


***TD 98/D15 - Income tax: how are deductions apportioned for the purposes of calculating the notional rate of tax payable on 'other taxable income' of a resident taxpayer under sections 23AF and 23AG of the Income Tax Assessment Act 1936 ?***

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This document has been finalised by TD 2000/12.

Draft Taxation Determinations (TDs) represent the preliminary, though considered, views of the ATO. Draft TDs may not be relied on; only final TDs are authoritative statements of the ATO.

## Draft Taxation Determination

### **Income tax: how are deductions apportioned for the purposes of calculating the notional rate of tax payable on 'other taxable income' of a resident taxpayer under sections 23AF and 23AG of the *Income Tax Assessment Act 1936*?**

1. Foreign earnings that are exempt from Australian tax under sections 23AF and 23AG are taken into account in calculating the tax payable on a taxpayer's 'other taxable income', which is defined in subsections 23AF(17A) and 23AG(3).
2. The purpose of these provisions is to ensure the calculation of the tax payable by resident taxpayers who receive exempt foreign earnings is on the same basis as those resident taxpayers who do not receive exempt foreign source earnings.
3. The formula used to calculate the tax payable applies the notional rate of tax the taxpayer would have paid, if the exempt foreign earnings were not exempt from Australian income tax, to the taxable amount of the taxpayer's non-exempt income ('other taxable income').
4. In determining the 'other taxable income' to which the notional rate of tax is applied, the following amounts are deducted from the amount of the taxpayer's other income that is assessable:
  - any deductions allowable to the taxpayer in relation to the year of income, which relate exclusively to that assessable income; and
  - so much of any other deductions (other than apportionable deductions) allowable to the taxpayer in relation to the year of income as, in the opinion of the Commissioner, may be appropriately related to that assessable income; and
  - the amount calculated using the formula in subsections 23AF(17B) and 23AG(4). This formula apportions the 'apportionable deductions' as defined in subsection 6(1) between the exempt and non-exempt income.
5. The formula for the calculation of the apportionment of the deduction under paragraphs (e) and (f) of the definition of 'other taxable income' in subsections 23AF(17A) and 23AG(3) is:

$$\begin{array}{rcccl}
 \text{Apportionable} & & & & \\
 \text{deductions} & \times & \frac{\text{Other taxable income}}{\text{Apportionable} & + & \text{Notional gross}} \\
 & & \text{deductions} & & \text{taxable income}
 \end{array}$$

Where:

**'apportionable deductions'** means the number of whole dollars in the apportionable deductions allowable to the taxpayer in relation to the year of income;

**'other taxable income'** means the amount that, apart from paragraphs 23AF(17A)(f) or 23AG(3)(f), as appropriate, would be represented by the component of other taxable income in subsections 23AF(17A) or 23AG(3), as appropriate; and

**'notional gross taxable income'** means the number of whole dollars in the amount that would have been the taxpayer's taxable income of the year of income if the exempt amount were not exempt income.

6. In *Case 67/96* 96 ATC 598; *AAT Case 11,375* (1996) 34 ATR 1034, the AAT decided no part of deductible superannuation contributions made by the taxpayer, or accountancy fees which related solely to the preparation of the Australian income tax return, were to be apportioned against the taxpayer's foreign income. These amounts were not connected with or appropriately related to the derivation of the foreign income. Instead, they were solely applied against the taxpayer's other taxable income.

### Example

7. During the year of income, Barbara received gross exempt foreign income of \$26,000 and incurred deductions relating to that income of \$2,000. She also earned assessable income of \$35,400 and incurred expenses of \$4,400 to derive that income. In addition, she made a deductible contribution of \$3,000 to a complying superannuation fund, paid \$400 for tax agent fees for the preparation of her Australian income tax return and paid a premium for income protection assurance of \$1,000.

Gross exempt foreign income:		\$26,000
Less: Deductions		<u>\$ 2,000</u>
Exempt foreign income		<u>\$24,000</u>
Gross assessable income:		\$35,400
Less: Expenses related to deriving that income	\$4,400	
Superannuation contributions	\$3,000	
Tax agent fees	<u>\$ 400</u>	<u>\$7,800</u>
Other taxable income:		<u>\$27,600</u>
Notional gross taxable income:		
Exempt foreign income		\$24,000
Other taxable income		<u>\$27,600</u>
		<u>\$51,600</u>

8. The calculation of the apportionment of the deduction claimed for the premium for income protection assurance under paragraphs (e) and (f) of the definition of 'other taxable income' in subsections 23AF(17A) and 23AG(3) is:

$$\begin{aligned}
 &\text{Apportionable deductions} \quad x \quad \frac{\text{Other taxable income}}{\text{Apportionable deductions} + \text{Notional gross taxable income}} \\
 &= \quad \$1,000 \quad x \quad \frac{\$27,600}{\$1,000 + \$51,600} \\
 &= \quad \$524.71.
 \end{aligned}$$

Barbara's 'other taxable income' for the purposes of sections 23AF and 23AG is:

Gross assessable income:		\$35,400
Less: Expenses related to deriving that income	\$4,400	
Superannuation contributions	\$3,000	
Tax agent fees	\$ 400	
Apportioned deductions (see above)	\$ 525	<u>\$8,325</u>
Other taxable income		<u>\$27,075</u>

**Note:**

9. This Determination, when finalised, will supersede Taxation Determination TD 95/36, which will be withdrawn.

**Your comments**

10. If you wish to comment on this draft Determination, please send your comments by 23 October 1998 to:

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**Commissioner of Taxation**

23 September 1998

FOI INDEX DETAIL: [Reference No.](#)

Previously issued as TD 95/36

[Related Determinations:](#)

[Related Rulings:](#)

[Subject Ref:](#) apportionable deductions; employee superannuation contributions; exempt foreign earnings; tax agent fees

[Legislative Ref:](#) ITAA 6(1); ITAA 23AF; ITAA 23AF(17A); ITAA 23AF(17A)(f); ITAA 23AF(17B); ITAA 23AG; ITAA 23AG(3); ITAA 23AG(3)(f); ITAA 23AG(4)

[Case Ref:](#) Case 67/96 96 ATC 598; AAT Case 11,375 (1996) 34 ATR 1034

[ATO Ref:](#) NAT 95/5340-1

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