

No. 2779

**UNITED STATES OF AMERICA
and
AUSTRALIA**

Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income. Signed at Washington, on 14 May 1953

Official text: English.

Registered by the United States of America on 3 March 1955.

**ÉTATS-UNIS D'AMÉRIQUE
et
AUSTRALIE**

Convention tendant à éviter la double imposition et à prévenir l'évasion fiscale en matière d'impôt sur le revenu. Signée à Washington, le 14 mai 1953

Texte officiel anglais.

Enregistrée par les États-Unis d'Amérique le 3 mars 1955.

No. 2779. CONVENTION¹ BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE COMMONWEALTH OF AUSTRALIA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME. SIGNED AT WASHINGTON, ON 14 MAY 1953

The Government of the United States of America and the Government of the Commonwealth of Australia, desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, have appointed for that purpose as their respective Plenipotentiaries :

The Government of the United States of America :

Mr. Walter Bedell Smith, Acting Secretary of State of the United States of America, and

The Government of the Commonwealth of Australia :

Sir Percy C. Spender, K.B.E., Q.C., Ambassador Extraordinary and Plenipotentiary of the Commonwealth of Australia,

Who, having communicated to one another their full powers, found in good and due form, have agreed as follows :

Article I

(1) The taxes which are the subject of this Convention are—

(a) In Australia :

The Commonwealth income tax and social services contribution, including the tax at the further rates of tax payable in respect of income from property and the additional tax assessed in respect of the undistributed amount of the distributable income of a private company (hereinafter referred to as "Australian tax");

(b) In the United States :

The Federal income taxes, including surtaxes and excess profits taxes (hereinafter referred to as "United States tax").

¹ Came into force on 14 December 1953, by the exchange of the instruments of ratification at Canberra, in accordance with article XXI.

(2) This Convention shall also apply to any other tax of a substantially similar character imposed by either Contracting State after the date of signature of this Convention.

Article II

(1) In this Convention, unless the context otherwise requires—

- (a) The terms “one of the Contracting States” and “the other Contracting State” mean the United States or Australia, as the context requires;
- (b) The term “Australia” means the Commonwealth of Australia and includes the Territories of Papua, New Guinea and Norfolk Island;
- (c) The term “United States” means the United States of America and when used in a geographical sense includes only the States thereof, the Territories of Alaska and Hawaii, and the District of Columbia;
- (d) The term “tax” means Australian tax or United States tax, as the context requires;
- (e) The terms “resident of one of the Contracting States” and “resident of the other Contracting State” mean a United States resident or an Australian resident, as the context requires;
- (f) The term “Australian resident” means any person (other than a citizen of the United States or a United States corporation) who is a resident of Australia and not resident in the United States for the purposes of United States tax, but a corporation (other than a United States corporation) which is a resident of Australia shall not be deemed to be resident in the United States even though that corporation is engaged in trade or business within the United States;
- (g) The term “United States resident” means any individual who is resident in the United States for the purposes of United States tax and not a resident of Australia, and any United States corporation and any partnership created or organized in or under the laws of the United States, being a corporation or partnership which is not a resident of Australia;
- (h) The term “resident of Australia” has the meaning which it has under the laws of Australia relating to Australian tax;
- (i) The terms “enterprise of one of the Contracting States” and “enterprise of the other Contracting State” mean a United States enterprise or an Australian enterprise, as the context requires;
- (j) The term “Australian enterprise” means an industrial or commercial enterprise or undertaking carried on by an Australian resident;
- (k) The term “United States enterprise” means an industrial or commercial enterprise or undertaking carried on by a United States resident;
- (l) The term “company” has the meaning which it has under Australian law relating to Australian tax;

