



Status: **legally binding**

Class Ruling

Cawarra Residential Limited – deductibility of donations under a payment direction deed

❶ Relying on this Ruling

This publication (excluding appendix) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

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What this Ruling is about

1. This Ruling sets out the income tax consequences of a landlord paying donation amounts to Cawarra Residential Limited (Cawarra) by way of an executed payment direction deed (PDD).
2. Details of this scheme are set out in paragraphs 9 to 29 of this Ruling.
3. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997* (ITAA 1997), unless otherwise indicated.

Note: by issuing this Ruling, the ATO is not endorsing this arrangement. Potential participants must form their own view about the arrangement.

Who this Ruling applies to

4. This Ruling applies to landlords who:
 - participate in the Cawarra Affordable Housing Program (AHP) in New South Wales (NSW), and
 - make a donation to Cawarra pursuant to a PDD.
5. This Ruling does not apply to anyone who is subject to the taxation of financial arrangements rules in Division 230 in relation to the scheme outlined in paragraphs 9 to 29 of this Ruling.

Note: Division 230 will not apply to individuals unless they have made an election for it to apply.

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When this Ruling applies

6. This Ruling applies from 1 July 2025 until 30 June 2029. However, if the scheme carried out is no longer implemented by Cawarra or the scheme implemented is materially different from the scheme that is described in this Ruling, then this Ruling:

- has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled, and
- may be withdrawn or modified.

Ruling

7. Donation amounts deducted from the landlord's gross rental receipts and paid to Cawarra, in accordance with a valid and executed PDD, can be deducted against the landlord's assessable income pursuant to section 30-15.

8. A landlord can claim a deduction for their donation amounts. However, the donation amounts cannot add to or create a tax loss under subsection 26-55(2).

Scheme

9. The following description of the scheme is based on information provided by the applicant. If the scheme is not carried out as described, this Ruling cannot be relied upon.

10. Cawarra was established in NSW as a public company limited by guarantee, registered under the *Corporations Act 2001*.

11. Cawarra is a public benevolent institution (PBI) registered under the *Australian Charities and Not-for-profits Commission Act 2012* (registered PBI), effective from 1 May 2023.

12. From 1 May 2023, Cawarra is endorsed as a deductible gift recipient (DGR).

13. On 27 March 2024, Cawarra constituent document 'Constitution of Abode Housing Limited' (Constitution) was adopted.

14. On 3 October 2024, Cawarra changed its name from Abode Housing Limited to Cawarra.

15. Cawarra provides a full suite of tenancy, property and housing services in NSW, delivering community, affordable and social housing.

16. Clause 3(a) of the Constitution outlines Cawarra's object as follows:

... to pursue the following charitable purposes in collaboration with [their] associated entities (including Civic [Disability Services Limited] and Thrive Clinical Services Limited ...):

- (i) promote the independence, worth and dignity of persons with disabilities, whether intellectual or otherwise, and/or mental health issues, and of whatever age, in accordance with the UN Convention on the Rights of Persons with a Disability; and
- (ii) promote social justice and carry out such other functions and purposes which are necessary or incidental to the above object(s).

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17. Clause 3(b) of the Constitution outlines the benevolent activities to achieve Cawarra's object by providing premises, facilities and other resources to enable its associated entities to undertake any of the following activities:

- (i) deliver reasonable and necessary supports that will help people with disabilities and/or mental health issues to reach their goals, objectives and aspirations, including undertaking activities to enable such persons' social and economic participation;
- (ii) promote the independence, worth and dignity of persons with disabilities and/or mental health issues, and of whatever age;
- (iii) establish and deliver a range of flexible individual supports that meet the assessed needs of the person with disabilities and/or mental health issues;
- (iv) provide accommodation support for persons with disabilities and/or mental health issues;
- (v) provide appropriate support and other assistance to persons with disabilities and/or mental health issues to encourage and effect their full effective participation and inclusion in society;
- (vi) encourage and promote citizenship and self-advocacy for persons with disabilities and/or mental health issues;
- (vii) assist persons with disabilities and/or mental health issues to achieve their desired lifestyle goals in ways that respect and promote their independence and inclusion;
- (viii) conduct or arrange vocational training of, promote employment opportunities for and arrange employment placement of persons with disabilities and/or mental health issues;
- (ix) acquire, establish or carrying on any business, whether primary production, manufacture, trade or otherwise, for the purpose of giving employment to persons with disabilities and/or mental health issues;
- (x) support or contribute to scientific or educational research into intellectual or other disabilities; and
- (xi) liaise with other community and government agencies to provide and improve services to persons with disabilities and/or mental health issues.

