# *IT 2575 - Income tax : Malaysian government service pension - paragraph 18(2) Australia/Malaysia double taxation agreement*

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# TAXATION RULING NO. IT 2575

INCOME TAX : MALAYSIAN GOVERNMENT SERVICE PENSION - PARAGRAPH 18(2) AUSTRALIA/MALAYSIA DOUBLE TAXATION AGREEMENT

F.O.I. EMBARGO: May be released

REF N.O. REF: 89/1916-0 DATE OF EFFECT: Immediate

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F.O.I. INDEX DETAIL

| REFERENCE NO: | SUBJECT REFS: | LEGISLAT. REFS: |
|---|---|---|
| I 1011772 | AUSTRALIA/MALAYSIA DOUBLE TAXATION AGREEMENT | INCOME TAX (INTERNATIONAL AGREEMENTS) ACT: SCHEDULE 16 ARTICLE 18 |

PREAMBLE Advice was recently sought from this office about the liability to Australian income tax of a pension that had been paid to an Australian resident by Malaysia for previous government service. The pension had already been subject to tax in Malaysia. The particular issue was whether under paragraph 18(2) of the Australia/Malaysia Double Taxation Agreement, Australia also had the right to impose tax on the pension.

2. Prior to 1 July 1987, government service pensions paid by Malaysia to residents of Australia were exempt from tax in Australia under paragraph 23(q) of the Income Tax Assessment Act (the Act), providing the pension was subject to tax in Malaysia. With the repeal of paragraph 23(q) of the Act it has become necessary to clarify the taxation treatment of such pensions for recipients in Australia.

RULING 3. Paragraph 18(2) of the Agreement provides that government service pensions shall be taxable in the country which pays the pension. Accordingly, where Malaysia pays a government service pension to an Australian resident, Malaysia has the right to tax the pension.

4. However there is nothing in paragraph 18(2) or any other provision of the Australia/Malaysia Double Taxation Agreement that precludes Australia from also taxing the pension where it is derived by an Australian resident. The absence of the word "only" from the last line of paragraph 18(2) after "shall be taxable" is significant and can be contrasted with paragraph 17(3) and Article 21 which include the word "only".

5. It follows that a Malaysian government service pension received by an Australian resident is taxable in Australia subject to any credit that might be available under the Foreign Tax Credit System for any tax paid in Malaysia.

COMMISSIONER OF TAXATION
25 January 1990