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LAWYERS

Alternate streams of income for the modern church

(ACC Webinar)

Andrew Lind, Director

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LAWYERS

Introduction

Corney & Lind Lawyers Pty Ltd

➤ Mid size law firm – 18 lawyers + 30 staff

➤ Our focus areas

Schools & Education

Not for Profit & Charity

Commercial

Employment & Discrimination

Personal Injury

Commercial & Construction Litigation

Migration & Visas

Family Law

Criminal & Traffic

Estate & Elder Law

➤ Our lawyers travel to you if needed

➤ Specialist lawyers committed to delivering “*just redemptive outcomes®*” with care and integrity

➤ Based right next to the CBD opposite the RBWH transport hub



No limits on trading income

1. The church exists for the charitable purpose of the “advancement of religion”
2. As long as the trading is done to make money for the advancement of that purpose, the trading itself does not need to be intrinsically charitable (High Court, Word Investments Case 2008)
3. Trading we are seeing:
 - Child care (but may see loss of BRC status with the ACNC)
 - Cafe
 - Op shop Markets
 - Home Maintenance / Gardening
 - Leasing of surplus land / premises
 - Hire of equipment (e.g. chairs) (beware of PPSR risks if not for a certain short term of 3 months or less)
 - Management / Consultancy services (e.g. at market rates to related DGR entities)
 - Music / Resources sales
 - Weddings and facilities hire (but beware of discrimination risks)
4. Liability risks – help with the case for the incorporation of the church
5. Watch – might we see a come-back of UBIT (unrelated business income tax)?



Crowd-funding

1. The church has been doing this for a long time
2. Churches with Ministers of Religion as authorised marriage celebrants are exempt from the fund-raising licence requirements in their public appeals for support which includes online giving
3. Churches could consider using a crowd-funding platform without a fund-raising licence
4. Crowd funding seems to work by “project”
5. Offering something tangible in return for the funding (e.g. a t-shirt) still does not make the funding taxable in the hands of the church (see “trading income” slide)



Giving in pre-tax dollars

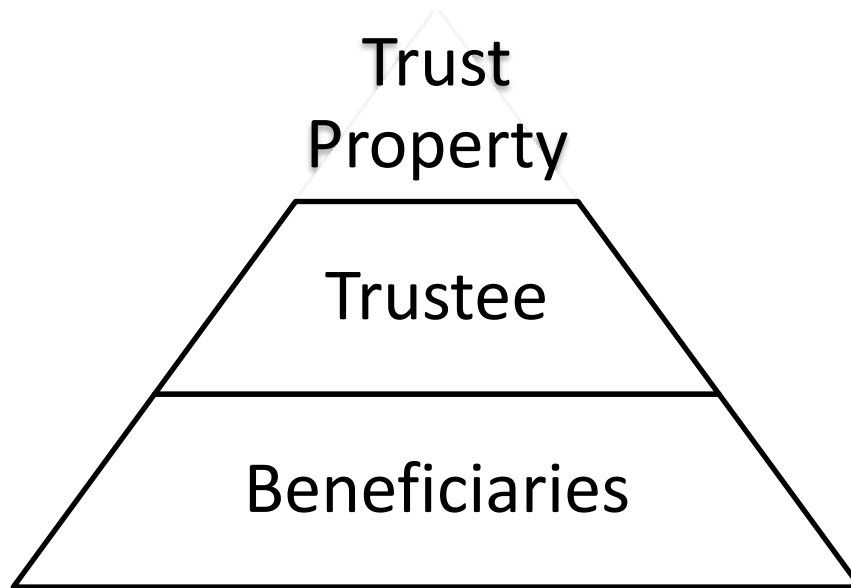
- Normally when we tithe or give additional free-will offerings we give out of after tax dollars.
- We earn money, pay tax, and out of what is left, we give.
- So if we earn \$1,000 and tax is deducted say at an average rate of 30%, we have \$700 left, and out of that we give.
- If we determine in our heart to give \$700 we have to earn \$1,000 to do so. What if we could give the full \$1,000 and no tax was payable on that \$1,000? There is a way...



Ways to give in pre-tax dollars and so increase your giving

- Gross Trust distributions
 - From Inter Vivos Discretionary / Family Trusts
 - From Testamentary Discretionary Trusts
- Trust distributions with Franking credit refunds
- DGR giving

Discretionary Trusts with 'tax exempt' beneficiaries



Distributed trust income taxed
in hands of Beneficiaries

If the Church is a Beneficiary – trust income is pre-tax (gross) income. It is tax exempt so no tax is payable.



Trust distribution of franked dividends

- Franked dividends have “franking credits” attached to them.
- That means that the Company that declared and paid the dividends has done so on the basis that it has already paid the Company tax rate (30c in the \$1) on that dividend, that the recipient can treat that income as having that amount of tax paid on it.
- If the recipient is a Church – then the church (as a tax exempt body) can claim the franking credit back from the ATO at the end of the relevant financial year. So if you give \$1,000 in franked dividends to the Church, the Church can gain a franking credit refund of \$300 from the ATO = total giving of \$1,300.
- The giver will need to prepare the form for the church to sign and lodge with the ATO to claim this franking credit refund.

