

Revenue Circular GEN010 - Charitable Organisations

CIRCULAR HISTORY

Circular number	Issued date	Dates of effect		Status
		From	To	
GEN010	25 November 2015	25 November 2015	–	Current

PREAMBLE

- Part 3A of the *Taxation Administration Act 1999* (TAA) provides for the definition of ‘charitable organisation’ for the purpose of ACT tax laws.
- This Revenue Circular sets out the relevant definitions for charitable organisations, explains the process by which some excluded organisations can apply for a Beneficial Organisation Determination (BOD) from the Commissioner for ACT Revenue (the Commissioner), and outlines the concessions and exemptions available to these organisations.

CIRCULAR

Meaning of ‘organisation’

- Under section 18A of the TAA, an ‘organisation’ includes an association, society, institution or body.

Meaning of ‘charitable organisation’

- Under section 18B of the TAA a ‘charitable organisation’ means an organisation carried on for a religious, educational, benevolent or charitable purpose, but does not include an organisation carried on for securing pecuniary profits to its members.
- Certain types of organisation are defined as ‘excluded organisations’ (see below). An excluded organisation is not eligible to be treated as a charitable organisation unless the Commissioner makes a BOD in respect of it.

Exemptions and concessions—charitable organisations

- An organisation regarded as charitable under section 18B of the TAA is eligible for a number of concessions or exemptions in relation to duty, payroll tax and rates, as detailed in the following table.

Act	Section	Concession or exemption	Exception(s)
<i>Duties Act 1999</i> (Duties Act)	232	Exemption from duty if the duty would be payable by a charitable organisation.	Does not apply to organisations related to an excluded organisation. Under subsection (3) an organisation is 'related' if it holds dutiable property as trustee for an excluded organisation as beneficiary.
<i>Payroll Tax Act 2011</i> (Payroll Tax Act)	schedule 2, part 2.2	Exemption from payroll tax for wages paid or payable by charitable organisation.	Does not apply to charitable organisations carried on for an educational purpose, unless the organisation is a school or college (other than a technical school or college) providing education at or below secondary level.
<i>Rates Act 2004</i> (Rates Act)	8 (1) (iii)	Land is not rateable if leased to a charitable organisation and used exclusively for religious, educational, benevolent or charitable purposes.	Does not apply to land used exclusively for community housing purposes.

Meaning of 'excluded organisation'

7. Section 18C of the TAA defines five types of excluded organisation as outlined in the table below:

Class of organisation	Definition	Can apply for BOD?
Political party	Organisation that has, as one of its purposes, the promotion of the election to the Legislative Assembly, Commonwealth parliament or State parliament of a candidate endorsed by it.	No
Industrial organisation (trade union)	<ul style="list-style-type: none"> Association of employees or association of employers registered or recognised under <i>Fair Work (Registered Organisations) Act 2009</i> (Cwlth); 	No

Class of organisation	Definition	Can apply for BOD?
	<ul style="list-style-type: none"> • Association of employees registered or recognised as trade union under State or Territory law; • Association of employers registered or recognised under State or Territory law; or • Association of employees with exclusive or predominant purpose of protecting and promoting employees' interests in matters concerning their employment. 	
Organisation that promotes trade, industry or commerce	Organisation that has, as one of its purposes, promoting or advocating for trade, industry or commerce, whether generally or limited to a particular kind.	Yes
Professional organisation	Organisation that has, as one of its purposes, the promotion of the interests of its members in a profession.	Yes
Class of organisation prescribed by regulation	As prescribed by regulation.	If prescribed by regulation

- The purposes of an organisation are determined having regard to all the relevant circumstances including the organisation's stated objects (if any) and its activities.
- For political parties, organisations that promote trade, industry and commerce, and professional organisations, only one of the purposes of the organisation needs to meet the respective definition in order for it to be excluded. The relevant purpose does not have to be a main, exclusive or predominant purpose of the organisation; the organisation will be excluded even if the relevant purpose is incidental or ancillary.
- For organisations to which section 18C (2), definition of **industrial organisation**, paragraph (d) applies, the purpose of protecting and promoting the employees' interests in matters concerning their employment must be an exclusive or predominant purpose of the organisation.

