TD 93/220 - Income tax: does the definition of "France" in the Protocol to the Australia-France Double Tax Agreement ("the DTA") include the French Territories?

This cover sheet is provided for information only. It does not form part of *TD 93/220 - Income tax: does the definition of "France" in the Protocol to the Australia-France Double Tax Agreement ("the DTA") include the French Territories?*

Australian Taxation Office

Taxation Determination TD 93/220

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: does the definition of "France" in the Protocol to the Australia-France Double Tax Agreement ("the DTA") include the French Territories?

1. No. Article 2(1)(b) of the DTA as amended by Article 1(a) of the Protocol to the Australia-France Double Tax Agreement ("the Protocol") defines France as follows:

> "the term 'France' means the European and Overseas Departments of the French Republic and includes the territorial sea and, beyond that, those areas over which, in conformity with international law, the French Republic has sovereign rights with respect to the exploration and exploitation of the resources of the marine depths, their sea-bed and the overlying waters;"

2. According to the *French Business Law Guide* (J C Newman, CCH Editions Ltd, 1984) Metropolitan France, consisting of continental France and Corsica, is divided into 96 geographic units called *départements.* In addition, there are four overseas departments: Guadeloupe, Martinique, Réunion and French Guiana.

3. The definition of France in the DTA clearly does not include the overseas territories, which the *French Business Law Guide* lists as New Caledonia, French Polynesia, Wallis and Futuna Island, French Indian Ocean Islands, French Antarctica, Oceana Territories, Mayotte, St. Pierre and Miguelon.

4. Note that Article 27 of the DTA provides for Letters to be exchanged through diplomatic channels to extend the DTA to any overseas territory which imposes taxes substantially similar in character to those to which the DTA applies. To date no such Letters have been exchanged. Note also that, contrary to the DTA, under Article 2 of the Australia-France Airline Profits Agreement, the term "France" includes the overseas territories.

Commissioner of Taxation
4/11/93

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Subject Ref: Australia-France Double Taxation Agreement; Australia-France Airline Profits Agreement definition of France, Guadeloupe, Martinique, Réunion and French Guiana, New Caledonia, French Polynesia, Wallis and Futuna Island, French Indian Ocean Islands, French Antarctica, Oceana Territories, Mayotte, St. Pierre and Miguelon

Legislative Ref: *Income Tax (International Agreements) Act 1953*, Section 9B, Schedule 7, Schedule 11

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