


TR 2025/1EC - Compendium

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Ruling compendium – TR 2025/1

📌 Relying on this Compendium

This Compendium of comments provides responses to comments received on draft Taxation Ruling TR 2024/D2 *Income tax: exempt income of international organisations and persons connected with them*. It is not a publication that has been approved to allow you to rely on it for any purpose and is not intended to provide you with advice or guidance, nor does it set out the ATO's general administrative practice. Therefore, this Compendium does not provide protection from primary tax, penalties or interest for any taxpayer that purports to rely on any views expressed in it.

Summary of issues raised and responses

All legislative references in this Compendium are to the *International Organisations (Privileges and Immunities) Act 1963* (IOPI Act), unless otherwise indicated.

Issue number	Issue raised	ATO response
1	It is understood that Australia does not intend, through this Ruling, to abridge or qualify its treaty obligations, and all the officials of the organisation are entitled to the full privileges and immunities under these agreements, regardless of the nature and location of the functions they perform for the organisation.	<p>Paragraph 3 of the final Ruling provides that the views expressed in this Ruling are those of the Commissioner of Taxation, applying for the purpose of the interpretation of income tax law. They do not extend to the interpretation of privileges and immunities for other purposes.</p> <p>The Commissioner is expressing their view for the purpose of fulfilling a statutory function under the Income Tax Assessment Acts and the <i>Taxation Administration Act 1953</i>; in this case to assist taxpayers to ascertain whether they need to declare salary or wages and other emoluments that have been derived as assessable income in their taxation return. This follows on from <i>Hamilton and Commissioner of Taxation</i> [2020] AATA 1812 (<i>Hamilton</i>) at [48–51].</p> <p>Furthermore, as per the decision in <i>Hamilton</i> at [53], for taxation purposes, the relevant law to apply to determine whether particular salary or wages and other emoluments are assessable for income tax purposes is the IOPI Act and the relevant international organisation's Regulation, if any. International treaties do not form part of domestic law except to the extent that they have been validly incorporated into Australian law by an Act of the Commonwealth</p>

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		Parliament: <i>CPCF v Minister for Immigration and Border Protection</i> [2015] HCA 1 at [490–491].
2	<p>The IOPI Act is a statutory scheme under which the term ‘holding an office’ is used. It is designed to provide flexibility to confer privileges and immunities on bespoke terms, subject to an overall ceiling on the content of the privileges and immunities. Sir Garfield Barwick (Minister for External Affairs and Attorney-General) in the Second Reading Speech to the original Bill stated (emphasis added)¹:</p> <p>[C]ause 6, when read in conjunction with the schedules, proposes that the Parliament should lay down very clearly the upper limits, so to speak, of the privileges and immunities which might be conferred by the regulations upon international organizations and the persons connected with those organizations in the capacities described. The details of the privileges and immunities to be conferred on specific organizations and specific classes of persons must, as a matter of practical convenience, be left to the regulations because of the special circumstances to be found in every organization ...</p> <p>The statutory structure of the IOPI Act reflects this intention:</p> <ul style="list-style-type: none"> • the chapeau of subsection 6(1) provides that (emphasis added) ‘the regulations may, either without restriction or to the extent or subject to the conditions prescribed by the regulations’ • subparagraph 6(1)(d)(i) enables the conferral privileges and immunities of Part I Schedule 4 upon ‘a person who holds an office in an international organisation’ to which the IOPI Act applies • paragraph 6(2)(a) provides that regulations made under the IOPI Act can (emphasis added) ‘relate to ... particular international organisations’, and • paragraph 6(2)(b) provides that regulations can (emphasis added) ‘relate to ... particular offices or classes of office’. 	<p>As per paragraph 15 of the final Ruling, the IOPI Act sets out in subsection 6(1) the categories of persons connected with an international organisation on whom privileges and immunities can be conferred. It then lists out, in the Second to Fifth Schedules to that Act, for each category of persons, the privileges and immunities that are able to be conferred. Privileges and immunities are then conferred by Regulation for each particular organisation. The Regulations specifically set out which privileges and immunities are conferred, for which category of persons and subject to which conditions (if any).</p> <p>The IOPI Act does not define the term ‘office holder’.</p> <p>The view expressed in paragraphs 27 to 32 of the final Ruling is drawn directly from relevant case law. The High Court considered the meaning of ‘person who holds an office’ in an international organisation in <i>Commissioner of Taxation v Jayasinghe</i> [2017] HCA 26. This jurisprudence was applied by the Administrative Appeals Tribunal in <i>Hamilton</i> at [35–36].</p>

