IT 2066 - Double taxation agreement with France

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TAXATION RULING NO. IT 2066

DOUBLE TAXATION AGREEMENT WITH FRANCE

F.O.I. EMBARGO: May be released

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F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1115353	AUSTRALIA/FRANCE DOUBLE TAXATION AGREEMENT	INCOME TAX (INTERNATIONAL AGREEMENTS) ACT SECTION 9A SCHEDULE 11

PREAMBLE A comprehensive double taxation agreement between Australia and France entered into force on 21 September 1977. A Head Office memorandum of 4 December 1981 informed Deputy Commissioners of interim procedures to be adopted to implement the agreement pending finalisation of further procedures by the French taxation authorities. These have now been settled.

2. The agreement commenced to have effect in relation to French withholding tax and the prepayment of tax (pr/compte) from 1 January 1973. This ruling sets out the procedures to be followed by Australian residents claiming the benefits of the agreement relating to reduced rates of French withholding tax on dividends, interest and royalties received on or after 1 January 1973. This ruling also outlines the procedures to be followed by Australian residents claiming entitlements to the French dividend tax credit (avoir fiscal) and refunds of the pr/compte.

RULING DIVIDENDS

3. French domestic law provides for a dividend withholding tax to be imposed at the rate of 25% on dividends paid to non-residents. Under the agreement, the tax is limited to 15% of the gross amount of dividends paid on or after 1 January 1973 to residents of Australia. Australian residents who are not entitled to the avoir fiscal credit (refer paragraphs 4 to 8 below) - that is, non-individuals - may obtain the benefit of the reduced dividend withholding tax rate by lodging a claim form (5000A) with the French company paying the dividends. As a general rule, the form, which requires certification by the Australian Taxation Office as to the applicant's residential status (refer paragraph 16), must reach the paying company before the dividend is actually paid. Further instructions for the use, preparation and lodgment of the form 5000A are contained in a notice accompanying the form. However, it should be noted that, in relation to item 7 of that notice, the French authorities have agreed that claim forms will be accepted up until 31 December of

the second year following the year in which the relevant income is paid. For example, in respect of dividends paid during 1982, the claim could be lodged at any time up to 31 December 1984 (see also paragraphs 14 and 15).

AVOIR FISCAL

4. French domestic law provides that resident shareholders in receipt of dividends from French companies are entitled to a credit (avoir fiscal) equal to one half of the amount of the dividends received. The agreement extends the benefit of the avoir fiscal to residents of Australia who are individuals, but subject to the imposition of withholding tax at the rate of 15%. Australian companies and other entities are not entitled to the 50% avoir fiscal.

5. To obtain the avoir fiscal credit, Australian individuals are required to complete a claim form 5001A and lodge it with the French company paying the dividends for certification and transmission to the French taxation authorities for payment of the amount of the avoir fiscal credit. While the explanatory notes on this form state that the claims must be lodged no later than 31 December in the year following that in which the dividend was paid, the French authorities have agreed to extend the time within which claims might be lodged to 31 December in the second year following that in which the dividend was paid (see also paragraphs 14 and 15). The amount of the credit allowed to an Australian shareholder is limited to the difference between the sum of the dividend declared and paid and the normal French avoir fiscal credit of 50% of that dividend, less tax at the agreement rate of 15%, and the net dividend received (being the amount actually received from the paying company after normal withholding tax has been deducted). The following example illustrates the calculation of the avoir fiscal credit -

A French company declares a dividend of $100 payable to an Australian individual resident.

	$	$
Dividend declared	100.00	
plus normal avoir fiscal credit of 50%	50.00	
	150.00	
Less French withholding tax at 15% (limited by agreement)	22.50	127.50
Less net dividend previously received ($100 less withholding tax at French domestic rate of 25%)		75.00
Avoir fiscal entitlement		52.50

6. An Australian individual shareholder in a French company will therefore receive, for every $100 of dividends declared, a total amount of $127.50, being $75 from the paying company plus $52.50 from the French taxation authorities as an avoir fiscal credit.

