

INCOME TAX (INTERNATIONAL AGREEMENTS).

No. 25 of 1958.

An Act to amend the *Income Tax (International Agreements) Act 1953*.

[Assented to 21st May, 1958.]

BE it enacted by the Queen's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

Short title
and citation.

1.—(1.) This Act may be cited as the *Income Tax (International Agreements) Act 1958*.

(2.) The *Income Tax (International Agreements) Act 1953** is in this Act referred to as the Principal Act.

(3.) The Principal Act, as amended by this Act, may be cited as the *Income Tax (International Agreements) Act 1953–1958*.

Commence-
ment.

2. This Act shall come into operation on the day on which it receives the Royal Assent.

Interpretation.

3. Section three of the Principal Act is amended by inserting in sub-section (1.), after the definition of “the Assessment Act”, the following definition:—

“ ‘the Canadian agreement’ means the Agreement between the Government of the Commonwealth and the Government of Canada for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, being the agreement a copy of which is set out in the Third Schedule to this Act; ”.

* Act No. 82, 1953.

4. After section six of the Principal Act the following section is inserted:—

“ 6A. Subject to this Act, the provisions of the Canadian agreement, so far as those provisions affect Australian tax, have the force of law in relation to tax in respect of income of the year of income that commenced on the first day of July, One thousand nine hundred and fifty-seven, and in respect of income of all subsequent years of income in relation to which the agreement remains effective.”.

Agreement
with Canada.

5.—(1.) Section sixteen of the Principal Act is amended—

(a) by omitting paragraph (b) of sub-section (6.) and inserting in its stead the following paragraph:—

Ascertainment
of Australian
tax on dividend.

“(b) the adjusted net dividend is an amount calculated in accordance with the formula—

$$E \left(\frac{F}{C} \right).”;$$

(b) by omitting from sub-section (7.) all the letters and words from and including the letter and word “E is—” to the end of the sub-section and inserting in their stead the following letters and words:—

“E is—

(a) if public loan interest is not included in the taxable income of the year of income—the amount of the net dividend;
or

(b) if public loan interest is included in that taxable income—an amount equal to the amount that would have been the net dividend if that interest had been interest other than public loan interest;

F is the undistributed amount of the year of income in respect of which additional tax under Division 7 of Part III. of the Assessment Act is or was payable.”; and

(c) by omitting from sub-section (8.) the definition of “public loan interest” and inserting in its stead the following definition:—

“‘public loan interest’ means interest to which section one hundred and sixty AB of the Assessment Act applies;”.

(2.) The amendments made by the last preceding sub-section do not affect assessments in respect of income, or the ascertainment of credits against tax on income, of a year of income before the year of income that commenced on the first day of July, One thousand nine hundred and fifty-seven.

Third
Schedule.

6. The Principal Act is amended by adding at the end thereof the following Schedule:—

THIRD SCHEDULE.

Section 3.

AGREEMENT BETWEEN THE GOVERNMENT OF THE COMMONWEALTH OF AUSTRALIA AND THE GOVERNMENT OF CANADA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME.

The Government of the Commonwealth of Australia and the Government of Canada, desiring to conclude an agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, have agreed as follows:—

ARTICLE I

1. The taxes which are the subject of this Agreement are:

- (a) in Australia:
the Commonwealth income tax and social services contribution, including the additional tax assessed in respect of the undistributed amount of the distributable income of a private company;
- (b) in Canada:
the income taxes, including surtaxes, imposed by Canada.

