TR 1999/D18 - Income tax: public libraries, public museums and public art galleries

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Draft Taxation Ruling
Income tax: public libraries, public museums and public art galleries

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Preamble

Draft Taxation Rulings (DTRs) represent the preliminary, though considered, views of the Australian Taxation Office. DTRs may not be relied on by taxation officers, taxpayers and practitioners. It is only final Taxation Rulings that represent authoritative statements by the Australian Taxation Office of its stance on the particular matters covered in the Ruling.

What this Ruling is about

1. This Ruling sets out the views of the Australian Taxation Office ('ATO') on what is a public library, public museum and public art gallery for purposes of gift deductibility under Division 30 of the *Income Tax Assessment Act 1997* ('the Act').

Class of person/arrangement

2. It applies to:

- persons claiming income tax deductions for gifts to a public library, public museum or public art gallery under Division 30 of the Act; and
- recipients of gifts seeking to be recognised as public libraries, public museums or public art galleries under Division 30 of the Act.

Previous Rulings

3. This Ruling replaces guidelines set out in Taxation Rulings IT 290, IT 2020, IT 2032 and IT 2676 dealing with such gifts. These Taxation Rulings will be withdrawn on finalisation of this draft Ruling.

Date of effect

4. This Ruling applies to years commencing both before and after its date of issue. However, the Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Ruling (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Ruling

5. The terms 'public library', 'public museum' and 'public art gallery' are not defined in the Act. Nor are they technical terms. They are to be understood in their ordinary or everyday meaning. We expect a public library, public museum or public art gallery to have the following features:

- its collection is made available to the public;
- it is owned or controlled by a government or quasi-government authority, or by persons or an institution having a degree of responsibility to the public;
- it is constituted as a library, museum or art gallery, other people recognise it as such, and it conducts itself in ways that are consistent with such a character; and
- it is an institution.

Available to the public

6. We accept the collection of a library, museum or art gallery as being available to the public where it is for use by the public or a section of the public. If such access is minor, the institution is not a public library, museum or art gallery. It is not necessary that a collection be made indiscriminately available. Limitations on access can be consistent with availability to the public where they are to protect the collection, ensure orderly access and efficient operation.

7. We accept that students attending a public educational institution are a section of the public, in this context.

Public responsibility

8. We accept that persons or institutions have a degree of responsibility to the public in the circumstances explained in Taxation Ruling TR 95/27 at paragraphs 7, 21, 22 and 23.

9. Where a library, museum or art gallery is carried on by an organisation and operated for the profit or gain of its owners or members, the facility is not public. However, the charging of appropriate fees is not, in itself, inconsistent with being a public library, museum or art gallery.

Institution

10. An entity, whether a corporation, trust or government body, is accepted as a public library, museum, or art gallery itself, where the purpose and activities of the entity are wholly those of the library, museum, or art gallery. Where other purposes and activities are evident, we only accept the entity as a public library, public museum, or public art gallery if they are minor and inconsistent with the purposes and activities of a public library, museum, or art gallery.

11. Where an entity itself is not a public library, museum, or art gallery, some part of the entity may be a public library, museum, or art gallery. We accept a part of an entity where:

- the affairs of the library, museum, or art gallery are separate from the general affairs of the entity;
- the public can readily distinguish the library, museum, or art gallery from the rest of the entity;
- the collection is readily identifiable to the public as the public collection of a library, museum, or art gallery;
- the accounts of the library, museum, or art gallery are separate from those of the rest of the entity; and
- any gifts made to the library, museum or art gallery are used only for library, museum or art gallery purposes.

In Australia

12. To be eligible to receive deductible gifts under Division 30 of the Act, the public library, public museum or public art gallery must be in Australia. If a facility, recognised as a public library, museum or art gallery, is established in Australia and makes its collection permanently available to the public in Australia, we accept that it is in Australia.

13. Borrowing from and temporarily lending exhibits to overseas public libraries, museums and art galleries do not, in themselves, prevent an institution from being in Australia.

