



undraising

YOU WORK HARD TO RAISE FUNDS FOR YOUR SCHOOL, SO IT'S WORTH HAVING TAX DEDUCTIBLE STATUS, BUT MAKE SURE YOU MEET THE LEGAL OBLIGATIONS THAT GO WITH THAT CONCESSION. **MICHAEL KOHN AND LENEEN FORDE** EXPLAIN.

School funding is constantly under pressure, which is one of the reasons why school administrators and associated parent bodies seek to supplement their school budget by undertaking a range of fundraising activities. In certain circumstances, this process may be made easier where donors can obtain tax deductions for the gifts they make. Let's look briefly at the obligations imposed on a school or association affiliated with a school seeking such a concession by the Commonwealth *Income Tax Assessment Act 1997* (the *1997 Act*).

Fundraising and tax deductible status

The *1997 Act* provides that in a variety of specified situations a person can deduct from their assessable income gifts or contributions which they make to certain types of organisations. The amount and nature of the gift may vary depending on the specific situation, but apart from deductions allowed for cash gifts, property

may also be claimed as a tax deduction by the donor.

In primary and secondary schools, gifts will be tax deductible where they are made to a fund, authority or institution that, according to Australian Taxation Office advice on school building funds, meets the following conditions:

- a public fund established and maintained solely for providing money for the acquisition, construction or maintenance of a building used or to be used as a school or college by a society or association which is carried on otherwise than for the purpose of profit or gain to the individual members of the society or association
- a public fund that is established for charitable purposes and that is established and maintained solely for providing money for scholarships, bursaries or prizes
- an institution that the Commonwealth Minister for Education has determined to be a technical and further education

institution under the Commonwealth *Student Assistance Act 1973*, and

- a government school that provides special education for students each of whom has a disability that is permanent or is likely to be permanent, and does not provide education for other students.

We'll focus here on public funds for school buildings and for scholarships, bursaries or prizes.

A public fund for the acquisition, construction or maintenance of a school building

What does 'public fund' mean? Let's look first at 'public.' 'Public' in relation to a public fund requires that the founders' intentions are that the public contribute to the fund and the founders invite contributions from the public at large.

Further, the public must participate in the administration of the fund, except ones established and controlled by a government or quasi-government authority. This crite-

tion is satisfied where the fund is administered or controlled by persons or institutions that, because of their tenure of some public office or their position in the community, have a degree of responsibility to the community as a whole. Church authorities, school principals, judges, clergy, solicitors, doctors and other professional people, mayors, councillors, town clerks and members of parliament qualify.

Thus, if the constituent document of the fund requires that some of the members responsible for the administration of the fund must comprise persons with those specified qualifications, and if in fact administrative positions of the fund are filled by such individuals, this criterion will be satisfied.

A 'fund' is created either pursuant to a deed of trust administered by trustee or is established as an independent unit within a sponsoring organisation such as a parent association or similar not-for-profit enterprise. It's worth noting that a sponsoring organisation's constitution or founding document must allow for the establishment of such a fund. In the event that it does not, it would need to be appropriately amended to accommodate a fund within the organisation's operations.

The objects of the fund must be clearly set out and reflect the purpose of the fund by specifying that the fund is for the acquisition or construction and maintenance of buildings to be used as schools or colleges. The objects and rules can be set out in a separate founding document or incorporated in the constitution or other founding documents of the sponsoring organisation.

The fund must, however, be subject to an acceptable dissolution clause, which provides that on winding up of the fund, any surplus money or other assets comprising the fund must be transferred to some other fund approved by the Commissioner of Taxation.

An acceptable dissolution clause for a public fund is:

'In the event of the fund being wound up or dissolved, any surplus assets remain-

ing after the payment of the fund's liabilities shall be transferred to another fund, authority or institution which has similar objects and to which income tax deductible gifts can be made.'

Further, the fund must operate on a non-profit basis – that is, moneys or property contributed to the fund or income earned must not be distributed to members of the sponsoring organisation or trustees of the fund except as reimbursement for out-of-pocket expenses incurred on behalf of the fund or as proper remuneration for administrative services. Gifts and deductible contributions made to the fund must be kept separate from any other funds of the sponsoring organisation, if any, or from any other activities undertaken by the fund. A separate bank account and clear accounting procedures are required.

What does 'school' or 'college' mean? A school or college provides organised instruction or training on a regular and continuing basis. The instruction is generally provided in classes. It includes people assembling for regular study in some area of knowledge or activity, and extends to religious as well as secular instruction.

In deciding whether a building qualifies as a school or college depends on:

- the courses provided
- the subjects taught
- the methods of assessment used and certificates awarded
- the teaching qualifications required of the instructors, and
- the number of students.

If the main function of the building is not for the provision of instruction or training, it's not a school or college and won't be eligible for the concession.

What is a 'school building'? The term includes one building, a group of buildings, a part of a building or additions to a building. The building should be a permanent structure, usually with walls and a roof. The building or group of buildings must be used for a purpose that is connected with delivery of the curriculum of the school or college.

Items that are not considered to be school buildings for the purpose of a public fund include tennis courts, playing fields, covered play areas, car parks and landscaping, other recreational space and things like furniture, training equipment and computers.

