IT 2047 - Australia/New Zealand Double Taxation Agreement Article 15 - teachers and professors

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TAXATION RULING NO. IT 2047

AUSTRALIA/NEW ZEALAND DOUBLE TAXATION AGREEMENT ARTICLE 15 - TEACHERS AND PROFESSORS

F.O.I. EMBARGO: May be released

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PREAMBLE Recent changes to New Zealand's taxation law concerning the residence of individuals have necessitated a review of the existing procedures in relation to the taxation of New Zealand teachers and professors visiting and working as teachers in Australia for periods of up to two years.

FACTS 2. Article 15 of the Australia/New Zealand Double Taxation Agreement provides that a professor or teacher, who was resident in New Zealand immediately before visiting Australia for the purpose of teaching, will be exempt from Australian tax in respect of remuneration from teaching if the visit to Australia does not exceed two years, and if the teacher's remuneration is subject to tax in New Zealand.

3. A recent amendment to the New Zealand tax act provides that a person who is absent from New Zealand for a continuous period of 365 days or more is deemed not to be resident of New Zealand during the period of absence. This provision does not apply, however, where, at the request of that person, the New Zealand Commissioner for Inland Revenue determines that at all times during the period of absence the person had a permanent place of abode in New Zealand.

4. This new provision has important implications for the operation of Article 15 of the Australia/New Zealand Double Taxation Agreement. Although Article 15 is a bi-lateral provision in that it deals with the taxation of both Australian and New Zealand teachers and professors visiting the other country for the purpose of teaching, this ruling concentrates upon New Zealand teachers (and professors) visiting Australia, as it is only these teachers who are affected by the amendment to the New Zealand domestic law.

RULING 5. A New Zealand teacher or professor who visits Australia for 365 days or more and who does not request the New Zealand Commissioner for Inland Revenue to determine that he is still a New Zealand resident, or who requests such a determination but

fails to satisfy the Commissioner that he maintains a permanent place of abode in New Zealand, will not be subject to any New Zealand tax upon remuneration derived in Australia. Accordingly, the "subject to tax" test contained in Article 15 would not be met and all of the teacher's remuneration derived in Australia would be subject to Australian tax.

6. To ensure that the Australia/New Zealand Double Taxation Agreement cannot have the effect that New Zealand teachers visiting Australia escape tax in both countries, procedures were agreed with the New Zealand authorities in relation to the implementation of Article 15. These are:

(1) In relation to official exchange teachers:

(a) the home country - which pays the exchange teacher's salary under the teacher exchange program - will continue to deduct tax instalments from the salary; and

(b) in cases where the exchange teacher becomes a non-resident of the paying country, that country will cease deducting tax instalments and will issue refunds of tax only upon the production of a certificate from the country visited that satisfactory arrangements for payment of its tax have been made.

(2) In relation to all other teachers:

(a) the country visited will deduct tax instalments from the visiting teacher's salary in all cases; and

(b) if the teacher returns to his home country within two years, the teacher can obtain a certificate from the tax authorities in his home country to the effect that tax will be paid in that country. The teacher will then submit this certificate to the tax authorities in the country visited who will issue the appropriate refund.

7. Under Article 15 of the Australia/New Zealand Agreement, a professor or teacher who remains in the country visited for more than two years will be liable for tax in that country from the date of his arrival. However, it has been agreed with the New Zealand tax authorities that this will not apply where ill health or accident etc, prevents departure, provided that the scheduled departure date had been within two years of arrival.

COMMISSIONER OF TAXATION
28 June 1983