Explanations

14. The terms public library, public museum and public art gallery are not defined in the Act. In determining whether an institution is a 'public library', 'public museum' or 'public art gallery' we apply the ordinary or natural meaning of the words.

15. *The Macquarie Dictionary* explains the following terms:

- a '**museum**' as:

  'a building or place for the keeping, exhibition, and study of objects of scientific, artistic, and historical interest';

- a '**gallery**' as:

  'a room, series of rooms, or building devoted to the exhibition of works of art … a collection of art for exhibition';

- a '**library**' as:

  'a place set apart to contain books and other literary material for reading, study, or reference, as a room, set of rooms, or building where books may be read or borrowed … a collection of manuscripts, publications, and other materials for reading, study, or reference'.

16. While the definitions adopted by various cultural bodies, such as the International Council of Museums ('ICOM'), may assist in understanding the scope of the terms 'public library', 'public museum' or 'public art gallery' we do not accept such definitions in so far as they go beyond the ordinary meaning.

17. While it would be expected that, ordinarily, a library, museum or art gallery would be located within a building, this is not always the case. Deductible gift status as a museum has been granted to public botanical gardens and zoological parks and gardens. Non-display functions such as collecting, research, recording, preserving and education are significant operations of a museum.

Available to the public

18. To be a public library, museum or art gallery it must be open to the public. This does not necessarily mean the whole community. It may mean a section of the community, provided it is a wide and substantial section of the community. A library made available to a body of students at a public educational institution has, therefore, been accepted as a library open to the public. A public educational institution is generally a school, college or university operated on a

non profit basis. It is not relevant that the institution is generally known or described as 'public' or 'private'. The fact that an institution charges fees does not necessarily affect its status as a public educational institution. However, a profit motive in the founders of an institution almost certainly excludes it from being a public educational institution: *Trustees of the Cardinal Vaughan Memorial School v. H.E Ryall(Surveyor of Taxes)* (1920) 7 TC 611. An organisation operated merely for the joint benefit of its members, for example, a professional association, is not a public educational institution.

19. In deciding whether other institutions make their collections available to the public, some guidance is given by the principles *In re Income Tax Acts (No 1)* [1930] VLR 211. This case considered whether a benevolent asylum was 'public'. The asylum had been founded and controlled by Freemasons for the benefit of Freemasons and their wives and widows. The Court held that the institution was not carried on for the benefit of the public. The word 'public' in relation to institutions connotes 'the carrying on of the institution for the benefit of the public generally, or at least of a definitely ascertainable section of the public, where the benefit of the institution is available without discrimination to every member of the public or of that section of it' (per Lowe J at [1930] VLR 222).

20. By example, Lowe J went on to suggest that a club, literary society or trade union would not be construed as public. He distinguished these associations by the power they had to admit or exclude members of the public. The provision of rules and regulations, which accorded some arbitrary test before membership, distinguished these bodies. Public character was missing due to selective membership. Where admission to membership of a body or inclusion in a class depends on the consent of members or of a committee of members, it is not provided for 'a section of the public'. Such associations exist for the benefit of their members, not the public or a section of the public.

21. Accordingly, where an association substantially limits use of its library, museum or art gallery to its members, or an employer substantially limits use to its employees and contractors, it is not available to the public. Even though a large number of people may be able to use such a collection, they are not doing so as members of the public. Alternatively, if a an association makes its library, museum or art gallery substantially available to the public, it could be a public library, museum or art gallery. Minor access to the public, for example, only by way of inter library loans, is not sufficient.

Public responsibility

22. We accept that persons or institutions have a degree of responsibility to the public where the requirements of Taxation Ruling

TR 95/27 are met. That Ruling provides guidance on persons who are considered to have a degree of responsibility to the community. It also explains public character in relation to organisations that may fail to display public character in themselves, due to selective membership, but have well-recognised community service functions.

