

***CR 2006/109 - Income tax: assessable income:
Australian Federal Police personnel on long term,
non-diplomatic posting to Solomon Islands under the
auspices of the Regional Assistance Mission to
Solomon Islands***

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! This document has changed over time. This is a consolidated version of the ruling which was published on *1 November 2006*



Class Ruling

Income tax: assessable income: Australian Federal Police personnel on long term, non-diplomatic posting to Solomon Islands under the auspices of the Regional Assistance Mission to Solomon Islands

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ⓘ This publication provides you with the following level of protection:

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, we must apply the law to you in the way set out in the ruling (or in a way that is more favourable for you if we are satisfied that the ruling is incorrect and disadvantages you, and we are not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

What this Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provision(s) identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

Relevant provision(s)

2. The relevant taxation provisions 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 entities

3. The class of entities to which this Ruling applies is:
- employees of the Australian Federal Police (AFP);
 - persons seconded to the AFP under section 69D of the *Australian Federal Police Act 1979* (AFP Act 1979) for the period of deployment; and
 - persons appointed to the AFP as special members of the AFP under section 40E of the AFP Act 1979 for the period of their deployment,

who are deployed to the Solomon Islands as part of the Participating Police Force (PPF) under the Regional Assistance Mission to the Solomon Islands (RAMSI). The deployment is under the Agreement between 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 Solomon Islands to assist in the restoration of law and order and security (the Government Treaty).

4. Those deployed as described in paragraph 3 of this Ruling to whom this Ruling applies will be collectively referred to in this Ruling as 'AFP employees'.

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

6. AFP employees include employees 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.

7. The class of entities does not include AFP employees who 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

8. The Commissioner makes this Ruling based on the precise scheme identified in this Ruling.

9. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 17 to 34 of this Ruling.

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

- this Ruling has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled; and
- this Ruling may be withdrawn or modified.

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Barton ACT 2600

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Date of effect

12. This Ruling applies from 1 November 2006. 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. Furthermore, the Ruling only applies to the extent that:

- it is not later withdrawn by notice in the *Gazette*; or
- the relevant provisions are not amended.

13. If this Class Ruling is inconsistent with a later public or private ruling, the relevant class of entities may rely on either ruling which applies to them (item 1 of subsection 357-75(1) of Schedule 1 to the *Taxation Administration Act 1953* (TAA)).

14. If this Class Ruling is inconsistent with an earlier private ruling, the private ruling is taken not to have been made if, when the Class Ruling is made, the following two conditions are met:

- the income year or other period to which the rulings relate has not begun; and
- the scheme to which the rulings relate has not begun to be carried out.

15. If the above two conditions do not apply, the relevant class of entities may rely on either ruling which applies to them (item 3 of subsection 357-75(1) of Schedule 1 to the TAA).

Previous Rulings

16. This Ruling replaces Class Ruling CR 2004/129 which is withdrawn on and from 1 November 2006.

Scheme

17. The scheme 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 Taxation 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 scheme are:

- the application for Class Ruling (dated 10 October 2005);
- Australian Federal Police – International Deployment Group – Determination No 20 of 2005;
- Australian Federal Police Certified Agreement 2003-2006 (Certified Agreement);
- copy of the Agreement between 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 Solomon Islands to assist in the restoration of law and order and security (dated 24 July 2003); and
- further information supplied by the applicant.

18. In February 2003, the Australian Government announced an ongoing program of capacity building assistance for the law and justice sector of Solomon Islands.

19. Following the withdrawal of many of the logistical support services provided by the Australian Defence Force, these services are now being provided by a contracted supplier. The AFP is placing employees in long term positions to manage the provision of services by the supplier.

20. In addition, other AFP employees and appointees will fulfil such roles as Police College Coordinator and Fire Commissioner.

21. The AFP employees will be deployed to Solomon Islands for a two year term posting. Conditions of service applicable to these members are contained in Australian Federal Police – International Deployment Group – Determination No 20 of 2005.

