This includes absences on recreation leave, other than:

- (i) leave wholly or partly attributable to a period of service or employment other than the foreign service;
- (ii) long service leave, furlough, extended leave or leave of a similar kind (however described); or
- (iii) leave without pay or on reduced pay.

44. As normal leave accruals for recreation leave and mandatory leave are suspended during the period of deployment, it is not expected that any absence on recreation leave (other than the six weeks compensating recreation leave) during the period of the deployment will be taken to form part of the period of foreign service.

45. Where the overseas employment is performed under a cyclical arrangement, the whole of the work cycle (times on and off) are regarded as a continuous period of employment (Taxation Ruling IT 2441 and TR 96/15).

46. IT 2441 states that where a resident is employed in a foreign country, leave taken in circumstances similar to those mentioned in Taxation Ruling IT 2015 is treated as recreation leave that forms part of a period of foreign service under subsection 23AG(6) of the ITAA 1936. Subsection 23AG(6) states that the period of foreign service will include recreation leave other than long service leave or leave without pay or reduced pay and will not constitute a break in a period of foreign service.

47. IT 2015 refers to employees who are engaged in uninterrupted cycles of five weeks on site and five weeks leave in Australia, without any entitlement for additional annual leave and who are not required to attend company offices in Australia during leave periods.

48. TR 96/15 in referring to the recreation leave under subsection 23AG(6) of the ITAA 1936 considers extended leave not be part of the recreation leave. However, additional recreation leave entitlements granted to employees posted overseas are not extended leave where the additional leave is reasonable for example where it is granted due to the hardship involved in the postings resulting in the need for more rest and recreation.

49. The period of six weeks recreation leave is granted to AFP members due to the arduous conditions under which they are deployed to the Solomon Islands. These include:

- shifts of 11 hours duration;
- rostered duty six days out of seven;
- the requirement to be on 'close call' when not rostered for duty;
- the duty time which occurs even when rostered for duty; and
- the assessment which highlight the physical risks for the AFP members when called out.

Therefore, it is considered that the six weeks recreation leave granted is reasonable and is considered to be recreation leave under subsection 23AG(6) of the ITAA 1936 and would not be considered as extended leave as described under subparagraph 23AG(6)(a)(ii) of the ITAA 1936.

50. In respect of periods spent by AFP members on visits to Australia as described in paragraph 21 of this Ruling, these periods are temporary absences from duty authorised by the terms and conditions of the employee's foreign service and it is considered that the work arrangement is a cyclical arrangement as defined in IT 2441 and TR 96/15. Therefore, the entire period of the cyclical arrangement forms part of a continuous period of foreign service and is taken to form part of the employee's foreign service period. These absences will not break the continuity of eligible foreign service.

51. If an AFP member who is in Australia as described in paragraph 21 of this Ruling, extends their stay to take further recreational leave that further recreation leave will not be taken to form part of the foreign service. As the normal leave accruals are suspended while on deployment, any further leave that is taken will not have accrued wholly from foreign service in the Solomon Islands.

Temporary absences utilising leave entitlements from employment in Australia

52. As advised in paragraph 5 of this Ruling, AFP members who take leave that accrued wholly or partly from employment in Australia are not part of the class of person to whom this Ruling applies.

53. In certain limited circumstances, an employee who is temporarily absent from the Solomon Islands while taking a period of leave that had accrued wholly or partly from employment in Australia may still meet the requirements of continuous service for exemption under section 23AG of the ITAA 1936. AFP members who have or are planning to take leave using an entitlement that wholly or partially accrued from employment in Australia should seek professional advice from their taxation adviser or the Australian Taxation Office about the application of subsection 23AG(6D) to their circumstances.

Foreign earnings

54. The definition of 'foreign earnings' is contained in subsection 23AG(7) of the ITAA 1936, 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.

55. The exclusions to the definition of 'foreign earnings' in the above paragraph are not, however, relevant to this arrangement as they relate to pensions, annuities, eligible termination payments and other similar amounts.

56. The remuneration of posted AFP members takes the form of an annual salary entitlement and the payment of various allowances (see paragraphs 18 and 20).

57. These salary and allowances are specifically included in the definition of 'foreign earnings' in subsection 23AG(7) of the ITAA 1936.

58. Whilst the salary of AFP members may be paid into financial institutions in Australia, those 'earnings' are still considered 'foreign earnings'.

From that foreign service

59. To qualify for the exemption the 'foreign earnings' must be derived from the 'foreign service'. That does not mean that the foreign earnings need to be derived at the time of engaging in foreign service. The important test is that the foreign earnings, when derived, need to be derived as a result of the undertaking of that foreign service.

60. In the case of allowances paid after the person returns to Australia that relate to the period of foreign service, such allowances are treated as foreign earnings derived from that foreign service. Also, any advances paid to the taxpayer prior to the undertaking of foreign service against salary arising from the undertaking of that foreign service would be treated as foreign earnings from foreign service.

61. The salary that is paid when taking recreation leave that accrued during the period of foreign service is also considered to be foreign earnings from that service, even though the recreation leave may be taken after the completion of the foreign service.

