STD 97/4 - In-house training centres

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Sales Tax Determination

Title: In-house training centres

Background

It is quite common for commercial and other organisations to carry out staff development and training programmes in-house. Training is often conducted by seminars and courses designed to support, reinforce and enhance skills and knowledge required to competently perform the duties of employment.

Examples of the development and training activities undertaken include courses in subjects such as supervision, interviewing skills, counselling, communication, machine operation, customer service and promotional and marketing skills. Programmes are conducted in a structured manner by qualified tutors. An award may be given at the end of a course which is, in some cases, recognised by other organisations in the same industry.

The duration of courses may vary and usually ranges from an hour to a week.

Australian Taxation Office (ATO) policy, in relation to universities and schools, has been set out in Sales Tax Ruling ST (NS) 3003 and Sales Tax Bulletin No 8. The guidelines in those publications state that one of the characteristics of a school, necessary for exemption to apply, is that 'its main aim is to give knowledge *as an object or end in itself*'.

Generally, in-house training centres have not been recognised as schools as they did not have this particular characteristic. Rather, their main aim was seen as maintaining or enhancing employees' skill levels to enable them to perform specific duties within the organisation. They were considered to be part of a wider organisation and their purpose took on that of the wider organisation.

In *FC of T v. Australian Airlines Ltd 96 ATC 5187; (1996) 34 ATR 310 (Australian Airlines)*, the Full Federal Court held that a flight training centre conducted by the airline, mainly to provide training and testing of flight crews, was a 'school' within the ordinary meaning of the word and qualified for exemption under the sales tax law. The Full Federal Court found that the airline was an organisation not carried on for the profit of an individual at the time.

This Determination explains the ATO policy in relation to in-house training centres.

Issue

Are goods for use in in-house training centres exempt from sales tax?

Decision

Goods for use by an in-house training centre are exempt from sales tax, provided the training centre meets each of the following criteria:

- the in-house training centre must be established and used for the purpose of giving knowledge or providing instruction;
- it must be a ***place***, i.e., classrooms or similar facilities, location or complex, that, in its own right, can be physically and administratively identified as a school;
- instruction must be given by suitably qualified people in an organised manner, on a regular or continuing basis; and
- the in-house training centre must be conducted by a non-profit body.

Date of effect

This Determination is effective immediately. To the extent that Sales Tax Ruling ST (NS) 3003 and Sales Tax Bulletin No 8 are inconsistent with this Determination, they are withdrawn. Revised versions will be published.

Reasons

We have based our decision on the following legislative provisions:

Item 109 in *Schedule 1* of the *Sales Tax (Exemptions and Classifications) Act 1992; subsection 3(2) of the Sales Tax (Exemptions and Classifications) Act; paragraph 22(1)(aa) of the Acts Interpretation Act 1901*

Item 109 in Schedule 1 to the *Sales Tax (Exemptions & Classifications) Act 1992* (ST (E&C) Act) provides exemption for:

> '*Goods for use by a university, or school, that is conducted by a non-profit body*.'

The word 'school' is not defined in the sales tax law, therefore it is given its ordinary or natural meaning. The *Macquarie Dictionary* defines 'school' as including:

> '*1. a place or establishment where instruction is given, esp. one for children;*
> *8. an instructive place, situation, etc*.'

Barwick CJ in *Cromer Golf Club Limited v. Downs & Anor* (1973) 47 ALJR 219, at 221, said:

> 'It seems to me that a "school" is a place where people, whether young, adolescent or adult, assemble for the purpose of being instructed in some area of knowledge or of activity. Thus there are drama schools, ballet schools, technical schools, trade schools, agricultural schools and so on.'

and case law:

Cromer Golf Club Limited v. Downs & Anor (1973) 47 ALJR 219

This statement by Barwick CJ on the meaning of 'school' was quoted with approval by the Full Federal Court in both *FC of T v. The Leeuwin Sail Training Foundation Ltd* 96 ATC 4721; (1996) 33 ATR 241 and *Australian Airlines*.

