IT 102 - Income tax: Australia/United Kingdom Double Taxation Agreement Article 16 - visiting professors and teachers

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TAXATION RULING NO. IT 102

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 1137032	DOUBLE TAX AGREEMENTS DOUBLE TAX - UNITED KINGDOM TEACHERS AND PROFESSORS	UK AGREEMENT - ARTICLE 16

OTHER RULINGS ON TOPIC CITCM 864 IT 100 IT 101

PREAMBLE The Finance Act 1974 (U.K.) provides a deduction in respect of the income of a person domiciled in the United Kingdom, arising from the performance of duties outside the United Kingdom. The deduction is 100 per cent in the case of 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 for a continuous period of 365 days or more. If he is absent from a lesser period, the deduction will be 25 per cent of the remuneration.

2. In Taxation Ruling IT 100 it was directed that the remuneration of a visiting United Kingdom professor or teacher in respect of which a 100 per cent deduction was allowed under the United Kingdom law would not be regarded as "subject to tax" within the meaning of Article 16 of the Australia/United Kingdom Double Tax Agreement. The remuneration would, therefore, be assessable in full in this country. In Taxation Ruling IT 101, the view was expressed that the allowance of a deduction of 25 per cent would have the effect of taxing only 75 per cent of the remuneration and that Article 16 would permit the balance (25 per cent) to be taxed in Australia.

3. The matter has been reviewed, however, and it is now considered that, where a 25 per cent deduction is allowed in the United Kingdom, the whole of the remuneration must be included in the computation of total income for tax purposes and is therefore "subject to tax". It is not considered an accurate description of the facts to maintain that 75 per cent is subject to tax and 25 per cent is not. Rather, the whole is subject to tax, which tax is reduced by virtue of a deduction (not an exemption) which is available in a given set of circumstances. It may now be accepted, therefore, that the remuneration of visiting professors and teachers in respect of which a deduction of 25 per cent is available in the United

Kingdom will be exempt in Australia under Article 16.

4. It is not accepted, however, that remuneration is subject to tax in the United Kingdom where a deduction of 100 per cent is allowed. Consistent with the views expressed in paragraph 4 of Taxation Ruling IT 100 it is considered that the deduction of an amount equal to the remuneration has the effect of extinguishing the tax attributable to the remuneration so that, in fact, the remuneration is not subject to tax in the United Kingdom. The instructions set out in that Ruling are accordingly confirmed.

COMMISSIONER OF TAXATION