



# ***TR 96/8 - Income tax: school and college building funds***

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 This document has changed over time. This is a consolidated version of the ruling which was published on *10 April 1996*



## Taxation Ruling

### Income tax: school and college building funds

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#### other Rulings on this topic

CITCM 806; IT 2071;  
IT 2443; IT 2676;  
TD 92/110; TD 93/57;  
TR 95/27

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*This Ruling, to the extent that it is capable of being a 'public ruling' in terms of Part IVAAA of the **Taxation Administration Act 1953**, is a public ruling for the purposes of that Part. Taxation Ruling TR 92/1 explains when a Ruling is a public ruling and how it is binding on the Commissioner.*

## What this Ruling is about

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### Class of person/arrangement

1. This Ruling applies to persons seeking to establish or maintain a school or college building fund under item 2.1.10 of table 2 in subsection 78(4) of the *Income Tax Assessment Act 1936* (the Act). This Ruling also applies to persons seeking to claim income tax deductions under subsection 78(4) for a gift made to a school or college building fund.
2. Gifts of \$2 or more to school or college building funds are, subject to the requirements of subsection 78(4), allowable deductions under item 2.1.10 of table 2 in subsection 78(4) of the Act.
3. This Ruling replaces guidelines set out in Canberra Income Tax Circular Memoranda (CITCM) 712, 782 and 806 dealing with such gifts and considers:
  - (a) how to obtain confirmation from the Australian Taxation Office (ATO) that a particular fund will be a school or college building fund under item 2.1.10 of table 2 in subsection 78(4);
  - (b) what is required for a fund to be a **school or college building fund**;
  - (c) what is meant by a **school or college**; and
  - (d) what is meant by a **building used as a school or college**.
4. This Ruling does not deal with the meaning of the term 'gift'. This term is considered in Taxation Rulings IT 2071, IT 2443 and Taxation Determinations TD 92/110 and TD 93/57.

## Ruling

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### **ATO confirmation that a fund is a school or college building fund**

5. It is not necessary for a fund to be formally approved by the ATO. However, it is in the best interests of a fund's manager(s) to seek confirmation that the fund qualifies as a school or college building fund. ATO confirmation ensures that donors can be confident, when making a gift, that they are properly entitled to an income tax deduction.

6. Advice as to whether a particular fund qualifies as a school or college building fund is given by Branch Offices of the ATO. A fund manager seeking advice should forward applications to the local Branch Office which will consider each case on its merits.

### **What is a school or college building fund?**

7. Item 2.1.10 of table 2 in subsection 78(4) applies to a fund which meets the following requirements:

- (a) the fund is a **public fund** (see '**Explanations**' at paragraph 25 below);
- (b) the fund is established and maintained **exclusively** for providing money for the acquisition, construction or maintenance of a building used, or to be used, as a school or college; and
- (c) the building is used as a **school or college** by a government or a public authority, or by a society or association which is not carried on for the profit or gain of its members.

### **When is 'a building used, or to be used, as a school or college'?**

#### ***What is a building?***

8. The word 'building' means a permanent structure usually with walls and a roof. This may range from a one room country school building to a group of buildings. It includes a part of a building and additions to buildings.

9. It is considered that fixtures fall within the definition of a building for the purposes of the item.

***What is a 'school or college'?***

10. For the purposes of item 2.1.10 of table 2 in subsection 78(4), 'school or college' means a place (not being a university) having the dominant function of providing organised or systematised instruction or training, usually in class form, which is given on a regular and a continuing basis.

11. The recreational nature of the instruction or training provided (if any) should be merely incidental to the main purpose of study or instruction.

12. An institution whose dominant function is other than instruction or training is not regarded as a school or college.

***When is a building 'used as a school or college'?***

13. To qualify as a school or college building for the purposes of item 2.1.10 of table 2 in subsection 78(4), the building or group of buildings must be used for a purpose which is connected with the curriculum of the school or college.

14. A multi-purpose building is taken to be used as a school or college if the primary and principal use of the building is as a school or college. In the case of a proposed building, the test is satisfied if the building is proposed to be used as a school or college more than 50% of the time. Where a school or college building fund is maintained for an existing school or college, the building must be used as a school or college for more than 50% of the time.