62. An AFP member is entitled to a composite allowance while undertaking pre-deployment training prior to engaging in foreign service. The composite allowance payable during the pre-deployment period is not derived from foreign service. It is derived as a result of the training undertaken prior to leaving Australia and does not, therefore, qualify for exemption under section 23AG of the ITAA 1936.

63. An AFP member is also entitled to a transfer allowance prior to engaging in foreign service and after the completion of foreign service. The transfer allowance payable prior to the deployment period and after the end of the foreign service is not derived from that foreign service. It is paid as a compensation for non-reimbursed expenditure incurred by the AFP member prior to engaging in foreign service and after completion of foreign service and does not, therefore, qualify for exemption under section 23AG of the ITAA 1936.

Certain foreign earnings not exempt

64. Subsection 23AG(2) of the ITAA 1936 provides that no exemption is available under subsection 23AG(1) in circumstances where an amount of foreign earnings derived in a foreign country is exempt from tax in the foreign country 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));
- a law of that foreign country which 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)); and

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

65. There is currently no double tax agreement between Australia and the Solomon Islands.

66. The privileges and immunities of persons connected with an international organisation do not apply to AFP members working in the Solomon Islands.

67. The foreign earnings derived by AFP members in the Solomon Islands are not exempt under a general provision from income tax in the Solomon Islands.

68. However, Article 16.6 of the Agreement provides that salary and other emoluments derived by the participating police force members and other personnel of assisting countries are exempt from taxation in the Solomon Islands.

69. As the foreign earnings of AFP members are not exempt from tax in the Solomon Islands solely because of any of the reasons listed in subsection 23AG(2) of the ITAA 1936, subsection 23AG(2) will not deny the exemption under subsection 23AG(1).

Exemption with progression

70. The 'foreign earnings' of AFP members that are exempt from Australian tax under section 23AG of the ITAA 1936 are nevertheless taken into account in calculating the Australian tax on other assessable income derived by the employee (subsection 23AG(3)).

71. Tax on other assessable income will be calculated by applying to the non-exempt income (for example, Australian salary, investment income), the notional average rate of tax payable on the sum of exempt income and non-exempt income.

Example

72. In the 2004-2005 income year, Daniel, an AFP member derives the following types of income:

- Australian employment income of \$60,300;
- allowable deductions against Australian income of \$300;
- foreign exempt employment income of \$30,100; and
- expenses directly related to foreign exempt employment income of \$100.

The foreign exempt employment income was earned from an AFP deployment in the Solomon Islands of eight weeks in mission and six weeks of compensating recreation leave taken in Australia.

Assume that Daniel has appropriate private patient hospital cover for Medicare levy surcharge purposes.

The total amount of Australian tax payable will be calculated with reference to the following formula:

(Notional gross tax/Notional gross taxable income) × Other taxable income

Step 1

Daniel's **notional gross taxable income** is \$90,000

([\$60,300 - \$300] + [\$30,100 - \$100]).

Step 2

The **notional gross tax** is \$29,362 (the normal Australian income tax and Medicare levy payable on a taxable income of \$90,000).

Step 3

The **other taxable income** is \$60,000 (Australian employment income).

Step 4

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

$$(\$29,362/\$90,000) \times \$60,000 = \$19,574.67$$

Detailed contents list

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

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Commissioner of Taxation

20 April 2005

<i>Previous draft:</i>	- ITAA 1936 23AG(2)(e)
Not previously issued as a draft	- ITAA 1936 23AG(2)(f)
	- ITAA 1936 23AG(2)(g)
<i>Related Rulings/Determinations:</i>	- ITAA 1936 23AG(3)
CR 2001/1; TR 92/1; TR 92/20;	- ITAA 1936 23AG(6)
TR 96/15; TR 97/16; IT 2015;	- ITAA 1936 23AG(6)(a)(ii)
IT 2441; IT 2650	- ITAA 1936 23AG(6D)
	- ITAA 1936 23AG(7)
<i>Subject references:</i>	- ITAA 1936 Pt III Div 2 Subdiv AA
- exempt foreign income	- ITAA 1936 27A(1)
- exempt income	- ITAA 1997 6-5
- foreign exempt employment	- ITAA 1997 6-5(2)
income	- ITAA 1997 6-15(2)
- foreign income	- ITAA 1997 11-15
- foreign salary & wages	- TAA 1953 Pt IVAAA
- foreign source income	- Copyright Act 1968
- international tax	- Australian Federal Police Act
- overseas countries	1979
- overseas tax laws	
- residence of individuals	<i>Other references:</i>
- Solomon Islands	- The Agreement between the
	Solomon Islands, Australia, New
<i>Legislative references:</i>	Zealand, Fiji, Papua New Guinea,
- ITAA 1936 23AG	Samoa and Tonga concerning the
- ITAA 1936 23AG(1)	operations and status of the police
- ITAA 1936 23AG(2)	and armed forces and other
- ITAA 1936 23AG(2)(a)	personnel deployed to the Solomon
- ITAA 1936 23AG(2)(b)	Islands to assist in the restoration
- ITAA 1936 23AG(2)(c)	of law and order and security
- ITAA 1936 23AG(2)(d)	

ATO references

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