



Australian Government

Attorney-General's Department

Ministry for the Arts

Register of Cultural Organisations Guide

Tax deductible donations to cultural organisations

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View the Register of Cultural Organisations

A full list of organisations on the Register is at: www.arts.gov.au/roco.

Website: www.arts.gov.au/roco.

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Introduction to the Register of Cultural Organisations

This guide explains how the Australian Government's Register of Cultural Organisations ('the Register' or 'ROCO') works. Organisations applying to be entered on the Register should read this guide before preparing and submitting their applications.

Background

Established in 1991, the Register of Cultural Organisations assists qualifying cultural bodies to attract support by enabling them to offer donors the incentive of a tax deduction.

The Register aims to strengthen private sector support for the arts and encourages Australians to contribute to the nation's vibrant cultural life.

Cultural bodies listed on the Register are able to receive tax deductible donations to assist them with a wide range of activities, such as the creation of a new theatrical work, the publication of a literary magazine or the building of a community arts centre.

The types of donations to organisations listed on the Register that may be tax deductible include:

- monetary gifts of \$2 or more
- gifts of property valued by the Australian Taxation Office at more than \$5000
- gifts of property purchased within the preceding 12 months, and
- in some circumstances, deductible contributions of \$150 or more towards an eligible fundraising event.

Please consult Appendix Five of this guide for more details on the types of gifts that are tax deductible.

Cultural bodies eligible for listing on the Register are those whose main purpose is the promotion of a cultural activity such as: literature; visual, community, performing or Aboriginal and Torres Strait Islander arts; music; crafts; design; television; video; radio or film.

Organisations whose main purpose is the promotion, preservation or study of movable cultural heritage are also eligible to be listed on the Register.

Public art galleries, museums and libraries are not included on the Register as they are endorsed by the Australian Taxation Office under another Deductible Gift Recipient category.

These bodies have the added benefit of being able to receive tax deductible donations of culturally significant items for their collections via the Australian Government's Cultural Gifts Program (see arts.gov.au/cgp for more information).

The Minister for the Arts and the Treasurer approve new appointments to the Register, which is administered by the Ministry for the Arts in the Attorney-General's Department (the Department).

Legislative framework

The Register is established under Subdivision 30-F of Australia's *Income Tax Assessment Act 1997* (the Act). Organisations entered on the Register and endorsed by the Australian Taxation Office as a Deductible Gift Recipient are eligible to receive tax deductible donations in accordance with Division 30 of the Act.

Appendix Six of this guide contains an extract of Subdivision 30-F of the Act.

Register eligibility requirements

Legal requirements

To be eligible for entry on the Register, a cultural organisation must be properly constituted as a legal entity and meet the eligibility criteria (Subdivision 30-F, subsections 30-300(1)-(7)) of the Act.

Applying organisations need to be constituted as one of the following legal entities:

- limited company
- incorporated association
- trust
- statutory body.

Organisations must have an Australian Business Number (ABN) and be able to demonstrate that they meet the criteria specified in this guide by submitting a completed Application Form.

Definition of a ‘cultural organisation’

To be considered for entry on the Register, the Minister for the Arts and the Treasurer must be satisfied that an organisation is a ‘cultural organisation’, with promotion of cultural activity(ies) as its principal purpose.

The definition of a cultural organisation, as specified in section 30-300 of the Act is as follows:

(1) A **cultural organisation** is:

- (a) a body corporate; or
- (b) a trust; or
- (c) an unincorporated body established for a public purpose by the Commonwealth, a State or a Territory;

that satisfies each requirement in the section.

(2) Its principal purpose must be the promotion of literature, music, a performing art, a visual art, a craft, design, film, video, television, radio, community arts, arts of *Indigenous persons or movable cultural heritage.

(3) It must maintain a public fund that meets the requirements of section 30-130, or would meet those requirements if the *cultural organisation were a fund, authority or institution.

(4) (Repealed by No 58 of 2006).

(5) It must not pay any of its profits or financial surplus, or give any of its property, to its members, beneficiaries, controllers or owners (as appropriate).

(6) It must have agreed to comply with any rules that the Treasurer and the *Arts Minister make to ensure that gifts made to the fund are used only for its principal purpose.

(7) It must have agreed to give the *Arts Secretary, at intervals of 6 months, statistical information about gifts made to the public fund during the last 6 months.

Section 30-130 mentioned in (3) can be found at Appendix Six of this guide.

An organisation's 'principal purpose'

For entry on the Register the 'principal purpose' of your organisation must be the promotion of one or more cultural activities. It is important to note that for the Register, 'culture' does not necessarily extend to the promotion of religion, traditions/norms and languages. The definition of 'culture', as it relates to the principal purpose of a cultural organisation, is restricted to the following cultural activities included in the Act (subsection 30-300(2) of Subdivision 30-F):

- Literature
- Design
- Crafts
- Performing Arts
- Radio
- Television
- Movable cultural heritage
- Music
- Community Arts
- Video
- Visual Arts
- Arts of Indigenous Persons
- Film

Assessment of your organisation's principal purpose involves not only consideration of the purposes of your organisation as evidenced in its governing documents but also consideration of your organisation's current and/or planned activities.

To demonstrate that your organisation has a principal purpose of promoting one or more of the cultural activities listed above, it is important that you provide documentation that gives evidence of your organisation's current or planned activities to promote its objectives. This may take the form of a summary of your organisation's current activities, business plan, etc.

