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Tax Deductibility of Donations to School Building Funds

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1. Introduction

Private school fees are not tax deductible in Australia. Nor are fees or levies paid to public schools. However, many private schools and some public schools operate building or library funds to which parents and ex-students are encouraged to make tax-deductible donations.¹ These donations can increase substantially the funds available to the schools and thereby permit fees to be lower than otherwise.

In certain circumstances, donations to school building funds are tax deductible for the donor.² This tax-deductibility of building and library funds stems from the specific provisions of the income tax law (section 30-25 Item 2.1.10 *Income Tax Assessment Act* 1997) and may ultimately be traced to the principle that trusts for the advancement of education are one of the four categories of charitable purposes as defined in the common law. There is also a public policy aspect to the tax incentive, which relieves governments to some extent from demands to fund school buildings. To qualify for tax deductibility, donations must have the following characteristics:

- they must be made voluntarily i.e. be freely given;
- they must not provide a material benefit for the donor, such as a reduction in school fees or receipt of a scholarship;
- they must essentially arise from a benefaction (i.e. be charitable in purpose), and be an act of detached and disinterested generosity; and
- they must be made to a public fund established and maintained solely to provide money for the acquisition, construction or maintenance of a building used or to be used by a school or college which is government or public, or run as a not-for-profit association ('private school').³

¹ Building funds operated by public schools are not considered in this paper as the evidence suggests that the problems here identified are more prevalent in private schools.

² The Australian Tax Office provides detailed guidelines. See 'Making tax deductible donations' and 'School building funds and tax deductible gifts' on the ATO website, www.ato.gov.au.

³ These are based on the ATO documents referred to in note 2.

The ATO has ruled that claims for deduction of gifts to school building funds are not allowed if the school has asked parents to make ‘donations’ as an alternative to an increase in school fees.⁴ However, this is a grey area as many schools emphasise to parents that they depend heavily on donations to building funds to sustain the level of education quality at the school. For example, The King’s School, which like other elite schools has established a separate foundation to administer its building fund, states that:

If all the money made available to the School over the last 20 years had been borrowed, instead of being given by the Foundation and some other endowments, then current tuition fees would need to be at least 13% higher (McGregor 2002).

At The King’s School, parents are reminded of the relationship of donations to the quality of education received by their children and are asked to donate each term.

Through termly giving with School fees parents contribute towards building maintenance and refurbishment programmes (McGregor 2002).

Apart from these considerations, there is evidence to suggest donations to some private schools are not being given freely either because parents are unaware that the payment is voluntary or because they are pressured by the school to give. These pressures may include perceptions that their child may be disadvantaged if they fail to make a ‘donation’. In addition, there is anecdotal evidence that some donors to school building funds receive a benefit from the gift, namely the enrolment of their children ahead of others on the waiting list. In these cases, claiming a tax deduction for a donation to a school building fund may not be legitimate.

This paper examines some of these practices and concludes that payments into some private school building funds may not meet the conditions required for tax deductibility so that claims for tax deductions for them are not legitimate.

2. Donations associated with fee payments

2.1 Donations are expected

At many schools a request is made to parents to make a tax-deductible donation to the school for building or library works at the time they pay their school fees. Schools often suggest or request specific amounts be donated, and the amounts requested appear to be based on the schools’ estimates of the need to fund all or part of the capital or recurrent costs for buildings at the school.

Pressure to pay donations to building funds takes various forms. Often the language used by the school to request the donation belies the fact that the payments are in fact voluntary. At St Aloysius’ College in NSW, for example, parents are told that:

⁴ Such arrangements ‘do not have the true character of gift for the purposes of section 78 [of the Income Tax Assessment Act]. ... The payments are not, all things considered, voluntary in nature nor is there a situation where the payers do not receive an advantage of a material character in return for making them’. Taxation Ruling No. IT 2071, Income Tax: School Building Funds, see <http://law.ato.gov.au/pdf/it2071.pdf>

While tuition fees cover a major portion of a boy's education at St Aloysius' College, fees do not and cannot provide all the funds we need to undertake building projects and new major capital works. The Foundation Building Fund is vital for the provision of new buildings and resources (St Aloysius' College, 2004b).

The implication is that the school fees alone are inadequate to provide a proper standard of education for pupils at the school. The school also tells parents:

The College Building Fund, *which appears as a voluntary contribution on School fees*, provides for the recurrent expenditure and maintenance (paint, carpet etc) of existing buildings only (St Aloysius' College, 2004b, emphasis added).

The wording 'which appears as a voluntary contribution on School fees' may have been chosen to suggest to parents that, while it *appears* to be voluntary, a contribution is in fact required. The pressure is intensified:

There is a mistaken perception in the community that St Aloysius' College has adequate funds on which to draw. The reality is that without strong and active support of the College Family, the College would not have the financial capacity to complete many major projects that enhance the education of our boys (St Aloysius' College, 2004b).

Finally, in relation to the St Aloysius' Building Fund, the expectation to donate is made explicit:

A Foundation exists at St Aloysius' College and parents are *expected to join* at a level in keeping with their personal circumstances (St Aloysius' College, 2004b, emphasis added).

In order to prompt parents to give generously in relation to their 'capacity to do so', the following table is provided. It is interesting to note that the explicit assumption is that all parents will be in the top marginal tax bracket.