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

ARTICLE II

1. In this Agreement, unless the context otherwise requires

- (a) "Australia" means the Commonwealth of Australia and includes the Territories of Papua, New Guinea, and Cocos (Keeling) Islands, and Norfolk Island;
- (b) "Australian enterprise" means an industrial or commercial enterprise or undertaking carried on by an Australian resident;
- (c) "Australian resident" means a person who is a resident of Australia and is not resident in Canada for the purposes of Canadian tax;
- (d) "Australian tax" means tax imposed by Australia, being tax to which this Agreement applies by virtue of Article I;
- (e) "Canadian enterprise" means an industrial or commercial enterprise or undertaking carried on by a Canadian resident;
- (f) "Canadian resident" means a person who is resident in Canada for the purposes of Canadian tax and is not a resident of Australia;
- (g) "Canadian tax" means tax imposed by Canada, being tax to which this Agreement applies by virtue of Article I;
- (h) "company" includes a corporation;
- (i) "Contracting State", "one of the Contracting States" or "the other Contracting State" means Australia or Canada, as a political entity or geographical area, as the context requires;
- (j) "enterprise of one of the Contracting States" and "enterprise of the other Contracting State" mean an Australian enterprise or a Canadian enterprise, as the context requires;
- (k) "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 or remuneration for personal services, or income from the operation of ships or aircraft;
- (l) "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, but where an enterprise 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

THIRD SCHEDULE—*continued.*

- (ii) maintains in that other State a fixed place of business exclusively for the purchase of goods or merchandise; or
 - (iii) has a subsidiary company 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 shall not, merely by reason thereof, be deemed to have a permanent establishment in that other Contracting State;
- (m) "person" includes any body of persons, corporate or not corporate;
 - (n) "resident of Australia" has the meaning which it has under the laws of Australia relating to Australian tax;
 - (o) "resident of one of the Contracting States" and "resident of the other Contracting State" mean an Australian resident or a Canadian resident, as the context requires;
 - (p) "tax" means Australian tax or Canadian tax, as the context requires;
 - (q) "taxation authority" means, in the case of Canada, the Minister of National Revenue or his authorized representative and, in the case of Australia, the Commissioner of Taxation or his authorized representative;
 - (r) words in the singular include the plural, and words in the plural include the singular.

2. Where an enterprise of one of the Contracting States sells to a resident of the other Contracting State goods manufactured, processed, packed or distributed in the other Contracting State by an industrial or commercial enterprise or undertaking for, or at or to the order of, that first-mentioned enterprise and that first-mentioned enterprise participates in the management, control or capital of that other enterprise or undertaking, then, for the purposes of this Agreement

- (a) that first-mentioned enterprise shall be deemed to have a permanent establishment in the other Contracting State and to be engaged in trade or business in the other Contracting State through that permanent establishment; and
- (b) the profits derived by that first-mentioned enterprise from the sale of those goods shall be deemed to be attributable to that permanent establishment.

3. In the application of the provisions of this Agreement 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 Contracting State relating to the taxes which are the subject of this Agreement.

ARTICLE III

1. The industrial or commercial profits of a Canadian enterprise shall not be subject to Australian tax unless the enterprise 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 those profits by Australia but only on so much of them as is attributable to that permanent establishment: Provided that nothing in this paragraph shall affect the operation of Divisions 14 and 15 of Part III of the *Income Tax and Social Services Contribution Assessment Act 1936-1957* of the Commonwealth of Australia (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.

2. The industrial or commercial profits of an Australian enterprise shall not be subject to Canadian tax unless the enterprise is engaged in trade or business in Canada through a permanent establishment in Canada. If it is so engaged, Canadian tax may be imposed upon those profits by Canada but only on so much of them as is attributable to that permanent establishment.

3. 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 Contracting State, there shall be attributed to that permanent establishment the industrial or commercial profits which that permanent establishment might be

THIRD SCHEDULE—*continued.*

expected to derive in that other Contracting 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 derived from sources in that other State and shall be taxed accordingly.

4. 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 Contracting 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 Contracting 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.

5. 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 might have been expected to accrue 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 be deemed to be income of that enterprise derived from sources in that Contracting State and shall be taxed accordingly.

3. If the information available to the taxation authority of a Contracting State is inadequate to determine, for the purposes of paragraph (1) of this Article, the profits which might have been expected to accrue to an enterprise, nothing in this Article shall affect the application of any law of that Contracting 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 Contracting 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

Profits which a resident of one of the Contracting States derives from operating ships whose port of registry is in that Contracting State, or aircraft registered in that Contracting State, shall be exempt from tax in the other Contracting State.

ARTICLE VI

1. A dividend paid by a company which is a Canadian resident to a person who is not a resident of Australia shall be exempt from Australian tax.

2. A dividend paid by a company which is an Australian resident to a person who is not resident in Canada shall be exempt from Canadian tax.

