

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Supplementary Budget Estimates 2012

18 October 2012

Question: SBT 46

Topic: 50% rule – school or college building funds. (ATO)

Hansard Page: 118

Senator CORMANN asked:

Senator CORMANN: I have a constituent question for the ATO, so can the ATO take on notice whether there is anything to add to that. On 5 December 2011, the ATO issued a draft taxation ruling 2011/D5 'Income tax: school or college building funds' which introduces changes to the ATO's administration of the taxation law as

it relates to the deductibility of gifts for what are referred to as school building funds. The draft ruling states that the 50 per cent rule is no longer considered correct in law. Do you understand what I am talking about?

Mr Quigley: I certainly do.

Senator CORMANN: What is the reason for departing from the 50 per cent use test? Was there a court judgement or anything else that drove the change, because it has significant implications for quite a number of schools across Australia in terms of their capacity to take advantage of that opportunity?

Mr Quigley: It was not as a result of a court decision per se. It was as a matter of us reviewing the previous position.

Senator CORMANN: Which has been in place since 1996, right?

Mr Quigley: That is correct. The draft ruling replaces taxation ruling 1996/8. A number of issues have been raised with the draft ruling to deal with what is meant by the words 'school or college'. They have been used by a school or college—and that is what you are referring to—on a core rule of thumb that was more than 50 per cent.

When we looked at it we did not think that is the case, but we are working on it.

Senator CORMANN: What is the rule now, 100 per cent?

Mr Quigley: No, if the school or college is using it for incidental or other purposes then that is fine, as the ruling says. But there is not a clear-cut 50-50 rule.

Senator CORMANN: Can I please find out—

CHAIR: No, it might be very important, but you left it until right at the very end. We will stick to the timetable. Thank you, Mr Quigley.

Answer:

The law requires that a school building fund be established solely for the acquisition, construction and maintenance of a school or college building.

The ATO's previous ruling, Taxation Ruling TR 96/8: *Income tax: school and college building funds* contained an administrative 'rule of thumb' under which a building would be accepted as being 'used... as a school or college' for the purposes of the deductible gift provisions where it was used as a school or college more than 50% of the time.

The ATO reviewed the technical position in TR 96/8 when it became apparent that some school building funds were purporting to rely on it in order to obtain tax-deductible funding for extensive non-school

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activities. TR 96/8 was withdrawn once it was concluded that the 50% rule could not be sustained as a matter of law.

Draft Taxation Ruling 2011/D5 *Income tax: school and college building funds* was released on 5 December 2011, for the purpose of seeking public comment.

While the draft ruling does not require a building to be used 100% as a school, it stipulates that other use of the building must be integral to the operation of a school; or be no more than minor or occasional. However, the draft ruling provides that gifts made before the issue of the final ruling would remain deductible under the 'more than 50% rule'.

Numerous comments were received on a number of issues raised in the draft ruling.

A number of comments have focussed on the correctness or appropriateness of the 'more than 50%' rule used in TR 96/8. It has been argued that a building can satisfy the deductible gift rules even where it is put to substantial non-school use.

A number of comments have focussed on the date of effect of the final ruling. It has been argued that the transitional arrangement should be extended in order to recognise that organisations may have relied on TR 96/8 in planning existing projects.

All comments received during the consultation process are being reviewed by the ATO and will be taken into account in the preparation of the draft final taxation ruling to be considered by the Public Rulings Panel in November 2012.

The comments, together with the Commissioner's proposed response, will be included in a draft compendium provided to the Public Rulings Panel.

The final ruling and compendium are expected to be published in February 2013.