FC of T v. The Leeuwin Sail Training Foundation Ltd 96 ATC 4721; (1996) 33 ATR 241

Organisations may carry on a number of different activities, only one of which is the running of a training centre for employees or other people. The business activities of the wider organisation would not prevent its training centre from being a school. However, the activities of the training centre must be able to be distinguished from those of the wider organisation.

FC of T v. Australian Airlines Ltd 96 ATC 5187; (1996) 34 ATR 310

In *Australian Airlines*, Lockhart J noted that the general purposes of the organisation that runs the school should not be confused with the activities of the school itself, and Sundberg and Merkel JJ commented at ATC 5200; ATR 324, that: '... that which is claimed to be a school must be characterised in its own right.'

An in-house training centre is a school for sales tax purposes if it can be physically and administratively identified, in its own right, as a place established and used for the purpose of giving knowledge or providing instruction.

A training centre that is physically identifiable as a school has facilities for instruction, such as classrooms or similar places. It may also have computer facilities, library facilities, equipment etc.

A training centre that is administratively identifiable as a school has its own administration, separate from that of the wider organisation. It has regular, structured instruction delivered by qualified tutors and periodic testing of proficiencies which result in some form of qualification or competency.

Many organisations have a training room or similar facility which may double up as a conference room, amenities room or library. The organisation may, from time to time, purchase equipment, such as computers, whiteboards, furniture, etc., for use in the room. The fact that an organisation has some part of its premises set up for in-house staff training does not make that room or area a school. For exemption to apply, other factors discussed above must be present.

Conducted by a non-profit body

For exemption to apply under Item 109, a school must be conducted by a non-profit body, The term 'non-profit body' is defined in subsection 3(2) of the ST(E&C) Act as follows:

> '*Non-profit body' means a society, institution, organisation or other body that is not carried on for the profit of individuals*'.

Paragraph 22(1)(aa) of the *Acts Interpretation Act 1901* defines the word 'individual' to mean 'a natural person'.

An organisation is a non-profit body where, by its constituent documents or by operation of law (for example, a statute governing the organisation), it is prevented from distributing its profits or assets among individuals while it is operating or on its winding-up. The organisation's actions must, of course, be consistent with the prohibition.

The fact that an organisation which runs a school is carried on to make a profit does not prevent the school from being eligible for sales tax exemption, as long as that profit does not find its way, directly or indirectly, into the hands of, or for the benefit of individuals. Lockhart J commented in *Australian Airlines*, at ATC 5197; ATR 321:

> 'If profits are ploughed back into the school for the benefit of future generations or to enhance the future growth of the organization, it is not carried on for the benefit of an individual. But if the profit goes directly or indirectly to identifiable persons then the exemption is not available.'

Sundberg and Merkel JJ in *Australian Airlines* also found that the profit of individuals is not limited to direct profit, but includes indirect or ultimate profit. They commented, at ATC 5201; ATR 325:

> 'We would regard an organization as being carried on for the profit of an individual notwithstanding that one or more corporations are interposed between the organization and an individual. Thus, if the profit of an organization is distributed directly or indirectly to one or more natural persons, the organization is carried on for the profit of an individual ...'.

It is probable that the majority of organisations that run in-house training centres would be unable to meet the non-profit requirements of Item 109.

Communication of the Decision

This Determination has been made available for publication by the sale tax publishing houses and will be provided to interested persons upon request.

Commissioner of Taxation
30 July 1997

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Related Determinations:

Related Rulings:	Sales Tax Ruling ST(NS) 3003; Sales Tax Bulletin No 8
Subject Ref:	in-house training centres; non-profit bodies; schools
Legislative Ref:	Sales Tax (Exemptions & Classifications) Act 1992 Item 109 Schedule 1 and Subsection 3(2); Acts Interpretation Act 1901 paragraph 22(1)(aa)
Case Ref:	Cromer Golf Club Limited v. Downs & Anor (1973) 47 ALJR 219; FC of T v. The Leeuwin Sail Training Foundation Ltd 96 ATC 4721; (1996) 33 ATR 241; FC of T v. Australian Airlines Ltd 96 ATC 5187; (1996) 34 ATR 310
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