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Edited version of private ruling

Authorisation Number: 1011395629147

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Ruling

Subject: Foreign service income

Question

Is the income that you received as a consultant for the Entity A in Country B assessable in Australia?

Answer: Yes.

This ruling applies for the following period/s:

Year ended 30 June 2009

Year ended 30 June 2010

The scheme commences on:

1 July 2008

Relevant facts and circumstances

You are a resident of Australia for income tax purposes.

You were engaged by Entity C in Country B which is the managing agent for the Entity A through Entity D program as a consultant.

The period of your engagement was from a time in the 2009 income year to about the middle of the 2010 income year.

You have not paid tax on the income that was earned in Country B.

You are a consultant and not an officer or employee of the Entity A in Country B.

Relevant legislative provisions

Section 6-5 of the Income Tax Assessment Act 1997

Subsection 6-5(2) of the Income Tax Assessment Act 1997

Subsection 6-15(2) of the Income Tax Assessment Act 1997

Section 6-20 of the Income Tax Assessment Act 1997

Section 11-15 of the Income Tax Assessment Act 1997

Section 23AF of the Income Tax Assessment Act 1936

Section 23AG of the Income Tax Assessment Act 1936

Subsection 23AG(1) of the Income Tax Assessment Act 1936

Subsection 23AG(7) of the Income Tax Assessment Act 1936

Reasons for decision

Subsection 6-5(2) of the *Income Tax Assessment Act 1997* (ITAA 1997) provides that the assessable income of an Australia resident will include ordinary income derived from all sources, whether in or out of Australia, during the income year.

Income from your consultancy services is ordinary income for the purposes of subsection 6-5(2) of the ITAA 1997.

However, subsection 6-15(2) of the ITAA 1997 provides that if an amount is exempt income then it is not assessable.

Section 6-20 of the ITAA 1997 provides that an amount of ordinary income is exempt income if it is made exempt from

income tax by a provision of the ITAA 1997 or another Commonwealth law.

The *International Organisations (Privileges & Immunities) Act 1963* (IO(P&I)A) is a Commonwealth law under which an international organisation, and persons engaged by it, may be accorded certain privileges and immunities including an exemption from tax.

Subparagraph 6(1)(e)(i) of the IO(P&I)A provides that the Regulations may confer all or any of the privileges and immunities set out in Part 1 of the Fifth Schedule of the IO(P&I)A upon a person who serves on a committee, or, participates in the work of, or, performs a mission on behalf of, an international organisation to which this Act applies.

Entity A is listed in the Schedule to the *Specialised Agencies (Privileges & Immunities) Regulations 1986* (SA(P&I) Regs). The SA(P&I)Regs are made under section 6 of the IO(P&I)A.

Regulation 9 of the SA(P&I) Regs does not provide any income tax exemption for persons serving on a committee or performing a mission (such as independent consultants) for Entity A.

The Commissioner's views on the IO(P&I)A are set out in Taxation Ruling TR 92/14 (as addended). As outlined in paragraph 12 of TR 92/14, generally, Australia's policy is that experts and consultants of an International Organisation are not exempt from tax in Australia.

The limited exemptions provided under the Regulations do not apply to you. Accordingly, the income derived by you as a consultant to the Entity C in Country B (an agency for an Entity A program) is not exempt income under the IO(P&I)A.

Section 11-15 of the ITAA 1997 lists those provisions dealing with income which may be exempt. Included in this list is section 23AG of the *Income Tax Assessment Act 1936* (ITAA 1936) which deals with overseas employment income and 23AF of the ITAA 1936 which deals with approved overseas projects.

Subsection 23AG(1) of the ITAA 1936 provides that where a resident taxpayer is engaged in foreign service for a continuous period of not less than 91 days, any foreign earnings derived will be exempt from tax in Australia. 'Foreign service' means service in a foreign country as the holder of an office or in the capacity as an employee (subsection 23AG(7) of the ITAA 1936). As you are not considered to be the holder of an office or an employee, section 23AG of the ITAA 1936 does not apply (paragraph 20 of Taxation Ruling TR96/15).

Section 23AF of the ITAA 1936 provides relief from Australian income tax for Australian residents working overseas on approved projects. The approval of a project is dependent upon the Minister for Trade being satisfied that the undertaking is an eligible project. The Minister for Trade has not certified the project on which you are working as an approved overseas project. Consequently, section 23AF of the ITAA 1936 does not apply and your income is not exempt in Australia under this provision.

In your case, your income does not fall within any of the above exemptions. Neither is it exempt under any other provision. Accordingly, your income received whilst working as a consultant for the Entity C in Country B (an agency for

an Entity A program) is assessable under section 6-5 of the ITAA-1997.

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Ruling

Subject: Foreign Income

Is the salary you derive from your employer for working in country A assessable income in Australia?

No.

This ruling applies for the following period/s:

Income year ending 30 June 2010.

Income year ending 30 June 2011.

The scheme commenced:

1 July 2009

Relevant facts and circumstances:

You are an Australian resident for income tax purposes.

You are engaged as an employee to undertake work for a specialised agency, an international organisation to which the *International Organisations (Privileges and Immunities) Act 1963* (IO(P&I)A) applies in Country A.

Relevant legislative provisions:

Income Tax Assessment Act 1997 Subsection 6-5(2),

Income Tax Assessment Act 1997 Subsection 6-15(2),

Income Tax Assessment Act 1997 6-20(1),

International Organisations (Privileges and Immunities) Act 1963,

Income Tax Assessment Act 1936 and

Specialised Agencies (Privileges and Immunities) Regulations 1986.

Reasons for decision:

Subsection 6-5(2) of the *Income Tax Assessment Act 1997* (ITAA 1997) provides that the assessable income of an Australian resident will include ordinary income derived from all sources, whether in or out of Australia, during the income year.

However, subsection 6-15(2) of the ITAA 1997 provides that if an amount is exempt income then it is not assessable.

Subsection 6-20(1) of the ITAA 1997 provides that an amount of ordinary income is exempt income if it is made exempt by a provision of the ITAA 1997 or the *Income Tax Assessment Act 1936* or another Commonwealth law.

The *International Organisations (Privileges and Immunities) Act 1963* (IO(P&I)A) is a Commonwealth law under which an international organisation, and persons engaged by it, may be accorded certain privileges and immunities including an exemption from tax. Taxation Ruling TR 92/14 discusses taxation privileges and immunities of prescribed international organisations and their staff.

The Specialised Agencies (Privileges and Immunities) Regulations 1986 (SA (P&I) Regs) were made under the IO(P&I)A. Your employer is listed in the SA(P&I) Regs as a specialised agency. A specialised agency is an international organisation to which the IO(P&I)A applies.

Sub Regulation 8(1) of the SA(P&I) Regs confers on officers (other than high officers) of specialised agencies the privileges and immunities specified in Part I of the Fourth Schedule to the IO(P&I)A.

Paragraph two of Part one of the Fourth Schedule of the IO(P&I)A provides for exemption from taxation on salaries and emoluments received from an international organisation by an officer (other than high officer) of the organisation

(paragraph 9 of TR 92/14).

As an employee of this particular agency, paragraph two of Part one of the Fourth Schedule of the IO(P&I)A provides that you are exempt from tax on salaries and emoluments paid to you by the agency.

Therefore, the salary you receive from your employer for working in Country A is not assessable income in Australia under subsection 6-15(2) of the ITAA 1997.

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Ruling

Subject: Foreign employment income

Question 1

Is the income you derive from services provided to the international organisation where the work is performed overseas assessable in Australia?

Answer

No.

Question 2

Is the income you derive from services provided to the international organisation where the work is performed in Australia assessable in Australia?

Answer

No.

This ruling applies for the following periods:

Year ending 30 June 2011

Year ending 30 June 2012

Year ending 30 June 2013

Year ending 30 June 2014

Year ending 30 June 2015

Year ending 30 June 2016

The scheme commences on:

1 July 2010

Relevant facts and circumstances

This ruling is based on the facts stated in the description of the scheme that is set out below. If your circumstances are materially different from these facts, this ruling has no effect and you cannot rely on it. The fact sheet has more information about relying on your private ruling.

You are an Australian citizen and resident for income tax purposes.

You have been appointed as a short term consultant to the staff of an international organisation.

During this assignment you will be considered a staff member of the international organisation and you will be subject to their staff rules.

The international organisation is listed in the *Specialised Agencies (Privileges and Immunities) Regulations 1986* (SA (P&I) Regs) as a specialised agency.

You are currently performing services for the international organisation overseas and you will also be performing some work in Australia.

