



Taxpayer Alert

TA 2002/6

The Tax Office view on this arrangement is set out in Taxation Ruling TR 93/39.

FOI status: may be released

Taxpayer Alerts are intended to be an "early warning" of significant new and emerging tax planning issues or arrangements that the ATO has under risk assessment.

Taxpayer Alerts will provide information that is in the interests of an open tax administration to taxpayers. Taxpayer Alerts are written principally for taxpayers and their advisers and they also serve to inform ATO officers of new and emerging tax planning issues. Not all potential tax planning issues that the ATO has under risk assessment will be the subject of a Taxpayer Alert, and some arrangements that are the subject of a Taxpayer Alert may on further examination be found not to be of concern to the ATO.

Taxpayer Alerts will give the title of the issue (which may be a scheme, arrangement or particular transaction), briefly describe the issue and will highlight the features which the ATO considers give rise to taxation issues. These issues will generally require more detailed analysis to provide an ATO view to taxpayers.

The developers and marketers of an arrangement which is the subject of a Taxpayer Alert should provide the full facts of the arrangement to the ATO to enable the ATO to finalise its view.

Taxpayers who have entered into or are contemplating entering into an arrangement similar to that described in this Taxpayer Alert can seek a formal determination of the ATO's position through a Private Ruling. Such taxpayers might obtain their own advice and/or contact the ATO officer named in the Alert.

This Taxpayer Alert is issued under the authority of the Commissioner.

TITLE: Education or Scholarship Trust Arrangements

This Taxpayer Alert describes arrangements where an Education or Scholarship Trust is established by relatives of a student ('a beneficiary of the trust') for the provision of their education. The income derived from the Trust assets is "paid" to the student as a scholarship, bursary, educational allowance or educational assistance, and is claimed to be exempt income.

These arrangements seek to convert an assessable income distribution from a trust to a distribution that would be exempt income. In a variation to these arrangements, some Education or Scholarship Trusts are claiming education expenses as deductions.

DESCRIPTION

The Alert applies to arrangements having the following features:

1. An Education or Scholarship Trust is established by relatives of a student for the provision of the student's education, through the granting of scholarships, bursaries, educational allowances or educational assistance.
2. The Education or Scholarship Trust Deed may have clauses which:

- (a) specify the name of the student eligible for the scholarship or educational assistance;
 - (b) list the criteria which the student must satisfy in order to qualify for the scholarship or educational assistance;
 - (c) ensure that the Education or Scholarship Trust is not open to other students who may meet the set criteria; and/or
 - (d) specify a yearly educational allowance or educational assistance to be paid to the student.
3. The Trust Deed states that where the student is a minor, they are not under a legal disability, they are presently entitled and can demand trust income from the Trustee.
4. The Trustee distributes or expends funds to the student as an amount called a scholarship, bursary, educational allowance or educational assistance.
5. The student claims this income is exempt from tax.
6. In a variation to these arrangements, deductions for education expenses are being claimed by the Education or Scholarship Trust.
7. The arrangements seek to take advantage of section 51-10 of the ITAA 1997 which exempts from income tax, a scholarship, bursary, educational allowance or educational assistance. The arrangements seek to convert an assessable distribution from a trust to exempt income.

FEATURES WHICH THE ATO CONSIDERS GIVE RISE TO TAXATION ISSUES

The ATO considers that the arrangements outlined above give rise to taxation issues which include:

- (a) whether the distribution is exempt income of the student (see Note 1).
- (b) whether a student who is a minor, is under a legal disability notwithstanding a provision to the contrary in the Trust Deed.
- (c) the deductibility of payments made to a student, or for their benefit, in the calculation of the net income of the Education or Scholarship Trust.
- (d) questions about the application of the general anti-avoidance provisions of Part IVA of the ITAA 1936.

Note 1

The ATO's view as published in Taxation Ruling TR 93/39 is that a 'scholarship, bursary or other educational allowance or educational assistance' is an award for merit attained as a result of competition or selection on the basis of general criteria. There is an issue as to whether the payments made by the Education or Scholarship Trusts described in these arrangements meet these criteria and consequently whether the distributions are exempt income in the hands of the student.

subject references: Scholarships and Education

related taxation rulings: TR 93/39

legislative references: ITAA 1997 section 8-1
ITAA 1997 section 51-10
ITAA 1997 section 51-35
ITAA 1936 section 95A
ITAA 1936 section 97
ITAA 1936 section 98
ITAA 1936 subsection 98(1)
ITAA 1936 Part IVA

related taxpayer alerts:

related practice statements: PS 2001/15 - Taxpayer Alerts

related media releases:

file references:

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