TR 2013/2EC - Compendium

Ruling Compendium – TR 2013/2

This is a compendium of responses to the issues raised by external parties to draft Taxation Ruling TR 2011/D5 – *Income tax: school or college building funds*.

This compendium of comments has been edited to maintain the anonymity of entities that commented on the draft ruling.

Summary of issues raised and responses

Issue No.	Issue raised[1]	ATO Response/Action taken[2]
1	**General comments**	
1.1	Schools seeking to rely on the draft need certainty. The ruling must provide a clear and straightforward means of users ensuring compliance with the legislation.	The final Ruling contains a revised interpretation of Item 2.1.10 of the table in subsection 30-25(1) of the *Income Tax Assessment Act 1997* ('Item 2.1.10'). The Ruling gives particular attention to the requirement that a fund be established and maintained solely to provide money for the requisite purpose (see paragraphs 57-62), as well as to the meaning of the terms and expressions 'school', 'building', 'used as a school' and 'used… by a qualifying body'. The Ruling is intended to provide clear principles for qualifying bodies and funds. However, it remains necessary to apply those principles to the facts of each case. The approach in the Ruling recognises that it is not possible to devise a single test which can be applied to ensure

[1] References are to examples and paragraphs in TR 2011/D5.

[2] References are to examples and paragraphs in TR 2013/2.

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		compliance in all cases. Accordingly, the Ruling does not adopt the 'more than 50% use' rule which was included in Taxation Ruling TR 96/8 (withdrawn). Examples illustrate the practical application of the principles in the Ruling, including their application where school buildings are put to non-school use.
1.2	The fact that some taxpayers may have applied the more than 50% rule in unintended ways is an integrity issue and should be dealt with by the ATO taking action against the organisations who have wrongly applied it.	The unintended application of the 50% rule was an indication that the rule did not produce a legally correct outcome in all cases. In these circumstances, it was necessary to amend the rule in order to ensure that it accurately reflected the law.
2	**Date of effect**	
2.1	The draft represents a significant shift in the ATO's interpretation of the law. Many qualifying bodies have entered into long term capital funding obligations or long term leasing arrangements in good faith and in reliance on the previous ruling. The current transition proposal will result in significant financial stress to some qualifying bodies. The submissions present the following options for the date of effect: • The date the final ruling is published. • The date the final ruling is published, but with no application to: o funds endorsed before that date; or, in the alternative, o funds established before that date; or, in the alternative, o agreements entered into before that date and	Acknowledged. The ATO has considered all of the comments received on this issue and recognises that funds donors and funds may have relied on TR 96/8 (withdrawn) in planning existing arrangements. These considerations are reflected in the date of effect arrangements in paragraphs 114 to 119 of the Ruling. Effectively, the former '50% use rule' continues to apply to acquisition or construction arrangements committed to before the issue of the Ruling, provided that a fund meets the requirements of the Ruling for any arrangement entered into after that date. Funds are also permitted to apply the 50% use rule in relation to maintenance costs until 1 July 2013.

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	donations received before that date. • The date of publication of a revised draft ruling. • The date the final ruling is published, but with funds established before that date being given a set period (for example 36 months) to either accelerate fundraising or implement changes to the building program. • The date of the final ruling, but with funds established before that date being given a period of at least 36 months from that date to either accelerate fundraising or implement changes to the building program.	
3	**Meaning of 'established and maintained solely' - the sole purpose test**	
3.1	The draft Ruling does not give separate consideration to the issue of whether a fund can have a sole purpose if there are multiple uses of a building but effectively confines itself to the issue of what qualifies as the use of a building as a school.	The Ruling recognises that it is necessary to have regard to both the purposes of the fund and the character of the building. Paragraphs 63 to 73 of the Ruling, in particular, deal with the factors which are taken into account in determining whether a fund is established and maintained for the requisite purpose. In this regard, it is critical to determine how a fund actually uses money and consider the inferences which may be drawn from that use. The Ruling also requires funds to have regard to how buildings are actually being used; see paragraph 26. The actual use of a building is relevant to both its character as a building 'used as a school' and to an inquiry about the fund's