Relevant legislative provisions

Subsection 6-5(2) of the *Income Tax Assessment Act 1997*

Subsection 6-15(2) of the *Income Tax Assessment Act 1997*

Subsection 6-20(1) of the *Income Tax Assessment Act 1997*

International Organisations (Privileges and Immunities) Act 1963

Specialised Agencies (Privileges and Immunities) Regulations 1986 (SA (P&I) Regs)

Reasons for decision

While these reasons are not part of the private ruling, we provide them to help you to understand how we reached our decision.

Subsection 6-5(2) of the *Income Tax Assessment Act 1997* (ITAA 1997) provides that the assessable income of an Australian resident will include ordinary income derived from all sources, whether in or out of Australia, during the income year.

However, subsection 6-15(2) of the ITAA 1997 provides that if an amount is exempt income then it is not assessable.

Subsection 6-20(1) of the ITAA 1997 provides that an amount of ordinary income is exempt income if it is made exempt by a provision of the ITAA 1997 or the *Income Tax Assessment Act 1936* or another Commonwealth law.

The *International Organisations (Privileges and Immunities) Act 1963* (IO(P&I)A) is a Commonwealth law under which an international organisation, and persons engaged by it, may be accorded certain privileges and immunities including an exemption from tax. Taxation Ruling TR 92/14 discusses taxation privileges and immunities of prescribed international organisations and their staff.

The *Specialised Agencies (Privileges and Immunities) Regulations 1986* (SA (P&I) Regs) were made under the IO(P&I)A. The international organisation is listed in the SA(P&I) Regs as a specialised agency. A specialised agency is an international organisation to which the IO(P&I)A applies.

Sub Regulation 8(1) of the SA(P&I) Regs confers on officers (other than high officers) of specialised agencies the privileges and immunities specified in Part I of the Fourth Schedule to the IO(P&I)A.

Paragraph 2 of Part 1 of the Fourth Schedule of the IO(P&I)A provides for exemption from taxation on salaries and emoluments received from an international organisation by an officer (other than high officer) of the organisation (see paragraph 9 of TR 92/14).

As you have been appointed to the staff of the international organisation and during the assignment you are considered a staff member and subject to their staff rules, it is accepted that your status is that of an employee.

As an employee of the international organisation paragraph 2 of Part 1 of the Fourth Schedule of the IO(P&I)A provides that you are exempt from tax on salaries and emoluments paid to you by the international organisation.

There is nothing in the IO(P&I)A or the regulations which restricts the privileges and immunities afforded to the taxpayer to those circumstances when the taxpayer is performing their duties outside of Australia.

Accordingly, the income you receive from the international organisation is exempt income under section 6-20 of the ITAA 1997 and it is not assessable income in Australia under subsection 6-5(2) of the ITAA 1997.

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Ruling

Subject: Foreign income

Question and answer:

Is the income derived by you as a consultant to an International Organisation for the provision of services, carried out partly in Australia and partly outside Australia, assessable income?

Yes.

This ruling applies for the following periods:

Year ending 30 June 2011

The scheme commenced on:

1 July 2010

Relevant facts and circumstances

You are an Australian resident for tax purposes.

You have taken up an appointment as a short term consultant with an International Organisation.

You are sometimes required to travel overseas.

The income you receive is paid directly into your Australian bank account.

The International Organisation does not withhold tax from the payments it makes to you.

Relevant legislative provisions

Income Tax Assessment Act 1997 Subsection 6-5(2).

Income Tax Assessment Act 1997 Subsection 6-15(2).

Income Tax Assessment Act 1997 Section 6-20.

Income Tax Assessment Act 1936 Section 23AG.

International Organisation (Privileges and Immunities) Act 1963.

Specialized Agencies (Privileges and Immunities) Regulations 1986.

Reasons for decision

Subsection 6-5(2) of the *Income Tax Assessment Act 1997* (ITAA 1997) provides that the assessable income of an Australian resident will include ordinary income derived from all sources, whether in or out of Australia, during the income year.

Income from professional services is ordinary income for the purposes of subsection 6-5(2) of the ITAA 1997.

However, subsection 6-15(2) of the ITAA 1997 provides that if an amount is exempt income then it is not assessable income.

Section 6-20 of the ITAA 1997 provides that an amount of ordinary income is exempt income if it is made exempt from income tax by a provision of the ITAA 1997 or another Commonwealth law.

The *International Organisations (Privileges & Immunities) Act 1963* (IO(P&I)A) is a Commonwealth law under which an international organisation, and persons engaged by it, may be accorded certain privileges and immunities including an exemption from tax.

Subparagraph 6(1)(e)(i) of the IO(P&I)A provides that the regulations may confer all or any of the privileges and

immunities set out in Part I of the Fifth Schedule of the IO(P&I)A upon a person who serves on a committee, or, participates in the work of, or, performs a mission on behalf of, an international organisation to which this Act applies.

The International Organisation in your case is listed in the Schedule to the *Specialised Agencies (Privileges & Immunities) Regulations 1986* (SA(P&I) Regs). The SA(P&I) Regs are made under section 6 the IO(P&I)A.

Regulation 9 of the SA(P&I) Regs does not provide any income tax exemption for persons serving on a committee or performing a mission (such as independent consultants) for the International Organisation in your case.

In your case you received income as a result of a contract with an International Organisation to provide consultancy services. You are not an employee of this International Organisation.

Therefore, the income you received as a consultant from the International Organisation for the provision of services carried out in Australia and overseas, is assessable under subsection 6-5(2) of the ITAA 1997.

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Ruling

Subject: Income - international organisation

Question

Is the income you derive from services provided to an international organisation assessable in Australia?

Answer

No

This ruling applies for the following period

Year ending 30 June 2010

Year ending 30 June 2011

Year ending 30 June 2012

Year ending 30 June 2013

The scheme commenced on

1 July 2009

Relevant facts and circumstances

You are an Australian citizen and resident for income tax purposes.

You have been appointed as a short term consultant to the staff of an international organisation.

Your appointment is for an initial period of one year, and is expected to be renewed.

The period of assignment is expected to be less than 150 days per year.

You will be working in Country X for three to four months, and also in Australia.

You may also work in similar roles in other countries.

The international organisation is listed in the *Specialised Agencies (Privileges and Immunities) Regulations 1986* as a specialised agency.

The international organisation provided a letter stating you are an officer of the organisation and exempt from taxation under the *International Organisations (Privileges and Immunities) Act 1963* and the *Specialised Agencies (Privileges and Immunities) Regulations 1986.*

Relevant legislative provisions

Subsection 6-5(2) of the *Income Tax Assessment Act 1997*

Subsection 6-15(2) of the *Income Tax Assessment Act 1997*

Subsection 6-20(1) of the *Income Tax Assessment Act 1997*

Reasons for decision

Subsection 6-5(2) of the *Income Tax Assessment Act 1997* (ITAA 1997) provides that the assessable income of an Australian resident will include ordinary income derived from all sources, whether in or out of Australia, during the income year.

However, subsection 6-15(2) of the ITAA 1997 provides that if an amount is exempt income then it is not assessable.

Subsection 6-20(1) of the ITAA 1997 provides that an amount of ordinary income is exempt income if it is made exempt by a provision of the ITAA 1997 or the *Income Tax Assessment Act 1936* or another Commonwealth law.

The *International Organisations (Privileges and Immunities) Act 1963* (IO(P&I)A) is a Commonwealth law under which an international organisation, and persons engaged by it, may be accorded certain privileges and immunities including an exemption from tax. Taxation Ruling TR 92/14 discusses taxation privileges and immunities of prescribed international organisations and their staff.

The *Specialised Agencies (Privileges and Immunities) Regulations 1986* (SA (P&I) Regs) were made under the IO(P&I)A. Your employer is listed in the SA(P&I) Regs as a specialised agency. A specialised agency is an international organisation to which the IO(P&I)A applies.

Sub Regulation 8(1) of the SA(P&I) Regs confers on officers (other than high officers) of specialised agencies the privileges and immunities specified in Part I of the Fourth Schedule to the IO(P&I)A.

Paragraph 2 of Part 1 of the Fourth Schedule of the IO(P&I)A provides for exemption from taxation on salaries and emoluments received from an international organisation by an officer (other than high officer) of the organisation (paragraph 9 of TR 92/14).

Taxation Determination TD 92/153 discusses who is a 'person who holds an office' as specified in various regulations made under the *International Organisations (Privileges and Immunities) Act 1963*.

If the international organisation designates a person as one who holds an office in that organisation, in the absence of evidence to the contrary, this designation is sufficient evidence of the status of that person.

As you are considered an officer by the international organisation, paragraph 2 of Part 1 of the Fourth Schedule of the IO(P&I)A provides that you are exempt from tax on salaries and emoluments paid to you by the organisation.

