


CR 2002/49 - Income tax: The Armidale School Fee Plan

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Class Ruling

Income tax: The Armidale School Fee Plan

Preamble

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*The number, subject heading, and the **What this Class Ruling is about** (including **Tax law(s)**, **Class of persons** and **Qualifications** sections), **Date of effect**, **Arrangement** and **Ruling** parts of this document are a 'public ruling' in terms of Part IVAAA of the **Taxation Administration Act 1953**. CR 2001/1 explains **Class Rulings** and **Taxation Rulings** TR 92/1 and TR 97/16 together explain when a Ruling is a public ruling and how it is binding on the Commissioner.*

What this Class Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the 'tax law(s)' identified below apply to the defined class of persons, who take part in the arrangement to which this Ruling relates.

Tax law(s)

2. The tax law(s) dealt with in this Ruling are:

- Division 6 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- Division 10 of ITAA 1997;
- Division 30 of the ITAA 1997;

Class of persons

3. The Class of persons to which this ruling applies is those participating in the Armidale School Fee Plan (the Plan) who are guardians, parents, step parents, siblings, grandparents, great grandparents, aunts, uncles or other persons who have a close personal relationship (the Parents) with a named student who is enrolled or guaranteed enrolment at the Armidale School.

4. This Ruling does not apply to companies, trusts or partnerships that make prepayments for a named student's school fees. In respect of trusts, a prepayment that is not covered by this ruling includes prepayments made as part of a distribution of trust corpus or income

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to a beneficiary. Additionally, this Ruling does not apply to payments by a Parent where the payments are an expense or outgoing incurred in deriving the assessable income of the Parent.

Qualifications

5. The Commissioner makes this Ruling based on the precise arrangement identified in this Ruling.
6. The class of persons defined in this Ruling may rely on its contents provided the arrangement actually carried out is carried out in accordance with the arrangement described below at paragraphs 10 to 20 in this Ruling.
7. If the arrangement actually carried out is materially different from the arrangement that is described in this Ruling :
 - (a) this Ruling has no binding effect on the Commissioner because the arrangement entered into is not the arrangement on which the Commissioner has ruled; and
 - (b) this Ruling may be withdrawn or modified.
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Date of effect

9. This Ruling applies to years commencing both before and after its date of issue. However, the Ruling does not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of the Ruling (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Arrangement

10. The arrangement that is the subject of the Ruling is described below. This description is based on the following documents. These documents, or relevant parts of them, as the case may be, form part of and are to be read with this description. The relevant documents or relevant parts of documents incorporated into this description of the arrangement are:

- application for Class Ruling dated 12 October 2001;
- The Armidale School Fee Plan Brochure;
- The Armidale School acceptance form;
- the draft agreement between the Armidale School and a Bank;
- The Armidale School offer of enrolment letter; and
- correspondence from the applicant dated 23 November 2001, 11 February 2002, 22 February 2002, 26 February 2002 and 22 May 2002.

11. The Armidale School (the School) will offer the Parents of a named student the opportunity to pre-pay amounts towards the school fees for that named student who is enrolled or accepted for enrolment at the School.

12. To encourage participation in the Plan the School will offer a discount towards meeting the student's eventual school fees.

13. The Parents are able to make prepayments at any time. However the discount offered is calculated at the end of each calendar quarter based on the cumulative prepayments made over a quarterly period.

14. The discount offered to Parents may vary from quarter to quarter and will depend in part on the extent of the prepayment. The discount available to be allowed against future school fees will be notified to the person who in the normal course of events would be responsible for the payment of those fees (the Responsible Parent) (who will not necessarily be the person who actually makes the prepayment). This will be done on a quarterly basis. The School may from time to time provide an indication to the Responsible Parent of how the discount is likely to be calculated (e.g., using a formula that might be varied from time to time).

15. Once the money is prepaid to the School, the money will belong to the School. The School is free to use the funds in any manner it wishes. The School may choose, but is not limited, to doing one or more of the following:

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- (a) retire existing debt earlier than would otherwise be the case;
- (b) expend the money on capital works;
- (c) use the money to meet short term cash flow needs; or
- (d) deposit the money at interest in the wholesale market.

16. In addition to the cash flow benefits prepayments provide to the School, the School argues that it benefits from the Plan as it encourages Responsible Parents to commit to educating their child at the School, for instance, by establishing a relationship between the School and a prospective student (and that prospective student's family) prior to the student actually commencing, offers a means by which Parents who experience fluctuating incomes are able to make provision for future school fees and enables the School to better predict future enrolments and therefore provides greater certainty for forward planning in relation to future numbers and resources.