THIRD SCHEDULE—*continued.*

ARTICLE VII

1. The amount of Australian tax on a dividend paid by a company which is a resident of Australia to a Canadian resident who is liable for Canadian tax 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 Canadian tax on a dividend derived from sources within Canada by an Australian resident who is liable for Australian tax and is not engaged in trade or business in Canada through a permanent establishment in Canada shall not exceed 15 per centum.

ARTICLE VIII

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

(a) during the taxation year in which the services are performed he is present in Canada 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 Canadian 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 Agreement 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 Canadian resident.

3. The provisions of this Article shall not apply to the remuneration or other income of public entertainers such as stage, motion picture, radio or television artists and musicians, or of athletes.

ARTICLE IX

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 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 Contracting State through a permanent establishment in that Contracting State, shall be exempt from tax by the former Contracting State.

ARTICLE X

1. Remuneration (other than pensions) paid by the Government of the Commonwealth of Australia or of any State of Australia to any individual for services rendered to that Government in the discharge of governmental functions shall be exempt from Canadian tax if the individual is not ordinarily resident in Canada or is resident in Canada solely for the purpose of rendering those services.

2. Remuneration (other than pensions) paid by the Government of Canada or of any Province of Canada to any individual for services rendered to that Government in the discharge of governmental functions shall be exempt from Australian tax if the individual is not a resident of Australia or is resident in Australia solely for the purpose of rendering those services.

3. The provisions of this Article shall not apply to payments in respect of services rendered in connection with a trade or business carried on by a Government.

ARTICLE XI

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 Contracting 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.

THIRD SCHEDULE—continued.

ARTICLE XII

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 Contracting State, remuneration derived by him for so teaching for that period shall be exempt from tax by that other Contracting State.

ARTICLE XIII

1. Subject to the provisions of the law of Canada regarding the deduction from tax payable in Canada of tax paid in a country outside Canada, Australian tax paid in respect of income from sources within Australia shall be allowed as a credit against Canadian tax payable in respect of that income.

2. Subject to any provisions of the law of Australia which relate to the allowance of a credit against Australian tax of tax paid in a country outside Australia, Canadian tax paid in respect of income derived by a resident of Australia from sources in Canada 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 Contracting State;
- (b) an amount included in taxable income under Division 14 or 15 of Part III of the *Income Tax and Social Services Contribution Assessment Act 1936–1957* of the Commonwealth of Australia, 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 "Canadian tax" do not include any amount which represents a penalty or interest imposed under the law of either Contracting State relating to the taxes which are the subject of this Agreement.

ARTICLE XIV

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

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 Agreement, or the determination of appeals in relation thereto.

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

ARTICLE XV

The taxation authority of a 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 Agreement.

ARTICLE XVI

1. This Agreement shall come into force on the date on which the last of all such things shall have been done in Australia and Canada as are necessary to give the Agreement the force of law in Australia and Canada respectively and shall thereupon have effect

- (a) as regards Canadian tax, for the taxation year in which this Agreement comes into force, and subsequent taxation years; and
- (b) as regards Australian tax, for the year of income in which this Agreement comes into force and subsequent years of income.

2. This Agreement shall continue in effect indefinitely but either Contracting State may, on or before the thirty-first day of March in any calendar year after the year 1960, give to the other Contracting State notice of termination and, in that event, this Agreement shall not be effective

- (a) as regards Canadian tax, for the taxation year next succeeding that in which notice of termination is given or subsequent taxation years; and

THIRD SCHEDULE—*continued.*

(b) as regards Australian tax, for the year of income next succeeding that in which notice of termination is given or subsequent years of income.

IN WITNESS WHEREOF the undersigned, duly authorized thereto, have signed this Agreement and affixed thereto their seals.

DONE at Mont Tremblant, in duplicate, on the First day of October, One thousand nine hundred and fifty-seven.

(L.S.) FOR THE GOVERNMENT OF THE
 COMMONWEALTH OF AUSTRALIA:

A. W. FADDEN
W. R. CROCKER

(L.S.) FOR THE GOVERNMENT OF CANADA:

DONALD M. FLEMING
