IT 2265 - Income tax : donations of policies of life insurance

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TAXATION RULING NO. IT 2265

INCOME TAX : DONATIONS OF POLICIES OF LIFE INSURANCE

F.O.I. EMBARGO: May be released

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REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1075317	DONATIONS OF POLICIES OF LIFE INSURANCE	78(1)(a)

PREAMBLE This Office has been asked in what circumstances donations of life insurance policies to charitable institutions and the subsequent payments of premiums thereon qualify as income tax deductions for gifts in terms of paragraph 78(1)(a).

RULING 2. Where a donor makes an absolute assignment of a policy of insurance on the donor's life to an institution which is specified in or approved for the purposes of paragraph 78(1)(a) of the Income Tax Assessment Act, so that the institution is entitled to receive the benefits from the policy and at the same time is liable to pay the premiums, the assignment of the policy of insurance on the donor's life is a gift of property to the institution. Provided the policy has been purchased within the twelve months preceding the assignment, it will qualify as a gift of property for the purposes of paragraph 78(1)(a). The value of the gift, i.e. the amount to be allowed as an income tax deduction is deemed, by the operation of sub-section 78(2) of the Act, to be the value of the policy at the time of assignment, i.e. the surrender value, or the amount paid by the donor for the policy, whichever is the lesser amount.

3. The payment of premiums by a donor would qualify as gifts to the institution and would also be an income tax deduction. This would be so whether the donor pays the amount of the premiums to the assurance company or to the institution.

4. Whether or not an income tax deduction is to be allowed in respect of the assignment will depend upon whether the assignment is characterised as a gift. As is stated in FC of T v McPhail (1968) 117 CLR 111 "to constitute a gift it must appear that the property transferred was transferred voluntarily and not as the result of a contractual obligation to transfer it and that no advantage of a material character was received by the transferor by way of return"; see also Leary v FC of T 80 ATC 4438 : 11 ATR 145.

5. It has been suggested that assignments of life insurance policies may be made by parents, relatives or associates of inmates of institutions or organisations to which the policies are assigned. Any assignment where the assignor

expected a benefit for the assignment and/or the payment of premiums, i.e. where it substituted for or reduced the payment of fees in respect of an inmate of an institution, would not be a gift for the purposes of paragraph 78(1)(a).

COMMISSIONER OF TAXATION
6 March 1986