



Charitable Exemptions Duties – Payroll Tax – Land Tax

Duties Act 2008 – Pay-roll Tax Assessment Act 2002 – Land Tax Assessment Act 2002

As at 21 November 2017

Introduction

The *Duties Act 2008* ('Duties Act'), the *Land Tax Assessment Act 2002* ('LTA Act') and the *Pay-roll Tax Assessment Act 2002* ('PTA Act') ('the Acts') each provide an exemption from tax for certain charitable bodies, institutions or transactions. However, an exemption cannot apply if the taxpayer is a relevant body unless a beneficial body determination is in force in respect of that relevant body.

Separate eligibility criteria apply for each tax, and an individual charitable exemption application must be made for each tax liability. This means that being eligible for an exemption for one tax does not result in an automatic exemption from the other taxes.

A determination about whether a body or transaction is charitable requires significant analysis and the consideration of complex legal principles. This fact sheet is intended to provide only an overview of the charitable exemptions, and taxpayers should refer to the Acts and Revenue Ruling [DA/PT/LA 18 'Charitable Exemptions'](#) for further information about how the Commissioner will determine a charitable exemption application.

Charitable purposes

The Commissioner may grant an exemption from tax for certain charitable bodies. The Commissioner may also exempt a transaction that has been entered into or occurred for a charitable or similar public purpose.

A body will be charitable if its main or dominant purpose is a charitable purpose. The term 'charitable purpose' is not defined in the Acts. For a body or transaction to have a charitable purpose, the purpose must be recognised by common law in Australia as being charitable. Charitable purposes are divided into four categories, commonly referred to as the four heads of charity.

The following table describes the four heads of charity and includes examples of charitable purposes that may fall within each head:

Heads of charity	Examples of charitable purposes
<p>First head</p> <p>Relief of the aged, impotent and poor</p>	<ul style="list-style-type: none"> • providing low cost accommodation to persons in needy circumstances • providing health and welfare services • caring for the physically disabled or mentally afflicted

<p>Second head</p> <p>Advancement of education</p>	<ul style="list-style-type: none"> • establishing teaching positions or providing student accommodation • increasing public appreciation for art, music or literature • conducting scientific research
<p>Third head</p> <p>Advancement of religion</p>	<ul style="list-style-type: none"> • the construction of churches and other places of worship • providing accommodation, support, aid or relief for clergy, ministers, nuns or teachers of religion
<p>Fourth head</p> <p>Other purposes beneficial to the community</p>	<ul style="list-style-type: none"> • increasing the safety and protection of the community • conservation of the environment • advocating for animal welfare • promotion of trade, industry and commerce, such as an organisation formed for the general improvement of agriculture

The fact that a taxpayer may be recognised as a charity by another agency, such as the Australian Charities and Not-for-profits Commission (ACNC), will not independently satisfy the Commissioner that the taxpayer is a charitable body.

Duties

Overview

The Duties Act provides an exemption from transfer duty for a dutiable transaction, such as a contract for the purchase of land, where it has been entered into or occurred for charitable or similar public purposes.

A landholder acquisition is exempt from duty where transfer duty would not have been chargeable if the landholder's land had instead been acquired directly. Further information about landholder duty is [available from the website](#).

A similar public purpose differs from a charitable purpose in that the purpose does not have to be characterised as being 'charitable' under common law principles. 'Similar public purpose' is generally accepted to mean a purpose of providing some service, utility or benefit to the public that would not otherwise be provided and which is not provided with the primary purpose of producing a profit.

To determine if a dutiable transaction or acquisition was entered into or occurred for a charitable or similar public purpose, the Commissioner will focus on the purposes for which the property was acquired. This means the taxpayer does not necessarily have to be charitable body.

How to Apply

An application for charitable exemption must be made each time a transaction is lodged for assessment.

Apply to the Commissioner for an exemption from duty by submitting the relevant transaction record (for example, contract for sale or transfer of land) with the completed application form [FDA2 'Application for Charitable Exemption'](#) and all required supporting information. Where a taxpayer has made a landholder acquisition, completed form [FDA22 'Landholder Acquisition'](#) must also be lodged.

If the taxpayer is applying for a reassessment of transfer duty, the transaction record on which the original duty stamp is printed, or to which the Certificate of Duty is attached, must be provided. For a reassessment of duty to be considered by the Commissioner, an application must be made within five years of the original date of assessment.

Land tax

Overview

The LTA Act provides an exemption for land owned by, vested in or held in trust for a public charitable or benevolent institution and used solely for the purposes for which the institution was established. An exemption will not apply for a public charitable or benevolent institution that is a relevant body, unless a beneficial body determination is in force for that relevant body.

A taxpayer is a public charitable or benevolent institution if its main purpose is charitable. To establish this, the Commissioner will have regard to the taxpayer's purpose at the time it was established and to the taxpayer's activities on 30 June in the financial year before the assessment year.