There is nothing in the IO(P&I)A or the regulations which restricts the privileges and immunities afforded to the taxpayer to those circumstances when the taxpayer is performing their duties outside Australia.

Accordingly, the income you receive from the international organisation is exempt income under section 6-20 of the ITAA 1997 and it is not assessable in Australia under subsection 6-5(2) of the ITAA 1997.

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Edited version of your private ruling

Authorisation Number: 1012479780335

Ruling

Subject: Assessability of foreign income

Question and answer:

Is the income you derive from services provided to International Organisation X, where the work is performed in Australia, assessable in Australia?

No.

This ruling applies for the following period:

Year ended 30 June 2013.

The scheme commenced on:

1 July 2012.

Relevant facts and circumstances

This ruling is based on the facts stated in the description of the scheme that is set out below. If your circumstances are materially different from these facts, this ruling has no effect and you cannot rely on it. The fact sheet has more information about relying on your private ruling.

You are an Australian resident.

You are currently employed as an employee of Organisation X. Your services are required for a certain amount of days

during the period of your employment.

Your employment contract states that you receive a certain amount of money per day worked.

You work remotely from home via the internet.

Organisation X is listed in the *Specialised Agencies (Privileges and Immunities) Regulations 1986*.

Reasons for decision

Subsection 6-5(2) of the *Income Tax Assessment Act 1997* (ITAA 1997) provides that the assessable income of an Australian resident includes ordinary income derived from all sources, whether inside or outside Australia, during an income year.

Subsection 6-15(2) of the ITAA 1997 provides that, if an amount is classed as exempt income, then it is not assessable.

Subsection 6-20(1) of the ITAA 1997 provides that ordinary income is exempt if it is made exempt by a provision of the ITAA 1997, or the *Income Tax Assessment Act 1936* (ITAA 1936), or another Commonwealth law.

The *International Organisations (Privileges and Immunities) Act 1963* (IO(P&I)A 1963) is a Commonwealth law under which an international organisation, and its employees, may be receive an exemption from tax.

Some of the international organisations which this exemption applies to are listed in *Specialised Agencies (Privileges & Immunities) Regulations 1986* (SA(P&I) Regulations 1986).

Organisation X is listed in the Regulations as an organisation which this exemption applies to.

As you are an employee of Organisation X, the income that you receive from Organisation X is exempt income under section 6-20 of the ITAA 1997 and it is not assessable income in Australia under subsection 6-5(2) of the ITAA 1997.

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Edited version of your private ruling

Authorisation Number: 1012611308679

Ruling

Subject: Assessability of foreign income

Question and answer

Is the income you derive in respect of your position at Entity X in Country Y exempt from income tax in Australia?

Yes.

This ruling applies for the following period:

Year ending 30 June 2014

The scheme commenced on:

1 July 2013

Relevant facts and circumstances

You have been appointed to the staff of Entity X as a consultant.

A letter from Entity X states that you, as an official of Entity X, should enjoy the same exemptions from taxation in respect of the salaries and emoluments paid to them by the specialized agencies and on the same conditions as are enjoyed by officials of the United Nations.

Relevant legislative provisions:

Income Tax Assessment Act 1997 Subsection 6-5(2).

Income Tax Assessment Act 1997 Subsection 6-15(2).

Income Tax Assessment Act 1997 Section 6-20.

International Organisation (Privileges and Immunities) Act 1963.

Specialized Agencies (Privileges and Immunities) Regulations 1986.

Reasons for decision

Subsection 6-5(2) of the *Income Tax Assessment Act 1997* (ITAA 1997) provides that the assessable income of an Australian resident will include ordinary income derived from all sources, whether in or out of Australia, during the income year.

However, subsection 6-15(2) of the ITAA 1997 provides that if an amount is exempt income then it is not assessable income.

Section 6-20 of the ITAA 1997 provides that an amount of ordinary income is exempt income if it is made exempt from income tax by a provision of the ITAA 1997 or another Commonwealth law.

The *International Organisations (Privileges & Immunities) Act 1963* (IO(P&I)A) is a Commonwealth law under which an international organisation, and persons engaged by it, may be accorded certain privileges and immunities including an exemption from tax.

Subparagraph 6(1)(e)(i) of the IO(P&I)A provides that the regulations may confer all or any of the privileges and immunities set out in Part I of the Fifth Schedule of the IO(P&I)A upon a person who serves on a committee, or, participates in the work of, or, performs a mission on behalf of, an international organisation to which this Act applies.

Entity X is listed in the Schedule to the *Specialised Agencies (Privileges & Immunities) Regulations 1986* (SA(P&I) Regs). The SA(P&I) Regs are made under section 6 the IO(P&I)A.

In your case, you have been appointed to the staff of Entity X as a consultant. As you are therefore participating in the work of Entity X, your income is exempt from income tax in Australia under the IO(P&I)A.

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Edited version of private advice

Authorisation Number: 1012661349191

Ruling

Subject: Exempt foreign income

Question

Are the salary and allowances you earn from an international organisation exempt from income tax in Australia?

Answer

No.

This ruling applies for the following periods

Year ended 30 June 2014

Year ending 30 June 2015

The scheme commenced on

1 July 2013

Relevant facts and circumstances

You are an Australian resident for income tax purposes.

You perform work as a consultant for an international organisation (the organisation).

Your agreement with the organisation is for up to 150 days of work per year.

The agreement does not stipulate the periods you must work in the overseas country. Generally you work for several

weeks at a time in an overseas country before returning to Australia for several weeks.

The majority of work you do for the organisation is performed in an overseas country, with a small amount being done in Australia.

You are paid directly by the organisation to a bank account in an overseas country.

Your income is not taxed in the overseas country.

Relevant legislative provisions

Subsection 6-5(2) of the *Income Tax Assessment Act 1997*

Subsection 6-15(2) of the *Income Tax Assessment Act 1997*

Section 6-20 of the *Income Tax Assessment Act 1997*

Section 23AF of the *Income Tax Assessment Act 1936*

Subparagraph 6(1)(e)(i) of the *International Organisation (Privileges and Immunities) Act 1963*

Regulation 9 of the *Specialized Agencies (Privileges and Immunities) Regulations 1986*

Section 3AAA of the *International Tax Agreements Act 1953*

Section 5 of the *International Tax Agreements Act 1953*

Reasons for decision

Assessable income

Subsection 6-5(2) of the *Income Tax Assessment Act 1997* (ITAA 1997) provides that the assessable income of an Australian resident will include ordinary income derived from all sources, whether in or out of Australia, during the income year.

Indicators of ordinary income include the receipt being:

- received periodically and regularly
- relied upon or expected
- earned

- for the replacement of income.

Income from your consultancy services is ordinary income for the purposes of subsection 6-5(2) of the ITAA 1997.

Subsection 6-15(2) of the ITAA 1997 provides that if an amount is exempt income then it is not assessable. Section 6-20 of the ITAA 1997 provides that an amount of ordinary income is exempt income if it is made exempt from income tax by a provision of the ITAA 1997 or another Commonwealth law.

International organisations

The *International Organisations (Privileges & Immunities) Act 1963* (IO(P&I)A) is a Commonwealth law under which an international organisation, and persons engaged by it, may be accorded certain privileges and immunities including an exemption from tax.

Subparagraph 6(1)(e)(i) of the IO(P&I)A provides that the regulations may confer all or any of the privileges and immunities set out in Part 1 of the Fifth Schedule of the IO(P&I)A upon a person who serves on a committee, or participates in the work of, or performs a mission on behalf of, an international organisation to which the Act applies.

The organisation you consult for (the organisation) is listed in the Schedule to the *Specialised Agencies (Privileges & Immunities) Regulations 1986* (SA(P&I) Regs), making it an organisation that the IO(P&I)A applies to.

Regulation 9 of the SA(P&I) Regs does not provide any income tax exemption for persons serving on a committee or performing a mission (such as independent consultants) for the organisation. This means that the immunities in Part 1 of the Fifth Schedule of the IO(P&I)A do not apply.

The Commissioner's views on the IO(P&I)A are set out in Taxation Ruling TR 92/14 *Income tax: taxation privileges and immunities of prescribed International Organisations and their staff* (TR 92/14). As outlined in paragraph 12 of TR 92/14, generally, Australia's policy is that experts and consultants of an International Organisation are not exempt from tax in Australia.

The limited exemptions provided under the SA(P&I) Regs do not apply to you. Accordingly, the income derived by you as a consultant to the organisation is not exempt income under the IO(P&I)A.

