


IT 2188 - Income tax : examination of section 23F superannuation fund trust deeds

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TAXATION RULING NO. IT 2188

INCOME TAX : EXAMINATION OF SECTION 23F SUPERANNUATION
FUND TRUST DEEDS

F.O.I. EMBARGO: May be released

REF

H.O. REF: 85/2426-2

DATE OF EFFECT:

B.O. REF:

DATE ORIG. MEMO ISSUED:

F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1124053	SUPERANNUATION SECTION 23F STANDARD TRUST DEEDS APPROVAL OF TRUST DEEDS	23F

RULING

Up to the present time it has been the practice of the Australian Taxation Office to undertake a detailed examination of trust deeds for section 23F superannuation funds. The examination has not been confined solely to ascertaining whether the formal requirements of the Income Tax Assessment Act have been satisfied but it has extended also to making comments for the benefit of fund trustees.

2. In many instances a standard trust deed is used to establish more than one section 23F superannuation fund. In other cases funds are established using deeds unique to the particular fund. In the past promoters of standard deeds, prior to making them available to their clients, have requested and received confirmation that the deeds satisfied the formal requirements of the income tax law. Where the particular standard deed was to be used to establish funds in more than one State it has been usual for the promoter to seek the requisite confirmation from Head Office in Canberra. Trustees of funds established under unique trust deeds have also sought confirmation that their trust deeds satisfy the requirements of the income tax law.

3. Experience has shown that it is not wholly necessary to undertake the detailed examination of all superannuation fund trust deeds that has hitherto taken place. The procedure for examination of superannuation fund trust deeds has been modified therefore in the interests of accelerating the examination in this office and of generally facilitating the handling of income tax returns of superannuation funds. The purpose of this ruling is to outline the modified procedures.

4. A questionnaire designed to indicate whether a trust deed satisfies the formal requirements of the income tax law is now available from Taxation offices throughout Australia.

5. Where prior examination of a standard trust deed is

sought it will be necessary for both the standard deed and a completed questionnaire to be forwarded to the Taxation Office in whose area the promoter of the deed is located. It will no longer be necessary to forward deeds to Head Office. Where the trust deed is satisfactory it will be given a reference number which will be communicated to the promoter on the advice giving approval to the trust deed.

6. The promoter of an approved standard trust deed will be required to advise the trustee of any fund established using the standard trust deed to include in the first income tax return of the superannuation fund a copy of the executed trust deed and a statement indicating that the fund has been established using, without alteration, standard deed reference number

7. Where a superannuation fund is established other than by use of a standard deed it will be necessary for the trustee of the fund to include with the first income tax return of the fund a copy of the executed trust deed and a completed questionnaire.

8. Irrespective of the type of deed adopted it will not be necessary for a trustee to submit the deed to this office prior to lodgment of the first income tax return for the superannuation fund. As a general rule there will not be any correspondence with the trustee in relation to the trust deed. In due course a notice of assessment or advice that no tax is payable will be forwarded to the trustee. The file number of the superannuation fund will appear thereon.

9. Similar procedures will be followed where material amendments are made to superannuation fund deeds. Whether it is an approved standard trust deed or a non-standard deed it will be necessary for the promoter or the trustee to complete a new questionnaire and forward it together with a copy of the amendment to the appropriate Taxation Office. In the case of an approved standard trust deed a new reference number will be allocated. Trustees of superannuation funds who adopt the approved amended standard trust deed should refer to the new reference number in income tax returns lodged after the date of adoption.

10. It is important to remember that the acceptance of a superannuation fund trust deed as satisfying the formal requirements of the income tax law does not carry with it a decision by this office that the fund is exempt from income tax under section 23F. Exemption of a superannuation fund from income tax will depend upon whether the year to year administration of the fund is in accordance with the requirements of section 23F.

COMMISSIONER OF TAXATION
30 August 1985