


# ***TR 2013/2A1 - Addendum - Income tax: school or college building funds***

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# Addendum

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## Taxation Ruling

### Income tax: school or college building funds

This Addendum is a public ruling for the purposes of the *Taxation Administration Act 1953*. It amends Taxation Ruling TR 2013/2 to reflect the ordinary meaning of 'school' and to ensure that the meaning of school is consistent with the decision in *The Buddhist Society of Western Australia Inc v Commissioner of Taxation (No 2)* [2021] FCA 1363.

TR 2013/2 is amended as follows:

#### 1. Table of Contents

Omit 'Appendix 1: Explanation 120 Appendix 2: Detailed contents list 331'; substitute 'Appendix: Explanation 120'.

#### 2. Preamble

Omit 'excluding appendixes'; substitute 'excluding appendix'.

#### 3. Paragraph 1

(a) Omit footnote 1.

(b) After the paragraph, insert new paragraph 1A:

1A. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997*, unless otherwise indicated.

#### 4. Paragraph 6

Omit '*GiftPack* (NAT 3132)'; substitute '*Instructions for endorsement as a deductible gift recipient* (NAT 2948)'.

#### 5. Paragraph 10

(a) In the first dot point, after 'see paragraphs', omit '11 to 19'; substitute '11 to 16A'.

(b) In the sixth dot point, after 'and paragraphs', omit '75 to 89'; substitute '75 to 90'.

#### 6. Paragraph 12

(a) Omit the wording of the paragraph; substitute:

For the purposes of Item 2.1.10, the word 'school' carries its ordinary meaning. In *Cromer Golf Ltd v Downs* 47 ALJR 219 (*Cromer*), the ordinary meaning of the word 'school' in the context of the *Public Works Act 1912* (NSW) was held by Barwick CJ

to be ' ... a place where people, whether young, adolescent or adult, assemble for the purpose of being instructed in some area of knowledge or of activity.'<sup>3A</sup> This broad concept has been subsequently affirmed and applied in numerous decisions to a variety of facts and statutory contexts.<sup>3B</sup>

- (b) At the end of the first sentence, insert new footnote 3A:

<sup>3A</sup> At [221].

- (c) At the end of the paragraph, insert new footnote 3B:

<sup>3B</sup> *The Buddhist Society of Western Australia Inc v Commissioner of Taxation (No 2)* [2021] FCA 1363; *Commissioner of Taxation of the Commonwealth of Australia v The Leeuwin Sail Training Foundation Ltd* [1996] FCA 626; *Australian Airlines Ltd v The Commissioner of Taxation of the Commonwealth of Australia* [1996] FCA 217; *The National Institute of Dramatic Art v Chief Commissioner of State Revenue* [2016] NSWSC 1471.

- (d) After the paragraph, insert new paragraphs 12A and 12B:

12A. While an essential element of the school is to provide education, the education provided does not require formal examination or testing, or the granting of formal awards of certificates of completion.<sup>3C</sup> Schools are not limited to those focused on academic pursuits and includes (but is not limited to) recreational, technical, arts and agricultural schools.<sup>3D</sup>

12B. The following factors are not required<sup>3E</sup> but can help demonstrate there is a school:

- a set curriculum;
- instruction or training provided by suitably qualified persons;
- the enrolment of students;
- some form of assessment and correction;
- the creation of a qualification or status which is recognised outside of the organisation.

- (e) After the first sentence of new paragraph 12A, insert new footnote 3C:

<sup>3C</sup> *The Buddhist Society of Western Australia Inc v Commissioner of Taxation (No 2)* [2021] FCA 1363 at [101].

- (f) After the second sentence of new paragraph 12A, insert new footnote 3D:

<sup>3D</sup> *Cromer* at [222].

- (g) In new paragraph 12B after 'are not required', insert new footnote 3E:

<sup>3E</sup> *The Buddhist Society of Western Australia Inc v Commissioner of Taxation (No 2)* [2021] FCA 1363 at [98].

## 7. Paragraph 14

Omit the wording of the paragraph; substitute:

In order for there to be a school for the purposes of Item 2.1.10, there must also be an educational organisation which has a distinct identity (referred to as a '**school organisation**').

**8. Paragraph 15**

Omit the paragraph.