18. As part of its benevolent activities, Cawarra will operate the AHP, which will complement their activities and operations as detailed in paragraph 17 of this Ruling.

19. Cawarra will act as a not-for-profit real estate agency providing a professional property management service to landlords and tenants while reinvesting any profits back into the community through the AHP.

20. The AHP is a series of arrangements between landlords, tenants and Cawarra (in its capacity as the landlords' agent and a DGR).

21. The purpose of the AHP is for Cawarra to provide affordable housing at below market rent to people in need in NSW. To achieve this, Cawarra proposes to engage landlords who would like to participate in the AHP.

22. Under the AHP, it is proposed that instead of the landlord making cash donations, the landlord will enter into a PDD with Cawarra.

23. Under the PDD, Cawarra (in its capacity as the landlord's agent) will deduct amounts (representing donation amounts) from the landlord's rental income.

24. A gift made by a landlord is not directly connected to any one tenant or any other person.

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25. The gift received by Cawarra becomes part of the 'general pool of funds' used to finance the operations of the organisation, including payment of rental subsidies to tenants. The landlord has no control over how the funds will be deployed by Cawarra.

26. Under the AHP:

- The landlord enters into a standard management agency agreement (Agency Agreement) with Cawarra to act as agent for the landlord.
- The rent stipulated in the Agency Agreement is 'market rent'. The landlord and Cawarra agree on the market rent by way of independent valuation or consultation with the landlord via market research.
- Cawarra identifies tenants that meet the State Environmental Planning Policy for Affordable Housing income eligibility thresholds.
- Cawarra and the prospective tenant determine how much the tenant can afford to pay as monthly rent.
- Cawarra agrees to enter into a subsidy agreement with the tenant where Cawarra will be responsible for providing financial assistance to the tenant (that is, the difference between the market rent and what the tenant has agreed to pay).
- Cawarra identifies a suitable property for the proposed tenancy and enters into a PDD with the landlord, where it is agreed that Cawarra, acting in its capacity as the landlord's agent, will deduct amounts (representing gifted amounts) from the landlord's rental income.
- The criteria for determining a suitable landlord include:
 - The landlord must be a registered property owner in NSW or hold legal authority from the owner (for example, a trustee, executor, power of attorney or company director).
 - The property must be safe and in compliance with the health and safety laws for residential tenancies.
- A standard residential tenancy agreement (Tenancy Agreement) between the landlord and the tenant is entered into.
- The rent stipulated under the Tenancy Agreement is market rent.
- Just prior to the tenant entering into the Tenancy Agreement, Cawarra furnishes a signed letter to the tenant confirming the details of the subsidy agreement. The letter stipulates the amount Cawarra will fund by way of subsidy to the tenant and the amount the tenant is required to pay as rent.
- During the lease period, the tenant pays their share of the rent obligation to Cawarra.
- Cawarra collects the rent from the tenant, deducts various outgoings (for example, council rates, insurance and management fees) and remits the net rent amount (rent under the Tenancy Agreement less outgoings) to the landlord in accordance with the Agency Agreement.
- Commissions levied to the landlord by Cawarra (the percentage fee can range between 7 and 10%) are calculated on the gross rental income (that is, market rent).