¹ Sir Garfield Barwick MP, Second Reading Speech, International Organizations (Privileges and Immunities) Bill 1936 and Associated Bills, Commonwealth of Australia, House of Representatives, *Official Hansard*, 8 May 1963, page 1161.

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	<p>Additionally, subsection 13(1) confers a broad power for the Governor-General to make regulations, not inconsistent with the IOPI Act, prescribing all matters required or permitted by the IOPI Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the IOPI Act.</p> <p>This statutory structure assumes that there will be criteria to distinguish between officers of different organisations and offices or classes of offices. This reflects that fact that the IOPI Act is intended to apply to a variety of international organisations and whether an individual will be considered an office holder necessitates regard to the specific regulation.</p>	
3	<p>Regard should be had to subparagraph 6(1)(d)(i) and the associated regulations. Regulations made under the IOPI Act have taken 2 broad approaches to conferring privileges and immunities contained in the Fourth Schedule:</p> <ul style="list-style-type: none"> • The relevant regulations simply use terminology similar to ‘a person who holds an office in [international organisation] has the privileges specified in Part I of the Fourth Schedule to the Act’ This formulation is most commonly used in the IOPI Act regulations (for example, <i>Specialized Agencies (Privileges and Immunities) Regulations 1986</i> and the <i>United Nations (Privileges and Immunities) Regulations 1986</i>). Paragraphs 27 and 28 of the draft Ruling correctly describe the law in relation to the first category of regulations as they take the common law meaning. • The relevant regulations provide specific detail on the individuals who attract the privileges specified in Part I of the Fourth Schedule. Phrasing used in these regulations is not uniform, however a clear intention for holding an office to have a specific meaning is evident. <p>The second category of regulations is not addressed in the draft Ruling. These regulations were made in reliance of subparagraph 6(1)(d)(i) and are intended to confer privileges and immunities upon identified categories of personnel of international organisations. The application of paragraphs 27 and 28 of the draft Ruling would result in privileges and immunities being conferred inconsistently with the intended operation of the regulations.</p>	Refer to the response given at Issue 2 of this Compendium.

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	<p>An example where the draft Ruling would result in an incorrect conclusion is the <i>Asian Development Bank (Privileges and Immunities) Regulations 1967</i> (ADB Regulations). In summary:</p> <ul style="list-style-type: none"> • Regulation 6(1) of the ADB Regulations provides that (emphasis added) '[a] person who holds an office in the Bank has such of the privileges and immunities specified in Part I of the Fourth Schedule to the Act as are required by the Agreement and the MOU to be conferred on a person who holds that office'. • Paragraph 12.1(b) of Schedule 3 to the of the ADB Regulations (the Memorandum of Understanding between the Government of Australia and the Asian Development Bank (ADB)) specifies that income tax exemptions are extended to Governors, Directors, alternates, and Officers of ADB and the Office. • Paragraphs 1.1(k) to (l) of Schedule 3 to the of the ADB Regulations exhaustively defines 'Officers of ADB' and 'Officers of the Office' to mean (emphasis added) 'all officers and employees of ADB', excluding persons locally engaged on hourly rates. <p>As an example, the ADB routinely provides its employees with evidence letters stating that they are Officers of ADB to claim income tax exemptions on ADB income in reliance of the clear meaning of the term Officers of ADB in the ADB Regulations. The application of the factors in paragraph 27 of the draft Ruling would likely deny office holder status for junior and mid-level ADB employees or even more senior employees engaged to work in fixed-term, non-ongoing positions. This conclusion would not be stated that mere employment is not enough to be an officer and attracting officer status requires senior or executive-level responsibility. That is consistent with the intended operation of the ADB Regulations to extend income tax exemptions to all officers and employees, except specifically excluded persons.</p> <p>Another example is the application of the <i>Secretariat to the Meeting of the Parties to the Agreement on the Conservation of Albatrosses and Petrels (Privileges and Immunities) Regulations 2008</i> (ACAP Regulations). Sub-regulations 12(1) and (2) make it clear that the concept of holding an office takes its meaning from being employed in the Secretariat, without any distinction being made regarding seniority or ongoing nature of the position.</p>	

