



Foreign employment income and section 23AG – employees

Find out about tax and super on foreign employment income covered by 23AG or 23AF if you worked overseas.

Exemption for Australian residents under 23AG [>](#)

Use the steps to work out if your foreign employment income is exempt from Australian tax.

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Find out how a fringe benefit you receive may affect your eligibility to claim a foreign income tax offset.

Superannuation and foreign employment income



Check your super entitlements and deductions on your foreign employment income.

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Exemption for Australian residents under 23AG

Use the steps to work out if your foreign employment income is exempt from Australian tax.

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Step 1: continuous service for 91 days or more

Are you engaged in continuous foreign service as an employee for 91 days or more?

If yes, go to [step 2](#).

If no, your foreign employment income is **not** exempt from Australian tax.

Step 2: payment after 1 July 2009

Did you get your foreign employment income earnings on or after 1 July 2009 for foreign service performed on or after 1 July 2009?

If yes, go to [step 3](#).

If no, different rules apply for [work done or paid for before 1 July 2009](#).

Payments before 1 July 2009

The following applies if your income is from:

- foreign earnings paid before 1 July 2009 relating to foreign service performed before, on or after 1 July 2009
- foreign earnings paid on or after 1 July 2009 relating to foreign service performed before 1 July 2009.

A payment only qualifies for exemption if you:

- were eligible for the foreign employment income exemption up to 1 July 2009
- you received the payment on or after 1 July 2009 for foreign service performed before 1 July 2009.

The exemption doesn't apply to foreign earnings derived on or after 1 July 2009 from foreign service performed on or after 1 July 2009. This is where your foreign service isn't directly related to one of the above types of employment that qualify for exemption.

Example: Foreign earnings after 1 July 2009

Natalie is an Australian resident who works as an engineer in Germany. She began work in Germany on 1 February 2009 and was eligible to claim exemption for her foreign employment income at that time. From 1 July 2009, following the changes to the law, Natalie's foreign employment income no longer qualifies for exemption.

Natalie received her salary for June on 5 July 2009. Although it was paid after 1 July 2009, Natalie's June salary is exempt from income tax in Australia. This is because it was for foreign service before 1 July 2009.

Any salary Natalie received on or after 1 July 2009 from her foreign service performed on or after 1 July 2009 will not be exempt. This is because her foreign employment income no longer qualifies for the exemption.

Step 3: type of employment

Is your foreign employment income related to any of the following:

- employment in the delivery of Australian official development assistance by your employer

- employment for an employer in operating a public fund that is either
 - declared by the Treasurer to be a developing country relief fund
 - operated by a public benevolent institution solely to provide relief to people in a foreign country
- employment with an employer that as a prescribed institution is exempt from Australian income tax
- deployment outside Australia by an Australian Government (or an Australian Government authority) as a member of a disciplined force
- employment in an activity of the kind specified in the regulations.

If yes, go to [step 4](#).

If no, your foreign employment income is **not** exempt from Australian tax under 23AG.

If you're not certain if your employment activity falls within one of these types, you can:

- apply for a private ruling
- contact us
- speak to your employer.

Step 4: no non-exemption conditions apply

Do any the following apply to you.

Your income is exempt in the other country only because:

- Australia has a [tax treaty](#) (also called a double tax agreement) with the other country or there is a law giving effect to a treaty agreement.
- The other country does not impose tax on employment personal services income or similar income.
- A law of the other country, or an international agreement to which Australia is a party, deals with privileges and immunities for

diplomats, consular staff and people connected with international organisations (such as the United Nations)

- From 1 July 2016, you're an Australian Government employee delivering Australian official development assistance.

If **yes**, go to [step 5](#).

If **no**, your foreign employment income is exempt from Australian tax.

Tax treaty

Australia has **tax treaties** (also known as double tax agreements or **International tax agreements**) with a number of other countries. These treaties may affect the way we tax your foreign employment income. A tax treaty will only apply to you if you're an Australian resident or resident of the other country.

If your foreign employment income wasn't taxed in the other country solely because of a tax treaty (or a law giving effect to a treaty agreement), the **foreign employment exemption** won't apply. That income will be taxable in Australia.

Step 5: additional exemption reasons

If there was another or additional reason that your income wasn't taxed in the other country, you may still qualify for an exemption from tax in Australia. Other or additional reasons may include if:

- your income was less than the amount at which tax starts in the other country
- your income falls into a special category that the other country exempts (for example, payments to visiting aid project workers)
- a memorandum of understanding (MOU) between Australia and the other country exempts the payments (for example, a MOU between Australia and a developing country for Australians to assist that country)
- your income includes supplements paid in Australia under the Australian Staffing Assistance Scheme (ASAS) for overseas service.

If you're working on an approved project

Your foreign income may be exempt from tax if you're working on an **approved overseas project**. This exemption under 23AF is separate to the foreign employment exemption under 23AG. The Minister for Trade (Austrade) is responsible for approving 'eligible projects'. Your employer will advise you if you're working on an approved overseas project.

