

# Australian Not for Profit Accountants Network

**Taxation Ruling TR 2013/2  
School or College Building Funds**

# Australian Not For Profit Accountants Network

## ● Background

- Prior to TR 2011/D5 Commissioner held view that a building might still be considered to be used as a school where any other uses were less than 50% of the total time the building was used.
- In TR 2011/D5 it was suggested the building must be used “solely” as a school or college and not for any other purpose. Any other use must be integral to its use as a school or only minor
- TR 2013/2 looks at various concepts relevant to the definition of a school building fund and considers primarily whether there is a school and if the building is being used as a school. Any non-school use must not materially limit, detract from or be incompatible with its school use

# Australian Not for Profit Accountants Network

## What is an eligible school?

- An objective intention to carry on a school with a distinct identity (Name, governing body, quality of permanence)
- Place where people come together for systematic instruction as its primary function or essential purpose
- which will require a curriculum, enrolment of students, assessment and resulting qualifications which are recognised outside of the organisation.
- Distinct identity from any related organisation
- Must be a qualifying body – separate organisation, control the building, its use and provide structured teaching

## What is an Eligible Building?

Permanent structure providing protection from the elements

May be part of a building so long as it is separately identifiable

School use must be substantial – school use vs non-school use, number of people involved, physical area, extent of modification in order to accommodate the school

Where a Church carries on a school need to have regard to the extent to which the school organisation is able to control the use of the building

# Australian Not for Profit Accountants Network

- Buildings incidental to the provision of instruction in a school might include a tuck shop, toilet block or sports complex will qualify
- Where the design or adaptation to support non-school use prevents it from ordinarily being described as a “school building”
- Sunday School – would need to be a separate identity, have specialist instruction, formal assessment, documented levels of achievement
- School of Ministries – curriculum and completion certificate will qualify

# Australian Not for Profit Accountants Network

- Denominational School Chapels – used only by students and teachers for religious services & prayer as part of the conduct of the school.
- Multi-purpose buildings and church auditoriums – even if used for college assemblies, award presentations & occasional artistic presentations will not qualify as physical attributes prevent it from being regarded as being used as a school
- School building built by church with modification – used more than 50% as a school, however, the design, no. of people who use it each week for non-school activities indicate it is not used as a school.
- Above examples would indicate churches which have multi-purpose buildings used for worship on weekends and educational purposes during the week may find it difficult to argue acceptable school building for the purposes of the DGR fund

# Australian Not for Profit Accountants Network

- Eligible Expenditure:
  - Building acquisition, land, rent and lease payments, cleaning costs, bank fees, accounting, audit, remuneration of fund administrator
- Ineligible Expenditure:
  - Costs relating to non-school use of a building, general operating costs such as electricity, insurance, maintenance of sports equip. playgrounds, landscaping, sports fields, outdoor swimming pool or tennis courts.

# Australian Not for Profit Accountants Network

## ● Transitional Arrangements

- The 50% rule under TR 96/8 no longer applies from 13<sup>th</sup> February 2013
- Funds committed to acquisition or construction prior to 13<sup>th</sup> Feb 2013 under an earlier arrangement will not be subject to the new ruling
- Gifts or contributions to a building fund are able to be paid on the old basis for up to 1 July 2013 for committed arrangements
- For any new acquisition or constructions arrangements where the new requirements under TR 2013/2 are not met the building fund will cease to be a DGR fund



# Australian Not for Profit Accountants Network

- TR 2011/4 Income Tax and FBT: charities
  - Seeks to clarify the meaning of “charitable” & what constitutes a “charitable institution” and “fund established for charitable purpose” in the context of income tax and FBT legislation
  - As it relates to benefits such as income tax exemption, tax deductible gifts, refund of imputation credits, FBT exemptions and FBT rebates
  - Considers the decisions in the Word Investments case and Aid/Watch case as they impact on the Commissioners decision

## Australian Not For Profit Accountants Network

- **Purposes must be Charitable**
- A charitable organisation can only have charitable purposes (or incidental or ancillary to charitable purpose). A charitable organisation cannot have an independent non-charitable purpose regardless of how minor it may be.
- The ruling re-iterates the legal definition of charitable as it pertains to the 4 heads of charity – relief of poverty, advancement of education and religion & other purposes beneficial to the community

# Australian Not For Profit Accountants Network

- For a purpose to be charitable it must provide for the public benefit – benefit to the community that is real and of value, either tangible or intangible and available to the public
- Not necessarily all public but at least a section of public
- The notion of public benefit may change over time

# Australian Not For Profit Accountants Network

- **Identifying Charitable Purpose**
- - the objects in the constituent documents
- - the activities of the organisation to achieve those objects
- It is possible to engage in activities that are not in themselves charitable provided they are carried out in the furtherance of the charitable purposes
- As in Word it is possible to have a profit making enterprise provided it is clear they are intended to achieve the charitable purpose

# Australian Not For Profit Accountants Network

## ● Profit Making

- A charitable organisation can work to make a profit provided:
  - - the profit making goal is only pursued to assist its charitable purpose
  - -the profits are accumulated to augment funds available to give effect to the charitable purpose
- Commercial activities can be compatible with charitable purpose. Eg Residential aged care
- Can hold passive investments at market rates of return to meet operational expenses without undermining charitable status

# Australian Not for Profit Network

- Implications of these rulings
  - Charities will need to:
    - Assess that their purposes are in fact charitable
    - Distinguish if their charitable organisations are institutions or funds
    - Examine the relevant factors which convey tax exempt status to organisations under their control
    - Examine commercial and other activities undertaken, either by the charity itself or a controlled entity, and the possible impact on their tax exempt status
    - Review the governing documents of the organisation - are activities and purposes compatible
    - Assess possible income tax and CGT implications

# Australian Not for Profit Network

- **FBT and LAFHA Allowances**

- From October 2012 limits concessional tax treatment of LAFH allowances to a maximum period of 12 months for employees who maintain a home in Australia
- Transitional rules apply arrangements previously existing up until July 2014
- Substantiation required for accommodation & food where it exceeds ATO reasonable amounts
- Affects temporary residents such as those working in Aust for CCCA

# Australian Not For Profit Accountants Network



# Australian Not For Profit Accountants Network

# Australian Not For Profit Accountants Network

# Australian Not For Profit Accountants Network

# Australian Not for Profit Network

- 
-

# Australian Not for Profit Network

# Australian Not for Profit Network