**Disbursements from a school or college building fund**

15. Only disbursements from a school or college building fund that are directly and essentially related to the acquisition, construction or maintenance of a building used, or to be used, as a school or college are legitimate charges against that fund.

16. Disbursements on capital improvements and maintenance, as well as installation and maintenance of fixtures to a building used, or to be used, as a school or college are legitimate charges against a school or college building fund.

**Raising funds for more than one purpose**

17. A gift to a fund which is established and maintained to provide money for both:

- (a) acquisition, construction or maintenance of a building used, or to be used, as a school or college; and

- (b) any other purpose, such as the acquisition of furniture, books, computers, etc., for the use of students

is not tax deductible as a gift to a school or college building fund as the fund is not established and maintained exclusively for school or college building purposes.

### ***Ancillary funds***

18. However, organisations such as schools and colleges wanting to raise money for a number of income tax deductible purposes may establish and maintain a separate public fund in accordance with subsection 78(5). Donations paid into this type of fund may be tax deductible if the fund is established and maintained under a will or instrument of trust exclusively for:

- the purpose of providing money, property or benefits to or for funds, authorities or institutions referred to, and for the purposes (if any) referred to, in any of the items in the tables in subsection 78(4); or
- the establishment of funds, authorities or institutions referred to in the tables in subsection 78(4).

19. If the ancillary fund distributes money to a school or college building fund, that school or college building fund must be separately established for the purposes of item 2.1.10 of table 2 in subsection 78(4).

### ***Multi-purpose fundraising appeals***

20. Schools and colleges often have fund raising projects to raise money for a number of purposes at one time. Donors of gifts to such projects may nominate an amount to be allocated to a school or college building fund. Gifts allocated to the school or college building fund will be tax deductible to the donor provided that:

- (a) an identifiable part of the contributions paid by donors will be allocated directly to a school or college building fund at the time the donation is made;
- (b) receipts in the name of the fund to which the donor has made a contribution will be written in respect only of specific gifts to that fund and all amounts shown on those receipts will be credited to that fund and paid direct to the separate bank account of that fund; and

- (c) no amount credited to that fund will be transferred out of that fund or disbursed other than for the purposes for which the fund is established.

21. Fund managers requesting ATO confirmation that a fund receiving donations from multi-purpose fundraising projects is a school or college building fund will be required to confirm that the above requirements will be satisfied.

### **Investments by school or college building funds**

22. A school or college building fund may invest or lend its funds if the persons in control of the fund are able to establish that they are proceeding with all reasonable speed to achieve the fund's objects, and that such investments or loans from the fund represent a bona fide and temporary arrangement. The fund's controllers must also be able to demonstrate that the investment or loan will assist the fund achieve its objects within a reasonable period.

## **Date of effect**

23. This Ruling applies to years commencing both before and after its date of issue. However, to the extent that the Ruling conflicts with the terms of settlement of a dispute agreed to, before the date of issue of the Ruling, it will only apply as from 1 July 1996 (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

24. If a taxpayer has a more favourable private ruling (whether legally or administratively binding), this Ruling applies to that taxpayer to the extent of the inconsistency only from and including the 1996-1997 year of income.

## **Explanations**

### **ATO confirmation that a fund is a school or college building fund**

25. Requests for confirmation that a fund is a school or college building fund should be forwarded to the local branch of the ATO. The ATO can only confirm that a fund is a school or college building fund if it is provided with the following documents/information:

- the name of the fund seeking confirmation that it is a school or college building fund;
- the title, composition and nature of the body controlling the fund, including the names and occupations of the

members of the Committee operating the fund and the positions and occupations held by them;

- a copy of the constitution or rules of the fund;
- whether an appeal for other funds will be made jointly with the school or college building fund appeal;
- details of the fund's bank account; and
- a full description of the nature of the school or college building, indicating precisely the purpose for which it is or will be used. If available, a copy of a plan should be submitted for perusal.

26. In order to determine whether a building is primarily and principally a school or college, the following information would be considered and should be provided with the request for confirmation:

- the number of days each week on which the building is, or will be, used for study and instruction;
- whether the building is, or will be, used for activities of a social, community or non school or college nature. If so, the number of days each week on which such activities will occur; and
- details of the total hours of usage each week applicable to:
  - (a) activities of a social or community nature; and
  - (b) study and instruction.