17. If a student's enrolment ceases or, alternatively, fails to commence with the School, only the amount that has been prepaid to the School and which has not been applied to meet actual school fees will be returned to the Responsible Parent. In other words, the School will not pay to the Responsible Parents any unused discount in the event that the student's education does not proceed as originally intended.

18. The School will maintain a collection arrangement with a bank or other financial institution under which the Parents can make payments into a nominated account of the School (the Account) with the bank or other financial institution and the individual deposits will be tracked. At the end of each calendar quarter the funds in the Account will be dealt with as directed by the School. The collection arrangement provides the opportunity and facility for more than one Parent to make contributions in respect of the one named student.

19. At each time an invoice for school fees is issued the cumulative amount of prepayments and discounts available at that time will be offset against the school fees payable and the shortfall, if any, will be payable at that time or the excess, if any, will be carried forward.

20. The School limits the amount of prepayments that it will accept from Parents such that the total of the accumulated balance of prepayments and the quarterly discount for a named student will not exceed the total projected school fees most recently advised by the School as required for the named student's education through to the final year of education at the School. If the amount of prepayment does exceed the most recently advised total projected school fees, the School will refund the excess to the Responsible Parent within 30 days of the prepayment. Where the Responsible Parent has

responsibility for another named student enrolled or guaranteed enrolment at the School, by agreement between the Responsible Parent and the School, the excess account balance of the first named student may be transferred to the account of the second named student within the 30 days.

Ruling

21. The discount on school fees is not included in the assessable income of the Responsible Parent under either section 6-5 or section 6-10 of the ITAA 1997.

22. The prepayments made under the Plan will not be allowable deductions as gifts to a school building fund under subsection 30-15(1) of the ITAA 1997.

Explanations

Assessable income

23. An amount or other benefit received by a taxpayer is included in assessable income if it is:

- (a) ordinary income (being income according to ordinary concepts: subsection 6-5(1) of the ITAA 1997); or
- (b) statutory income (being an amount or benefit that is not ordinary income but is made assessable through the operation of certain provisions of the tax law: subsections 6-10(1) and (2) of the ITAA 1997).

24. If an amount is not ordinary income and is not statutory income, it is not included in assessable income: subsection 6-15(1) of the ITAA 1997.

Ordinary income

25. The Courts have refrained from attempting to formulate a definition or precise tests for determining what is income according to ordinary concepts (refer, for example, to the comments of Dixon CJ and Williams J in *FC of T v. Dixon* (1952) 86 CLR 540 at 555; (1952) 10 ATD 82 at 84). Whether an amount or benefit should be treated as income must be determined in accordance with the ordinary concepts and usages of mankind (*Scott v. FC of T* (1966) 117 CLR 514; (1966) 14 ATD 286). However, some of the factors relevant to determining whether an amount is ordinary income include:

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- whether the payment is the product of any employment, services rendered, or any business (*FC of T v. Harris* (1980) 43 FLR 36 at 40; 80 ATC 4238 at 4241; (1980) 10 ATR 869 at 872; *Hayes v. FC of T* (1956) 96 CLR 47 at 54; (1956) 11 ATD 68 at 72);
- the quality or character of the payment in the hands of the recipient (*FC of T v. Blake* 84 ATC 4661; (1984) 15 ATR 1006 - refer comments of Carter J (at ATC 4664; ATR 1010); *Scott v. FC of T* (1966) 117 CLR 514 at 526; (1966) 14 ATD 286 at 293; *GP International Pipecoaters Pty Ltd v. FC of T* (1990) 170 CLR 124 at 136; 90 ATC 4413 at 4419; (1990) 21 ATR 1 at 6.);
- the form of the receipt, that is, whether it is received as a lump sum or periodically (*FC of T v. Dixon* (1952) 86 CLR 540 at 557; (1952) 10 ATD 82 at 86); and
- the motive of the person making the payment. Motive, however, is rarely decisive as in many cases a mixture of motives may exist (*Hayes v. FC of T* (1956) 96 CLR 47 at 55; (1956) 11 ATD 68 at 72-73).

26. None of the above factors would cause the discount on school fees received by the Responsible Parent to be considered ordinary income for the purposes of section 6-5 of the ITAA 1997. In this case the benefit relates to private expenditure and therefore is not considered to be of an income character.

27. Section 6-5(4) of the ITAA 1997 provides that “in working out whether you derived an amount of ordinary income and (if so) when you derived it, you are taken to have received the amount as soon as it is applied or dealt with in any way on your behalf or as you direct”.