- (m) The term “United States corporation” means a corporation, association or other like entity created or organized in or under the laws of the United States;
- (n) The term “industrial or commercial profits” includes the profits of an industrial or commercial enterprise or undertaking but does not include income in the form of dividends, interest, rent, royalties, management charges, remuneration for personal services, or income from the operation of ships or aircraft;
- (o) The term “permanent establishment” means a branch, agency, management or fixed place of business and includes a factory, workshop, mine, oilwell, office or agricultural or pastoral property, or the use or installation of substantial equipment or machinery by, for, or under contract with, an enterprise of one of the Contracting States. Where an enterprise or a resident of one of the Contracting States—
- (i) Carries on business dealings in the other Contracting State through a bona fide commission agent or broker acting in the ordinary course of his business as such and receiving remuneration in respect of those dealings at the rate customary in the class of business in question; or
 - (ii) Maintains in that other State a fixed place of business exclusively for the purchase of goods or merchandise; or
 - (iii) Has a subsidiary corporation which is engaged in trade or business in that other State, whether through a permanent establishment or otherwise; or
 - (iv) Has an agent in that other State (other than an agent who has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of that enterprise, or regularly fills orders on its behalf from a stock of goods or merchandise located in that other State),
- That enterprise or resident shall not, merely by reason thereof, be deemed to have a permanent establishment in that other State;
- (p) The term “taxation authority” means, in the case of the United States, the Commissioner of Internal Revenue as authorized by the Secretary of the Treasury and, in the case of Australia, the Commissioner of Taxation or his authorized representative.

(2) In the application of the provisions of this Convention by one of the Contracting States any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that State relating to the taxes which are the subject of this Convention.

Article III

(1) An Australian enterprise shall not be subject to United States tax in respect of its industrial or commercial profits unless it is engaged in trade or business in the United States through a permanent establishment in the United States. If it is so engaged, United States tax may be imposed upon the entire income of that enterprise from sources within the United States.

(2) A United States enterprise shall not be subject to Australian tax in respect of its industrial or commercial profits unless it is engaged in trade or business in Australia through a permanent establishment in Australia. If it is so engaged, Australian tax may be imposed upon the entire income of that enterprise from sources within Australia.

(3) There shall be allowed in determining the industrial or commercial profits attributable to a permanent establishment in one of the Contracting States all expenses of a type allowed as a deduction by that State and which are reasonably attributable to the permanent establishment, including executive and general administrative expenses so attributable, except that, in the case of Australia, there shall be applied the principle underlying section 38 of the Australian Income Tax and Social Services Contribution Assessment Act 1936-1953.

(4) Where an enterprise of one of the Contracting States is engaged in trade or business in the other Contracting State through a permanent establishment in that other State, there shall be attributed to that permanent establishment the industrial or commercial profits which that enterprise might be expected to derive in that other State if it were an independent enterprise engaged in the same or similar activities and its dealings with the enterprise of which it is a permanent establishment were dealings at arm's length with that enterprise or an independent enterprise; and the profits so attributed shall be deemed to be income of that permanent establishment and shall be taxed accordingly.

(5) If the information available to the taxation authority of the Contracting State concerned is inadequate to determine the profits to be attributed to the permanent establishment, nothing in this article shall affect the application of any law of that State in relation to the liability of the permanent establishment to pay tax on an amount determined by the exercise of a discretion or the making of an estimate by the taxation authority of that State: *Provided*, That the discretion shall be exercised or the estimate shall be made, so far as the information available to the taxation authority permits, in accordance with the principle stated in this article.

(6) No portion of any profits arising from the sale of goods or merchandise by an enterprise of one of the Contracting States shall be attributed to a permanent establishment in the other Contracting State by reason of the mere

purchase by that enterprise of the goods or merchandise within that other Contracting State.

Article IV

(1) Where—

- (a) An enterprise of one of the Contracting States participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State; or
- (b) The same persons participate directly or indirectly in the management, control or capital of an enterprise of one of the Contracting States and an enterprise of the other Contracting State; and
- (c) In either case conditions are operative between the two enterprises in their commercial or financial relations which differ from those which might be expected to operate between independent enterprises dealing at arm's length with one another,

Then, if by reason of those circumstances profits which might be expected to accrue to one of the enterprises do not accrue to that enterprise, there may be included in the profits of that enterprise the profits which would have accrued to it if it were an independent enterprise engaged in the same or similar activities and its dealings with the other enterprise were dealings at arm's length with that enterprise or an independent enterprise.

(2) Profits included in the profits of an enterprise of one of the Contracting States under paragraph (1) of this article shall, subject to the provisions of article XX of this Convention, be deemed to be income of that enterprise and shall be taxed accordingly.

(3) If the information available to the taxation authority of the Contracting State concerned is inadequate to determine, for the purposes of paragraph (1) of this article, the profits which might be expected to accrue to an enterprise, nothing in this article shall affect the application of any law of that State in relation to the liability of that enterprise to pay tax on an amount determined by the exercise of a discretion or the making of an estimate by the taxation authority of that State: *Provided*, That the discretion shall be exercised or the estimate shall be made, so far as the information available to the taxation authority permits, in accordance with the principle stated in this article.

