



TD 93/191 - Income tax: gifts: can an entity which is seeking recognition in terms of 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 entity to go to the general funds of the founding church or community organisation?

 This cover sheet is provided for information only. It does not form part of *TD 93/191 - Income tax: gifts: can an entity which is seeking recognition in terms of 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 entity to go to the general funds of the founding church or community organisation?*

 This document has changed over time. This is a consolidated version of the ruling which was published on 7 October 1993

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: gifts: can an entity which is seeking recognition in terms of 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 entity to go to the general funds of the founding church or community organisation?

1. No, unless 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 and upwards to various classes of funds, authorities and institutions. The paragraph specifically names a small number of organisations and also lists various classes of entities which attract the concession.
3. Taxation Ruling IT 2259 discusses an appropriate dissolution clause for entities. The ruling provides that on dissolution surplus property must be transferred to some other entity which comes within the scope of paragraph 78(1)(a). The form of wording of the dissolution clause is at the discretion of the founders of the entity, however, IT 2259 gives an example of a commonly used dissolution clause.
4. The requirements of the dissolution clause as described in IT 2259 are to ensure that, in the event of an approved entity being wound-up, gifts which have attracted income tax deductibility for the donor flow to, and are ultimately used by, an entity which itself attracts the concession.

Example:

A church establishes a public fund for the relief of persons in necessitous circumstances in terms of sub-paragraph 78(1)(a)(iii). 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 fund surplus cash and property are transferred to the general funds of the church. Surplus cash and property may only be transferred to some other 'tax deductible' entity. That entity may be, for example, another tax deductible fund conducted by the church, a tax deductible organisation associated with the church or some other unassociated entity, as long as it is recognised in terms of paragraph 78(1)(a).

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Related Determinations:

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