

IT 136 - Tax avoidance schemes: unit trusts



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TAXATION RULING NO. IT 136

TAX AVOIDANCE SCHEMES : UNIT TRUSTS

F.O.I. EMBARGO: May be released

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TAX AVOIDANCE SCHEMES

PART IVA

UNIT TRUSTS

PREAMBLE

Consideration was given to the possible application of Part IVA where a business proposed to reorganise its operations so as to establish a unit trust for the benefit of the shareholders and their families.

FACTS

2. The proposal was to restructure the business carried on by a company, 'A' Pty. Ltd. A subsidiary company 'B' Pty Ltd conducts an allied type of business. Under the Articles of Association of 'A', share holding is restricted to employees of the group only. There are presently 31 shareholders.

3. The proposed restructuring involves the establishment of a unit trust with a corporate trustee to:

- a. acquire at market value the freehold properties owned by 'A';
- b. acquire as a going concern part of the business at present conducted by 'A'; and
- c. borrow, interest free, the surplus funds from time to time in the hands of 'A' for investment by the unit trust.

4. It is proposed that the holders of units in the unit trust will be discretionary trusts established for the benefit of the shareholders of 'A' and their families. In accordance with established company policy, ex-group employees will be required to surrender all units whether held directly or through family trusts etc. on ceasing to be employed by the group.

5. The reason for restructuring the group is to provide a means of attracting and holding highly qualified personnel in the professional field in which the group operates. It is expected that the arrangements proposed will foster the view that the group provides a desirable and competitive career both to be adopted on a permanent basis and a suitable alternative to starting up in the business of the profession on a self employed basis.

RULING

6. The view was formed, on the information furnished, that

the provisions of Part IVA would have no application to the proposed arrangements. The ruling was given on the understanding that the respective personal remunerations of the shareholders in the form of salaries, wages, bonuses, allowances, directors' fees, etc., are not reduced as a result of implementing the proposal.

COMMISSIONER OF TAXATION