**9. Paragraph 16**

(a) Omit the heading.

(b) After the paragraph, insert new paragraph 16A:

16A. To be a school for the purposes of Item 2.1.10, the building must be used as a school by either:

- a government;
- a public authority;
- a society or association which is carried on otherwise than for the purposes of profit or gain to the individual members of the society or association.<sup>3F</sup>

(c) At the end of the new paragraph 16A, insert new footnote 3F:

<sup>3F</sup> Subsection 30-25(1), Column 1 of item 2.1.10.

**10. Paragraphs 17 to 19**

Omit the paragraphs, including the heading.

**11. Paragraph 26 and 29**

In the first dot point, after 'in paragraphs', omit '13 to 19'; substitute '13 to 16A'.

**12. Paragraph 30**

(a) After the first sentence, insert:

Broadly, regard must be given to:

- the overall purpose (or purposes) for which the building has been established and maintained;
- the importance of each of the activities carried out to that purpose;
- any connection that the non-school use has towards the school use;
- the extent the school use and non-school use have contributed to that purpose.<sup>3G</sup>

(b) At the end of the new sentence, insert new footnote 3G:

<sup>3G</sup> *The Buddhist Society of Western Australia Inc v Commissioner of Taxation (No 2)* [2021] FCA 1363 at [104].

(c) After the paragraph, insert new paragraph 30A:

30A. The following factors are not determinative, but may indicate that a building is used as a school building:

- the amount of time the building is put to school use relative to the amount of time it is put to non-school use;
- the number of people involved in the school use of the building relative to the number involved in its non-school use;
- the physical area of the building put to school use relative to the physical area put to non-school use;
- the extent to which the building has been adapted or modified in order to accommodate its school or non-school use.

### **13. Paragraphs 31 to 35**

Omit the paragraphs.

### **14. Paragraph 38**

Omit the wording of the paragraph; substitute:

In considering the physical attributes of a building it is necessary to have regard to the overall purpose of the building and the importance of each of the activities carried out to that purpose. This would require consideration to be given to the extent to which the building has been specifically designed or materially adapted to enable, support or facilitate its non-school use.

### **15. Paragraph 42**

After 'in paragraphs', omit '13 to 19'; substitute '13 to 16A'.

### **16. Paragraph 43**

(a) After the first sentence, insert:

Consideration of any connection that the non-school use has towards the school use and the extent to which both contribute to the furtherance of the overall purpose for which the building has been established and maintained must be central to this examination.<sup>3H</sup>

(b) At the end of the new sentence, insert new footnote 3H:

<sup>3H</sup> *The Buddhist Society of Western Australia Inc v Commissioner of Taxation (No 2)* [2021] FCA 1363 at [104].

### **17. Paragraph 49**

In the third dot point, after 'in paragraphs', omit '13 to 19'; substitute '13 to 16A'.

**18. Paragraph 74**

After, 'in paragraphs', omit '75 to 89'; substitute '75 to 90'.

**19. Paragraph 82**

At the end of the last dot point, omit the semicolon; substitute a full stop.

**20. Paragraph 94**

(a) Omit the wording of the paragraph; substitute:

*Local Church wishes to establish a 'School of Ministries' that will be open to the public at large, where students will undertake a nationally recognised course of study for the attainment of a Diploma, Bachelor or Masters of Theology and Ministry.*

(b) After the paragraph, insert new paragraphs 94A and 94B:

*94A. In doing so, it will establish a separate body within the Church with a school board, constitution and accounts. A number of qualified lecturers will be engaged to provide instruction to students. Students will be required to undertake the course within a set timeframe and pass various forms of assessment as part of the course.*

*94B. The 'School of Ministries' will be a school for the purposes of Item 2.1.10.*

**21. Paragraph 95**

(a) Omit the wording of the paragraph; substitute:

*Family Church establishes an Adult Bible Education Program, advertised as open to members of the public. Courses are structured to give a broad coverage of scripture topics and are designed to enhance participants' spiritual life through a deeper understanding of the Bible. They are also suitable as introductory courses for those who wish to undertake more in-depth study. Participants are not required to enrol. Attendance, however, is typically good and regular. Instruction is given by theology graduates. Participant achievement is not assessed and the courses do not lead to any externally recognised qualification or status. The Program is one of a number of ministry initiatives conducted by Family Church.*

