

TR 94/D7 - Income tax: school building funds



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Draft Taxation Ruling

Income tax: school building funds

other Rulings on this topic

CITCM 712; CITCM 782;
CITCM 806; IT 2071;
IT 2676

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DTRs may not be relied on by taxation officers, taxpayers and practitioners. It is only final Taxation Rulings which represent authoritative statements by the Australian Taxation Office of its stance on the particular matters covered in the Ruling.

What this Ruling is about

1. Gifts of \$2 or more to school or college building funds are allowable deductions under item 2.1.10 of table 2 in subsection 78(4) of the *Income Tax Assessment Act 1936*. This Ruling updates guidelines set out in Canberra Income Tax Memorandum (CITCM) 806 and considers:

- (i) how to obtain approvals of a school or college building fund under item 2.1.10 of table 2 in subsection 78(4);
- (ii) criteria that need to be satisfied before a fund will be accepted as a **school or college building fund**;
- (iii) what is meant by a **school or college**; and
- (iv) what is meant by a **school or college building**.

For the purpose of this Ruling school or college building funds will be referred to as school building funds.

Ruling

How to obtain approval of a school building fund under subsection 78(4) Item 2.1.10

2. Gifts made to a fund that qualifies as a school building fund under item 2.1.10 of table 2 in subsection 78(4) will be allowable deductions. It is not necessary for a fund to be formally approved by the Taxation Office if the fund meets all the requirements set out in the law. However, it is in the best interests of the fund to ensure that donors are confident that their gifts will qualify as allowable deductions. The fund could apply to the Taxation Office for

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confirmation that it qualifies as a school building fund for the purposes of item 2.1.10 of table 2 in subsection 78(4).

3. The decision whether a particular fund qualifies for approval as a **school building fund** is made by Taxation Branch Offices. Persons seeking approval should forward applications to their local Branch Office which will decide each case on its merits.

4. A Branch Office may consult with National Office for advice in relation to a particular case if it considers this to be appropriate. This may happen, for example, where a fund has novel features, the decisions relating to which will have national implications.

5. Branch offices should advise other Branch offices of decisions of any significance.

Criteria that need to be satisfied before a fund will be accepted as a school building fund

6. To qualify as a school building fund the following criteria must be satisfied:-

- (i) the fund must be a **public fund**;
- (ii) the fund must be established and maintained **exclusively** for providing money for the acquisition, construction or maintenance of a school or college building; and
- (iii) the building must be used as a **school or college** by a government or public authority, or by a society or association which is not carried on for the profit or gain of its members.

7. To be a school building fund that is a public fund the constitution or rules of the fund should satisfy the following requirements:-

- (1) the objects of the fund must indicate that the fund is to be used exclusively for the acquisition, construction or maintenance of a building which is used or to be used as a school or college. A fund may also be established for a specific project such as building a classroom wing for a school as opposed to constructing a complete school. The Taxation Office must be advised of any changes to the fund's objectives;
- (2) gifts to the fund must be kept separate from any other funds of the donee organisation. To ensure this, a separate bank account and clear accounting procedures are required;
- (3) the name of the fund must include "Building Fund" or words of similar import;

- (4) receipts must be issued in the name of the school building fund;
- (5) the fund must operate on a non-profit basis. No moneys can be distributed to members of the donee organisation except as reimbursement for out-of-pocket expenses incurred on behalf of the fund;
- (6) the fund must be managed by members of a Committee a majority of whom have a degree of responsibility to the general community; and
- (7) should the fund be wound-up any surplus money must be transferred to some other fund qualifying under subsection 78(4).

8 To qualify as an allowable deduction, any contribution to a school building fund must fall within the meaning of 'gift'. (See Taxation Ruling IT 2071).

Multipurpose funds

9. A gift to a multipurpose fund such as one which incorporates both:

- (a) a school building fund; and
- (b) a fund established for some other purpose such as to provide furniture, books, computers, etc for the use of students in a school library;

would not be deductible under item 2.1.10 of table 2 in subsection 78(4). This is because criterion (ii) of paragraph 6 above will not have been satisfied.

