

Payroll Tax Ruling PTA009

Payroll Tax Charitable Exemption – Meaning of Exclusively

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PREAMBLE

The *Payroll Tax Act* (the Act), which commenced on 1 July 2009, rewrites the *Pay-roll Tax Act* to largely harmonise it with the legislation of other states. One of the areas which has been harmonised relates to exempt non-profit organisations.

Section 48(1)(c) of the Act provides an exemption from payroll tax to the wages paid by a non-profit organisation having wholly charitable, benevolent, philanthropic or patriotic purposes (but not including a school, an educational institution, an educational company or an instrumentality of the Territory). Section 48(2) restricts the exemption to wages paid to a person engaged exclusively in work of a kind ordinarily performed in connection with the charitable, benevolent, philanthropic or patriotic purposes of the body.

The Commissioner of Territory Revenue (the Commissioner) is aware that uncertainty may arise where:

1. an organisation is established for both charitable and non-charitable purposes; or
2. an organisation that is charitable in the legal and technical sense has undertaken commercial activities to raise funds to finance their primary charitable function.

This Payroll Tax Ruling explains the interpretation adopted by the Commissioner of the term 'exclusively' as referred to in section 48(2)(b) of the Act in respect of charitable organisations. In doing so, this Payroll Tax Ruling clarifies the payroll tax treatment of wages paid to employees engaged in commercial activities and those who are engaged in both the charitable and non-charitable functions of the organisation.

RULING

The term 'charitable body' is not defined in the Act. Therefore the question of whether or not an organisation is a charitable body is determined in accordance with common law principles.

According to common law principles, a body is charitable in the technical and legal sense if:

1. it is established for the relief of poverty, the advancement of education, the advancement of religion or other purposes beneficial to the community; and
2. its objects are directed towards public benefit.

The Commissioner takes the view that an organisation established for both charitable and non-charitable purposes is not regarded as a charitable body unless the non-charitable purposes are merely incidental and ancillary to its main charitable purpose. For instance, some organisations that are charitable bodies in the technical and legal sense may undertake business activities in order to raise funds to finance their primary charitable purpose.

The employees of such a charitable body may belong to one of the following categories:

1. Category I - Persons engaged directly in the charitable work
2. Category II - Persons engaged in administrative/management roles
3. Category III - Persons engaged wholly in the business activities undertaken to fund its charitable work

Wages paid to persons in Category I, such as carers and counsellors, clearly satisfy the requirements of the section and are exempt from payroll tax.

On a strict interpretation of section 48(2) of the Act, persons in Category II are not considered as being engaged exclusively in the charitable work of the organisation. Therefore, wages paid to these personnel are technically excluded from the exemption.

However, where such persons are engaged predominantly in work associated with the body's charitable activities, the Commissioner will regard those persons as being engaged exclusively in charitable work. A Chief Executive Officer (CEO) would typically fall within this category. Others such as administrative staff or a bookkeeper who is responsible for the accounts of both the charitable body and business activities may also fall within this category. Accordingly, the Commissioner will regard wages paid to those persons as exempt from payroll tax.

Where a person's role and duties encompass both charitable and business activities, but he/she is not engaged predominantly in the body's charitable activities, the wages paid to that person are always subject to payroll tax.

Wages paid to persons in Category III are subject to payroll tax even if the business activities of the charitable body are incidental and ancillary to its main charitable purpose. This is because these persons are not engaged either exclusively or predominantly in charitable activities.

Example:

The Helpers is a fictitious charitable body 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:

1. *60 persons are engaged directly in the provision of charitable services to the needy;*
2. *two managers oversee the charitable services;*
3. *eight persons provide administration and support services (five of these provide administrative/support services to the charitable activities only, two provide administrative/support services to both the charitable and the plant nursery activities and one provides administrative/support services to the plant nursery business only);*
4. *a CEO and a Financial Controller; and*
5. *18 persons engaged in the operation of plant nursery business (the profits of which are used to funds The Helpers charitable activities).*

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

1. the 60 persons engaged directly in the provision of the charitable services;
2. the two managers engaged to oversee the charitable services; and
3. the five administrative/support staff members providing services to the charitable activities only.


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

1. the 18 employees engaged in the plant nursery business; and
2. 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 charitable activities and plant nursery business are not wages paid to persons engaged exclusively in the charitable work of the body, because their roles and responsibilities also encompass the non-charitable 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 charitable work of the organisation.

Unless a charitable body, such as The Helpers, pays wages to employees engaged in non-charitable activities in excess of the threshold, no payroll tax is payable. If any charitable body is unsure of its liability in this regard, it should seek clarification from the Territory Revenue Office.

Please note that rulings do not have the force of law. Each decision made by the Territory Revenue Office is made on the merits of each individual case, having regard to any relevant ruling. Commissioner's Guideline CG-GEN-001, which sets out information on the revenue publication system, is incorporated into and is to be read as one with this Ruling. All Circulars, Guidelines and Rulings are available from www.revenue.nt.gov.au.



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