


# ***TR 2013/7A1 - Addendum - Income tax: foreign employment income: interpretation of subsection 23AG(1AA) of the Income Tax Assessment Act 1936.***

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# Addendum

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## Taxation Ruling

### Income tax: foreign employment income: interpretation of subsection 23AG(1AA) of the *Income Tax Assessment Act 1936*

This Addendum is a public ruling for the purposes of the *Taxation Administration Act 1953*. It amends Taxation Ruling TR 2013/7 to reflect that paragraph 23AG(1AA)(a) of the *Income Tax Assessment Act 1936* does not apply where the person's employer is an Australian government agency. Amendments are also made to reflect changes to website documentation and linkages, as well as updates to case citations and other content issues.

TR 2013/7 is amended as follows:

**1. Paragraph 2**

Omit 'Australian resident'; substitute 'Australian-resident'.

**2. Paragraph 3**

Omit '*ITAA 1936*'; substitute '*Income Tax Assessment Act 1936*'.

**3. Paragraphs 5, 6, 42, 46 and 90**

Omit 'Australian government'; substitute 'Australian Government'.

**4. Paragraph 8**

After 'paragraph 7', insert 'of this Ruling'.

**5. Paragraphs 12 and 13**

After 'paragraph 11', insert 'of this Ruling'.

**6. Paragraph 16**

(a) Omit the second sentence (including footnote); substitute:

However, because DFAT is an Australian government agency, paragraph 23AG(1AA)(a) is not satisfied. Alice's foreign earnings will not be exempt under 23AG.<sup>1A</sup>

- (b) At the end of the paragraph, insert new footnote 1A:

<sup>1A</sup> Employers that are an Australian government agency were expressly excluded from paragraph 23AG(1AA)(a) with effect from 1 July 2016. In respect of periods prior to 1 July 2016 (but covered by the date of effect of this Ruling in paragraphs 75 to 76), Alice satisfied paragraph 23AG(1AA)(a) as her foreign service was directly attributable to the delivery of Australian ODA by her employer.

**7. Paragraph 22**

- (a) In the heading, omit the second occurrence of 'DFAT'.  
(b) Omit 'DFAT's employees'; substitute 'Australian workers'.

**8. Paragraph 23**

In the first sentence, omit 'This'; substitute 'The'.

**9. Paragraph 24**

Omit the words 'services of'.

**10. Paragraph 32**

Omit the paragraph; substitute:

DFAT makes their funding conditional on the appointment of an employee of Manage Co as project supervisor. Manage Co is an Australian-resident company set up to supervise and manage projects.

**11. Paragraphs 33 and 37**

Omit 'a DFAT employee'; substitute 'an employee of Manage Co'.

**12. Paragraph 35**

Omit 'example 6'; substitute 'Example 6 of this Ruling,'.

**13. Paragraph 36**

Omit the paragraph; substitute:

Isabel is employed by a commercial bank in a foreign country on a full-time basis. Isabel applies for and is successful in obtaining the role of project supervisor that arises in the same country as her bank job. When taking up the position of project supervisor, Isabel ceases her employment with the commercial bank.

**14. Paragraph 38**

Omit 'example 7'; substitute 'Example 7 of this Ruling,'.

**15. Paragraph 40**

Omit '(DFAT)'; substitute '(Manage Co)'.

**16. Paragraph 41**

Omit 'DFAT employment'; substitute 'employment with Manage Co'.

**17. Paragraph 43**

Omit 'DFAT'; substitute 'the Australian Government'.

**18. Paragraph 56**

Omit 'Commonwealth Government'; substitute 'Australian Government'.

**19. Paragraph 57**

In footnote 2, omit 'example 5'; substitute 'Example 5 of this Ruling'.

**20. Paragraph 75**

- (a) After 'paragraph 76', insert 'of this Ruling'.
- (b) After 'TR 2006/10', insert '*Public Rulings*'.

**21. Paragraph 77**

- (a) Omit the word 'for'.
- (b) In the first dot point, before 'certain foreign earnings', insert 'for'.