10. An organisation may, however, establish and maintain a public fund in accordance with subsection 78(5). Donations paid into this type of fund are deductible providing the fund is maintained exclusively to provide money, property or benefits to or for:

- any fund, authority or institution which satisfies the requirements of subsection 78(4); or
- to any combination of funds, authorities or institutions which in their own right satisfy the requirements of that subsection.

For instance, a special purpose fund can be established so that moneys can be provided to a school building fund (item 2.1.10 of table 2 in subsection 78(4)) and a library fund (item 12.1.2 or item 12.1.5 of table 12 in subsection 78(4)).

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11. A school may seek contributions (i.e. gifts) not only for a school building fund but for other purposes as well. It may do this by conducting a multipurpose fundraising project. For this case, if approval is sought for a separate school building fund, confirmation must be given to the relevant Taxation Branch Office that:-

- (a) an identifiable part of the contributions paid by donors will be allocated directly to a school building fund at the time the donation is made;
- (b) receipts in the name of the fund to which the donor has made a contribution will be written in respect only of specific gifts to that fund and all amounts shown on those receipts will be credited to that fund and paid direct to the separate bank account of that fund; and
- (c) no amount credited to that fund will be transferred out of that fund or disbursed other than for the purposes for which the fund is established.

What is meant by a school or college

12. The words "school or college" are to be given their ordinary meaning to be an institution of students or scholars formed for the purpose of study or instruction. The study or instruction must be for academic or vocational purposes.

13. An institution whose dominant purpose is other than study or instruction would not be regarded as a school or college. Consequently, where a building is used for more than one purpose, approval for the purposes of item 2.1.10 of table 2 in subsection 78(4) can only be obtained if the primary and principal use of the building is for the purpose of study or instruction.

What is meant by a school or college building

14. The word "building" means a structure with walls and a roof. This may range from a one room country school building to a group of buildings. It includes a part of a building and additions to buildings.

15. To qualify as a school building for the purposes of item 2.1.10 of table 2 in subsection 78(4), the building or group of buildings must be used for a purpose which is connected with the academic curriculum of the school or college.

Date of effect

16. 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).

Explanations

How to obtain approval of a school building fund under item 2.1.10 of table 2 in subsection 78(4)

17. While it is not necessary for a fund to be formally approved by the Taxation Office before deductions are allowed for gifts made to the fund, it is in the best interests of the fund to ensure that donors can be assured that their gifts will qualify as allowable deductions.

18. When a person makes an application for a fund to be approved as a school building fund, the following documents/information must be supplied to the relevant Taxation Branch Office:

- the name of the proposed school building fund;
- the title, composition and nature of the body controlling the fund, including the names of the members of the Committee operating the fund and the positions held by them;
- a copy of the constitution or rules of the fund;
- a full description of the nature of the proposed building, indicating precisely the purpose for which it will be used. If available, a copy of a plan should be submitted for perusal;
- whether an appeal for other funds will be made jointly with the school building fund appeal; and
- details of the fund's bank account.

19. Where an organisation has a number of building funds each of which relate to a separate school or college under its control, the organisation could apply to the relevant Deputy Commissioner to ascertain whether a block application would be acceptable.

Criteria that need to be satisfied before a fund will be accepted as a school building fund

20. Paragraph 6 sets out the criteria which must be satisfied for a fund to qualify as a school building fund. Paragraph 18 sets out the information to be furnished when an application is made to a Taxation Branch Office for approval of the fund.

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21. The word **public** in relation to fund refers to the source, constitution and management of the fund and includes two types of funds:

- (a) funds established and controlled by governmental or quasi-governmental authorities; and
- (b) funds to which the public is invited to contribute and which are controlled or administered by persons or institutions having a degree of public responsibility arising from their tenure of some public office or their positions in the community, have a degree of responsibility to the community as a whole.

A future Taxation Ruling dealing specifically with public funds will set out in some detail the requirements of a "public fund".

22. Religious and charitable institutions may be accepted as being non-profit. For other organisations, it will be necessary to examine the organisation's constitution. Incorporation under the Companies Act or other law does not prevent an organisation from satisfying the public fund criteria providing it retains a public character and the persons who hold positions of control do so by reason of their tenure of a public office or have a degree of responsibility to the community in the exercise of their control of the company.