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		purposes. TR 96/8 (withdrawn) and TR 2011/D5 also required funds to have regard to the use of buildings.
3.2	The draft Ruling obliges funds to look more specifically at the use to which individual buildings are put rather than to the general intent of the fund, and is likely to require schools to undertake an audit of their buildings. It is a much narrower approach than that in the original ruling.	The Ruling recognises that it is necessary to have regard to both the purposes of the fund and the character of the building. See the response to Issue No 3.1.
3.3	The purpose of the fund is confused with the use of the building.	The Ruling recognises that it is necessary to have regard to both the purposes of the fund and the character of the building. See the response to Issue No 3.1.
3.4	There has been significant investment into the academic and vocational education sectors by charities such as churches over a long period of time. The ATO proposal fails to recognise that in many instances these entities are paying more than 50% of the facility development costs from non DGR funds.	This comment raises policy considerations which are beyond the scope of the ATO's role as an administrator of the taxation law. The Ruling recognises that it is critical to determine how a fund actually uses money and consider the inferences which may be drawn from that use. See paragraphs 65 to 73.
3.5	There has been a move from focussing on whether a school used a building, to now focussing primarily on whether there are any activities held in a building that can disqualify it from being characterised as being used as a school.	The Ruling considers a range of considerations which are relevant to determining whether a building has the character of a building 'used as a school'. These considerations include both qualifying and disqualifying factors. See paragraphs 30 to 45.
4	**What is a building?**	

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4.1	COLA structures such as those built under the BER programme should be included. See paragraphs 12, 13 and 106.	Paragraph 152 of the Ruling discusses covered outdoor learning areas (COLA) structures. COLAs as described in the Ruling are considered to be buildings for the purposes of Item 2.1.10.
4.2	Paragraph 13 should make it clearer that you cannot have a school building fund for part of a building when the remainder of that building is not a school (whether the other part is pre-existing or built at the same time as the school).	Not accepted. The Ruling takes the view that a part of a building can be a building in the circumstances set out in paragraph 23. This view is considered to have regard to the context in which the term 'building' appears. See paragraph 155.
4.3	Paragraph 13 should clarify how schools can demonstrate the delineation between the part of the building used as a school and the part used as something else.	The applicable principles are set out in paragraph 23 and paragraphs 153-155.
4.4	School buildings are increasingly fitted out with electronic devices that are not necessarily hard wired but are generally connected to a school-wide cabling system and connected or controlled by a central computer processor. Examples are electronic whiteboards, virtual classrooms, cameras and projectors, large monitor screens. Are these fixtures? Do the elements of a school canteen fit-out (for example, cupboards, benches, serveries, plumbing and electrical installations and built in	No change. An item is a fixture to a building where it is attached to a building so as to form part of the building permanently, or for an indefinite or substantial period of time. See paragraphs 158 to 161. The question of whether a given item is a fixture is a matter to be determined in accordance with property law. A detailed

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	appliances) qualify as fixtures? See paragraphs 14-15 and 107-111.	consideration of what may constitute a fixture in particular cases is beyond the scope of the Ruling.
5	**What is a school or college?**	
5.1	The ordinary meaning of school as determined by Barwick CJ in *Cromer Golf Club v. Downs* should apply. In spite of the fact that the High Court determined the ordinary meaning of 'school' in *Cromer Golf Club v. Downs*, the ATO continues to run the unsuccessful arguments it put in *C of T v. The Leeuwin Sailing Foundation*, and seeks to support its position by reference to an English case from 1973 and two old Board of Review cases where the word school was used in a different context. A provision that exists for the purpose of encouraging, rewarding or protecting some class of activity should not be narrowly construed. Barwick CJ's judgment in *Cromer* explicitly refers to 'trade schools' as well as 'technical schools'. See paragraphs 16-18, 34, 114-139	The Ruling contains a revised interpretation of the phrase 'school or college' in Item 2.1.10. See paragraphs 13 to 19. Like TR 2011/D5, the Ruling applies the decisions in *Commissioner of Taxation v. The Leeuwin Sail Training Foundation Limited* (1996) 68 FCR 197; 96 ATC 4721; (1996) 33 ATR 241 and *Australian Airlines Ltd v. Commissioner of Taxation* (1996) 71 FCR 446; 96 ATC 5187; (1996) 34 ATR 310. Both decisions support the conclusion that a school is ordinarily an institution and that the factors outlined in paragraph 18 are relevant to determining whether such an institution has the character of a school. Examples 1 to 5 have been provided to clarify what is considered to be a school for the purposes of Item 2.1.10.
5.2	A Sunday school would usually be just a side activity of church activities. In the light of the definition of institution in paragraph 114, it is difficult to see how it could ever be the 'separate institution' referred to in paragraph 139. The ruling should make it clear that the functions and activities of a Sunday school must be controlled by a qualifying body, and that a religious institution is not necessarily a qualifying body as it may not be a 'society or association'.	Acknowledged. The Ruling contains a revised interpretation of the meaning of 'school or college' for the purposes of Item 2.1.10. The question of whether a particular activity constitutes a school is determined by reference to its true character rather than the label attributed to it. Accordingly, in determining whether an activity labelled a 'Sunday School' is a school for the purposes of Item 2.1.10 the Ruling requires regard to be

