TR 92/D27 - Income tax: deductions for gifts made under the Taxation Incentives for the Arts Scheme: procedures and valuation method

This cover sheet is provided for information only. It does not form part of *TR 92/D27 - Income tax: deductions for gifts made under the Taxation Incentives for the Arts Scheme: procedures and valuation method*

This document has been finalised by TR 96/1.

Generated on: 26 November 2026, 07:41:33 AM

Media Unit

Australian Taxation Office

DRAFT TAXATION RULING TR 92/D27

We invite you to comment on this Draft Taxation Ruling. We are allowing six weeks for comments before we finalise the Ruling. If you want your comments considered, please get them to us within this period.

PLEASE ADDRESS ALL COMMENTS TO THE CONTACT OFFICER LISTED BELOW.

TITLE Income tax: Deductions for gifts made under the Taxation Incentives for the Arts Scheme: procedures and valuation method.

LAST DAY FOR COMMENTS : 29 October 1992

CONTACT OFFICER : Miles Carone

TELEPHONE : (02) 284 1632

ADDRESS FOR WRITTEN COMMENTS : Australian Taxation Office
GPO Box 9990
SYDNEY NSW 2001
Attention: Miles Carone

FAX NO. : (02) 284 1305

NOTE:

. Draft Taxation Rulings (DTRs) represent the preliminary, though considered, views of the Australian Taxation Office.

. Draft Taxation Rulings may not be relied on by taxation officers, taxpayers and practitioners. It is only final Taxation Rulings which represent authoritative statements by the Taxation Office of its stance on the particular matters covered in the Ruling.

COMMISSIONER OF TAXATION

For ATO Staff only: the contact officer is/is not on HIGGINS

Draft Taxation Ruling

Income tax: deductions for gifts made under the Taxation Incentives for the Arts Scheme: procedures and valuation method

Draft Taxation Rulings (DTRs) represent the preliminary, though considered, views of the Australian Taxation Office.

DTRs may not be relied on by taxation officers, taxpayers and practitioners. It is only final Taxation Rulings which represent authoritative statements by the Australian Taxation Office of its stance on the particular matters covered in the Ruling.

contents para

What this Ruling is about 1
Ruling 5
(a) Procedures 5
(b) Valuation method 8
Date of effect 12
Explanations 13

What this Ruling is about

1. A deduction for gifts of property of the value of $2 or more made under the Taxation Incentives for the Arts Scheme is generally allowable under paragraph 78(1)(aa) of the *Income Tax Assessment Act 1936*.

2. Under the Scheme, the donor is required to obtain at least two written valuations of the gifted property from approved valuers (subsection 78(6B)). If we are satisfied that the average of the values specified in these valuations fairly represents the value of the gifted property, an income tax deduction is allowable for the amount of that average value (subparagraph 78(6E)(a)(i)). However, if we are not satisfied of this, we need to determine the value of the gifted property ourselves. An income tax deduction is then allowable for that value (subparagraph 78(6E)(a)(ii)).

3. This Ruling explains:

(a) the **procedures** a donor should follow to claim a deduction under paragraph 78(1)(aa); and

(b) the **valuation method** that we consider should be used both by approved valuers for the purposes of subsection 78(6B) and by us for the purposes of subparagraph 78(6E)(a)(ii).

4. Taxation Ruling IT 2076 is now withdrawn. To the extent that the procedures outlined in that Ruling still apply, they are incorporated in this Ruling.

Ruling

(a) Procedures

5. The donor should send the originals of the written valuations to the Committee on Taxation Incentives for the Arts Scheme. If the Committee accepts that the values and other aspects of the gift conform with all legislative requirements, it will endorse the valuations to that effect and return them to the donor.

6. The recipient institution will send the Committee documentary evidence that it has received the gift. After certifying the documentation, the Committee will send it (together with the valuations referred to in paragraph 5 above) to the donor.

7. The donor should keep with his or her other taxation records the valuations and the certified documentary evidence that the institution has received the gift. He or she should make them available to the Taxation Office only if asked to do so. There is no need for the donor to include any of these documents in his or her income tax return. In accordance with the authority conferred on us by subsection 78(6B) to extend the time by which the valuations are to be lodged with us, that time is to be taken as extended until such time as we ask that they be made available.

