


# ***TR 2004/8 - Income tax and fringe benefits tax: health promotion charities***

 This cover sheet is provided for information only. It does not form part of *TR 2004/8 - Income tax and fringe benefits tax: health promotion charities*

 This document has changed over time. This is a consolidated version of the ruling which was published on *30 June 2004*



## Taxation Ruling

### Income tax and fringe benefits tax: health promotion charities

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#### **Preamble**

*The number, subject heading, **What this Ruling is about** (including **Class of person/arrangement** section), **Date of effect**, and **Ruling** parts of this document are a 'public ruling' for the purposes of **Part IVAAA of the Taxation Administration Act 1953** and are legally binding on the Commissioner Taxation. Rulings TR 92/1 and TR 97/16 together explain when a Ruling is a 'public ruling' and how it is binding on the Commissioner.*

## What this Ruling is about

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#### **Class of person/arrangement**

1. This Ruling contains the Commissioner's opinion on what types of organisation are charitable institutions whose 'principal activity is to promote the prevention or the control of diseases in human beings' for the purposes of item 1.1.6 in the table in subsection 30-20(1) of the *Income Tax Assessment Act 1997* (ITAA 1997), item 1.1.6 in the table in subsection 78(4) of the *Income Tax Assessment Act 1936* (ITAA 1936), and subsection 57A(5) of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA).

2. These provisions, introduced by the *Taxation Laws Amendment Act (No. 2) 2001*, are designed to provide the same concessions to qualifying organisations that are available to public benevolent institutions: Treasurer's Press Release No. 55 of 22 June 2000. The amendments, subject to the conditions in each piece of legislation, broadly provide the following benefits to such organisations<sup>1</sup>:

- status as deductible gift recipients in the 1997-98 income year and all subsequent income years (item 1.1.6 in subsection 30-20(1) of the ITAA 1997);
- deductibility for gifts for the 1996-97 income year and all earlier income years (item 1.1.6 in subsection 78(4) of the ITAA 1936); and

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<sup>1</sup> These organisations can also be entitled to exemption from sales tax from 28 October 1992 on goods they use (prior to the introduction of the Goods and Services Tax): Item 140A in Schedule 1 to the *Sales Tax (Exemptions and Classifications) Act 1992*.

- exemption from fringe benefits tax (subject to capping) in relation to fringe benefits provided to employees of such organisations in respect of the FBT year beginning 1 April 1998 and all later FBT years (subsection 57A(5) of the FBTA).

## Date of effect

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3. This Ruling applies both before and after its date of issue. However, the Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Ruling (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

## Ruling

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4. To qualify for the available concessions, the legislation requires an organisation to have the following characteristics:

- it is a charitable institution; and
- its principal activity is to promote the prevention or the control of diseases in human beings.

5. It is immaterial whether the organisation is also a public benevolent institution or other type of organisation entitled to gift deductibility or fringe benefits tax concessions.<sup>2</sup>

6. A charitable institution has these features:

- it exists for the public benefit or the relief of poverty;
- its purposes are charitable within the legal sense of that term;
- its sole or dominant purpose is charitable;
- it is non-profit; and
- it is an institution.

7. The institution's principal activity must promote the prevention or the control of diseases in human beings. It is not necessary that the institution's activities promote both the prevention and the control; either is sufficient. Although an institution may have more than one activity, to qualify, the prevention or the control of diseases in human beings must be its main activity. This activity must outweigh its other activities.

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<sup>2</sup> Organisations which do not qualify as health promotion charities might nonetheless be entitled to various tax concessions. This Ruling does not canvass those possibilities.

8. Disease is a morbid condition of the body, or of some organ or part; illness; sickness; ailment.<sup>3</sup> For the ITAA 1997<sup>4</sup> and the FBTAA it is also defined to include 'any mental or physical ailment, disorder, defect or morbid condition, whether of sudden onset or gradual development and whether of genetic or other origin': subsection 34-20(3) ITAA 1997 and subsection 136(1) FBTAA.

## Explanation

### Charitable institution

9. The meaning of charitable institution is more fully discussed in Draft Taxation Ruling 1999/D21. However the characteristics of a charitable institution are discussed briefly below.

### *Public benefit*

10. A charitable institution exists for the public benefit or the relief of poverty. While individuals will inevitably benefit from the carrying out of a charitable institution's public purposes, any such personal benefit must be merely incidental to the charitable purpose.

