IT 101 - Income tax: Australia/United Kingdom Double Taxation Agreement Article 16 - visiting professors and teachers

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TAXATION RULING NO. IT 101

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

F.O.I. EMBARGO: May be released

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F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1138478	DOUBLE TAX AGREEMENTS DOUBLE TAX - UNITED KINGDOM TEACHERS AND PROFESSORS	UK AGREEMENT - ARTICLE 12(2) ARTICLE 16

OTHER RULINGS ON TOPIC CITCM 864 IT 100

PREAMBLE In Taxation Ruling IT 100 it was stated that, where the provisions of the United Kingdom tax law grant United Kingdom residents a deduction of 100% of the emoluments derived from an office or employment carried on wholly outside of the United Kingdom, it is not accepted that the remuneration in question is subject to United Kingdom tax so as to confer exemption from Australian tax on that remuneration. The question of liability to Australian tax in cases where a deduction of 25% of foreign emoluments is granted for purposes of United Kingdom tax has now been considered.

RULING 2. In circumstances where a deduction of 25% of the foreign emoluments is allowable in determining the amount of such emoluments subject to United Kingdom tax, it is considered that the United Kingdom legislation, by design, intends only to tax effectively 75% of the remuneration. Therefore, it has been decided that Article 16 of the United Kingdom/Australia Double Taxation Agreement may be interpreted as only exempting that portion of the income which is so taxed, leaving the balance of the remuneration exposed to Australian tax.

3. Although the legal position that Article 16 may be so interpreted may not be entirely free from doubt, in all cases where a deduction of 25% of foreign emoluments is granted, or is allowable, in calculating the liability to United Kingdom tax of a visiting professor or teacher, it should consequently, be maintained that only 75% of the remuneration is subject to tax in the United Kingdom and that the remaining 25% is liable to Australian tax.

4. A similar view should also be taken where, under Case II of Schedule E of the United Kingdom legislation, a person in receipt of emoluments from any office or employment, where the person is not resident, or if resident, then not ordinarily

resident in the United Kingdom, is allowed a deduction, or a deduction is allowable, of 50% of the emoluments in respect of duties performed in the United Kingdom. In these circumstances, where the taxpayer is a resident of Australia, only 50% of the remuneration is considered to be subject to tax in the United Kingdom leaving the remaining 50% liable to Australian tax.

5. Notwithstanding the ruling in the preceding paragraph, Article 12(2) of the United Kingdom Double Tax Agreement will continue to apply, in cases where an Australian resident is employed in the United Kingdom by a non-resident of that country for a period or periods not exceeding in the aggregate 183 days in the year of income, to exempt the remuneration from United Kingdom tax. The whole of the remuneration, in such cases, will remain liable to Australian tax.

COMMISSIONER OF TAXATION