IT 2259 - Income tax : gifts - acceptable dissolution clause

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TAXATION RULING NO. IT 2259

INCOME TAX : GIFTS - ACCEPTABLE DISSOLUTION CLAUSE

F.O.I. EMBARGO: May be released

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I 1205974	GIFTS	78(1)(a)

PREAMBLE Where a fund, authority or institution seeks recognition under any of the sub-paragraphs of paragraph 78(1)(a) of the Income Tax Assessment Act, so that gifts to it may be an allowable income tax deduction, it is necessary that the founding documents contain, amongst other things, an acceptable dissolution clause. From time to time advice is sought from this office as to what constitutes an acceptable dissolution clause.

RULING 2. Generally speaking, a dissolution clause provides that, upon the winding-up of the fund, authority or institution, all assets remaining after the payment of just debts and liabilities are to be transferred to one or more funds, authorities or institutions having similar objects and which come within the scope of paragraph 78(1)(a).

3. The precise form of wording of a dissolution clause is a matter for the founders of the particular organisation. They may specify that all remaining assets are to be distributed:-

(1) to a named fund, authority or institution known to have been approved under a particular sub-paragraph of paragraph 78(1)(a);

(2) to any fund, authority or institution approved under one or more sub-paragraphs of paragraph 78(1)(a) of the Act, e.g. to public benevolent institutions approved under sub-paragraph 78(1)(a)(ii) of the Act.

4. The following is an example of a commonly used dissolution clause:-

> "If upon the winding up or dissolution of the ..... there remains, after satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the members of the .... but shall be given or transferred to some other institution or institutions having objects similar to the objects of the ..... and which is a fund, authority or institution approved by the Commissioner of Taxation as a fund, authority or institution referred to in

paragraph 78(1)(a) of the Income Tax Assessment Act, 1936."

5. The above example is merely intended as an illustration of an acceptable dissolution clause and should not be construed as indicating any preference or requirement as to wording or format.

COMMISSIONER OF TAXATION
28 February 1986