TD 93/D219 - Income tax: does the definition of "United Kingdom" in the Australia-United Kingdom Double Tax Agreement ("the DTA") include British possessions?

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This document has been finalised by TD 93/219.

Australian Taxation Office

Taxation Determination TD 93/D219

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: does the definition of "United Kingdom" in the Australia-United Kingdom Double Tax Agreement ("the DTA") include British possessions?

1. No. The definition of the United Kingdom in Article 2(1)(a) of the DTA follows the formulation adopted in the Interpretation Act 1978 (UK) by generally confining the meaning of the United Kingdom to Great Britain and Northern Ireland, unless the context otherwise requires:

> "the term 'United Kingdom' means Great Britain and Northern Ireland including any area outside the territorial sea of the United Kingdom . . . "

2. The terms "Great Britain" and "Northern Ireland" are not defined in the Agreement Under United Kingdom law "Great Britain" refers to England, Scotland and Wales. (See Preamble and Article 1, Union With Scotland Act 1706 (UK); and Subsection 22(1) and paragraph 5(a) of Schedule 2, of the Interpretation Act 1978).

3. United Kingdom law, excludes British possessions from the definition of the United Kingdom. The Interpretation Act 1978 defines British possessions to mean "any part of Her Majesty's dominions outside the United Kingdom" (Subsection 22(1) and Schedule 1).

4. The issue frequently arises as to whether the Isle of Man or the Channel Islands (Jersey, Guernsey, Alderney, and Sark) which have local autonomy in their tax matters, are part of the United Kingdom. These islands are not part of England, Scotland, Wales or Northern Ireland and therefore are not part of the United Kingdom for the purposes of the DTA. English case law confirms that the Channel Islands are not within the meaning of "United Kingdom" (*Navigators and General Insurance Co. v Ringrose* [1962] 1 All ER 97). Likewise, the Isle of Man is not considered to be part of the United Kingdom (*Davison v Farmer and Grace* (1851) 6 Exch 242).

Commissioner of Taxation
26/8/93

FOI INDEX DETAIL: Reference No.

Subject Ref: Australia-United Kingdom Double Taxation Agreement; definition of United Kingdom, Isle of Man, Channel Islands: Jersey, Guernsey, Alderney and Sark

Legislative Ref: *Income Tax (International Agreements) Act 1953*, Section 5, Schedule 1

Case Ref: Navigators and General Insurance Co. v Ringrose [1962] 1 All ER 97; Davison v Farmer and Grace (1851) 6 Exch 242

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