


***TD 92/D188 - 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 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.

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## Draft Taxation Determination

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**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

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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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