	The elements of the definition of institution in paragraph 114 (establishment organisation and association) could themselves be explained in the ruling.	had to the factors in paragraphs 13 to 19. The Ruling recognises that a qualifying body must carry on the school, control the use of a building and use it to provide instruction of the required kind; see paragraph 49. Examples 3 and 4 are included to illustrate where a Sunday school would or would not be considered to be a school for the purposes of Item 2.1.10.
5.3	The draft Ruling does not adequately explain what constitutional arrangement is necessary for a school to demonstrate a separate institutional existence 'within or as part of another institution' and will create even greater confusion. Does the school have to be a separately incorporated entity or a separate ABN holder? See paragraphs 17 and 136.	The Ruling sets out the principles which are relevant to establishing the institutional existence of a school. See paragraph 16. Whether a school is being carried on for the purposes of item 2.1.10 is a question of fact. The Ruling provides criteria but does not specify what constitutional or legal arrangements might constitute a school. These arrangements can take a variety of forms. See paragraphs 11-19. The Ruling does not require an organisation to be separately incorporated or to hold a separate Australian Business Number before it can be regarded as an institution or a school organisation.
5.4	Insert 'usually' before 'a school' and 'it trains' in the riding school example. This will align the analysis with other examples in the paragraph, and will allow for circumstances where a riding school trains persons such as jockeys and professional polo players whose occupation requires riding qualifications.	Acknowledged. These suggested changes are reflected in paragraph 145.

	As suggested for paragraph 129, modify the manual skills comment in the opera, ballet and drama dot point as well.	
6	**What is a building used or to be used as a school or college?**	
6.1	'Minor' is defined in the *Macquarie Dictionary* as 'lesser, as in size, extent, or importance, or being the lesser of two'. Applying this definition should result in no difference to the predominance test outlined in the previous ruling: a use that accounts for less than 50% of the time the building is used must be minor. Removal of the 'more than 50%' rule means the approach has changed from one where it must be demonstrated that the primary and principal use of a building is a school to one where use other than as a school or an integral part of a school must be merely minor or occasional. This allows for a much narrower range of acceptable circumstances. See paragraphs 155-156.	The Ruling contains a revised interpretation of Item 2.1.10. The Ruling does not rely on the concept of 'minor or occasional' school use. The Ruling considers a range of factors which are relevant to determining whether a building has the character of a building 'used as a school'. See paragraphs 25 to 45. The Ruling contains examples which are intended to illustrate the application of these factors to particular cases.
6.2	The explanation of 'minor or occasional' in paragraphs 27- 28 is open to significant interpretational difficulties which may limit the capacity of schools to make their facilities available to the community for fear of breaching this. External use of school facilities is part of the public policy landscape in which schools have been encouraged to operate by both state and federal governments (for example the BER program). The draft flies in the face of this clear public policy direction by suggesting that minor or occasional other use must not 'materially affect the cost of acquiring, constructing or maintaining the building'.	The Ruling contains a revised interpretation of Item 2.1.10. The Ruling does not rely on the concept of 'minor or occasional' school use. Further examples have been provided to clarify the view in the Ruling. Example 8 specifically addresses other use under the BER program. See also the Response to Issue No. 6.1. This comment raises policy considerations which are beyond the scope of the ATO's role as an administrator of

