IT 2619 - Income tax: tax liability of professors and teachers visiting Australia from the United Kingdom

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TAXATION RULING NO. IT 2619

INCOME TAX: TAX LIABILITY OF PROFESSORS AND TEACHERS VISITING AUSTRALIA FROM THE UNITED KINGDOM

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Reference no.:	Subject refs:	Legislative refs:
I 1012433	VISITING U.K. PROFESSORS AND TEACHERS	U.K. AGREEMENT PARA.2(3) PARA.2(3)(A) ARTICLE 16

OTHER RULINGS ON THIS TOPIC: IT 100, IT 101, IT 102

PREAMBLE
The purpose of this Ruling is to clarify the tax liabilities of United Kingdom professors and teachers temporarily working in Australia on or after 1 July 1980.

2. Article 16 of the Australian/United Kingdom Double Tax Agreement ("the Agreement") provides that:

> "A professor or teacher who visits one of the territories [i.e. the United Kingdom or Australia] for a period not exceeding two years for the purpose of teaching at a university, college, school or other educational institution in that territory and who is, or was immediately before that visit, a resident of the other territory shall be exempt from tax in the first-mentioned territory on any remuneration for such teaching in respect of which he is subject to tax in the other terrritory."

Paragraphs 2(3) and 2(3)(A) of the Agreement provide, respectively, that:

> "Where under this Agreement income is relieved from tax in one of the territories and, under the law in force in the other territory an individual, in respect of the said income, is subject to tax by reference to the amount thereof which is remitted to or received in that other territory and not by reference to the full amount thereof, then the relief to be allowed under this Agreement in the first-mentioned territory shall apply only to so much of the income as is remitted to or received in the other territory."
>
> and
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> "Where under the law in force in one of the territories an

individual's remuneration from an employment is reduced in charging it to tax in consequence of a period or periods of absence by the individual from that territory, or of the place where the employment is exercised, or of the domicile of the individual, by deducting either the whole or a fixed proportion of the amount arising, then

(a) where under this Agreement that remuneration would otherwise be relieved from tax in the other territory, the relief shall not extend to the amount so deducted; and

(b) the amount so deducted shall be regarded as income in respect of which the individual is exempt from and not subject to tax in the first-mentioned territory."

3. When Article 16 of the Agreement was signed in 1967 the United Kingdom applied the "remittance" basis of taxation to the overseas earnings of professors and teachers from the United Kingdom on exchange duty in Australia. Under that system only that part of the overseas earnings which was actually remitted to or received in the United Kingdom was subject to United Kingdom tax. In 1974 the "remittance" basis was replaced by a system (known as "the deductions system") under which remuneration from employment carried on wholly outside of the United Kingdom is formally subject to United Kingdom tax, regardless of whether it is actually remitted to the United Kingdom. A special deduction of up to 100% of the relevant remuneration may then be allowed in certain circumstances against this income.

4. Paragraph 2(3) of the Agreement relates to a provision in the United Kingdom tax law under which, in certain circumstances, income derived by a United Kingdom resident from overseas sources was taxed in the United Kingdom only when it is remitted to or received in that country. Paragraph 2(3) ensures that any income of a United Kingdom resident, which is not "subject to tax" in the United Kingdom because it was not remitted there, is not relieved from Australian tax.

5. When the United Kingdom deductions system was introduced, however, it had the unintended effect of making some income free of tax in both countries. Where, for example, employment income derived from overseas sources is remitted to the United Kingdom and is subject to tax in that country but a special 100% deduction is allowed, no tax is payable in the United Kingdom. Paragraph 2(3) did not apply, however (and the income was relieved from Australian tax under Article 16 of the Agreement), because the income was "subject to tax" in the relevant sense. Article 1 of the Protocol to the Agreement, which in 1980 inserted paragraph 2(3)(A) in the Agreement, remedied this situation.

6. Paragraph 2(3)(A) of the Agreement is designed to ensure that the double taxation agreement would continue to have its intended effect under the new United Kingdom deductions system . The paragraph identifies circumstances in which the United Kingdom may allow the special deduction referred to above. It then

requires that any relief, under the Agreement, from Australian tax is not to be granted in relation to so much of the income of a United Kingdom resident which, by reason of the deduction, is effectively freed from tax in the United Kingdom. The amendments made by Article 1 have effect in the United Kingdom for any year of assessment from 6 April 1980 and in Australia for any year of income beginning on or after 1 July 1980.

7. In Case V9 88 ATC 149 the taxpayer, a visiting United Kingdom professor, arrived in Australia in 1983 to take up a two year academic appointment at a university. The Administrative Appeals Tribunal held that the new paragraph 2(3)(A) meant that the exemption under Article 16 of the Agreement does not apply where the Australian income of a visiting non-resident is fully deductible in the United Kingdom.

