

# GIFT DUTY CONVENTION (UNITED STATES OF AMERICA).

**No. 84 of 1953.**

An Act to give the force of Law to a Convention with the United States of America with respect to Duties and Taxes on Gifts, and for purposes incidental thereto.

[Assented to 11th December, 1953.]

**B**E 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.**        1. This Act may be cited as the *Gift Duty Convention (United States of America) Act 1953*.
- Commencement.**    2. This Act shall come into operation on the day on which it receives the Royal Assent.
- Definitions.**        3. In this Act, unless the contrary intention appears  
“Australian duty” means gift duty imposed by the *Gift Duty Act 1941-1947* ;

“foreign duty” means a tax imposed by the laws of the United States of America, being a tax to which the Convention applies;

“the Assessment Act” means the *Gift Duty Assessment Act 1941-1953*;

“the Convention” means the Convention between the Government of the Commonwealth and the Government of the United States of America for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on gifts, being the convention a copy of which is set out in the Schedule to this Act.

4.—(1.) Subject to the next succeeding sub-section, the Assessment Act is incorporated and shall be read as one with this Act. Incorporation.

(2.) The provisions of this Act have effect notwithstanding anything inconsistent with those provisions contained in the Assessment Act.

5. Subject to this Act, the provisions of the Convention, so far as those provisions affect Australian duty, shall, on and after the date on which the Convention comes into force, have the force of law in relation to gifts in respect of which the Convention is effective. The Convention to have the force of law.

6.—(1.) Where a claim is made for a credit for foreign duty in accordance with the provisions of the Convention, the Commissioner shall determine whether a credit is allowable and, if so, the amount of the credit. Determination of claims for credits.

(2.) A determination under this Act does not form part of an assessment under the Assessment Act.

(3.) As soon as conveniently may be after a determination is made, the Commissioner shall serve notice in writing of the determination, by post or otherwise, upon the person claiming the credit.

(4.) The notice in writing under the last preceding sub-section may be included in a notice of assessment.

7. The production of a notice of a determination, or of a document under the hand of the Commissioner, the Second Commissioner or a Deputy Commissioner purporting to be a copy of a notice of a determination, is conclusive evidence of the due making of the determination and (except in proceedings on appeal against the determination) that the determination is correct. Evidence of determinations.

8.—(1.) Subject to the next two succeeding sub-sections, the Commissioner may at any time amend a determination in such manner as he thinks necessary. Amendment of determinations.

(2.) Where a person claiming a credit for foreign duty has made to the Commissioner a full and true disclosure of all the material facts necessary for the making of a determination and a determination is made after that disclosure, an amendment of the determination decreasing the amount of a credit shall not be made except to correct an error in calculation or a mistake of fact or in consequence of an adjustment credit or refund of Australian duty or foreign duty.

(3.) An amendment of a determination increasing the amount of a credit for foreign duty shall not be made except to correct an error in calculation or a mistake of fact or in consequence of an adjustment, credit or refund of Australian duty or foreign duty.

(4.) Nothing in this section prevents the amendment of a determination in order to give effect to the decision upon an appeal or review, or the amendment of a determination increasing the amount of a credit for foreign duty in pursuance of an objection made by the person who claimed the credit or pending an appeal or review.

(5.) An amended determination shall, for all the purposes of this Act, be deemed to be a determination.

Reviews and appeals.

9.—(1.) The provisions of Part VI. of the Assessment Act apply to and in relation to determinations under this Act in like manner as they apply to and in relation to assessments under the Assessment Act and, for the purposes of those provisions as so applying—

(a) a reference in that Part to an assessment under the Assessment Act shall be read as a reference to a determination under this Act; and

(b) the references in sub-section (3.) of section thirty-three, and in sub-section (4.) of section thirty-four, of the Assessment Act to the reduction of an assessment by the Commissioner and to the reduced assessment shall be read as references to the amendment of a determination by the Commissioner and to the amended determination, respectively.

(2.) The fact that an appeal or reference in respect of a determination is pending does not in the meantime interfere with or affect the determination or an assessment of duty against which a credit is claimed, and duty may be recovered on the assessment as if an appeal or reference were not pending.

Rebates under section 41 of the Assessment Act.

10. In relation to gifts made on or after the date on which the Convention comes into force, section forty-one of the Assessment Act has effect as if the reference in that section to any country outside Australia did not include a reference to the United States of America.

Application of credit.

11.—(1.) Subject to this section, the amount of a credit for foreign duty is a debt due and payable to the person entitled to the credit by the Commissioner on behalf of the Commonwealth.

(2.) The Commissioner may apply the whole or a part of the credit in total or partial discharge of any liability to the Commonwealth of the person entitled to the credit arising under, or by virtue of, the Assessment Act or any other Act of which the Commissioner has the general administration.