Convention on the privileges and immunities of the specialized agencies

It is well established, as explained by the Full High Court in *Minister of State for Immigration and Ethnic Affairs v. Ah Hin Teoh* (1995) 183 CLR 273 that "the provisions of an international treaty to which Australia is a party do not form part of Australian law unless those provisions have been validly incorporated into our municipal law by statute" (Mason CJ and Deane J at para 25). The reasons for this are found in the Constitution, where the power to enter treaties is vested in the Executive under section 61, but the power to make an alter law falls to the Parliament under section 51.

The United Nations *Convention on the Privileges and Immunities of the Specialized Agencies*, to which Australia became a party in 1986, provides that the organisation is a 'specialized agency' and that officials of a specialized agency shall be immune from taxation (sections 9 and 19). However, this convention has not been legislated into Australian law any further than the IO(P&I)A and it's regulations as discussed earlier, and as discussed you are not an official of the organisation.

As has been discussed above, the law in Australia is clear that consultants to the organisation are not exempt from taxation in Australia.

ITAA exempt income

Section 11-15 of the ITAA 1997 lists those provisions dealing with income which may be exempt. Included in this list is section 23AG of the *Income Tax Assessment Act 1936* (ITAA 1936) which deals with overseas employment income and 23AF of the ITAA 1936 which deals with approved overseas projects.

Subsection 23AG(1) of the ITAA 1936 provides that where a resident taxpayer is engaged in foreign service for a continuous period of not less than 91 days, any foreign earnings derived will be exempt from tax in Australia. 'Foreign service' means service in a foreign country as the holder of an office or in the capacity as an employee (subsection 23AG(7) of the ITAA 1936). As you are not considered to be the holder of an office or an employee, section 23AG of the ITAA 1936 does not apply.

Section 23AF of the ITAA 1936 provides relief from Australian income tax for Australian residents working overseas on approved projects. The approval of a project is dependent upon the Minister for Trade being satisfied that the undertaking is an eligible project.

In your case, you are performing work on a project that assists farmers with good agricultural training.

You have been unable to provide information that the work you undertake is part of an approved project. Consequently, you are not exempt from income tax under this provision. Additionally, you have not been engaged in the service for a continuous period of 91 days or more as required by the section.

DTA

In determining liability to Australian tax on foreign sourced income it is necessary to consider not only the income tax laws, but also the double tax agreement between Australia and the overseas country.

Under a double taxation agreement between Australia and the overseas country (the Agreement), income derived by an Australian resident in respect of professional services or other independent activities of a similar character are generally taxable only in Australia.

Your income as a consultant is not exempt from Australian tax under the Agreement.

Summary

In your case, your income does not fall within any of the above exemptions. Accordingly, your income received whilst working as a consultant for the organisation is assessable under section 6-5 of the ITAA 1997.

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Authorisation Number: 1051223181856

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Ruling

Subject: Assessability of foreign income

Question and answer:
Is the income derived by you as a consultant to the overseas organization, carried out partly in Australia and partly outside Australia, assessable income?

Yes.

This ruling applies for the following periods:
Year ending 30 June 2017
Year ending 30 June 2018
Year ending 30 June 2019
Year ending 30 June 2020
Year ending 30 June 2021

The scheme commenced on:
1 July 2016

Relevant facts:
You are an Australian resident for tax purposes.
You have taken up an appointment as a consultant with an overseas organisation.
You will carry out the work for the organisation overseas and in Australia.

Relevant legislative provisions:
Income Tax Assessment Act 1997 Subsection 6-5(2).
Income Tax Assessment Act 1997 Subsection 6-15(2).
Income Tax Assessment Act 1997 Section 6-20.
International Organisation (Privileges and Immunities) Act 1963.
Specialized Agencies (Privileges and Immunities) Regulations 1986.

Reasons for decision
Subsection 6-5(2) of the *Income Tax Assessment Act 1997* (ITAA 1997) provides that the assessable income of an Australian resident will include ordinary income derived from all sources, whether in or out of Australia, during the income year.

Income from professional services is ordinary income for the purposes of subsection 6-5(2) of the ITAA 1997.

However, subsection 6-15(2) of the ITAA 1997 provides that if an amount is exempt income then it is not assessable income.

Section 6-20 of the ITAA 1997 provides that an amount of ordinary income is exempt income if it is made exempt from income tax by a provision of the ITAA 1997 or another Commonwealth law.

The *International Organisations (Privileges & Immunities) Act 1963* (IO(P&I)A) is a Commonwealth law under which an international organisation, and persons engaged by it, may be accorded certain privileges and immunities including an exemption from tax.

Subparagraph 6(1)(e)(i) of the IO(P&I)A provides that the regulations may confer all or any of the privileges and immunities set out in Part I of the Fifth Schedule of the IO(P&I)A upon a person who serves on a committee, or, participates in the work of, or, performs a mission on behalf of, an international organisation to which this Act applies.

The organisation is listed in the Schedule to the *Specialised Agencies (Privileges & Immunities) Regulations 1986* (SA(P&I) Regs). The SA(P&I) Regs are made under section 6 the IO(P&I)A.

Regulation 9 of the SA(P&I) Regs does not provide any income tax exemption for persons serving on a committee or performing a mission (such as independent consultants) for the organisation.

In your case you received income as a result of a contract with the organisation to provide consultancy services. You are not an employee of the organisation.

Therefore, the income you received as a consultant from the organisation for the provision of services carried out in Australia and overseas, is assessable under subsection 6-5(2) of the ITAA 1997.

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Subject: Assessable income

Question:

Is the income you derive for services to an international organisation assessable in Australia?

Answer: No.

This ruling applies for the following period/s:

1 July 2009 to 30 June 2010

The scheme commences on:

1 July 2009

Relevant facts and circumstances

You are an Australian resident for income tax purposes.

You were engaged to provide services to an international organisation as a short term consultant.

The majority of the services are performed in Australia.

You are paid a net amount from the organisation.

The organisation advised that it has an agreement with several countries, including Australia, that the payments are exempt from income tax in those countries.

You provided a covering letter from the organisation stating that you have been appointed to the staff, and are an official, of the organisation.

Relevant legislative provisions

Income Tax Assessment Act 1997 subsection 6-5(2)
Income Tax Assessment Act 1997 subsection 6-15(2)
Income Tax Assessment Act 1997 subsection 6-20(1)

Reasons for decision

Subsection 6-5(2) of the *Income Tax Assessment Act 1997* (ITAA 1997) provides that the assessable income of an Australian resident will include ordinary income derived from all sources, whether in or out of Australia, during the income year.

However, subsection 6-15(2) of the ITAA 1997 provides that if an amount is exempt income then it is not assessable.

Subsection 6-20(1) of the ITAA 1997 provides that an amount of ordinary income is exempt income if it is made exempt by a provision of the ITAA 1997 or the *Income Tax Assessment Act 1936* or another Commonwealth law.

The *International Organisations (Privileges and Immunities) Act 1963* (IO(P&I)A) is a Commonwealth law under which an international organisation, and persons engaged by it, may be accorded certain privileges and immunities including an exemption from tax. Taxation Ruling TR 92/14 discusses taxation privileges and immunities of prescribed international organisations and their staff.

The *Specialised Agencies (Privileges and Immunities) Regulations 1986* (SA (P&I) Regs) were made under the IO(P&I)A. The international organisation is listed in the SA(P&I) Regs as a specialised agency.

A specialised agency is an international organisation to which the IO(P&I)A applies.

Subregulation 8(1) of the SA(P&I) Regs confers on officers (other than high officers) of specialised agencies the privileges and immunities specified in Part 1 of the Fourth Schedule to the IO(P&I)A.

Paragraph two of Part 1 of the Fourth Schedule of the IO(P&I)A provides for exemption from taxation on salaries and emoluments received from an international organisation by an officer (other than high officer) of the organisation.

As a staff member and official of the organisation, paragraph two of Part 1of the Fourth Schedule of the IO(P&I)A provides that you are exempt from tax on salaries and emoluments paid to you by the organisation.

Therefore, the income you receive from the organisation is exempt income under subsection 6-20(1) of the ITAA 1997, and is not assessable in Australia under subsection 6-15(2) of the ITAA 1997.

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Edited version of your written advice

Authorisation Number: 1051279939564

Date of advice: 27 September 2017

Ruling

Subject: Exempt foreign source income

Question 1

Is the income derived by you from a specialised agency for services carried out partly in Australia and partly outside Australia, assessable income?

Answer

No

This ruling applies for the following periods:

Year ended 30 June 2017

Year ending 30 June 2018

Year ending 30 June 2019

Year ending 30 June 2020

Year ending 30 June 2021

The scheme commences on:

1 July 2016

Relevant facts and circumstances

You are an Australian resident for taxation purposes.

You have taken up an appointment as a short term consultant with a specialised agency, an agency of an international organisation.

You have been employed on one year contracts that have been renewed each year since 2011.

