TD 2001/24 - Income tax: Is salary paid to a Japanese resident employed as an assistant teacher in an Australian school exempt income?

This cover sheet is provided for information only. It does not form part of *TD 2001/24 - Income tax: Is salary paid to a Japanese resident employed as an assistant teacher in an Australian school exempt income?*

This determination contains references to repealed provisions, some of which may have been re-enacted or remade. The determination has effect in relation to the re-enacted or remade provisions. Paragraph 32 in TR 2006/10 provides further guidance on the status and binding effect of public rulings where the law has been repealed or repealed and rewritten.
Australia's tax treaties and other agreements except for the Taipei Agreement are set out in the Australian Treaty Series. The citation for each is in a note to the applicable defined term in sections 3AAA or 3AAB of the International Tax Agreements Act 1953.

Taxation Determination

Income tax: Is salary paid to a Japanese resident employed as an assistant teacher in an Australian school exempt income?

Preamble

The number, subject heading, date of effect and paragraphs 1 to 5 of this Taxation Determination are a 'public ruling' for the purposes of Part IVAAA of the ***Taxation Administration Act 1953*** *and are legally binding on the Commissioner. The remainder of the Determination is administratively binding on the Commissioner. Taxation Rulings TR 92/1 and TR 97/16 together explain how a Determination is legally or administratively binding.*

Date of Effect

This Determination applies to years commencing both before and after its date of issue. However, this Determination 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 the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

1. Yes, the salary is exempt income in Australia if all of the requirements of Article 15 of Schedule 6 (the Japanese Agreement) to the *International Tax Agreements Act 1953* are met.

2. If the salary is exempt income, subsection 12-1(1) of Schedule 1 of the *Taxation Administration Act 1953* says that the employer is not required to withhold an amount of tax.

3. Some Australian schools employ residents of Japan to assist in the teaching of the Japanese language. The position in the school that the resident of Japan will hold may be described as assistant teacher or language assistant. Invariably there will be a class teacher who holds Australian teaching qualifications and the assistant teacher will work closely with and under the directions of that class teacher. While the assistant teacher may not have the full range of professional responsibilities that a class teacher will have, the assistant teacher is recognised by teachers, parents and students as teaching within the school.

4. Article 15 of Schedule 6 to the *International Tax Agreements Act 1953* says:

> *Where a professor or teacher, who is a resident of one of the Contracting States, is temporarily present in the other Contracting State for the purpose of teaching or conducting research during a period not exceeding two years at a university, college, school or other educational institution in that other Contracting State, remuneration derived by him for so teaching or conducting research for that period shall be exempt from tax in that other Contracting State.*

5. To obtain the 'visiting teacher' exemption from Australian income tax, the assistant teacher must satisfy the following requirements:

- Be a teacher in Japan. This is a question of fact. If a person was employed as a teacher in Japan or had recently qualified to be employed as a teacher immediately prior to coming to Australia, we accept that the person is a teacher in Japan. If a person who is qualified to be a teacher in Japan had ceased to be teacher sometime before coming to Australia, the person does not meet this requirement;
- Be a resident of Japan. This is a question of fact. Japanese citizenship is not sufficient, the person must be a resident of Japan;
- Visit Australia for a period not exceeding two years. This is a question of fact which can ordinarily be determined by reference to the period of time that the entry visa permits the person to be in Australia. The two year period refers to the total time of the visit. If during the period of teaching or after it has finished, an intention is formed to remain in Australia for a period that in total (with the earlier period) exceeds two years, the teaching income derived before the person's intention had changed will remain exempt. The exemption will not apply to any teaching income earned after the person's intention changed;
- The purpose of the visit is teaching at a university, college school or other educational institution. This is a question of fact that can be determined by reference to any employment contracts the person had entered prior to coming to or soon after arrival in Australia. Sightseeing and other tourist activities between school terms are not considered to impact upon the purpose of the visit; and
- The remuneration received must be for the teaching activities. The purpose for which a person is remunerated is a question of fact. The job title that the person holds in the school is not relevant. The professional opinion of a school principal, deputy principal or a senior officer in the Education Department that an assistant teacher is remunerated for teaching in a school will generally be accepted as evidence.

Example 1

6. Mika completed her University and State examinations in 2000 and is qualified to teach in Japanese schools. Mika considered that it would enhance her career prospects if she gained teaching experience outside of Japan. In November 2000 Mika entered into an employment contract with the Education Department of an Australian State for the 2001 and 2002 academic years. Under the terms of the contract she will be employed as an assistant teacher in a State school where she will assist the class teacher in the teaching of the Japanese language to students. Mika entered Australia on 4 January 2001. Her entry visa requires that she leave Australia on or before 3 January 2003. Mika has and will continue to see Australia as a tourist between school terms.

The remuneration paid to Mika for teaching in the State school is not subject to tax in Australia. The State school is not required to withhold an amount of tax from the remuneration.

Example 2

7. Masojuro is a teacher in Japan. Masojuro sought advice from the Australian Embassy of teaching opportunities in Australia. After being advised that his skills and qualifications were in demand in certain Australian States, Masojuro wrote to the Education Department of the State where he preferred to teach informing the Department that he would arrive in Australia in early December 2000 and would like to teach in a school for one academic year. Soon after his arrival, Masojuro was interviewed by the Department and accepted a teaching position for the 2001

academic year. Masojuro then toured parts of Australia and took up his teaching position in February 2001. Masojuro intends to return to Japan in February 2002.

The remuneration paid to Masojuro for teaching in the State school is not subject to tax in Australia. The State school is not required to withhold an amount of tax from the remuneration.

Example 3

8. Yoko is a teacher in Japan. Yoko arrived in Australia in October 2000 and commenced to tour Australia as a backpacker. Yoko has earned income picking fruit whilst backpacking around Australia. In late January 2001, Yoko met Mika and Masojuro and then successfully applied for a teaching position in an Australian school. Yoko intends to return to Japan in July 2002.

Yoko did not enter Australia for the purpose of teaching. The remuneration paid to Yoko for teaching in the State school is subject to tax in Australia. The State school is required to withhold an amount of tax from the remuneration.

Example 4

9. Yukio is a teacher in Japan. Yukio arrived in Australia on 25 January 2001 to undertake a teaching contract at an Australian school for two academic years. In August 2002, Yukio booked his return flight to Japan to depart Australia on 23 January 2003. On Christmas Day, Yukio is invited by Australian friends to join them on a 2 week bush walking trip in February 2003. Yukio extends his visa, completes the bush walking trip and departs Australia on 18 February 2003.

The remuneration paid to Yukio for teaching in the Australian school is not subject to tax in Australia. The school is not required to withhold an amount of tax from the remuneration. On the evidence available, as Yukio did not form an intention to remain in Australia for a period exceeding two years until after completing his teaching contract, no part of his teaching income is taxable in Australia.

Commissioner of Taxation
3 October 2001

Previous draft:
Not previously issued in draft form

Related Rulings/Determinations:
TR 92/1; TR 92/20; TR 97/16; IT 2577

Subject references:
- double tax agreement
- double tax convention
- exempt income
- international tax
- teachers
- withholding taxes

Legislative references:
- ITAA 1953 15, Schedule 6
- TAA 1953 12-1(1), Schedule 1
- TAA 1953 Part IVAAA

ATO references:
NO T2001/010696
FOI I 1023337
ISSN: 1038-8982