7. It should be noted that it is not necessary for Australian individuals entitled to an avoir fiscal credit to also apply to the French company paying the dividend to reduce the French dividend withholding tax. Such action would result in the Australian shareholder still receiving $127.50 as in the above example, but then comprised of $85 net dividend and $42.50 avoir fiscal credit.

8. The avoir fiscal credit received by a resident individual is assessable income for Australian income tax purposes in the year of income in which it is paid. In accordance with sub-section 9A(5)(b) of the Income Tax (International Agreements) Act, the avoir fiscal credit is deemed to be a dividend.

PRECOMPTE

9. Under French domestic taxation laws, a French company declaring dividends out of profits which have not been subject to French corporation tax is required to make a prepayment (pr/compte) of tax equal to the avoir fiscal which will be allowed to a French resident recipient of the dividend.

10. Australian shareholders (other than individuals) receiving dividends from France on which pr/compte has been levied are entitled to a refund of the pr/compte less withholding tax at the rate of 15%.

11. The claim form 5000A - which is to be used by non-individuals to obtain reduced dividend withholding tax rates (refer paragraph 3) - is also to be used for claiming refunds of pr/compte. In particular, details of the pr/compte payment must be shown on the reverse side of the third copy of the form 5000A. The time limit for lodging these claims is the same as that for lodging claims for the reduced rate of withholding tax on dividends - see paragraph 3 and also paragraphs 14 and 15.

12. The amount of the pr/compte refund, before deduction of withholding tax, is assessable income of the recipient in the year in which it is paid and, like the avoir fiscal, is treated for Australian tax purposes as being a dividend. This means, in practical effect, that when the Australian recipient of the pr/compte is a company, section 46 of the Income Tax Assessment Act will free the pr/compte refund from Australian tax.

INTEREST AND ROYALTIES

13. Withholding tax is imposed under French domestic law on the gross amount of interest and royalties paid to non-residents at the rates of 38% and 33 1/3% respectively. Under the agreement, Australian residents in receipt of interest or royalties from sources in France are entitled to have the French withholding tax on such income reduced to 10%. To obtain the benefit of these reduced rates, the Australian resident must lodge a claim form 5002A with the French payer of the interest or royalties. A separate form must be lodged every calendar year

with each French paying establishment. As a general rule, applicants should lodge the form with the French paying establishment before the first relevant payment of each calendar year. Details regarding completion and lodgment of claims are contained in a notice accompanying the form 5002A. However, it should be noted that, in relation to item 6 of that notice, the French authorities have agreed that claim forms will be accepted up until 31 December of the second year following the year in which the relevant income is paid. For example, in respect of interest paid during 1982, the claim could be lodged at any time up to 31 December 1984 (See, also, paragraphs 14 and 15).

REFUNDS OF FRENCH TAX

14. The French authorities have agreed to extend to 31 December 1983 the time within which Australian residents who have paid French dividend, interest or royalty withholding tax at rates in excess of those specified in the agreement in respect of such income derived between 1 January 1973 and 31 December 1981, Australian resident individuals who have not yet claimed their entitlement to the avoir fiscal on dividends received during that period, and Australian resident non-individuals who have not yet claimed refunds of the pr/compte, may lodge the relevant claim forms with the French paying establishments.

15. It should be noted that, in respect of the abovementioned period, only one claim form is required to be lodged with each paying establishment in relation to each category of income.

CLAIM FORMS AND CERTIFICATION

16. All claim forms referred to in this ruling require certification by the Australian Taxation Office as to the residential status of the applicant. The Taxation Office will retain one copy of the form and return the remaining copies to the applicant who will also retain a copy and must then forward the remaining copies to the appropriate French paying establishment. Details of the required distribution of copies are given on the forms themselves. In this regard, the French taxation authorities have advised that, to facilitate expedition of claims, it is necessary for the certification by the Australian Taxation Office to be completed only on the second copy of the claim forms and that other copies will be appropriately endorsed by the French paying establishments.

17. Supplies of the claim forms 5000A, 5001A and 5002A, together with accompanying instruction notices, are available from all branch offices of the Australian Taxation Office.

COMMISSIONER OF TAXATION
30 November 1983