An organisation's 'public fund'

It is a requirement that your organisation maintains a 'public fund' to be eligible for entry on the Register. The Australian Taxation Office's view of what constitutes a public fund is set out in Taxation Ruling TR 95/27. This ruling can be viewed on the Australian Taxation Office's Legal Database at <http://law.ato.gov.au>.

A fund can be described as a 'public' fund where it is intended that:

- the public will contribute to the fund;
- the public or a significant part of the public does in fact contribute to the fund; and
- the public participates in the administration of the fund.

The fund must be controlled or administered by persons or institutions having a degree of responsibility to the community as a whole. Details of what constitutes a 'responsible person' for this purpose are detailed on Page 8 of this guide.

In maintaining a public fund, section 30-130 of the Act also requires that:

- gifts and deductible contributions to the fund be kept separate from any other funds of an organisation; that is, a separate financial institution account and clear accounting procedures are required;
- all gifts and deductible contributions and interest accruing thereon, be credited to and kept in this fund. (Note: Sponsorships which are usually payments by a business in exchange for promotional or advertising services, do not constitute donations and should not be credited to the public fund); and
- the fund must not receive any other money or property (e.g. grant payments should not be placed in the fund).

It is necessary to include the establishment of the public fund as part of an organisation's governing documents. Organisations are required to provide details of the separate financial institution account established for donations.

Monies must not be distributed to members of the managing committee or trustees of the fund except as reimbursement for out-of-pocket expenses incurred on behalf of the fund or proper remuneration for administrative services.

Your organisation's governing documents (i.e. constitution/memorandum/trust deed) should include a clause that prohibits the distribution of profits to members, shareholders, controllers, etc. of the organisation, or trustees of a trust.

Granting awards from a public fund

A public fund may be used to fund grants, scholarships and prizes within an organisation's cultural purpose, although only to individuals, and as long as the grants are open to the public and a proper selection process is in place.

A similar process should be followed for the commissioning of a work. There should not be, under any circumstances, a connection between a donor and a recipient of a prize or commission. If an organisation intends to make awards from its public fund, it should forward a copy of its official award guidelines covering advertising policy and selection process, when it applies for entry on the Register.

Definition of 'responsible persons'

A key criterion for the operation of a public fund is the appointment of 'responsible persons' to administer the public fund.

As part of the assessment process that an organisation undergoes when applying for entry on the Register, the Department considers the eligibility of such persons in accordance with Australian Taxation Office criteria.

While these criteria set down no limit on the number of members of the committee that may manage a public fund, a minimum of three people is recommended.

A public fund may be administered by a sponsoring organisation's management committee or a sub-committee of the applying organisation's management committee. It is also possible to appoint an administration committee that may include members who are not part of the organisation's management structure.

However, to qualify as a public fund, a majority of the members of the committee or board administering the fund must have a degree of responsibility to the general community as specified on the following page, as distinct from obligations solely in regard to the cultural objectives of the organisation.

Public fund ‘persons of responsibility’ (as defined in Taxation Ruling TR95/27)

- Justices of the Peace
- Members of the clergy
- Church authorities
- Trustees or board members of a non-profit school or college
- Judges/Magistrates
- Solicitors
- Accountants (must be CPA, ASA, NIA or ICA registered)
- Directors/Senior Executives of large companies (must be listed on the Australian Stock Exchange)
- Medical practitioners and other professional persons (must belong to a professional body, which has a professional code of ethics and rules of conduct, e.g. Medical Registration Board)
- Teachers in senior positions:
 - School principals
 - Senior academics (professors, deans, principal lecturers, as well as appointments made by chancellors)
- Persons holding Public or Elected Office:
 - Mayors
 - Town Clerks
 - Councillors
 - Members of Parliament
- People who hold (or have held) other public positions (i.e. appointments made by Government Ministers)
- People with honours (AO, AM, OBE etc)

Definition of being ‘located in Australia’

If an organisation’s public fund is not located in Australia, the organisation is ineligible for inclusion on the Register. An organisation is considered ‘in Australia’ if:

- its establishment, control, donors and assets are predominantly in Australia; and
- its purposes and/or beneficiaries are in Australia.

The Register: Step by step

The steps for an organisation to be entered on the Register and endorsed as a Deductible Gift Recipient are as follows:

The Department assesses the Application for eligibility. The Department will contact the organisation if further information is required.



Applications are forwarded to the Minister for Arts and the Treasurer for their consideration and decision.



The Department writes to each organisation advising it of the Ministers' decision.



If approved for entry on the Register, the Application Form is sent to the Australian Taxation Office for endorsement as a Deductible Gift Recipient under item number 12.1.1.



The organisation will receive confirmation of Deductible Gift Recipient status from the Australian Taxation Office.



The organisation can then proceed to promote its tax deductible status to potential donors and receive tax deductible donations.

The organisation issues official receipts for all tax deductible donations.



At six-monthly intervals in July and January, organisations on the Register provide the Department with information on all tax deductible donations received during the period, on a Statistical Return of Donations form.



Listed organisations keep the Department informed of any contact and personnel changes, and of the selection processes for any new grants, scholarships or prizes that they introduce.



Approximately every three years listed organisations participate in a review of their eligibility to remain on the Register.

Applying for entry on the Register

The assessment process

Once an organisation submits an Application for entry on the Register of Cultural Organisations (an Application) to the Department, an assessment of the applicant organisation's eligibility is undertaken.