Article V

(1) Profits which an Australian resident derives from operating ships or aircraft registered in Australia shall be exempt from United States tax.

(2) Profits which a citizen of the United States who is not a resident of Australia or a United States corporation which is not a resident of Australia derives from operating ships or aircraft registered under the laws of the United States shall be exempt from Australian tax.

Article VI

(1) A dividend paid to a United States resident by a United States corporation which is not a resident of Australia shall be exempt from Australian tax.

(2) A dividend paid to an Australian resident by a company which is a resident of Australia (other than a United States corporation) shall be exempt from United States tax.

Article VII

(1) The amount of Australian tax on dividends paid by a company which is a resident of Australia to a United States resident who is liable for United States tax thereon and is not engaged in trade or business in Australia through a permanent establishment in Australia shall not exceed 15 per centum of the dividend.

(2) The rate of United States tax on dividends derived from sources within the United States by an Australian resident who is liable for Australian tax thereon and is not engaged in trade or business in the United States through a permanent establishment in the United States shall not exceed 15 per centum.

Article VIII

Any additional tax assessable—

- (a) In respect of the undistributed amount of the distributable income of a company which is a private company for purposes of Australian tax; or
 - (b) Under the laws of the United States with respect to undistributed profits of corporations,
- as the case may be, shall be the amount which would have been assessable if articles VI and VII had not been included in this Convention.

Article IX

(1) An individual who is an Australian resident shall be exempt from United States tax on remuneration or other income received, in respect of personal (including professional) services performed in the United States, on or after the effective date of this Convention if—

- (a) During the taxable year in which the services are performed he is present in the United States for a period or periods not exceeding in the aggregate 183 days; and

- (b) The services are performed for or on behalf of an Australian resident.
- (2) An individual who is a United States resident shall be exempt from Australian tax on remuneration or other income received, in respect of personal (including professional) services performed in Australia, on or after the effective date of this Convention if—
- (a) During the year of income in which the services are performed he is present in Australia for a period or periods not exceeding in the aggregate 183 days; and
- (b) The services are performed for or on behalf of a United States resident.
- (3) In determining, for the purposes of this article, whether a person for, or on behalf of, whom services are performed is a resident of one of the Contracting States that person shall not be considered a resident of the other Contracting State solely by reason of the fact that he is engaged in trade or business in that other State through a permanent establishment in that other State.

Article X

Royalties (not being royalties in relation to motion picture films or the reproduction by any means of images or sound produced directly or indirectly from those films) for the use, production or reproduction of, or for the privilege of using, producing or reproducing, a literary, dramatic, musical or artistic work in which copyright subsists, being royalties derived from sources within one of the Contracting States by a resident of the other Contracting State not engaged in trade or business in the former State through a permanent establishment in that State, shall be exempt from tax by the former State.

Article XI

A resident of one of the Contracting States deriving from sources within the other Contracting State—

- (a) Royalties in respect of the exploitation of mines, quarries or other natural resources; or
- (b) Rentals from real property,

may elect for any taxable year to be subject to the tax of the other State on a net basis as if that resident were engaged in trade or business within the other State through a permanent establishment in that State.

Article XII

(1) A pension (including a Government pension) and an annuity, derived from sources within one of the Contracting States by a resident of the other Contracting State, shall be exempt from tax by the former State.

(2) The term “annuity” means a stated sum payable periodically at stated times, during life or during a specified or ascertainable period of time, under an obligation to make the payments in consideration of money paid.

Article XIII

Where a professor or teacher, who is a resident of one of the Contracting States, is temporarily present in the other Contracting State for the purpose of teaching during a period not exceeding two years at a university, college, school or other educational institution in that other State, remuneration derived by him for so teaching for that period shall be exempt from tax by that other State.

Article XIV

Income derived from sources within one of the Contracting States by a religious, scientific, educational, or charitable organization of the other Contracting State shall be exempt from taxation by the State from which the income is derived if, within the meaning of the laws of that State, that organization would, if established in that State, be exempt in respect of that income, and if within the meaning of the laws of the other State it would be exempt in respect of income derived from sources within that other State.

Article XV

(1) Subject to section 131 of the United States Internal Revenue Code as in effect on the date of signature of this Convention, Australian tax shall be allowed as a credit against United States tax.

