


IT 2280 - Income tax: Australia/New Zealand Double Taxation Agreement film rental fees subject to foreign tax at source

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TAXATION RULING NO. IT 2280

INCOME TAX : AUSTRALIA/NEW ZEALAND DOUBLE TAXATION
AGREEMENT FILM RENTAL FEES SUBJECT TO FOREIGN TAX AT
SOURCE.

F.O.I. EMBARGO: May be released

REF

H.O. REF: 84/5754-9

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F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1077896	FILM RENTAL FEES ROYALTIES AUSTRALIA/NEW ZEALAND DOUBLE TAXATION AGREEMENT	23(q) INCOME TAX (INTERNATIONAL AGREEMENTS)ACT; SCHEDULE 4, ARTICLE 10.

PREAMBLE

This office recently had occasion to consider the liability to Australian income tax of Australian resident investors in relation to an arrangement for the distribution of an Australian produced film in New Zealand. The terms of the arrangement are understood to be typical of arrangements entered into for the distribution of Australian produced films in New Zealand.

2. In the particular circumstances, a resident Australian company producer of a film, as agent for the investors in the film, entered into a licence/distribution agreement with an arm's length Australian resident company distributor for the distribution of the film in New Zealand. In consideration for granting the rights to distribute etc., the company producer, as agent for the investors, is entitled to the balance of gross receipts received by the distributor from exploiting the distribution rights after deducting the distribution expenditure, which includes New Zealand taxes, and the distribution fee to be retained by the distributor.

3. The agreement defines the "distribution fee" to be retained by the distributor as, broadly, a specified percentage of the net receipts from exploitation of the various rights. "Net receipts" in turn is defined as gross receipts less deductible expenses including any New Zealand taxes. The effect of the definitions is that the distribution fee retained by the distributor is not reduced by any New Zealand taxes, i.e. the taxes are taken into account in determining the balance of gross receipts payable to the producer for on-payment to the investors.

4. The gross fees are liable to New Zealand income tax under section 224 of the New Zealand Income Tax Act 1976. The section provides that non-residents deriving film rentals from

New Zealand exhibitors are deemed to have derived assessable income equal to 10% of the gross rentals received. Where the non-resident is a company, income tax is imposed on the deemed assessable income at the rate applicable to non-resident companies, currently 50%.

5. It was contended on behalf of the Australian resident investors that the income received by them through the agency of the production company would be exempt from Australian tax by virtue of the operation of paragraph 23(q), i.e. the income would be derived by residents from sources outside Australia and would not be exempt from income tax in New Zealand. The contention had, as its basis, the proposition that the rate of tax imposed on the film rentals by the New Zealand Income Tax Act was such that it took the film rentals outside the scope of Article 10 of the Australia/New Zealand Double Taxation Agreement. Article 10 restricts the tax on royalties to 15% of the gross amount of the royalties. This being so, the operation of paragraph 23(q) was not excluded by paragraph 12(1)(ac) of the Income Tax (International Agreements) Act.

RULING

6. The film rentals received by the Australian resident company distributor are "royalties" for the purposes of Article 10 of the New Zealand Agreement. The New Zealand tax imposed on the film rentals, i.e. 1/2 of 10% of the gross, is equivalent to 5% of the gross rentals. This does not exceed the limit in sub-Article 10(1). Paragraph 12(1)(ac) of the (International Agreements) Act applies, therefore, to preclude the operation of paragraph 23(q) of the Assessment Act.

7. For Australian income tax purposes the balance of rentals payable under the licence/distribution agreement to the Australian resident company producer, increased by the amount of New Zealand income tax paid by the distributor, is assessable income of the investors. The investors are entitled, by Article 18 of the Australia/New Zealand Double Taxation Agreement, to a credit in their Australian income tax assessments for the New Zealand tax so paid on their behalf. The amount of credit allowable is the proportion of the New Zealand tax paid by the distributor applicable to the amount included in the investor's assessable income.

COMMISSIONER OF TAXATION
16 April 1986

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