You'll be able to claim the approved overseas project exemption if you meet the conditions, including working 91 days or more on the project.

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Exempt income and other tax obligations

How your foreign employment income can affect other aspects of your tax, even if it is exempt from income tax.

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Medicare levy and surcharge

Your exempt foreign employment income is included in the calculation of your liability for **Medicare levy**.

Your **total reportable fringe benefits amount** and **reportable employer superannuation contribution amount** are also added to your taxable income to work out your liability for the **Medicare levy surcharge**.

Income tests

We take your exempt foreign employment income into account when we work out your adjusted taxable income (ATI). This is one of the **income tests** that apply from 1 July 2009.

We use your ATI to determine if you are eligible for some **tax offsets**.

Student loan repayments

We include your exempt foreign employment income when we work out your repayment income as part of working out your **study and training support loans** for the year.

If you have a study or trade support loan, we include your exempt foreign employment income to work out your repayment income. You must make compulsory repayments to your **study or training support loan** when your repayment income exceeds the minimum repayment threshold.

Employee share scheme benefits

If a benefit you receive under an employee share scheme (ESS) forms part of your foreign employment income. If your foreign employment income is tax exempt, the benefit is also exempt.

If your foreign employment income isn't eligible for the exemption, the benefit you receive under an ESS will not be exempt.

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Pay as you go and foreign employment income

Make sure your pay as you go withholding meets your end-of-year tax liability if you have exempt foreign income.

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Varying the amount of tax your employer withholds

You can ask us for a **variation to your Australian pay as you go (PAYG)** withholding amounts. The main reason you'd apply for a variation is to ensure the amounts withheld best meet your end of year tax liability.

If your variation is approved by us, we send a withholding variation notice to your employer. Your employer can then reduce the amount they withhold from payments to you. We can't provide a withholding

variation notice for any foreign tax withheld on the same payment in the other country.

Your employer can use a class variation to reduce the amount of Australian tax they withhold on payments made to you and their other employees working overseas. The reduction is based on the amount of foreign tax your employer has withheld and paid to a foreign government. You can discuss a class variation with your employer.

How your income is shown on a payment summary

From the 2009–10 income year, there's a separate PAYG payment summary for employees who have had amounts withheld from their foreign employment income.

Your *PAYG payment summary – foreign employment* shows:

- your gross foreign employment income
- the total amount withheld for Australian PAYG withholding purposes

Your payment summary may also include the total amount of foreign tax that your employer has withheld and paid to a foreign government.

If you earn both foreign employment income and Australian employment income, and your employer is registered for the Australian PAYG withholding system, you'll receive 2 payment summaries:

- *PAYG payment summary – foreign employment income*
- your regular *PAYG payment summary – individuals non-business* to advise you of your gross Australian employment income and the total amount withheld for Australian PAYG withholding purposes.

You need to include all of your income in your tax return. This includes foreign employment income that isn't reported on your income statement.

Foreign employment income is not PAYG instalment income

Foreign employment income subject to PAYG withholding in Australia and shown on an income statement doesn't form part of your PAYG instalment income.

Foreign employment income not shown on a payment summary may form part of your PAYG instalment income. The value of non-cash benefits that you receive from your employer may also form part of your PAYG instalment income.

Exempt foreign employment income will not form part of your PAYG instalment income.

If your foreign employer isn't taking tax out

The PAYG instalment system is a system for paying instalments towards your expected income tax liability.

Australia's PAYG withholding system doesn't apply to foreign employers that don't have 'a sufficient connection with Australia.' Even if your foreign employer isn't taking PAYG withholding amounts out of your pay, you'll need to include your foreign employment income in your annual tax return as assessable income. You can do this by declaring it at the foreign employment income label.

If your foreign employer isn't subject to Australia's PAYG withholding system and therefore doesn't withhold Australian tax on your foreign employment income, it will be subject to the **PAYG instalment** system. We'll advise you how much to pay in instalments in the following income tax year.

If your foreign employer provides you with a non-cash benefit and they're not subject to Australia's PAYG withholding system, you'll need to include the value of the non-cash benefit in your assessable income.

If your foreign employer gives you a non-cash benefit

If your foreign employer isn't subject to Australia's PAYG withholding regime, they won't be subject to our fringe benefits tax regime either. If they give you a non-cash benefit in respect of your employment, you need to include the value of that benefit in your assessable income.

Whether or not a non-cash benefit is convertible to cash determines what type of income we take it to be (ordinary or statutory). The value of convertible non-cash benefits (ordinary income) is generally subject

to the PAYG instalment system. The value of non-convertible benefits (statutory income) is not.

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Fringe benefits tax and foreign employment income

Find out how a fringe benefit you receive may affect your eligibility to claim a foreign income tax offset.

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Claiming a FITO for foreign tax on a benefit

If you pay tax in another country on a fringe benefit and your employer is subject to FBT in Australia on the same benefit, you can't claim a **foreign income tax offset (FITO)** on the foreign tax you paid on the benefit. This is because you can only claim a FITO on foreign income that is included in your assessable income in Australia. A benefit your employer pays FBT on is not included in your assessable income in Australia.