27. If more information is required the ATO will request it. The ATO will be unable to confirm the fund's status until the necessary information is provided.

### **What is a public fund?**

28. The requirements of a 'public fund' for the purposes of the gift provisions of the Act are set out fully in Taxation Ruling TR 95/27. Persons involved in the management of a public fund or proposing to establish one should refer to TR 95/27, a copy of which may be obtained from the local branch of the ATO.

### **When is a building used by a government or public authority, or a non-profit society or association?**

29. Whether a building is used as a school or college by a government or a public authority is generally obvious from the individual facts. Whether a building is used by a non-profit society or

association will be determined by referring to the constitution or founding documents of the society or association.

30. A school or college used by a religious or charitable institution would usually operate on a non-profit basis. However, in all cases, it is necessary to examine the relevant constitution, etc., to ensure that the school or college is operated by a non-profit organisation.

### **Raising funds for more than one purpose**

31. The term 'exclusively' in so far as it applies to item 2.1.10 of table 2 in subsection 78(4) was considered by Windeyer J in *Cobb & Co Limited v. FC of T* (1959) 101 CLR 333; (1959) 12 ATD 11. It was held that the term refers to the purposes or objects for which the funds are established or maintained and does not refer to the use of the building acquired with the fund moneys.

32. Windeyer J in the course of his decision gave examples of funds that would not satisfy the requirements of item 2.1.10 of table 2 in subsection 78(4):

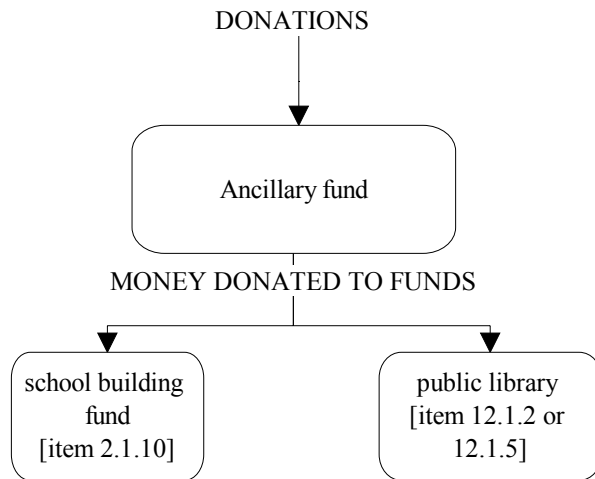
- (a) a fund for the acquisition of a building and the endowment of a scholarship; and
- (b) a fund used to acquire a building and also to provide books.

33. In these examples the funds are not maintained exclusively for providing money for the acquisition, construction, or maintenance of a building used or to be used as a school or college. Accordingly, such funds will not qualify for the gifts concessions under item 2.1.10 of table 2 in subsection 78(4).

### ***Ancillary funds***

34. A school or college wishing to raise money for a number of income tax deductible purposes may establish an ancillary fund under subsection 78(5). For example, money raised by such a fund can be provided to a school or college building fund (item 2.1.10 of table 2 in subsection 78(4)) or a public library (item 12.1.2 or item 12.1.5 of table 12 in subsection 78(4)).

35. The following diagram illustrates the operation of an ancillary fund:

**Tax deductible donations to Ancillary Funds****An example:**

36. For further explanation and discussion of the criteria applicable to ancillary funds under the general gift provisions, see Taxation Ruling TR 95/27.

***Multi-purpose fund raising appeals***

37. Where a school or college raises moneys for a school or college building fund as well as other purposes, there are varying methods by which a donor's entitlement to a tax deduction can be determined.

Examples are:

- (a) where an organisation raises funds by using a form to show how a donor wishes to allocate his or her donation e.g., a pledge form, the donor can indicate on that form the proportion or amount of his or her contribution which is to be distributed to the school or college building fund. It is that proportion which is deductible under subsection 78(4); or
- (b) the terms of the appeal, usually recorded in a printed brochure, may state the proportion which is to be distributed to the school or college building fund. It is that proportion of the donation which is deductible under subsection 78(4).

38. It should be noted that gifts to the general fund of a school or college are not deductible even if the sum donated is subsequently

applied towards the cost of construction or maintenance of the school or college building. Similarly, gifts to the general funds of the Parents and Citizens Association (or like organisation) do not qualify for an income tax deduction.