**22. Paragraph 78**

- (a) In subparagraph 78(a), after 'person's employer,' insert 'except if that employer is an Australian government agency<sup>2A</sup>'.
- (b) Omit paragraph 78(b); substitute:
  - (b) the activities of the person's employer in operating a public fund
    - (i) declared by the Minister<sup>2B</sup> to be a developing country relief fund; or
    - (ii) established and maintained by a registered public benevolent institution solely to provide monetary relief to people who are distressed as a result of a disaster.
- (c) At the end of subparagraph 78(a), insert new footnote 2A:

<sup>2A</sup> The exception for Australian government agencies was inserted with effect from 1 July 2016, as per the *Tax and Superannuation Laws Amendment (2015 Measures No. 4) Act 2015*.

- (d) In subparagraph 78(b)(i), after 'Minister', insert new footnote 2B:

<sup>2B</sup> Subsection 30-80(1) was amended by the *Tax and Superannuation Laws Amendment (2014 Measures No. 4) Act 2014* to substitute 'Minister' for 'Treasurer', effective from 16 October 2014.

**23. Paragraph 79**

- (a) After 'person's employer', insert ', except if that employer is an Australian government agency.<sup>2C</sup>'.

- (b) At the end of the paragraph, insert new footnote 2C:

<sup>2C</sup> Australian government agency is defined in section 995-1 of the *Income Tax Assessment Act 1997* as '(a) the Commonwealth, a State or Territory; or (b) an authority of the Commonwealth or of a State or a Territory.'

**24. Paragraph 81**

- (a) Omit the paragraph (including footnote 3); substitute:

The term 'official development assistance' (ODA) is a term used in international standards developed by the OECD DAC as a measure of government aid that promotes and specifically targets the economic development and welfare of developing countries.<sup>2D</sup> The OECD DAC is an international forum of providers of aid, including 30 members.<sup>2E</sup> The OECD DAC tracks and monitors ODA so that individual donor efforts are measured alongside the wider array of resources that are available to developing countries. It informs donors about where aid should be targeted, and provides a clearer picture of the resource flows available to developing countries.<sup>2F</sup>

- (b) At the end of the first sentence, insert new footnote 2D:

<sup>2D</sup> See

<https://www.oecd.org/dac/financing-sustainable-development/development-finance-standards/official-development-assistance.htm>

- (c) At the end of the second sentence, insert new footnote 2E:

<sup>2E</sup> Australia is a member of the DAC, which sets the international standard for defining and recording ODA. Members are required to report the provision of ODA to the DAC – see <http://www.oecd.org/dac/development-assistance-committee/>

- (d) At the end of the last sentence, insert new footnote 2F:

<sup>2F</sup> See

<https://www.oecd.org/dac/financing-sustainable-development/development-finance-standards/>

**25. Paragraph 82**

- (a) Omit the paragraph (including footnotes 4 and 5); substitute:

The OECD DAC sets out what is reported as ODA and defines ODA<sup>5A</sup> as:

flows to countries and territories on the [DAC List of ODA Recipients](#) [(developing countries)] and to [multilateral development institutions](#) which are:

- i. provided by official agencies, including state and local governments, or by their executive agencies; and

- ii. each transaction of which:
  - a) is administered with the promotion of the economic development and welfare of developing countries as its main objective; and
  - b) is concessional in character [as set out in the Directives].
- (b) In the first sentence, after 'defines ODA', insert new footnote 5A:

<sup>5A</sup> See [https://www.oecd.org/dac/stats/documentupload/DCDDAC\(2016\)3FINAL.pdf](https://www.oecd.org/dac/stats/documentupload/DCDDAC(2016)3FINAL.pdf). In addition to financial flows, technical cooperation is included in aid. Grants, loans and credits for military purposes and transactions that have primarily commercial objectives are excluded. Transfer payments to private individuals (for example, pensions, reparations or insurance payouts) are in general not counted – see <http://www.oecd.org/dac/dac-glossary.htm#ODA>. Part ii(b) of the definition of 'ODA' changed starting with the 2018 year data. For 2017 and prior years data, the definition stated 'is concessional in character and conveys a grant element of at least 25 per cent (calculated at a rate of discount of 10 per cent)'.