(b) After the paragraph, insert new paragraphs 95A and 95B:

*95A. The Adult Bible Education Program is not a school for the purposes of Item 2.1.10.*

*95B. The Program does not have an organisational identity which is sufficiently distinct from that of Family Church.*

**22. Paragraph 96**

(a) Omit the wording of the paragraph; substitute:

*Good Neighbour Church conducts a number of Sunday school groups for children of various ages. The Church establishes a Sunday school committee of three persons which includes the pastor and two other permanent members from the congregation. The Church makes provision in its constitution for the establishment*

*of this committee and specific rules are developed in respect of the operation of the committee and the Sunday schools. Separate accounts and records are kept.*

- (b) After the paragraph, insert new paragraphs 96A to 96C:

*96A. The Committee is responsible for selecting prospective teachers based on minimum standards that they have set. Teachers are required to be properly trained and to have appropriate qualifications (including blue card). The Committee is also responsible for the curriculum that is taught and has applied the national curriculum for that religious body. The design of the curriculum takes into account the age of the child and their level of knowledge.*

*96B. Children are assessed on what they have learnt, for which they receive certificates which enable them to progress to new levels. Parents are also required to register their children and ensure that they are signed in and out of classes.*

*96C. The Sunday school groups are a school for the purposes of Item 2.1.10.*

### **23. Paragraph 97**

Omit the paragraph, including the heading.

### **24. Paragraph 98**

- (a) Omit the wording of the paragraph; substitute:

*Local Church also conducts the following during the week:*

- *the weekly sermon;*
- *a women's group that has as its purpose teaching from the Bible;*
- *a youth group every Friday night with teachings from the Bible and youth-based activities;*
- *weekly Bible study classes conducted by the senior pastor based on topics determined by the pastor for that week;*
- *spiritual support and counselling;*
- *a pre-marital course with marriage counselling; and*
- *a one-week church conference held on an annual basis with guest speakers.*

- (b) After the paragraph, insert new paragraphs 98A and 98B:

*98A. These activities are performed and/or organised by a pastor from the Church and a team of senior church staff.*

*98B. None of these activities on their own or in conjunction with each other constitute a school for the purposes of Item 2.1.10. Specifically, they are not performed by an organisation with an identity which is sufficiently distinct from the Church.*

**25. Paragraph 99**

- (a) Omit the wording of the paragraph; substitute:

*Primary School intends to build an indoor sports complex on school grounds to support its sports curriculum. The complex will include a gym, a basketball court and an in-ground swimming pool, all enclosed by walls and a roof.*

- (b) After the paragraph, insert new paragraphs 99A and 99B:

*99A. A school building fund can provide money to acquire, construct or maintain the sports complex.*

*99B. The complex (including the in-ground swimming pool) will be a building for the purposes of Item 2.1.10 as it is a permanent structure forming an enclosure that provides protection from the elements. The building will be used for the purposes of providing instruction and has the character of a school building.*

**26. Paragraph 100**

- (a) Omit the wording of the paragraph; substitute:

*Little Primary School provides a supervised before and after school care service for its students. This care does not involve the provision of any instruction or training. Little Primary School uses the existing school hall and facilities. The use of the school hall for this purpose does not contribute materially to the hall's maintenance costs.*

- (b) After the paragraph, insert new paragraph 100A:

*100A. A school building fund can provide money to maintain the hall.*

**27. Paragraph 101**

- (a) Omit the wording of the paragraph; substitute:

*ABC Primary School constructs a multipurpose hall with a grant from the Australian government under the Building the Education Revolution (BER) program. The hall contains a large open area marked out for basketball and netball courts, a food service area, storage rooms and toilets. It is equipped with stage blocks, screens, tables and chairs which are stored away when not in use. The School uses the hall for various purposes including physical education classes, school assemblies, the school canteen, a wet-weather play area, school concerts and graduation ceremonies.*

- (b) After the paragraph, insert new paragraphs 101A to 101C:

*101A. The school regularly hires out the hall to various community and sports groups after school hours, on weekends and during school holidays. On Sundays the hall is used by a local church for worship services. The non-school use of the hall gives rise to additional maintenance costs and those costs are material. Hire is on a cost-recovery basis in accordance with the BER Guidelines. The hall has not been modified to cater for use by external bodies.*