You are sometimes required to travel overseas.

The income you receive is paid directly into your Australian bank account.

The specialised agency does not withhold tax from the payments it makes to you.

You have a letter issued by the specialised agency confirming you hold an office and are an official of the specialised agency.

That office is not a high office.

You are named on the list of officials provided to the Australian Government pursuant to section 18 of the UN Convention on the Privileges and Immunities of the Specialized Agencies.

Relevant legislative provisions

Income Tax Assessment Act 1997 subsection 6-5(2),

Income Tax Assessment Act 1997 subsection 6-15(2),

Income Tax Assessment Act 1997 section 6-20,

International Organisation (Privileges and Immunities) Act 1963 subsection 5(1),

International Organisation (Privileges and Immunities) Act 1963 section 6,

International Organisation (Privileges and Immunities) Act 1963 paragraph 2 of part I of the fourth schedule and

Specialized Agencies (Privileges and Immunities) Regulations 1986 regulation 8.

Reasons for decision

Subsection 6-5(2) of the *Income Tax Assessment Act 1997* (ITAA 1997) provides that the assessable income of an

Australian resident will include ordinary income derived from all sources, whether in or out of Australia, during the income year.

Income from professional services is ordinary income for the purposes of subsection 6-5(2) of the ITAA 1997. However, subsection 6-15(2) of the ITAA 1997 provides that if an amount is exempt income then it is not assessable income.

Section 6-20 of the ITAA 1997 provides that an amount of ordinary income is exempt income if it is made exempt from income tax by a provision of the ITAA 1997 or another Commonwealth law.

The *International Organisations (Privileges & Immunities) Act 1963* (IO(P&I)A) is a Commonwealth law under which an international organisation, and persons engaged by it, may be accorded certain privileges and immunities including an exemption from tax.

Subsection 5(1) of the IO(P&I)A provides that the regulations may declare an organisation to be an organisation to which the IO(P&I)A applies.

The specialised agency is listed in the Schedule to the *Specialized Agencies (Privileges & Immunities) Regulations 1986* (SA(P&I) Regulations). The SA(P&I) Regulations are made under section 6 the IO(P&I)A.

Regulation 8 of the SA(P&I) Regulations sets out the privileges and immunities of officers, other than high officers of specialized agencies. A person who holds an office in a Specialized Agency has the privileges and immunities specified in Part I of the Fourth Schedule to the IO(P&I)A.

You hold an office in the specialised agency. Paragraph 2 of Part I of the Fourth Schedule to the IO(P&I)A provides an exemption from taxation on salary and emoluments received from the international organisation.

There is nothing in the IO(P&I)A or the regulations which restricts the privileges and immunities afforded to the taxpayer to those circumstances when the taxpayer is performing their duties outside Australia.

Accordingly, as the income you received from the specialised agency is exempt income under section 6-20 of the ITAA 1997, it is not assessable under subsection 6-5(2) of the ITAA 1997.

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Ruling

Subject: Foreign earnings received from overseas projects funded by international organisations

Question 1

Is income you earn as an employee of a company contracted to work on internationally funded projects exempt from Australian income tax?

Advice/Answers

No.

Question 2

Is income you earn as an employee of a company contracted by an International Organisation exempt from Australian income tax under section 23AG of the *Income Tax Assessment Act 1936* (ITAA 1936)?

Advice/Answers

No.

This ruling applies for the following period:

year ending 30 June 2010

The scheme commences on:

1 July 2009

Relevant facts and circumstances

You are an Australian resident for tax purposes.

In the recent income year you were employed by an Australian company contracted by an international organisation to work on an overseas project.

In the subsequent and future income years you expect to be employed by Australian or overseas companies contracted by international organisations to work on overseas projects.

In the recent income year you worked overseas for a period of time greater than 91 days.

In the subsequent and future income years you expect to work overseas for period of time greater than 91 days.

Relevant legislative provisions

Income Tax Assessment Act 1936 section 23AG

Income Tax Assessment Act 1936 subsection 23AG(1)

Income Tax Assessment Act 1936 subsection 23AG(7)

Income Tax Assessment Act 1936 subsection 6-5(2)

Income Tax Assessment Act 1936 subsection 6-15(2)

Income Tax Assessment Act 1936 section 6-20

Question 1

Summary

People serving on a committee or participating in the work of, or performing a mission on behalf of an international organisation may be accorded exemption from tax on salaries and emoluments received from the organisation (emphasis

added). This usually covers experts and consultants engaged by the organisation (paragraph 11 of Taxation Ruling TR 92/14). Your income is received from a company contracted by the organisation.

Detailed reasoning

Subsection 6-5(2) of the *Income Tax Assessment Act 1997* (ITAA 1997) provides that the assessable income of an Australian resident taxpayer will include ordinary income derived from all sources, whether in or out of Australia, during the income year.

However, subsection 6-15(2) of the ITAA 1997 provides that if an amount is exempt income then it is not assessable income.

Section 6-20 of the ITAA 1997 provides that an amount of ordinary income is exempt income if it is made exempt from income tax by a provision of the ITAA 1997 or another Commonwealth law.

Paragraph 6(1)(e) of the IOPIA states:

> Subject to this section, the regulations may, either without restriction or to the extent or subject to the conditions prescribed by the regulations:
>
> ...
>
> confer:
>
> upon a person who is serving on a committee, or is participating in the work, of an international organisation to which this Act applies or is performing, whether alone or jointly with other persons, a mission on behalf of such an organisation all or any of the privileges and immunities specified in Part I of the Fifth Schedule
>
> …

People serving on a Committee or participating in the work of, or performing a mission on behalf of an international oranisation may be accorded exemption from tax on salaries and emoluments (paragraph 2A of Part 1 of the Fifth Schedule of the *International Organisation (Privileges and Immunities) Act 1963* (OPIA))

However, the regulations of international organisations are clear that the salary and emoluments referred to must be received from the organisation itself and not a third party.

For example, regulation 7 of the *Asian Development Bank (Privileges and Immunities) Regulations 1967* states:

> (1) A person who is serving on a committee, or is participating in the work, of the bank or is performing, whether alone or jointly with other persons, a mission on behalf of the bank has the privileges and immunities specified in paragraphs 2, 2A and 5 of Part I of the Fifth Schedule to the Act.

> (2) The salary and emoluments received from the Bank (emphasis added) by a person on whom privileges and immunities are conferred by subregulation (1)…
>
> …

In addition, Taxation Determination TD 92/153 advises that the Department of Foreign Affairs and Trade (who administer the IOPIA) take the view that the phrase 'person who holds an office' in relation to a prescribed international organisation covers those people who work as employees for that organisation. However they do not accept that the phrase includes persons engaged by the organisation as experts or consultants. The ATO agrees with these views.

In your circumstances, you are engaged by either an Australian or overseas company to work on projects that are funded by an international organisation to which the provisions of the IOPIA apply. You receive your salary and emoluments from the company who employs you and not directly or indirectly from an international organisation.

Consequently, the income you receive from the company when working overseas on a project funded by an international organisation is not exempt from Australian income tax under the provisions of the IOPIA.

Question 2

Summary

The income you earn as an employee of a company contracted by an international organisation to which the provisions of the IOPIA apply is not exempt from Australian income tax under section 23AG of the ITAA 1936.

Detailed reasoning

Subsection 23AG(1) of the ITAA 1936 provides that foreign earnings of an Australian resident derived during a continuous period of foreign service of not less than 91 days employment in a foreign country are exempt from tax in Australia.

Foreign service is defined as service in a foreign country as the holder of an office or in the capacity of an employee (subsection 23AG(7) of the ITAA 1936).

Foreign earnings includes income consisting of earnings, salary, wages, commission, bonuses or allowances, or of amounts included in a person's assessable income under Division 83A of the ITAA 1997 (about employee share schemes) (subsection 23AG(7) of the ITAA 1936).

However, from 1 July 2009, foreign earnings are not exempt from tax under section 23AG of the ITAA 1936 unless the continuous period of foreign service is directly attributable to any of the following:

(a) the delivery of Australian official development assistance by your employer

(b) the activities of your employer in operating a public fund covered by item 9.1.1 or 9.1.2 of the table in subsection 30-80(1) of the ITAA 1997 (international affairs deductible gift recipients)

(c) The activities of your employer, if your employer is exempt from income tax because of paragraph 50-50(c) or (d) of the ITAA 1997 (prescribed institutions located or pursuing objectives outside Australia)

(d) your deployment outside Australia as a member of a disciplined force by:

i) the Commonwealth, a State or a Territory, or

ii) an authority of the Commonwealth, a State or a Territory

(e) an activity of a kind specified in the regulations (subsection 23AG(1AA) of the ITAA 1936)

From the information provided in your Private ruling application, your foreign service is not directly attributable to any of the conditions mentioned above.