A check is made to ensure that the organisation meets the legislative and administrative requirements outlined in this guide. If required, further information will be requested from an organisation to complete the assessment process.

Applications of eligible organisations are forwarded to the Minister the Arts and the Treasurer for consideration.

Applicant organisations are advised in writing once a decision has been reached.

Australian Taxation Office endorsement of Deductible Gift Recipient status

If an organisation is approved for entry on the Register, the Australian Taxation Office will assess its Application so it can process the endorsement of the organisation's public fund as a Deductible Gift Recipient.

The Australian Taxation Office will process the Application in accordance with the legislative provisions of the Act and will issue written notification of its endorsement.

To assist with this process, the Application Form incorporates the information required by the Australian Taxation Office as part of the Deductible Gift Recipient endorsement process.

The Department forwards this information to the Australian Taxation Office so that Ministerial approval for entry on the Register and Deductible Gift Recipient endorsement are concurrent.

Completing an Application Form

To be assessed for eligibility for entry on the Register, an organisation must submit a completed Application Form for the Register of Cultural Organisations to the Department. The Application Form can be downloaded at <http://www.arts.gov.au/roco> or obtained as a hard copy from the Department. A sample of the Application Form is included in this guide at Appendix Two.

As outlined above, all information provided to the Department in a submitted Application will be forwarded to the Australian Taxation Office so it can assess an organisation's eligibility to be endorsed as a Deductible Gift Recipient.

It is important that organisations fill out the Application Form, as per the instructions provided in the following section, to avoid delays in the assessment process. A check list to help organisations provide all the necessary information is provided at Appendix Three of this guide.

Providing details on your organisation

Legal name

An organisation must be properly constituted as a legal entity before it can be considered for entry on the Register. You must provide the full legal name of your organisation as stated on your Certificate of Incorporation, Certificate of Registration, Deed of Trust or other founding documents.

Australian Business Number (ABN)

Organisations need to have obtained an ABN before they can be entered on the Register and endorsed as a Deductible Gift Recipient.

Contact details

- Postal address: You must provide either a street address or postal address for correspondence purposes.
- Contact numbers: You must provide contact details for your organisation during normal business hours (e.g. email address).
- Email address: If applicable, provide an email address for correspondence purposes.
- Contact name: You must provide the name of a person who is able to answer questions relating to your organisation's application during normal business hours.

Type of organisation

You must identify the structure of your cultural organisation/body. Most eligible cultural bodies will be incorporated under state/territory or Australian Government law as an incorporated association or limited company. Some bodies may be established under the terms of a trust deed or may be established by a specific piece of legislation (i.e. a statutory body).

In summary, to be eligible for inclusion on the Register, an organisation must be properly constituted as:

- a body corporate (limited company or incorporated association);
- a trust; or
- a statutory body (an unincorporated body established for a public purpose by the Commonwealth, a state or a territory).

You are required to provide a copy of your organisation's Certificate of Incorporation/ Registration as evidence that your organisation is properly constituted as a legal entity.

Further information on how to become incorporated as an association can be obtained from the Fair Trading/ Business Affairs Office in your state or territory. Information on a limited company is available from the Australian Securities and Investments Commission (www.asic.gov.au/asic/asic.nsf).

Providing details on your organisation's activities

An organisation must identify the cultural activity(ies) that is (are) its principal purpose and attach its articles/constitution/rules/trust deed and other evidence of this principal purpose. You are also required to outline your organisation's current activities and explain how they advance its principal purpose.

Your organisation may have more than one of the listed activities as its principal purpose.

Providing details on your organisation's public fund

Australian Taxation Office endorsement of fund

The information provided in this section is also required by the Australian Taxation Office as part of the application process for Australian Taxation Office endorsement as a Deductible Gift Recipient. On the Application Form a box indicating that your organisation is seeking endorsement as a Deductible Gift Recipient for a public fund has already been ticked, as this requirement is mandatory.

Item number

The income tax law assigns the item number 12.1.1 to organisations applying to be endorsed as a cultural organisation on the Register. You will find on the Application Form this item number has already been inserted for you.

Name of fund

You will need to provide the exact name of the public fund to which donations will be made.

Located in Australia

If your organisation or your fund are not located in Australia, you are ineligible for inclusion on the Register. An organisation or fund is considered 'in Australia' if:

- its establishment, control, donors and assets are predominantly in Australia; and
- its purposes and/or beneficiaries are in Australia.

To indicate that you or your fund is located in Australia, tick 'Yes' to this question in section three (public fund) of the Application Form.

Postal address of fund

You must provide a postal address for the public fund. This may be the same as your organisation's postal address.

Is your public fund receiving donations?

You are required to indicate whether your public fund is currently receiving donations from the public. If it is not, and you answer 'No' to this question in section three (public fund) of the Application Form, you must outline how your organisation intends to solicit donations from the public.

Identity of responsible persons

You must provide the names and occupations of your public fund's management committee and identify their qualifying category. The qualifying categories are listed on Page 8 of this guide. The management committee should comprise a minimum of three persons and the majority of the committee must be deemed by the Department to be 'responsible persons'. If you need to include additional persons, provide a separate attachment to your Application Form.

Governing documents

Outline which provisions (clauses) of your organisation's governing documents implement the specified requirements of the public fund.

Public fund account

It is a requirement of the Register that organisations applying for entry have established a separate financial institution account for donations to the public fund. Enter 'Yes' to this question in section 3 (the public fund) of the Application Form to indicate a separate account has been established.

