

***TD 2004/5 - Income tax: Is the parent responsible for payment of school fees assessable on a discount arising from a prepayment of the fees?***

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## Taxation Determination

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**Income tax: Is the parent responsible for payment of school fees assessable on a discount arising from a prepayment of the 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 discount arising from a prepayment of school fees is not assessable income of the parent responsible for payment of the child's fees under either section 6-5 or 6-10 of the *Income Tax 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 or basis 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. The discount arising from a prepaid school fee in the circumstances described in paragraphs 2, 3 and 5 is not considered to be ordinary income of the Responsible Parent or any other person making such a prepayment. Nor is the discount considered to be statutory income of any Responsible Parent or any other person making such a prepayment. The discount is not included in their assessable income under either section 6-5 or 6-10 of the ITAA 1997.

### **Prepayments themselves (as distinct from the discount), including distributions by companies or trusts**

7. This Taxation Determination does not consider whether the prepayment of school fees is assessable income or has other taxation consequences. A prepayment of school fees by a company could be the paying of a dividend or a deemed dividend or the provision of a fringe benefit. A prepayment of school fees by a trust could be a distribution of trust income. Whether the prepayment of school fees is assessable income, and if so whose assessable income it is, can only be determined on a case by case basis where there has been a full disclosure of all relevant facts.

### **Example**

*Tristan is a student who is enrolled to complete Years 11 and 12 at a school. His father and Responsible Parent, Robert, pays the most recently advised Year 11 and 12 school fees less the expected discount. Tristan's maternal grandmother, Janet prepays the same amount. When Robert was informed of the second payment he authorised the transfer of the second payment to the account balance of his youngest son also enrolled at the School.*

*The discount on the school fees in respect of both of his sons is not included in Robert's assessable income. The discounts are not included in Janet's assessable income.*

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## 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).

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## Commissioner of Taxation

31 March 2004

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*Previous draft:*

TD 2003/D5

*Related Rulings/Determinations:*

TR 92/1; TR 92/20; TR 97/16; TD 2004/6; TD 2004/7; IT 2071

*Legislative references:*

- ITAA 1997 6-5
- ITAA 1997 6-10
- TAA 1953 Pt IVAAA

*Other References:*

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

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