Consequently, the foreign income you derive from foreign service (as an employee of a company contracted by an international organisation to which the provisions of the IOPIA apply) is not exempt from tax in Australia.

Further issues for you to consider

If you have assessable income from overseas, you must declare it in your Australian income tax return. If you have paid foreign tax in another country, you may be entitled to an Australian foreign income tax offset, which provides relief from double taxation.

Information on the foreign income tax offset rules can be found on the ATO website at www.ato.gov.au, specifically, *Guide to foreign income tax offset rules 2008-09*

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Edited version of your private ruling

Authorisation Number: 1012607641598

Ruling

Subject: residency

Questions and answers

1. Are you a resident of Australia for taxation purposes for the period you are in overseas?

Yes.

2. Is the income you derive from an international organisation as a short term consultant assessable in Australia?

Yes.

This ruling applies for the following periods

Year ended 30 June 2013

Year ended 30 June 2014

The scheme commences on

1 July 2012

Relevant facts and circumstances

You were born in country Y and you are a citizen of both Country Y and Australia.

You and your spouse went overseas a number of years ago.

You have taken leave without pay from your Australian employer for the period you are overseas.

Your spouse is working for an international organisation overseas.

You have travelled with your spouse on a dependant's visa.

You do short term consultancy work for an International organisation.

You and your spouse lived and worked in Australia prior to going to overseas.

You have come back to Australia since leaving to visit family.

You and your spouse are renting an apartment in overseas.

You and your spouse own a property in Australia which is being rented out.

You left some of your household affects with family members and the remainder you took with you.

You derive income in Australia.

You have a number of assets in Australia.

You have a few assets overseas.

You and your spouse intend on returning to Australia to live.

You have registered as an overseas voter.

You believe that you put on the outgoing passenger card that you were accompanying spouse on posting.

You and your spouse are not eligible to contribute to the PSS or the CSS.

Relevant legislative provisions

Income Tax Assessment Act 1936 Subsection 6(1)

Income Tax Assessment Act 1997 Subsection 6-5(2)

Income Tax Assessment Act 1997 Subsection 6-15(2)

Income Tax Assessment Act 1997 Subsection 6-20

Income Tax Assessment Act 1997 Section 995-1

International Organisation (Privileges and Immunities) Act 1963

Specialized Agencies (Privileges and Immunities) Regulations 1986

Reasons for decision

The terms 'resident' and 'resident of Australia', in regard to an individual, are defined in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936). The definition provides four tests to ascertain whether a taxpayer is a resident of Australia for income tax purposes. These tests are:

- the 'resides' test;
- the 'domicile' and 'permanent place of abode' test;
- the 183 day test; and
- the Commonwealth superannuation fund test.

If any one of these tests is met, an individual will be a resident of Australia for taxation purposes.

The resides test is the primary test for determining the residency status of an individual for taxation purposes. If residency is established under the resides test, the remaining three tests do not need to be considered. However, if residency is not established under the resides test, an individual will still be a resident of Australia for taxation purposes if they meet the conditions of one of the other three tests.

The resides test

The resides test considers whether an individual is residing in Australia according to the ordinary meaning of the word 'reside'. As the word 'reside' is not defined in Australian taxation law, it takes its ordinary meaning for the purposes of subsection 6(1) of the ITAA 1936.

The ordinary meaning of the word 'reside', according to the *Macquarie Dictionary*, 2001, rev. 3rd edition, The Macquarie Library Pty Ltd, NSW, is 'to dwell permanently or for a considerable time; having one's abode for a time', and according to the *Compact Edition of the Oxford English Dictionary* (1987), is 'to dwell permanently, or for a considerable time, to have one's settled or usual abode, to live in or at a particular place'.

In considering the definition of 'reside', the High Court of Australia, in *Federal Commissioner of Taxation* v *Miller* (1946) 73 CLR 93 at page 99-100, per Latham CJ, noted the term 'reside' should be given a wide meaning for the purposes of section 6(1) of the ITAA 1936. Similarly, in *Subrahmanyam* v *Commissioner of Taxation* 2002 ATC 2303, Deputy President Forgie said at paragraphs 43 and 44 that the widest meaning should be attributed to the word 'reside'.

The question of whether an individual 'resides' in a particular country is a question of fact and degree and not of law. In

deciding this question, the courts have consistently referred to and taken into account the following factors as being relevant:

> (i) physical presence in Australia;
>
> (ii) nationality;
>
> (iii) history of residence and movements;
>
> (iv) habits and 'mode of life';
>
> (v) frequency, regularity and duration of visits to Australia;
>
> (vi) purpose of visits to or absences from Australia;
>
> (vii) family and business ties with Australia compared to the foreign country concerned; and
>
> (viii) Maintenance of a place of abode.

The weight given to each factor varies with individual circumstances and no single factor is necessarily decisive. In *Shand v Federal Commissioner of Taxation* 2003 ATC 2080, the Tribunal stated (at 35):

> Questions of residence, domicile, permanent place of abode, have frequently been found by the courts and tribunals to be difficult to assess on a factual level and not easy to define in concrete legal terms.

To determine whether or not you are residing in Australia for taxation purposes, it is necessary for us to examine each of these factors in the context of your circumstances.

(i) Physical presence in Australia

It is important to note that a person does not necessarily cease to be a resident because he or she is physically absent from Australia. In *Joachim v Federal Commissioner of Taxation 2002 ATC 2088*, the Tribunal stated (at 2090):

> Physical presence and intention will coincide for most of the time but few people are always at home. Once a person has established a home in a particular place, even involuntary, a person does not necessarily cease to be resident there because he or she is physically absent. The test is, whether the person has retained a continuity of association with the place, together with an intention to return to that place and an attitude that the place remains home.

Further, in *Iyengar v. Federal Commissioner of Taxation* 2011 ATC 10-222, (2011) AATA, the Tribunal stated (at 62):

> Physical presence in a country for some period during a particular year of income is usually considered by the courts as necessary in order that a person should be resident in that country during that particular income year. However, there have been exceptions to this: *Rogers v Inland Revenue Commissioners* (1879) 1 TC 225 and *Slater v Commissioner of Taxation* (NZ) (1949) 9 ATD 1.

You accompanied your spouse overseas for work purposes.

You have returned to visit family for a few weeks since leaving Australia.

Although you will not be physically present in Australia while you and your spouse are living and working overseas, this does not preclude you from being an Australian resident as no one single factor is necessarily decisive, as mentioned above.

(ii) Nationality

You were born in country Y and you are a citizen of both Country Y and Australia.

(iii) History of residence and movements

You lived and worked in Australia prior to accompanying your spouse overseas.

(iv) Habits and 'mode of life'

You intend to be overseas for the duration of your spouse's employment.

You intend on returning to Australia to live in the future.

It is considered that you have a continuing association with Australia and is consistent with someone who is still residing in Australia.

(v) Frequency, regularity and duration of visits to Australia

You have returned to Australia to visit family since leaving.

(vi) Purpose of visits to and absence from Australia

The purpose of your absence from Australia was to accompany your spouse on their posting with an international organisation.

(vii) Family, business and financial ties

Family

You accompanied your spouse overseas.

Business or economic

As mentioned above you have gone overseas with your spouse while they are working for an international organisation.

Assets

You have significantly more assets in Australia than overseas.

(viii) Maintenance of a place of abode in Australia

You are not maintaining a home in Australia while you are overseas.

Summary of the resides test

As mentioned above, the weight given to each factor varies with individual circumstances, no single factor is necessarily decisive and the term 'reside' should be given a wide meaning.

In your case, although you intended to be physically absent from Australia, there are various factors that indicate that you did not ceased to be a resident of Australia. These are primarily:

- you are an Australian citizen;
- you live in rented accommodation overseas
- you intend on returning to Australia

Based on the above, you retained a continuity of association with Australia while you were overseas and were residing in Australia according to the ordinary meaning of the word.

Therefore, you are a resident of Australia under the 'resides' test of residency.

Whilst it is not necessary to meet more than one test to determine residency for tax purposes (we have already established that you are a resident under the resides test), we will also include a discussion of the 'domicile and permanent place of abode' test as an alternative argument.

The domicile test

If a person is considered to have their domicile in Australia they will be considered an Australian resident unless the Commissioner is satisfied they have a permanent place of abode outside of Australia.

A person's domicile is generally their country of birth. This is known as a person's 'domicile of origin'. In order to show that an individual's domicile of choice has been adopted, the person must be able to prove an intention to make his or her home indefinitely in that country.

Your domicile of origin is country Y.