11. The values or benefits provided by charitable purposes are not restricted, but arise over time through statutory extension and the courts acceptance of changing needs and community views. For example, the Extension of Charitable Purpose Bill 2004 of 27 May 2004 is to extend the common law meaning of 'charity' for the purposes of all Commonwealth legislation.

### *Charitable*

12. The purposes of a charitable institution must be charitable within the legal sense of that term. The courts have accepted a range of different charitable purposes for the different types of charity, being the relief of poverty, the advancement of education, the advancement of religion, and other purposes beneficial to the community.

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<sup>3</sup> See *The Macquarie Dictionary*, Macquarie University, 3rd Ed, 1998.

<sup>4</sup> In the ITAA 1997, defined terms are generally identified by an asterisk: section 2-10 ITAA 1997. 'Diseases' is not asterisked in item 1.1.6 of the table in subsection 30-20(1) ITAA 1997. Nonetheless the definition is considered to apply to it. In deciding whether a term bears a defined meaning, the lack of an asterisk is to be disregarded: subsection 950-100(2) ITAA 1997.

13. Some examples of health-related bodies that have been accepted by the courts as charitable are hospitals,<sup>5</sup> convalescent homes,<sup>6</sup> sanatoria,<sup>7</sup> dispensaries,<sup>8</sup> and a specialised school for the study of obstetrics and gynaecology.<sup>9</sup>

### **Purpose**

14. The sole or dominant purpose of a charitable institution must be charitable, with any non-charitable purposes being solely incidental or ancillary. The dominant purpose of an institution is ascertained by an objective evaluation of all its features. These include governing legislation, constitutive documents, its activities, policies and plans, administration, finances, history and control.

### **Non-profit**

15. A charitable institution must be non-profit, meaning it is not conducted for the purpose of profit or gain to particular persons including its owners or members. This is regardless of whether the organisation's activities result in charitable consequences. For example, an institution would not be a charitable institution if it operated to derive profits for its members, even though its profits were acquired through the sale of medical research preventing cancer.

### **Institution**

16. It must be an institution, and not an entity established, controlled and operated by family members and friends, and not merely a fund. An institution can be an establishment, organisation or association, established for the promotion of an object of public or general utility. It can be a corporation, unincorporated association or a trust. However it must be more than mere incorporation, or trustees simply executing trust property in accordance with a trust deed.

17. An entity is unlikely to be a charitable institution if:

- it is a government department or instrumentality;
- it is primarily for political or lobbying purposes; or
- it is a fund merely managing property and/or holding property to make distributions to other entities or persons.

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<sup>5</sup> *Re Resch's Will Trusts; Le Cras v. Perpetual Trustee Co.* [1969] 1 AC 514; [1967] 3 All ER 915.

<sup>6</sup> *IRC v. Trustees of Roberts Marine Mansions* (1927) 43 TLR 270.

<sup>7</sup> *Kytherian Association of Queensland v. Sklavos* (1958) 101 CLR 56.

<sup>8</sup> *Re Ford* [1945] 1 All ER 288.

<sup>9</sup> *McGregor v. Commissioner of Stamp Duties* [1942] NZLR 164.

*Example 1*

18. *A charitable testamentary trust manages a fund provided by a bequest under a will, to make grants to three charities that help to mitigate the effects of a disease. This is its sole purpose and it does not undertake any other activities or have any other functions.*

19. *The trust cannot qualify because it is not an institution, and so it is not a charitable institution. The role of the trustee in this example is merely to manage the trust property consistently with the trust deed. In this context 'institution' does not connote such a mere trust. The trust lacks the features and activity of an institution.*

**Diseases in human beings**

20. Examples of diseases are asthma, cancer, acquired immune deficiency syndrome (AIDS), arthritis, heart conditions, brain conditions, paraplegia, and kidney conditions (see paragraph 5.12 of the Explanatory Memorandum to the Taxation Laws Amendment Bill (No. 2) 2001). Other examples are dementia, autism, cerebral palsy, mental illness and multiple sclerosis. Recognition by medical authorities will no doubt assist in concluding whether newly identified conditions fall within the term. An example of something that is not a disease is pregnancy; there may, of course, be diseases associated with pregnancy.