39. An income tax deduction is also denied where a general pledge is made (where the gift is not made to an ancillary fund of the type referred to above) and allocations to a school or college building fund are subsequently determined by the fund manager from the pool of contributions received. A donor must personally nominate at the time of making a donation the proportion or amount to be allocated to each fund or alternatively the donor must have agreed to the allocation specified by the fund manager, and receipts must be issued in the name of the deductible funds for the specified amounts which must then be paid to the specified funds.

40. Any moneys received by a school or college other than tax deductible donations to its building fund, e.g., government grants, school or college fees, other donations, etc., should be kept separate from the school or college building fund.

### **What is meant by the term 'a building used, or to be used, as a school or college'?**

#### ***What is a building?***

41. The Commissioner has accepted that, for the purposes of the school or college building fund provisions, a building includes a part of a building and additions to buildings.

42. Fixtures form part of a building. Fixtures are considered to be those items which have been affixed to a building after the original building has been completed and in relation to which there is an intention that the item will remain in position permanently or for an indefinite or substantial period. The fact that an item is unable to be detached without substantial damage to the item or that to which it is attached would be strong evidence that the item is a fixture. Examples of fixtures include ducted heating systems and fixed air conditioning systems. The Commissioner has accepted that carpets which are fixed to the floor are part of the building for school or college building fund purposes.

#### ***What is meant by the term 'school or college'?***

43. The words 'school or college' are not defined in the Act. The *Macquarie Dictionary* defines a school as 'a place or establishment where instruction is given, esp. one for children'. A college is defined

as 'a (usu.) post-secondary, diploma awarding, technical or professional school'.

44. The term 'school' was considered in *Cromer Golf Club Limited v. Downs and Another* (1973) 47 ALJR 219; [1972-73] ALR 1295 where Barwick CJ gave the term 'school' a wide definition in the context of the *Public Works Act 1912* (NSW). At ALJR 221; ALR 1299, Barwick CJ gave the term its ordinary meaning, when he 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.'

45. In *Case P17* 82 ATC 72 at 76; *Case 81* 25 CTBR (NS) 608 at 612, the Board of Review considered the meaning of the word 'school' in the context of the former section 159U of the Act. The Board did not give the word 'school' its ordinary meaning (as expressed by Barwick CJ in *Cromer*). Rather, it said:

'...for the purposes of the definition of "prescribed course of education", a "school" does not have its ordinary or general meaning and that a need for a narrower meaning to be attributed to the word flows necessarily from its placement immediately before the words "college, university..." which connote places of instruction in ascending order of educational gradation. ... a "school" should be regarded as a place (not being a college or university) at which organised or systematised instruction, usually in class form, is given on a regular and a continuing basis.'

46. For the purposes of item 2.1.10 of table 2 in subsection 78(4), the meaning of the words 'school' and 'college' is narrower than their ordinary meaning. The collocation of 'school' and 'college' in item 2.1.10 requires a narrower meaning in that the method of instruction, study or training must be organised or systematised, and given on a regular and continuing basis. The term "school" would usually connote a place where instruction is given by qualified persons in accordance with a set curriculum and there is some form of student assessment and correction.

47. In addition, if any instruction, study or training is of a recreational nature it should be merely incidental to the main purpose of study or instruction (see *Lloyd and Another v. Federal Commissioner of Taxation* (1955) 93 CLR 645 at 665; (1955) 29 ALJ 693 at 695).

48. An institution whose dominant purpose is other than systematic instruction or training would not be regarded as a school or college (see *Lloyd and Another v. Federal Commissioner of Taxation* (1955) 93 CLR 645 at 668; (1955) 29 ALJ 693 at 696).

49. The instruction provided could include religious as well as secular instruction. The concession therefore applies to funds for buildings used as theological seminaries or colleges.

50. The Commissioner has accepted that a Sunday School, Adult Religious Education or Bible Study Centre, etc., is a school, provided the institution has been established with the dominant purpose of giving regular and systematic instruction (e.g., if the institution has a curriculum then it may qualify as a school). Similarly, where the purpose of an institution is to systematically educate students in theological studies, the activities would be accepted as being a school or college.