A domicile of choice is adopted when you become a citizen of a new country or apply for permanent residency in a new country.

You are a citizen of Australia and therefore your domicile of choice is Australia.

You have not changed your domicile since you have been overseas and have not indicated that you are going too.

In order to show that a new domicile of choice in a country outside Australia has been adopted, the person must be able to prove an intention to make his or her home indefinitely in that country.

The expression 'place of abode' refers to a person's residence, where they live with their family and sleep at night. In essence, a person's place of abode is that person's dwelling place or the physical surroundings in which a person lives.

A permanent place of abode does not have to be 'everlasting' or 'forever'. It does not mean an abode in which a person intends to live for the rest of his or her life. An intention to return to Australia in the foreseeable future to live does not prevent the taxpayer in the meantime setting up a permanent place of abode elsewhere.

The Commissioner is not satisfied that you have set up a permanent place of abode outside Australia for the following reasons:

- You intend on returning to Australia
- You live in rented accommodation overseas
- You have left some of your belongings in Australia

You are a resident under this test.

As you meet the resides and domicile tests of residency, you are a resident of Australia for tax purposes for the period you are in Country Y.

Short term consultancy work

Subsection 6-5(2) of the *Income Tax Assessment Act 1997* (ITAA 1997) provides that the assessable income of an Australian resident will include ordinary income derived from all sources, whether in or out of Australia, during the income

year.

Income from professional services is ordinary income for the purposes of subsection 6-5(2) of the ITAA 1997.

However, subsection 6-15(2) of the ITAA 1997 provides that if an amount is exempt income then it is not assessable income.

Section 6-20 of the ITAA 1997 provides that an amount of ordinary income is exempt income if it is made exempt from income tax by a provision of the ITAA 1997 or another Commonwealth law.

The *International Organisations (Privileges & Immunities) Act 1963* (IO(P&I)A) is a Commonwealth law under which an international organisation, and persons engaged by it, may be accorded certain privileges and immunities including an exemption from tax.

Subparagraph 6(1)(e)(i) of the IO(P&I)A provides that the regulations may confer all or any of the privileges and immunities set out in Part I of the Fifth Schedule of the IO(P&I)A upon a person who serves on a committee, or, participates in the work of, or, performs a mission on behalf of, an international organisation to which this Act applies.

The organisation is listed in the Schedule to the *Specialised Agencies (Privileges & Immunities) Regulations 1986* (SA(P&I) Regs). The SA(P&I) Regs are made under section 6 the IO(P&I)A.

Regulation 9 of the SA(P&I) Regs does not provide any income tax exemption for persons serving on a committee or performing a mission (such as independent consultants) for the World Bank.

In your case you received income as a result of a contract with international organisation to provide consultancy services. You are not an employee of the international organisation.

Therefore, the income you received as a consultant from the international organisation for the provision of services carried out overseas, is assessable under subsection 6-5(2) of the ITAA 1997.

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From: James Charlton
Sent: Wednesday, 19 December 2018 3:08 PM
To: s38
Subject: ATO: Your private ruling application has been received - s38 [SEC=UNCLASSIFIED]

We use hyperlinks to give you more information. If you don't want to click hyperlinks, you can search for the information on the **ATO website**.

Australian Government
Australian Taxation Office

Your private ruling application

Reference Number: s38

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Hello s38

My name is James Charlton and I'll be the case officer actioning your private ruling application.

Listed below is the information I need in order to process your application. I need this information by 1 February 2019.

- What are the responsibilities of your role?
- Is there a statement that describes the role and functions that you undertake and how that fits within the structure s38
- Are you able to provide further information on the working arrangements – what are the staff rules?

- Is there a contract of employment? If so can you please provide a copy?
- How did you obtain the position (was it an advertised position?).
- Can you provide a copy of the job advertisement if available?

I'll aim to reply to you within 28 days of receiving all the information I need.

Please note we can only accept emails less than 10 megabytes in size. If your email is larger than this you will need to send us multiple smaller emails.

We can't guarantee the security of information sent to us by email. When replying by email, make sure that you only send us the information we asked for.

Withdrawing your application

You can withdraw your application at any time before I make your private ruling. If you want to withdraw your application, in whole or in part, please contact me and quote reference number s38 . I will confirm the withdrawal of your application in writing.

For more information

You should read the important information about private rulings and the rights available to you on our website.

Click here

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If you have any questions, you can phone us on

13 28 69

Between 8.00am-6.00pm AEDT, Monday to Friday and ask for James Charlton on extension **10426** or call direct on **0362210426**.

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Look suspicious?

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From: James Charlton
Sent: Thursday, 20 December 2018 11:30 AM
To: s38
Subject: FW: Your private ruling application has been received - s38 [SEC=UNCLASSIFIED]
Attachments: s38

Good morning s38,

Thanks for your email below.

I am about to go on leave until the 7th January; so if you don't mind I will look at this when I am back in the week of the 7th?

Cheers

James Charlton
Team Leader – LINCS Technical Leadership
Individuals and Small Business
P 03 6221 0426 s47E(d)

From: s38
Sent: Thursday, 20 December 2018 10:03 AM
To: James Charlton
Subject: RE: Your private ruling application has been received - s38 [SEC=UNCLASSIFIED]

Dear Mr. Charlton

The answers to your questions are provided below:

1. The specific responsibilities of my role are set out in the attached s38
2. My role and functions within the s38 are set out generally in the attached s38
3. My working arrangements generally are set out generally in the attached s38
4. s38 of employment are made via s38 a copy of which has already been provided to you.
5. I do not know if the position was ever advertised. It was offered to me directly upon recommendation of a colleague and subject to meeting the criteria s38. That approach is usual for short and fixed-term appointments s38
6. N/A

Following your review of the above, if you have further questions please do not hesitate to contact me.

Your acknowledgement of receipt of this email would be appreciated.

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Yours faithfully

s38

From: James Charlton <James.Charlton@ato.gov.au>
Sent: Wednesday, December 19, 2018 3:08:03 PM
To: s38
Subject: ATO: Your private ruling application has been received - s38]

We use hyperlinks to give you more information. If you don't want to click hyperlinks, you can search for the information on the **ATO website**.

Your private ruling application

Reference Number: s38

Hello s38

My name is James Charlton and I'll be the case officer actioning your private ruling application.

Listed below is the information I need in order to process your application. I need this information by 1 February 2019.

- What are the responsibilities of your role?
- Is there a statement that describes the role and functions that you undertake and how that fits within the structure of s38

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s38

- Are you able to provide further information on the working arrangements – what are the staff rules?
- Is there a contract of employment? If so can you please provide a copy?
- How did you obtain the position (was it an advertised position?).
- Can you provide a copy of the job advertisement if available?

I'll aim to reply to you within 28 days of receiving all the information I need.

Please note we can only accept emails less than 10 megabytes in size. If your email is larger than this you will need to send us multiple smaller emails.

We can't guarantee the security of information sent to us by email. When replying by email, make sure that you only send us the information we asked for.

Withdrawing your application

You can withdraw your application at any time before I make your private ruling. If you want to withdraw your application, in whole or in part, please contact me and quote s38 . I will confirm the withdrawal of your application in writing.

For more information

You should read the important information about private rulings and the rights available to you on our website.

Click here

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If you have any questions, you can phone us on

13 28 69

Between 8.00am-6.00pm AEDT, Monday to Friday and ask for James Charlton on extension **10426** or call direct on **0362210426**.

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Objection decision template

Case ID of objection: s38
Activity ID of audit report (if applicable):

EOT request

Validity

Request signed	Yes	Financial year(s)	2010
Date received	08/04/2015	Date NOA issued	16/09/2010
Date NOAA issued	16/08/2013	Are grounds stated	Yes

**where not signed – continue with profiling adding note for officer to make valid.*
**where no grounds are stated, activity is to be treated as an INVALID Objection.*

Entity type

Individual	Sole trader	Company	Partnership	Trust	Superfund
Yes	☐	☐	☐	☐	☐

Taxpayer's questions raised (briefly as stated in objection)

Question 1:
Will the Commissioner grant an extension of time to lodge the objection against the amended assessment for the financial year ended 30 June 2010?

Answer:
Yes.

Question 2:
Should your assessment for the financial year ended 30 June 2010 be amended to exclude an amount of s38 from your assessable income?

Answer:
Yes.

Evidence supplied
Verification of Employment s38
Letter of employment s38
Confirmation of employment s38

Further evidence required
No.

Concerns for further investigation
No.

Final decision:
Year ended 30 June 2010 – Allow in Full

Profile comments
EOT

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The reason for the delay in lodging the objection is that t/p did not receive the amended assessment. She only knew of the audit and the amended assessment when she received letter in relation to the outstanding debt.

