

IT 2106 - Supplementary trust stripping settlement guidelines

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TAXATION RULING NO.IT 2106

SUPPLEMENTARY TRUST STRIPPING
SETTLEMENT GUIDELINES

F.O.I. EMBARGO: May be released

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F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1122028	INCOME TAX AVOIDANCE TRUST STRIPPING SETTLEMENT GUIDELINES	DIVISION 6 SECTION 26(a)

PREAMBLE This ruling is to be read in conjunction with Taxation Ruling No. IT 2100.

2. It is emphasised that settlement arrangements entered into by the Commissioner in accordance with these rulings will finalise the taxpayer's liability to income tax in respect of the trust income which is purported to have been distributed to a promoter entity and recouped by the taxpayer group in an allegedly non-taxable form, and will do so having regard to all provisions of the income tax law.

FACTS 3. This Office has been approached regarding the possibility of settlement on the basis that the trust income purportedly distributed to the promoter entity as part of a trust stripping scheme in respect of the 1977 and 1978 income years should be allocated in accordance with trustees' resolutions. In the cases in question the resolutions provide for the balance of the trust income to be accumulated by the trustee. It has been argued on behalf of taxpayers that an accumulation by the trustee of the balance of the trust income accords with the past pattern of distributions of the relevant trusts or reflects the real intention of the trustee if the scheme distribution is regarded as a sham. If this were the case it would follow that section 99A is the appropriate basis for settlement in respect of these two years.

4. The advantage of this approach to a taxpayer lies in the difference between the maximum rate of tax applicable to trustees and that applicable to individuals in the 1977 and 1978 income years.

RULING

5. In the normal course, assessments will continue to be raised on the basis of the primary argument that the terms of the trust deed determine whether there is any beneficiary presently entitled to the scheme distribution. In relation to resolutions, it is considered that, generally speaking, the reference in a resolution to the alleged distribution to the promoter entity provides an indication that the remainder of the resolution, or an additional resolution which acknowledges the scheme distribution, is not intended to govern the allocation of the scheme amount.

6. It has, however, been decided that, in a final settlement context, resolutions in respect of the 1977 and 1978 income years which provide for the balance of the trust income to be accumulated by the trustee may be accepted as a basis for assessment. This approach will be available in respect of settlement offers made before 1 December 1984 and relates only to the 1977 and 1978 income years where the difference in the marginal rate of tax applicable to trustees and that applicable to individuals make it likely that, but for the trust stripping arrangements, the trustee would have accumulated the funds.

7. Where assessments have already been raised in respect of the scheme amount, settlement will include an amount equivalent to the late payment penalty that, subject to paragraph 8 below, has accrued on those assessments (i.e. the assessments raised in accordance with the terms of the trust deed regarding the ineffectual scheme distribution). This approach will be adopted in these circumstances in order to prevent the avoidance of late payment penalty by the simple expedient of manipulating the settlement concessions that are presently available.

8. The concessions contained in paragraphs 11 and 12 of Taxation Ruling No. IT 2100 regarding late payment penalty will apply to settlements made on the basis of this ruling.

COMMISSIONER OF TAXATION
26 September 1984

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