Submission No 40

Inquiry into Australia's Maritime Strategy

Organisation: Australian Taxation Office

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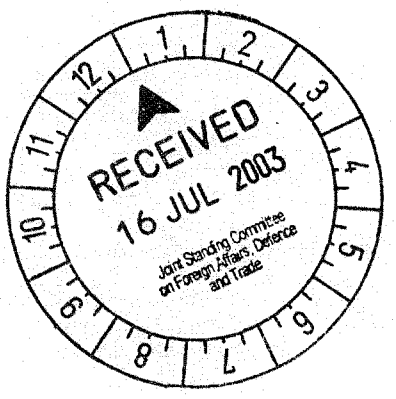
COMMISSIONER OF TAXATION

Australian Taxation Office



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Mr Stephen Boyd
Secretary
Joint Standing Committee on
Foreign Affairs, Defence and Trade
Defence Sub-Committee
Parliament House
CANBERRA ACT 2600

Dear Mr Boyd

INQUIRY INTO AUSTRALIA'S MARITIME STRATEGY

Thank you for your letter of 5 May 2003 in relation to an inquiry into Australia's maritime strategy.

The Australian Taxation Office (ATO) was asked to provide written advice on the following three points:

- the operation of section 23AG of the *Income Tax Assessment Act* and its application to Australian residents working in a foreign service but whose place of work is a ship at sea;
- the reasons why Australian residents working in a foreign service but whose place of work is a ship at sea are not covered under the provisions of section 23AG; and
- how section 23AG compares to taxation legislation of other relevant countries.

In relation to the first point, paragraph 19 of Taxation Ruling TR 96/15 states that "to fall within the definition of 'foreign service' the service must be performed in a foreign country. Service on a foreign ship in international waters does not therefore constitute foreign service."

Therefore, seafarers who work in international waters are not eligible for exemption under section 23AG because their service is not foreign service. This view was challenged in *Chaudri v FCT, 2001 ATC 4214*. The Federal Court confirmed the ATO's view that service aboard a ship in international waters was not foreign service and as such the exemption under section 23AG could not be attracted. In affirming the AAT decision, Hill, Drummond and Goldberg JJ in a joint judgment stated (at paragraph 25):

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"Ultimately, we think that we should return to the ordinary English use of the word "country" in the context of that being a place where personal service such as employment may be engaged in and where that income may be derived. In that context, ordinary usage would not suggest that the high seas, or for that matter some parts of them, were in a composite sense to be regarded as a country, or for that matter a series of countries. Rather the ordinary meaning of the expression "foreign country" in modern usage looks to a political entity, be that a tract of land, a district or a group of islands. It does not extend to an ocean or region of the sea."

Seafarers typically spend a number of continuous working days in international waters - in most cases they perform most of their duties in international waters. Only a minor part of their work at best appears to be service in a foreign country (e.g. work in territorial waters).

The practical outcome is that seafarers who work for continuous periods in international waters cannot access the exemption under section 23AG.

The ATO is responsible for administration of the law. As such questions on policy, raised in the second point, are more appropriately directed to Treasury. Related to that, we have not undertaken a comparison that would enable me to respond to the third point.

I trust this information will assist with the Committee's Inquiry.

Yours sincerely

Michael Carmody
COMMISSIONER OF TAXATION

16 July 2003