23. Disbursements from a school building fund that are not expenses related directly and essentially to the acquisition, construction or maintenance of a school building are **not** legitimate charges against that fund. Reasonable costs of establishing, promoting and managing an approved fund may legitimately be charged to it. However, reasonable costs would not include an apportionment of normal expenses necessarily incurred by the organisation independently of the school building fund.

24. The term "acquisition", when used in relation to the approval of a school building fund, is given a wide application. That expression would cover, for example, the liquidation of a debt incurred in the purchase of a building to be used as a school or college. However, it would not include the purchase of land without the definite purpose of constructing a school building.

25. If a school building fund is approved for tax deductibility purposes and at a later stage it is decided not to proceed with the building, any funds raised will have to be transferred to another subsection 78(4) fund (see dissolution clause referred to in paragraph 7 above). Funds raised cannot be diverted to the school for any other purpose such as the purchase of equipment for the school.

26. Where the school building fund does not own the land upon which the school is to be built, one of the following conditions must be satisfied:-

- (i) the entity owning the land must also include a suitable paragraph 78(4) dissolution clause in its constitution or governing document;
- (ii) in any lease agreement between the school and the owner of the land, the owner must agree to use the assets acquired from the fund monies or the proceeds of those assets for paragraph 78(4) purposes in the future;
- (iii) a trust must be established in which the land and buildings of the school are vested. The trust deed must state that if the buildings cease to be used for an educational purpose they must be used for another purpose approved under subsection 78(4) or sold and the proceeds diverted to another subsection 78(4) fund.

27. Paragraph 26 does not apply to State Government Schools.

Multipurpose funds

28. The term '**exclusively**' in so far as it applies to item 2.1.10 of table 2 in subsection 78(4) was considered in *Cobb & Co v. FC of T* (1959) 101 CLR 333; 12 ATD 11. It was held that the term refers to the purposes or objects for which the funds are established or maintained and does not refer to the use of the building acquired with the fund moneys.

29. Windeyer J. in the course of his decision gave examples of funds that do not satisfy the requirements of item 2.1.10 of table 2 in subsection 78(4):-

- (i) a fund for the acquisition of a building and the endowment of a scholarship; and
- (ii) a fund used to acquire a building and also to provide books.

In these examples the funds are not maintained exclusively for providing money for the acquisition, construction, or maintenance of a building used or to be used as a school.

30. A fund that is established and maintained for a combination of purposes or objects such as:

- (i) the acquisition of a school building; and
- (ii) some other purpose such as the acquisition of school furniture;

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will accordingly not qualify for the gifts concessions under item 2.1.10 of table 2 in subsection 78(4).

31. However, as stated at paragraph 10 above, subsection 78(5) enables a public fund (special purpose fund) to be established and maintained under a will or instrument of trust exclusively for the purpose of providing money, property or benefits to one or more approved funds, authorities or institutions referred to in subsection 78(4). Gifts to a special purpose fund are deductible even though the moneys from the special purpose fund are, for example, paid into both an approved school building fund and to another subsection 78(4) fund.

32. Where a school raises funds not only for a school building but for other purposes as well two methods can be used to show that the contribution is allocated to a particular fund at the time the gift is made:-

- (1) the donor can indicate on the pledge form the proportion of his or her contribution to be distributed to the respective funds; or
- (2) the terms of the appeal, usually recorded in a printed brochure, may state the proportion to be distributed to each fund from pledges received.

33. It should be noted that gifts to the general fund of a school are not deductible even if the sum donated is applied towards the cost of construction or maintenance of the school building. Similarly gifts to the general funds of the Parents and Citizens Association do not qualify for deduction under the subsection.

34. A deduction is also denied where a general pledge is made (where the gift is not made to a special purpose fund of the type referred to at paragraph 31) and allocations to a school building fund are determined by the fund manager from the pool of contributions received. A donor must personally nominate at the time of making a donation the proportion to be allocated to each fund or alternatively the donor must have agreed to the allocation specified by the fund manager.

35. Where a school receives moneys other than tax deductible grants, e.g., government grants, these moneys should be placed in a separate account. It is not necessary for these moneys to be transferred to another subsection 78(4) fund on dissolution of the fund.