You will also need to provide the following details of your public fund:

- name of financial institution
- branch
- account name
- BSB number
- account number.

Required Application Form attachments

A copy of specified documentation must be attached to your submitted Application Form to enable the assessment of your eligibility for entry on the Register. The required documentation is listed in this guide at Appendix Three: Checklist for Register applicants.

Declaration

In the 'Declaration' section of the Application Form your organisation's chief executive officer or his/her equivalent must state that the information provided in the Application is accurate and complete and that he/she is authorised to make the statement. An Application will not be accepted if this section is not signed and dated.

Date of Endorsement

This section of the Application Form is for office use only. This is the date the Treasurer approves an organisation's entry on the Register.

Receiving donations

Status

Prior to accepting donations, cultural bodies need to receive notification from the Australian Taxation Office that they are endorsed as a Deductible Gift Recipient in accordance with Subdivision 30-BA of the Act.

Gift conditions

When registered as a cultural organisation, subsection 30-300(3) of the Act requires that an organisation use gifts made to the fund, and any money received because of such gifts, only for its principal purpose.

The Australian Government may make rules to ensure that this occurs. The Register Application Form contains a 'Declaration' section that requires the chief executive officer or his/her equivalent to agree, on behalf of the organisation, to comply with any such rules.

To qualify as a deduction under Division 30 of the Act, a gift must be given voluntarily without the donor receiving any material advantage or benefit in return; otherwise it is not considered to be a 'gift'. Donors may be acknowledged in programs, annual reports or on a plaque. However, no form of prominent advertising such as corporate logos may be used.

To be eligible for a tax deduction, donors may not put any conditions on a gift.

While a donor may state a preference as to how their gift might be used in relation to project priorities of the recipient organisation, the organisation must ultimately have unfettered discretion as to how it will use the gift in accordance with its principal purpose.

Where a donor insists, or the recipient guarantees, that a donation will be used in a particular way, the donation will not be tax deductible.

Sponsorships

There are other arrangements whereby corporate sponsors may receive promotional or advertising services from cultural organisations in return for a contribution, but these do not qualify as donations. These are generally corporate sponsorships and tax deductible to the business as a business expense. Organisations do not need to be on the Register to seek corporate sponsorship support.

Reporting and other responsibilities

Following the Minister for the Arts and the Treasurer agreeing to an inclusion on the Register, organisations will receive a letter of confirmation that sets out the responsibilities of registered organisations.

The following section outlines the reporting requirements and other main responsibilities of registered organisations.

Formal notification of donations

Within 21 days of the end of the two six-month periods, January to June and July to December, a registered organisation must provide the Department with information on all the tax deductible donations it has received.

This information can be provided via a completed Statistical Return of Donations form and sent to the Department by mail, facsimile or email. A sample of this form is at Appendix Four of this guide. An electronic version can be downloaded from the Department's website at www.arts.gov.au/roco or a hard copy obtained by contacting the Department.

Organisations are required to provide the Department with a 'nil return' if no donations are received within the above periods. Advice of a 'nil return' may be provided by phone.

It is recommended that this reporting requirement be incorporated into an organisation's normal planning processes so as to avoid the possibility of non-compliance.

Donations are classified into two categories. 'Individual' donations are those from a private individual, one or more family members or from family trusts. 'Corporate' donations include those from any size business or organisation.

It is preferable that organisations avoid anonymous donations. However, where donors do not wish to have their identity disclosed, an anonymous donation should only be included (under the appropriate category) if a tax deductible receipt has been issued in the name of the person or company.

Changes to details

It is the responsibility of registered organisations to notify the Department of any changes to contact details, governing documents, office bearers or board members and in particular the persons responsible for the public fund. This includes, for example, advising the Department of resignations and the names/occupations/qualifications of any new appointments. Where grants, scholarships and prizes are introduced, please provide details of the selection process that will be used to choose recipients.

Review of eligibility

Registered organisations shall participate in a review of their eligibility for inclusion on the Register approximately every three years.

Removal from the Register

A cultural organisation and the public fund it maintains may be removed from the Register if it fails to meet the legislative and ongoing administrative requirements specified in this guide.

Winding-up notification

Registered organisations must advise the Department in writing as soon as possible in the event that their organisation and/or the public fund are wound-up or are in the process of winding-up.

Issuing receipts

To ensure tax deductibility of donations, receipts issued in the name of the fund must contain the following elements:

- Australian Business Number;
- date the donation was received;
- name of the organisation;
- name of the fund;
- signature of a person authorised to act on behalf of the fund;
- name of the donor;
- type of donation (money or property) and value; and
- indication that the fund is listed on the Register of Cultural Organisations maintained under Subdivision 30-B of the *Income Tax Assessment Act 1997*.

If your organisation issues a receipt for a deductible contribution in relation to an eligible fundraising event, there are further requirements. Please refer to the Australian Taxation Office publication

Non-profit organisations and fundraising (document reference number, NAT 13095). The document is available at www.ato.gov.au.

