

# ***IT 2344A - Addendum - Income Tax : trust schemes with non-resident beneficiaries : assessing guidelines : determination of objections : settlement guidelines***

 This cover sheet is provided for information only. It does not form part of *IT 2344A - Addendum - Income Tax : trust schemes with non-resident beneficiaries : assessing guidelines : determination of objections : settlement guidelines*



## **TAXATION RULING IT 2344**

### **ADDENDUM**

F.O.I. EMBARGO: may be released

Taxation Ruling IT 2344 is amended by the following;

1. F.O.I. INDEX DETAIL; delete reference to 'former sub-sections 226(2) and (3)'.
2. Title; delete the words 'ASSESSING GUIDELINES : DETERMINATION OF OBJECTIONS : SETTLEMENT GUIDELINES'
3. Paragraph 1, line 2; delete the words 'assessing and settlement'.
4. Paragraph 2; delete first sentence.
5. Paragraph 3, lines 2 and 3; delete the words 'for the purposes of assessment and determination of objections'.
6. Renumber sub-paragraphs 3(c) to 3(g) inclusive to 3(d) to 3(h) accordingly. Original sub-paragraph 3(h); delete.
7. Insert new sub-paragraph 3(c) as follows;  
'(c) the beneficiary's acknowledgement of entitlement, if any, issued to the trustee;'
8. Sub-paragraph 4(b); delete the final word 'and'.
9. Sub-paragraph 4(c); insert the following after at the end of the paragraph;  
'ie. details of the date, amount and method of remittance; details of bank and account name and number to which funds were deposited/transferred; and the names of all persons who are authorised to operate the account.'
10. Insert new sub-paragraph 4(d) as follows;  
'(d) provision of a statement signed by each non-resident beneficiary and witnessed by a certified authority or notary, which includes their full name and residential address and which acknowledges :
  - (i) awareness of being beneficiary of specific trust(s);
  - (ii) entitlement to, or receipt of specific trust distributions for specific years;
  - (iii) where distributions were loaned back to trust
  - (iv) entitlement to, or receipt of any interest payments made by the trust on funds loaned back to the trust;
  - (v) all amounts actually remitted to the non-resident by the trust, including details of method of remittance, bank name and account number of any bank used;



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- (vi) names of all persons authorised to operate the bank account that received remitted funds;
  - (vii) details of how remitted funds were used or evidence that funds have been retained in bank account, and
  - (viii) all remittances gifted back to either the default beneficiaries, the trustee or an associate.'
11. Paragraph 5, lines 5 and 6; delete 'the following assessment action is considered appropriate'; and replace with 'the arrangement is considered not to be bona fide.'
  12. Sub-paragraph 5(b); delete.
  13. 'Additional tax (Penalty)' heading and paragraph 6; delete.
  14. Insert new paragraph 6 as follows;
  - '6. In such situations, the arrangement can be challenged as being a sham, and would fail the requirements of subsection 190(b) of the *Income Tax Assessment Act 1936*. Refer to the following cases;
    - Case X22 90 ATC 242; 21 ATR 3245*
    - Case W48 89 ATC 460; 20 ATR 3719*
    - Faucilles Pty Ltd v FC of T 90 ATC 4003; 20 ATR 1712*Schemes considered to be shams could also be subject to the general anti-avoidance provisions of Section 260 and Part IVA of the *Income Tax Assessment Act 1936*.'
  15. 'Determination of Objections' heading and paragraphs 7 and 8; delete.
  16. Sub-paragraph 5(a) is to be amended to become the new paragraph 7. New paragraph 7 now reads;
    - 'Although the correct assessment treatment is not free from doubt, the assessment action is determined in each case by interpreting the trustees resolution and the trust deed. Generally, assessments should be raised on the basis that the entitlement to that income is



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governed by the default clause in the trust deed, i.e. on the beneficiaries specified in the trust deed as being presently entitled to the net income of the trust in default of a valid appointment by the trustee. If the trust deed does not include a default clause, the trustee should be assessed under section 99A.'

**Commissioner of Taxation**

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