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	<p>Without clarification, the draft Ruling could lead to employees of the Secretariat incorrectly being found liable for backed income taxes.</p> <p>The draft Ruling should incorporate a statement that the ATO will regard individuals as office holders of international organisations according to the terms of the relevant regulations and preferably, identify these regulations. A similar statement to this effect has been incorporated at paragraph 41 of the draft Ruling in relation to persons who serve on a committee, participate in the work of, or perform a mission on behalf of international organisations.</p>	
4	<p>There is an over-reliance on labels in the ruling. Paragraph 15 of the draft Ruling instructs ATO officers to look at the substance of the relationship between an individual and an organisation. International organisations often state in their terms of engagement with an individual their 'intended' status of the individual; however, this is largely a reflection of their interpretation of their governing instruments and not a genuine attempt to correctly classify a person for the purpose of the IOPI Act. The use of labels such as 'officer', 'expert', 'consultant' or similar in contracts by international organisations are of limited weight and are not determinative of an individual's status under the relevant IOPI Act regulations.</p> <p>The analysis in paragraphs 35 to 46 of the draft Ruling contains statements that are likely to encourage ATO officers to focus on contractual labels used by international organisations rather than the substance of the relationship. Specifically:</p> <ul style="list-style-type: none"> • Paragraph 40 of the draft Ruling – the analysis provides examples of persons falling under this category as: <ul style="list-style-type: none"> • experts • consultants • other persons engaged by the organisation to perform a specific act or thing. <p>The statement distracts from the core exercise of reviewing:</p> <ul style="list-style-type: none"> - whether the person holds an office, and - the person's duties and functions. Whether a person attracts the status of being an 'expert on mission', and is thus referred to as an 'expert' or 'consultant', is the conclusion of the 	<p>In the final Ruling, this paragraph (now paragraph 16) has been clarified to emphasise that whether a person comes within a category of persons and is therefore, connected with an international organisation has to be determined taking into account the facts and circumstances of their situation. This includes considering the substance of the terms of engagement between that person and the organisation, the role, functions or tasks that the person has been engaged to perform and the relationship between that and the organisation performing its functions.</p> <p>The categories of persons (see paragraph 15 of the final Ruling) are not mutually exclusive. Therefore, where a person falls within more than one category, they would have the privileges and immunities from both categories conferred upon them.</p> <p>Similarly, in the final Ruling, the wording of Example 3 (in now paragraph 44) now clarifies that George is undertaking the work and representing the international organisation in an official capacity.</p>

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	<p>assessment exercise. The statement is similar to saying an example of 'a person holding an office in an international organisation' is an officer.</p> <p>Paragraph 40 of the draft Ruling implies to ATO officers that seeing a label used by international organisations in a contract will be strongly indicative of a person's status. Alternatively, ATO officers may seek to apply more generic understandings of 'experts' or 'consultants'. This is inconsistent with the need to look at the substance of the relationship and should be deleted.</p> <ul style="list-style-type: none"> Paragraph 42 of the draft Ruling – the example implies that being engaged in an individual capacity as a technical adviser makes George an expert. An individual can be engaged by an international organisation to undertake technical work as an officer. <p>The example should make it clearer that George is an expert because:</p> <ul style="list-style-type: none"> the terms of his engagement do not meet the common law criteria for being an officer (preferably, the example should state that the relevant regulation adopts the common law meaning of an officer), and <p>he is undertaking work on behalf of the international organisation. Paragraph 44 of the draft Ruling does not make it sufficiently clear that it is included to address the first criterion for attracting this status.</p>	
5	<p>Paragraph 29 of the draft Ruling (citing <i>Jayasinghe</i> at [52] as the basis) states:</p> <p>[t]herefore, an office holder can include a person who works as an employee of the international organisation, but an office holder does not include a person (whether an employee or not) who is:</p> <p>...</p> <ul style="list-style-type: none"> engaged as an expert or consultant <p>The inclusion of this statement under the discussion of who is an officer implies to an ATO compliance officer that the labels 'expert' or 'consultant', or a person being required to undertake specialised duties, will be an independent disqualification factor to being considered an officer in addition</p>	<p>This paragraph (now paragraph 32 of the final Ruling) maintains the ATO's long-standing view on this matter, as it was originally published in former TD 92/153.</p>

