

TR 94/D34 - Income tax: Overseas Aid Gift Deduction Scheme



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Draft Taxation Ruling

Income tax: Overseas Aid Gift Deduction Scheme

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What this Ruling is about

1. The gift provisions of the *Income Tax Assessment Act 1936* (the ITAA) are generally directed to the allowance of deductions for donations to certain funds, authorities or institutions whose activities are confined to Australia. An exception to this general rule exists in respect of donations made to public funds established exclusively for the relief of persons in certified developing countries. A necessary requirement for this concession is that the public fund be established and administered in Australia. The arrangements are generally known as the 'Overseas Aid Gift Deduction Scheme'.

2. The purpose of this Ruling is to provide guidelines that an organisation can follow when seeking:

- (a) to have a fund admitted to the Overseas Aid Gift Deduction Scheme;
- (b) to change its name or that of its overseas aid fund which has already been admitted to the scheme; or
- (c) to have a fund removed from the Overseas Aid Gift Deduction Scheme.

Ruling

Admission to the Overseas Aid Gift Deduction Scheme

3. An organisation seeking access to the Overseas Aid Gift Deduction Scheme must, in the first instance, be accepted as an 'approved organisation', that is, an organisation approved by the Minister for Foreign Affairs in terms of subsection 78(19) of the ITAA. Details of the criteria to be met, and those countries which are

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considered to be developing countries for the purposes of this provision, may be obtained by writing to:

The Director
NGO Programs and Liaison Section
Australian International Development Assistance Bureau
Department of Foreign Affairs and Trade
GPO Box 887
CANBERRA ACT 2601

Formal applications seeking the Minister's approval must also be forwarded to that address. The Minister will inform the Treasurer of each application that is approved.

4. Once an organisation has gained Ministerial approval, it is then necessary for it to satisfy the Treasurer that it has established a public fund exclusively for the relief of persons in certified developing countries (subsection 78(21)). The Australian Taxation Office (the ATO) is responsible for ensuring that the Treasurer is fully informed before he decides that issue.

5. Consequently, the documentation establishing such a fund must be submitted to the ATO for subsequent referral to the Treasurer. This can be done at the same time that the formal application has been lodged with the Department of Foreign Affairs and Trade. However, no decision will be made on its suitability until the approval of the Minister for Foreign Affairs, as referred to above, has been received.

6. The documentation required to satisfy the Treasurer for the purposes of subsection 78(21) is generally expected to meet the requirements listed below. Such requirements are normally sought to be met by any public fund which comes within the income tax gift provisions contained in subsections 78(4) and 78(5) of the ITAA. For further explanation and discussion of the criteria applicable to public funds under the general gift provisions, see draft Taxation Ruling TR 94/D12. The specific requirements for public funds seeking admission to the Overseas Aid Gift Deduction Scheme are that:

- (a) the fund is to be governed by a constitution or set of rules from which it is clear that its **exclusive purpose** is to provide relief to persons in certified developing countries;
- (b) members of the general public are to be invited to contribute to the fund;
- (c) gifts to the fund are to be kept separate from any other funds of the sponsoring organisation. A separate bank account and clear accounting procedures are required;
- (d) the fund is to be public in the sense that it be administered by a committee of persons a majority of whom have a degree of responsibility to the general community. In this

respect it will be necessary to provide details of the occupations and positions in the community of the fund's office-bearers;

- (e) should the fund be wound-up, any surplus money or assets are to be transferred to some other fund qualifying under the overseas aid gift provisions of the law, i.e., under item 9.1.1 of table 9 in subsection 78(4);
- (f) the fund's name has to reflect the fact that it is a developing country's aid fund and that the name appears on all receipts issued to the donors; and
- (g) that the ATO is to be informed of any changes within the organisation, reflecting on the operational or financial arrangements of the fund.

7. Should the Treasurer be satisfied for the purposes of subsection 78(21) the Treasurer may, at his or her discretion, by notice published in the Commonwealth Government *Gazette*, declare the fund to be an eligible fund under the Overseas Aid Gift Deduction Scheme. In such cases, it has been the usual practice for the Treasurer to advise the public of the declaration through the issue of a press release.

8. Gifts to an eligible fund will generally be deductible from the date of the *Gazette* declaring its eligibility, although a later date may be specified. The provisions governing overseas aid gift deductions in the ITAA do not allow the Treasurer to grant tax deductible gift status at a date prior to the gazettal of the fund.

