TR 96/1 - Income tax: deductions for gifts made under the Taxation Incentives for the Arts Scheme: procedures and valuation method

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Taxation Ruling
Income tax: deductions for gifts made under the Taxation Incentives for the Arts Scheme: procedures and valuation method

other Rulings on this topic

IT 2624; IT 2662; TD 93/128

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*This Ruling, 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 Ruling is a public ruling and how it is binding on the Commissioner.*

*[**Note**: This is a consolidated version of this document. Refer to the Tax Office Legal Database (http://law.ato.gov.au) to check its currency and to view the details of all changes.]*

What this Ruling is about

Class of person/arrangement

1. A deduction for a gift of property of the value of $2 or more made under the Taxation Incentives for the Arts Scheme ('the Scheme') is generally allowable under subsections 78(6) or (7) of the *Income Tax Assessment Act 1936* ('the Act'). Compliance with the special valuation conditions in subsection 78(13) of the Act is a prerequisite to the deductibility under each of these provisions.

2. Broadly stated, these special conditions are satisfied if:

   (a) the making of the gift does not result in an amount being included in the taxpayer's assessable income even though, had the property been sold by the taxpayer rather than donated, any profits or proceeds on the sale would have been included in assessable income; or

   (b) at least two written valuations by approved valuers, stating their opinion as to the value of the property on, or within 90 days of, the time of the gift, are obtained by the taxpayer.

3. The written valuations in (b) above are relevant in determining the value of a gift under the Scheme, where subparagraph 78(14)(c)(i) applies; that is, an average of two or more valuations is adopted.

4. This Ruling considers the situation in (b) and explains:

(a) the procedures that we prefer a donor to follow when claiming a deduction for a gift under the Scheme, based on the average of two or more valuations; and

(b) what we consider to be the meaning of 'value' that should be used by approved valuers for the purposes of providing valuations under paragraph 78(13)(b).

Previous Rulings

5. Taxation Ruling IT 2076 is now withdrawn.

Date of effect

6. This Ruling applies to years commencing both before and after its date of issue. However, the Ruling 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 Ruling (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Ruling

Preferred procedures

7. A donor seeking to claim a deduction for a gift under the Scheme is required to obtain, from persons who are approved valuers (subsection 78(26) of the Act), at least two written valuations of the gifted property. These valuations must state the value of the property at the time the gift was made or, if the valuation was undertaken within 90 days (or such further period allowed by the Commissioner) of the making of the gift, the value at the time of valuation.

8. The donor should send the originals of the written valuations to the recipient institution which should then forward them, together with any further documentation required, to the Committee on Taxation Incentives for the Arts ('the Committee'). If the Committee accepts that the values and other aspects of the gift conform with all relevant requirements, it will endorse the valuations to that effect and return them to the donor.

9. Consistent with the approach taken in Taxation Rulings IT 2624 and IT 2662, confirmed in Tax Determination TD 93/128, the donor only has to make the valuation documents available to the Taxation Office on request. In this regard, the time by which these documents need to be lodged with us can be taken to extend until such time as we

ask that they be made available (sub-subparagraph 78(13)(b)(iii)(C)). The donor should retain the documents and not lodge them with the income tax return for the year in which the gift is made.

The 'value' of property

10. We consider that the meaning of 'value' adopted by the Supreme Court of New South Wales (Hunt J) in *Coppleson v. FC of T* 81 ATC 4019; (1981) 11 ATR 472 (*Coppleson's* case) applies to the value of property in paragraph 78(13)(b).

11. In our opinion, the 'value' of property for the purposes of that paragraph is determined by **what a willing, but not anxious, vendor and a willing, but not anxious, purchaser could reasonably be expected to agree for the transfer of the property**. **This assumes the existence of such a vendor and purchaser both uninfluenced by any consideration of sentiment or need**.

12. We do not accept that the decision of the Administrative Appeals Tribunal in *Case X12* 90 ATC 162; *AAT Case 5594* (1989) 21 ATR 3144 is authority for a contrary view.

13. In most cases in which the value of a gift is determined under paragraph 78(14)(c), we will accept that the average of valuations obtained from approved valuers fairly represents the value of the gifted property. This acceptance is conditional on the values having been determined according to the meaning of 'value' outlined in this Ruling and endorsed by the Committee. However, there may be circumstances where information is available which suggests that the average of the values should not be accepted because one (or more) of the valuations has been improperly made or made on an unsound basis. For example, a valuer may have changed his or her view on certain matters since making the valuation - see paragraphs 38 and 50 of *Case Y22* 91 ATC 257; *AAT Case 6919* (1991) 22 ATR 3166. We will consider each case of this nature in the light of its own facts and make a valuation based on the principles outlined above.

Explanations

General background

14. Under the Scheme, donors of works of art or other property to:

(a) (i) The Australiana Fund;

(ii) a public library in Australia;

(iii) a public museum in Australia;

(iv) a public art gallery in Australia; or

(v) an institution in Australia consisting of a public library, a public museum or public art gallery or any two of them (subsection 78(6)); or

(b) Artbank (subsection 78(7));

may, in some circumstances, obtain a deduction for their gifts, based on valuations determined by at least two approved valuers, pursuant to paragraph 78(13)(b).

15. Further information concerning the Scheme, including:

(a) guidelines as to the classification of fields of valuation;

(b) guidelines for the valuation of:

(i) scientific journals;

(ii) manuscript and other paper based documentary material;

(iii) aircraft;

(c) a procedural checklist for recipient institutions; and

(d) lists of approved valuers

can be obtained from:

The Secretary
Committee on Taxation Incentives for the Arts
Department of Communications and the Arts
GPO Box 2154
CANBERRA ACT 2601

Telephone: (06) 279 1000
Fax: (06) 279 1697

Preferred procedure

16. The procedures set out in this Ruling ensure that there is suitable evidence that the donor has made the gift and that the valuations are the subject of appropriate scrutiny. They also reflect the practical reality that the donor, the approved valuers, the recipient institution, the Committee and the Commissioner all have a role in administering the scheme.

The 'value' of property

17. The Supreme Court of New South Wales considered the meaning of 'value' for the purpose of the then general gift provisions (currently subsection 78(4)) in *Coppleson's* case. In determining the

value of a gift of property, Hunt J (81 ATC at 4025; 11 ATR at 480) adopted the meaning of 'value' applied in the High Court of Australia in *Abrahams v. FC of T* (1944) 70 CLR 23 in the context of compulsorily acquired land. This was described by Williams J at 29 as:

> ' ... the price which a willing but not anxious vendor could reasonably expect to obtain and a hypothetical willing but not anxious purchaser could reasonably expect to have to pay ... if the vendor and purchaser had got together and agreed on a price in friendly negotiation.'

18. We are of the view that the term 'value' in paragraph 78(13)(b) has the same meaning as in paragraph 78(4)(c). Both provisions relate to gifts of property which give rise to a deduction based on the value of that property.

19. Accordingly, approved valuers should adopt the same concept of value as that used in *Coppleson's* case in determining the value of property under paragraph 78(13)(b).

Commissioner of Taxation

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- ITAA 78(14)(c)(i)
- ITAA 78(26)

case references
- Abrahams v. FC of T (1944) 70 CLR 23
- Coppleson v. FC of T 81 ATC 4019; (1981) 11 ATR 472
- Case X12 90 ATC 162; AAT Case 5594 (1989) 21 ATR 3144
- Case Y22 91 ATC 257; AAT Case 6919 (1991) 22 ATR 3166