

TD 92/D188 - Fringe benefits tax and income tax: is an organisation, whose activities are predominantly charitable in nature, always a 'public benevolent institution'?

 This cover sheet is provided for information only. It does not form part of *TD 92/D188 - Fringe benefits tax and income tax: is an organisation, whose activities are predominantly charitable in nature, always a 'public benevolent institution'?*

This document has been finalised by TD 93/11.

Draft Taxation Determinations (TDs) represent the preliminary, though considered, views of the ATO. Draft TDs may not be relied on; only final TDs are authoritative statements of the ATO.

Draft 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 benevolent depends on the nature of its activities and the circumstances of the person to whom its activities are directed.
3. A public benevolent institution is defined as one which:
 - a. has as its 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 ATR394).

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 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.

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

Examples:

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

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

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

Commissioner of Taxation

29/10/92

FOI INDEX DETAIL: Reference No.

Related Determinations:

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

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

Legislative Ref: Debits Tax Administration Act 1982 3(1); FBTA 57A(1); ITAA 23(e); ITAA 78(1)(a)(ii); First Schedule to the Sales Tax (Exemptions & Classifications) Act 81(1)(c).

Case Ref: Australian Council for Overseas Aid v F C of T 80 ATC4575, 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 C L R 224; The Commissioners for Special Purposes of the Income Tax v John Frederick Pemsel 1891 AC 531; 3 TC 53

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