**26. Paragraph 83**

- (a) Omit the paragraph (including footnotes 6 and 7); substitute:

The OECD DAC Secretariat collects aid statistics using OECD Methodology.<sup>5B</sup> All donor countries should report data on the same basis as set out in the *Converged statistical reporting directives for the creditor reporting system (CRS) and the annual DAC questionnaire* (the DAC Directives).<sup>5C</sup>
- (b) At the end of the first sentence, insert new footnote 5B:

<sup>5B</sup> See <https://www.oecd.org/development/stats/methodology.htm>
- (c) At the end of the paragraph, insert new footnote 5C:

<sup>5C</sup> See [DCDDAC\(2016\)3FINAL.pdf \(oecd.org\)](https://www.oecd.org/dac/financing-sustainable-development/development-finance-standards/modernisation-dac-statistical-system.htm). These directives, dated 8 April 2016, implement the new grant system in reporting on ODA. In 2012, the DAC commenced a modernisation project which saw clarifications of eligibility rules over 2016-2018, and in 2019 the grant equivalent system became the standard for measuring ODA (previously it was a cash-flow system). Further changes are being made over the years to keep the DAC statistical system fit-for-purpose with the 2030 agenda. See <http://www.oecd.org/dac/financing-sustainable-development/development-finance-standards/modernisation-dac-statistical-system.htm>

**27. Paragraph 84**

- (a) Omit 'eligible expenditure to the DAC'; substitute 'flows to the OECD DAC'.
- (b) At the end of the second sentence, add new footnote 7A:

<sup>7A</sup> 'ODA flows' is a defined term in paragraph 60 of the *Converged statistical reporting directives for the creditor reporting system (CRS) and the annual DAC questionnaire*.
- (c) In the last sentence, omit 'expenditure'; substitute 'flows'.

**28. Paragraph 86**

- (a) Omit 'Australian government'; substitute 'Australian Government'.
- (b) Omit the second sentence (including the footnote 9); substitute:

In undertaking this reporting, DFAT must follow the DAC Directives.

**29. Paragraph 87**

Omit the paragraph; substitute:

Strictly speaking, therefore, 'Australian ODA' can be said to encompass only the Australian Government's ODA flows.

**30. Paragraph 89**

Omit 'eligible expenditure'; substitute 'flows'.

**31. Paragraph 92**

Omit 'of funds'.

**32. Paragraph 93**

(a) At the end of the paragraph, insert:

As well, the employer cannot be an Australian government agency<sup>9A</sup>, but it can be an entity contracted by DFAT or another Australian government agency to deliver the Australian ODA.

(b) After the first occurrence of 'Australian government agency', insert new footnote 9A:

<sup>9A</sup> From 1 July 2016.

**33. Paragraph 94**

(a) Omit 'example 3'; substitute 'Example 3'.

(b) Omit 'example 4'; substitute 'Example 4 of this Ruling'.

**34. Paragraph 95**

Omit 'example 3'; substitute 'Example 3 of this Ruling'.

**35. Paragraph 96**

Omit the paragraph.

**36. Paragraph 97**

Omit the paragraph; substitute:

Paragraph 23AG(1AA)(a) requires the employer to be delivering the Australian ODA. It, however, does not require that an Australian government agency by the employer actually delivering the Australian ODA or in fact that a government agency be directly involved. In fact, from 1 July 2016, paragraph 23AG(1AA)(a) stipulates that the employer cannot be an Australian government agency for subsection 23AG(1AA) to be satisfied. The employer may be a contractor

(contracted by an Australian government body on behalf of the Australian Government to assist in the delivery of the Australian ODA) or sub-contractor (contracted by the contractor previously identified, to assist in the delivery of the Australian ODA).

**37. Paragraph 98**

At the end of the paragraph, insert new footnote 9B:

<sup>9B</sup> From 1 July 2016, paragraph 23AG(1AA)(a) is limited to employees of non-Australian government agencies only. The Explanatory Memorandum to the Tax and Superannuation Laws Amendment (2015 Measures No. 4) Bill 2015 states that the amendment:

... ensure[s] that all employees of an Australian government agency are treated equally in that they will now all be subject to income tax on overseas income they have earned in the delivery of ODA.

