TD 2004/7 - Income tax: Can a prepayment of school fees be a deductible gift to a school-building fund?

This cover sheet is provided for information only. It does not form part of *TD 2004/7 - Income tax: Can a prepayment of school fees be a deductible gift to a school-building fund?*

Taxation Determination

Income tax: Can a prepayment of school fees be a deductible gift to a school-building fund?

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 prepayment of school fees that is held on deposit in 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 *Income Taxation Assessment Act 1997* (ITAA 1997).

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. A prepayment which had any other character to the payer would be beyond the scope of this Taxation Determination.

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. 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. 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, if given). 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.

Example

Isolde is a student who is enrolled to complete Years 11 and 12 at a school. Her father and Responsible Parent, David, pays the most recently advised Year 11 and 12 school fees less the expected discount which are held in the school building fund. At the beginning of each school term, an amount is transferred from the prepayment held in the school building fund account to the general account of the school to meet David's obligation to pay Isolde's school fees.

Notwithstanding that the prepayment is initially held in the school building fund, it is not a gift. David is not entitled to claim a gift deduction for the prepayment.

Date of Effect

7. 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 96/14; TD 2004/5; TD 2004/6; IT 2071

Legislative references:
- ITAA 1936 78A(2)
- ITAA 1997 30
- ITAA 1997 30B
- ITAA 1997 30-15(1)
- ITAA 1997 30-25(1)
- TAA 1953 Pt IVAAA

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

ATO references:
NO 2004/003876
ISSN: 1038-8982