28. In this case the Responsible Parent does not have an entitlement, either in law or equity, to receive interest payments or payments in the nature of interest on the amounts credited to the deposit account operated by the Bank. Any interest income earned on the deposit account or by further investment of the funds is derived by the School. There is no understanding, direction or arrangement whereby the School undertakes to invest the money deposited with it and use the proceeds of this investment to reduce the Responsible Parents liability for school fees. There is no derivation of income by the Responsible Parent in respect of which it could be argued that the discount represents an application or dealing with thereto. Accordingly, subsection 6-5(4) of the ITAA 1997 has no application to the Responsible Parent.

Statutory income

29. Section 6-10 of the ITAA 1997 provides that the assessable income of a resident taxpayer includes statutory income from all sources, whether in or out of Australia. Subsection 6-10(2) of the ITAA 1997 defines statutory income as amounts that are included in assessable income by provisions about assessable income as listed in section 10-5 of the ITAA 1997.

30. There are no provisions in section 10-5 of the ITAA 1997 which would include the discount on school fees received by the Responsible Parent in assessable income for the purposes of section 6-10 of the ITAA 1997.

Donation to school building fund

31. 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 paid to be an allowable deduction it must be a gift or contribution. The terms 'gift' and 'contribution' are not defined in the ITAA 1997. In the case *FC of T v. McPhail* (1968) 117 CLR 111 at 116;10 AITR 552 at 555, Owen J gave the following meaning to the term gift:

‘...to constitute a “gift”, it must appear that the property transferred was transferred voluntarily and not as the result of a contractual obligation to transfer it and that no advantage of a material character was received by the transferor by way of return.’

32. The Commissioner has taken the view in Taxation Ruling IT 2071 that amounts paid to a school which result in lesser fees being payable are not gifts, as an advantage of a material character is received in return for making the payment. Therefore the prepayments made under the Plan will not be allowable deductions as gifts to a school building fund under subsection 30-15(1) of the ITAA 1997.

Examples**Example 1**

33. Andrew is a student who intends to complete Years 11 and 12 at Armidale School. Robert who is Andrew's father and the Responsible Parent pays the most recently advised Year 11 and 12 school fees less the expected discount. Andrew's maternal

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grandparents make the same payment. Armidale School promptly informed Robert of the second payment. Robert authorised the transfer of the second payment to the account balance of his youngest son at Armidale School.

34. The discount on school fees is not included in Robert's assessable income. The discount is not included in the assessable income of either of the maternal grandparents.

Example 2

35. Aaron is enrolled in Year 8 at Armidale School and lives with his custodial mother Michelle, who the School recognises as the Responsible Parent. Michelle has paid some of the school fees in advance. Aaron's father David, as trustee of a discretionary trust purports to make a distribution of trust income to Armidale School which is to be treated as a prepayment of school fees.

36. The purported trust distribution is not within the arrangement of this Ruling. As trustee, David should seek taxation advice.

37. The discount arising from the two prepayments is not included in the assessable income of Michelle. The making of a prepayment that is outside the arrangement covered by this Ruling by someone else, does not effect the taxation position of persons who make prepayments that are within the arrangement.

Detailed contents list

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Commissioner of Taxation

7 August 2002

Previous draft:

Not previously issued in draft form

- ITAA 1997 30-15(1)

- ITAA 1997. Subdiv 30-B

- ITAA 1997 30-25(1)

- TAA 1953 Part IVAAA

Related Rulings/Determinations:

CR 2001/1; IT 2071; TR 92/1;

TR 92/20; TR 97/16;

Case references:

- FC of T v. Blake 84 ATC 4661;

(1984) 15 ATR 1006

- FC of T v. Dixon (1952) 86 CLR

540; (1952) 10 ATD 82

- FC of T v. Harris (1980) 43 FLR 36;

80 ATC 4238; (1980) 10 ATR 869

- GP International Pipecoaters Pty Ltd

v. FC of T (1990) 170 CLR 124; 90

ATC 4413 (1990) 21 ATR 1

- Hayes v. FC of T (1956) 96 CLR 47;

(1956) 11 ATD 68

- FC of T v. McPhail (1968) 117 CLR

111; 10 AITR 552

- Scott v. FC of T (1966) 117 CLR

514; (1966) 14 ATD 286

Subject references

- Assessable income

- Gifts

- School building fund

Legislative references:

- ITAA 1997 Div 6

- ITAA 1997 6-5

- ITAA 1997 6-5(1)

- ITAA 1997 6-5(4)

- ITAA 1997 6-10

- ITAA 1997 6-10(1)

- ITAA 1997 6-10(2)

- ITAA 1997 6-15(1)

- ITAA 1997 Div 10

- ITAA 1997 10-5

- ITAA 1997 Div 30

ATO References

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