Beneficial organisation determinations

- If an excluded organisation is a professional organisation or an organisation that promotes trade, industry or commerce, it may make an application to the Commissioner for a BOD. Political parties and industrial organisations are not entitled to make a BOD application.
- An organisation prescribed by regulation may apply for a BOD if this is provided for under the regulation.

13. The organisation must provide the Commissioner with the following information in support of its application:
 - a. a completed application form;
 - b. the organisation’s constitution, memorandum of association or other establishing document, including any amending documents;
 - c. the organisation’s most recently published annual reports and/or financial statements;
 - d. a comprehensive outline of all activities carried out by the organisation in the conduct of its business; and
 - e. if the organisation is seeking a rates exemption—information about the use of the land for which the exemption is sought.
14. The Commissioner must be satisfied of the following considerations before making a BOD:
 - a. the predominant purpose of the organisation is to advance religion, advance education, relieve poverty, or otherwise benefit the community;
 - b. the objects and activities of the organisation that make the organisation an excluded organisation are not significant in relation to the purpose of the organisation considered as a whole; and
 - c. the purpose of the organisation is not, or is not intended to be, beneficial to a particular class of people (whether or not members of the organisation) rather than the community generally.
15. BODs are notifiable instruments made under the TAA.

Exemptions and concessions—organisations with BOD

16. A BOD takes effect on the day the organisation applied for a determination (rather than the date it is made).
17. A BOD will apply to an organisation’s tax liability as detailed in the table below:

Tax	Effect of BOD
Duty	Organisation is eligible for a duty exemption or concession (whichever is applicable) in relation to dutiable transactions entered into while the BOD is in effect.
Payroll tax	Organisation is eligible for a payroll tax exemption for a financial year in which the BOD is in effect.
Rates	Land leased by the organisation, and used exclusively for religious, educational, benevolent or charitable purposes, is eligible for an exemption from rates for a financial year in which the BOD is in effect.

Objections and appeals

18. The following decisions of the Commissioner are reviewable decisions under the TAA:
 - a. a refusal to make a BOD in respect of an organisation; or
 - b. a revocation of a BOD.

19. Organisations retain the right to lodge an objection through the regular procedures and have a decision reviewed in the ACT Civil and Administrative Tribunal (ACAT) and other courts, subject to the restrictions on reassessment outlined below.

Reassessments for organisations with a BOD

20. The Commissioner is required to reassess the duty, payroll tax or rates liability of an organisation with a BOD beginning on the day the BOD takes effect, unless the reassessment would be made more than 5 years after the BOD is made.
21. Organisations with a BOD are otherwise treated as any other charitable organisation for the purpose of seeking a reassessment. In addition to receiving prospective exemption from tax, organisations with a BOD may be able to receive refunds of any tax paid.

Reassessments for excluded organisations

22. For excluded organisations, to which a BOD does not apply, part 20 of the TAA prevents the Commissioner from making a reassessment under the state of the law that was in place prior to the commencement of the *Revenue (Charitable Organisations) Legislation Amendment Act 2015*.
23. In other words, excluded organisations cannot seek a reassessment from the Commissioner for periods before commencement of the amendments, on the basis that they were charitable organisations before the change in the law.
24. This limitation applies regardless of whether the organisation made a submission to the Commissioner or the ACAT (including an objection or appeal) about the matter. It is restricted to situations where the reassessment's purpose is to give effect to a decision that a now excluded organisation was or is a charitable organisation (and its tax liability was therefore nil or negligible).
25. Part 20 of the TAA does not apply if the organisation applies for and obtains a BOD from the Commissioner. If a BOD is in effect, the usual reassessment process will apply to the organisation (see paragraph 22).

SIGNED

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