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

Australian Taxation Office

TAXATION RULING IT 2323

ADDENDUM

F.O.I. EMBARGO: may be released

Taxation Ruling IT 2323 has been amended as follows;

Delete paragraph 10 and insert the following replacement paragraphs -

10. In *F C of T v. Robinson* (1992) 23 ATR 364, 92 ATC 4424, Ryan J held that if the entertainer himself incurred expenses to fulfill his engagements, and they were reimbursed to him , the amount of the reimbursement should be included in the gross receipts. However, if the entertainer's contract entitled him to a "benefit" in the form of transport, accommodation or consumption of meals at another's expense, which are necessitated by the requirement to be in a given place at a particular time to render services to another, the substantial benefit of the relevant expenditure is derived by that other person. The discharge of these expenses is an obligation undertaken by that other person in requiring the entertainer to perform. Those expenses are borne on their own behalf and not on behalf of the entertainer.

11. The qualification expressed in *F C of T v. Robinson* is that the substantial benefit of the relevant expenditure must be reasonably necessary for the recipient to render the services in question. Payments made for expenses incurred for some "other person", for example, who makes no contribution to the his professional performance, are characterized as "borne on his behalf" and included in gross receipts.

12. Subject to the qualification expressed in paragraph 11, it follows that the gross receipts, for the purposes of paragraph (1) of Article 17, of a United States resident entertainer, who is employed on an arms length basis by a United States resident company, would not include air fares paid for the entertainer by that company.

Commissioner of Taxation

8/9/94

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