*101B. A school building fund can provide money to maintain the hall, provided that it is promptly reimbursed for the cost of the building's non-school use. This reimbursement could be funded from the cost recovery fees charged for the hire of the building.*



101C. *The use of the hall by community and church groups occurs outside of school hours and does not materially limit or detract from its use by the school, nor is it otherwise incompatible with such use. Although non-school use is regular, it is not use of a kind which would prevent the hall from being considered to be used as a school as a matter of ordinary language.*

**28. Paragraph 102**

- (a) Omit the wording of the paragraph; substitute:

*East West Church is a church that also conducts a school for the purposes of Item 2.1.10. The Church decides to build one large building with a 3,000 seat capacity which will be used to hold church services and other church related activities; and will also be used by the school.*

- (b) After the paragraph, insert new paragraphs 102A to 102E:

102A. *The building will be used by the 500 students of the school a little over 50% of the time each week to conduct the practical component of their drama and dance courses using the bare stage area. On average, the building is also used by 10,000 people per week for various church services, youth and other church related activities.*

102B. *A school building fund cannot provide money to acquire, construct or maintain the building.*

102C. *The building has been designed to cater for the Church and the large numbers that will attend church activities.*

102D. *Although the building will be used for the purposes of instruction more than 50% of the time, it is not a school building. The size of the building, its design and the number of people who use it each week for non-school activities indicate that the building cannot be described as a being 'used as a school' as a matter of ordinary language.*

102E. *The building's significant non-school use also means that it cannot be regarded as being used as a school in conjunction with one or more other school buildings.*

**29. Paragraph 103**

- (a) Omit the wording of the paragraph; substitute:

*Private College has constructed an indoor 25-metre swimming pool which it makes available for public use from early morning until evening, charging entry fees. The pool is also used regularly by health professionals to conduct hydrotherapy sessions and by swimming instructors to give private lessons. When the pool is required for students, lanes are cordoned off for student use.*

- (b) After the paragraph, insert new paragraphs 103A to 103C:

103A. *A school building fund cannot provide money to maintain the pool building.*

103B. *The extent of the building's non-school use indicates that it cannot be described as being used as a school as a matter of ordinary language. The use of the building by health professionals and others detracts from or limits its ability to be used by the school.*

103C. *The building's significant non-school use also means that it cannot be regarded as being used as a school in conjunction with other school buildings.*

**30. Paragraph 104**

- (a) Omit the wording of the paragraph; substitute:

*The governing Council of Northwest Church wants to construct a new building. The building will include a hall, a number of rooms described as 'classrooms', an office, a kitchen and a storeroom.*

- (b) After the paragraph, insert new paragraphs 104A to 104H:

104A. *The Council intends to use the classrooms and office for a 'School of Ministries' where students will study for a Bachelor of Theology. The 'School of Ministries' is a school for the purposes of Item 2.1.10.*

104B. *The Council intends to use the hall and kitchen for the purposes of Church services, functions and events.*

104C. *Under an arrangement between the Council and the Board of the school:*

- *the School will have priority access to the classrooms but will allow them to be used by the Church for Bible study groups and youth meetings outside of school hours;*
- *the Church will have priority access to the hall and kitchen but will allow those facilities to be used for School events; and*
- *the School and Church will have equal access to storeroom.*

104D. *A school building fund can provide money to acquire, construct and maintain the classrooms and office. A school building fund cannot provide money to acquire, construct or maintain the remainder of the building.*

104E. *The classrooms and office will be buildings in their own right for the purposes of Item 2.1.10. The classrooms will be buildings used as a school. Their use will be controlled by the School and their school use will be substantial. Further, the non-school use of the classrooms will not limit or detract from their school use. The office will be used as a school in conjunction with the classrooms.*

104F. *The hall and kitchen will not be school buildings. Their use will not be controlled by the School and their school use will not be sufficiently substantial. Neither the hall nor the kitchen will be used as a school, whether alone or in conjunction with other buildings.*

104G. *The storeroom will not be a school building. Its character is influenced as much by its Church use as it is by its school use.*