(3.) Where, under the last preceding sub-section, the Commissioner has applied an amount of credit for foreign duty in discharge of a liability of a person to the Commonwealth, that person shall be deemed to have paid the amount so applied for the purpose for which, and at the time at which, it has been so applied.

(4.) Where, by reason of an amendment of a determination made under this Act, the amount, or the sum of the amounts, applied or paid by the Commissioner as a credit for foreign duty to which a person is entitled exceeds the amount of the credit to which that person is entitled, the Commissioner may recover the amount of the excess as if it were Australian duty due and payable by that person.

12. The power to make regulations conferred by section forty-seven of the Assessment Act shall be deemed to extend to the making of regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act. Regulations

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## THE SCHEDULE.

Section 3.

CONVENTION BETWEEN THE GOVERNMENT OF THE COMMONWEALTH OF AUSTRALIA  
AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA FOR THE AVOIDANCE  
OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT  
TO TAXES ON GIFTS.

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

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, and

The Government of the United States of America :

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

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 the United States :

The Federal gift tax ;

(b) In Australia :

The Commonwealth gift duty.

(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 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 ;

(b) the term " Australia " means the Commonwealth of Australia and includes the Territories of Papua, New Guinea and Norfolk Island ;

(c) the term " tax " means the Federal gift tax imposed by the United States, or the Commonwealth gift duty imposed by Australia, as the context requires ;

(d) 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 ;

THE SCHEDULE—*continued.*

- (e) the term “territory”, when used in relation to one or the other of the Contracting States, means Australia or the United States, as the context requires.
- (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.
- (3) For the purposes of this Convention, the question whether a donor was a citizen, or was domiciled in any part of the territory, of one of the Contracting States at the time of the gift shall be determined in accordance with the law in force in that territory.

ARTICLE III

(1) Where a donor at the time of the gift was a citizen of the United States or domiciled in any part of the territory of either Contracting State, the situs at the time of the gift of rights and interests, legal or equitable, in or over the classes of property specified in this paragraph shall, for the purposes of the imposition of tax in respect of the gift by reason only of the situs of property being within the taxing State and for the purposes of the credit to be allowed under Article V of this Convention, be determined exclusively in accordance with the following rules:

- (a) Immovable property (otherwise than by way of security) shall be deemed to be situated at the place where the land concerned is located;
- (b) Tangible movable property (otherwise than by way of security and other than property for which specific provision is hereinafter made) and bank or currency notes and other forms of currency recognized as legal tender at the place of issue shall be deemed to be situated at the place where that property or currency is located, or, if *in transitu*, at the place of destination;
- (c) Debts (including bonds other than bonds referred to in sub-paragraph (d) hereof, bills of exchange and promissory notes, whether negotiable or not), secured or unsecured and whether under seal or not, excluding the forms of indebtedness for which specific provision is made elsewhere in this paragraph, shall be deemed to be situated at the place where the debtor is resident, but if the debtor, at the time of the gift, has an established place of business in the State in which the donor is domiciled and debts were incurred in carrying on the business of that establishment, the debts so incurred shall be deemed to be situated in that State;
- (d) Bonds, stocks, debentures, and other debts being securities, issued by any government, municipality or public authority shall be deemed to be situated at the place where that government, municipality or public authority is located;
- (e) Bank accounts shall be deemed to be situated at the place where the bank or branch thereof, at which the account was kept, is located;
- (f) Moneys, payable under a policy of assurance or insurance or under an annuity contract, whether under seal or not, shall be deemed to be situated where the policy or annuity contract provides that the moneys shall be payable or, if the policy or annuity contract does not provide where the moneys shall be payable—
- (i) in the case of a company (corporation)—at the place where it is incorporated;
  - (ii) in any other case—at the place of residence of the person by whom the moneys are payable;
- (g) A partnership shall be deemed to be situated at the place where the business of the partnership is carried on but only to the extent of the partnership business at that place;
- (h) Ships and aircraft and shares thereof shall be deemed to be situated at the place of registration of the ship or aircraft;
- (i) Goodwill as a trade, business or professional asset shall be deemed to be situated at the place where the trade, business or profession to which it pertains is carried on;
- (j) Patents, trade marks and designs shall be deemed to be situated at the place where they are registered;
- (k) Copyright, franchises, and rights or licenses to use any copyrighted material, patent, trade mark or design shall be deemed to be situated at the place where the rights arising therefrom are exercisable.
- (2) The situs of rights or interests, legal or equitable, in or over property not specified in paragraph (1) of this Article, shall be determined in accordance with the law in force in the Contracting State imposing the tax or allowing the credit.

THE SCHEDULE—continued.