Note: check the Trust Deed for Income Streaming permissions

DGRs that churches most commonly consider

DGR Giving → If givers decided to give \$1,000. Could give more with a tax deduction.

1. Public Benevolent Institution (PBI) for:

- your care arm
- overseas aid

2. School or College Building Fund (if significant 'educational' activities) (TR 2013/2)

*96. Good Neighbour Church conducts a number of **Sunday school** groups for children of various ages. The Church establishes a Sunday school committee of three persons which includes the pastor and two other permanent members from the congregation. The Church makes provision in its constitution for the establishment of this committee and specific rules are developed in respect of the operation of the committee and the Sunday schools. Separate accounts and records are kept .*

The Committee is responsible for selecting prospective teachers based on minimum standards that they have set. Teachers are required to be properly trained and to have appropriate qualifications (including blue card). The Committee is also responsible for the curriculum that is taught and has applied the national curriculum for that religious body. The design of the curriculum takes into account the age of the child and their level of knowledge .

Children are assessed on what they have learnt, for which they receive certificates which enable them to progress to new levels. Parents are also required to register their children and ensure that they are signed in and out of classes .

The Sunday school groups are a school ...

School or College Building funds for Churches (TR 2013/2)

Purpose – Commonwealth subsidy (tax deduction) to encourage the building of public educational infrastructure.

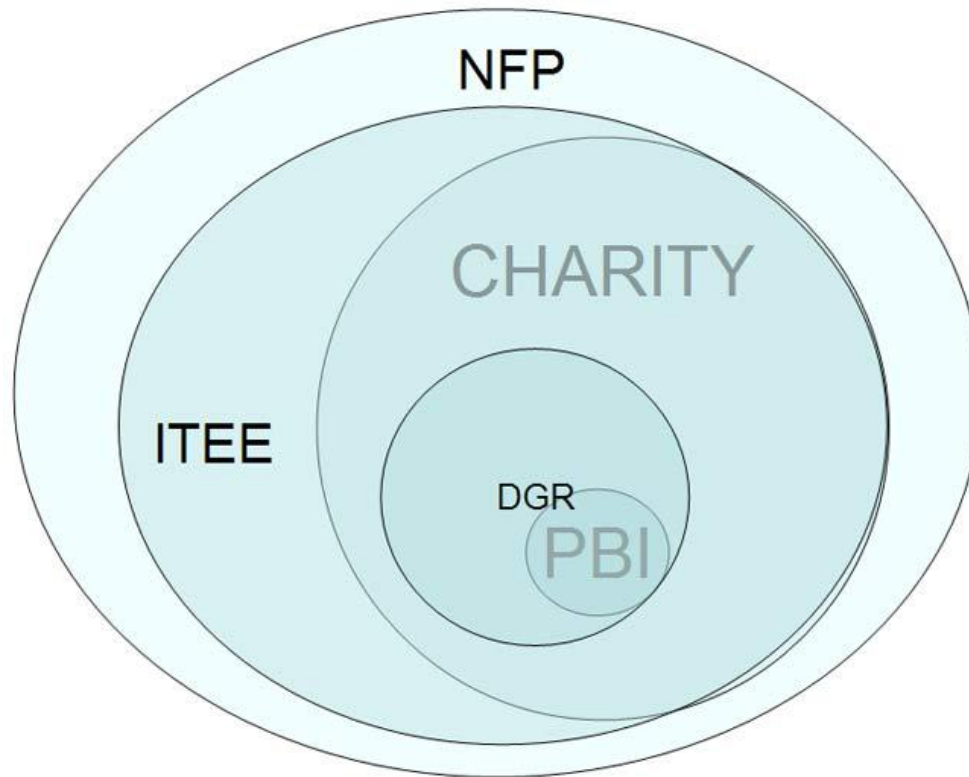
Assuming no P-12 School associated with the Church:

How to consider using:

1. There must be a school – Sunday School/ Bible School (Para 11 ff)
2. There must be a building (Para 13)
3. Educational Organisation (Para 14 ff)
 - Distinct identity
 - Governing body/rules
 - May lead to loss of BRC status
 - Regular ongoing & systematic instruction- curriculum, teachers (vetted), assessment & correction
4. Part of a Building can be funded (Para 23)
5. Building must be ‘used as a school’ and school use must be substantial and proportional(Para 25 ff)
6. Construction, renovation and maintenance can be funded.

