

## Schools and Tax Deductibility

Although private schools are regarded in Australia as exempt from income tax, this does not mean that gifts to the school can be regarded as tax deductible donations by donors. Unlike the rest of the developed world, Australian taxation law has a special definition for organisations or special funds to which gifts are tax deductible for donors.

Such organisations or special funds within organisations are known as Deductible Gift Recipients (DGRs) and since 1 July 2000 must be endorsed as such with the Australian Taxation Office (ATO). A special fund for deductible donations that is available to schools is a school building fund. As at November 2002, the ATO had endorsed approximately 24,500 DGRs with about 3,400 being school building funds.

### School Building Fund

The DGR category of school building fund covers funds with the following characteristics:

- the fund is a public fund
- the public fund is established and maintained solely for the acquisition, construction or maintenance of a building
- the building is used, or to be used, as a school or college, and
- the building is used for that purpose by:
  - a government
  - a public authority, or
  - a non-profit society or association.

The ATO has made a special ruling on school building funds and is known as TR 96/8.

### Public fund

A public fund is a special fund to which the public is invited and do contribute to in a meaningful way. It operates on a non-profit basis, with the governing body members having a degree of responsibility to the community as a whole (such as church authorities, professional persons and government officers). The school building fund often takes the form of a trust document with the object of raising money for the acquisition, construction or maintenance of a school building. The ATO has issued a special ruling on its technical requirements for a public fund and is known as TR 95/27.

### Building used as a school or college

The term 'building' includes one building, a group of buildings, a part of a building or additions to a building.

The building should be a permanent structure, usually with walls and a roof.

#### EXAMPLE

Items that are not buildings include:

tennis courts, playing fields, covered play areas, car parks and landscaping

land acquired for the purpose of providing recreational space, such as a sports ground, and furniture, training equipment and computers, unless they form an integral part of the building, that is, fixtures.

Fixtures are accepted as part of a building. They are affixed to a building and are unable to be detached without substantial damage to the item itself or that to which it is attached.

#### EXAMPLE

Fixtures include ducted heating systems and fixed air conditioning systems.

The building or group of buildings must be used for a purpose that is connected with the curriculum of the school or college.

#### EXAMPLE

Buildings used as a school include:

indoor swimming pool (surrounded by walls and roof) being an integral part of a building which is used as a school or college, and school or college assembly halls.

A multi-purpose building is taken to be used as a school or college if the primary and principal use of the building is as a school or college. More than 50% of the time will satisfy this requirement.

#### EXAMPLE

A building used as a school or college every weekday and a place of worship on Sundays will qualify as a school or

college building. However, a hall used for religious instruction on Sundays only and for community and social activities on other days of the week would not be a school or college building.

What types of gifts can be tax deductible to donors?

Gifts have the following characteristics:

- they are made voluntarily
- they do not provide a material benefit to the donor, and
- they essentially arise from benefaction, and detached and disinterested generosity.

Gifts to school building funds made in substitution for school fees or made in exchange for lower school fees or as "an alternative" to an increase in the level of school fees will not be deductible (Income Tax Ruling IT2071, note despite the age of this ruling it remains a valid ruling).

See also Taxation Determination TD 93/57 which states that payments 'to a school building fund which result in a benefit to the payer are not deductible gifts for taxation purposes'.

Material benefits to the donor would include reduction in school fees, grant of scholarships to nominated students, raffle tickets, tickets to functions. Items of insubstantial value such as plastic lapel pins or bumper stickers would not be a material benefit. Mere public recognition such as donor's names on honour boards, in school newspapers, on bricks or pavers would not be material benefits unless they amounted to advertising.

Only certain types of gifts to school building funds are tax deductible to donors. The types are:

- money gifts of \$2 or more
- property purchased during the 12 months before the gift was made
- trading stock disposed of outside the ordinary course of business, and
- gifts of property valued by the Tax Office at more than \$5000 and not purchased during the 12 months before the gift was made.

What a school building fund can pay for.

A school building fund is solely for providing money for acquiring, constructing or maintaining the school or college buildings. It cannot be used for any other purpose.

Expenditure on capital improvements and maintenance, as well as installing and maintaining fixtures, are accepted outlays of a school building fund.

## EXAMPLE

Costs payable from a school building fund include:

- purchase of land for which there are definite plans to construct a building to be used as a school or college
- construction or purchase expenses and associated financing costs
- painting and general maintenance of school buildings, and building insurance
- expenditure on carpets that are fixed to the floor of the school building, and
- administration costs of the fund, including bank fees, accounting costs and fundraising expenses.

Costs that cannot be paid by a school building fund include running expenses of the school, paying teachers, buying furniture and materials, and maintaining sports grounds and car parks.

A school building fund may invest or lend its money if this is a bona fide and temporary arrangement, and is consistent with achieving the fund's objects with all reasonable speed. Some school building fund's investment policies will be subject to the prudent investor rules found in each State or Territories trust legislation.

Can your endorsement be revoked?

It should also be noted that DGR endorsement is not 'for life' or guaranteed forever. Section 30-160 of the Income Tax Assessment Act 1997 requires the school building fund or entity hosting the fund (the school) to advise the ATO before or soon as practicable after it is not entitled to be endorsed.

A school building fund is not entitled to be endorsed if:

- it fails to maintain a gift fund in the correct fashion
- it has not provided information or documents within the specified time after a request by the Tax Office
- it has not given the specified information on receipts, or
- is no longer a school building fund because it has changed its character so it no longer complies with its endorsement conditions (for example funding matters outside its terms such as car park maintenance).

The ATO also has the power to revoke a Deductible Gift Recipient's endorsement. The Tax Office will provide written notice of the revocation. The revocation has effect from a date specified by the Tax Office and the date may be retrospective.

If you are dissatisfied with the revocation of your organisation's DGR endorsement, you can lodge an objection against the revocation. You must do this in writing to the Tax Office, giving the grounds for the objection.

Does DGR endorsement affect income tax exemption?

DGR endorsement is separate from income tax exemption. DGRs that are charities will need to apply separately for endorsement as an income tax exempt charity (ITEC). For information, see the ATO fact sheet "The endorsement process for income tax exempt charities" (ITECs) (NAT 3192).

Finally

If the trustees of a school building fund are found to be engaging in practices that are not in accordance with the requirements of a school building fund that has been endorsed as a deductible gift recipient (DGR) by the Commissioner, then the DGR endorsement may be revoked. The Tax Office may also investigate donations made by donors to the fund with the result that they are disallowed. This could even involve retrospective disallowance

of a claim for a tax deduction for a donation in a donor's past tax return.

#### ATO REFERENCE MATERIAL

Fact sheet NAT 5393.

Taxation Ruling TR 96/8

Taxation Ruling TR 95/27

Taxation Ruling IT2071

Taxation Ruling TR 2000/12

Tax Determination 93/75