IT 100 - Income tax: Australia/United Kingdom Double Tax Agreement Article 16 - visition professors and teachers

This cover sheet is provided for information only. It does not form part of *IT 100 - Income tax: Australia/United Kingdom Double Tax Agreement Article 16 - visition professors and teachers*

This document has been Withdrawn.
There is a Withdrawal notice for this document.

Generated on: 29 November 2026, 12:49:10 AM

TAXATION RULING NO. IT 100

INCOME TAX : AUSTRALIA/UNITED KINGDOM DOUBLE TAXATION AGREEMENT ARTICLE 16 - VISITING PROFESSORS AND TEACHERS.

F.O.I. EMBARGO: May be released

REF H.O. REF: J245/30 P2 F118 DATE OF EFFECT:

B.O. REF: DATE ORIG. MEMO ISSUED: 29.05.75

F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1138294	DOUBLE TAX AGREEMENTS DOUBLE TAX - UNITED KINGDON TEACHERS AND PROFESSORS	UK AGREEMENT - ARTICLE 16

OTHER RULINGS ON TOPIC CITCM 864

PREAMBLE This office has recently reviewed the operation of Article 16 of the Australia/United Kingdom Double Taxation Agreement in relation to the taxation of United Kingdom professors and teachers who visit Australia. The review was occasioned by amendments to the United Kingdom taxing provisions by the 1974 Finance Act, effective from 6 April 1974.

2. That Act made far-reaching changes to the method of assessment of United Kingdom tax on foreign emoluments - i.e. income derived outside the United Kingdom by employees who are United Kingdom residents. One change was the virtual abolition of the remittance basis of assessment for United Kingdom tax and its replacement by assessment on an arising basis with the allowance of a deduction of either 100% or 25% of the emoluments derived from an office of employment carried on wholly outside of the United Kingdom. Briefly stated, an employee who is resident and ordinarily resident in the United Kingdom but who is absent from the United Kingdom while performing the duties of his employment will, if he is absent for a continuous period of 365 days or more, be able to obtain the 100% deduction. If he is absent for a lesser period, the deduction will be 25% of the emoluments.

3. Article 16 of the Agreement provides, in effect, that, where the conditions of the Article are satisfied, a professor or teacher visiting Australia will be exempt from tax in this country on remuneration which is subject to tax in the United Kingdom. In the light of the amendments effected by the 1974 Finance Act, the question arises whether a taxpayer who qualifies for a deduction equal to 100% of the amount of emoluments received by him would be regarded as being "subject to tax" in the United Kingdom for the purpose of Article 16.

4. While there may be grounds for considering that, before

a deduction of 100% of the emoluments can be made, the emoluments must first be chargeable to tax, it is considered that the better view is that Article 16 requires that the income in question has to be subject to tax, not merely not exempt from tax. In other words, it is not accepted that the subject to tax test is satisfied when a taxpayer is allowed a 100% deduction. As indicated in paragraph 321 of CITCM 864, the Double Tax Agreement shows a clear intention that a taxpayer should not escape tax in both countries.

RULING

5. It has been decided, therefore, that, in cases coming under notice where the remuneration would be subject to the 100% deduction, or where it appears that conditions permitting the deduction exist, the income in question should not be accepted as being subject to United Kingdom tax. In these cases the exemption from Australian tax provided by Article 16 should not be conceded. Accordingly, professors or teachers who are absent from the United Kingdom for a period exceeding 365 days, but not including a complete year of assessment (a year ending 5 April), should be taxed in Australia on the whole of their Australian remuneration.

6. The direction in paragraph 309 of CITCM 864, that a refund will be made by excising from Australian assessments so much of the remuneration as is subject to United Kingdom tax, will not apply to remuneration derived after 6 April 1974.

7. In the light of the changed United Kingdom provisions, paragraph 308 of the CITCM does not now express the correct position in relation to the imposition of United Kingdom tax. However, no changes are necessary to the directions in paragraphs 306 and 311 concerning the treatment of official exchange teachers and professors and teachers who are absent from the United Kingdom for a period including a full year of assessments.

COMMISSIONER OF TAXATION