Sample of an issued receipt

The following example contains all the elements required of an issued receipt:

RECEIPT	
Register of Cultural Organisations under Subdivision 30-B of the <i>Income Tax Assessment Act 1997</i>	
Name of organisation:	<input type="text"/>
Australian Business Number (ABN):	<input type="text"/>
Received from:	<input type="text"/>
Type of donation	<input type="text"/> (cash/cheque/property)
To the value of:	\$ <input type="text"/>
Representing a donation to the:	<input type="text"/> (name of public fund)
Date of Donation:	<input type="text"/> / <input type="text"/> / <input type="text"/>
Received by:	<input type="text"/> (signature)
<p>The (enter name of fund here) is a tax-deductible fund listed on the Australian Government's Register of Cultural Organisations maintained under Subdivision 30-B of the <i>Income Tax Assessment Act 1997</i>.</p>	
DONATIONS OF \$2.00 OR MORE ARE TAX-DEDUCTIBLE	

Model clauses

Use of model clauses

It is mandatory to include specific public fund clauses, including a winding-up clause for the public fund, in your organisation's governing documentation.

The examples below cover the essential public fund requirements of the Register.

It is not necessary to use the exact wording of the model clauses provided, however the essential elements should be reflected.

Please note the winding-up clause must include the relevant provision of the Act in full, namely Subdivision 30-B, section 30-100. Inclusion of the phrase 'and listed on the Register of Cultural Organisations maintained under the Act' is optional, but must be spelt out in full if included.

Clauses relating to a public fund

The Association will establish and maintain a public fund.

Donations will be deposited into the public fund listed on the Register of Cultural Organisations. These monies will be kept separate from other funds of the Association and will only be used to further the principal purpose of the Association. Investment of monies in this fund will be made in accordance with guidelines for public funds as specified by the Australian Taxation Office.

The fund will be administered by a management committee or a subcommittee of the management committee, the majority of whom, because of their tenure of some public office or their professional standing, have an underlying community responsibility, as distinct from obligations solely in regard to the cultural objectives of [name of organisation].

No monies/assets in this fund will be distributed to members or office bearers of the Association, except as reimbursement of out-of-pocket expenses incurred on behalf of the fund or proper remuneration for administrative services.

The Department responsible for the administration of the Register of Cultural Organisations will be notified of any proposed amendments or alterations to provisions for the public fund, to assess the effect of any amendments on the public fund's continuing Deductible Gift Recipient status.

Receipts for gifts to the public fund must state:

the name of the public fund and that the receipt is for a gift made to the public fund;

the Australian Business Number of the company;

the fact that the receipt is for a gift; and

any other matter required to be included on the receipt pursuant to the requirements of the *Income Tax Assessment Act 1997*.

The company must comply with any rules that the Treasurer or the Minister for the Arts make to ensure that gifts made to the public fund will only be used for the company's principal purpose. The company must provide to the Department statistical information on the gifts made to the public fund every 6 months.

Winding-up clause

If upon the winding-up or dissolution of the public fund listed on the Register of Cultural Organisations, there remains after satisfaction of all its debts and liabilities, any property or funds, the property or funds shall not be paid to or distributed among its members, but shall be given or transferred to some other fund, authority or institution having objects similar to the objects of this public fund, and whose rules shall prohibit the distribution of its or their income among its or their members, such fund, authority or institution to be eligible for tax deductibility of donations under Subdivision 30-B, section 30-100, of the *Income Tax Assessment Act 1997* and listed on the Register of Cultural Organisations maintained under the Act.

APPENDICES

Appendix One: Frequently asked questions

If you require further information after reading this section you may wish to speak with a Departmental officer using the contact details provided on Page 1 of this guide.

Must my organisation maintain a separate financial account for the public fund?

Yes. Gifts to the organisation must be kept separate from any other funds of the organisation. A separate financial institution account and clear accounting procedures are mandatory.

Can public art galleries, museums and libraries apply for entry on the Register?

A public art gallery, museum or library, or an entity comprising a combination of these can obtain Deductible Gift Recipient status under a *different* category and should apply directly to the Australian Taxation Office for endorsement.

In addition to being able to receive tax deductible donations of money and certain property, Deductible Gift Recipient status enables these organisations to receive gifts of culturally significant items for their collections through the Australian Government's Cultural Gifts Program. For information on this program see www.arts.gov.au/cgp.

Does the Register allow for public funds to be used to restore or construct a building?

This is permissible only where the building being constructed or restored is used primarily for a cultural purpose, that is, the promotion of one or more of the cultural activities covered by the Register provisions.

Can a local council or religious body apply for their cultural activities to be registered?

Yes. However, an organisation listed on the Register must have a principal cultural purpose as set out in the legislation and listed on Page 6 of this guide. A local council or religious body would need to establish a separate entity for its cultural activities. Such entities are usually incorporated as an association or established as a trust.

Is it necessary for an organisation to promote its public fund and Deductible Gift Recipient status?

Yes. As outlined in Taxation Ruling TR95/27, a 'public fund' is a fund to which the public is invited to contribute and in fact does contribute. To remain eligible for listing on the Register, an organisation must promote its fund to the public and receive donations from the public.

The eligibility of registered organisations is reviewed approximately every three years. If donations have not been sought or received, it may be recommended that an organisation be removed from the Register.

Can cultural organisations seek funding from charitable trusts or foundations?

Charitable trusts and foundations distribute funds to other Deductible Gift Recipients in accordance with certain criteria.

A registered organisation may enter into an agreement with a trust/foundation to use funding for the particular purpose for which it was sought, as long as it falls within the organisation's principal purpose.

For example, a registered organisation promotes modern dance. It applies to a foundation that provides grants and scholarships to support the promotion of Australian dance, in particular modern dance, and is successful in obtaining a grant.

However, where conditions are attached or acquittals are required, monies received from such a foundation will be regarded as a *grant* and not as a tax deductible donation. The money therefore cannot be credited to the organisation's public fund.