22. The AFP employees will not be afforded diplomatic status and will not be attached to a diplomatic mission.

23. The remuneration for AFP employees takes the form of an annual salary entitlement and the payment of various allowances. Salary and allowances will continue to be paid into the employee's nominated account on a fortnightly basis.

24. The AFP employees will be entitled to some or all of the following allowances:

- composite overseas loading (paid during posting);
- transfer allowance (pre-departure);
- transfer allowance (repatriation);
- location allowance;
- communication allowance;
- boarding allowance (If applicable); and
- extended overseas unaccompanied allowance.

25. Allowances will be paid while an AFP employee is on leave accrued during the deployment period.

26. The AFP employees are entitled to the following categories of leave:

- standard recreation leave;
- mandatory recreation leave;
- personal leave;
- miscellaneous leave with/without pay;
- purchased recreation leave;
- maternity leave; and
- adoption leave.

27. AFP employees accrue 240 hours recreation leave per annum on a monthly pro-rata basis. Recreation leave is credited to the employee on the first day of each month.

28. The employee's team leader may approve recreation leave subject to operational requirements and the employee's leave balance. However, this would generally be restricted to leave accrued during the deployment.

29. In addition to standard recreation leave employees will accrue a further five days off per annum on the basis of one day for two months worked. This mandatory recreation leave will be taken in accordance with arrangements made with the Team Leader, and cannot be taken as other than single days unless otherwise agreed by a General Manager.

30. Article 16.6 of the Government Treaty exempts members of the Visiting Contingent (including AFP employees deployed as part of the PPF) from taxation on their pay and other emoluments. The Government Treaty was given effect in Solomon Islands through the passing of Solomon Islands *Facilitation of International Assistance Act 2003*.

Ruling

31. Subject to paragraph 32 of this Ruling, the salary and allowances referred to in paragraph 23 and 24 of this Ruling, derived by AFP employees described in paragraphs 3 to 6 of this Ruling deployed to the Solomon Islands are exempt from tax under section 23AG of the ITAA 1936 where:

- the employee 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.

32. The transfer allowance (pre-departure and repatriation) referred to in paragraph 24 of this Ruling, are not exempt from tax under subsection 23AG(1) of the ITAA 1936.

33. Where the salary and allowances are exempt from tax under paragraph 31 of this Ruling, they are 'foreign earnings' of the AFP employees under subsection 23AG(7) of the ITAA 1936 and are taken into account in calculating the Australian tax on other assessable income derived by the employee (subsection 23AG(3) of the ITAA 1936).

Example

34. In the 2006-2007 income year, Daniel, an AFP employee derives the following types of income:

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

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 \$25,200 (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:

$$(\$25,200/\$90,000) \times \$60,000 = \$16,800$$

Note: This calculation is based on the 2006-2007 income tax rates. If the income tax rates for future years change, you should refer to the tax rates for that current income year.

Commissioner of Taxation1 November 2006

Appendix 1 – Explanation

❶ *This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.*

35. 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.

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

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

38. 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.

39. 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.

40. 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.

41. 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 75 to 80 of this Ruling).

Resident of Australia

42. 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 Taxation Ruling IT 2650. This Ruling only applies to the class of entities described in paragraphs 3 to 6 of this Ruling who remain Australian residents for tax purposes during their deployment to the Solomon Islands.

43. AFP employees deployed to the Solomon Islands will remain Australian residents for tax purposes throughout the period of their deployment.

Engaged in foreign service

44. '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).

45. 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'.

46. AFP employees referred to in paragraphs 3 to 6 of this Ruling are considered to meet the above definition of an 'employee'.

47. Deployment of AFP employees 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

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

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

50. However, 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 12 of Taxation Ruling TR 96/15 and paragraphs 62 to 64 of this Ruling).

Temporary absences forming part of a period of foreign service

51. Subsection 23AG(6) of the ITAA 1936 treats certain temporary absences from foreign service as forming part of the period of foreign service. The Commissioner's view on the application of that subsection is reflected in paragraphs 9 to 11 of TR 96/15.

52. Absences which form part of the period of foreign service include absences taken in accordance with the terms and conditions of employment because of accident or illness or recreation leave.

