

What is a School Building for Gift Fund Purposes?

The relevant Tax Ruling is TR 2013/2

The Australian Taxation Office (ATO) takes a highly prescriptive approach to what it considers will qualify as a school building. Outbuildings on a school's premises will not qualify as 'school buildings' unless the use they are put to is educational in and of itself. This means they need to be recognised, using ordinary language, as a school in their own right. For example, a groundsman's hut does not constitute a school building and the School Building Fund (SBF) must not be used to fund such a facility.

The ATO says that a school building must be operated by a 'school organisation'. This means an entity with a distinct identity that provides regular and systematic non-recreational education.

The following points are useful guides to determining whether the entity qualifies as a 'school organisation' (a school):

- (i) The organisation must be identifiable in its own right whether as an entirety or as a discrete part of a larger parent entity;
- (ii) The education provided by the organisation must follow a set curriculum (preferably set by a suitably recognised body);
- (iii) It must be provided by appropriately qualified staff to enrolled students;
- (iv) The students' work must be subjected to a form of assessment; and
- (v) The education must aim to prepare students to acquire recognised qualifications.

While the aim should be to achieve all of these points, it is important to meet most of them, both initially and at all relevant times, following the approval of the SBF. The reason that the ATO insists that the education be non-recreational is that while the pursuit of recreational interest may be considered to be educational in normal circumstances, for SBF purposes it is not. A significant tax concession is available and the Rules are tight. For example a group of philatelists may arrange for various 'experts' to talk about aspects of philately at stamp club meetings, and may claim to be an educational institution on the grounds that they educate their members about stamp collecting and seek DGR status for a fund set up to purchase their club room: their 'school'. Clearly while the people involved get some sort of 'instruction' it is not 'education' in the proper (normally understood) sense of the word.

The ATO makes a valid distinction between the provision of information and the provision of education. However, the distinction is not well articulated as the ATO Ruling is expressed in negative rather than positive terms. For example rather than saying 'education must be formal', a statement of what it must be; the Ruling states that 'education must be non-recreational', a statement of what it cannot be. For present purposes suffice to say that the provision of information in an informal setting or manner is not the provision of education.

The following points will help to determine whether, or not, a particular building is a school building:

- (i) The building must be used predominantly for educational purposes (as above);
- (ii) If the building is also used for non-educational purposes the non-educational use must be either incidental to the educational purposes, or minor and insignificant in relation to the overall use of the building, e.g. a teachers' staff room.
- (iii) It is desirable that a school building is identified to the public as a school, e.g. a sign on the building saying 'Such and Such' school.

An example of non-educational use in item (ii) above may be where the school occasionally allows a community group, e.g. the philatelist society, to use a classroom for its meetings. As long as this non-school use is minimal it will not detract from the building's being classified as a school building. However, if the classroom is used more by the community group than by the school itself it would fail to qualify as a school building.

It is possible that a part of a multi-purpose building will qualify as a school building. If part of the overall building passes the tests referred to above, then that part of the multi-purpose building will qualify as a school building. The most common example of this is a Sunday School in a church building.

The ATO has tightened up what they consider to be a Sunday School for SBF purposes in recent years. To qualify as a Sunday school:

- (i) the church should establish a Sunday School Committee to select prospective teachers (the school organisation);
- (ii) The Committee should ensure that the curriculum for that religious body is followed;
- (iii) The teachers appointed by the Committee should have suitable qualifications;
- (iv) The children, who are registered attendees, should be assessed on what they have learnt and normally be awarded certificates.

The establishment of a Committee to run the Sunday School shows that a discrete and identifiable 'school organisation', rather than the church, runs the school.

The above list is not exhaustive and other factors may help to establish that a Sunday School is a proper school for SBF purposes. But, if part of a multi-purpose building (in this case a church with a Sunday School), passes the tests referred to above when discussing what constitutes a school building, then that part of the multi-purpose building will qualify as a school building. It is usually obvious by the application of normal language and common sense whether a building, or part of a building, is a school.

The ATO does not look kindly upon organisations that seek to twist or manipulate the normal meanings and understanding of words in attempts to bring their buildings into the SBF regime.

Traditional Sunday Schools conducted by ministers or members of the church on Scriptural topics they choose for whoever turns up on any particular Sunday will not qualify as schools for SBF purposes. There is neither an identifiable school

organisation nor any formal educational characteristics in this type of setup and, as with the philatelic society, its activities are more properly described as informative, or proselytising, rather than educational. However a structured curriculum, registered attendees and appropriately qualified teachers may well change that.

For-profit schools are not entitled to DGR status for any SBFs. Only schools run on a not-for-profit basis will achieve DGR endorsement of an SBF.

The school that establishes an SBF must create a 'Gift Fund' that must be identified and accounted for separately from other funds held by the school. A separate bank account is not strictly necessary, but may be the easiest way to achieve this requirement. However, rigorous internal accounting procedures that can easily identify gifts to and earnings of the SBF and its uses will satisfy the legislative requirements.

The SBF Gift Fund must hold all gifts of money or property to it, as well as any earnings from investment of same, and it must not hold any other unrelated money or property.

A property asset given to the SBF can become part of a school building, unless the property is itself a school building, or if it is an income earning investment; in which case, it cannot be put to school building purposes unless it is sold and the proceeds used for school building purposes.

The SBF must only be used for the acquisition, construction, or maintenance of a school building. This may include mortgage payments, insurance of the property, air conditioning that is built into the structure etc.

The SBF may be used to acquire land upon which the school building will sit but cannot be used to acquire any land which surrounds the school building and may form part of the school grounds, playgrounds car parks etc. Put simply, the acquisition of only as much land as the school building will cover is legitimate expenditure for an SBF. For example if a proposed school building will cover 200sm of a block of 1000sm an SBF may only be used to purchase the 200sm: the rest of the block must be bought with funds other than those in the SBF

It is prohibited to use the fund for anything other than acquiring or maintaining a school building (or the land it sits on), such as teachers' salaries or books for the school library for example. It is a School Building Fund.

Donations to a school for general purposes are not tax deductible unless the portion of the amount donated that will be put into the SBF is determined at the time that the gift is made. In that case only the portion of the overall gift allocated to the SBF will be deductible and the administrators of the SBF should issue a deductible receipt only for that portion of the donation.

Add-Ministry Inc.
September 2014