# *TD 2003/D5 - Income tax: what are some of the tax implications relating to the prepayment of school fees?*

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This document has been finalised by TD 2004/5 , TD 2004/6 , TD 2004/7.

# Draft Taxation Determination

## **Income tax:** What are some of the tax implications relating to the prepayment of school fees?

**Preamble**

*Draft Taxation Determinations (DTDs) represent the preliminary, though considered, views of the Australian Taxation Office. DTDs may not be relied on by taxpayers and practitioners. It is only final Taxation Determinations that represent authoritative statements by the Australian Taxation Office.*

1. A discount arising from a prepayment of school fees is not assessable income of the parent responsible for payment of the child's fees under either section 6-5 or 6-10 of the *Income Tax Assessment Act 1997* ('ITAA 1997').

2. The prepayment of school fees that is held on deposit or otherwise applied to a school-building fund is not an allowable deduction as a gift to a school-building fund under subsection 30-15(1) of the ITAA 1997.

3. The school's tax exempt status is not disturbed by allowing prepayment of school fees or by offering a discount for prepayment.

### Background

4. Some schools offer a school fee plan under which school fees can be prepaid for a child who is already studying or who is enrolled or accepted for enrolment for future years at the school. The person responsible for the payment of school fees (the Responsible Parent, who is commonly the parent, step-parent or guardian of the child) or another person who has a close personal relationship with the child (such as a sibling, grandparent, great grandparent, uncle or aunt of the child) may make the prepayment. As a consequence of the prepayment towards school fees, the school discounts the amount of the school fees of the child at the time the fees fall due. The school ordinarily advises of the amount of discount in advance and will take account of the amounts prepaid and the time at which the prepayment was made in determining the discount.

5. If no school fees actually arise, the school gives no discount and offers no other benefit or investment return for the prepayment (although actual amounts prepaid may be returned in whole or part). School fees might not arise, for instance, because the child does not commence or continue at the school and the Responsible Parent does not transfer the amount of any prepayments to the account of another child or children at the school for whom they are responsible. Any possibility of a benefit or investment return for the prepayment would take the prepayment and any discount beyond the scope of this Taxation

Determination, whether the benefit is given to the Responsible Parent or any other person. A refund of the prepayment, in whole or part, is not such a benefit or investment return.

## Explanation

6. The discount arising from a prepaid school fee in the circumstances described in paragraphs 4 to 5 is not considered to be ordinary income of the Responsible Parent or any other person making a prepayment. Nor is the discount considered to be statutory income of any Responsible Parent or any other person making a prepayment. The discount is not included in assessable income under either section 6-5 or 6-10 of the ITAA 1997.

7. Subsection 30-15(1) of the ITAA 1997 provides a table of gifts or contributions that may be deducted from assessable income. Item 1 of that table allows a gift to a recipient listed in the table in subdivision 30-B of the ITAA 1997. Item 2.1.10 in the table in subsection 30-25(1) of the ITAA 1997 includes school-building funds as recipients to whom gifts are allowable. However for the amount to be an allowable deduction it must be a gift or contribution. Any prepayment of school fees will provide an advantage of a material nature to the Responsible Parent in that schooling for the child will be provided to the extent of the prepayment plus any discount. Such a prepayment is not a gift. Even if it were a gift, subsection 78A(2) of the *Income Tax Assessment Act 1936* ('ITAA 1936') would apply to deny any deduction under Division 30 of the ITAA 1997 by reason of the obligation the school may reasonably be expected to incur to provide schooling to the child. Therefore, a prepayment of school fees is not deductible under subsection 30-15(1), even if it is made as a deposit to or otherwise applied by the school to a school building fund, whether or not the school gives a discount for the prepayment.

8. Some schools are entitled to be exempt from income tax on the grounds that they are charitable institutions, set up for the advancement of education. That charitable purpose is not altered by permitting prepayment of school fees, or allowing a discount for such prepayments. The tax exempt status of a school that has obtained endorsement from the Commissioner of Taxation that it is exempt from taxation as a charitable institution set up for the advancement of education will not be disturbed by the school permitting prepayments of school fees or allowing a discount, as described above.

9. Some schools are exempt from income tax as public educational institutions. That character is not altered by permitting prepayment of school fees or allowing a discount for such prepayments. The tax exempt status of a school that is a public educational institution will not be disturbed by the school permitting prepayments of school fees or allowing a discount, as described above.

## Prepayments themselves (as distinct from the discount), including distributions by companies or trusts

10. This Taxation Determination does not consider whether the prepayment of school fees is assessable income or has other taxation consequences. A prepayment of school fees by a company could be the paying of a dividend or a deemed dividend or the provision of a fringe benefit. A prepayment of school fees by a trust could be a distribution of trust income. Whether the prepayment of school fees is assessable income, and if so whose

assessable income it is, can only be determined on a case by case basis where there has been a full disclosure of all relevant facts.

### Example

*Andrew is a student who is enrolled to complete Years 11 and 12 at a School. His father and Responsible Parent, Robert, pays the most recently advised Year 11 and 12 school fees less the expected discount. Andrew's maternal grandmother, Janet prepays the same amount. When Robert was informed of the second payment he authorised the transfer of the second payment to the account balance of his youngest son also enrolled at the School.*

*The discount on the school fees in respect of both of his sons is not included in Robert's assessable income. The discounts are not included in Janet's assessable income.*

### Date of Effect

11. When the final Determination is issued, it is proposed to apply both before and after its date of issue. However, the Determination will not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

### Your comments

12. We invite you to comment on this Draft Taxation Determination. We are allowing 2 weeks for comments before we finalise the Determination. If you want your comments considered, please provide them to us within this period.

**Comments by Date:** **19 March 2003**

**Contact Officer:** Tony Trumble

**E-Mail address:** tony.trumble@ato.gov.au

**Telephone:** (02) 6279 7460

**Facsimile:** (02) 6279 7475

**Address:** Mr Tony Trumble
Personal Tax – Tax Technical Network
Australian Taxation Office
PO Box 900
Civic Square Canberra ACT 2608

**Commissioner of Taxation**
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*Previous draft:*
Not previously issued in draft form

*Related Rulings/Determinations:*
IT 2071; 92/20

*Legislative references:*
- ITAA 1936 78A(2)
- ITAA 1997 6-5
- ITAA 1997 6-10
- ITAA 1997 30
- ITAA 1997 30B
- ITAA 1997 30-15(1)
- ITAA 1997 30-25(1)

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