IT 2577 - Income tax : Japan exchange and teaching program

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TAXATION RULING NO. IT 2577

INCOME TAX JAPAN EXCHANGE AND TEACHING PROGRAM

F.O.I. EMBARGO: May be released

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REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1011843	OVERSEAS INCOME JAPAN EXCHANGE AND TEACHING PROGRAM	23AG ARTICLES 11 AND 15 AUSTRALIA/JAPAN DOUBLE TAXATION AGREEMENT

OTHER RULINGS ON TOPIC: IT 2441

PREAMBLE This Ruling deals with the taxation treatment of remuneration paid to Australian participants in the Japan Exchange and Teaching (JET) Program.

2. The JET Program was instituted by the Japanese Government to help promote mutual understanding between Japan and participating countries, foster international perspectives and intensify English language education in Japan. The Program provides Australian graduates with an opportunity to live and work in Japan.

3. The Program's participants serve in either of two roles - a small number as Co-ordinators for International Relations (CIRs) but the majority as Assistant English Teachers (AETs). CIRs are based in local government offices and are expected to contribute ideas and support for international activities including sister-city exchanges, hosting guests from abroad and encouraging foreign tourism and investment. AETs work in schools and boards of education and are employed to motivate teachers and students to study and use English, to provide direct contact with various cultures and to develop the confidence of Japanese people in speaking foreign languages. In either role, the participants carry out their duties as assistants under the guidance of Japanese teachers (in the case of AETs) or of the heads of their division in the local government offices (in the case of CIRs).

4. Participants are generally required to be under 35 years of age and have at least a Bachelor's degree. They need to have a high degree of written and oral skills in English and have an interest in Japan and the local Japanese community. AETs are expected to have at least an interest in studying as a language teacher but, in practice, only a small percentage of participants are qualified teachers and it is understood that

teaching qualifications or experience are an advantage only and are in no way a pre-requisite for selection in the Program. Participants are employed for a period of 12 months and in some circumstances have an option to renew the posting for a further period of 12 months.

5. Subject to Article 15 and to other conditions not presently relevant, Article 11 of the Double Taxation Agreement between Australia and Japan operates to give Japan the right to tax the remuneration derived by an Australian resident who is employed in Japan. Section 23AG of the Income Tax Assessment Act (the Act) provides that earnings derived by an Australian resident individual from a continuous period of foreign service of not less than 365 days (as the holder of an office or as an employee) are exempt from Australian income tax, provided the foreign earnings are not exempt from income tax in the country of source and any tax liability has been or will be paid.

6. Article 15 of the Double Taxation Agreement applies where a teacher who is a resident of one country is temporarily present in the other country for the purpose of teaching during a period not exceeding two years at a university, college, school or other educational institution in the other country. Where those requirements are satisfied, the article operates to exempt the remuneration of Australian teachers from Japanese income tax and the remuneration of Japanese teachers from Australian income tax.

7. The question has arisen whether Article 15 applies to JET participants who are qualified teachers and to JET participants who, whether qualified teachers or not, undertake the duties of AETs.

RULING

8. Australian residents selected as JET participants are not considered to come within the terms of Article 15. Selection is not due to the fact that a particular participant was a teacher in Australia but because the participant possessed a range of the required attributes. The fact that a participant had been a teacher in Australia is not of itself sufficient to bring the Article into operation. In addition, the role of those employed in Japanese schools is not one of formal teaching but one of assistant only.

9. Under Australia income tax law, JET participants remain Australian residents for taxation purposes. Accordingly, Article 11 of the Agreement operates to give Japan the right to tax their remuneration from JET.

10. Where the Japanese authorities tax the remuneration of an Australian JET participant, whether the participant is a CIR or an AET, that remuneration will be exempt from Australian income tax provided the participant has been engaged in the Program for a continuous period of not less than 365 days. However, the exempt remuneration is taken into account in determining the rate of Australian income tax to be levied on other income derived by a participant.

11. To claim the exemption a participant will need to produce

documentary evidence of tax paid in Japan. This must be provided by the Japanese authorities, should be written in English and should clearly state the type of tax paid (e.g., income tax, local prefectural or municipal inhabitant tax), the period of time over which it was paid, and the amount paid.

12. If tax is not paid in Japan, remuneration derived by Australian JET participants will be liable to income tax in Australia.

COMMISSIONER OF TAXATION
15 March 1990