104H. *The amount of money which can be provided by a school building fund must be determined on a reasonable basis, having regard to the cost of the classrooms and office relative to the cost of the building as a whole.*

**31. Paragraph 105**

- (a) Omit the wording of the paragraph; substitute:

*Exceptional College is a school of 1,000 students which is affiliated with Exceptional Church. Exceptional College wishes to have an auditorium that is large*

*enough to accommodate school students, their families and invited guests for student award presentations, annual and other student cultural presentations, religious services involving students and other occasional school events. The auditorium will also be used to provide lectures to students on a regular basis.*

- (b) After the paragraph, insert new paragraphs 105A to 105H:

*105A. Due to its location, Exceptional College has had difficulties in hiring facilities of this kind in the past. It considers the convenience in having its own facility outweighs the additional expense involved in constructing its own.*

*105B. Based on current and projected student enrolments and records regarding the number of attendees that typically attend its functions, the College estimates that the auditorium would need to seat 2,500 people.*

*105C. The auditorium will have movable partitions which will enable a part of the building to be converted into temporary lecture theatres.*

*105D. Exceptional Church would also like to use the auditorium for public church services and functions on the weekends, when it is not being used by Exceptional College. It estimates the auditorium would need to seat an additional 2,500 people for this purpose.*

*105E. It is decided that the auditorium will be built to seat 5,000 people. Considerable expenditure will also be incurred on items such as lighting and staging equipment so that the auditorium can be used for public church services that will be held every weekend. The auditorium complex will include administration offices solely for church use and a gift shop.*

*105F. A school building fund cannot provide money to acquire, construct or maintain the auditorium.*

*105G. The physical attributes of the building as a whole prevent it from being regarded as a building to be 'used as a school' as a matter of ordinary language. Although the building will be put to school use, its size and design indicate that it does not have the character of a school building. The building's character is influenced as much by its design for public church events as it is by its design for the purpose of providing instruction.*

*105H. The lecture theatres will not be buildings in their own right for the purposes of Item 2.1.10 as they are not a permanent, fixed and separately identifiable part of the auditorium.*

### **32. Paragraph 106**

- (a) Omit the wording of the paragraph; substitute:

*Country College constructs a stand alone toilet block and a stand alone tuck-shop facility on school property. The toilet block is for the use of students, teachers and visitors to the school. The school tuck-shop facility operates during school hours for students and teachers. Orders are taken by the tuck-shop and delivered during school time.*

- (b) After the paragraph, insert new paragraphs 106A and 106B:

*106A. A school building fund can provide money to acquire, construct and maintain the toilet block and tuck-shop.*

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106B. *Both the toilet block and tuck-shop facility are incidental to the provision of instruction in one or more other buildings. Accordingly, they are buildings used as a school for the purposes of Item 2.1.10.*

**33. Paragraph 107**

- (a) Omit the wording of the paragraph; substitute:

*Country College, as described above, is located in the centre of town and decides to construct a stand alone café food facility that it owns and operates. The food available and the café food facility itself will be designed to attract office workers in town, though it is equally available to members of the school community. Unlike the school tuck-shop, the café food facility will operate at times and on days when the school does not operate.*

- (b) After the paragraph, insert new paragraphs 107A and 107B:

*107A. A school building fund cannot provide money to acquire, construct or maintain the facility.*

*107B. Country College will not use the facility to provide instruction to students. Further, the building's significant non-school use prevents it from being regarded as being used as a school in conjunction with other buildings. Accordingly the facility will not be a building used as a school for the purposes of Item 2.1.10.*

**34. Paragraph 108**

- (a) Omit the wording of the paragraph; substitute:

*Religious College, a denominational school, plans to build a chapel on college grounds. The chapel will only be used by teachers and students for religious services and prayer as part of the conduct of the school.*

- (b) After the paragraph, insert new paragraphs 108A and 108B:

*108A. A school building fund can provide money to acquire, construct or maintain the chapel.*

*108B. The use of the chapel is incidental to the provision of instruction in a denominational school and as such is a building used as a school for the purposes of Item 2.1.10.*

**35. Paragraph 109**

- (a) Omit the wording of the paragraph; substitute:

*Following on from example 15, Religious College plans to allow the chapel to be used by former students and members of its denomination for wedding and funeral services. However, it will only allow this use of the chapel during weekends and school holidays. The design of the Chapel is not affected by Religious College's plan to allow this non-school use.*

