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Public Ruling General:

EXEMPT INSTITUTIONS AND EXEMPT CHARITABLE INSTITUTIONS

A Public Ruling, when issued, is the published view of the Commissioner on the particular topic to which it relates. It therefore replaces and overrides any existing private rulings, memoranda, manuals and advice provided by the Commissioner in respect of the issue/s it addresses. Where a change in legislation or case law (the law) affects the content of a Public Ruling, the change in the law overrides the Public Ruling—that is, the Commissioner will determine the tax liability or eligibility for a concession, grant, subsidy or exemption, as the case may be, in accordance with the law.

What this Ruling is about

1. The various state taxation statutes¹ administered by the Office of State Revenue each provide exemptions, in certain specified circumstances, from the relevant state taxes for organisations which qualify as exempt institutions. For the *Payroll Tax Act 1971* and the *Land Tax Act 1915* the term used is exempt charitable institution.
2. Each taxation statute defines exempt institutions² (or exempt charitable institutions for payroll tax and land tax purposes) with reference to a number of specific categories of organisations covering educational, religious and public benevolent activities. Also an institution may qualify if its principal object or pursuit is the fulfilling of a charitable object or promotion of the public good (not being an object or pursuit that is a sporting, recreational, leisure or social pursuit or object or an object or pursuit declared by a regulation).
3. This Public Ruling explains the Commissioner's approach to determining whether an organisation qualifies as an exempt institution (or exempt charitable institution).

Ruling and explanation

Steps involved

4. The steps involved in determining whether an institution qualifies as an exempt institution (or exempt charitable institution) are as follows:
 - Step 1 Where relevant, establish that the organisation is an institution.

¹ *Duties Act 2001, Payroll Tax Act 1971 and the Land Tax Act 1915*

² Section 459(2) of the *Duties Act 2001*, s.14(1) of the *Payroll Tax Act 1971*, s.13A(1) of the *Land Tax Act 1915*

- Step 2 Where relevant, establish that the constituent documents prohibit distributions of income or property to members and the income and property is used solely for promoting its objects.
- Step 3 Determine the institution's principal object and pursuit.
- Step 4 Establish that the principal object is a qualifying object.
- Step 5 Determine whether the principal object is a disqualified object.
- Step 6 Establish that the organisation is pursuing its principal object.
- Step 7 Consider which provision of the particular taxation statute the taxpayer should apply for exemption under. Specific provisions should be applied prior to general provisions.
- Step 8 Make application to the Commissioner detailing why the organisation should qualify for exemption.

Step 1 Where relevant, establish that the organisation is an institution

5. In most cases, entitlement to exemption is dependent upon the organisation being an *institution*.
6. That term is defined in the *Oxford Dictionary* as:
an establishment, organisation or association, instituted for the promotion of some object, especially one of public utility, religious, charitable, educational, etc., e.g. as church, school, college, hospital, asylum, reformatory, mission, or the like; as a literary and philosophical institution; a deaf and dumb institution ... etc.
7. This definition was quoted with approval by Higgins J. in *Young Men's Christian Association of Melbourne v F C of T*.³ A shortened form of this definition contained in the Shorter Oxford English Dictionary has also been adopted by the High Court; see *Stratton v Simpson*.⁴
8. Ordinarily, the term will connote more than a mere trust. In *Minister of National Revenue v Trusts & Guarantee Co Ltd*,⁵ the Privy Council held that a trust to pay a fund and accumulations to a municipal council for the benefit of the aged and poor was a charitable trust but not a charitable institution. Lord Romer said at p.149:
*In view of the language that has in fact been used, it seems to their Lordships that the charitable institutions exempted are those which are institutions in the sense in which boards of trade and chambers of commerce are institutions, such, for example, as a charity organisation society, or a society for the prevention of cruelty to children. The trust with which the present appeal is concerned is an ordinary trust for charity...An ordinary trust for charity is, indeed only a charitable institution in the sense that a farm is an agricultural institution.*⁶
9. An organisation will therefore require some form of administrative structure to attain the status of an institution.

³ (1926) 37 CLR 351 at 361

⁴ (1970) 125 CLR 138 at 158

⁵ [1940] AC 138

⁶ See also Case X13 90 ATC 165

Step 2 Where relevant, establish that the constituent documents prohibit distributions of income or property to members

10. In specified circumstances under the *Payroll Tax Act 1971* and the *Land Tax Act 1915*⁷, an institution will not qualify for exemption unless under its constitution, however described:
 - (a) its income and property is used solely for promoting its objects and
 - (b) no part of its income or property is to be distributed, paid or transferred by way of bonus, dividend or other similar payment to its members and
 - (c) on its dissolution the assets remaining after satisfying all debts and liabilities must be transferred to some institution having similar objects.

11. In specified circumstances under the *Duties Act 2001*⁸, an institution will not qualify for exemption unless under its constitution, however described:
 - (a) its income and property is used solely for promoting its objects and
 - (b) no part of its income or property is to be distributed, paid or transferred by way of bonus, dividend or other similar payment to its members and
 - (c) on its dissolution, the assets remaining after satisfying all debts and liabilities must be transferred
 - (i) to an institution that, under s.459 of the *Duties Act 2001*, may be registered or
 - (ii) to an institution the Commissioner is satisfied has a principal object or pursuit that is charitable or promoting the public good or
 - (iii) for a purpose the Commissioner is satisfied is charitable or for the promotion of the public good.

