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## **Public Ruling**

### **Payroll Tax Act—Harmonised:**

#### **EXEMPT CHARITABLE INSTITUTIONS – MEANING OF ‘EXCLUSIVELY’**

*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 *Pay-roll Tax (Harmonisation) Amendment Act 2008* amended the *Payroll Tax Act 1971* (the Payroll Tax Act) with effect from 1 July 2008 to harmonise certain aspects of Queensland's payroll tax system with the systems of other jurisdictions.
2. Section 14(2) of the Payroll Tax Act provides an exemption from payroll tax for the wages paid by an exempt charitable institution (as defined in s.14(1)).<sup>1</sup>
3. Depending on the nature of the exempt charitable institution, s.14(2) of the Payroll Tax Act restricts the exemption to wages paid or payable to a person engaged exclusively in the work of the exempt charitable institution, where such work (exempt work) is:
  - (a) for a qualifying exempt purpose (as defined in s.14(1)) or
  - (b) of a kind ordinarily performed in connection with the conduct of that type of exempt charitable institution.
4. The primary function of the exempt charitable institution is referred to in this Public Ruling as ‘the primary purpose’.
5. This Public Ruling explains the interpretation adopted by the Commissioner of State Revenue (the Commissioner) of the term ‘exclusively’ as referred to in s.14(2) of the Payroll Tax Act in respect of exempt charitable institutions.

<sup>1</sup> See also Public Ruling GEN003—*Exempt institutions and exempt charitable institutions*, 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*

## Ruling and explanation

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6. The employees of an exempt charitable institution may belong to one of the following categories:
  - (a) Category I – persons engaged exclusively in exempt work
  - (b) Category II – persons engaged in administrative/management roles and
  - (c) Category III – persons engaged wholly in business activities undertaken by the exempt charitable institution to fund the primary purpose.
7. Wages paid to persons in Category I, such as carers and counsellors, clearly satisfy the requirements of s.14(2) of the Payroll Tax Act and are exempt from payroll tax.
8. On a strict interpretation of s.14(2) of the Payroll Tax Act, persons in Category II are not considered as being engaged *exclusively* in exempt work. Therefore, wages paid to these personnel are technically excluded from the exemption.
9. However, where such persons are engaged *predominantly* in exempt work, the Commissioner will regard those persons as being engaged exclusively in exempt work for the purposes of s.14(2) of the Payroll Tax Act. A Chief Executive Officer (CEO) would typically fall within this category. Other persons such as administrative staff may also fall within this category. Accordingly, the Commissioner will regard wages paid to those persons as exempt from payroll tax.
10. Where a person's role and duties encompass both exempt work and business activities of the exempt charitable institution, but he/she is *not* engaged predominantly in exempt work, the wages paid to that person are always subject to payroll tax.
11. Wages paid to persons in Category III are subject to payroll tax even if the business activities of the exempt charitable institution are incidental and ancillary to its primary purpose. This is because these persons are not engaged either exclusively or predominantly in exempt work.

### Example

*The Helpers is an exempt charitable institution whose primary purpose is to provide short-term accommodation and meals to the needy. In order to generate additional funds, the organisation runs a plant nursery and employs staff to work in that business.*

*The Helpers employs a total of 90 persons engaged in the following capacities:*

- *60 persons are engaged directly in the provision of services to the needy*
- *two managers oversee those services*
- *eight persons provide administration and support services (five of these provide administrative/support services to the primary purpose only, two provide administrative/support services to both the primary purpose and the plant nursery activities, and one provides administrative/support services to the plant nursery business only)*
- *a CEO and a Financial Controller and*
- *18 persons engaged in the operation of the plant nursery business (the profits of which are used to fund The Helpers' primary purpose).*

*Wages paid to the following persons are clearly exempt from payroll tax:*

- *the 60 persons engaged directly in the provision of services to the needy*
- *the two managers engaged to oversee those services and*
- *the five administrative/support staff members providing services to the primary purpose only.*

*Wages paid to the following persons are clearly not exempt from payroll tax:*

- *the 18 employees engaged in the plant nursery business and*
- *the administrative/support staff providing services to the plant nursery business only.*

*Strictly speaking, the wages paid to the CEO, the Financial Controller and the two administrative/support staff that service both the primary purpose and plant nursery business are not wages paid to persons engaged exclusively in exempt work, because their roles and responsibilities also encompass the plant nursery business. However, the Commissioner will regard these wages as exempt from payroll tax as long as their duties and responsibilities are directed predominantly towards the primary purpose of the institution.*

12. Unless an exempt charitable institution:

- (a) pays wages to employees engaged in work other than exempt work or
  - (b) is otherwise deemed to have paid wages under the Payroll Tax Act
- in excess of the threshold, no payroll tax is payable.

## Date of effect

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

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

## References

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Public Ruling	Issued	Dates of effect	
		From	To
PTA009.2	3 July 2009	3 July 2009	15 March 2011
PTA009.1	24 February 2009	1 July 2008	2 July 2009