23. Private enterprises may have occasion to incorporate displays into their operations which have functions similar to a museum, i.e., collection, preservation, research, study and education. However, the primary purpose of these displays is not accepted as being consistent with a public museum. These displays exist to assist promotion of their product or as exhibits ancillary to other activities provided by their commercial operations.

Purpose and functions

24. Whether an institution is a public library, museum or art gallery depends on the purposes for which it is constituted, how people recognise it, and the ways it operates.

25. Matters that manifest the purpose for which an institution is constituted include its name, governing documents, objectives and policies, acquisition policy, advertising, staffing, and membership of associations. If these do not indicate the purpose of the institution is to be a library, museum or art gallery, we do not accept that it is such.

26. Libraries, museums and art galleries operate to collect, preserve and maintain their collections, and make them available for use. Museums also study, research and educate people in their fields of specialisation. If an institution's activities are not consistent with these functions we do not accept it as a library, museum or art gallery. The mere possession of a collection of literature, artefacts or artworks is unlikely, on its own, to make an institution a library, museum or art gallery.

27. Accordingly, it is necessary to review an institution's governing documents, the character of the services it provides, its objectives and policies, its acquisition policy, ownership of its assets, its controls, staffing, membership of associations and its financial organisation. Where purposes and activities other than those of a public library, museum or art gallery are evident, it is necessary to determine whether they are minor and consistent with the purposes and activities of a public library, museum or art gallery.

Collection

28. We do not specify what items can form the collections of libraries, museums and art galleries. However, we recognise that the nature of such institutions can place limits, especially in relation to

cultural value and human interaction. We have accepted living plants and wild animals as the exhibits of museums. Buildings or places of historical significance can comprise a museum's collection where they are used only in that way and are recognised by the public as such. For example, a court house may be of architectural and historical significance. However, if it still operates as a court house and is primarily regarded by the community as a court house, then the building and any funds donated towards its restoration would not be accepted as being for the purposes of a public library, public museum or public art gallery. Similarly, a memorial may be of historical significance; however, its primary function is as a memorial not as a museum.

29. The terms library, museum and art gallery imply that exhibits of literature, artefacts and art are collected. The collecting of exhibits of fauna and flora for holding and display may be consistent with the function of a museum. Such activity is absent in merely setting aside a natural area as a nature reserve, irrespective of the flora and fauna located in the reserve.

Use and display

30. Making their collections available for use is a distinguishing feature of libraries, museums and art galleries. The modes of use include lending, display, making available for reading (including over the internet), and vary with the sort of institution and its particular purpose. The mere storage of artefacts without display or regular lending is insufficient.

31. The display of artworks or artefacts is not sufficient to be a museum or art gallery. They must be displayed in such a way that viewers engage them as part of the collection of the museum or art gallery. While display in a building or separate place may be most common, it is not essential. Display in a building or separate place enables an institution readily to distinguish the library, museum or art gallery from the rest of the institution. For other displays, the items must be clearly identifiable to the public as part of the particular collection. In addition, they must be integrated with the other functions of a museum or art gallery.

32. For example, a collection of statues and art work commissioned by a public authority and displayed in an open air forum could be accepted as a public art gallery where:

- it is clearly identifiable to the public as belonging to that public collection;
- it is supported by an administration consistent with an art gallery's operation; and

- and the collection was added to, maintained, publicised and operated in the normal manner of an art gallery.

The exhibits would need to be displayed in such a way that viewers were able to clearly identify the exhibits as belonging to the organisation's museum or art gallery. In contrast, a display of works of art or artefacts scattered throughout a building that is used primarily for another purpose would not, of itself, be accepted as a public art gallery or museum.

33. To encourage the use, education and enjoyment of a collection, interactive displays may be provided. For example, railway preservation exhibits may entail the use of the exhibit. It is recognised that exhibits of this nature lend themselves to display of the use of the exhibit. Provided the purpose and other activities, such as collection, preservation, research and display, are consistent with being a museum, we accept that the train can comprise part of the museum where the exhibit is part of a permanent display made available to the public.