Can my organisation use its public fund to assist other organisations?

No. The aim of the Register is that listed organisations use monies from the public fund for their own particular cultural purpose.

Registered bodies are therefore not permitted to provide grants or loans from their public fund to other bodies. Similarly, donations cannot be accepted, nor a tax deductible receipt issued, when there is a specific intention to pass them on to another organisation.

Is a registered organisation eligible for income tax exemption?

Only certain types of organisations are exempt from paying income tax. Others are taxable and need to lodge income tax returns.

Organisations that meet the requirements for listing on the Register may also be charities. Charities must be endorsed by the Australian Taxation Office to be exempt from income tax.

This is a separate process from endorsement as a Deductible Gift Recipient. Enquiries concerning income tax exemption should be directed to the Australian Taxation Office at 1300 130 248 or visit the website at www.ato.gov.au/nonprofit.

Appendix Two: Sample Register Application Form



Australian Government
Attorney-General's Department
Ministry for the Arts

Application for Register of Cultural Organisations

Established under Subdivision 30-F of the *Income Tax Assessment Act 1997*

IMPORTANT:

The Register of Cultural Organisations Guide provides an explanation of the information required in this Application form.

Applicants should refer to the guide when completing this application.

The information provided by an organisation in this application is used to assess its eligibility for inclusion on the Register. Once approved, applications are forwarded to the Australian Taxation Office (ATO) for assessment of the organisation for endorsement as a Deductible Gift Recipient (DGR).

1. Organisation details

Legal name: _____

Australian Business Number (ABN): _____

Postal address: _____

Contact numbers:

Business: _____

Facsimile: _____

Mobile: _____

Email address: _____

Contact name: _____

Which of the following is your organisation constituted as? (please tick one):

- | | |
|---|---|
| <input type="checkbox"/> Limited company | <input type="checkbox"/> Trust |
| <input type="checkbox"/> Incorporated association | <input type="checkbox"/> Statutory body |

2. Activities

The promotion of which of the following arts-related activities is your organisation's principal purpose? (You may fall under more than one category—refer to the guide.):

- | | |
|--|---|
| <input type="checkbox"/> Literature | <input type="checkbox"/> Music |
| <input type="checkbox"/> Design | <input type="checkbox"/> Community arts |
| <input type="checkbox"/> Crafts | <input type="checkbox"/> Video |
| <input type="checkbox"/> Performing arts | <input type="checkbox"/> Visual arts |
| <input type="checkbox"/> Radio | <input type="checkbox"/> Arts of Indigenous persons |
| <input type="checkbox"/> Television | <input type="checkbox"/> Film |
| <input type="checkbox"/> Movable cultural heritage (promotion/preservation/study of) | |

3. Public fund

I am applying for endorsement of my entity as a deductible gift recipient for the operation of a public fund.

Item number applying to public fund: 12.1.1

Legal name of public fund: _____

Are you or your fund located in Australia? yes no
(if not, you are not entitled to endorsement. See the guide).

Postal address of public fund: _____
(if different from address provided at section 1)

Does your fund currently receive donations from the public? yes no

If you answered 'No', how does your organisation intend to solicit donations?

Responsible persons:

Provide the name and occupation of a minimum of three persons to be responsible for your public fund. Also, identify which description (outlined in the guide) qualifies each person nominated as a 'responsible person'. If you need to include additional persons, attach a separate document to your Application.

Person 1

Name: _____

Occupation: _____

Responsible person qualification: _____

Person 2

Name: _____

Occupation: _____

Responsible person qualification: _____

Person 3

Name: _____

Occupation: _____

Responsible person qualification: _____

Governing documents:

Specify which provisions (clauses) of your organisation's governing documents mandate the following public fund requirements (see the guide):

- A public fund will be maintained:
 - to which gifts of money or property for your organisation's principal purpose are to be made
 - to which any money received because of such gifts (including interest accrued thereon) is to be credited
 - that does not receive any other money or property
 - that prohibits the distribution of profits to its members, shareholders, controllers of the organisation or the trustees of a trust.
- Use of public fund:
 - gifts made to the fund, and any money received because of such gifts, will be used only for the organisation's principal purpose.
- Winding up of the fund:
 - the winding up** of the public fund (see the guide).

Public fund account

Does your organisation have a separate financial institution account, that is a 'public fund', for donations?
(This is a requirement for inclusion on the Register).

yes no

Details of separate financial institution account

Name of financial institution: _____

Branch: _____

Account name: _____

BSB number: _____

Account number: _____

4. Required attachments

I have attached to this application a copy of the following documentation (please tick):

- Constitution/Rules/Memorandum and Articles of Association or Trust Deed
- Annual report and/or audited financial statement and/or profit & loss sheet (if organisation has been operating for more than a year)
- Certificate of Incorporation/Registration
- The organisation's official objects either in the Constitution/ Memorandum/ Trust Deed or in a Statement of Purpose if using the model rules for Incorporated associations
- Details of how grants, scholarships and prizes are advertised and the selection process followed to choose recipients (if applicable).

5. Declaration (to be signed by chief executive or equivalent)

I declare that the information provided in this application is accurate and complete, and that I am authorised to make this declaration.