What is meant by school or college

36. The words "school or college" take their ordinary meaning to be an institution of students or scholars formed for the purpose of study

or instruction. To be accepted as a school or college for the purposes of item 2.1.10 of table 2 in subsection 78(4) one of the following conditions must be satisfied:-

- (i) formal academic schooling must be carried out which generally would be associated with a curriculum of a State Department of Education. This also encompasses activities which are an adjunct to the school system such as an outdoor centre; or
- (ii) the school must prepare students for a career, the course must have a syllabus and students must be assessed.

37. The instruction provided could include religious as well as secular instruction. The concession therefore applies to funds for buildings used as theological seminaries or colleges.

What is meant by school building

38. The decision of the High Court in *Cobb and Co. v. FC of T* (1959) 101 CLR 333; 12 ATD 111 is considered to confirm the view that a building must be used for a purpose which is connected with the academic curriculum of the school or college. Windeyer J. at p. 337 distinguished between structures which are used for the purposes of a school as opposed to being used as a school. Only buildings which are **used as a school** fall within the scope of item 2.1.10 of table 2 in subsection 78(4).

39. Where a school building fund has been established to finance an entire school there may not be as much difficulty in accepting that a building is to be used as a school as there would be if a fund is set up to construct a single building. For example, the construction of a cloakroom as part of an entire school complex would be accepted as it forms an integral part of a school building project. However, a fund established solely to build a garage for staff cars, even if it is located on school grounds, would not qualify as the building is not being used as a school.

40. When considering whether a proposed building constitutes a school building regard must be had to the changing trends and nature of education and the different types of schools in existence. Consequently, when assessing an application for approval of a school building fund, a decision can not be based solely on decisions taken in relation to earlier applications by other organisations. Regard has to be had to the **current** education system together with the objectives and syllabus of the particular school. Each application has to be assessed on its own merits.

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41. It is possible, for example, that some sports facilities (provided that they constitute a building) could be said to be 'used as a school'. In deciding this question officers should refer to the school's syllabus. Relevant factors to consider when making a decision are whether the school syllabus requires organised training; whether physical education is part of the general school curriculum set out by the Education Department of the State concerned; whether the subject is examinable; and whether certificates are issued by school principals. Generally the only sporting facility that would be accepted is a gymnasium.

42. For some schools a chapel may be accepted as a school building. For example, a denominational school may conduct scripture classes in the chapel and scripture or religion may form part of the syllabus on which students are assessed. Similarly, a library constructed primarily for use in connection with the normal academic curriculum of a school could be said to be "used as a school".

43. Approval of a fund under subsection 78(4) is not limited to cases where all the objects of a fund are carried out simultaneously. Buildings fall within the scope of item 2.1.10 of table 2 in subsection 78(4) -

- (i) where the buildings in the group are all constructed at the same time or at intervals as finance becomes available; and
- (ii) where a building within the group that is not, of itself, a building used as a school is completed at the initial, intermediate or concluding stage of the overall construction programme and it is an integral part of the building complex.

44. However, the above paragraphs do not apply where a structure is not regarded as a building (e.g. swimming pools, sports ovals, walls, tennis courts).

45. It is also accepted that a building which forms an integral part of the school or college and is used to provide residential accommodation or facilities for students and /or staff is a building used as a school or college. A similar view also applies to a school assembly hall. A hostel run by an organisation independent of the school does not qualify for the concession.

46. Items that are not acceptable as a 'building' include furniture, training equipment, laboratory equipment and computers as they do not form an integral part of the building. An outdoor swimming pool is also not a building. However an indoor swimming pool (surrounded by walls and a roof) that is an integral part of a building which is used as a school would qualify as a school building.

47. The purchase of land which represents the first step towards the acquisition or construction of buildings to be used as a school or college falls within the subsection.

Multipurpose Buildings

48. If a building is used for more than one purpose, it will be a question of fact whether its principal use is for the purposes of study or instruction. A building used as a school every weekday and a place of worship on Sundays will qualify as a school. However, a Sunday School hall used for religious instruction on Sundays only and for community and social activities on other days of the week is not principally a school.

49. When a school is located in a multipurpose complex (and the area set aside for a school is used in excess of 50% of the time for academic purposes) a donation directly to a school building fund is fully tax deductible. If monies are collected on a combined fundraising basis (to finance, for example a school and a church) then the amount which is deductible will depend on how much is allocated by the fundraisers (see paragraph 32 above) to the school building fund.

