

TD 94/73 - Income tax: would a government department or agency qualify for public benevolent institution (PBI) status under item 4.1.1 of table 4 in subsection 78(4) of the Income Tax Assessment Act 1936 ?

! This cover sheet is provided for information only. It does not form part of *TD 94/73 - Income tax: would a government department or agency qualify for public benevolent institution (PBI) status under item 4.1.1 of table 4 in subsection 78(4) of the Income Tax Assessment Act 1936 ?*

! This document has changed over time. This is a consolidated version of the ruling which was published on *1 January 1994*

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

Income tax: would a government department or agency qualify for public benevolent institution (PBI) status under item 4.1.1 of table 4 in subsection 78(4) of the *Income Tax Assessment Act 1936*?

1. No. Such bodies are established and operated for the general community good rather than being organised and conducted for the direct relief of poverty, distress, suffering or misfortune. They are considered to be simply performing the accepted functions of government even where direct relief may be provided as an incidence of government functions.
2. An institution is accepted as benevolent where its dominant objective and activity is the immediate and direct relief of poverty, sickness, distress, misfortune, destitution or helplessness and the institution directly provides such relief. An organisation must satisfy certain tests to qualify as a PBI including: being non-profit making, being established for the benefit of a section or class of the public, and providing relief without discrimination to every member of that section of the public which it aims to benefit (refer to TD 92/197).
3. The Full Federal Court decision in *Metropolitan Fire Brigades Board v. FC of T* 91ATC 4052; 21 ATR 1137 has become established authority for the view that a government body performing the accepted functions of government would hardly ever qualify for PBI status. This is because, unlike voluntary organisations performing the same functions, the necessary benevolence criteria are not satisfied. Such bodies are simply performing the accepted functions of government.
4. There may be instances where a body or organisation, which is in receipt of government funding, would be accepted as a PBI. These bodies would have to satisfy all the necessary criteria of a PBI, including the fact that the organisation cannot be classified as a purely governmental body performing the accepted functions of government. One of the tests which would determine the latter aspect is whether the body is constituted, funded or controlled by government. Refer to recent cases of *Legal Aid Commission of Victoria v. Commissioner of Payroll Tax (Vic)* 92 ATC 2053, 23 ATR 1148 and *Tangentyere Council Inc v. Commissioner of Taxes (NT)* 92 ATC 4313, 23 ATR 370 which discuss this test.

Examples

1. *A government department disburses money by way of pension payments and other assistance to pensioners, a group of people who would generally be regarded as disadvantaged. The department making those payments would not be regarded as acting as a PBI as the department is simply using government funds to exercise a function of government.*
2. *A drug and alcohol abuse unit of a State Health Department provides assistance as part of a wider organisational function directed to the general good of the community. Such a unit would not be considered to be a PBI as the relief is provided as a function of government.*
3. *State Emergency Services or Search and Rescue Teams which both consist of volunteers, and voluntary organisations such as bush fire brigades which have as their central purpose the provision of direct relief to disadvantaged persons, may qualify as a PBI even where they are government sponsored. This is because they would not be usually arms of government and subject to government control.*
4. *A public hospital, which provides direct relief of sickness and suffering without discrimination to the public at large, administered by a board and whose activities are not directly controlled by an arm of government, would qualify as a PBI. This is because the hospital is an institution in its own right, and it is carrying out a benevolent activity.*

Commissioner of Taxation

1/9/94

FOI INDEX DETAIL: Reference No. I 1217754

Previously issued as Draft TD 93/D67

Related Determinations: TD 92/197

Related Rulings: CITCM 806

Subject Ref: gifts; government department; public benevolent institutions

Legislative Ref: ITAA item 4.1.1 of table 4 in 78(4)

Case Ref: Legal Aid Commission of Victoria v. Commissioner of Payroll Tax (Vic) 92 ATC 2053, 23 ATR 1148;
Tangentyere Council Inc v. Commissioner of Taxes (NT) 92 ATC 4313, 23 ATR 370; Metropolitan Fire
Brigades Board v. FCT 91 ATC 4052, 21 ATR 1137

ATO Ref: NAT 92/5746-2

ISSN 1038 - 8982