- (b) After the paragraph, insert new paragraphs 109A to 109E:

*109A. A school building fund can provide money to acquire or construct the chapel.*

109B. *Although the chapel will be put to regular non-school use, that use will not impact on the conduct of the school and will not require the incurrence of any additional acquisition or construction costs.*

109C. *After construction, the chapel is used by teachers and students for religious services and prayer as part of the conduct of the school. It is also used to host weddings and funerals when not required by the school for school use. This non-school use gives rise to additional maintenance costs and those costs are material.*

109D. *A school building fund can provide money to maintain the chapel, but only to the extent that such maintenance relates to the use of the chapel for school purposes. A reasonable apportionment is required.*

109E. *If a school building fund covers all maintenance costs of the chapel it must be promptly reimbursed for those costs which reasonably relate to the use of the chapel for non-school purposes.*

**36. Paragraph 110**

- (a) Omit the wording of the paragraph; substitute:

*Junior Primary School decides to support working parents in its school and local community by building and operating a child care centre from a stand alone building on school grounds. The child care centre will be open to the public (with preference to siblings of school students) but will also offer before and after school care to the students of the school and students of other schools.*

- (b) After the paragraph, insert new paragraphs 110A and 110B:

110A. *A school building fund cannot provide money to acquire, construct or maintain the centre.*

110B. *The centre will not be used to provide instruction to students and its use will not be incidental to the provision of instruction in a school building. Although it will be available to school students for after school care, it will also be available for public use.*

**37. Paragraph 111**

- (a) Omit the wording of the paragraph; substitute:

*Secondary College is a school for the purposes of Item 2.1.10. It has a stand alone school gymnasium building that it uses as part of its physical education curriculum and also for school events. The building has a large floor area with court markings and an area for fitness equipment. The College is approached by a local businessman who wishes to operate a fitness club from the school building for the general public outside of school hours during the early morning, evenings and weekends.*

- (b) After the paragraph, insert new paragraphs 111A to 111D:

111A. *The businessman has requested construction of a separate entrance and a small storage area for the fitness club's goods and sound equipment. Other than that, existing school equipment and facilities are to be used.*

111B. *The operation of the fitness club results in additional maintenance costs and those costs are material.*

111C. *A school building fund cannot provide money to pay any costs associated with the alterations for the fitness club area.*

111D. *A school building fund can provide money to pay maintenance costs which relate to the school use of the building. If a school building fund provides money in respect of all maintenance costs, it must be promptly reimbursed for those costs which reasonably relate to the use of the building by the fitness club. A reasonable apportionment is required in order to determine what proportion of the total cost of maintenance can be borne by the fund.*

**38. Paragraph 112**

- (a) Omit the wording of the paragraph; substitute:

*Secondary College is a school for the purposes of Item 2.1.10. It is located next to a national park and space for expansion is limited and heavily restricted due to environmental concerns. In order to expand, the College entered into negotiations with the owner of an adjacent property with a view to acquiring the property and demolishing the building on that property to make way for a new classroom building. It has a development plan for the new building professionally prepared, and intends using funds from a school building fund it has already established.*

- (b) After the paragraph, insert new paragraphs 112A to 112C:

112A. *The College signed a contract with the owner to purchase the property subject to planning approval being granted by the local council. However, planning approval is provided on the condition that an environmental impact study is conducted to determine the best method to minimise the impact of construction on the neighbouring national park.*

112B. *As opportunities to expand are limited, the College decides to make the contract unconditional and proceed with the contract of purchase with the intention of renting the property at commercial rates until planning approval is eventually granted.*

112C. *Although the funds used to acquire the property are not actually used to acquire or construct a building to be used as a school, it is evident that they are the first step towards that end. This will be the case even if planning approval takes a number of years.*

**39. Paragraph 113**

- (a) Omit the wording of the paragraph; substitute:

*Secondary College has a school building fund which is accumulating funds for the next phase of expansion and refurbishment of the school. The fund is approached to make an interest-free loan to the school for the purpose of meeting the school's operational costs.*

- (b) After the paragraph, insert new paragraph 113A:

113A. *The school building fund cannot use money in this way. The interest-free nature of the loan indicates that it has a purpose other than providing money to acquire, construct or maintain a school building for school purposes. In order for the loan to constitute a permissible investment by the fund, it would need to be a strictly temporary arrangement made on ordinary commercial terms.*

**40. Paragraph 114**

After 'TR 2006/10', insert '*Public Rulings*'.