53. 'Recreation leave' is leave in the nature of paid holidays to which an employee has accrued an entitlement. Most usually it is the employee's accrued annual leave. Leave which fits this description is 'recreation leave', even if it is not called this.

54. However, 'recreation leave' does not include:

- leave that is not in the nature of paid holidays, such as weekends, rostered days off, flexidays, and days off in lieu;
- public holidays;
- leave wholly or partly attributable to a period of employment other than foreign service;
- long service leave, furlough, extended leave or similar leave; and
- leave without pay or on reduced pay.

55. During the period of deployment, AFP employees will accrue the following recreation leave:

- 240 hours recreation leave per annum on a monthly pro-rata basis. Recreation leave is credited to the employee on the first day of each month; and
- mandatory recreation leave of a further five days off per annum on the basis of one day for two months worked.

56. Given the nature of the overseas deployment, it is considered that the additional recreation leave in paragraph 55 of this Ruling granted to AFP employees deployed to the Solomon Islands is reasonable. This recreation leave is wholly attributable to the period of foreign service and forms part of a continuous period of 'foreign service' for the purposes of subsection 23AG(1) of the ITAA 1936.

57. Where an AFP employee purchases recreation leave, the employee's base salary is adjusted by the amount of the leave purchased and they will receive a reduced fortnightly salary. This leave is not recreation leave as it is not in the nature of paid holidays to which an employee has accrued an entitlement, but rather, is leave on reduced pay (see paragraphs 53 and 54 of this Ruling). The AFP employee needs to consider the discussion at paragraph 61 of this Ruling to determine whether the continuity of foreign service can be maintained.

58. An AFP employee's period of continuous foreign service will be maintained where the AFP employee is granted:

- personal leave relating to their sickness or accident; or
- miscellaneous leave with pay or personal leave because of the accident, illness or death or another person where the leave is for a short period.

Temporary absences not breaking the period of foreign service: the one-sixth administrative test

59. In certain limited circumstances, breaks other than those specified in paragraph 52 of this ruling are also taken to form part of a period of foreign service. Such breaks include weekends, public holidays, rostered days off, and days off in lieu of such, where such breaks are authorised by the terms and conditions of the deployment. However, where such breaks are used to return to Australia they must not be excessive. Where the break is excessive the period of foreign service will still not be broken if continuity of the foreign service period can be maintained by application of the rules outlined in paragraph 61 of this Ruling.

60. Breaks taken to visit or return to Australia are considered excessive when the total of such breaks are more than one-sixth of the period of scheduled foreign service or, if the period of foreign service is ongoing, more than one-sixth of the income year. This one-sixth administrative test is different to the 1/6 legislative rule covered in paragraphs 62 to 64 of this Ruling.

Temporary absences not breaking the period of foreign service: the legislative rule

61. Where an AFP employee takes leave other than the leave outlined at:

- paragraphs 55 and 58 of this Ruling; or
- paragraph 59 of this Ruling that is not excessive,

they need to determine whether the continuity of foreign service can be maintained (subsection 23AG(6A) of the ITAA 1936).

Paragraphs 62 to 64 of this Ruling provide an explanation of this tax provision. Alternatively, the AFP employee could seek professional advice from their taxation adviser or the Australian Taxation Office.

Continuity of the period of foreign service – 1/6 legislative rule

62. The 1/6 legislative rule allows two or more continuous periods of foreign service to be joined as a total period of foreign service, unless, at any time, the total period of absence (in days) from foreign service between the continuous periods of foreign service exceeds 1/6 of the number of days of the total period of foreign service.

63. If the period of absence exceeds 1/6 of the total period of foreign service at any time, continuity of foreign service is broken. The AFP employee will begin a new period of foreign service when he or she next engages in foreign service and must determine whether that period of foreign service lasts for at least 91 continuous days (subsections 23AG(6A) of the ITAA 1936).