	Some buildings are highly sought after for out of hours hire due to the nature or capacity of the building and this may not occur only 'from time to time'.	the taxation law.
6.3	In *Cobb's case*, the concept of minor or occasional use is referable solely to whether the building is being used as a school, and not to the separate issue of whether the fund may have multiple purposes. As such, the words 'and consistent with…by a qualifying body' in paragraph 155 and 'consistent with the fund…as a school' in paragraph 156 should be deleted. Paragraph 156 should be rewritten. Neither the judgment in *Cobb's case* nor the language of Item 2.1.10 warrants the limitation on minor or occasional other use to use that does not materially limit the use of the building as a school or the cost of the building. These are issues which arise in considering whether the **fund** has multiple **purposes**.	The Ruling contains a revised interpretation of Item 2.1.10. It does not rely on the concept of 'minor or occasional' school use. The Ruling recognises that it is necessary to have regard to both the purposes of the fund and the character of the building. See the response to Issue 3.1. The Ruling requires funds to have regard to how buildings are actually being used; see paragraph 26. The actual use of a building is relevant to both its character as a building 'used as a school' and to an inquiry about the fund's purposes. The ATO's views on the implications of *Cobb & Co Ltd v. Commissioner of Taxation* (1959) 101 CLR 333; (1959) 12 ATD 11; 7 AITR 534 in this context are set out in paragraphs 176, 177, 224, 225 and 226 of the Ruling.
6.4	Delete the second sentence in paragraph 22. The ordinary meaning of the words in item 2.1.10 does not require the relevant element to be a structurally integrated part of a building the rest of which is used as a school.	This sentence does not appear in the Ruling.
6.5	A safe harbour test based on a quantifiable calculation of time is easier to administer and provides greater certainty than notions of what is minor or occasional.	The Ruling does not include a 'safe harbour' test. See the responses to Issue No 1.1 and Issue No. 1.2.

6.6	Where buildings are used for multiple purposes, a determining factor seems to be who takes priority in the event of a timing clash between different users. However, circumstances may dictate a different outcome at different times – for example a school may have priority access to its chapel during school hours, while the church group may have priority access outside of school hours. The draft does not allow for this. See paragraphs 23-29 and 148-149.	Acknowledged. The Ruling considers the relevance and weight to be given to control of a building in determining whether it is a building used as a school and whether it is used by a qualifying body as a school. See paragraphs 35, 41, 49-52, 181, 188-189 and 202-206.
6.7	It is far more cost effective to incorporate additional equipment at the construction phase than to retrofit later when actually needed by the school. In the intervening period the availability of such equipment may make the building more attractive to external users with the resulting income benefitting the school. Efforts to offset its costs are in the public interest.	The Ruling recognises that a fund can make reasonable and bona fide judgments about the future requirements of a school. Equally, however, it must be possible to characterise the fund's purposes as relating only to the provision of money to acquire, construct or maintain a building used as a school. This is a question of fact to be determined in each case. A provision of money may give rise to an inference that a fund was not established or is not being maintained for the requisite purpose where it is disproportionate to the needs of the school; see paragraph 71 of the Ruling. However, this inquiry takes into account both the present and future needs of the school in question.
6.8	The structure of item 2.1.11 of the table in subsection 30-25(1) does not support the approach in paragraph 24. Item 2.1.11 is similar to 2.1.10, but is made subject to the special conditions in section 30-35. Section 30-35 requires that the building must be 'used, or going to be used, *principally* as residential	The Ruling contains a revised interpretation of Item 2.1.10. It does not rely on the concept of 'minor or occasional other use'.

	accommodation…'.	
6.9	The draft disqualifies buildings from characterisation as a school where they are used in other ways, but accepts that a building that is only used as a school for short periods of time but is not used at all at other times can still be a school. This encourages the misuse of community facilities and charitable assets by requiring the assets not to be used to their full capacity. The better approach is to consider whether the building is in fact being used as a school with no reference to the time that the building is used.	The Ruling contains a revised interpretation of Item 2.1.10. See responses to Issue No. 6.2 and Issue No. 6.3 in relation to the use of a building and the responses to Issue No 3 in relation to the sole purpose test. The time a building is used for school purposes is one factor which is relevant to determining whether a building can be characterised as a school building. However, a range of other factors are potentially relevant. See paragraphs 26-45. Example 8 confirms that a school building can be put to regular non-school use by the community and still be regarded as a school building.
6.10	If under its constitution the sole purpose of the fund is to have a facility for use as a school, the fact that a building may be used for something else as well but that other use does not prevent or interfere with use as a school, the fund should not be excluded. See paragraph 164.	The Ruling recognises that it is necessary to have regard to both the purposes of the fund and the use of the building. In considering whether a fund was established and is being maintained for the requisite purpose, it is relevant to have regard to the fund's constitutional documents; see paragraph 64. However, it is also necessary to have regard to the fund's actual activities and the use of the building.
6.11	It is not clear how the approach to shared areas in multi-purpose complexes would work in practice. The use of 'towards' in paragraphs	The Explanation in Appendix 1 to the Ruling contains a revised description of the characterisation principles