8. Article 16 of the Agreement exempts from Australian tax remuneration derived by a United Kingdom professor or teacher where:

- the visit is for the purpose of teaching at a university, college, school or other educational institution;
- the visit does not exceed two years;
- the professor or teacher is, or was immediately before the visit, a resident of the United Kingdom; and
- the remuneration for such teaching is subject to tax in the United Kingdom.

RULING
Visits between 1 July 1980 and 5 April 1984

9. United Kingdom professors and teachers visiting Australia between 1 July 1980 and 5 April 1984, where the other requirements of Article 16 had been satisfied, were treated as follows:

(a) If the taxpayer was absent from the United Kingdom for a qualifying period of 365 days or more:

(1) The remuneration was not taxable in the United Kingdom.

(2) The remuneration was subject in full to Australian tax.

(b) If the taxpayer was absent from the United Kingdom for less than 365 days but more than 30 days:

(1) The taxpayer received a United Kingdom deduction of 25% of the remuneration, i.e. only 75% of the remuneration was subject to United Kingdom tax.

(2) An amount equal to the 25% allowed as a deduction under United Kingdom legislation was subject to Australian tax in accordance with paragraph 2(3)(A) of the Agreement.

(c) If the taxpayer was absent from the United Kingdom for 30 days or less:

(1) The taxpayer received no deduction and was fully subject to United Kingdom tax in respect of the Australian source remuneration.

(2) The taxpayer was not subject to Australian tax in respect of the remuneration.

Visits between 6 April 1984 and 5 April 1986

10. United Kingdom professors and teachers visiting Australia during the period 6 April 1984 and 5 April 1986, where the other requirements of Article 16 had been satisfied, were treated as follows:

(a) If the taxpayer was absent from the United Kingdom for a qualifying period of 365 days or more:

(1) The United Kingdom tax authorities allowed the professor or teacher a 100% deduction.

(2) This remuneration continued to be subject in full to Australian tax.

(b) If the taxpayer was absent from the United Kingdom for less than 365 days but greater than 30 days in this United Kingdom tax year:

(1) The taxpayer received a deduction in the United Kingdom of 12.5% of the remuneration.

(2) An amount equal to the 12.5% deduction allowed by the United Kingdom was subject to tax in Australia.

(3) Where the taxpayer's visit straddled the United Kingdom 1984 and 1985 tax years, he or she was effectively treated by the United Kingdom tax authorities as being absent from the United Kingdom for two separate periods. For the absence up to and including 5 April 1984 the United Kingdom allowed a 25% deduction. An amount equal to this 25% deduction was assessable in Australia. For the period after 6 April 1984 the United Kingdom allowed a 12.5% deduction, and again, an amount equal to this 12.5% deduction was assessable in Australia.

(c) If the taxpayer was absent from the United Kingdom for 30 days or less:

(1) The taxpayer received no deduction in respect of the remuneration and was subject in full to United Kingdom tax.

(2) The taxpayer was not subject to Australian tax in

respect of the remuneration.

Visits on or after 6 April 1986

11. United Kingdom professors and teachers visiting Australia on or after 6 April 1986, where the other requirements of Article 16 have been satisfied, are treated as follows:

(1) Taxpayers who are out of the United Kingdom for less than 365 days will receive no deduction in the United Kingdom. All the remuneration received for teaching will be subject to tax in the United Kingdom. Accordingly, the taxpayer will not be liable to Australian tax on teaching remuneration received on or after 6 April 1986.

(2) If the visit is greater than 365 days and the visiting United Kingdom professor or teacher receives a 100% deduction in the United Kingdom the teaching remuneration will be subject in full to Australian taxation (c.f. Case V9).

(3) If the taxpayer's visit straddled the United Kingdom 1985 and 1986 years, again the United Kingdom authorities treated the Australian visit as two separate absences from the United Kingdom. For the absence up to and including 5 April 1986 the United Kingdom allowed a 12.5% deduction. A sum equal to the amount of this deduction was assessable in Australia in accordance with paragraph 2(3)(A) of the Agreement. For the period on or after 6 April 1986 the United Kingdom authorities did not allow any deductions. Hence, remuneration received after that date for Australian duties is subjected to United Kingdom tax in full and is not subject to Australian tax.

Date of Effect

12. Taxation Rulings IT 100, IT 101 and IT 102 are withdrawn insofar as they relate to visits made by United Kingdom professors and teachers after 1 July 1980. If a professor or teacher who visited Australia after 1 July 1980 has been incorrectly taxed under those earlier Rulings he or she may seek an amended assessment, provided the amendment is sought within the time limit specified in section 170 of the Income Tax Assessment Act.

COMMISSIONER OF TAXATION
15 November 1990