TAKE CARE
-
READ THE
RULING
CAREFULLY

How to move funds from the DGR to the church



How to move funds from a DGR to the church

1. Governors of DGR must act in its best interests and apply its assets and income for its purposes
2. PBI DGR can agree to pay for the following; provided by the church on arms length commercial terms:
 - Rent
 - Venue / equipment hire
 - Management services
 - Administration services
 - Loan
3. Relevant lessons from *Malek Fahd Islamic School Limited and Minister for Education and Training* [2016] AATA 1087 (23 December 2016):
 - **Lease / Licence rent** and charges by related entities must be reasonable and commercial (supported by evidence)
 - **The length of tenure** must be reasonable and commercial (at least the useful life of buildings so not capital improving land belonging to someone else)
 - **Loan Agreements** to related entities should be on reasonable commercial terms
 - **Management / Services charges** by related entities must be on reasonable commercial terms
 - There should be written **Board policies & practices** about the above matters, consistently applied in accordance with their terms

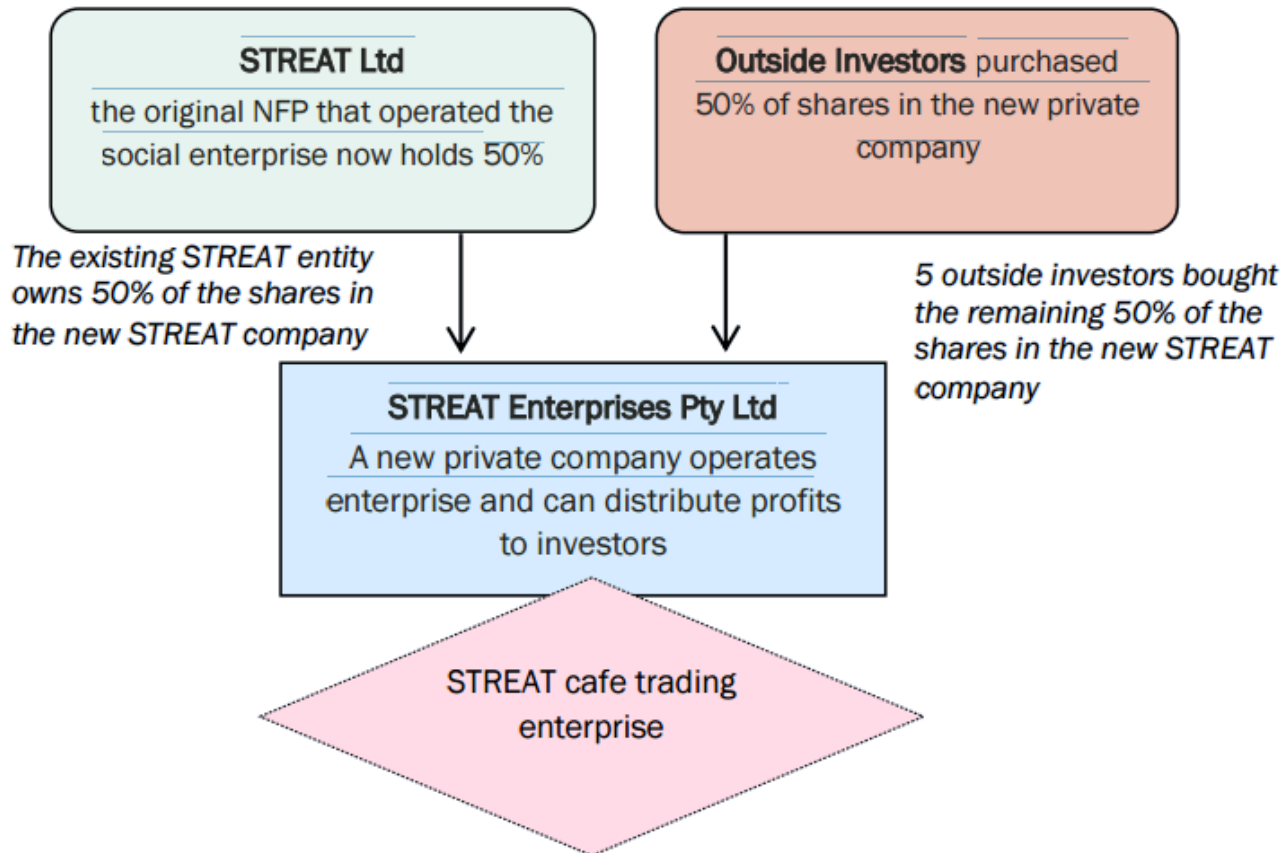


Social enterprise / JVs with ‘for-profits’

1. Social enterprise = enterprise with dual “mission” and “profit” purpose
2. May be “for-profit” with shareholders
3. May be “not-for-profit” and subject to the non-distribution constraint
4. Churches can directly participate in “not-for-profit” social enterprise. Consider Goodstart Early Learning. (See earlier slide on “trading income”).
5. Churches can indirectly participate in “for-profit” social enterprise by forming an associated for profit entity ...
6. Watch for any developments in possible re-debate about Unrelated Business Income Tax (UBIT)



Social enterprise / JVs with 'for-profits'



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Next Webinar

THURSDAY

11th May 2017 @ 1:00pm

Protecting your Church in the Digital Age

corneyandlind.com.au/webinar/protecting-church-digital-age/

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