To determine if land is used for charitable purposes, the focus is on the use of the land as at 30 June in the financial year before the assessment year. Use of the land for charitable purposes is determined by comparing the charitable purposes of the taxpayer with the actual use of the land. The taxpayer's intended future use of the land is not relevant. A partial exemption may apply where only part of the land is used solely for the taxpayer's charitable purposes.

How to Apply

Apply to the Commissioner for an exemption for land tax by submitting form [FLT37 'Application for Charitable Exemption'](#) and all required supporting information. An application for exemption must be made each time the taxpayer acquires a new piece of land.

Payroll tax

Overview

Under the PTA Act, wages paid by a charitable body or organisation are exempt if they are paid for doing work in connection with a charitable purpose for which the body is carried on.

A charitable body or organisation is defined in the PTA Act to mean a body established or carried on for charitable purposes except:

- a body whose sole or principal purpose is the provision of tertiary education; or
- a college or other vocational education and training institution under the *Vocational Education and Training Act 1996*.

An exemption will not apply to a charitable body if it is a relevant body, unless a beneficial body determination is in force for that relevant body.

Public Benevolent Institutions

The PTA Act also exempts wages paid by a Public Benevolent Institution ('PBI'). A PBI's wages are automatically exempt and the taxpayer is not required to apply for an

exemption, however they may seek confirmation from the Commissioner that it is exempt from payroll tax as a PBI.

To confirm whether a taxpayer is a PBI, the Commissioner will determine if the following requirements are met:

- its main or principal object is the direct relief of poverty, sickness, suffering, distress, misfortune, destitution or helplessness;
- it is carried on without purpose of private gain for particular persons;
- it is established for the benefit of the general public, or a large section or class of the public; and
- relief is available without discrimination to every member of the public which the organisation aims to benefit.

How to Apply

Apply to the Commissioner for an exemption from payroll tax by submitting form [FPRT41 'Application for Charitable Exemption'](#) and all required supporting information.

An exemption from payroll tax will commence:

- if the taxpayer has been registered for payroll tax – at the start of the financial year in which the application was made; or
- if the taxpayer has never been registered for payroll tax – at the start of the financial year that is five years before the financial year in which the application was made.

Relevant bodies

Under the Acts, a charitable exemption is not available to a taxpayer that is, or for duties purposes is related to, a relevant body, unless a beneficial body determination is in force for that relevant body. If the Commissioner determines that a taxpayer is not a charitable body or a transaction does not have a charitable purpose, the relevant body provisions will not be considered.

A relevant body includes:

- political parties, industrial associations and professional associations;
- a body (other than a political party, industrial association or professional association) that promotes trade, industry or commerce, unless its main purposes are the relief of poverty, advancement of education or advancement of religion;
- a body that:
 - is a member of a payroll tax group with a relevant body; or
 - is a related body corporate of a relevant body; or
 - has a sole or dominant purpose or object to confer a benefit on a relevant body.

For further information about the relevant body provisions, please refer to Revenue Ruling [DA/PT/LT 18 'Charitable Exemptions'](#).

For duties, the exemption will also not apply if the taxpayer is related to a relevant body, unless a beneficial body determination is in force for that body. A taxpayer is related to a relevant body if the taxpayer holds the acquired property as trustee of a trust under which

a relevant body is a beneficiary. The Commissioner has the discretion to determine in any particular case that a trustee of a discretionary trust is not related to a relevant body who is a beneficiary of that trust. Information about the exercise of this discretion can be found in the ruling.

Beneficial body determination

Subject to certain conditions, an application may be made to the Minister for Finance for a determination that a relevant body is a beneficial body for the purposes of the Acts. A beneficial body determination reinstates the taxpayer's entitlement to the charitable exemptions. A relevant body that is an industrial association or political party is not entitled to apply for a beneficial body determination.

The Minister for Finance may, with the Treasurer's concurrence, make a beneficial body determination when he considers it is in the public interest to do so and after considering any information he considers relevant.

For further information regarding beneficial body determinations, please refer to the Acts and the ['Application for a Beneficial Body Determination'](#).

Contact the Office of State Revenue

Office	Office of State Revenue 200 St Georges Terrace PERTH WA 6000	Telephone	Duties - 9262 1100 Land Tax - 9262 1200 Payroll Tax - 9262 1300
Office hours	8:30 am – 4:30 pm Monday to Friday	Web Enquiry	Duties Enquiry Land Tax Enquiry Payroll Tax Enquiry
Postal	Office of State Revenue GPO Box T1600 PERTH WA 6845	Website	www.osr.wa.gov.au

Note: The information contained in this FACT SHEET is issued for guidance purposes only. It is not an exhaustive explanation of the provisions of the Acts and reference should be made to those Acts for additional details.