34. The occasional display of exhibits outside an institution's premises can be consistent with the purpose of a library, museum or art gallery. Lending to other libraries, museums or art galleries is an accepted function.

Ownership and control of the collection

35. The ownership and control of its own collection is consistent with being a library, museum or art gallery. This does not prevent, of course, borrowing from other institutions. Artefacts or artworks not belonging to the institution or to other public libraries, museums or art galleries because, for example, they belong to enthusiasts, artists or dealers, are an indicator against it being a public library, museum or art gallery. Functions of merely providing facilities for display, storage and maintenance by private owners are not consistent with being a public library, museum or art gallery.

Preservation

36. A function of libraries, museums and art galleries is the preservation of their collections. A fundamental practice of collecting for only short periods followed by disposal is inconsistent with being a library, museum or art gallery. For example, an entire exhibition established for a limited term (for example, 12 months) and dismantled at the end of the term, is unlikely to satisfy this primary function. However, disposals as part of a regular program of maintenance can be an acceptable practice, depending on the sort of institution. This may be caused by the need for new exhibits.

Staffing

37. The employment of qualified librarians or curators, although not essential, is an indicator that an institution is a library, museum or art gallery. While the degree of expertise may vary with the size and nature of the institution, the lack of appropriate knowledge and skills may indicate the institution as not a library, museum or art gallery.

Organisations lacking the required purpose and function

38. A fund established to support a library, museum or art gallery would not, in itself, be recognised as library, museum or art gallery. However, public funds established under a will or instrument of trust solely to provide money, property or benefits to a public library, public museum or public art gallery may be accepted as ancillary funds for gift deduction purposes: see item 2 of the table in section 30-15 of the Act. These gift deductible funds are explained in Taxation Ruling TR 95/27.

39. Support organisations such as the 'Friends of' an art gallery or museum, are not accepted as libraries, museums or art galleries. The function and purpose of these groups are to provide support for these institutions; for example, assistance with education. Their purpose and function are not consistent with those of a public library, museum or art gallery, i.e., collection, preservation, research, study, education, display and maintenance of a collection. They may assist in the provision of any one or a number of these functions, but would not be responsible for delivering all functions. Nor would they be recognised by the public as libraries, museums or art galleries.

40. Hobby associations and clubs may display their personal collections to the public. Functions similar to a museum may be evident, such as display, collection, restoration, research and education. However, the overall function and purpose of the display is not consistent with a public library, museum or art gallery. The association exists primarily to provide services and facilities for its members.

41. An exhibition set up by a business as part of its promotion could have many similar functions to a museum. However, the collection is held to improve the efficiency of the business rather than for purposes consistent with being a museum.

42. A collection of resources may be accumulated over time and stored in a common area. The display of these resources would not, in itself, be accepted as a library, museum or art gallery. We would require the collection to incorporate other features of a public library, museum or art gallery. Display of a collection is only one of the

functions of these institutions. The purpose and function of the collection should incorporate other features consistent with those of a public library, museum or art gallery.

43. Preservation schemes that encourage people to preserve their buildings of historical and architectural significance are not accepted as museums.

Examples

Example 1

44. A school run by a religious society has set aside a separate room exclusively for use as a library. A collection of books is kept in the room for reading or borrowing by the students. The books are clearly marked as belonging to the library. They are catalogued and maintained by a library technician. The library is open only during school hours. The school maintains separate accounts for the library. Although the school charges fees to the students, it is not a profit-making organisation.

45. In these circumstances, the school library is a public library. The school is a public educational institution, its students are a section of the public, and the library is a separate institution (see paragraph 11).

Example 2

46. Members of an engineering association are provided with access to the association's library on membership. The library is available solely to members of the association.

47. We do not accept that the library is a public library. Even if there was a large number of members this would not cause the collection to be available to a section of the public. Limiting access to the association's members is inconsistent with the library having a public character.

