

IT 2438 - Income tax: Interpretation of the term 'public benevolent institution' for gift deduction purposes

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TAXATION RULING NO. IT 2438

INCOME TAX : INTERPRETATION OF THE TERM 'PUBLIC
BENEVOLENT INSTITUTION' FOR GIFT DEDUCTION PURPOSES

F.O.I. EMBARGO: May be released

REF

N.O. REF: 84/508-6

DATE OF EFFECT:

B.O. REF:

DATE ORIG. MEMO ISSUED:

F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1218667	GIFTS PUBLIC BENEVOLENT INSTITUTION	78(1) (a) (ii)

PREAMBLE

A 1985 decision of the NSW Court of Appeal has led to a review of the applicable guidelines in determining whether an organisation is a public benevolent institution.

2. In particular, the review turns on whether the organisation has to provide direct relief to persons requiring benevolent assistance, or whether it is sufficient for an organisation to play a merely supporting role in the benevolent process, not providing direct relief.

3. The High Court of Australia held in *Perpetual Trustee Company Limited v FCT* (1931) 45 CLR 224 that a public benevolent institution was an institution organised for the relief of poverty, sickness, destitution or helplessness. Over the years this decision was interpreted as meaning an organisation which provides direct relief for the abovementioned conditions.

4. In recent years, largely upon the basis of the decision of the Supreme Court of the A.C.T. in *Australian Council for Overseas Aid v FCT* 80 ATC 4575, 11 ATR 343, a small number of organisations which do not provide direct benevolent assistance, but which play a role in the benevolent process, have been accepted as public benevolent institutions. Members of the Australian Council for Overseas Aid were predominantly public benevolent institutions, giving assistance in the overseas aid field. The Council itself did not provide overseas aid but co-ordinated the activities of the member bodies, consulted with governments and provided education aimed at stimulating fund raising by its members. The Court held that it was a public benevolent institution and saw nothing in the abovementioned decision of the High Court of Australia to counter the proposition that an institution may be organised for benevolent relief even though it performs only one of a number of steps in the benevolent process.

5. The issue was considered by the N.S.W. Court of Appeal in *Australian Council of Social Service Inc. & Anor v Commissioner*

of Pay-roll Tax (N.S.W.) 85 ATC 4235, 16 ATR 394. The Council's main functions and aims were directed towards providing aid for the relief of poverty and distress by performing advisory, informative, research and advocacy functions. Its funds were not used for the purposes of direct relief to the poor or other disadvantaged persons. The Court held that the Council was not a public benevolent institution and described that term as including an institution which in a public way conducts itself benevolently towards those who are recognisably in need of benevolence. On the other hand, the term excludes an institution which, although concerned in the abstract sense with the relief of poverty and distress, manifests concern by the promotion of social welfare in the community generally.

RULING

6. The principles arising out of the Australian Council of Social Service decision are to be applied in determining whether an organisation is a public benevolent institution. To be accepted as such, an institution must be directly concerned with the provision of relief to persons requiring benevolent relief.

7. Recognition for these purposes will not be given to organisations which merely play a general role in the field of benevolent relief e.g. conducting research in the particular field or educating the public about the particular problem. Similarly, an organisation which merely provided information on welfare and/or similar services to the community at large would not be regarded as a public benevolent institution. This is not of course to say that the income of the types of organisations referred to in this paragraph would not qualify for exemption from income tax as charitable institutions in terms of paragraph 23(e) of the Income Tax Assessment Act - that is a matter for determination in the light of the particular factual situation.

8. The principles arising out of the Australian Council for Overseas Aid decision are to be applied only where the circumstances run parallel to those of that organisation.

COMMISSIONER OF TAXATION
6 August 1987