IT 295 - Conditional gifts to the australiana fund, public libraries, museums, art galleries

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TAXATION RULING NO. IT 295

CONDITIONAL GIFTS TO THE AUSTRALIANA FUND, PUBLIC LIBRARIES, MUSEUMS, ART GALLERIES

F.O.I. EMBARGO: May be released

REF H.O. REF: J 153/126/3 P3 F191 DATE OF EFFECT:

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F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1103854	GIFTS	78(1)(aa)
	CONDITIONAL GIFTS	78(6F)

FACTS The following advice was given in reply to a request for guidelines as to the basis upon which the value of a conditional gift to the Australiana Fund might be reduced because of an arrangement under which custody of the gifted property is to remain with the donor for an agreed period after the gifting. The advice given applies equally to gifts made to, and accepted by, a public library, public museum or public art gallery for inclusion in a collection maintained or being established by the donee institution (section 78(1)(aa)).

RULING 2. This is a matter not without its difficulties and one which will depend largely upon the kinds of conditions that are attached to particular gifts and the weight that may reasonably be given to the effect of those conditions upon the donee institution acquiring through the gift unfettered possession and legal title to the gifted property.

3. Factors that would have a bearing on this would include the effect of a life or fixed period interest of the donor in the gifted property, a joint life or survivorship interest of the donor and his or her spouse, life expectancy of the relevant parties as well as undetermined factors such as the periods during which the donee institution may, if so agreed, require possession of the gifted property for display or study purposes.

4. The end result is not one that could be arrived at by a simple arithmetical formula. In principle, the amount of the deduction for a conditional gift would be the amount which a purchaser could be expected to pay on the date of the gift to acquire the property concerned from the donee, if the purchaser were to be buying the property on the same terms as the donee is receiving it. As mentioned previously, this would depend on an assessment of all the surrounding circumstances.

5. However to illustrate the basic method that would be applied, assume a simple case in which property worth $10,000 has been given to the Australiana Fund or to a public library, art gallery or museum, subject to the donor retaining full rights of possession and enjoyment for the ensuing 10 years.

Using what would seem to be an appropriate discounting factor of 10%, the present value of the gift of $10,000 would be $3,885 and that would be the amount of the deduction allowed.

6. From an assessing viewpoint where, for deduction purposes, the value of a gift to the Australiana Fund or to a public library, public museum or public art gallery is to be reduced because of the operation of section 78(6F), it would be preferable to call upon the expertise of the Valuation Branch of the Australian Taxation Office to calculate the discounting factor necessary to arrive at the reduced value of a conditional gift.

COMMISSIONER OF TAXATION