TD 93/151 - Income tax: are periodic workers' compensation payments made by Comcare, 'pensions' for purposes of the pensions articles in Australia's double taxation agreements (DTAs)?

This cover sheet is provided for information only. It does not form part of *TD 93/151 - Income tax: are periodic workers' compensation payments made by Comcare, 'pensions' for purposes of the pensions articles in Australia's double taxation agreements (DTAs)?*

This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVAAA of the *Taxation Administration Act 1953*, is a public ruling for the purposes of that Part . Taxation Ruling TR 92/1 explains when a Determination is a public ruling and how it is binding on the Commissioner. Unless otherwise stated, 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 a settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Taxation Determination

Income tax: are periodic workers' compensation payments made by Comcare, 'pensions' for purposes of the pensions articles in Australia's double taxation agreements (DTAs)?

1. Yes. The term 'pension' is not defined in any of the DTAs and therefore takes the meaning it has under domestic law. A pension is defined in the Macquarie Dictionary as '1. a fixed periodical payment made in consideration of past services, injury or loss sustained, merit, poverty etc. 2. an allowance or annuity.' The meaning of the term 'pension' was considered by Hill J. in the Federal Court in *Tubemakers of Aust Ltd v FC of T* 93 ATC 4207. His Honour concluded that the essential characteristic of a pension is only that there be periodical payments. Payments made by Comcare under section 19 of the *Commonwealth Employees Rehabilitation and Compensation Act 1988* are fixed periodical payments made in consideration of injury or loss of wages. They are therefore pensions within the ordinary meaning of that term and fall within the operation of the Pensions Article in Australia's DTAs.

2. Under Australia's DTAs, pensions paid by the Australian Government are generally included in the Pensions Article and are taxable only in the country of residence of the recipient. Although, in some DTAs, government pensions paid in respect of services rendered to that government are dealt with under the Government Services Article rather than the Pensions Article, this does not affect the treatment of Comcare payments made under section 19. This is because the Comcare payments are made in consideration of injury or loss of wages and not for past services to the Government.

Commissioner of Taxation
5/8/93

FOI INDEX DETAIL: Reference No. I 1215797 Previously issued as Draft TD 93/D111

Related Determinations:

Related Rulings:

Subject Ref: Comcare; workers compensation; pensions; double tax agreements

Legislative Ref: Commonwealth Employees Rehabilitation and Compensation Act 1988, Section 19; Income Tax International Agreements Act 1953

Case Ref: Tubemakers of Aust Ltd v FC of T 93 ATC 4207

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