Step 3 Where relevant, determine the institution's principal object and pursuit

12. Where the statute requires⁹ determination of the institution's principal object and pursuit, the institution's constituent documents must be produced for perusal.

13. Constituent documents are commonly drafted widely and it is necessary to determine whether any of an institution's objects may disqualify it from entitlement to exemption. In these circumstances, a distinction must be drawn between:
 - (a) independent and
 - (b) ancillary, incidental or dependent objects.

⁷ For example ss.13A(1)(d) and 13A(1)(e) of the *Land Tax Act 1915*, paragraphs (a), (b),(c) and (d) of the definition of 'exempt charitable institution' in s.14(1) of the *Payroll Tax Act 1971*

⁸ Section 459(5) of the *Duties Act 2001*

⁹ For example the principal object is not relevant for s.459(2)(c) of the *Duties Act 2001*

14. The following approach will be taken to establish the institution's true nature, objects and activities.
- (a) The constituent documents will be examined to ascertain what is the main or dominant purpose.
 - (b) To determine what is the main or dominant purpose, the objects contained in the constituent documents will not be examined disjunctively. Rather, they will be examined in conjunction with one another and in light of the circumstances in which the organisation was formed and of the manner in which the organisation is fulfilling the purpose for which it was established.
 - (c) A non-charitable object which is expressed to be, and is accepted by the Commissioner as, a means of achieving the entity's principal object will be treated as ancillary to the principal object and will not disqualify the entity from treatment as an exempt institution (or exempt charitable institution).
 - (d) An institution's objects and activities may be of a mixed character – partly charitable and partly non-charitable. If the non-charitable object is not expressed to be, or is expressed to be but is not accepted by the Commissioner as, a means of achieving the institution's principal object, the question is determined not by the fact that the entity can direct its efforts to all of its objects but rather by what it does in pursuit of each of them. In such cases, the institution's activities will be examined. If those activities are mainly or predominantly directed towards the charitable object, the non-charitable objects will be treated as ancillary or incidental to that object.
 - (e) The question is dependent upon the intrinsic character of the object which the institution promotes and not upon the scope of the benefits which may result from its transactions. The fact that ancillary or subsidiary functions may indirectly and incidentally be of benefit to members of the institution does not destroy the exemption claimed.
15. This approach is consistent with the relevant case law.¹⁰

Step 4 Establish that the principal object is a qualifying object

16. The institution's principal object and pursuit must be one which falls within one of the categories listed in the taxation statutes. Where an institution qualifies as an exempt institution or exempt charitable institution under more than one provision, the more specific provision should be applied.

Step 5 Determine whether the principal object is a disqualified object

17. Despite the fact that an institution's principal object and pursuit may fulfil a charitable object or an object promoting the public good, the entity will be disqualified from obtaining an exemption where that object or pursuit involves a leisure, recreational, social or sporting activity. For example, an institution the principal object and pursuit of which is education will not qualify as an exempt institution if its activities, considered objectively, also have a leisure or social purpose.

¹⁰ *The Royal Australasian College of Surgeons v FC of T* (1943) 68 CLR 437, *Nungera Co-operative Society Ltd v Maclean Shire Council* (1991) 73 LGRA 178, *Barclay & Ors v Treasurer of Queensland* 95 ATC 4496

Step 6 Establish that the organisation is pursuing its principal object

18. The institution must pursue its principal object. In this respect, the institution will be required to produce evidence of the nature of its activities and how those activities further the attainment of its principal object.

Step 7 Consider under which provision of the particular statute the taxpayer should apply for exemption. Specific provisions should be applied prior to general provisions.

19. Separate Public Rulings¹¹ are issued in relation to determining whether an institution's principal object and pursuit qualifies it as an exempt institution (or exempt charitable institution) on the basis either that it pursues the relief of poverty, is a public benevolent institution or its principal object or pursuit is the fulfilling of a charitable object or promotion of the public good¹².

Step 8 Make application to the Commissioner detailing why the organisation should qualify for exemption.

20. The general guidelines in this Public Ruling are subject, in each case, to the requirements of the relevant statutory provisions. In particular, statutes specify the use to which property must be put as a condition of exemption.

Date of effect

21. This Public Ruling takes effect from 30 June 2009.

David Smith
 Commissioner of State Revenue
 Date of Issue 3 July 2009

References

Public Ruling	Issued	Dates of effect	
		From	To
GEN003.2	3 July 2009	30 June 2009	29 June 2010
GEN003.1	24 February 2009	24 February 2009	29 June 2009
Supersedes Revenue Ruling G 2.3	1 July 2005	1 July 2005	23 February 2009

¹¹ Public Ruling GEN004—*Relief of poverty*, Public Ruling GEN005—*Public benevolent institutions* and Public Ruling GEN006—*Guidelines as to charitable object or an object promoting the public good*

¹² It is a ministerial declaration for land tax and payroll tax purposes