**41. Paragraph 115**

After 'paragraphs 116 to 119', insert 'of this Ruling'.

**42. Paragraph 120**

In the heading to the Appendix, omit '1'.

**43. Paragraph 126**

In footnote 5, omit the wording of the footnote; substitute:

*The Buddhist Society of Western Australia Inc v Commissioner of Taxation (No 2)* [2021] FCA 1363; *Cromer* [221–222].

**44. Paragraph 129**

- (a) After 'In *Cromer*', omit '*Golf Club Limited v. Downs and Another* (1973) 47 ALJR 219; [1972-73] ALR 1295 ('*Cromer*')'; substitute a comma.
- (b) After 'His Honour said at', omit 'ALJR 221; ALR 1299'; substitute '[221]'.

**45. Paragraph 130**

Omit the wording of the paragraph; substitute:

In order for there to be a school for the purposes of Item 2.1.10, there must also be an educational organisation which has a distinct identity.

**46. Paragraph 135**

- (a) In footnote 6, after 'per Gibbs J at', omit '157 – 159'; substitute '[157-159]'.
- (b) In footnote 7, after '35 Ch D 472', omit 'at 484'; substitute 'at [484]'.
- (c) Omit the wording of footnote 8; substitute '*Commissioner of Land Tax (NSW) v Joyce* [1974] HCA 39.'.

**47. Paragraph 136**

In footnote 9, after '1 NSWLR 963', omit 'at 966-968'; substitute 'at [966-968]'.

**48. Paragraphs 137 to 145**

Omit the paragraphs, including the heading and footnote 10.

**49. Paragraph 149**

- (a) After '*Commissioner of Taxation*', omit '(1959) 101 CLR 333; (1959) 12 ATD 111; 7 AITR 534 (*Cobb & Co*)'; substitute '[1959] HCA 38 (*Cobb & Co*)'.
- (b) Omit the wording of footnote 13; substitute '*Cobb & Co* 101 CLR 333 at [337]'.

**50. Paragraph 150**

Omit the wording of footnote 14; substitute 'For example, *Hilderbrandt v. Stephen* [1964] NSW 740 at [742-743].'

**51. Paragraph 157**

In footnote 15, after '*Commissioner of Taxation*', omit '(1990) 90 ATC 4925; (1990) 21 ATR 920'; substitute '[1990] FCA 524'.

**52. Paragraph 167**

Omit the wording of footnote 17; substitute:

<sup>17</sup> For example, *Shell-Mex & B P Ltd v. Clayton* [1955] 3 All ER 102 at [106]; *R v. Rintel* (1991) 52 Crim R 209 at [210-211].

**53. Paragraph 168**

After 'merely because some form of', omit 'systematic'.

**54. Paragraph 172**

- (a) Omit '*Randwick Corporation v. Rutledge* [1959] HCA 63; (1959) 102 CLR 54 (*Randwick*)'; substitute '*Randwick Municipal Council v Rutledge* [1959] HCA 63 (*Randwick*)'.
- (b) Omit the wording of footnote 18; substitute '*Randwick* 102 CLR 54 at [37]'.

**55. Paragraph 173**

- (a) Omit the wording of the paragraph; substitute:

In order for a building to be described as 'used as a school' as a matter of ordinary language, its use for school purposes must be substantial, though a mere mathematical examination of the time used is not sufficient of itself to determine this factor.<sup>18A</sup>

- (b) After the paragraph, insert new footnote 18A:

<sup>18A</sup> *The Buddhist Society of Western Australia Inc v Commissioner of Taxation (No 2)* [2021] FCA 1363 at [104].



**56. Paragraph 178**

(a) After the first sentence, insert:

Broadly, regard must be given to:

- the overall purpose (or purposes) for which the building has been established and maintained;
- the importance of each of the activities carried out to that purpose;
- any connection that the non-school use has towards the school use;
- the extent the school use and non-school use have contributed to that purpose.<sup>18B</sup>

(b) At the end of the new sentence, insert new footnote 18B:

<sup>18B</sup> *The Buddhist Society of Western Australia Inc v Commissioner of Taxation (No 2)* [2021] FCA 1363 at [104].