50. As stated previously, separate founding documents (e.g. constitution, rules) are required for the school building fund. Where the school building fund does not own the land on which the school is built a provision or arrangement similar to one of the arrangements outlined in paragraph 26 is required.

51. Where a multipurpose building has a common area, which is shared by the school with other 'tenants', the school building fund can only use its funds to contribute towards the cost of the common area where the area is used primarily or principally as a school. (This could be determined on a time basis).

Examples

Examples concerning combined funds

Example 1:

52. To reduce administrative costs, a parish combines its school building fund and church building fund. The combined fund is not established under a will or a trust deed. That is, it is not a special purpose fund. Donations made for both purposes flow into the one fund and disbursements for either purpose flow out of the same fund.

53. Because the fund is not maintained **exclusively** as a school building fund, gifts made to the fund are not allowable deductions

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under item 2.1.10 of table 2 in subsection 78(4). The combined fund does not qualify for consideration under the special provision in subsection 78(5) for two reasons:

- (i) contributions towards the building of a church are not tax deductible gifts; and
- (ii) the combined fund has not been established under a will or a trust deed.

Example 2:

54. A private school has a public trust fund established in accordance with subsection 78(5). The public contributes to the trust fund and the fund is administered and controlled by trustees who have a degree of responsibility to the community. The trustees decide to appropriate the funds in favour of an approved school building fund as well as a public library.

55. Gifts made to the public trust fund are allowable under subsection 78(5). [Gifts to public libraries are tax deductible under item 12.1.2 of table 12 in subsection 78(4).]

Examples of what is meant by school or college

56. A **yoga school** is not considered to be a school for the purposes of item 2.1.10 of table 2 in subsection 78(4) as it does not fall within the common meaning of school. Yoga is a recreational activity and does not concern academic study.

57. A **child care centre** is not considered to be a school for the purposes of item 2.1.10 of table 2 in subsection 78(4) as it does not fall within the common meaning of a school. However, a **pre school kindergarten** would qualify as a school.

58. A **riding school** is not considered to be a school since it is designed for the training of persons to take part in a particular sport rather than to fit them for a particular vocation. Similarly places where instructions are provided on **dressmaking, woodwork, ceramics and cookery** for recreational pursuits would not qualify as schools. These types of courses would, in most instances, also not qualify as they would be conducted on a profit making basis.

59. An institution (e.g. a **professional organisation**) whose dominant purposes is not study or instruction is not considered to be a school or college even though it may describe itself in these terms.

60. **A film and television school** where training is in all facets of film and television work (and this could result in a career in this field) is considered to be a school.

61. **Schools for opera, ballet and drama** may qualify where they are non profit, there is a curriculum and examinations and it can be said that the instruction the students receive would equip them for a career.

Examples of what is meant by a school building

Multipurpose buildings

62. In the following examples it is assumed that all the criteria for a school building fund outlined at paragraph 6 have been satisfied:-

(i) **Building used 100% as a school**

The building is to be used as a school and all donations to the building fund would be 100% tax deductible.

(ii) **Multipurpose building. 25% of the building is used for non academic purposes (e.g. church) and 75% is used as a parish school**

Part of the building is being used primarily and principally as a school, i.e., 75%. A taxpayer would qualify for the gifts deduction if the gift is specified as being exclusively for the school and it is receipted on that basis. Should the donation be to a collection for both the church and the school then, depending on how the funds are allocated by the fundraiser (note also paragraph 32), the taxpayer may qualify for a deduction.

It should be noted that, in the above example, if the part used by the school (i.e. 75%) is in fact used for that purpose only 40% of the time and is not used at all at other times that part would still qualify as a school building as it is being used primarily and principally as a school.

(iii) **A church constructs a multipurpose building which is to be used for a number of parish activities. Some of these activities include remedial reading, youth education, preventative and corrective care for various social disorders, adult education, counselling, training, Bible college, sexual abuse clinic and creative ministry training. No proposed floor plan is provided.**

The application would not be approved under item 2.1.10 of table 2 in subsection 78(4) as no evidence has been provided that there was any commitment to carry out

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courses on a long-term basis and also no particular part of the building could be denoted as a school.

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case references

Cobb & Co v FC of T (1959) 101 CLR
333; 12 ATD 111