TD 92/D202 - Income tax: gifts: can a fund, authority or institution which is recognised under paragraph 78(1)(a), and has been established by a church or community organisation, have a dissolution clause that permits surplus property on winding-up of the fund, authority or institution to go to the general funds of the founding church or community organisation?

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Draft Taxation Determination

Income tax: gifts: can a fund, authority or institution which is recognised under paragraph 78(1)(a), and has been established by a church or community organisation, have a dissolution clause that permits surplus property on winding-up of the fund, authority or institution to go to the general funds of the founding church or community organisation?

1. No. The only exception being if the founding organisation **as a whole** is recognised under paragraph 78(1)(a) of *the Income Tax Assessment Act*.

2. Paragraph 78(1)(a) enables donors to claim income tax deductions for gifts of $2 upwards to various classes of funds, authorities and institutions. The paragraph specifically names a small number of organisations and also lists various classes of organisations which attract the concession.

3. Taxation Ruling No IT 2259 discusses, and gives an example of, an appropriate dissolution clause for funds. The requirements of the dissolution clause as described in IT 2259 are to ensure that, in the event of an approved fund, authority or institution being wound-up, gifts which have attracted income tax deductibility for the donor flow to, and are ultimately used by, a fund, authority or institution which itself attracts the concession.

Example:

A church establishes a school building fund in terms of sub-paragraph 78(1)(a)(xv). As gifts to the general funds of a church are not deductible to donors it is not acceptable to provide that on the dissolution of the school building fund surplus cash and property are transferred to the general funds of the church . Surplus property may only be transferred to some other "tax deductible" fund conducted by the church , and if none exists, to some other "tax deductible" fund conducted by another organisation.

Commissioner of Taxation
12/11/92

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Subject Ref: Dissolution clause; gifts; winding-up
Legislative Ref: ITAA Paragraph 78(1)(a)
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