IT 2323 - Income tax : United States entertainers Article 17 Australia/United States double taxation convention

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TAXATION RULING NO. IT 2323

INCOME TAX : UNITED STATES ENTERTAINERS ARTICLE 17
AUSTRALIA/UNITED STATES DOUBLE TAXATION CONVENTION

F.O.I. EMBARGO: May be released

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REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1209300	UNITED STATES ENTERTAINERS AUSTRALIA/UNITED STATES DOUBLE TAXATION CONVENTION	INCOME TAX (INTERNATIONAL AGREEMENTS) ACT; SCHEDULE 2 ARTICLE 17

PREAMBLE Article 17 of the Australia/United States Double Taxation Convention contains provisions for the taxing of income derived by entertainers from either country from their personal activities in the other country. Entertainers are expressed to include theatrical, motion picture, radio and television artists, musicians and athletes.

2. By virtue of paragraph (1) of Article 17 income derived by United States entertainers from their personal activities in Australia may be taxed in Australia irrespective of the duration of their visits. Where, however, the gross receipts derived by the entertainer from the personal activities, including expenses reimbursed to or borne on behalf of the entertainer, do not exceed $US10,000 or its equivalent in Australian dollars in the year of income Article 17 does not apply - whether the income derived by an entertainer in this situation is to be taxed in Australia will depend upon the operation of Articles 14 and 15.

3. Paragraph (2) of Article 17 provides that, where income in respect of the personal activities of a United States entertainer in Australia accrues not to the entertainer but to some other person, e.g. a company, the income may also be taxed in Australia, i.e. where the personal activities of the entertainer are exercised. Paragraph (2) applies only where the entertainer or persons related to him participate directly or indirectly and in any manner whatsoever in the profits of the company.

4. The operation of Article 17 was recently considered in this office in the following context:-

(a) whether the salary paid to a United States resident entertainer for performing in Australia constitutes income derived from personal activities as such where the entertainer is employed by a United States resident corporation

or partnership which has entered into a contract for the provision of the entertainer's services with an Australian resident promoter and :

(i) the entertainer is totally at arm's length from the United States resident corporation or partnership; or

(ii) the entertainer is not at arm's length from the United States resident corporation being a shareholder in that corporation but not a director or involved in the management of that corporation; or

(iii) the entertainer is not at arm's length from the United States resident corporation being a shareholder and director of that corporation.

(b) the determination of the gross receipts of the entertainer and, in particular, whether air fares paid by a United Kingdom resident company which employs United States resident musicians on an arm's length basis are included in those gross receipts.

RULING 5. An entertainer, in fulfilling the contractual obligations of a United States employer, by performing in Australia for a salary paid by the employer, is considered to derive income from personal activities in Australia within the meaning of paragraph (1) of Article 17. This is so, whether or not the entertainer is at arm's length from the United States employer.

6. The amount of income derived by the entertainer from his personal activities in Australia will be the amount of income attributable to the personal activities in Australia. Where the entertainer is paid an annual salary by the United States employer an apportionment of the salary will be necessary to determine the amount applicable to the period of time spent in Australia.

7. Where the contract for the personal services of a United States entertainer in Australia is made between a United States resident and an Australian resident and paragraph (2) of Article 17 applies, both the United States resident and the entertainer may be taxable in Australia. The United States resident will be liable to tax under paragraph (2) on the taxable income derived by it and the entertainer may be taxed under paragraph (1) on remuneration derived from the United States resident in respect of his/her personal activities in Australia. Paragraph (2) would not operate in the situation referred to earlier in this Ruling in sub-paragraph 4(a)(i). It is likely, however, that paragraph (2) would apply in the circumstances outlined in sub-paragraphs 4(a)(ii) and (iii) because the inferences to be drawn from the circumstances is that the entertainer participates directly or indirectly in the

profits of the United States resident.

8. The ascertainment of the gross receipts of an entertainer for the purposes of paragraph (1) is in the nature of a threshold test. It is important to note that, in this context, paragraph (1) does not refer to the gross income of the entertainer but to the gross receipts. Where the gross receipts as defined exceed $US10,000, paragraph (1) requires the entertainer to be taxed in Australia. It is then a matter of applying the provisions of the income tax law to determine what assessable income an entertainer has derived from his personal activities in Australia. It is quite possible for the gross receipts of the entertainer for the purposes of paragraph (1) to exceed $US10,000 and his assessable income to be less than $US10,000.

9. Gross receipts of an entertainer for the purposes of paragraph (1) extend to amounts reimbursed to or borne on behalf of the entertainer. Included would be travelling expenses (both international and domestic), accommodation, meals, costumes, make-up, payments to agents and any other amounts paid to or on behalf of the entertainer. The scope of paragraph (1) extends to expenses borne on behalf of the entertainer by persons in Australia or the United States or in any other country.

10. In many cases expenses borne on behalf of an entertainer would not represent income derived by the entertainer. To take an example referred to in the preceding paragraph, e.g. travelling expenses - ordinarily they would be expenses incurred by either the United States resident or the Australian resident depending upon the terms of a particular contract. They would be costs which might normally be expected to occur in this sphere of activity. They are not part of an entertainer's reward for his services. Where the liability for the costs falls upon either the United States resident or the Australian resident the costs cannot be said to be income of the entertainer. On the other hand, however, the costs are borne on behalf of the entertainer and must be taken into account in the determination of the threshold test for the operation of paragraph (1).

COMMISSIONER OF TAXATION
17 June 1986