Example 3

48. A society of enthusiasts restore horse drawn carriages. The carriages are bought and restored by the society. The society's site contains a workshop, a period road, and a shed in which completed carriages are displayed, along with memorabilia and information, three days per week. Members who own horses bring them to draw the carriages on Sundays. The public visit the displays and ride in the carriages. No individuals profit from the venture and the society's

rules and regulations ensure it is controlled by persons who are responsible to the public (see paragraphs 8 and 22).

49. The society is operating a public museum.

Example 4

50. A group of train enthusiasts have a common interest in constructing mini replicas of engines. Individuals own their own engines. The group lays tracks in a local park, a miniature railway station is erected and food, drinks and merchandise, bearing the insignia of the club, are sold. The club members make their engines available to the club on the last day of every month and invite the general public for a small fee to ride their model trains. The fees generated from the train rides are fed back into the club for further development of the park and tracks and a workshop for use by the club members.

51. There is no public museum. The main function and purpose is to provide facilities for the mini train enthusiasts. The display and use of the facilities by the general public once a month does not alter this purpose.

Example 5

52. A club acquires an historic warplane. Memorabilia in the form of photos at various stages of restoration, aerial reconnaissance photos, apparel worn by aircrew, defused armaments, etc., are displayed. The objects of the club are listed as providing access to the plane and memorabilia by the general public and restoring the plane for the use and enjoyment of contributing members. The display is available to the public once a month and on special request. Members who are pilots can fly the plane depending on their contributions to the club.

53. The main purpose and function of the association are not considered to be those of a public museum. While the facilities and memorabilia are made available to the public, the purpose of the club is primarily to restore the plane for the use and enjoyment of the contributing members.

Example 6

54. A private hospital lines its corridors with paintings provided by budding local artists. Some are owned by the hospital and others are for sale by the artists. Details of the artists and the subject matter are listed below the paintings. Hospital administrators, who are not

qualified curators, ensure that the turnover of exhibits is regularly maintained.

55. We do not accept that the corridors of the hospital are being used as an art gallery. The paintings are not held in a way that a public art gallery would hold its collection. Also, there is insufficient indication of a separate institution.

Example 7

56. A government building contains items of historical and architectural significance. Twice a year it opens its rooms and gardens to the general public. The remainder of the year the building operates as the offices of a government department.

57. This venue would not be accepted as a public museum or public art gallery. The venue's primary function is to provide accommodation for the government department. In addition, other functions consistent with a public museum and art gallery are not evident.

Example 8

58. A local association is set up to acquire the site of a former mill and associated machinery. It co-locates the machinery and abandoned sheds within the mill grounds. Photographs and research into the workings of the mill are collected by the association. An entrance fee is charged to enter the site, and all money collected is fed back into restoration and maintenance of the project. Qualified staff are engaged by the association and assistance is also provided by volunteers. No individuals profit from the association and it is controlled by persons responsible to the public for the public benefit (see paragraphs 8 and 22). The association has no other purposes or activities.

59. The association is accepted as a public museum.

Example 9

60. The local council proposes to decorate a skate ramp with murals. The main purpose and function of the facility are to provide a venue for the youth of the city to use their skateboards in a specially constructed facility rather than the local streets.

61. The decoration of the facility with murals is not considered to alter the purpose of the venue to that of an art gallery.

Your comments

62. We invite you to comment on this Draft Taxation Ruling. We are allowing 10 weeks for comments before we finalise the Ruling. If you want your comments to be considered, please provide them to us within this period.

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Detailed contents list

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Commissioner of Taxation
22 December 1999

Previous draft:

Not previously issued in draft form

Related Rulings/Determinations:

TR 95/27

Subject references:

- donations
- gifts
- libraries
- public libraries
- public museums
- school libraries
- botanic gardens

Legislative references:

- ITAA 1997 Division 30

Case references:

- Trustees of the Cardinal Vaughan Memorial School v. H.E Ryall (Surveyer of Taxes) (1920) 7 TC 611
- In re Income Tax Acts (No 1) [1930] VLR 211

ATO references:
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