

| Contents | Page |
|---------------------------|------|
| What this Ruling is about | 1 |
| Ruling and explanation | 2 |
| Date of effect | 7 |
| References | 7 |

Public Ruling General:

GUIDELINES AS TO CHARITABLE OBJECT OR AN OBJECT PROMOTING THE PUBLIC GOOD

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 *Pay-roll Tax Act 1971* and the *Land Tax Act 1915* the term used is exempt charitable institution.
2. Each relevant statute defines exempt institutions² (or exempt charitable institutions for the pay-roll 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 good³ (not being an object or pursuit that is a sporting, recreational, leisure or social pursuit or object or an object or pursuit declared under a regulation).
3. This Public Ruling provides guidelines on the relevant case law governing when institutions may be institutions whose principal object or pursuit is the fulfilling of a charitable object or promotion of the public good.
4. The terms of each relevant statute must also be satisfied if an institution which qualifies as an exempt institution (or exempt charitable institution) is to obtain exemption from the relevant state taxes in relation to a particular matter.

¹ *Duties Act 2001*, *Pay-roll Tax Act 1971* and the *Land Tax Act 1915*

² Sections 459(2)–(4) of the *Duties Act 2001*, s.14(1) of the *Pay-roll Tax Act 1971*, s.13A(1) of the *Land Tax Act 1915*

³ For pay-roll tax and land tax, this is a Minister's discretion.

5. Public Ruling GEN003—*Exempt institutions and exempt charitable institutions* sets out the Commissioner's approach to determining whether an institution qualifies as an exempt institution (or exempt charitable institution). This Public Ruling should be read in conjunction with that ruling.

Ruling and explanation

Conditions

6. In determining whether an institution may qualify under s.459(3) of the *Duties Act 2001*, paragraph (c) of the definition of exempt charitable institution in s.14(1) of the *Pay-roll Tax Act 1971* or s.13A(1)(f) of the *Land Tax Act 1915*, the following conditions, amongst others, must be met:
- (a) the principal object or pursuit of the institution must be the fulfilling of a charitable object or promotion of the public good and
 - (b) the object and pursuit must be directed to the public benefit.⁴

Condition (a) – charitable object or object promoting the public good

7. In *Commissioners for Special Purposes of Income Tax v Pemsel*⁵ (Pemsel's case), the House of Lords identified four categories of trusts for charitable purposes⁶, being:
- (a) Trusts for the relief of poverty
 - (b) Trusts for the advancement of education
 - (c) Trusts for the advancement of religion and
 - (d) Trusts for other purposes beneficial to the community.
8. The state taxation statutes provide specifically for an institution whose principal object or pursuit is the relief of poverty.⁷ Those specific provisions should be applied first, as they do not have a public benefit requirement.⁸ For example, taxpayers that submit that their principal object or pursuit is the relief of poverty should seek exemption under the specific provision relating to relief of poverty rather than the general provision.
9. The state taxation statutes provide specifically for institutions that are a religious body or a body that is controlled by, or associated with, a religious body and whose principal object or pursuit is the conduct of activities of a religious nature.⁹ As the specific provision should be applied prior to considering the general provision, those specific provisions should be applied first. If the organisation is not within the specific provisions dealing with religion,

⁴ Section 459(3) of the *Duties Act 2001* and the various minister's discretion provisions of the other statutes are directed towards the common law notion of charitable trust. The common law notion of charitable trust requires that the object and pursuit of the charitable trust must be directed to the public benefit.

⁵ [1891] A.C. 531

⁶ [1891] AC 531 at 583

⁷ Section 459(2)(h) of the *Duties Act 2001*, s.14(1) of the *Pay-roll Tax Act 1971*, s.13A (1)(e)(iv) of the *Land Tax Act 1915*

⁸ Refer Public Ruling GEN004—*Relief of poverty*

⁹ Section 459(2)(a) of the *Duties Act 2001*, s. 14(1) of the *Pay-roll Tax Act 1971*, ss.13A(1)(g) and 14 of the *Land Tax Act 1915*

consideration should then be given to whether the institution is one for the advancement of religion generally.

10. The state taxation statutes provide specifically for institutions that are educational bodies such as a primary or secondary school.¹⁰ Those specific provisions should be applied first, as they do not have a public benefit requirement. If the institution is not within the specific provisions dealing with education, consideration should then be given to whether the institution is one for the advancement of education generally.

Relief of poverty

11. Relief of poverty is dealt with in Public Ruling GEN004—*Relief of poverty*. Trusts for the relief of poverty satisfy condition (a) above.

