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Public Ruling General:

PUBLIC BENEVOLENT 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 *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 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 by a regulation).
3. This Public Ruling explains the Commissioner's view of when institutions are exempt institutions (or exempt charitable institutions) on the basis that they are public benevolent institutions.
4. The terms of each of the relevant statutes 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 Section 459(2) 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

Benevolence

6. The meaning of ‘benevolence’ which has been generally accepted is that given in *Perpetual Trustee Co Ltd v Commissioner of Taxation (Cth)*⁴ where Dixon J. said that a public benevolent institution means an institution organised for the relief of poverty, suffering, distress or misfortune.
7. In *Australian Council of Social Service Inc v Commissioner of Pay-roll Tax (NSW)*,⁵ the New South Wales Court of Appeal held that the Council was not a public benevolent institution. Priestly JA, with whom Mahoney JA agreed, said at 4241–4242:
- To me, the word ‘benevolent’ in the composite phrase ‘public benevolent institution’ carries with it the idea of benevolence exercised towards persons in need of benevolence, however manifested. Benevolence in this sense seems to me to be quite a different concept from benevolence exercised at large and for the benefit of the community as a whole even if such benevolence results in relief of or reduction in poverty and distress. Thus it seems to me that ‘public benevolent institution’ includes an institution which in a public way conducts itself benevolently towards those who are recognisably in need of benevolence but excludes an institution, which although concerned, in an abstract sense, with the relief of poverty and distress, manifests that concern by promotion of social welfare in the community generally.*
8. In determining whether an institution is a public benevolent institution, the number and characteristics of the persons benefited by the institution in question are determinative of the question. What is required is that a section of the public benefits from the institution’s activities rather than some benefit being conferred upon the public as a whole.
9. Some of the factors to which regard will be had include:⁶
- (a) Constitution of the organisation
 - (b) Membership of the managing and governing body
 - (c) Sources of moneys
 - (d) Its public accountability
 - (e) Class or classes of recipients of its benevolence
 - (f) Scope and nature of its work
 - (g) Whether fees are payable by recipients and, if so, their nature
 - (h) Whether the overall work is beneficial to the public at large⁷.

⁴ (1931) 45 CLR 224

⁵ (1985) 85 ATC 4235

⁶ *Tangentyere Council Inc v Commissioner of Taxes (NT)* (1990) 90 ATC 4352

⁷ Refer to requirements stated in paragraph 8 above

Incidental activities

10. Status as a public benevolent institution is not lost by the institution's involvement in other non-benevolent incidental activities.

Charging for services

11. The fact that an institution charges for services does not preclude it from being characterised as a public benevolent institution.⁸

Aboriginal Institutions

12. Notice will be taken of the fact that the recipients of the institution's benevolence are Aboriginal persons as that gives a special character to the institution's purposes which may render an otherwise neutral purpose, charitable. However, each case will still be considered on its own merits.
13. There have been a number of cases⁹ where judicial notice has been taken of the plight of Aboriginal persons.
14. The cases in which Aboriginal organisations have been held to be public benevolent institutions concerned Aboriginal persons clearly in need of assistance and who epitomised the Aboriginal persons referred to in judicial pronouncements concerning the plight of Aboriginal persons generally. That may not be so in every case. Consequently, the Commissioner will consider the facts of each case.
15. Judicial notice is taken of the fact that Aboriginal persons are a disadvantaged section of the public. Consequently, an Aboriginal housing society would ordinarily be engaging in the relief of poverty, suffering, distress or misfortune. However, there may be special factors that preclude this conclusion.

Public v private benefit

16. A public benefit in the organisation's activities must be established before an institution can be regarded as a public benevolent institution.
17. The public benefit required is in the sense that a section of the public benefits from the organisation's activities rather than some benefit being conferred upon the public as a whole.¹⁰
18. This requirement differs to that for institutions seeking to qualify as being engaged in the relief of poverty (where no public benefit is required) and institutions that qualify under s.459(3) of the *Duties Act 2001* or seeking the exercise of the Minister's discretion under the *Payroll Tax Act 1971* and the *Land Tax Act 1915*.

⁸ *Commissioner for Pay-roll Tax (Vic) v Cairnmillar Institute* (1992) 92 ATC 4307

⁹ *In re Mathew* (1951) VLR 226 at p.232, *Aboriginal Hostels Ltd v Darwin City Council* (1985) 55 LGRA 414 at p.211, *Nungera Co-operative Society Ltd v Maclean Shire Council* (1991) 73 LGRA 178

¹⁰ *Australasian Council of Social Service Inc. v Commissioner of Pay-roll Tax (NSW)* (1985) 85 ATC 4235

Date of effect

19. 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	
		From	To
GEN005.1	24 February 2009	24 February 2009	29 June 2009
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