	31 and 166 seems to contemplate a contribution towards part of the total cost of the shared area. The paragraphs, and paragraph 32, should include a statement similar to that in paragraph 50 to the effect that a reasonable apportionment of costs is acceptable. This may require a school to set up separate funds for two parts of a building which has multiple uses, with costs pro-rated and appropriate allocations from each fund. This could be unnecessarily complex.	applicable to multi-purpose complexes. This description includes a high-level discussion of the circumstances in which apportionment is required and the manner in which apportionment is to be undertaken. See paragraphs 257 to 269.
6.12	The Ruling should include a definition of the term 'multipurpose complex'	The Explanation in Appendix 1 to the Ruling contains a description of the sense in which the terms 'multipurpose complex and 'multipurpose building' are used. See paragraph 255 and 256.
6.13	Buildings set up in similar circumstances and with similar intentions as BER buildings may not receive the same benefit. The source of funding should not influence the tax implications. See paragraphs 162-163.	The source of donations or contributions to a school building fund is not a factor in determining the application of Item 2.1.10. However, inferences may be drawn about the purposes of a fund from the way in which the fund provides money. See paragraphs 65 to 73 The Ruling has revised its interpretation of Item 2.1.10 to make it clear that it applies consistently.
7	**Qualifying body, use of a building by a qualifying body**	
7.1	Paragraph 19 should make it clear that a particular fund is not restricted to a particular location but can be for a group of schools. For example a system of schools operated by a religious body under one central administration may have schools at several locations.	The Ruling does not consider whether, or the circumstances in which, a single school building fund may provide money for the acquisition, construction and maintenance of buildings used by more than one school or qualifying body. This issue is currently the subject of further consideration by

		the ATO. The Ruling recognises that two or more buildings may be used as a school in conjunction with one another. Further, there is nothing in the Ruling which requires all buildings to be in the same location.
7.2	Paragraphs 33-35 and 168-173 assume, but do not require, use by a single body. The ATO has previously accepted that use by more than one qualifying body could be counted in determining whether the relevant building was used as a school. This practice should continue, and should be confirmed in adjustments to paragraphs 35 and 173.	The Ruling does not consider whether, or the circumstances in which, a single school building fund may provide money for the acquisition, construction and maintenance of buildings used by more than one school or qualifying body. This issue is currently the subject of further consideration by the ATO. See the response to Issue No. 7.1.
7.3	Paragraph 34 makes no reference to other forms of incorporation such as a company limited by guarantee or trusts which are common structures housing schools.	No change. A description of the various legal forms which a government, public authority, society or association may adopt in order to conduct a school would be outside the intended scope of the Ruling.
7.4	The view that a building must be controlled by the educational institution goes beyond the terminology of item 2.1.10. Item 2.1.10 simply requires the building to be used as a school by a qualifying body. Control by the educational institution is an irrelevant consideration.	Not accepted. The Ruling requires a qualifying body to control the use of the building and to use it to carry on a school. See paragraph 49. This reflects the terminology in Item 2.1.10. In particular, it recognises the distinction between using a building ‘as a school’ and using a building ‘for the purposes of’ a school. See paragraphs 49 to 52.
8	**Acquisition or construction**	

8.1	The Ruling should also refer to a licence to occupy, as this is a common legal arrangement entered into by both government and non-government educational institutions. See paragraphs 56 – 59 and 206-208.	Not accepted. A qualifying body is not considered to have acquired a building for the purposes of Item 2.1.10 where it has a mere license to occupy or use the building. In such a case, the thing acquired by the qualifying body is a right to access or use a building for certain purposes. Such a body may use the building for the purposes of a school, but it does not use the building 'as a school'. Taxation Ruling TR 2002/14 discusses the distinction between a lease and a licence to occupy. It explains that a lease confers on a tenant an interest in the land and the right to exclude persons from the property whereas a licence does not. In order for a qualifying body to use a building as a school the body must: • conduct the school as an organisation; • control the use of the building; and • employ the building in provision of instruction of the kind described. The control required would arise where the qualifying body has a legal or equitable interest in the building. See paragraphs 49-52 and 55.
8.2	Having regard to the ordinary meaning of the words in item 2.1.10, and as recognised in the first sentence in paragraph 206, fair rent paid even just for some hours or days per week should be a permitted disbursement, irrespective of whether the building can only be used as a school permanently or for the whole of its useful life.	Not accepted. The fact that a building may occasionally be used for school purposes does not mean that the building is a school building. See paragraph 26.

