


TD 94/D88 - Income tax: are gifts to approved funds deductible under subsection 78(4) or subsection 78(5) of the Income Tax Assessment Act 1936 if the donor receives a material benefit in return?

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Draft Taxation Determinations (TDs) represent the preliminary, though considered, views of the ATO. Draft TDs may not be relied on; only final TDs are authoritative statements of the ATO.

Draft Taxation Determination

Income tax: are gifts to approved funds deductible under subsection 78(4) or subsection 78(5) of the *Income Tax Assessment Act 1936* if the donor receives a material benefit in return?

1. No, to be a 'gift' for taxation purposes, the money or property must be given voluntarily and the donor must not receive any material benefit (*FC of T v. McPhail* (1968) 117 CLR 111). The receipt of something of trifling or insubstantial value, such as a sticker, is not a material benefit.
2. Where a material benefit is received, the payment is not a 'gift' and is therefore not tax deductible.

Examples

(a) *Shannon donates \$10 to a well-known charity and receives a plastic lapel badge. The payment is a tax deductible gift because no material benefit was received.*

(b) *Stuart gives \$20 to a public benevolent institution and receives a packet of Christmas cards. The payment is not a gift because Stuart has received a material benefit. The result is the same if Stuart had received theatre, ball or dinner tickets, a diary, a bottle of wine, or any other item of value.*

(c) *At an auction conducted by a public hospital, Desiree makes a successful bid of \$100 for a new radio. Desiree wants to claim the difference between the bid price and actual cost of the radio as a 'gift'. No part of the payment is a gift because Desiree has received a material benefit.*

Commissioner of Taxation

18/8/94

FOI INDEX DETAIL: Reference No.

Related Determinations: TD 92/110, TD 93/57

Related Rulings: IT 2071, IT 2443

Subject Ref: gifts; conditional gifts

Legislative Ref: ITAA 78(4) and (5)

Case Ref: *FC of T v. McPhail* (1968) 117 CLR 111

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