***When is a building 'used, or to be used, as a school or college'?***

51. The decision of the High Court in *Cobb & Co Limited v. FC of T* (1959) 101 CLR 333; (1959) 12 ATD 111 is considered to confirm the view that a building must be used for a purpose which is connected with the curriculum of the school or college. Windeyer J at CLR 337; ATD 113 distinguished between structures which are used for the purposes of a school as opposed to being used as a school. Only buildings which are used, or to be used, as a school or college fall within the scope of item 2.1.10 of table 2 in subsection 78(4).

52. Where a school or college building fund has been established to finance an entire school or college there may not be as much difficulty in accepting that a building is to be used as a school or college as there would be if a fund is set up to construct a single building. For example, the construction of a cloakroom as part of an entire school or college complex would be accepted as it forms an integral part of a school or college building project. However, a fund established solely to build a garage for staff cars, even if it is located on school or college grounds, would not qualify as the building is not being used as a school or college.

53. When considering whether a proposed building constitutes a school or college building regard must be had to the changing trends and nature of education and the different types of schools and colleges in existence. Consequently, when assessing an application for approval of a school or college building fund, a decision should not be based solely on decisions taken in relation to earlier applications by other organisations. Regard has to be had to the current education system together with the objectives and curriculum of the particular

school or college. Each application has to be assessed on its own merits.

54. It is possible, for example, that some sports facilities (provided that they constitute a building) could be said to be 'used as a school or college'. In deciding this question reference should be made to the school or college's curriculum and syllabus. Relevant factors to consider when making a decision are: whether the school or college syllabus requires organised training; whether physical education is part of the general school or college curriculum set out by the relevant school or college registration authority in the State; whether the subject is examinable; and whether certificates of achievement, etc., are issued by the school or college. Generally, a sporting facility such as a gymnasium would be accepted as a school or college building.

55. For some schools or colleges, a chapel may be accepted as a school or college building. For example, a denominational school may conduct Scripture classes in the chapel, the primary use of the chapel may be for the school, and Scripture or religion may form part of the curriculum of the school on which students are assessed. Similarly, a library constructed primarily for use in connection with the normal curriculum of a school or college could be said to be 'used as a school or college'.

56. Approval of a fund under subsection 78(4) is not limited to cases where all the objects of a fund are carried out simultaneously. Buildings fall within the scope of item 2.1.10 of table 2 in subsection 78(4):

- (a) where the buildings in the group are all constructed at the same time or at intervals as finance becomes available; and
- (b) where a building within the group that is not, of itself, a building used as a school or college is completed at the initial, intermediate or concluding stage of the overall construction program and it is an integral part (i.e., by way of use and not just architecture) of the building complex.

57. However, the above paragraphs do not apply where a structure is not regarded as a building (e.g., swimming pools, sports ovals, walls, tennis courts). See also paragraph 58 below.

58. It is also accepted that a building which forms an integral part of the school or college and is used to provide residential accommodation or facilities for students and/or staff is a building used as a school or college. A similar view also applies to a school or college assembly hall. A hostel run by an organisation independent of the school or college does not qualify for the concession.

59. Items that are not acceptable as a 'building' include furniture, training equipment, laboratory equipment and computers, etc., unless they form an integral part of the building, i.e., fixtures. An outdoor swimming pool is also not a building. However, an indoor swimming pool (surrounded by walls and a roof) that is an integral part of a building which is used as a school or college would qualify as a school or college building.

60. The purchase of land which represents the first step towards the acquisition or construction of buildings to be used as a school or college falls within the subsection. Moneys from a school or college building fund must not, however, be used to purchase land for the purpose of providing recreational space, such as sports grounds (since these do not involve a building) or other facilities which are not essentially for use in connection with the normal curriculum of a school or college.

### **Multi-purpose buildings**

61. If a building is used for more than one purpose, it will be a question of fact whether its principal use is for the purposes of study or instruction. A building will be accepted as being primarily and principally used as a school or college if the building is used as a school or college more than 50% of the time. For example, a building used as a school or college every weekday and a place of worship on Sundays will qualify as a school or college. However, a Sunday School hall used for religious instruction on Sundays only and for community and social activities on other days of the week is not principally a school or college.