(b) Valuation method

8. We consider that the meaning of 'value' in relation to paragraph 78(1)(a) - as adopted by the Supreme Court of New South Wales (Hunt J) in *Coppleson v. FC of T* 81 ATC 4019 at 4025; (1981) 11 ATR 472 at 480 (*Coppleson's Case*) - also applies to paragraph 78(1)(aa).

9. In our opinion, the appropriate way of valuing gifts for the purposes of subsection 78(6B) and subparagraph 78(6E)(a)(ii) is to determine what a willing, but not anxious, vendor and a willing, but not anxious, purchaser could reasonably be expected to agree for transfer of the property.

10. We do not accept that the decision of the Administrative Appeals Tribunal in *Case* X12, 90 ATC 162; *AAT Case* 5594 (1989) 21 ATR 3144 is authority for a contrary view.

11. If the approved valuers have used the valuation method adopted in this Ruling, we will in virtually all cases readily accept that the average of the values specified fairly represents the value of the gifted property. However, rare cases may arise where there is information available which suggests that the average of the values should not be accepted as the correct value of the property. We will consider each

case of this nature in the light of its own facts and make a valuation using the method adopted in this Ruling.

Date of effect

12. This Ruling (that is, the final Taxation Ruling based on this Draft Taxation Ruling) sets out the current practice of the Australian Taxation Office and is not concerned with a change in interpretation. Consequently, it applies (subject to any limitations imposed by statute) for years of income commencing both before and after the date on which it is issued.

Explanations

13. Under the Taxation Incentives for the Arts Scheme, donors of works of art or other property to a public art gallery, a public library, a public museum or the Australiana Fund may, in general, obtain a deduction for their gifts as determined by at least two approved valuers (paragraph 78(1)(aa) and subsection 78(6B)). Gifts qualify for deduction under paragraph 78(1)(aa) on a more liberal basis than under the ordinary gift provisions of paragraph 78(1)(a). For example, a gift is an allowable deduction under paragraph 78(1)(aa) for the purposes of the Scheme irrespective of how long the donor has owned the property. Unlike the ordinary gift provisions of paragraph 78(1)(a), the donor need not have purchased the gifted property within the previous 12 months.

14. The concept of 'value' in relation to gifts of property arises both in the context of the Taxation Incentives for the Arts Scheme provisions of paragraph 78(1)(aa) and the ordinary gift provisions of paragraph 78(1)(a). The Supreme Court of New South Wales considered the meaning of 'value' in paragraph 78(1)(a) in *Coppleson's Case*. In deciding the value of a gift of property in that case, Hunt J (81 ATC at 4025; 11 ATR at 480) adopted the meaning of 'value' applied by the High Court of Australia in *Abrahams v. FC of T* (1944) 70 CLR 23 in the context of compulsorily acquired land. This was described by Williams J at 29 as:

> ...the price at which a willing but not anxious vendor could reasonably expect to obtain and a hypothetical willing but not anxious purchaser could reasonably expect to have to pay... if the vendor and the purchaser had got together and agreed on a price in friendly negotiations.

15. We are of the view that the term 'value' in paragraph 78(1)(aa) has the same meaning as in paragraph 78(1)(a). This is because they

are related provisions in that they both refer to the 'value' of gifts of property for the purposes of the gift provisions.

16. Accordingly, our view is that the appropriate method when making valuations for the purposes of the Scheme is that adopted by the Supreme Court of New South Wales in *Coppleson's Case*.

Commissioner of Taxation

17 September 1992

ISSN 0813 - 3662

ATO references
NO 90/5897-4
BO 6/G/Complex/1068 (Sydney)

Not previously released to the public in draft form

Price $0.40

FOI index detail
reference number

subject references
- gifts
- Taxation Incentives for the Arts Scheme
- valuation
- value

legislative references
- ITAA 78(1)(a); ITAA 78(1)(aa); ITAA 78(6B);
- ITAA 78(6E)(a)(i);
- ITAA 78(6E)(a)(ii)

case references
- Abrahams v. FC of T (1944) 70 CLR 23
- Coppleson v. FC of T 81 ATC 4019; (1981) 11 ATR 472
- Case X12, 90 ATC 162; AAT Case 5594 (1989) 21 ATR 3144