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- Where the gifted amount as agreed with the landlord under the PDD is equivalent to the subsidised amount as agreed with the tenant under the subsidy agreement, Cawarra will not be required to fund the difference between the market rent and the tenant's subsidised rent.
 - However, where the gifted amount is different to the subsidised amount, Cawarra may need to fund the difference between the market rent and the tenant's subsidised rent.
27. Landlords voluntarily enter into a PDD.
28. Under the PDD:
- the landlord directs the agent (Cawarra) to deduct the donation amount from each monthly rental payment and pay the donation amount to Cawarra, in the nominated bank account, within 5 business days of the agent receiving the monthly rental payment
 - Cawarra agrees to accept the donation amount as a voluntary donation to further its charitable purposes and issue a receipt in accordance with section 30-228 (including name, Australian business number and a statement that it is for a gift)
 - the PDD can be revoked by the landlord at any time, by giving Cawarra 60 days' written notice
 - each donation amount is made voluntarily and without expectation of any material benefit or advantage
 - each donation amount constitutes a gift for the purposes of Division 30
 - each donation amount may be used for any purpose at the absolute discretion of Cawarra, which is consistent with its obligations under the ITAA 1997
 - Cawarra has not made any representations with respect to the allocation of any particular donation amount to a particular purpose or property, and
 - by paying each donation amount in accordance with the written directions of Cawarra, the agent will have discharged all its obligations under the PDD.
29. The landlord, or associate of the landlord, does not receive any advantage or benefit from:
- Cawarra
 - Cawarra in its capacity as the landlord's agent
 - the tenant, or
 - any other party as a consequence of making the donation to Cawarra.

Commissioner of Taxation

15 April 2026

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Appendix – Explanation

❶ *This Explanation is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.*

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Meaning of 'gifts'

30. The meaning of 'gift' for the purposes of Division 30 is explained in Taxation Ruling TR 2005/13 *Income tax: tax deductible gifts – what is a gift*.

31. The word 'gift' is not defined in tax law. For the purposes of Division 30, the word gift has its ordinary meaning as established by case law.

32. The courts have described a gift as having the following characteristics and features:

- the donor transfers money or property
- the donor makes the transfer voluntarily
- the transfer arises by way of benefaction, and
- there is no material benefit or advantage for the donor.

33. These characteristics are not absolute and may involve a matter of degree. In determining whether a transfer is a gift, it is necessary to consider the whole set of circumstances surrounding the transfer that provide the context and explanation for the transfer.

Transfer of money or property

34. The making of a gift involves the transfer of a beneficial interest in property to the recipient of the gift.

35. In each case, it is necessary to ascertain whether a transfer has occurred, what property has been transferred and when the transfer took place. This is to ensure that ownership of identifiable property has been divested and transferred to the recipient.

36. The giver must have proprietary rights in the property just prior to its transfer. When money or property is transferred to the recipient, the recipient must receive full title,

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custody and control of the property so that the recipient is entitled to deal with the property in its own right.

37. The transfer may still be a gift when it is made by way of an agent. In an agency relationship, an agent has the authority or capacity to create or affect legal relations between a principal and third parties. Generally, what a person may do themselves, they may also do by an agent. If an agent discloses the principal's name (or at least the existence of a principal) to the third party with whom they are dealing, the agent is not normally entitled to the benefit of, or liable under, the contract. Therefore, an agent does not have beneficial interest in the property being transferred.

38. Under the PDD, the landlord unconditionally directs their agent (Cawarra) to deduct a donation amount from each rental payment paid by the tenant to the landlord under the Tenancy Agreement and pay it to Cawarra for their charitable purposes.

39. Prior to the donation amount being paid to Cawarra, the landlord has beneficial interest in the rent paid under the Tenancy Agreement. Following the payment of the donation amount, ownership of the money transfers to Cawarra, who can use it for their charitable purposes at their absolute discretion.

40. The donation is made when the donation amount is transferred under the PDD to Cawarra's bank account. After the donation is made, Cawarra no longer holds it as agent for the landlord.

Transfer made voluntarily

41. A transfer must be made voluntarily for it to be a gift. It must be the act and will of the giver and there must be nothing to interfere with or control the exercise of that will. However, a transfer made under a sense of moral obligation is still made voluntarily.