62. When a school or college is located in a multi-purpose complex (and the area set aside for a school or college is used in excess of 50% of the time for school or college purposes) a donation directly to a school or college building fund is fully tax deductible. If moneys are collected on a combined fundraising basis (to finance, for example, a school and a church) then the amount which is deductible will depend on how much is allocated by the donor to the school building fund.

63. As stated previously (see paragraph 28 above) the school or college building fund must satisfy the public fund requirements if money allocated to it are to be tax deductible.

64. Where a multi-purpose building has a common area, which is shared by the school or college with other 'tenants', the school or college building fund can only use its funds to contribute towards the cost of the common area where the area is used primarily or principally as a school or college (this could be determined on a time basis).

## **Disbursements**

65. Reasonable costs of establishing, promoting and managing an approved fund may legitimately be charged to the fund as being directly related to the fund's objects of providing money for the acquisition, construction or maintenance of a building used, or to be used, as a school or college.

66. These costs include such inevitable and ancillary items as bank charges, stationery costs and accounting and audit fees relating expressly to the fund. These costs, however, do not include an apportionment of normal expenses incurred by any donee organisation independently of the school or college building fund.

67. The fees paid for professional direction of a planned giving or fundraising program are a legitimate charge against the fund. In a combined fundraising appeal (or multiple purpose appeal), however, the school or college building fund should only bear the proportion of the costs of fundraising equal to its share of the total amount raised in the appeal.

## ***Acquisition costs***

68. Expenditure on the acquisition of a building includes the costs incurred in negotiating, completing and financing the purchase of the building. The repayment of the capital of a loan and the payment of interest charges incurred in the purchase of a building to be used as a school or a college are expenditures on the acquisition of a building.

69. The cost of purchasing land on which there are definite plans to construct a building to be used as a school or college is also included as part of the cost of acquiring a building.

70. Only so much of the cost of the land as is directly required for the construction of the buildings to be used as a school or college would be a proper expenditure of the school or college building fund.

## ***Maintenance costs***

71. The term 'maintenance' is not defined in the gift provisions so it should be given its ordinary meaning. Maintenance of a building means to keep the building and fixtures in proper or good condition. It does not include the general operating costs of a school or college or the general upkeep costs of furnishings. The Commissioner has accepted maintenance costs of a school or college building include:

- the cost of cleaning the building including its floor coverings and windows, but not extending to playgrounds or sports fields;
- janitors' and cleaners' salaries and wages to the extent they directly relate to maintaining the building in good condition;
- insurance premiums for the building and fixtures (but not premiums relating to the contents of the building);
- the purchase of equipment used exclusively for maintaining the school or college building (e.g., vacuum cleaner); and
- repairs, painting and plumbing works on the building and fixtures.

72. Overall, the costs must be readily perceived as relating to the actual building and fixtures and their maintenance. The maintenance of a school or college building does not extend to disbursements on sports equipment, playgrounds, sports fields, landscaping or car parks. The fact that such items are required by a local government to obtain approval of building plans does not make those items 'buildings to be used as a school or college' within the meaning of item 2.1.10 of table 2 of subsection 78(4). Maintenance also does not include general running costs such as water, gas, electricity, sewerage, contents insurance, teaching staff salaries, etc.

73. Where costs relate, in part, to the maintenance of the building used as a school or college, only the appropriate proportion attributable to those purposes are a legitimate charge against the school or college building fund. For example, if a cleaner's time is devoted 50% to maintaining the building used as a school or college, with the balance of his or her time devoted to other work, only 50% of his or her salary costs, etc., are a legitimate charge.

### ***Security costs***

74. The costs of installing and maintaining security alarms and lighting, window and door security (such as grills, etc.) are legitimate disbursements if the security equipment forms a fixture to the building used as a school or college. Maintenance of this equipment will similarly be legitimate disbursements.

75. Expenditure on security guards, guard dogs, mobile communications, etc., are not related to the acquisition, construction or maintenance of a building used, or to be used as a school or college. These costs are not legitimate disbursements from a school or college building fund.

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## Examples

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### Combined funds

#### *Example 1*

76. To reduce administrative costs, a parish combines its school or college building fund and church building fund. The combined fund is not established under a will or a trust deed. That is, it is not an ancillary fund. Donations made for both purposes flow into the one fund and disbursements for either purpose flow out of the same fund.