Changes in name of organisation or fund

9. When an organisation seeks to change its name and/or that of its fund, it must write to the Australian International Development Assistance Bureau (AIDAB) for approval. AIDAB will advise the ATO of the organisation's request.

10. Where it is only the organisation which is seeking to change its name, and AIDAB considers the renamed **organisation** to be the same organisation as that approved previously, formal approval of the name change by the Minister for Foreign Affairs is not required because the previous approval would still be applicable to the renamed organisation. In this event AIDAB would advise the ATO of this decision. But if there is more than just an organisation name change involved, a new organisation approval might need to be sought from the Minister for Foreign Affairs, and the Minister would advise the Treasurer of the outcome of such an application. In the case where an organisation is seeking to change its name, the ATO may wish to re-examine the documentation of the overseas aid fund, and its activities,

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to ensure that it continues to comply with the requirements set down in the ITAA.

11. Where an organisation is seeking to change the name of its overseas aid fund, it will have to submit the renamed fund to the full approval process. That is, the fund will have to satisfy the Treasurer that it meets the public fund requirements discussed at paragraph 6. For a renamed **fund** to obtain tax deductibility gift status the Treasurer will have to declare in the *Gazette* that the 'new' fund is an eligible fund for the purposes of subsection 78(21) of the ITAA. The Treasurer will also have to revoke the 'old' fund for the purposes of subsection 78(23) of the ITAA.

12. Organisations seeking to have the 'new' name of their overseas aid fund approved, and tax deductible gift status granted to it, should continue to operate the 'old' fund until the name of the new fund is gazetted. Otherwise they will be unable to continue to collect tax deductible donations. Tax deductible donations can not be made to the 'new' fund until the 'new' fund is declared to be an eligible fund under the Overseas Aid Gift Deduction Scheme. Similarly, if the 'new' fund is not itself approved as an overseas aid fund at the time of cessation of the 'old' fund, it will not be able to receive any surplus money or assets from the 'old' fund. See paragraph 15 below which discusses the transfer of moneys or assets held by a fund which has ceased to exist.

Cessation of Overseas Aid Fund

13. Where an organisation seeks to wind up an existing aid fund, or the fund ceases to exist, the organisation should write to ATO seeking the revocation of the fund as an eligible fund.

14. The Treasurer will by notice in the Commonwealth Government *Gazette* revoke the earlier declaration that the fund is an eligible fund under the Overseas Aid Gift Deduction Scheme. The revocation is made under subsection 78(23). The notice of revocation must specify the date on which it will have effect. The date of effect cannot be earlier than the date on which the notice is published in the *Gazette*.

15. Any surplus money or assets held in the fund that have received tax concessions (i.e. the donors were entitled to claim tax deductions for the donations) must be transferred to some other fund qualifying under the overseas aid gift provisions of the ITAA; i.e., item 9.1.1 in table 9 of subsection 78(4).

Use of Donated Moneys

16. Money or assets derived by way of tax deductible gifts must be used exclusively for the relief of persons in certified developing

countries. This must be reflected in the fund's objects as stated in the constitution or other founding documents of the organisation.

17. The list of approved countries, as certified by the Minister for Foreign Affairs under subsection 78(20) of the ITAA, changes from time to time. Consequently, an overseas aid fund should approach AIDAB from time to time to ensure that countries to which it is providing relief continue to be certified developing countries. Otherwise a fund which has been set up to provide relief to persons in a particular certified developing country, where that country is subsequently removed by the Minister from the 'certified' list, would lose its tax deductible gift status. This is even if only part of a fund is being used to support activities in the now-uncertified country.

18. No part of the moneys or assets derived by way of tax deductible gifts can be transferred or paid, directly or indirectly by way of dividends, bonus or otherwise to any member of the organisation except by way of reimbursement for out-of-pocket expenses incurred on behalf of the fund or for proper remuneration for administrative services. Similarly, moneys or assets can not be used for some other project of the organisation which does not fall within the meaning of relief of persons in certified developing countries.

Date of effect

19. 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).

Previous Rulings

20. Taxation Rulings IT 2578 and IT 293 are now to be withdrawn. To the extent that the principles in those Rulings are still applicable and are still consistent with the current state of taxation judicial authority, they have been incorporated into this Ruling.

Commissioner of Taxation

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- ITAA 78(4) item 9.1.1
- ITAA 78(19)
- ITAA 78(20)
- ITAA 78(21)
- ITAA 78(23)
- ITAA 78(26)