

IT 2665 - Income tax: Swedish, Danish, Finnish, Dutch and Malaysian Government pensions paid to Australian residents

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TAXATION RULING IT 2665

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| I 1013002 | AUSTRALIA/SWEDEN DOUBLE TAXATION AGREEMENT AUSTRALIA/DENMARK DOUBLE TAXATION AGREEMENT AUSTRALIA/FINLAND DOUBLE TAXATION AGREEMENT AUSTRALIA/NETHERLANDS DOUBLE TAXATION AGREEMENT AUSTRALIA/MALAYSIA DOUBLE TAXATION AGREEMENT | INCOME TAX (INTERNATIONAL AGREEMENTS) ACT: SCHEDULE 17, ARTICLE 18, 23(2), 24(1) SCHEDULE 18, ARTICLE 18, 22(2), 23(1) SCHEDULE 25, ARTICLE 18, 22(2), 23(1) SCHEDULE 10, ARTICLE 19, 23(1), PROTOCOL para (5) SCHEDULE 16, ARTICLE 18, 22, 23(3) |

OTHER RULINGS ON THIS TOPIC: IT 2575

TITLE: INCOME TAX: SWEDISH, DANISH, FINNISH, DUTCH AND
MALAYSIAN GOVERNMENT PENSIONS PAID TO
AUSTRALIAN RESIDENTS

NOTE: . Income Tax Rulings do not have the force of law.
. Each decision made by the Australian Taxation Office
is made on the merits of each individual case having
regard to any relevant Ruling.

PREAMBLE

Advice was sought from this Office concerning the taxation of certain Swedish pensions paid to Swedish citizens residing in Australia. The query concerned the position under the Australia/Sweden Double Taxation Agreement of Swedish social security pensions and pensions paid by the Swedish Government in respect of services rendered to that government. Both types of pensions are normally taxed in Sweden and clarification was sought of the taxation treatment applicable in Australia to such pensions received by residents of Australia.

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2. The taxation treatment of such pensions is broadly analogous to that applicable in respect of certain government pensions paid from Denmark, Finland, the Netherlands or Malaysia to residents of Australia.

SUMMARY

3. Swedish government service pensions or social security pensions paid to a resident of Australia who is also a citizen of Sweden may be taxed by both countries under the Australia/Sweden Double Taxation Agreement, but Australia is obliged to provide double tax credit relief in respect of Swedish tax imposed on such pensions. The same position applies for Danish government service or social security pensions paid to citizens of that country who are residents of Australia, and for Finnish government service or social security pensions paid to nationals of that country who are residents of Australia, in accordance with the terms of the respective double taxation agreements concluded with those countries.

4. The Australia/Malaysia Double Taxation Agreement (see also Taxation Ruling IT 2575) and the Australia/Netherlands Double Taxation Agreement have the same effect in relation to a government service pension derived from either of those countries by a resident of Australia, irrespective in those cases of the pensioner's citizenship or nationality. This position does not apply, however, under those agreements where the pension is paid in respect of services that were rendered in connection with a governmental trading or business undertaking.

RULING

Swedish Pensions

5. Article 18(1) of the Australia/Sweden Double Taxation Agreement contains the rule generally common to most of Australia's double taxation agreements, that a pension or annuity shall be taxable only in the country of residence of the pension or annuity recipient. In the case of this agreement, however, that rule is subject to the provisions of Article 18(3), which effectively provides that a Swedish Government service pension or social security pension paid to any individual who is a Swedish citizen may be taxed by Sweden. In that case, there is nothing under that Article or any other provision of the agreement that precludes Australia from also taxing the pension, in accordance with its domestic law, where it is derived by an Australian resident. The absence of the word "only" after "may be taxed" in Article 18(3) is significant and can be contrasted with Article 18(1) which includes the word "only".

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6. Under Article 23(2) of the agreement, these pensions are deemed to be income from sources in Sweden. Accordingly, where Sweden exercises its right under Article 18(3) to tax the pensions, Article 24(1) operates to require the Swedish tax paid to be allowed as a credit against Australian tax payable in respect of that income.

7. Hence, the agreement allows for these pensions to be taxed by both countries, but obliges Australia to provide double tax credit relief. This reflects the position applicable under Australia's domestic general foreign tax credit system under subsection 160AO(2) of the Income Tax Assessment Act 1936, with the credit to be allowed against the Australian tax for the Swedish tax paid by the Australian resident on the pension income being limited to the amount of the Australian tax referable to that income.

Danish Pensions

8. Article 18 of the Australia/Denmark Double Taxation Agreement contains provisions concerning the taxation of pensions which are identical to Article 18 of the Swedish Agreement. The "Source of Income" and "Methods of Elimination of Double Taxation" articles, Article 22(2) and Article 23(1), also have the same effect as the comparable articles of the Australia/Sweden Double Taxation Agreement.

9. It follows that the principles outlined in paragraphs 5 to 7 of this Ruling in relation to Swedish pensions apply equally to Danish government service pensions and social security pensions paid to citizens of Denmark who are residents of Australia.

Finnish Pensions

10. Article 18 of the Australia/Finland Double Taxation Agreement contains almost identical provisions to the Swedish and Danish Double Taxation Agreements, except that the source country taxing right for government service and social security pensions is expressed to apply in respect of such pensions paid to nationals of that country. Articles 22(2) and 23(1) of the Agreement have the same effect as the comparable articles in the Australia/Sweden Double Taxation Agreement.

11. The principles set out in paragraphs 5 to 7 of this Ruling also apply to Finnish government service and social security pensions paid to nationals of Finland who are residents of Australia.

Malaysian Pensions

12. As explained in Taxation Ruling IT 2575, Articles 18(2) and 23(3) of the Australia/Malaysia Double Taxation Agreement have the same effect as the provisions discussed in paragraphs 5 to 7 of this Ruling with respect to government service pensions paid from Malaysia to Australian residents generally.

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13. However, by reason of Article 18(3) of the Australia/Malaysia Agreement, a different rule applies under that agreement where the government service pensions are paid in respect of services rendered in connection with any trade or business carried on by the Government or a political subdivision or a local authority of the other country, e.g., the Central Bank of Malaysia (Bank Negara) or the Malayan Railway Authority. In such cases, the general pension article, Article 17(1), prevails to require the Malaysian government service pension to be taxed only in Australia.

Dutch Pensions

14. Although expressed in different terms, Article 19(1) of the Australia/Netherlands Double Taxation Agreement (when read with Article 23(1) and paragraph (5) of the Protocol to that Agreement) also has the same effect as the provisions discussed in paragraphs 5 to 7 of this Ruling with respect to government service pensions paid from the Netherlands to Australian residents generally.

15. Article 19(2) of the Australia/Netherlands Agreement is comparable with Article 18(3) of the Australia/Malaysia Agreement and has the same effect as outlined in paragraph 13 above. In such cases, Article 18(1) applies to require the Netherlands government service pension to be taxed only in Australia.

COMMISSIONER OF TAXATION

2 January 1992