Advancement of education

12. Trusts for the advancement of education satisfy condition (a) above.
13. Charitable purposes for the advancement of education extend beyond gifts to particular educational entities. The following should be noted regarding the advancement of education.
 - (a) Trusts with an object of increasing knowledge (eg pure research) without spreading that knowledge would not be charitable.
 - (b) Although the promotion of sport has been found not to be a charitable purpose, the promotion of, and provision of prizes for, sport at schools has been held to be for the advancement of the educational work of a school through physical development.
 - (c) Charitable educational trusts, include the promotion of education generally as well as particular branches of study including drama, music, science, law, technical training, medicine, nursing, engineering and geology.

Advancement of religion

14. Trusts for the advancement of religion satisfy condition (a) above.
15. What constitutes a 'religion' has been considered by the High Court in *Church of New Faith v. The Commissioner of Pay-roll tax (Vic.)*¹¹. In that case the High Court held that the beliefs, practices and observances of the Church of New Faith (Scientology) were a religion in Victoria.
16. At the least there is a need that the 'religion' promotes a belief in a supernatural Being, Thing or Principle. The test of religion is not confined to theistic religions. Theistic religions are those where there is a belief in the existence of a god supernaturally revealed to man and sustaining a personal relation to his creatures.
17. Religion is not limited to Christian beliefs.
18. The purpose may be stated in general or specific terms. Institutions for promoting religion, for the worship of God or for the spread of Christianity will qualify. There must, however, be

¹⁰ Section 459(2)(d) of the *Duties Act 2001*, s.14(1) of the *Pay-roll Tax Act 1971*, s.13A(1)(e)(i) of the *Land Tax Act 1915*

¹¹ (1983) 154 CLR 120

more than an incidental connection with religion. For example, an institution establishing a religious daily newspaper will not qualify.

Object promoting the public good

19. The expression *object promoting the public good* is the second limb of condition (a) above. Those words equate to the fourth category of charitable trust identified in Pemsel's case: see paragraph 7 above.
20. The words require that the principal object and pursuit of the institution be for *purposes beneficial to the community*,¹² other than for the relief of poverty, the advancement of education or the advancement of religion.
21. Purposes that are of general public utility are not necessarily charitable. The way in which courts have decided which objects fit within the concept of charity is to first determine whether the object is set out in the preamble to the *Statute of Elizabeth*.¹³ If the object fits within any of those listed, it is clearly charitable. Because this statute does not provide an exhaustive list of what is within the concept of charity, courts have determined whether an object comes within the spirit and intention of the statute by having regard to the decided cases.
22. There are a number of cases that have been held to be charitable yet do not fall within the first three classifications mentioned in Pemsel's case at paragraph 7. A convenient list of categories which is by no means exhaustive would include the following:
 - (a) A trust for the whole community
A gift 'unto my country England' has been held to be charitable.
 - (b) Objects of public utility
Charitable objects under this heading often relate to the category listed in the preamble to the *Statute of Elizabeth* which provides for the repair of bridges, ports, havens, causeways, churches, sea banks and highways. Again the question to be asked is whether the object is within the spirit of this statute. Purposes, which have been found to be charitable under this category, include:
 - the repair of bridges and highways
 - the provision of a water supply
 - the construction of public amenities in a defined locality such as a public library and
 - the promotion of agriculture and horticulture.

Many of the activities found to be charitable under this category are the types that may be provided by a government department. However, if the disposition is found to be provided for the work of the department it has been held that this is not for a charitable purpose.
 - (c) The relief of distress
This includes purposes for the advancement of medical knowledge or the treatment of sickness as well as the alleviation of other forms of distress. Gifts to medical societies,

¹² That is the fourth category of charitable trusts in Pemsel's case

¹³ 'Statute of Elizabeth' is a reference to the preamble to the Statute of Charitable Uses 1601 43 Eliz., c.4

hospitals, nursing associations and the victims of cyclones are examples of purposes that are under this category.

(d) Trusts for a section of the community

This includes associations which have objects which are beneficial to the public and within the spirit of the *Statute of Elizabeth* (eg the YMCA). Gifts, which will increase the efficiency of the armed services, have been found to be charitable including gifts for the benefit of volunteer corps, returned soldiers and to provide prizes for competition amongst cadets and officers.

(e) Purposes that uplift the moral tone of the community

Trusts for animals as such are not charitable. However, where the needs of animals are met in a manner that stimulates the public's finer feelings, the trust is likely to be charitable. Examples include gifts for the prevention of cruelty to animals, to promote prosecutions for cruelty to animals, and for homes for lost cats and dogs. The public benefit regarding the prevention of cruelty to animals lies in the fact that public morality is promoted by checking an innate tendency to cruelty.

