TD 2004/6 - Income tax: Is a school's tax exempt status disturbed if it permits prepayments of school fees or offers discounts for prepayments of fees?

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Taxation Determination

Income tax: Is a school's tax exempt status disturbed if it permits prepayments of school fees or offers discounts for prepayments of fees?

Preamble

The number, subject heading, date of effect and paragraph 1 of this Taxation Determination are a 'public ruling' for the purposes of Part IVAAA of the ***Taxation Administration Act 1953*** *and are legally binding on the Commissioner. The remainder of this Determination is administratively binding on the Commissioner. Taxation Rulings TR 92/1 and TR 97/16 together explain how a Determination is legally or administratively binding*

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

Background

2. Some schools let school fees 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. Such a prepayment is an item of non-deductible personal expenditure, like school fees paid when due.

3. As a consequence of the prepayment towards school fees, the school may discount 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. 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.

4. If any other benefit or investment return is available for the prepayment, then any discount is beyond the scope of this Taxation Determination, whether the benefit is given to

the prepayer, the Responsible Parent or any other person. Where a discount is given against school fees in place of liability to provide another benefit, the law on set-off would be likely to mean that the other benefit was actually paid: see *Spargo's case – Re Harmony & Montague Tin and Copper Mining Co* (1873) 8 LR ChApp 407 as the leading case continually applied. The payment of such another benefit would be likely to be income on ordinary concepts, even if paid by being set off as a discount against school fees. A refund of the prepayment to the payer, in whole or part, and on a 'last in-first out' basis, is not such a benefit or investment return.

5. Schools may choose to manage their prepayment arrangements in-house using their own administrative arrangements. Other schools may choose to contract out all or part of the management of their prepayment arrangements to a bank or other external party with suitable expertise.

Explanation

6. 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 (*Income Tax Assessment Act 1997* (ITAA 1997) item 1.1, table, section 50-5 and special conditions in sections 50-50 and 50-52). 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 in paragraphs 2, 3 and 5 of this determination.

7. Some schools are exempt from income tax as public educational institutions (ITAA 1997 item 1.4, table, section 50-5 and special condition in section 50-55). 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 in paragraphs 2 to 3 of this determination.

Date of Effect

8. This Determination applies to years commencing 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).

Commissioner of Taxation
31 March 2004

Previous draft:
TD 2003/D5

Related Rulings/Determinations:
TR 92/1; TR 92/20; TR 97/16; TD 2004/5; TD 2004/7; IT 2071

Legislative references:
- TAA 1953 Pt IVAAA
- ITAA 1997 50-5
- ITAA 1997 50-50
- ITAA 1997 50-52
- ITAA 1997 50-55

Other References:
- Spargo's case – Re Harmony & Montague Tin and Copper Mining Co (1873) 8 LR ChApp 407

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