Fixtures are accepted as forming part of a building. Fixtures are affixed to a building and are unable to be detached without substantial damage to the item itself or to the building. Fixtures include ducted heating systems and fixed air conditioning systems.

On these definitions, indoor swimming pools and assembly halls are school buildings, as are multipurpose halls, so long as the primary and principal use of the building is as a school or college – use by a school or college for more than 50 per cent of the time will satisfy this requirement. This means a school or college can put a building to some commercial use in an effort to raise additional funds to supplement their building fund income.

What can a school building fund pay for? A school building fund is solely for providing money for acquiring, constructing or maintaining school or college buildings. It cannot be used for any other purpose. Expenditure on capital improvements and maintenance, as well as installing and maintaining fixtures, are accepted outlays of a school building fund.

Costs payable from a school building fund therefore include:

- the purchase of land for which there are definite plans to construct a building to be used as a school or college
- construction or purchase expenses, and associated financing costs
- lease payments on a rented school building
- painting and general maintenance of school buildings
- building insurance
- expenditure on carpets that are fixed to the floor of the school building, and
- administration costs of the fund, including bank fees, accounting costs and fundraising expenses.

Costs that cannot be paid by a school building fund include running expenses of the school, paying teachers, buying furniture and materials, and maintaining sports grounds and car parks. A school building fund may invest or lend its money if this is a bona fide and temporary arrangement, and is consistent with achieving the fund's objects with all reasonable speed.

A public fund for scholarships, bursaries or prizes

A scholarship fund is a public fund, on the same basis as public fund for the acquisition, construction or maintenance of a school building, established for charitable purposes and maintained solely for providing money for eligible scholarships, bursaries or prizes.

The fund must be established for charitable purposes, keeping in mind that the advancement of education is a charitable purpose. This means that if the fund is operating as a separate entity, it must be a charitable fund. If the fund is operating as part of an organisation, the organisation must be a charity. Note charities are tax exempt entities.

The fund's constituent or governing document must reflect the fact that the fund is established for the sole purpose of providing money for eligible scholarships, bursaries or prizes. If the fund is also established for other purposes, it cannot qualify as a scholarship fund. In its operations, the fund must be maintained solely for the required purpose. In doing this, the fund can incur expenses that are incidental to the sole purpose, such as for advertising, investment and administration.

The fund may itself provide one or more eligible scholarships, bursaries or prizes directly to recipients, or provide money to another organisation for the provision of eligible scholarships, bursaries or prizes, or do both.

If the fund provides money to another organisation for the provision of a scholarship, bursary or prize, it must ensure the money is used only for an eligible scholar-

ship, bursary or prize, although there's no requirement for that other organisation to be a charity or deductible gift recipient. The trustees or controllers of the fund must assure themselves that the money can only be used for the provision of an eligible scholarship, bursary or prize. If, nonetheless, the money is in fact not used solely for an eligible scholarship, bursary or prize, the fund must take all reasonable steps to stop and correct the misuse.

To qualify as an eligible scholarship, bursary or prize, each and every scholarship, bursary or prize that is sponsored by a scholarship fund must satisfy the following requirements.

It must be a scholarship, bursary or prize. The words 'scholarship,' 'bursary' and 'prize' are not defined by the legislation and have their ordinary meanings. Scholarships and bursaries are ongoing or one-off benefit payments to students to cover school fees, textbooks and other related educational expenses such as for uniforms, travel, boarding or living costs. A prize, in the context of a scholarship fund, is an award of money or property to students usually conferred for reasons of merit such as academic achievement, but may include reasons of equity.

A scholarship, bursary or prize may only be awarded to people who are Australian citizens or permanent residents of Australia. These terms have the same meaning as in the Commonwealth *Australian Citizenship Act 1948*. If the rules and criteria of a scholarship, bursary or prize are silent on this limitation, it must be clear from the application and other procedures for the scholarship, bursary or prize that it will only be awarded to Australian citizens or permanent residents.

A scholarship, bursary or prize must be open to individuals or groups of individuals throughout Australia, a state or territory, or a region of at least 200,000 people: for the purpose of promoting the recipients' education, in approved Australian courses or at educational institutions overseas to study as a component of an approved

Australian course, and awarded on merit or for reasons of equity. In estimating whether a region has a population of at least 200,000 people, Australian Bureau of Statistics data or another reasonable basis may be used. If the rules and criteria of a scholarship, bursary or prize are silent on being open throughout at least a state, territory or region of 200,000 people, it must be clear the rules, criteria and operation of the scholarship, bursary or prize do not indirectly restrict the required openness.

While a scholarship, bursary or prize will normally be open to individuals, some may be open to groups of individuals. Examples are prizes for a championship school choir or debating team. The means used to ensure the required openness will vary with the nature of the scholarship, bursary or prize, but can include publicising through the internet and in appropriate forums.

Matters that can be consistent with this requirement, even though they may have the effect of reducing the number of people who could qualify, include offering a scholarship or bursary for study at a particular school, but do not include making it open only to students at a particular school.

You and your associated parent bodies work hard to supplement the school budget by undertaking a range of fundraising activities. It's worth making sure you work hard to meet your legal obligations as well. **1**

This article includes information extracted from various Australian Tax Office publications and is not to be taken as legal advice.

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LINKS:

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