

IT 2386 - Income tax: gifts to public benevolent institutions

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TAXATION RULING NO. IT 2386

INCOME TAX : GIFTS TO PUBLIC BENEVOLENT INSTITUTIONS

F.O.I. EMBARGO: May be released

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I 1210613 78(1) (a)

PREAMBLE This office has considered the operation of sub-paragraph 78(1) (a) (ii) of the Income Tax Assessment Act in relation to a proposed public benevolent institution where the persons who are to benefit from the institution are resident in an overseas country.

FACTS 2. The purpose of the institution was to render financial assistance to people in necessitous circumstances in an overseas country. It was to be a non-profit, non-political organization. It was proposed that funds would be collected exclusively in Australia through general fund raising activities. The directors would then forward funds to a representative in England who would then send them to the overseas country.

RULING 3. Paragraph 78(1) (a) provides that gifts of \$2 and upwards made by a taxpayer "to any of the following funds, authorities or institutions in Australia" are allowable as deductions for income tax purposes.

4. In paragraph 26 of Canberra Income Tax Circular Memorandum 806 (CM 806) it is stated that the expression "in Australia" refers to the location of the institution and not to the persons who are to benefit from the institution's activities. It was accepted that, if a public benevolent institution is located in Australia, it is not essential that the granting of assistance be limited to persons in Australia.

5. CM 806 was circulated in 1961. In 1967 a memorandum addressed to all Deputy Commissioners explained that the comments in paragraph 26 of CM 806 were based on the case of a society which had been recognised as a public benevolent institution even though its charter authorised the use of the society's funds outside Australia. Approval of the society as a public benevolent institution had been granted on the understanding that the main function of the society was to carry out its benevolent work in Australia.

6. The memorandum went on to state that, not only must the fund, organisation or institution be established and maintained

in Australia but its activities should also be confined to Australia. That has been the official approach to the operation of paragraph 78(1)(a) ever since. It was against this background that sub-paragraph 78(1)(a)(ixii) and sub-sections 78(8) to 78(12) were established to allow tax deductions in respect of gifts to approved overseas aid organisations.

7. Because of the long standing approach to the operation of paragraph 78(1)(a) the organisers of the institution described in paragraph 2 were advised that gifts to the institution would not be allowable as income tax deductions under sub-paragraph 78(1)(a)(ii).

COMMISSIONER OF TAXATION
26 March 1987