FBT living-away-from-home provisions

If you're working overseas, required to live away from your usual place of residence to perform your employment-related duties, and you meet the requirements of the **living-away-from-home (LAFH)** provisions, the LAFH provisions can apply.

The usual record-keeping requirements, such as employee declarations, also still apply.

FBT as an employee

Regardless of whether your income is exempt or not, you aren't liable for FBT in Australia on the value of fringe benefits your employer provides you with. This is because FBT is an employer obligation. If

your employer has to pay FBT, they will advise you of any reportable fringe benefits by including them on your payment summary.

You must include the amount of any **reportable fringe benefits** in your tax return, but we don't include this amount when we work out your assessable income. However, it may affect other calculations such as:

- the Medicare levy surcharge
- deductions for **personal super contributions** made before 1 July 2017
- super co-contribution
- entitlements to some income-tested government benefits.

You have to declare the value of any benefits your employer provides you with that aren't subject to the FBT regime.

Timing

If you're an employee, you generally can't claim a tax deduction for any personal super contributions made before 1 July 2017. However, most people, regardless of their employment arrangement, will be able to claim a deduction for any personal super contributions made on or from 1 July 2017.

Non-cash benefits in Australia

If your employer doesn't have to deduct PAYG withholding from your foreign employment income, any non-cash benefits you receive aren't subject to FBT. However, you must include the value of the non-cash benefits in your assessable income.

For more information, see [If your foreign employer gives you a non-cash benefit](#).

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Superannuation and foreign employment income

Check your super entitlements and deductions on your foreign employment income.

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Your super guarantee


Regardless of whether your foreign employment income is exempt from tax, you may still be entitled to super guarantee. The super guarantee is not linked to your assessable income. If you're an employee and get salary or wages, you may be entitled to super guarantee. An exception to this is if your employer is a foreign resident and you are working outside Australia.

Non-resident employer

If your employer isn't an Australian resident, they aren't required to provide super guarantee for you when you are working outside Australia. If you also work within Australia for this employer, they should be providing the super guarantee for you for this period.

Resident employer

If your employer is an Australian resident then generally the law requires them to provide super guarantee for you for your period of service both inside and outside Australia.

If you have questions about your super guarantee, speak to your employer. Also, our [Superannuation guarantee \(SG\) tool](#)  can help you work out your super guarantee eligibility.

Your super co-contributions

To be entitled to a super co-contribution you must have made a personal contribution into a complying fund and meet certain income tests.

If your foreign employment income is:

- not exempt from tax
 - include it in your assessable income

- we will take it into account when we work out your entitlement to a super co-contribution
- exempt from tax
 - it is excluded from your assessable income
 - we do not take it into account when we work out your entitlement to a co-contribution.

Your deductions for personal super contributions

You may be able to claim a tax deduction for personal super contributions that you made to your super fund from your after-tax income.

Personal super contributions made on or after 1 July 2017

For personal super contributions made on or after 1 July 2017, there is no income test. Your foreign employment income isn't taken into account in working out your entitlement to a deduction for personal super contributions, however you still need to meet the other eligibility requirements.

Personal super contributions made before 1 July 2017

If your foreign income is not exempt from tax, you need to include any super contributions you made before 1 July 2017 in your assessable income. This is taken into account in working out your entitlement to deductions for super contributions.

Your entitlement to deductions for super contributions made before 1 July 2017 is based on the combined amount of your:

- assessable income
- reportable fringe benefits
- reportable employer super contributions.

For personal super contributions made before 1 July 2017, you aren't entitled to claim a tax deduction if you earn 10% or more of the above as an employee. This includes activities in which you are treated as an employee for the purpose of the *Superannuation Guarantee Administration Act 1992* (SGAA) for the income year.

Generally, you will be an employee for the purposes of the SGAA if you either:

- receive a payment in the form of salary or wages in return for your labour or services
- are engaged under a contract that is wholly or principally for your labour.

You may be entitled to claim a deduction for your personal super contributions made before 1 July 2017 if your employer is an Australian resident, and your foreign employment income is either:

- exempt (you still need to meet the eligibility requirements)
- not exempt but (together with reportable fringe benefits and reportable employer super contributions) is below 10% of your total assessable income, reportable fringe benefits and reportable employer super contributions for that income year (you also need to meet the eligibility requirements)
- your entitlement to claiming a deduction for personal super contributions will depend upon if you get employment-related income from other employers during the income year.

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Our commitment to you

We are committed to providing you with accurate, consistent and clear information to help you understand your rights and entitlements and meet your obligations.

If you follow our information and it turns out to be incorrect, or it is misleading and you make a mistake as a result, we will take that into account when determining what action, if any, we should take.

Some of the information on this website applies to a specific financial year. This is clearly marked. Make sure you have the information for the right year before making decisions based on that information.

If you feel that our information does not fully cover your circumstances, or you are unsure how it applies to you, contact us or seek professional advice.

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