Upon inclusion on the Register of Cultural Organisations, this organisation undertakes to:

- credit any money received because of gifts for its principal purpose to the organisation’s public fund
- ensure that the public fund receives no other money or property
- ensure that donations made to the organisation’s public fund are used only for the organisation’s principal purpose
- provide information on donations at six monthly intervals
- comply with any rules made by the Australian Government to ensure that gifts made to the public fund are used only for the organisation’s principal purpose
- inform the department in writing within 21 days of all changes to contact details, governing documents, office bearers or Board and in particular the persons responsible for the public fund (i.e. advise resignations and new name/s with occupation/qualifications), the current person to whom all correspondence should be forwarded and where grants scholarships and prizes are introduced—provide details of the selection process used to choose recipients
- inform the department if the organisation and/or its public fund is to be wound-up, and
- participate in a review approximately every three years to check ongoing eligibility for tax deductibility status.

Name: _____

Position held: _____

Signature: _____

Date: _____

Daytime contact: Phone: _____ Mobile: _____

6. Where did you find out about the register?

- | | |
|---|---|
| <input type="checkbox"/> Tax advisor | <input type="checkbox"/> Department website |
| <input type="checkbox"/> Australian Taxation Office (ATO) | <input type="checkbox"/> Other (please specify) |

7. Date of endorsement (office use only)

Date of endorsement as a Deductible Gift Recipient: _____

Appendix Three: Checklist for Register applicants

The organisation submits the following documentation to the Department for assessment:

- Application Form
- governing documents
- Certificate of Incorporation/Registration
- financial statements (if available)
- evidence of activities.

To minimise delays with the processing of your application, please provide the following:

1. Application Form

Ensure all fields have been completed, and the following details are provided:

ABN details

Names of persons of responsibility for public fund

Public fund name

Bank account details for public fund

2. Constitution/rules/trust deed

Ensure the following statement/clauses are included in your governing documents:

Objects/Statement of purpose

Public fund clauses

Not-for-profit clause

Winding-up clause for public fund

3. Certificate of incorporation/registration

Certificate of Incorporation/Registration provided (if appropriate)

4. Audited accounts, financial statements and/or annual report

  Financial information provided

5. Information/evidence of activities

  Information provided

6. Awards/scholarships

Does your organisation conduct awards/scholarships? If yes, include information on application and selection process.

  Information provided

Appendix Four: Sample Statistical Return Donations form

 <p>Australian Government Attorney-General's Department Ministry for the Arts</p>	<p>REGISTER OF CULTURAL ORGANISATIONS Under subdivision 30-F of the <i>Income Tax Assessment Act 1997</i></p>
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STATISTICAL RETURN OF DONATIONS

Note: This is a sample form only; download an actual form from the web and return to the Register at the contact details provided.

1. (a) _____
 Name of Organisation
- (b) _____
 Name of Fund

2. **Period** (please indicate using a tick 1 January to 30 June 20 OR 1 July to 31 December 20

3. **Donations:** For the purposes of Division 30 of the *Income Tax Assessment Act 1997*, **donations** are gifts made **unconditionally** where the donor receives no benefit in return.

Type of donation	Individual Donations		Corporate Donations		Contributions from charitable trusts/foundations	
MONETARY	_____ No.	\$_____ Value	_____ No.	\$_____ Value	_____ No.	\$_____ Value
PROPERTY <= \$5000*	_____ No.	\$_____ Value	_____ No.	\$_____ Value	_____ No.	\$_____ Value
PROPERTY > \$5000*	_____ No.	\$_____ Value	_____ No.	\$_____ Value	_____ No.	\$_____ Value

'Individual' donations are those from a private individual, one or more family members or from a family trust; **'Corporate'** donations include those from any size business or organisation. NB: Payments made by a business in exchange for promotional or advertising services do not qualify as a donation (These are corporate sponsorships which are deductible as a business expense, not as a gift). **'Charitable trusts or foundations'** are only those from a properly established charitable trust or foundation (for example, philanthropic trusts).

*** Refer to the Register Guide for information on the restrictions on tax-deductible donations of property.**

4. **Awards/Prizes:** If grants, prizes or other payments were awarded from the public fund, please attach a list of recipients.

STATEMENT BY AUTHORISED OFFICER (EXECUTIVE OFFICER OR FINANCE OFFICER).

I declare that the information provided in this return is true and accurate and that donations have not been received only from the trustees/members or their associates, but have also been received from the public.

Name: _____

Signature: _____ Position Held: _____ Date: _____

This form is to be completed and returned (with supporting documentation where applicable) to:

Register of Cultural Organisations
 Ministry for the Arts
 Attorney-General's Department
 Robert Garran Offices
 3-5 National Circuit
 CANBERRA ACT 2600

Appendix Five: Categories of tax deductible gifts

Deductions for gifts of cash and property

Note: The term 'property' has a wide meaning and can refer to physical things as well as rights and interests that can be owned and that have a value.

A tax deduction for most deductible gifts and contributions is claimed in the tax return for the income year in which the gift or contribution was made. For some gift types, donors may elect to spread their deductions over a period of up to five years, commencing in the return for the income year in which the gift was made.

For more information about deductible contributions, see the Australian Taxation Office publication *Non-profit organisations and fundraising* (Document reference number NAT 13095). The document is available at www.ato.gov.au.

The table below lists the more common types of deductible gifts and contributions.