**38. Paragraph 101**

- (a) Omit 'Australian government'; substitute 'Australian Government'.
- (b) In footnote 10, omit '[www.oecd.org/dac/stats/daclist](http://www.oecd.org/dac/stats/daclist)'; substitute:  
<https://www.oecd.org/development/financing-sustainable-development/development-finance-standards/daclist.htm>

**39. Paragraph 103**

- (a) Omit '*Commissioner of Taxation (Cth) v. Sun Alliance Investments Pty Ltd (In Liq)*'; substitute: '*Commissioner of Taxation (Cth) v Sun Alliance Investments Pty Ltd (in liquidation)*'.
- (b) Omit the words in footnote 12; substitute '[2005] HCA 70'.

**40. Paragraph 104**

Omit the paragraph (excluding the footnote); substitute:

In *Repatriation Commission v Law*<sup>13</sup>, the Full Federal Court said '[i]t seems clear that the expression "attributable to" in each case involves an element of causation.'

**41. Paragraph 106**

- (a) Omit the paragraph (excluding the footnotes); substitute:  
The High Court, in *Commissioner of Taxation (Cth) v Dixon*<sup>14</sup>, said of the phrase 'directly or indirectly' in former paragraph 26(e) that 'in relation directly... to, any employment' means '... where the employment is the proximate cause of the payment ...'. Conversely, an indirect relation was '... one where the employment is a cause less proximate or, indeed, only one contributory cause.'<sup>15</sup>
- (b) Omit the words in footnote 14; substitute '[1952] HCA 65.'



**42. Paragraph 111**

- (a) Omit 'example 7'; substitute 'Example 7'.
- (b) Omit 'a DFAT employee'; substitute 'the project supervisor'.
- (c) Omit 'with DFAT'; substitute 'as project supervisor'.

**43. Paragraph 112**

Omit 'example 5'; substitute 'Example 5 of this Ruling'.

**44. Paragraph 115**

- (a) Omit 'example 10'; substitute 'Example 10 of this Ruling'.
- (b) Omit 'Australian government'; substitute 'Australian Government'.

**45. Paragraph 116**

Omit the last sentence; substitute:

However, if the employee is sent overseas to specifically oversee the distribution of these funds, as in Example 9 of this Ruling, this foreign service would be directly attributable to the delivery of Australian ODA by their employer.

**46. Paragraph 117**

Omit 'As noted above'; substitute 'As noted in this Ruling'.

**47. Paragraph 124**

- (a) Omit '*Cooper Brookes (Wollongong) Pty Ltd v. Federal Commissioner of Taxation*'; substitute '*Cooper Brookes (Wollongong) Pty Ltd v Commissioner of Taxation*'.
- (b) In footnote 16, omit '(1981) 147 CLR 297'.

**48. Paragraph 126**

- (a) Omit the full stop after 'v'.
- (b) Omit 'Chief Justice Gleeson'; substitute 'Gleeson CJ'.
- (c) In footnote 18, omit '(2007) 81 ALJR 1021'.

**49. Paragraph 127**

- (a) Omit '*White v. Director of Military Prosecutions & Anor*'; substitute '*White v Director of Military Prosecutions*'.
- (b) In footnote 20, omit '235 ALR 455'.

**50. Paragraph 131**

After 'Second Reading Speech to', insert 'the'.

**51. Paragraph 134**

After 'paragraphs 120 to 131', insert 'of this Ruling'.

**52. Paragraph 139**

Omit 'above in paragraph 130'; substitute 'in paragraph 130 of this Ruling'.

**53. Paragraph 140**

Omit 'As discussed above'; substitute 'As discussed in this Ruling'.

**54. Paragraph 144**

In footnote 23, omit '*White v. Director of Military Prosecutions & Anor*'; substitute '*White v Director of Military Prosecutions*'.

**55. Paragraph 150**

Omit '(ILN)' and '(IDG)'.

This Addendum applies on and from 25 August 2021.

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**Commissioner of Taxation**  
25 August 2021

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ATO references

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