Table 1 Indicative donation to St Aloysius' College Foundation Building Fund

Total gift over five years	Gift per annum	After tax cost approx.
\$100,000	\$20,000	\$10,260
\$50,000	\$10,000	\$5,130
\$30,000	\$6,000	\$3,078
\$25,000	\$5,000	\$2,565
\$20,000	\$4,000	\$2,052
\$15,000	\$3,000	\$1,539
\$10,000	\$2,000	\$1,026
\$5,000	\$1,000	\$513

Source: St Aloysius 2004a

It is clear that St Aloysius, which charges parents over \$8000 for Year 12 students and receives a further \$4089 per student from state and federal governments (St Aloysius' College 2004a), relies on the extra money raised from the College Building Fund to cover the day-to-day expenses - 'recurrent expenditure and maintenance (paint, carpet etc)'. Examples of recurrent expenditure are not given, but it is clear that the tax concession is aimed largely at capital items - 'acquisition, construction or maintenance of existing buildings only'. Use of a building fund to pay the cleaners would be patently incorrect.

As a second example, parents with children at the Maranatha Christian School in Endeavour Hills, Melbourne, are asked to accept the necessity of contributing to the building fund.

The 'building fund' amount represents a contribution to school income for certain operating expenditures of the school which can be separately identified for taxation purposes - these are maintenance and financing costs of eligible existing buildings in the school complex. It is not a contribution towards new buildings.

The School has nominated \$300 as the amount of the building fund donation. *We wish parents to recognise and accept the necessity of this contribution in meeting the School's operating budget.*

The donation is tax deductible.

The nominated amount will be indicated on the fees statements issued by the School (Maranatha Christian School, 2004, emphasis added).

In addition to stating that the contributions are a 'necessity' for the school, inclusion of a specified amount on the fee statement implies that a parent must take an active decision to refuse to make a contribution to the school's building fund. Since there is clearly a strong expectation by the school that parents will pay, claiming a tax deduction for contributions to the Maranatha Christian School's building fund may not be allowable.

2.2 Donations are assumed

In a few cases, school fee statements actually suggest or indicate that payments to building and library funds are compulsory *and* that the contributions are tax-deductible. For example, the fee statement on the website of Minaret College, Victoria, provides no indication to parents that building fund donations (which are said to be tax deductible) are optional despite explicitly informing them that bus fees are optional. It also says that the 'composite fee' which, like the tuition fee, is 'payable in advance each term', includes a Library Levy that is tax deductible (Minaret College 2003). A 'levy' is not usually seen as a donation.

Beaconhills College in Victoria goes even further, telling parents that payment to its building fund are an essential part of the cost of educating their child.

The Building Fund Contribution is \$450 per family per year and is a Tax Deductible Donation. Building Fund Contributions are an essential part of the

income of the College in that they are the means by which we are able to finance some necessary Capital Works of the College.

The College regards Building Fund Contributions *as part of the cost to parents of providing an education* for the children in our care. In the same way as school fees are necessary to finance the day to day operation of the school, the *Building Fund Contributions are necessary to finance the Capital Development of the school*, i.e. new buildings.

Consequently, *parents should view their contributions to the Building Fund simply as part of the cost of educating their child or children, and add their Tax Deductible Contribution of \$450 per year or \$112.50 per term to the payment of fees* (Beaconhills College, 2004, emphasis added).

The Christadelphian Heritage College Sydney simply presents its scale of fees on its web site and then informs parents that:

\$300 per child (maximum \$1,200) of the above fees is to be made payable as a tax deductible donation to the building fund. The balance of the fees to be paid to the general fund (Christadelphian Heritage College Sydney 2004).

It would be difficult to maintain that ‘donations’ paid to these schools are voluntary as they are presented as an essential component of the school fees. Thus claiming a tax deduction for them would appear to contravene the tax laws.

2.3 ‘Donations’ are compulsory

Some schools abandon any pretence that parents have a choice to donate to the building fund. The website for Kardinia International School in Victoria, for example, says of its building levy:

This is a *compulsory* Levy, which is charged annually to families that attend Kardinia International College, with students in Prep to Year 12.

Not Tax Deductible \$185.00

Tax Deductible \$250.00

(Kardinia International School 2004, emphasis added)

2.4 Receiving a benefit

Another practice that raises questions about the legality of some claimed tax deductions relates to the returns that some parents receive for making donations. Places at elite private schools are often filled many years in advance making it difficult even for very wealthy parents to enrol their children at the school of their choice. There is anecdotal evidence to suggest that some parents have ‘queue-jumped’ waiting lists by offering schools large sums of money in the form of ‘donations’ to building funds.

The ATO has ruled that payments made to a school building fund for acceptance of an application to a school (or confirmation of an enrolment) are not tax deductible. ‘A

fee is not a gift' because there is a benefit to the payer,⁵ although the more likely ground for denying deductibility is the lack of voluntariness. Depending upon the role that schools play in these activities, they too could be encouraging illegitimate claims against the Commonwealth.

3. Implications

Many, perhaps most, schools scrupulously adhere to the spirit and the letter of the law in relation to school building funds. However, there is evidence to suggest that some private schools are urging or facilitating parents to claim tax deductions for contributions to building funds to which they are not entitled. Other schools, perhaps with the benefit of advice from tax experts, do not make false claims but nevertheless apply intense pressure on parents to make 'voluntary' contributions.

As a result of these practices, Australian tax-payers are funding additional payments to schools and tax breaks to parents of children at schools to which they are not entitled under law. There is therefore a need for the Federal Government to enforce the tax laws more rigorously.

At a minimum the Federal Government should require all schools with school building funds to include a clear statement on fee accounts and solicitation material, including websites, that all contributions to building funds that enjoy tax deductible status must be entirely voluntary. There are approximately 2,500 private schools in Australia. The examples cited in this paper were collected with little investigative effort. The ATO should look more closely at the practices of schools and, where breaches are found, recover the tax underpaid. If schools respond that such action would force them to raise their fees, then this would provide further evidence of the extent of tax currently being avoided.

⁵ Taxation Determination TD 93/57 See <http://law.ato.gov.au/atolaw/view.htm?locid='TXD/TD9357/NAT/ATO'>

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