(2) Subject to any provisions of the law of Australia which may from time to time be in force and which—

- (a) Relate to the allowance of a credit against Australian tax of tax payable outside Australia; and
- (b) Do not affect the general principle of this paragraph,

United States tax payable in respect of income derived by a resident of Australia from sources in the United States shall be allowed as a credit against Australian tax payable in respect of that income.

(3) For the purposes of this article—

- (a) Profits, remuneration or other income in respect of personal (including professional) services performed in one of the Contracting States shall be deemed to be income derived from sources in that State;
- (b) Subject to the provisions of paragraph (1) of this article, an amount included in taxable income under Division 14 or 15 of Part III. of the Australian Income Tax and Social Services Contribution Assessment Act 1936-1953, or that Act as amended from time to time, or the corresponding provisions of a statute substituted for that Act, shall be deemed to be income derived from sources in Australia; and
- (c) The terms “Australian tax” and “United States tax” do not include any tax payable in Australia or the United States which represents a penalty imposed under the law of either Contracting State relating to the taxes which are the subject of this Convention.

Article XVI

Each Contracting State shall, so far as it is practicable to do so, collect, and pay to the other Contracting State, amounts equivalent to amounts due to the other Contracting State by way of taxes which are the subject of this Convention, being amounts the collection of which is necessary in order to ensure that the benefit of exemptions from tax, or of reductions in rates of tax, provided for by this Convention is not received by persons not entitled to that benefit.

Article XVII

Where a taxpayer shows proof that the action of the taxation authority of one of the Contracting States has resulted, or is likely to result, in double taxation contrary to the provisions of this Convention, he shall be entitled to present the facts to the State of which he is a citizen or a resident, or, if the taxpayer is a corporation or other entity, to the State in which it is created or organized and, should the taxpayer's claim be deemed worthy of consideration, the taxation authority of that State shall endeavor to come to an agreement with the taxation authority of the other State with a view to avoidance of the double taxation in question.

Article XVIII

(1) The taxation authorities of the Contracting States shall exchange such information (being information available under the respective taxation laws of the Contracting States) as is necessary for carrying out the provisions of this

Convention or for the prevention of fraud or for the administration of statutory provisions against avoidance of the taxes which are the subject of this Convention.

(2) Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than those (including a Court or a reviewing authority) concerned with the assessment or collection of the taxes, which are the subject of this Convention, or the determination of appeals in relation thereto.

(3) No information shall be exchanged which would disclose any trade secret or trade process.

Article XIX

The taxation authority of each Contracting State may communicate directly with the taxation authority of the other Contracting State for the purpose of giving effect to the provisions of this Convention.

Article XX

The provisions of this Convention shall not—

- (a) Be construed as restricting in any manner any exemption, deduction, credit or other allowance now or hereafter accorded by the laws of one of the Contracting States in the determination of the tax payable to that State; or
- (b) Affect the operation of Divisions 14 and 15 of Part III. of the Australian Income Tax and Social Services Contribution Assessment Act 1936-1953, or that Act as amended from time to time, relating to film business controlled abroad and insurance with non-residents, or the corresponding provisions of any statute substituted for that Act.

Article XXI

(1) This Convention shall be ratified and the instruments of ratification shall be exchanged at Canberra as soon as possible.

(2) This Convention shall become effective—

- (a) In the case of United States tax, on the first day of January in the year in which the exchange of instruments of ratification takes place; and
- (b) In the case of Australian tax, for the year of income commencing on the first day of July next succeeding the date upon which this Convention becomes effective in the case of United States tax.

(3) This Convention shall continue in effect indefinitely but either Contracting State may, on or before the thirtieth day of June in any year after 1955, give to the other Contracting State notice of termination and, in that event, this Convention shall cease to be effective—

- (a) In the case of United States tax, on and after the first day of January next following the giving of that notice of termination; and
- (b) In the case of Australian tax, for the year of income commencing on the first day of July next succeeding the date on which this Convention ceases to be effective in the case of United States tax, and for all subsequent years.

IN WITNESS WHEREOF the above-mentioned Plenipotentiaries have signed the present Convention and have affixed thereto their seals.

DONE at Washington, in duplicate, on the fourteenth day of May, one thousand nine hundred and fifty-three.

For the Government of the United States of America :
[SEAL] Walter BEDELL SMITH

For the Government of the Commonwealth of Australia :
[SEAL] Percy C. SPENDER