IT 2194 - Income tax: gifts - reference of cases to head office

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TAXATION RULING NO. IT 2194

INCOME TAX GIFTS - REFERENCE OF CASES TO HEAD OFFICE

F.O.I. EMBARGO: May be released

REF H.O. REF: 84/3399-2 DATE OF EFFECT:

B.O. REF: DATE ORIG. MEMO ISSUED:

F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1199402		
	GIFTS	78(1)(a)

RULING

Subject to the exceptions noted in the next paragraph, decisions whether or not particular funds, authorities or institutions come within any of the sub-paragraphs of paragraph 78(1)(a) or within the special provisions at the end of paragraph 78(1)(a) will henceforth generally be decided in branch offices.

2. Because of the necessity to obtain the approval of authorities outside the Australian Taxation Office, applications for consideration under the following sub-paragraphs of paragraph 78(1)(a) should continue to be referred to Head Office :-

sub-paragraph (x) - Approved Research Institutes

sub-paragraph (xxxi) - Marriage Guidance Organisations

sub-paragraph (lxii) - Overseas Aid Organisations

3. In practice, this Ruling will mean that applications by or on behalf of funds, authorities or institutions for recognition under paragraph 78(1)(a) should be made to branch offices in the locality in which the particular fund, authority or institution is established. Where the particular fund, authority or institution is to operate in more than one State or Territory, application should be made to the branch office in the locality in which the fund, authority or institution is principally controlled. Only applications presenting unusual or novel features or about which a Deputy Commissioner is uncertain should be referred to Head Office for decision.

4. Advice of any decision of current significance should be conveyed immediately to other branch offices by the branch office making the decision.

5. The special provisions at the end of paragraph 78(1)(a) refer to public funds established and maintained under a will or instrument of trust exclusively for the purpose of providing money, property or benefits -

(a) to or for funds, authorities or institutions, and for the purposes, if any, referred to in any

sub-paragraph (but not the special provisions) of paragraph 78(1)(a)); or

(b) for the establishment of funds, authorities or institutions referred to in any sub-paragraph (but not the special provisions) of paragraph 78(1)(a).

6. The essence of the special provisions funds is that they collect money, property, etc. and, subject to any administration expenses, pass on the money, property, etc. to relevant funds, authorities or institutions. Special provisions funds may be likened to a conduit.

7. The operation of the special provisions at the end of paragraph 78(1)(a) is explained in Canberra Income Tax Circular Memorandum (CITCM) 837. The instructions in CITCM 837, and in earlier CITCMs referred to in CITCM 837, should be applied in deciding applications for recognition under the special provisions.

8. Since the issue of CITCM 837 the High Court, in Bray v. F.C. of T. 78 ATC 4179, 8 ATR 569, has had occasion to consider whether a particular fund was a public fund within the meaning of the special provisions. The effect of the High Court decision is that a fund will be a public fund for the purposes of the special provisions where -

(a) it is the intention of the promoters or the founder or founders that the public will contribute to the fund;

(b) the public, or a significant part of it, does in fact contribute to the fund;

(c) the public participates in the administration of the fund.

9. Public participation in the administration of a fund is discussed in paragraphs 33 and 34 of CITCM 806. In essence the requirement will be satisfied where a fund is administered or controlled by persons or institutions who or which, because of their tenure of some public office or their position in the community, have a degree of responsibility to the community as a whole.

10. The purpose of the public funds to which the special provisions apply is to provide money, property or benefits exclusively to and for the relevant institutions. The provision of money and property is a straightforward concept. The provision of benefits is, however, somewhat more difficult. The word 'benefits' is of wide import and should not be construed narrowly in the context of the special provisions at the end of paragraph 78(1)(a).

11. A benefit will arise where it can be seen that some discernible advantage has been bestowed on a specified institution - it may take the form of some tangible addition to

or the removal of some detriment from the conduct of the particular institution. The creation and maintenance of a holiday camp exclusively for children in orphanages would represent a benefit to the orphanages in terms of the special provisions. So also the creation of a scholarship scheme where, for example, a university generally controlled the terms and award of the scholarship would be a benefit to the university. On the other hand, if a special provisions fund awarded and generally controlled the scholarship and its only connection with the university was that it was tenable there, there would not be a benefit to the university in terms of the special provisions - it would not add to the affairs and activities for which the university is responsible.

12. Branch offices are reminded of the need to update their own gift index, every quarter, by retyping the whole of any page where alterations, additions or deletions are found necessary as a result of any decisions given by that branch during the quarter. The retyped pages should then be copied and despatched direct to all other branch offices and Head Office.

COMMISSIONER OF TAXATION
September 1985