

TD 93/11 - Fringe benefits tax and income tax: is an organisation whose activities are predominantly charitable in nature always a 'public benevolent institution'?

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! This document has changed over time. This is a consolidated version of the ruling which was published on *28 January 1993*

This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVAAA of the *Taxation Administration Act 1953*, is a public ruling for the purposes of that Part. Taxation Ruling TR 92/1 explains when a Determination is a public ruling and how it is binding on the Commissioner. Unless otherwise stated, this Determination applies to years commencing both before and after its date of issue. However, this Determination does not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Taxation Determination

Fringe benefits tax and income tax: is an organisation whose activities are predominantly charitable in nature always a 'public benevolent institution'?

1. No.
2. Whether an organisation is charitable or benevolent depends on the nature of its activities and the circumstances of the person(s) to whom its activities are directed.
3. A public benevolent institution is defined as one which:
 - a. has as its main or principal object, the relief of poverty, sickness, suffering, distress, misfortune, destitution or helplessness;
 - b. is carried on without purpose of private gain for particular persons;
 - c. is established for the benefit of a section or class of the public;
 - d. the relief is available without discrimination to every member of that section of the public which the organisation aims to benefit; and
 - e. the aid is given directly to those in need.

(See *Perpetual Trustee Company Limited v F C of T* (1931) 45 C L R 224, *Australian Council for Overseas Aid v F C of T* 80 ATC 4575, 11 ATR 343 and *Australian Council of Social Services Inc & Anor v Commissioner of Pay-roll Tax* (N S W) 85 ATC 4235, 16 ATR 394).

4. The decision in *The Commissioners for Special Purposes of the Income Tax v John Frederick Pemsel* 1891 AC 531, 3 TC 53 is authority for the view that a charitable organisation must fall under one (or more) of the following heads:
 - a. for the relief of poverty;
 - b. for the advancement of education;
 - c. for the advancement of religion; or

- d. for other purposes beneficial to the community and not falling under any of the preceding heads.

5. Therefore, an organisation whose activities are charitable is not a public benevolent institution unless the organisation also meets, among other things, the definition in paragraph 3.

Examples:

(i) *A non-profit organisation which promotes the health of women is charitable. A non-profit organisation which provides medical facilities to disadvantaged women who otherwise do not have access to these facilities is benevolent.*

(ii) *A non-profit organisation which educates the public about a particular disease is charitable. A non-profit organisation which educates and trains sufferers of the disease to overcome that disease or its effects is benevolent.*

(iii) *A non-profit organisation which provides community or neighbourhood facilities for benevolent institutions is charitable. A non-profit organisation which provides the facilities directly to the community or neighbourhood disadvantaged is benevolent.*

Commissioner of Taxation

28/1/93

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Related Determinations:

Related Rulings: CITCM 806; IT 2175; IT 2281.

Subject Ref: benevolent; charitable; direct aid; public benevolent institution.

Legislative Ref: FBTA 57A(1); ITAA 23(e); ITAA 78(1)(a)(ii)

Case Ref: *Australian Council for Overseas Aid v F C of T* 80 ATC 4575, 11 ATR 343; *Australian Council of Social Services Inc & Anor v Commissioner of Pay-roll Tax (N S W)* 85 ATC 4235, 16 ATR 394; *Perpetual Trustee Company Limited v F C of T* (1931) 45 CLR 224; *The Commissioners for Special Purposes of the Income Tax v John Frederick Pemsel* 1891 AC 531 3 TC 53.

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