

# Early return from foreign service due to COVID-19 – foreign employment income

This fact sheet applies to you if you have returned from foreign service as a result of COVID-19 and had:

- undertaken 91 days of continuous foreign service that qualifies for the income tax exemption, but you expected to complete further foreign service prior to returning to Australia, or
- commenced foreign service that otherwise would have qualified for the income tax exemption, however you had not yet completed 91 days of continuous foreign service at the time of your return.

This advice is about whether you remain entitled to the income tax exemption for foreign earnings when you returned to Australia as a result of COVID-19. Foreign earnings include salary, wages, commission, bonuses and allowances earned while you were engaged in foreign service.

## Income tax exemption

An Australian resident deriving foreign earnings from service in a foreign country may be entitled to an income tax exemption on those foreign earnings under section 23AG of the *Income Tax Assessment Act 1936*. This exemption can only apply where the foreign earnings are from a continuous period of service in the foreign country that lasts for at least 91 days.

Any period of absence from foreign service breaks the continuity of your foreign service, unless the absence:

- still counts as foreign service
- does not exceed one-sixth of your total period of foreign service.

Both of these exceptions are further explained in this fact sheet.

## Income from foreign service

If you had already completed 91 days of continuous foreign service and met all the other requirements in section 23AG of the *Income Tax Assessment Act 1936*, the foreign earnings you earned while undertaking your completed foreign service will remain exempt income.

The income you earned after your return that is from that period of foreign service will continue to be exempt even if paid after your return (for example, wages paid in arrears and paid recreation leave that accrued during the period of foreign service).

If you had not yet completed 91 days of continuous foreign service taking into account the exceptions explained in this fact sheet, your foreign earnings from that period of foreign service are not exempt and therefore will be assessable to you in Australia.

## Absences counted as foreign service

In certain circumstances, temporary absences from foreign service (such as time spent in Australia) still count as a period of foreign service. For the absence to count as foreign service, it must be during a scheduled period of foreign service and be both:

- in accordance with the terms and conditions of the foreign service, and
- for one of the following reasons
  - recreation leave on full pay that is attributable to the period of foreign service
  - absence from work due to an accident or illness of yours
  - absence from work due to an accident or illness of a person other than you, including the death of another person, or
- short term absences for reasons directly related to your continuing foreign-service engagement (that is, work-related trips directly related to the foreign service), provided the absences are not excessive by comparison with the scheduled period of foreign service.

An absence from foreign service because you have returned to Australia as a result of COVID-19 and commenced working in Australia is not a temporary absence from foreign service that falls into these situations. You are returning without knowing when you can recommence your service in the foreign country. Your time in Australia cannot be characterised as a short work-related trip.

## Treating two separate periods as one continuous period

Absences that would otherwise break the continuity of your period of service for the purposes of the 91 days or more requirement can be bridged by applying the one-sixth test. The one-sixth test means that as long as your absence does not exceed one-sixth of your period of service up to that point, the absence will not break the continuity of your service.

The time spent on the break is not treated as foreign service.

### Example 1 – one-sixth test: not a continuous period of service

*Jack had completed 60 days of foreign service and then returned to Australia as a result of COVID-19.*

*After 10 days, the absence from foreign service exceeds one-sixth of Jack's first period of foreign service. An absence of 11 days or longer therefore breaks the continuity of service. If Jack returns to foreign service, the second period after the absence is treated as a separate period to the first. The number of days of continuous service in the new period starts from the first day of that period.*

### Example 2 – one-sixth test: continuous period of service

*Rita had completed 300 days of foreign service and then returned to Australia as a result of COVID-19. Rita was in Australia for 45 days and then returned to foreign service for a further 70 days.*

*The absence from foreign service does not exceed one-sixth of Rita's first period of foreign service. This means that the two periods are treated as continuous foreign service. However, the 45-day absence does not count as foreign service.*

➤ For more information on periods of foreign service see [Taxation Determination TD 2012/8 Income tax: what types of temporary absences from foreign service form part of a continuous period of foreign service under section 23AG of the Income Tax Assessment Act 1936?](#)

## Income from Australian service

The income you earn from work you do while located in Australia will not be exempt income and will therefore be assessable to you in Australia. This is because:

- the income you earn from work in Australia is not from service in a foreign country, and

- your return to Australia does not satisfy the criteria for your absence from foreign service to count as foreign service.

This is the case even if you return to Australia and commence or continue to work in Australia on matters relating to your previous foreign service.

## End-of-year tax liability

You may have an end-of-income-year tax liability as insufficient amounts may have been withheld.

If you review your situation and find that you will likely have an end-of-income-year tax liability you may want to consider:

- having additional PAYG withholding applied
- help with paying.

### Having additional PAYG withholding applied

You may request your employer to withhold additional amounts of withholding from your salary or wages if your change in circumstances means that you will have a tax shortfall at the end of the income year.

➤ For more information on additional amounts to withhold as a result of an agreement to increase withholding see [Schedule 14 – Tax table for additional amounts to withhold as a result of an agreement to increase withholding](#)

### Help with paying

Should the lodgment of your 2019–20 tax return result in money owing to the ATO, we encourage you to contact us early to discuss any circumstances that may prevent you paying by the relevant due date. We understand it can sometimes be difficult to pay unanticipated amounts and we are here to help which may involve a number of options, including setting up a payment plan.

➤ For more information on payment options see [Help with paying](#)

## More information

For more information in relation to an income tax exemption on foreign earnings under section 23AG of the *Income Tax Assessment Act 1936*, see:

- [Foreign employment income and section 23AG – employees](#)
- [Taxation Determination TD 2012/8](#) *Income tax: what types of temporary absences from foreign service form part of a continuous period of foreign service under section 23AG of the Income Tax Assessment Act 1936?*
- [Help with paying](#)
- [Schedule 14](#) – *Tax table for additional amounts to withhold as a result of an agreement to increase withholding*

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If you feel that this publication does not fully cover your circumstances, or you are unsure how it applies to you, you can seek further assistance from us.

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