42. A transfer is not made voluntarily if it is made for consideration or because of a prior obligation imposed on the giver by statute or by contract. Nonetheless, a transfer that has the other attributes of a gift will not fail to be considered a voluntary transfer merely because the means used to give effect to the benefaction have contractual or similar features.

43. Under the AHP arrangement, the landlord is not under any obligation to enter into a PDD and can revoke the PDD at any time. It is the will of the landlord to make donations under the PDD and there is nothing in the arrangement that interferes with the exercise of the landlord's will.

44. A payment under the PDD is made voluntarily and may be revoked with 60 days' notice by the landlord.

Transfer arises by way of benefaction

45. A gift should intend and confer benefaction on the recipient. Conferring benefaction means that the recipient is advantaged materially without any detriment arising from the terms of the transfer.

46. Where the giver is aware that the transfer will result in detriments, disadvantages, obligations, liabilities or limitations to the recipient, benefaction may be missing.

47. A gift ordinarily proceeds from detached and disinterested generosity. There may be a variety of reasons and motivations behind the giver making a gift. However, the fact that the giver has a personal motive for making the gift, such as a strong interest or

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emotional involvement in the work of the recipient, will not disqualify a transfer from being a gift.

48. In cases where the giver gives a gift for self-interested commercial or fiscal reasons rather than conferring benefaction on the recipient, the transfer does not proceed from detached and disinterested generosity. However, a motive of seeking a tax deduction does not, by itself, disqualify a transfer from being a gift.

49. Donation amounts made in accordance with the PDD will cause money owned by a landlord to be transferred to Cawarra for its benefit. There is no evidence that a detriment will result from Cawarra accepting the donation amount.

50. There is no commercial benefit for a landlord to make the donation amounts under the PDD. The landlord will receive the rent amount under the Tenancy Agreement regardless of whether donation amounts are made under the PDD. Furthermore, the management fee payable by a landlord to Cawarra is specified under the Agency Agreement and is levied at market rate irrespective of whether a landlord makes payments under the PDD.

51. Payments under the PDD confer benefaction on Cawarra.

No material benefit or advantage

52. To constitute a gift, the giver or an associate of the giver must not receive a material benefit or advantage from the transfer. It does not matter whether the material benefit or advantage comes from the recipient or another party.

53. It is a question of fact in each case whether any benefit or advantage is considered material. A benefit or advantage can be material if there is a link between the benefit and the transfer, and the benefit is sufficiently significant in relation to the value of the transfer.

54. There is no evidence that the landlord or an associate of the landlord will receive any benefit or advantage from making payments under the PDD.

55. The landlord receives the rent amount under the Tenancy Agreement with the tenant regardless of whether donation amounts are paid to Cawarra under the PDD. The Agency Agreement specifies the management fee paid by a landlord to Cawarra is not less than market value. A landlord does not receive a discount of any kind if they entered into a PDD. There is no material benefit for a landlord entering a PDD (for example, in the form of discounted or free property management services in exchange).

Donation amounts are gifts

56. The donation amounts paid by landlords to Cawarra in accordance with the PDD are gifts for the purposes of Division 30.

Tax deduction on donation amounts

57. If the requirements contained in section 30-15 are satisfied, a donor can claim a tax deduction for a gift. The table in subsection 30-15(2) sets out:

- the categories of recipients of deductible gifts and contributions
- the types of deductible gift or contribution that can be made to each category of recipients
- how much can be deducted, and

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- if any special conditions apply to the requirements.

Gift recipient

58. Table item 1 of subsection 30-15(2) states that deductible gifts and contributions can be made to recipients who are covered by any of the tables in Subdivision 30-B.

59. Subdivision 30-B includes section 30-45. Table item 4.1.1 of subsection 30-45(1) includes recipients who are a registered PBI.

60. Deductible gifts and contributions can therefore be made to a recipient that is a registered PBI.

61. A registered PBI is defined in subsection 995-1(1) as:

... an institution that is:

- (a) a registered charity; and
- (b) registered under the *Australian Charities and Not-for-profits Commission Act 2012* as the subtype of entity mentioned in column 2 of item 14 of the table in subsection 25-5(5) of that Act.