		In order for a qualifying body to use a building as a school the body must: • conduct the school as an organisation; • control the use of the building; and • employ the building in the provision of instruction of the kind described in the Ruling. A qualifying body does not use a building as a school merely because a third party provides access to the building for purposes which are beneficial to the operation of a school conducted by the body. See paragraphs of the 52 and 206.
8.3	The Ruling should specify a minimum lease term to avoid situations where, say, the church is the legal owner of the building and after it has in fact been used as a school for a short time, the building is returned to the church for church use. See paragraph 56.	The Ruling provides that a building is only acquired where an entity obtains a legal or equitable interest in a building which enables its use to be controlled. See paragraph 54. Furthermore, a qualifying body will only use a building as a school where it controls the use of the building and uses the building to provide instruction of the kind contemplated in the Ruling. See paragraph 49. Accordingly, the term of a lease is a factor which is relevant to determining whether there is a school and whether a building is used as a school by a qualifying body. However, a test based only on a minimum lease term would not allow for a full and proper consideration of all of the relevant circumstances. See further, paragraph 212.

8.4.	At the end of paragraph 203 add '(which could point to the fund having another purpose)'.	The Ruling recognises that disbursements from a school building fund may include payments in respect of a lease of a school building. However, such payments must have the objective purpose of acquiring a school building for the purposes of its school use. Furthermore, a provision of money will give rise to an inference that a fund does not satisfy the sole purpose test where it can only be explained by the non-school use of the building. See paragraphs 70, 79 and 80.
8.5	Consider including recognition of commonly encountered Local Government Authority (LGA) conditions for granting development approval, such as the LGA insisting on the provision of off-street parking or the construction of a garage building where the garage building is not structurally part of other buildings used as a school. See paragraph 144.	Acknowledged. The Ruling includes a consideration of when a fund may provide money to meet expenses incurred due to conditions on the construction of a building. See paragraphs 81 and 294-297.
8.6	The ruling should clarify if the following real life examples qualify as land that is 'incidental' to the site of a building: • Land in the open areas immediately surrounding the building for activities such as eating lunch, physical health and general playtime activities and school assembly. • Land to be used for car parking and if so whether it matters if the car parking is for students, staff or visitors. • Land used to meet regulatory requirements for off-street set	The Ruling provides that a school building fund can provide money to purchase land to the extent that it reasonably relates to the area of land occupied by the building. See paragraph 80. The Ruling is a public ruling applying to a class of entity. As such, it is designed to provide high level principles which are capable of being applied to a wide range of circumstances.

	down and pick up of students. • Land used for set back from boundaries, for noise barrier, council requested landscaping, and easements for pipes.	The ATO will give consideration to whether further guidance is required to address the scenarios referred to in this submission, or whether these scenarios are more appropriately dealt with on a case by case basis, having regard to the general principles in the Ruling.
8.7	How is value to be apportioned if the area that is not for a school building has characteristics that diminish its value? Will a lesser value per square metre be accepted in the allocation of acquisition costs? Can an apportionment be revised if the local authority eventually requires the building to be on a different part of the parcel, or to be of different dimensions, or a different configuration? Can the fund be used to purchase land for future expansion where there are no definite plans at present?	The Ruling is a public ruling applying to a class of entity. As such, it is designed to provide high level principles which are capable of being applied to a wide range of circumstances. The ATO will give consideration to whether further guidance is required to address the scenarios referred to in this submission, or whether these scenarios are more appropriately dealt with on a case by case basis, having regard to the general principles in the Ruling.
9	**Maintenance**	
9.1	There is inconsistency between the treatment of security costs and the treatment of cleaning costs. Given the *Macquarie Dictionary* definitions of 'maintenance' and 'maintain', security expenditure directed at keeping a building intact or preserving it in its present condition is just as much expenditure on maintenance within the ordinary meaning of the term as a roof repair which is designed to prevent water leaking into a building. See paragraphs 51-52 and 196-197.	Paragraph 84 of the Ruling recognises that a school building fund can provide money to pay security costs to the extent that those costs reasonably relate to the preservation or protection of a school building. See also, paragraphs 306 to 308.
9.2.	The treatment of the cost of monitoring an electronic security system	Acknowledged.