77. Because the fund is not maintained exclusively as a school or college building fund, gifts made to the fund are not allowable deductions under item 2.1.10 of table 2 in subsection 78(4). The combined fund does not qualify for consideration under the ancillary fund provision in subsection 78(5) for two reasons:

- (a) contributions towards the building of a church are not tax deductible gifts; and
- (b) the combined fund has not been established under a will or a trust deed.

#### *Example 2*

78. A private school has a public trust fund established in accordance with subsection 78(5). The public contributes to the trust fund. The trustees decide to appropriate the funds in favour of an approved school building fund as well as a public library.

79. Gifts made to the public trust fund are allowable under subsection 78(5). (Gifts to public libraries are tax deductible under item 12.1.2 or 12.1.5 of table 12 in subsection 78(4)).

### What is meant by school or college?

80. A **yoga school** is not considered to be a school for the purposes of item 2.1.10 of table 2 in subsection 78(4) as it does not fall within the meaning of school. Yoga is a recreational activity and does not concern systematised instruction or study.

81. A **child care centre** is not considered to be a school for the purposes of item 2.1.10 of table 2 in subsection 78(4). However, a **pre-school kindergarten** may qualify as a school.

82. A **riding school** is not considered to be a school within the meaning of item 2.1.10 of table 2 in subsection 78(4) as it is designed

for the training of persons to take part in a particular recreational sport. Similarly, places where instructions are provided on **dressmaking, woodwork, ceramics and cookery** for recreational pursuits would not qualify as schools.

83. A **film and television school** where systematised training and instruction is provided in all facets of film and television work may qualify as a school provided there is only an incidental recreational component to the instruction (if any).

84. **Schools for opera, ballet and drama** may qualify as a school where there is a curriculum and examinations and it can be said that the instruction of the students is not for recreational purposes (e.g., a drama school which provides systematised instruction to professional actors).

### **Multi-purpose buildings**

85. In the following examples it is assumed that all the criteria for a school or college building fund outlined at paragraph 7 above have been satisfied:

(a) **Building used 100% as a school or college**

The building is to be used as a school or college and all donations to the building fund would be tax deductible.

(b) **Multi-purpose building - 75% is to be used as a school, 25% of the building to be used for non-school purposes (e.g., community centre)**

Part of the building, i.e., 75%, is to be used primarily and principally as a school. A taxpayer would qualify for a deduction if the gift is specified as being exclusively for the school building fund and it is receipted on that basis. The school building fund, however, may only use its funds in relation to that part of the building used primarily as a school.

If the donation is to a collection for both the church and the school then, depending on how the funds are allocated by the donor, the taxpayer may qualify for a deduction (see paragraph 37 above for further details).

It should be noted that, in the above example, if the part used by the school (i.e., 75%) is only used one day in the week and is not used at all at other times, that part would still qualify as a school as 100% of the use of that part of the building is considered to be as a school.

- (c) **Multi-purpose building - 20% of the building is used for non-school purposes (e.g., community centre) and 70% is used as a school. 10% of the building is used as common areas (e.g., hallway, foyer, toilets) which are shared by the school and community centre**

If access and use of the common areas reflects the usage of the building as a whole (in this example part of the building is being used primarily and principally as a school, i.e., 70%), then applying the primary and principal usage test to the common areas results in the school building fund being able to be used in relation to the acquisition, construction or maintenance of the common areas as well as that part of the building used primarily as a school.

In the example above, if 20% of the building is used primarily or principally as a school and 70% is used for non-school purposes, the primary and principal test would not be satisfied in relation to the common areas. None of the cost of the acquisition, construction or maintenance of the common areas would be legitimate expenditure of a school building fund.

- (d) **The entire area of a building is shared by a school and a community services group - for 5 days a week the building is used as a school and on weekends it is used as a community centre**

The entire building will qualify as a building used as a school as it is primarily and principally used as a school. Donations to the building fund would be 100% tax deductible.

## Detailed contents list

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- ITAA 78(4)
- ITAA 78(4) Item 2.1.10
- ITAA 78(4) Item 12.1.2
- ITAA 78(4) Item 12.1.5
- ITAA 78(5)

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25 CTBR (NS) 608