

TD 93/122 - Income tax: are organisations which are established to promote tourism exempt from income tax under paragraph 23(h) of the Income Tax Assessment Act 1936 ?

! This cover sheet is provided for information only. It does not form part of *TD 93/122 - Income tax: are organisations which are established to promote tourism exempt from income tax under paragraph 23(h) of the Income Tax Assessment Act 1936 ?*

! Except for the partial withdrawal of IT 2415 effected by paragraph 4, this Taxation Determination is redundant.

As foreshadowed in the note in TD 93/122, the *Income Tax Assessment Act 1936* was amended by the *Taxation Laws Amendment Act (No. 3) 1993* to extend exemption to the income of not-for-profit organisations established for the purpose of promoting the development of tourism (paragraph 23(h) of the ITAA 1936). This amendment applied to income derived on or after 1 July 1993.

Paragraph 23(h) was subsequently re-written into Subdivision 50-A of the *Income Tax Assessment Act 1997* (ITAA 1997). Section 50-1 together with section 50-40 table item 8.1(b) provide that not-for-profit organisations established to promote the development of tourism are exempt from income tax. These provisions took effect from 1 July 1997.

This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVAAA of the *Taxation Administration Act 1953*, is a public ruling for the purposes of that Part. Taxation Ruling TR 92/1 explains when a Determination is a public ruling and how it is binding on the Commissioner. Unless otherwise stated, this Determination applies to years commencing both before and after its date of issue. However, this Determination does not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Taxation Determination

Income tax: are organisations which are established to promote tourism exempt from income tax under paragraph 23(h) of the *Income Tax Assessment Act 1936*?

1. No. Paragraph 23(h) provides that the income of a society or association not carried on for the purposes of profit or gain to its individual members, established for the purpose of promoting the development of aviation or of the agricultural, pastoral, horticultural, viticultural, manufacturing or industrial resources of Australia, is exempt from income tax.
2. The development of one or more of the resources specified in paragraph 23(h) may be promoted incidentally by the activities of tourism organisations. That is not enough to qualify the organisations for exemption. To qualify for exemption, the principal or dominant purpose for which an organisation is established must be to promote the development of one or more of those resources themselves: see *Australian Insurance Association v. FC of T* 79 ATC 4569; (1980) 10 ATR 333.
3. It has been suggested to this office that bodies which promote tourism are exempt under paragraph 23(h) on the basis that tourism is an industrial resource of Australia. However, in the *Australian Insurance Association* case, Sheppard J stated that the draftsman did not intend to give the word 'industrial' any wide meaning that would embrace business or commercial resources generally. Tourism is a business or commercial resource, but is not an industrial resource.
4. Taxation Ruling IT 2415, in the course of arriving at its particular conclusions, implies that tourism is an industrial resource for the purposes of paragraph 23(h). For the reasons outlined in paragraphs 1 to 3 of this Determination, that view is considered to be incorrect. To the extent that IT 2415 deals with this issue, it is withdrawn with respect to income derived by tourist organizations in the 1993/94 year of income and subsequent years.

Note: In a News Release of 11 March 1993, the then federal Minister for Tourism announced that the *Income Tax Assessment Act 1936* will be amended to extend to tourism industry associations the same tax exemption given to associations promoting the development of agricultural, manufacturing or industrial resources of Australia.

FOI INDEX DETAIL: Reference No. I 1215382

Previously issued as Draft TD 93/D49

Related Determinations:

Related Rulings: IT 2415

Subject Ref: income tax; exempt income; industrial resources of Australia; tourism; tourism organisations

Legislative Ref: ITAA 23(h)

Case Ref: *Australian Insurance Association v. FC of T* 79 ATC 4569; (1980) 10 ATR 333

ATO Ref: NO 92/9022-2

ISSN 1038 - 8982