


IT 2628 - Income tax: trusts - concessional treatment on winding up of non-resident trusts

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TAXATION RULING NO. IT 2628

INCOME TAX: TRUSTS - CONCESSIONAL TREATMENT ON
WINDING UP OF NON-RESIDENT TRUSTS

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I 1012551 TRUSTS - CONCESSIONAL 102AAN
TREATMENT ON WINDING UP
OF NON-RESIDENT TRUSTS

OTHER RULINGS ON THIS TOPIC:

PREAMBLE The purpose of this Ruling is to clarify an issue relating to the availability of the concessional tax treatment provided under section 102AAN of the Income Tax Assessment Act 1936 (the Act) for taxable distributions made by certain non-resident trusts that are wound up before 30 June 1991. One interpretation of the provision would unduly restrict the availability of the concession and to that extent would defeat the legislative purpose of encouraging people to wind up non-resident trusts controlled by Australian residents.

2. Section 102AAN provides for the grant of a rebate of tax that will have the effect that the tax applicable to certain distributions made by non-resident discretionary trusts will not exceed 10 per cent of the taxable amount of the distributions. The rebate will apply only where the distribution is made after 7.30pm Eastern Standard Time on 12 April 1989 (the Information Paper or 'IP' time) and before 30 June 1991. The other conditions set out in section 102AAN must also be satisfied.

3. Clarification has been sought on the interpretation to be placed on the condition set out in paragraph 102AAN(1)(e), in particular whether the term 'transferors' that is used in that paragraph is to be taken to refer to -

- . any transferor, whether an Australian entity or not, as referred to in paragraph 102AAN(1)(b); or
- . an Australian entity as referred to in paragraph 102AAN(1)(c).

The answer to this question is important because the concessional treatment for trust distributions will not apply where the 'transferors', or any associates of the transferors, transferred property or services to the trust after the IP time. So, it is necessary to understand, in those cases where

transfers have occurred after the IP time, whether the transferor is a transferor of the type who is prohibited from making transfers after the IP time. The only exception is for property or services transferred in relation to the provision of personal services in connection with the winding up of the trust.

RULING

4. Paragraph 102AAN(1)(b) requires that one or more 'entities' should have transferred property or services to the non-resident trust estate before the IP time. As stated above, in this context these entities are referred to as 'transferors', and paragraph 102AAN(1)(b) does not limit this category to Australian entities.

5. Paragraph 102AAN(1)(c) also uses the concept of transferors but also specifies that at least one of the transferors should have been an Australian entity at one of the following times:

- (i) when the property or services were transferred;
- (ii) in the case of a natural person (not being a trustee), at the end of 30 June 1991; or
- (iii) in the case of companies, partnerships and natural persons in the capacity of trustees, the IP time.

Paragraphs 102AAN(1)(b) and 102AAN(1)(c) operate together to set out the requirement that an entity that was an Australian entity at the relevant time specified in the latter paragraph should have transferred property or services to the non-resident trust before the IP time. This formulation enables an individual, who transferred property to the non-resident trust before the IP time but who was not a resident of Australia at that time, to meet that requirement if he or she became a resident before 30 June 1991. In other words, it is not necessary that a transferor who is a natural person (other than in the capacity of a trustee) should have been an Australian resident at the time of the transfer.

6. Paragraph 102AAN(1)(e) provides, in general, that the 'transferors', or associates of the transferors, should not have transferred property or services to the trust estate after the IP time.

7. A construction of paragraph 102AAN(1)(e) that gives the term 'transferor' the same meaning as it has in paragraph 102AAN(1)(b) will have the effect that the coverage of the tax concession provided in section 102AAN will be narrowed down unduly.

This is because a non-resident entity that provided, for example, accounting and management services to the trust, will be treated as a transferor under paragraph 102AAN(1)(b). This in turn would lead to the unacceptable result that if the non-resident entity continues to provide services to the trust after the IP time, paragraph 102AAN(1)(e) would preclude the beneficiaries of that trust from the concession. A construction that limits the availability of the rebate in this way is seen

as inconsistent with the purpose of the section, which is to provide an incentive to wind up non-resident discretionary trusts controlled by Australian residents who would be liable to tax under the accruals measures.

8. Given the purpose of the provision and given that people only have until 30 June 1991 to avail themselves of this concession, a purposive approach will be taken to the interpretation of paragraph 102AAN(1)(e). Support for this approach can be found in the Explanatory Memorandum on paragraph 102AAN(1)(b) which in referring to an Australian entity that transfers property or services to the trust shows, that it was intended that only transferors that are Australian entities should be within the scope of that paragraph.

9. In other words, paragraph 102AAN(1)(e) will be applied so as to deny the concessional treatment provided by section 102AAN only where an Australian entity or an associate of the Australian entity transferred property or services to that trust after the IP time.

COMMISSIONER OF TAXATION
14 March 1991