**57. Paragraph 179**

After 'described in paragraphs', omit '13 to 19'; substitute '13 to 16A'.

**58. Paragraph 180**

Omit 'Other factors which are relevant to determining whether a building is used as a school include'; substitute 'The following factors are not determinative, but may indicate that a building is used as a school building'.

**59. Paragraph 181**

After the fourth sentence, insert 'This speaks to the purposes for which the building was established and the importance set to those purposes.'

**60. Paragraph 184**

Omit the wording of footnote 19; substitute 'For example, *Sunchen Pty Ltd v Commissioner of Taxation* [2010] FCAFC 138.'

**61. Paragraph 190**

After 'described in paragraphs', omit '13 to 19'; substitute '13 to 16A'.

**62. Paragraph 199**

(a) Omit the wording of footnote 23; substitute '*Kibby v Santiniketan Park Association Inc* [1998] VSC 148.'

(b) Omit the wording of footnote 25; substitute '*Re Hilton, Gibbes v. Hale-Hinton* [1909] 2 Ch 548.'

**63. Paragraph 202**

In the third dot point, after 'described in paragraphs', omit '13 to 19'; substitute '13 to 16A'.

**64. Paragraph 210**

Omit the wording of footnote 27; substitute 'For example, *Trade Practices Commission v. Australian Iron & Steel Pty Ltd* [1990] FCA 18.'.

**65. Paragraph 212**

- (a) After 'referred to in paragraphs', omit '13 to 19'; substitute '13 to 16A'.
- (b) After 'use the building to provide', omit 'regular, ongoing and systematic'.

**66. Paragraph 225**

Omit the wording of footnote 31; substitute '*Cobb & Co* [1959] HCA 38.'.

**67. Paragraph 232**

Omit the wording of footnote 32; substitute '*Lorimer v. Smail* [1911] HCA 44; *Mersey Docks and Harbour Board v. Henderson Bros* (1888) 13 App Cas 595 at [599-600]'.

**68. Paragraph 239**

Omit the wording of footnote 35; substitute '*Commissioner of Taxation of the Commonwealth of Australia v Word Investments Limited* [2008] HCA 55; 236 CLR 204 at [17]'.

**69. Paragraph 241**

- (a) Omit the wording of footnote 36; substitute '*Commissioner of Taxation v. Creer J.N.* [1986] FCA 166; 86 ATC 4318 at [4325]'.
- (b) Omit the wording of footnote 37; substitute:  
*Magna Alloys & Research Pty Ltd v. Commissioner of Taxation of the Commonwealth of Australia* [1980] FCA 180; *Robert G Nall Ltd v. Federal Commissioner of Taxation* [1937] HCA 88; 57 CLR 695 at [711]; 1 AITR 169 at [176].

**70. Paragraph 274**

In the third dot point, after 'and paragraphs', omit '315 to 319'; substitute '314 to 318'.

**71. Paragraph 326**

After 'discussed at paragraphs', omit '328 to 330'; substitute '327 to 330'.

**72. Paragraph 330**

After 'general gift provisions,' omit 'see Taxation Ruling TR 95/27 *Income tax: public funds*'; substitute 'see TR 95/27'.

**73. Paragraph 321**

Omit the wording of footnote 40; substitute:

*See Taxation Determination TD 2004/23 *Income tax: where a trustee of a public fund under item 2 of the table in section 30-15 of the Income Tax Assessment Act 1997 has an obligation or otherwise gives an assurance to apply funds in accordance with requests from a donor, is a separate fund created? If so, is the separate fund a public fund entitled to be endorsed as a deductible gift recipient?*.*

**74. Paragraph 331**

Omit the paragraph including the heading.

This Addendum applies before and after date of issue.

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**Commissioner of Taxation**

4 October 2024

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**ATO references**

NO: 1-VUKBWNA  
ISSN: 2205-6122  
BSL: SB  
ATOlaw topic: Deductible gift recipients and exempt entities ~~ Requirements for deductible gift recipients

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