ARTICLE IV

(1) In determining the amount on which tax is to be computed, permitted deductions shall be allowed in accordance with the law in force in the Contracting State imposing the tax.

(2) Where tax is imposed by one Contracting State in respect of a gift by a donor who, at the time of the gift, was not domiciled in any part of the territory of that State, but was a citizen, or was domiciled in some part of the territory, of the other Contracting State, the State so imposing that tax—

- (a) shall allow as an exemption an amount not less than an amount which bears the same proportion to any specific exemption that would have been allowed under the laws of that State if that person had been domiciled therein as the value of the property subjected to that tax bears to the value of the property which would have been subjected to that tax if that person had been so domiciled; and
- (b) shall (except for the purposes of sub-paragraph (a) of this paragraph and except for the purposes of any proportional allowance provided for in the laws of the Contracting State imposing that tax) take no account, in determining the amount or rate of that tax, of property situated outside its territory.

ARTICLE V

(1) Where a Contracting State imposes tax by reason of a donor's being domiciled in some part of its territory or being its citizen, that State shall allow against so much of its tax (as otherwise computed) as is attributable to property situated in the territory of the other Contracting State, a credit (not exceeding the amount of the tax so attributable) equal to so much of the tax imposed by that other Contracting State as is attributable to that property; but this paragraph shall not apply as respects so much of that property as is referred to in paragraph (2) of this Article.

(2) Where each Contracting State imposes tax by reason of a donor's being domiciled in some part of its territory or being its citizen, each Contracting State shall allow against so much of its tax (as otherwise computed) as is attributable to property which is situated—

- (a) outside the territory of each Contracting State; or
  - (b) in the territory of each Contracting State,
- a credit which bears the same proportion to—
- (c) the amount of its tax so attributable; or
  - (d) the amount of the other State's tax attributable to that property,
- whichever is the less, as the first-mentioned amount bears to the sum of both amounts.

(3) The amount of the tax in each Contracting State attributable to any property shall be ascertained after deducting from the total amount of tax any applicable diminution or credit, other than the credit to be allowed under this Article: *Provided*, That, in case another credit for duty on gifts is allowable with respect to the same property pursuant to any other Convention between the crediting State under this Convention and any other State, or pursuant to a law of the crediting State, the total credits shall not exceed the amount of tax of the crediting State attributable to that property computed before allowance of those credits, and in computing credit under paragraph (2) of this Article with respect to property situated outside both Contracting States any credit allowable by either Contracting State for duty on gifts payable in the country where the property is situated shall be taken into account in ascertaining the amount of tax of that Contracting State attributable to that property.

(4) A credit or refund of tax resulting from the application of this Article shall not be granted unless a claim for that credit or refund, accompanied by all the information necessary for the purpose of ascertaining the amount of the credit or refund, is made within six years from the date of the gift.

(5) A refund of tax resulting from the application of this Article shall be made without payment of interest on the amount refunded.

(6) Credit against tax imposed by one of the Contracting States shall not be finally allowed for tax imposed by the other Contracting State until the latter tax (reduced by credit, if any, allowable under this Article) has been paid.

THE SCHEDULE—*continued.*

ARTICLE VI

(1) The taxation authorities of the Contracting States shall exchange such information (being information available under the Federal gift tax or the Commonwealth gift duty laws of the Contracting States) as is necessary for carrying out the provisions of this Convention or for the prevention of fraud or 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 VII

Where a donor or donee 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 his State of citizenship or domicile or, if a corporation or company, to the State in which it is created, organized or incorporated and, should the claim be deemed worthy of consideration, the taxation authority of that State shall endeavour to come to an agreement with the taxation authority of the other State with a view to avoidance of any double taxation that may be involved.

ARTICLE VIII

(1) The provisions of this Convention shall not be construed so as to deny or affect in any manner any right of diplomatic or other official representatives of either Contracting State to exemptions which they may now enjoy or which may hereafter be granted to those representatives.

(2) This Convention shall not be construed as increasing the liability of any donor under the gift tax laws of the United States.

(3) Should any difficulty or doubt arise as to the interpretation or application of this Convention or its relationship to Conventions between one of the Contracting States and any other State, the taxation authorities of the Contracting States may, subject to applicable rights of appeal, settle the question by mutual agreement.

(4) 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 IX

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

(2) This Convention shall come into force on the date of exchange of instruments of ratification and shall be effective only as to gifts made on or after that date.

(3) This Convention shall remain in force indefinitely but either Contracting State may on or before the 31st day of March in any calendar year after the year 1955 give the other Contracting State notice of termination, in which event the Convention shall not be effective in respect of gifts made after the 30th day of September in the year in which that notice is given.

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 COMMONWEALTH OF AUSTRALIA :

PERCY C. SPENDER (L.S.)

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA :

WALTER BEDELL SMITH (L.S.)