62. However, gifts to a registered PBI will only be deductible if the registered PBI is also endorsed as a DGR under Subdivision 30-BA or is named in Subdivision 30-B (as stipulated in table item 1 of subsection 30-15(2) and section 30-17).

63. Cawarra is a registered PBI that is endorsed as a DGR. Therefore, Cawarra can receive tax-deductible gifts and contributions.

Type of gift

64. Table item 1 of subsection 30-15(2) provides that the deductible gifts and contributions that can be made to an item 1 recipient include gifts of money. Money includes foreign currency and can be paid in various ways, including by cash, cheque, credit card or electronically.

65. Under the PDD, the landlord authorises and directs Cawarra to deduct the donation amount from each monthly rental payment payable to the landlord and pay it into Cawarra's nominated account within 5 business days.

66. Therefore, the donation amounts paid to Cawarra are gifts of money to an endorsed DGR and are tax-deductible gifts under Division 30.

Amount of gift that can be deducted

67. In accordance with table item 1 of subsection 30-15(2), the amount that can be deducted for a gift of money is the amount that is given, subject to the further special conditions.

68. Under subsection 26-55(1), there is a limit on the total amount that can be deducted for the income year under Division 30. The limit is calculated in accordance with subsection 26-55(2), which states that the limit is calculated by subtracting from your assessable income all your deductions except tax losses. This means that the deduction can reduce the donor's assessable income to nil in the income year in which the gift is made – however, it cannot contribute to a tax loss of the donor for the income year.

69. Therefore, a deduction for a gift cannot add to or create a tax loss for the donor.

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70. Although a deduction for a gift cannot contribute to a tax loss for the donor, Subdivision 30-DB allows donors to elect to spread a tax deduction for a gift of money of \$2 or more over a period of up to 5 years.

71. If the donor elects to spread a deduction, the election must be made as specified in section 30-248, including:

- the election must start in the year the gift was made and can continue up to 4 of the immediately following income years
- the election must specify the percentage (if any) of the deduction that will be deducted in each of the income years
- the election may be varied at any time – however, the variation can only alter the percentage that will be deducted in respect of income years in which a tax return has not yet been lodged, and
- the election must be in the approved form and must be made before the lodgment of the tax return for the income year in which the gift was made.

72. A landlord who pays donation amounts to Cawarra in accordance with the PDD can claim a deduction for amounts of \$2 or more, provided the deduction does not create or add to a tax loss of the landlord. The landlord may elect to spread the tax deduction over a period of up to 5 years.

Gift receipts

73. Tax law does not require a DGR to issue a receipt for tax-deductible gifts it receives. However, where a DGR issues a receipt, subsection 30-228(1) sets out the information that must be included in the receipt, as follows:

If a deductible gift recipient issues a receipt for a gift described in the relevant item of the table in section 30-15 to the fund, authority or institution, the deductible gift recipient must ensure that the receipt states:

- (a) the name of the fund, authority or institution; and
- (b) the ABN (if any) of the deductible gift recipient; and
- (c) the fact that the receipt is for a gift.

74. However, under the PDD, Cawarra is required to issue a receipt in the name of the landlord for the donation amounts received.

75. The receipts issued by Cawarra to landlords must include Cawarra's name and Australian business number, and state the fact that the receipt is for a gift.

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References

Related rulings and determinations:

TR 2005/13

- ITAA 1997 30-45
 - ITAA 1997 30-45(1)
 - ITAA 1997 Subdiv 30-BA
 - ITAA 1997 Subdiv 30-DB
 - ITAA 1997 30-228
 - ITAA 1997 30-228(1)
 - ITAA 1997 30-248
 - ITAA 1997 Div 230
 - ITAA 1997 995-1(1)
 - Australian Charities and Not-for-profits Commission Act 2012
 - Corporations Act 2001
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Legislative references:

- ITAA 1997 26-55(1)
- ITAA 1997 26-55(2)
- ITAA 1997 Div 30
- ITAA 1997 30-15
- ITAA 1997 30-15(2)
- ITAA 1997 30-17
- ITAA 1997 Subdiv 30-B

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