

Wuest, Judith (SEN)

From: Saved by Windows Internet Explorer 7
Sent: Saturday, 13 January 2007 9:12 PM
Subject: IT 2586 - INCOME TAX : WOUNDS AND DISABILITY PENSIONS PAID BY FOREIGN GOVERNMENT: WHETHER EXEMPT (As at 10 May 1990)

**TAXATION RULING NO. IT 2586**

IT 2586

INCOME TAX : WOUNDS AND DISABILITY PENSIONS PAID BY FOREIGN GOVERNMENT: WHETHER EXEMPT

FOI status: May be released

PREAMBLE

This Ruling considers the application of paragraph 23AD(3)(c) of the Income Tax Assessment Act 1936 ("the Act") which exempts from Australian income tax wounds and disability pensions of the kinds specified in subsection 365(2) of the United Kingdom Income and Corporation Taxes Act 1970. Subsection 365(2) is reproduced at Attachment A.

2. The operation of paragraph 23AD(3)(c) was considered in the case of *Goodfellow v. FCT* 76 ATC 4199, (1976) 6 ATR 387 which involved an Australian DFRDB pension. In that case, Sheppard J said that paragraph 23(kab) (now repealed but which in all material respects is to the same effect as paragraph 23AD(3)(c)) embraced not only the specific pension exempt from English income tax under the Imperial Act, but also other wounds and disability pensions of the same kind payable from sources outside the United Kingdom. On appeal to the High Court (77 ATC 4086, 7 ATR 265) Jacobs J, the only Justice to consider the issue, expressed agreement with Sheppard J. More recently, in *Melkman v. FCT* 88 ATC 4468, 19 ATR 1391, which involved a pension paid by the Netherlands Government, the Full Federal Court did not find it necessary to decide the issue but made the following comments (ATC at pp. 4474-4475; ATR at pp. 1398-1399):

"At one end of the scale it is said that paragraph 23AD(3)(c) exempts only the pensions particularised in subsection 365(2)... This view gives an effect to the words 'of the kinds specified in' similar to that given to the words 'of a kind specified in' in section 30 of the Compensation (Commonwealth Government Employees) Act 1971... by Mason CJ, Brennan and Toohey JJ in *Bird v. Commonwealth of Australia*... The view is also supported by the use in paragraph 23AD(3)(b) of the different term 'of a similar nature to'. A wider view is that the exemption extends to pensions payable by governments other than the Government of the United Kingdom provided they answer the description 'of the Crown' for the purposes of subsection 365(2). At the other end of the scale it is said that the exemption extends further to include similar pensions payable by any governments, including governments formerly at war with the United Kingdom and Australia."

3. In *FCT v. Verzyden* 88 ATC 4613, 19 ATR 1557, which also involved a pension paid by the Netherlands Government, the Full Federal Court said (ATC at p. 4618; ATR at pp. 1561-1562) that:

"Notwithstanding that paragraph 23AD(3)(c)... is an exempting provision in a taxing statute, the construction of the expression 'of the kinds specified in subsection 365(2) of the Imperial Act' in the context of payments of wounds and disability pensions to Australian residents calls for no narrow or pedantic approach. Plainly that expression envisages a

wider class of pensions than those specified in subsection 365(2) of the Imperial Act."

RULING

4. In light of the comments made by the Courts in Goodfellow, Melkman, and Verzyden it is accepted by this Office that the exemption provided by paragraph 23AD(3)(c) applies to wounds and disability pensions payable by any government. Accordingly, wounds and disability pensions paid to Australian residents by a foreign government will be exempt from Australian income tax under paragraph 23AD(3)(c) of the Act if they fit into one of the categories of pensions described in section 365(2) of the United Kingdom Income and Corporation Taxes Act 1970.

5. Where a foreign wounds and disability pension falls within the operation of paragraph 23AD(3)(c) of the Act, it is exempt from Australian income tax irrespective of the age of the pensioner.

COMMISSIONER OF TAXATION

10 May 1990

APPENDIX

ATTACHMENT A

Sec. 365 of the United Kingdom Income and Corporation Taxes Act 1970 is as follows :

"365 (1) Income from wounds and disability pensions to which this subsection applies shall be exempt from income tax and shall not be reckoned in computing income for any of the purposes of the Income Tax Acts. (2) Subsection (1) above applies to -

- (a) wounds pensions granted to members of the naval, military or air forces of the Crown,
- (b) retired pay of disabled officers granted on account of medical unfitness attributable to or aggravated by naval, military or air-force service,
- (c) disablement or disability pensions granted to members, other than commissioned officers, of the naval, military or air forces of the Crown on account of medical unfitness attributable to or aggravated by naval, military or air-force service,
- (d) disablement pensions granted to persons who have been employed in the nursing services of any of the naval, military or air forces of the Crown on account of medical unfitness attributable to or aggravated by naval, military or air-force service, and
- (e) injury and disablement pensions payable under any scheme made under the Injuries in War Compensation Act 1914 (Session 2), and the Injuries in War (Compensation) Act 1915, or under any War Risks Compensation Scheme for the Mercantile Marine:

Provided that where the amount of any retired pay or pension to which subsection (1) above applies is not solely attributable to disablement or disability, the relief conferred by the said subsection (1) shall extend only to such part as is certified by the Secretary of State for Social Services, after consultation with the appropriate Government Department, to be attributable to disablement or disability."

References

ATO references:

NO 88/9021-8

FOI number: I 1011909

Date of effect:

Immediate

Subject References:

EXEMPT INCOME
WOUNDS AND DISABILITY PENSIONS
FOREIGN PENSIONS

Legislative References:

23AD(3)(c)

Case References:

Goodfellow v. FCT
76 ATC 4199
(1976) 6 ATR 387

Melkman v. FCT

88 ATC 4468

19 ATR 1391

FCT v. Verzyden

88 ATC 4613

19 ATR 1557

(As at 10 May 1990)

© Commonwealth of Australia

This work is copyright. You may download, display, print and reproduce this material in unaltered form only (retaining this notice) for your personal, non-commercial use or use within your organisation. Apart from any use as permitted under the Copyright Act 1968, all other rights are reserved.

Requests and inquiries concerning reproduction and rights should be addressed to Commonwealth Copyright Administration, Attorney General's Department, Robert Garran Offices, National Circuit, Barton ACT 2600 or posted at <http://www.ag.gov.au/cca>