IT 2102 - Trust stripping : post-Part IVA assessing guidelines

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TAXATION RULING NO.IT 2102

TRUST STRIPPING : POST-PART IVA ASSESSING GUIDELINES

F.O.I. EMBARGO: May be released

REF H.O. REF: 13.J209/103 P13 DATE OF EFFECT:

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F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1092930	TAX AVOIDANCE	DIVISION 6
	TRUST STRIPPING	SECTION 26(a)
	POST-PART IVA	PART IVA

PREAMBLE Assessing instructions issued on 21 September 1983 in relation to trust stripping schemes entered into prior to 28 May 1981. This ruling provides assessing instructions regarding trust stripping schemes entered into after 27 May 1981. This ruling is to be read in conjunction with existing guidelines in respect of pre-Part IVA trust stripping schemes, including:

- Taxation Ruling No. IT 2059;
- Head Office memorandum 13.J209/103 of 10 November 1983;
- Head Office memorandum 7.J206/1/2 of 6 July 1984;
- Head Office memorandum 13.J209/103 of 21 August 1984; and
- Head Office memorandum 13.J209/103 of 22 August 1984.

FACTS Trust stripping refers to tax avoidance arrangements under which an entity associated with a promoter is purportedly introduced as a beneficiary of a trust estate which has derived income during the year. The income of the trust is allegedly distributed to that promoter entity which does not pay tax. As part of this contrivance the trust or an associate is reimbursed in an ostensibly non-taxable form.

2. The view is firmly held that such schemes are not effective in achieving their tax avoidance purpose.

RULING 3. The assessing guidelines applicable to trust stripping schemes entered into prior to 28 May 1981, except in so far as they refer to section 260, provide a general basis for the assessment of participants in trust stripping schemes entered into after 27 May 1981, the date of effect of Part IVA of the Income Tax Assessment Act. This accords with advice received from senior counsel.

4. Subject to the preceding paragraph, pre-Part IVA guidelines in relation to trust stripping schemes are now to be applied, mutatis mutandis, to schemes entered into after 27 May 1981. That is, assessments should be raised as soon as possible against those persons who participated in post-Part IVA trust stripping schemes and who are presently entitled to trust income on the basis that the scheme transactions are a sham or fiscal nullities. In addition, assessments should be raised, where possible, against the recipient of the reimbursement. These latter assessments may be supported on the basis of the existence of a profit-making undertaking or scheme - section 26(a) - or on the basis that the reimbursement represents income under section 25 or a distribution of trust income from the target trust.

5. It is recognised that Part IVA is a provision of last resort that can apply to deny tax benefits that would otherwise be available. If necessary, consideration will be given to the application of Part IVA, together with additional tax under sub-section 226(2A), to trust stripping schemes entered into after 27 May 1981.

COMMISSIONER OF TAXATION
7 September 1984