


***TD 2005/15A1 - Addendum - Income tax: does subsection 23AG(2) of the Income Tax Assessment Act 1936 apply where foreign earnings are exempt from tax in the foreign country for a reason listed in that subsection as well as a reason not listed?***

 This cover sheet is provided for information only. It does not form part of *TD 2005/15A1 - Addendum - Income tax: does subsection 23AG(2) of the Income Tax Assessment Act 1936 apply where foreign earnings are exempt from tax in the foreign country for a reason listed in that subsection as well as a reason not listed?*

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# Addendum

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## Taxation Determination

Income tax: does subsection 23AG(2) of the *Income Tax Assessment Act 1936* apply where foreign earnings are exempt from tax in the foreign country for a reason listed in that subsection as well as a reason not listed?

This Addendum is a public ruling for the purposes of the *Taxation Administration Act 1953*. It amends Taxation Determination TD 2005/15 to note the decision in *Tanddo and Commissioner of Taxation* [2022] AATA 4143 which provides that positive action is usually required to come within the operation of a memorandum of understanding or a general agreement on development cooperation for the purpose of section 23AG(2).

TD 2005/15 is amended as follows:

### 1. Preamble

Omit the preamble; substitute:

#### **ⓘ Relying on this Determination**

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

If this Determination applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Determination. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Determination.

### 2. Table of contents

Insert table of contents:

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<b>Table of Contents</b>	<b>Paragraph</b>
<b>Ruling</b>	<b>1</b>
Date of effect	1A
<b>Appendix 1 – Explanation</b>	<b>2</b>
<b>Appendix 2 – Example</b>	<b>9</b>
Example 1: Exempt income – foreign aid worker	9

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**3. Paragraph 1**

- (a) Omit the page status 'FOI status: **may be released**'; substitute 'Status: **legally binding**'.
- (b) Before the paragraph, insert the minor heading '**Ruling**'.
- (c) In footnote 1, omit 'TD 2004/D83'; substitute 'TD 2005/14 *Income tax: does subsection 23AG(2) of the Income Tax Assessment Act 1936 apply where foreign earnings are exempt from tax in a foreign country for one or more of the reasons listed in that subsection and there is no additional reason for exempting that income?*
- (d) After the paragraph, insert new paragraph 1A (including the minor heading) and signature and date block:

**Date of effect**

1A. This Determination applies to years commencing both before and after its date of issue. However, it does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of the Determination (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10 *Public Rulings*).

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**Commissioner of Taxation**11 May 2005

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**4. Paragraphs 2 to 8**

Omit the page status 'FOI status: **may be released**'; substitute 'Status: **not legally binding**'.

**5. Paragraph 2**

- (a) Change the minor heading to a major heading. In the major heading, before Explanation, insert '**Appendix 1 –**'.
- (b) After the heading, insert preamble:

ⓘ ***This Explanation is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.***

**6. Paragraphs 9 to 10**

Omit the page status 'FOI status: **may be released**'; substitute 'Status: **not legally binding**'.

**7. Paragraph 9**

- (a) Before paragraph 9 insert the major heading '**Appendix 2 – Example**'.

(b) After the major heading, insert preamble:

**ⓘ** *This Appendix provides an example which illustrates the principles in the Determination. Decisions on individual cases will depend on the overall circumstances of that case. Consequently, the conclusions reached in the following example are not necessarily determinative of the Commissioner's views on cases with similar, but different, facts.*

(c) In the minor heading, after 'Example', insert '**1: Exempt income – foreign aid worker**'

(d) At the end of the first sentence, insert footnote 2:

Because the taxpayer is undertaking an activity in the other country which has been selected for implementation under the relevant MoU. Where it has not been so selected, the MoU does not apply to grant the exemption in the foreign country – refer to *Tando and Commissioner of Taxation* [2022] AATA 4143.

## **8. Paragraph 11**

Omit the paragraph, including the heading and following signature and date block.

This Addendum applies before and after its date of issue.

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**Commissioner of Taxation**  
6 September 2023

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### ATO references

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