T/p has provided substantiation to support her case and her objection against the substantive issue is allowed.

Accordingly, I have granted the EOT.

FSI
The amount of s38 which has been included in assessable income is employment income earned from services provided to s38 .

The taxpayer was employed as an extended term consultant s38 during the 2010 financial year.

s38 international organisation for which there are certain privileges and immunities accorded to people who worked for them. (International Organisations (Privileges & Immunities) Act (IO(P&I)A and Specialised Agencies (Privileges & Immunities) Regulations 1986 (SA(P&I)Regs)

Under subregulation 8(1) of the SA(P&I) Regs a person who holds an office, other than a high office, in a Specialized Agency s38 , has the privileges and immunities specified in Part I of the Fourth Schedule to the IO(P&I)A, including income tax exemption on salaries and emoluments received from the «organisation.

TD 92/153 provides that a person who holds an office in an organisation covers those people who work as employees for that organisation and it does not include persons engaged as experts or consultants. The TD further provides that if the international organisation designates a person as one who holds an office then we will accept in the absence of contrary evidence the status of that person.

T/p has provided an email from her hiring manager that she was an employee of the s38 . T/p advised that her title uses the word consultant but she was actually an employee s38 . Furthermore, the employment letter provided shows that she was engaged as an employee for the following reasons:

- She negotiated an annual salary and was paid fortnightly.
- Her salary and wages were paid regularly and not dependable on results been delivered.
- She was entitled to annual leave and sick leave.

As t/p was an employee of s38 , the salary and wages she received s38 is exempt from income tax in Australia under Part I of the Fourth Schedule to the IO(P&I)A and is not included in assessable income in Australia.

The 2010 assessment will be amended to exclude the amount of s38 from assessable income.

We took these laws into account (legislation)

Income Tax Assessment Act Subsection 6-5(2)
Income Tax Assessment Act Subsection 6-15(2)
Income Tax Assessment Act Section 6-20
Part I of the Fourth Schedule to the IO(P&I)A
Regulation 8 of SA(P&I)Regs
TD 92/153

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Profiled by:
Rosina Lai

Profiled Date:
24/06/2015

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From: James Charlton
Sent: Thursday, 17 January 2019 4:29 PM
To: s38
Cc: Maree Brown
Subject: RE: Your private ruling application - s38 [DLM=For-Official-Use-Only] [SEC=UNCLASSIFIED]

Importance: High

Good afternoon s38

Thanks for getting back to be so promptly and I apologise for the delay in responding to your email below.

In terms of your ruling request, the Commissioner is seeking internal advice to clarify his view in relation to the exemption of your foreign income. At this stage I am not sure how long this will take but I will keep you informed of any timeframes. Once we have received clarification we will aim to have a response to you within 28 days.

As I previously advised I will out of the office from now until February 4th 2019. During this time Maree Brown can assist you with any further questions you may have.

Regards

James Charlton
Team Leader – LINCS Technical Leadership
Individuals and Small Business
P 03 6221 0426 s47E(d)

From: s38
Sent: Sunday, 13 January 2019 10:30 PM
To: James Charlton
Cc: Maree Brown
Subject: RE: Your private ruling application - s38 [DLM=For-Official-Use-Only]

Dear Mr. Charlton

In answer to your questions:

(i)

- The Letter of Appointment (LOA) which has been provided to you represents my current employment contract s38
- The details, purpose and expectations of my employment/engagement are fully stated in the s38 which have been provided to you. They are not spread over or duplicated in multiple documents.

(ii)

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- The details of the position I hold, including functions, responsibilities, duties and powers, are fully stated in the s38 . These do NOT operate to appoint me in any capacity to boards, commissions or other bodies.
- The purpose of my engagement is fully described in the s38
- The results or outcomes intended to be produced by my engagement in the position are fully described in the s38 The objective of the position is to improve the Enterprise Risk Management capacity s38 The deliverables include an improved ERM system and institutional risk culture. While a s38 is required it is not a diagnostic-type report. The issues and recommended improvements had already been determined by the s38 s38 . The work is yet to be undertaken – s38 Therefore a report does not exist. The primary objective of the report will be to record and communicate the work undertaken, improvements made and next steps s38 .
- The position I will hold is answerable and reports to s38
- I will not have any people reporting to me in the position I occupy.
- The position attaches to me personally under the LOA, I have not engaged others to undertake any part of it nor am I authorized to do so.
- The position (more correctly, the scope of the work) previously existed as a 45 days engagement s38 under a separate LOA. s38 My position is not ongoing per se as it occurs under a specific and separate LOA.
- The purpose of the engagement is to fulfil the TOR. It could be "extended" pursuant to a further LOA if the TOR cannot be reasonably completed within current LOA agreed timeframes s38
- I have no leave entitlements under the position.
- s38 . Actual hours of work within the period are somewhat flexible, but driven by the mission timeframes, business hours s38 amount of time needed to deliver the intended objectives – i.e. evening and weekend work is common in this kind of work.
- s38 staff members holding a Short Term Consultant or Short Term Temporary appointment may hold concurrent assignments from other public and private employers, subject to certain limitations s38
- If my work outputs and outcomes were found to be materially defective (i.e. not simply typos or report edits) I would be not be obliged to carry out the work again to correct it. The risk of defective work sits s38
- The location of the work is entirely determined by s38 :
  s38
- All my work-related expenses will be covered by s38
- See n. above.
- I use my own IT devices without compensation s38 .

Regards

s38

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From: James Charlton <James.Charlton@ato.gov.au>
Sent: Friday, January 11, 2019 4:04:47 PM
To: s38
Cc: Maree Brown
Subject: Your private ruling application - s38 [DLM=For-Official-Use-Only]

Dear s38

Thanks again for your prompt response to my request for further information on 19 December 2018. We had initially believed this would all the information we would need to provide you with a ruling; however there are some further questions we will need to have answered before we can progress with a ruling. Can you please provide answers to the following questions by 8 February 2019?

(iv) To the extent you have not already provided them, please provide copies of:
- Your contract of employment (if it is different to the engagement letter you have already provided)
- Any other relevant documentation setting out details, purpose and expectations of your employment/engagement

(v) to the extent it is not provided in your answer to question (1) or otherwise provided, can you please provide the following:
- A description of the position you hold while employed/engaged by the organisation. This should include details of the functions, responsibilities, duties and powers of the position including whether the holder of the position was a member of boards, commissions or other bodies.
- The purpose of your engagement in the position.
- The result (if any) or outcome (if any) produced by your engagement in the position. If it was to produce or contribute to a report or other thing, to the extent you are able; please provide us with a copy of it or a link to it if it is published on the internet.
- Who the holder of the position was answerable to or reported to (if anyone).
- Whether you had any people reporting to you, and if yes, in what capacity.
- Whether you engaged any other person(s) to perform any part of the work of the position, and if no, whether you could have done so, if you had chosen to do so.
- Details of whether the position was an ongoing role that existed before and after you will occupy it. This should include details of whether, at that time, it existed in the same capacity and manner that it had at the time you occupied it.
- Whether the engagement was always intended to be short term or whether it was able to be renewed or extended and if so, on what basis.
- Whether you have any leave entitlements or other similar benefits that you are entitled to while undertaking the engagement.
- Whether your hours of work were determined by the organisation or whether you are free to determine these on your own accord.
- Whether, during the engagement, you are only able to work for the organisation or whether you were free to accept other engagements, employment opportunities or undertake contract work concurrently while performing the engagement.
- Whether there is a requirement that, if certain things arise, for example there was a defect in what was undertaken, that you are under an obligation to return to correct this and if so on what basis.
- In relation to where the work is done:
  - (i) The location(s)
  - (ii) Whether the location(s) is a business premise of the organisation or their customer and if the latter, who.

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(iii) If any work is undertaken in Australia, the proportion of the total work that was done there.
(iv) Whether you have the choice of deciding where the work is done or whether this was determined by the organisation.

- Whether you pay for any accommodation, telephone, internet charges, travel expenses and health and travel insurance in relation to the engagement in the position and if so, whether you are reimbursed or otherwise compensated for those expenses.
- Whether you pay for any other expenses in relation to the engagement in the position and if so, whether you are reimbursed or otherwise compensated for those expenses.
- Whether you provide your own computer, phone and other work tools in relation to the engagement in the position and if so, whether you are reimbursed or otherwise compensated for doing so.

Also I will be going on leave from Friday 18 January 2019 and returning on 4 February 2019. During this time if you have any questions can you please contact Maree Brown (Maree.Brown2@ato.gov.au) for assistance?

Kind regards

James Charlton
Team Leader – LINCS Technical Leadership
Individuals and Small Business
P 03 6221 0426 s47E(d)

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