	needs to be clarified. Apportionment of costs may be an issue as cabling of computer systems used for administration and in classrooms often extends to lighting, fire systems, perimeter gates and CCTV. The cost of perimeter fencing should be specifically addressed. See paragraphs 196-197.	Security monitoring costs that relate only to a school building are considered to relate to the maintenance of the building for the purposes of Item 2.1.10. See paragraph 84. Perimeter fencing does not need to be specially addressed as it is neither a building nor a fixture to a building for the purposes of Item 2.1.10.
10	**Administration costs**	
10.1	Administration costs are not expended on the construction etcetera of a building used as a school but the reason they may be properly incurred is that it is the purpose of the fund that is the relevant criterion in item 2.1.10 See paragraphs 53-55 and 192-202.	No change. The Ruling recognises that a school building fund can disburse money on fund administration costs which enable or facilitate the provision of money to acquire, construct or maintain a building used as a school. See paragraph 89. See also, paragraphs 90 and 319-320.
11	**Investment by a school building fund**	
11.1	On occasions, fund moneys will be applied for general school purposes (not necessarily building purposes) on an investment basis. The fund enters into a loan arrangement with the school in accordance with powers in the trust deed, and does so on the understanding that the moneys will be repaid. It would be helpful if this could be addressed in the ruling. See paragraphs 60 and 209-210.	The Ruling recognises that a fund may obtain money before such a time as it is able to provide that money to acquire, construct or maintain a school building. Accordingly, the Ruling acknowledges that in such cases it may be appropriate for the fund to invest money on a commercial basis; see paragraphs 86 and 88. Example 20 has been included to illustrate when a fund may lend money to a school on an investment basis.

11.2	The principles should be more specific. At times, investments will not fall within what is ordinarily understood by the term 'temporary': o funds may be needed for a project costing millions of dollars, but are raised over a number of years; o Development Application approval may take a long time. The types of acceptable investments could be described as being at arm's length and consistent with a trustee's duties under trust law. Reference could be made to TR 95/27 paragraph 43. See paragraphs 60 and 209-210.	The Ruling includes a revised discussion of the circumstances in which a fund may make investments, relating these more expressly to the sole purpose test. Whether something is temporary will depend on the circumstances. Limiting the scope of the term by reference to specific timeframes would not invite a full and proper consideration of relevant circumstances. See paragraphs 86-88 and 314-318. Example 19 confirms that an investment can satisfy the sole purpose test even though planning approval may take a number of years.
12	**Examples**	
12.1	The following additional example is proposed after Example 2. *Example 2A* *As part of an expansion program to cater for increasing enrolments, City College wishes to build either a new classroom block or to enlarge existing school buildings. Inquiries at the local Council reveal that, either to ensure compliance with the latest version of its parking code or in response to local resident or other community concerns, the council is unlikely to grant Development Approval for the new works unless City College provides for additional off-street parking for at least 50 cars. There is objective evidence to support the likely attitude of the Council. Based on advice from its architects and town planners, City College decides that this likely requirement would best be met by erecting a new stand alone garage building to accommodate 50 cars. It*	Acknowledged. The Ruling includes a consideration of when a fund may provide money to meet expenses incurred due to conditions on the construction of a building. See paragraphs 81 and 294-297.

	includes that car parking building in the application for Development Approval, and receives approval which imposes a condition that the car park building be erected. The car park building forms an integral part of the operation of the school and as such is a building used as a school for the purposes of item 2.1.10. It is not different from a toilet block or stand alone dormitory block, both of which cater to the needs of students and relevant staff, with the toilet block also catering to the needs of visitors. The provision of extra parking spaces is not optional.	
12.2	The following additional example is proposed after Example 2. *Example 3A* *Religious College, a denominational school, plans to build a chapel on school grounds. The College is only a day school. Instead of the chapel lying idle outside school hours, the College plans to make it available to people of the same religious denomination in the area (or to an agency of the relevant Church body) for the conduct of evening and weekend religious services. That use would be more than minor or occasional. The arrangement would involve some (but not material) extra construction costs, and some extra ongoing maintenance costs (principally cleaning).*	Example 16 covers similar circumstances and reflects a revised interpretation of Item 2.1.10. Whether Item 2.1.10 is satisfied will depend on the purposes for which money is provided and a characterisation of the building. See also Examples 13, 14 and 15.
12.3	Examples 4 and 5 do not consider what happens where the canteen is available to outside patrons but only during school hours.	The Ruling does not include an example dealing specifically with instruction in the field of hospitality. The Ruling is designed to provide high level principles which are capable