Gift/contribution type	Description	Tax concession
Monetary gifts	This gift type covers gifts of \$2 or more of money, including foreign currency. The money may be paid in various ways, including by cash, cheque, credit card or electronic payment.	Donors may elect to spread the deduction over a period of up to five years.
Property valued at more than \$5000	This gift type covers gifts of property valued by the Australian Taxation Office at more than \$5000.	Donors may elect to spread the deduction over a period of up to five years.
Property purchased in 12 months	This gift type covers gifts of property purchased by the donor during the 12 months before making the gift. Property is purchased if it is acquired by way of bargain or sale for money or some other valuable consideration.	Donors may elect to spread the deduction over a period of up to five years where the gift has been valued by the Australian Taxation Office at more than \$5000.
Contributions to eligible fundraising events	<p>This covers contributions to eligible fundraising events (such as fetes, balls, gala shows, dinners and charity auctions), which at the same time extend a minor benefit to the contributor.</p> <p>To be deductible, a contribution must meet several requirements:</p> <ul style="list-style-type: none"> • it must be made: <ul style="list-style-type: none"> - in return for the right to attend or participate in an eligible fundraising event (e.g. the purchase of a ticket to a fundraiser); - by way of the purchase of goods or services as a successful bidder at an auction that is, or is at, a fundraising event; • it must be more than \$150 (and can include certain property contributions); • it must satisfy any gift conditions relating to the Deductible Gift Recipient as though it was a gift; • it must be made by an individual (not a company or a partnership); and • the GST inclusive value of the right or the goods or services (the benefit) must not exceed the lesser of \$150 or 20 per cent of the value of the contribution. 	For a contribution of this type, the deduction is claimed for the income year in which it is made.

Non tax deductible gifts and contribution types

The following types of gifts and contributions are not tax deductible.

Gift/contribution type	Description	Tax concession
Testamentary gifts/bequests	The term applies to both those gifts specifically bequeathed under a will or those made by trustees in pursuance of any requirement placed on them by a will, and also to any gifts made by trustees/executors out of the corpus of the estate.	Property of this gift type is exempt from capital gains tax.
Services	This includes the value of services, such as unpaid voluntary work and expenditure incurred in undertaking voluntary work for a charitable organisation.	Nil.
Membership/subsription fees	Contributions of this kind where there are associated benefits are not a gift. Note: If a membership fee and a gift are submitted together, a separate tax deductible receipt should be issued for the gift portion of the payment only.	Nil.

Appendix Six: Subdivision 30-F of the *Income Tax Assessment Act 1997*

30-290 What this Subdivision is about

This Subdivision requires the establishment of a register of cultural organisations. Section 30-15 allows you to deduct a gift that you make to a fund that is on the register.

Table of sections

Operative provisions

30-295 Establishing the register

30-300 Meaning of *cultural organisation*

30-305 What must be on the register

30-310 Removal from the register

Operative provisions

30-295 Establishing the register

The Secretary to the Department of Communications and the Arts must keep a register of *cultural organisations.

Note: Section 30-305 sets out what details must be entered on the register.

30-300 Meaning of cultural organisation

- (1) A cultural organisation is:
 - (a) a body corporate; or
 - (b) a trust; or
 - (c) an unincorporated body established for a public purpose by the Commonwealth, a State or a Territory;that satisfies each requirement in this section.
- (2) Its principal purpose must be the promotion of literature, music, a performing art, a visual art, a craft, design, film, video, television, radio, community arts, arts of *Indigenous persons or movable cultural heritage.
- (3) It must maintain a public fund that meets the requirements of section 30-130, or would meet those requirements if the *cultural organisation were a fund, authority or institution.
- (4) Repealed.
- (5) It must not pay any of its profits or financial surplus, or give any of its property, to its members, beneficiaries, controllers or owners (as appropriate).
- (6) It must have agreed to comply with any rules that the Treasurer and the *Arts Minister make to ensure that gifts made to the fund are used only for its principal purpose.
- (7) It must have agreed to give the *Arts Secretary, at intervals of 6 months, statistical information about gifts made to the public fund during the last 6 months.

30-305 What must be on the register

- (1) The *Arts Secretary must enter on the register each *cultural organisation, and the public fund it maintains, that he or she has been directed to enter by the Treasurer and the *Arts Minister.

- (2) The Treasurer and the Minister may so direct the Secretary only if the Minister has notified the Treasurer that he or she is satisfied that an organisation is a *cultural organisation. The notification must be in writing.
- (3) The direction must be in writing and must specify the day on which the organisation and public fund are to be entered on the register. The day must be the day on which the direction is given or a later day.
- (4) The Treasurer and the *Arts Minister must have regard to the policies and budgetary priorities of the Commonwealth Government in deciding whether to give a direction.

30-310 Removal from the register

- (1) The Treasurer and the *Arts Minister may direct the *Arts Secretary to remove a *cultural organisation, and the public fund it maintains, from the register.
- (2) The direction must be in writing and must specify the day on which the organisation and public fund are to be removed from the register. The day must be the day on which the direction is given or a later day.

30-130 Maintaining a gift fund

- (1) The entity must maintain for the principal purpose of the fund, authority or institution a fund (the gift fund):
 - (a) to which gifts of money or property for that purpose are to be made; and
 - (b) to which contributions described in item 7 or 8 of the table in section 30-15 in relation to a fund-raising event held for that purpose are to be made; and
 - (c) to which any money received by the entity because of such gifts or contributions is to be credited; and
 - (d) that does not receive any other money or property.
- (2) The entity must use the gift fund only for the principal purpose of the fund, authority or institution.

Note: '*cultural organisations' indicates that the Act defines the term 'cultural organisations'.

*'Indigenous persons' indicates that the Act defines the term 'Indigenous persons'.