

**Senate Standing Committee on Economics**

**ANSWERS TO QUESTIONS ON NOTICE**

**Treasury Portfolio**

Budget Estimates, 2 June – 4 June 2009

**Question: bet 5**

**Topic: Tax Arrangements for Australians Working Overseas**

**Hansard Page: Written**

**Senator Bob Brown asked:**

1. Have there been changes to tax arrangements for Australians who work overseas? If so, what will the new arrangements be?
2. If there have been changes to the tax arrangements, how will they affect Australians who work for the United Nations and regional organisations such as those that operate in the Pacific?

**Answer:**

1. Yes. *Tax Laws Amendment (2009 Budget Measures No. 1) Act 2009* amended section 23AG of the *Income Tax Assessment Act 1936*, which provides an income tax exemption for income earned in overseas employment by Australian resident individuals. Prior to the amendment, section 23AG applied broadly to most types of foreign employment income (subject to certain conditions).

From 1 July 2009, the scope of section 23AG is limited to foreign employment income derived by Australian resident individuals only in specific circumstances.

Foreign earnings derived by an Australian resident individual engaged in continuous foreign service for not less than 91 days will only be eligible for exemption from income tax if the foreign service is directly attributable to any of the following:

- The delivery of Australia's overseas aid program by the individual's employer;
- The activities of the individual's employer in operating a developing country relief fund or a public disaster relief fund;
- The activities of the individual's employer being a prescribed institution that is exempt from Australian income tax; or
- The individual's deployment outside Australia by an Australian government (or an authority thereof) as a member of a disciplined force; or
- An activity of a kind specified in the regulations.

However, the pre-1 July 2009 conditions for exemption continue to apply. That is, an exemption will be denied if the foreign earnings are exempt from tax in the foreign country only because of one or more of the following reasons:

## Senate Standing Committee on Economics

### ANSWERS TO QUESTIONS ON NOTICE

#### Treasury Portfolio

Budget Estimates, 2 June – 4 June 2009

- A double tax agreement with Australia or a law giving effect to a double tax agreement;
- The foreign country does not impose income tax on employment or personal services income, or similar income; or
- A law of the foreign country or an international agreement to which Australia is a party, which deals with diplomatic or consular privileges and immunities, or privileges and immunities for people connected with international organisations (such as the United Nations).

Foreign employment income that is not exempt under the new rules may be subject to Australian income tax. In such cases, taxpayers will be eligible to claim a non-refundable foreign income tax offset for foreign income tax paid on that income. This will relieve double taxation for those individuals.

2. The amendment to section 23AG may or may not affect Australians who work for the United Nations and regional organisations such as those that operate in the Pacific.

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

Notwithstanding the provisions of section 23AG, salary received by a person who holds an office in a specified international organisation may be exempt from Australian income tax pursuant to regulations made under the *International Organisations (Privileges and Immunities) Act 1963* (IO(P&I)A). This would apply, for example, to individuals employed by the United Nations.

Thus, to the extent that the regulations to the IO(P&I)A provide an income tax exemption to individuals employed by an international organisation, the tax position of those individuals would be unaffected by the recent amendment to section 23AG. In this regard, it is necessary to consider each international organisation separately.

Conversely, if the regulations to the IO(P&I)A do not provide an income tax exemption to individuals employed by an international organisation, those individuals may be subject to Australian tax if their foreign employment income is derived from foreign service that falls outside the scope of amended section 23AG.