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	<p>to the negative criteria stated paragraph 27 of the draft Ruling. As indicated in paragraph 29 of the draft Ruling, being described as an expert or consultant takes a different meaning within the field of international organisations. Incorrect quotations by ATO officers of this same statement in paragraph 27 of the former draft Taxation Ruling TR 2019/D1 <i>Income tax: income of international organisations and persons connected with them that is exempt from income tax</i> (now withdrawn) have been made in several private tax rulings, indicating that the phrasing is commonly misapplied.</p> <p>The statement in paragraph 29 of the draft Ruling misstates the <i>ratio decidendi</i> from <i>Jayasinghe</i>. The High Court dealt with 2 appeal questions:</p> <ul style="list-style-type: none"> • Was the respondent a person who held an office in an international organisation within the meaning of subparagraph 6(1)(d)(i), such that he was entitled to exemption from taxation on the income he received from United Nations Office for Project Services (UNOPS)? • Was the Commissioner, in reference to Taxation Determination TD 92/153 <i>Income tax: who is a 'person who holds an office' as specified in various regulations made under the International Organisations (Privileges and Immunities) Act 1963?</i> (now withdrawn) bound to exempt the respondent from taxation on the income he received from UNOPS? <p>The common law criteria for holding an office in an international organisation were authoritatively stated in <i>Jayasinghe</i> at [38] and are reproduced at paragraph 27 of the draft Ruling. The appellant was not in fact an officer of UNOPS as his position did not meet the relevant indicia. In outlining the factors to be assessed for the common law meaning of the term 'holds an office', the High Court made no mention of a person being engaged 'as an expert or consultant' as a negative factor.</p> <p>The High Court's finding in <i>Jayasinghe</i> at [52] related to the second ground of appeal where the appellant attempted to compel the Commissioner to find that the appellant was an officer simply because he was a common law employee of UNOPS in reliance of TD 92/153. <i>Jayasinghe</i> at [52] does not form an independent ground to exclude an individual from officer status. Rather, it picks up on TD 92/153 which was an abbreviated statement that a person who undertakes work for an international organisation in an officer capacity can include an employee; however, being an officer by definition</p>	

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	<p>attracts different privileges and immunities to someone who undertakes relevant functions without this status.</p> <p>Given that TD 92/153 has been withdrawn and there is an authoritative statement as to the common law meaning of the term 'holds an office', the inclusion in paragraph 29 of the draft Ruling is unnecessary and likely to cause ATO officers to misapply the ruling. Paragraph 29 of the draft Ruling should not be included in the final Ruling.</p>	
6	<p>To 'perform a mission' does not necessarily require a person to travel to another location or place. Mission denotes any assignment or staff engagement of staff of a non-permanent nature, irrespective of where that assignment or engagement was performed. Therefore, a person could perform a mission entirely from their residence in Australia.</p>	<p>We have noted this submission and agree with the statement.</p>
7	<p>Paragraph 41 and subsequent paragraphs of the draft Ruling discuss the scenario where the exemption is available only in respect of services rendered outside of Australia. The dot point list at the end of the paragraph should therefore not contain lists of organisations to which this condition does not apply.</p>	<p>The wording in paragraph 43 of the final Ruling has been adjusted. The list provides examples of organisations where the exemption is subject to any additional conditions, not just that of 'where the person is rendering the services in Australia and is a resident of Australia for taxation purposes'.</p>

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