(f) Other

Gifts for benevolent or philanthropic objects have been held not to be charitable because these words were general and may include purposes that are not within the spirit of the *Statute of Elizabeth*. However, in Queensland, the *Charitable Funds Act 1958* provides that a trust for benevolent or philanthropic purposes is valid as a charitable trust provided the fund forming the trust property has been provided voluntarily by public subscription.¹⁴

- If the objects of a trust are to secure a change in some law it will fail as a charitable trust. The encouragement of temperance is charitable whereas an object that sets out to obtain the abolition of the sale of liquor by legislation is not.
- Gifts for the encouragement of sport are not charitable. However, a gift to encourage sport at a school is charitable on the grounds that it forms part of the child's education and should be considered under the charitable category of the advancement of education.
- A trust, which has as its dominant purpose hospitality or entertainment, is not charitable.
- Where a trustee may distribute funds as he sees fit, this will not be for a charitable purpose even though the gift to the ultimate recipient might otherwise have been considered charitable. However, if a trustee may distribute funds among any charitable entities he selects, this is valid for charitable purposes.
- While the distribution of funds to charitable entities has been found to be charitable, fund raising, of itself, is not considered to be charitable. Fund raising is generally found as an object ancillary to a main object.
- The relief of aged, impotent and poor people is listed in the preamble to the *Statute of Elizabeth* and is considered to be charitable. The words are meant to be read disjunctively in that relief does not have to be to persons who are aged as well as impotent and poor to be considered to be charitable. 'Impotent' relates to physical illness and disability.

¹⁴ A trust which met these qualifications would also need to be an institution before an exemption could be considered.

Condition (b) - public benefit

23. A public benefit in the institution's activities must be established before s.459(3) of the Duties Act or the minister's discretion provisions of the other state taxation statutes will apply. Where a particular benefit is also obtained by a person or group not being a section of the public, the organisation will have to establish that the particular benefit so obtained is not the principal object or pursuit of the institution but rather is merely incidental to the public benefit. The former will disqualify the institution; the latter will not.
24. The following principles provide a guide to distinguishing between public and private purposes.
- (a) The mere fact that only a limited number of persons can benefit from the trust does not preclude the purpose from being a public one. However, the potential beneficiaries must not be negligible numerically.
 - (b) The character that marks the potential beneficiary must not be a relationship to a particular person or persons such as one of blood or employment.
 - (c) The fact that persons not in need of charity may take advantage of facilities intended for the great majority of a class in need of assistance does not detract from the charitable nature of purposes otherwise charitable.
 - (d) A group which takes power in itself to admit or exclude members of the public through some arbitrary test is, in a sense, an artificial institution which exists for the benefit of its members as members and not as members of the public. Such groups include clubs, literary societies and trade unions which can not properly be called a section of the public.
 - (e) Public benefit is presumed (unless the contrary is proved) in cases of trusts for the relief of poverty and the advancement of religion and education (the first three classes of charitable trusts mentioned in *Pemsel's case*). However, public benefit must be proved for other cases i.e. the fourth class of charitable trusts, being trusts for other purposes beneficial to the community.

Public v private benefit

25. Cases can arise where there is both a public and a private benefit in the pursuit of the object. In these cases, it is necessary to determine which benefit represents the principal object or pursuit of the organisation.
26. In *Barclay & Ors v Treasurer of Queensland*,¹⁵ Mackenzie J held that a building industry training fund was not disqualified from obtaining a Ministerial declaration under s.59E(1)(d) of the *Stamp Act 1894* even though there was a private benefit obtained by members of the construction industry.

The underlying premise in the objects of the Fund is that the level of skills of those engaged in the building and construction industry will be enhanced by enhancing their level of education and training through the medium of facilities assisted by the Fund and that thereby the public would benefit from better and more efficient services and products.

It is true that the industry as a whole may benefit by reason of its enhanced efficiency but what is the principal object and pursuit of the fund is to be determined by an overall

¹⁵ (1995) 95 ATC 4496

view of its structure and operation. In my view, any benefit to any particular individual in the industry generally is incidental rather than the principal object and pursuit of the Fund¹⁶.

27. A different result would have ensued had the Court determined that the industry benefit was the principal object of the fund to which the public benefit was ancillary or incidental.
28. Each case must be considered on its own facts.

Date of effect

29. This Public Ruling takes effect from the date of issue.

David Smith
 Commissioner of State Revenue
 Commissioner of Land Tax
 Date of Issue 24 February 2009

References

| Public Ruling | Issued | Dates of effect | |
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| GEN006.1 | 24 February 2009 | 24 February 2009 | 29 June 2009 |
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¹⁶ at 4500