TD 93/D61 - Income tax: is a payment of money to an eligible 'umbrella' organisation under a 'preferred donation arrangement' a tax deductible gift if the donor taxpayer or an associate obtains a collateral benefit?

This cover sheet is provided for information only. It does not form part of *TD 93/D61 - Income tax: is a payment of money to an eligible 'umbrella' organisation under a 'preferred donation arrangement' a tax deductible gift if the donor taxpayer or an associate obtains a collateral benefit?*

This document has been finalised by TD 93/139.

Draft Taxation Determinations (TDs) represent the preliminary, though considered, views of the ATO. Draft TDs may not be relied on; only final TDs are authoritative statements of the ATO.

Draft Taxation Determination

Income tax: is a payment of money to an eligible 'umbrella' organisation under a 'preferred donation arrangement' a tax deductible gift if the donor taxpayer or an associate obtains a collateral benefit?

1. No. The amount paid is not a tax deductible gift for the purposes of section 78 of the *Income Tax Assessment Act 1936*.

2. A 'preferred donation arrangement' involves a person paying money to an 'umbrella organisation' which is an eligible gift recipient. There is an understanding that the money will be passed on to an affiliate organisation preferred by the donor to fund projects or events nominated by the affiliate and approved by the umbrella organisation.

3. Under section 78 a payment of money to an organisation listed or described in paragraph 78(1)(a) is tax deductible where the donation constitutes a 'gift'. A gift involves a donor transferring property voluntarily to a donee without the donor or an associate of the donor receiving or being entitled to receive in return any material advantage or compensation (apart from the tax saving). The recipient organisation must:

(a) obtain in its own right the full value or benefit of the property; and

(b) be empowered and have the absolute discretion to distribute the property to those organisations or activities nominated by the donor.

Example:

An eligible "'umbrella' organisation operates a 'preferred donation scheme' for affiliated organisations.

Participants in an approved event nominated by an affiliate are required to fund some of the cost of participation either by paying directly for their travel expenses or by making 'preferred donations' to the 'umbrella' organisation. A participant pays an appropriate amount to the 'umbrella' organisation. The 'umbrella' organisation passes the funds to its affiliate organisation and the participant is not required to pay travel expenses.

In this instance the payment to the 'umbrella' organisation would not be a tax-deductible gift because the donor will receive a collateral material benefit - that is, the removal of the obligation to pay travel expenses.

Commissioner of Taxation
04/03/93

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