


IT 2415 - Income tax : associations promoting development of Australian resources

 This cover sheet is provided for information only. It does not form part of *IT 2415 - Income tax : associations promoting development of Australian resources*

 The ATO has recently considered the decision of Federal Commissioner of Taxation v Co-operative Bulk Handling Ltd [2010] FCAFC 155 which dealt with section 50-40 (rewrite of section 23(h)) and does not consider that case to be in direct conflict with this ruling.

TAXATION RULING NO. IT 2415

INCOME TAX : ASSOCIATIONS PROMOTING DEVELOPMENT OF
AUSTRALIAN RESOURCES

F.O.I. EMBARGO: May be released

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EXEMPTIONS - INDUSTRY
TRAINING COMMITTEES

23(h)

PREAMBLE

Paragraph 23(h) of the Income Tax Assessment Act provides exemption from income tax for income derived by a non-profit society or association which has been established primarily for the purpose of promoting the development of aviation, agricultural, pastoral, horticultural, viticultural manufacturing or industrial resources of Australia.

2. This office recently considered the operation of paragraph 23(h) in relation to specific industry training committees (ITC's) established under the National Training Council. In particular, advice was sought whether it could be said that ITC's promote the development of industrial resources of Australia.

3. ITC's are established in various areas of industry under the auspices of the National Training Council, the Australian Government's labour force training advisory body. The Department of Employment and Industrial Relations administers the scheme.

4. The National Training Council is a tripartite organisation composed of employer, trade union and Commonwealth/State Government representatives. It advises the Minister for Employment and Industrial Relations on the development, operation and promotion of labour force training policies, priorities and programs by reporting regularly to the Minister and tabling an annual report in Parliament.

5. The objectives of an ITC include the identification of manpower training needs, the development and implementation of policies, plans and programs to systematically meet these needs and the promotion and improvement of systematic industry training for all levels of employment in their respective industry. ITC's also furnish advice on industry training itself. Essentially the functions of an ITC are twofold, i.e., to promote and develop systematic training in its industry and to provide policy advice to the National Training Council and the Minister for Employment and Industrial Relations on the labour force and the training matters affecting its industry.

Although industries bear the major responsibility for improving the level of activities within their sectors it is the Government which provides advice and financial support towards the establishment and ongoing operation of a structure to undertake the task.

RULING

6. The operation of paragraph 23(h) was considered by the Supreme Court of New South Wales in *Australian Insurance Association v. FCT*, 79 ATC 4569 ; 10 ATR 333. The Court found the Association did not qualify for exemption under paragraph 23(h) because it was established for the predominant purpose of protecting and furthering the interests of Australian insurance companies. Furthermore, the Court concluded that the expression "industrial resources" in paragraph 23(h) refers to resources such as those of the building, mining, quarrying, shipping and transport industries - it does not extend to business or commercial resources or resources of the kind promoted by the Association.

7. The reasoning in the decision in the *Australian Insurance Association* case highlights the matters that need to be satisfied in any case before exemption under paragraph 23(h) applies:-

- (a) Promotion of the specified resources must be the predominant purpose for which a particular body is established.
- (b) The resources, the development of which is being promoted, must come within the umbrella of the specified resources.

8. It is important to note that paragraph 23(h) does not refer to the promotion of specified resources - it is directed to the promotion of the development of the specified resources. In the context of paragraph 23(h) the term "development" must be taken to be used in a commercial or business sense, i.e. it comprehends all the elements which must be taken into account to ensure that the specified resources are used in the best interests of Australia. Reference might usefully be made to the observations of the High Court in *FCT v. Broken Hill Pty. Co. Ltd.*, 69 ATC 4029 ; 1 ATR 40 on the meaning of the term "development" in relation to the development of a mining property.

9. There can be little doubt that the identification of, and programmes to overcome, manpower needs and the establishment of systematic training schemes in a particular industry are necessary for the efficient operation of the industry - they are part and parcel of the development of the resources specified in paragraph 23(h). Although the connection may not be as readily apparent the development of marketing techniques may also be relevant to the development of resources - it could be said that there is little point in developing resources if the products of the resources cannot be sold. Another area where the connection with development of resources may not be direct is the development of tourism - but it does

play a part in the development of the resources specified in paragraph 23(h).

10. ITC's established and operating in the resource areas covered by paragraph 23(h) are considered to be exempt from income tax in terms of the paragraph. For the reasons given in the preceding paragraph it is accepted that exemption extends to ITC's in the retail selling industries and in the tourism industry. In the light of the decision in the Australian Insurance Association case ITC's established in the insurance industry, and in comparable industries, would not qualify for exemption.

11. Local government ITC's are in a different category. Generally it would be expected that these committees would be sponsored by local government councils and it would be difficult for them to establish that they were promoting the development of industrial resources of Australia. It is likely, however, that they would constitute instruments of local government and share the exemption conferred on local governing bodies and municipal councils by paragraph 23(d) of the Act.

12. Whether or not exemption applies in any case there will always be the practical question of whether ITC's have any taxable income. They are not engaged in any trading activities. Subscriptions from members of committees would not be assessable income nor would contributions from Government. In all probability fees charged for training, etc. and other income may well be exceeded by the expenses of training. If there is doubt concerning the income tax exempt status of a particular ITC appropriate enquiries should be made and the matter referred to this office for final decision.

COMMISSIONER OF TAXATION

25 June 1987