IT 2324 - Income tax : United States entertainer's support personnel - article 15 Australia/United States double taxation convention

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TAXATION RULING NO. IT 2324

INCOME TAX : UNITED STATES ENTERTAINER'S SUPPORT PERSONNEL - ARTICLE 15 AUSTRALIA/UNITED STATES DOUBLE TAXATION CONVENTION

F.O.I. EMBARGO: May be released

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F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1209316	UNITED STATES ENTERTAINERS SUPPORT PERSONNEL PERMANENT ESTABLISHMENT AUSTRALIA/UNITED STATES DOUBLE TAXATION CONVENTION	INCOME TAX (INTERNATIONAL AGREEMENTS) ACT; SCHEDULE 2 ARTICLE 5 ARTICLE 15

PREAMBLE Advice was sought from this office recently about the liability to Australian income tax of income derived by support personnel engaged for a United States entertainer's Australian tour. The entertainer and his support personnel were in Australia for about three weeks. The support personnel, who are United States residents, were employed by a United States company for business, transport and associated matters. The entertainer is one of the company's directors and is its sole shareholder.

2. The particular point of the enquiry was the operation of Article 15 of the Australia/United States double taxation convention. Under the Article salaries and wages derived by a resident of the United States from an employment exercised in Australia may be taxed in Australia. However, the remuneration may be taxed in the United States if :

(a) the visit does not exceed 183 days in the year of income;

(b) the remuneration is paid by, or on behalf of, an employer who is not a resident of Australia; and

(c) the remuneration is not deductible in determining taxable profits of a permanent establishment, fixed base or a trade or business which the employer or company has in Australia.

RULING 3. The first two requirements for taxing in the United States are satisfied. What was in issue was whether the United States company had a "permanent establishment" in Australia. If it did, it would follow that the terms of requirement (c) would

not be met, i.e. the remuneration would be deductible in determining taxable profits of the permanent establishment. In the result the relevant income would be taxable in Australia.

4. Under the former Australia/United States double taxation convention the term "permanent establishment" was defined to include "a management". In a number of cases where the principal performer was also a majority shareholder and director of a United States company, the approach had been taken that the company had a management, and therefore a permanent establishment, in Australia during the time that the entertainer was in Australia.

5. Under the terms of the revised convention, however, this approach is no longer open. The opening words of Article 5(1) state that a permanent establishment means "a fixed place of business through which the business of an enterprise is wholly or partly carried on". Two things follow from this - firstly, the existence of a place of business is required, i.e. premises or other facilities and, secondly, the place of business must be fixed, i.e. have a degree of permanence. This is reinforced by the examples in paragraph 2 of Article 5 of what are to be regarded as permanent establishments. In contrast to the former convention, a place of management is specifically stated to constitute a permanent establishment.

6. In the circumstances it has been decided that the company did not have a permanent establishment in Australia.

7. In the result advice was given that the support personnel engaged for the entertainer's tour were not liable to tax in Australia.

COMMISSIONER OF TAXATION
18 June 1986

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