	The premise seems to be that making a facility open to the public means it is not integral to the operation of the school. However, is this the right outcome if a school offers a VET course in hospitality and as part of the course it operates a restaurant which provides meals to the general public outside school hours?	of being applied to a wide range of circumstances. Examples 13 and 14 are intended to address the characterisation of buildings which can potentially be regarded as school buildings when considered in conjunction with other buildings. Other parts of the Ruling should be referred to in order to characterise buildings which can or have the potential to be characterised as school buildings on the basis that they are used for the purposes of instruction.
12.4	Following on from Example 3, what if the local community wants the chapel to be 50% larger in size than the school needs, and this would involve material extra construction and ongoing maintenance costs? If the fund did not have to cover the extra costs, then the chapel could still be built. If use of the building by community groups did not entail extra costs, then the building should be available for such use. If there were extra costs, but they were immaterial, or material but not covered by the fund, the satisfaction of the sole purpose test should not be affected. If there were material extra costs, and the fund proposed covering them, that may lead to the inference that the fund did not meet the sole purpose test in item 2.1.10.	Examples 12, 15 and 16 address the principles which the proposed example seeks to illustrate.
12.5	The following additional example is proposed after Example 5. *Example 5A*	Example 14 of the Ruling addresses circumstances which are similar to those suggested and reflects the ATO's revised interpretation of Item 2.1.10.

	As in Example 5, except that instead of XYZ School constructing a separate facility, it wishes to knock down the old (and run down or outmoded) school tuckshop and erect a new facility which is capable both of serving as a school tuck shop during school hours and of being made available to the local community to operate at times and on days when the school does not operate, for the benefit of people participating in or otherwise attending sporting activities at the adjacent sporting fields, courts and other facilities. That other use would not be minor or occasional. Constructing, equipping and maintaining (principally cleaning) the new facility may involve material extra expense.	Whether Item 2.1.10 is satisfied will depend on the use of the building, the purpose of providing money and the characterisation of the building. See also, Example 13.
12.6	Example 12 The size of an auditorium should not determine the outcome. The building footprint would not vary significantly as regardless of size the determinants of building codes require similar egress etcetera with tiered seating, breakout rooms and student cafes and resource libraries. Also, Example 12 should be updated as follows - Delete the last sentence in the first paragraph and add the following after the second sentence: *The College bona fide considers it desirable to have a large auditorium for school events. The College is in an area that does not have a suitable venue for such events.* *Based on information such as current and projected student enrolments and records regarding the number of attendees that typically attend college functions, the College believes that the*	Noted. The facts in Example 12 have been revised, taking into account this comment. It is considered, however, that a school building fund cannot provide any money to acquire, construct or maintain the building described. It is considered that the physical attributes of the building prevent it from be regarded as a building ‘used as a school’ as a matter of ordinary language.

	auditorium should seat at least 2,500 people. *To obtain maximum use from the building, it is intended to be multi-purpose. Its design will allow it to be divided into smaller spaces for other uses as a school when it is not required as a single auditorium for school use.* *The related church body would like to use the auditorium for church services on Sundays, but would need it to seat 3,000 people and may also need additional lighting and staging equipment. It would also like the auditorium complex to include administration offices solely for church use and a gift shop. None of these uses would prevent the auditorium from being used as a school or interfere with or intrude upon the school program.* In these circumstances, an issue arises as to whether the other uses and the other surrounding circumstances lead to the objective conclusion that **the fund** was not established or is not being maintained for the requisite sole purpose. If it was contemplated that , or permissible for, the whole of the acquisition construction and maintenance costs of the new auditorium complex to be paid out of the fund, that inference should readily be drawn. However, if there is an expert and reasonable apportionment of the costs to isolate the extra, and the fund is not permitted to contribute towards any of that extra cost, the requisite sole purpose could still exist.	
13	**Other matters**	
13.1	As a result of the *Australian Charities and Not-for-profits Commission (Consequential and Transitional) Act 2012*, a special condition has been	The Ruling has been updated to reflect this amendment.

	added to Item 2.1.10 such that the public fund must: (a) be registered under the *Australian Charities and Not-for-profits Commission Act 2012*; or (b) not be an ACNC type of entity. An ACNC type of entity is defined in section 995-1 of the ITAA 1997 to mean: …an entity that meets the description of a type of entity in column 1 of the table in subsection 25-5(5) of the *Australian Charities and Not-for-profits Commission Act 2012.* This amendment commences when the ACNC Act commences (expected to be December 2012).	See paragraph 9.