64. The 1/6 legislative rule should not be confused with the one-sixth administrative test outlined at paragraphs 59 and 60 of this Ruling. The 1/6 legislative rule in subsection 23AG(6A) permits two or more periods of foreign service to constitute a continuous period of foreign service where continuity would be otherwise broken by absence. Absences between the periods of foreign service under the 1/6 legislative rule do not form part of the continuous period of foreign service. In contrast, the one-sixth rule is an administrative test which permits what would otherwise be a break in the foreign service to be included in a continuous period of foreign service.

Foreign earnings

65. 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, or of amounts included in a person's assessable income under Division 13A, 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.

66. The exclusions to the definition of 'foreign earnings' in paragraph 65 of this Ruling are not, however, relevant to this arrangement as they relate to pensions, annuities, eligible termination payments and other similar amounts.

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

68. These salary and allowances which are described in paragraphs 23 and 24 of this Ruling, with the exception of the transfer allowance (pre-departure and repatriation), come within the definition of 'foreign earnings' in subsection 23AG(7) of the ITAA 1936.

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

From that foreign service

70. 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.

71. In the case of allowances paid after the taxpayer 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 against salary or allowances paid to the taxpayer prior to the undertaking of foreign service arising from the undertaking of that foreign service would be treated as foreign earnings from foreign service.

72. The receipt of the following allowances paid to AFP employees:

- composite overseas loading;
- location allowance;
- extended overseas unaccompanied allowance;
- communication allowance; and
- boarding allowance (if applicable)

is considered to be foreign earnings from the foreign service as they relate to engaging in foreign service in the Solomon Islands.

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

74. An AFP employee is also entitled to a transfer allowance (pre-departure) prior to engaging in foreign service and a transfer allowance (repatriation) 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 foreign earnings derived from that foreign service. It is paid as a compensation for non-reimbursed expenditure incurred by the AFP employee 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

75. Subsection 23AG(2) of the ITAA 1936 provides that no exemption is available under subsection 23AG(1) of the ITAA 1936 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)).

76. Australia has not entered into a tax treaty with the Solomon Islands.

77. The foreign earnings derived by AFP employees in the Solomon Islands are not exempt from income tax in the Solomon Islands.

78. The Government Treaty is an international agreement, but it does not deal with diplomatic or consular privileges or immunities. Whilst AFP employees deployed under the Government Treaty receive privileges and immunities, they do not receive diplomatic or consular privileges and immunities under an international agreement.

79. Article 16.6 of the Government Treaty grants to members of the Visiting Contingent which includes AFP employees an exemption from taxation by the Government of the Solomon Islands on their pay and other emoluments.

80. As a result, the foreign earnings of the deployed AFP employees are exempt from tax in the Solomon Islands for a reason other than those listed in subsection 23AG(2) of the ITAA 1936. Therefore, subsection 23AG(2) will not operate to deny the exemption under subsection 23AG(1) of the ITAA 1936.

Exemption with progression

81. The 'foreign earnings' of AFP employees 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) of the ITAA 1936).

82. 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.

83. In calculating these amounts, 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.

Appendix 2 – Detailed contents list

84. The following is a detailed contents list for this Ruling:

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 96/15; IT 2650

Previous Rulings/Determinations:

CR 2004/129

Subject references:

- exempt foreign income
- exempt income
- foreign exempt employment income
- foreign income
- foreign income deductions
- foreign salary & wages
- foreign source income
- international tax
- overseas countries
- overseas employees
- overseas tax laws
- residence of individuals
- Solomon Islands

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)
- ITAA 1936 23AG(3)
- ITAA 1936 23AG(6)
- ITAA 1936 23AG(7)
- ITAA 1936 23AG(6A)
- ITAA 1936 Pt III Div 13A
- ITAA 1936 Pt III Div 2 Subdiv AA
- ITAA 1936 27A(1)
- ITAA 1997 6-5
- ITAA 1997 6-5(2)
- ITAA 1997 6-15(2)
- ITAA 1997 11-15
- AFP Act 1979 40E
- AFP Act 1979 69D
- TAA 1953
- TAA 1953 Sch 1 357-75(1)
- Copyright Act 1968

Other references:

- Agreement between the Governments of 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 dated 24 July 2003

ATO references

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