*Example 2*

21. *A charitable institution operates several women's health centres. Its principal activity is providing information and advice on birth control, undertaking pregnancy testing, and advising and counselling on unwanted pregnancies. Subsidiary activities include the prevention and the control of gynaecological diseases.*

22. *This institution does not qualify. While its principal activity concerns health issues, disease does not include conception and pregnancy. Also, any link with preventing or controlling disease in relation to pregnancy is too remote, and the gynaecological disease activities are no more than subsidiary or ancillary.*

23. Disease can include the adverse health consequences that follow from such things as burns, lacerations and broken bones. However, the burns, lacerations and broken bones themselves are not diseases. The separate references to 'disease' and 'injury' within section 34-20 would suggest that the terms contemplate different meanings, or at the very least that there are points of distinction between them. These distinctions are relevant in distinguishing accident prevention bodies, which are not contemplated by the legislation from health promotion bodies. Some internal changes to the body, such as stroke resulting from progressive heart disease, or the rupture of an aneurysm as a result of the progressive weakening of an arterial wall, have been found to constitute 'injuries' for the purposes of workers compensation legislation in the various States.<sup>10</sup> It is accepted that these types of incident may be associated with or are the result of an underlying disease. A judicial finding that such an event is an injury for workers compensation purposes does not necessarily preclude a view that the underlying cause is a disease for the purposes of the taxation health promotion legislation.

### **Principal activity to promote prevention or control**

#### ***Control, prevention***

24. The Explanatory Memorandum<sup>11</sup> refers to 'medical or health organisations whose principal focus is preventative in nature, rather than providing direct relief of sickness or suffering'. On a literal interpretation (reading the provisions disjunctively), the provisions are also directed to charitable institutions that promote the control of disease. Control, like prevention, extends to activities that are directed to limiting the incidence and spread of disease. On a plain reading of the legislation, 'control' activities would also include alleviating suffering and distress associated with the disease without necessarily being directed to the prevention of the disease itself. The view is taken that control of disease extends to the management and treatment of disease. This can extend to activities which control the spread and incidence of disease within and between people, and activities which control the severity of the disease.

25. While a broad view is taken of the activities that might promote the prevention or the control of disease, they do not extend to activities that are merely for the non-medical benefit of the sufferers of disease or their carers. So, for example, institutions whose principal activity is to provide nursing or professional carer assistance for sufferers of disease would qualify, but institutions whose principal activity is to provide childcare where the care provided is unrelated to the prevention or the control of illness of the child or carer would not qualify.

<sup>10</sup> *Zickar v MGH Plastic Industries Pty Ltd* (1995-1996) 187 CLR 310; *Kennedy Cleaning Service Pty Ltd v Petkoska* (2000) 200 CLR 286; [2000] HCA 45.

<sup>11</sup> To the Taxation Laws Amendment Bill (No. 2) 2001, which introduced the health promotion charity concessions.

26. Also, activities will be too remote from promoting the prevention of disease in circumstances like training in the safer use of tools and machinery, improving road and vehicle design to reduce vehicle accidents, and providing relationships guidance to reduce domestic violence. While particular events of misuse of machinery, vehicle collision or domestic violence may lead to disease, the prevention of such events is too remote from promoting the prevention of disease.

### ***Principal***

27. Where a charitable institution carries out more than one activity, the activity or activities which promote the relevant prevention or control must outweigh the other activities. This is consistent with the *Macquarie Dictionary* which states that 'principal' as an adjective means 'first or highest in rank, importance, value, etc.; chief; foremost.'

### ***Activities***

28. The legislation does not limit the activities that may be adopted and utilised; they are inevitably broad, given the complexity and variety in the human and medical realm.<sup>12</sup> Examples of such activities include:

- providing information about prevention or control to sufferers of the disease, health professionals, carers, and to the public;
- researching how to detect, prevent or treat the diseases;
- developing or providing relevant aids and equipment;
- evaluating health programs and processes to prevent or control disease;
- training carers and health professionals in ways of controlling the diseases;
- treating and caring for persons suffering the diseases;
- developing and implementing co-operative and cross-disciplinary approaches to treatment and prevention of diseases in human beings; and
- coordinating health promotion activities of charitable institutions that principally promote the prevention or the control of the diseases.

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<sup>12</sup> For example, the Treasurer's Press Release No 55 of 22 June 2000 said 'These organisations ... make a significant contribution to educating Australians about matters such as diet, lifestyle and disease'.



## *Example 3*

29. *A charitable institution's principal activities are providing medical information on heart disease for health professionals, running a program to endorse healthy foods to prevent onset of heart disease, providing information to schools on healthy diet and lifestyle to prevent heart disease (including resources for teachers), and providing scholarships and fellowships for study of heart diseases and their treatment.*

30. *This institution qualifies. The activities promote the prevention or the control of heart disease.*

## *Example 4*

31. *A charitable institution's activities are supporting child sufferers of a particular disease, running public awareness campaigns on the disease, participating in research on its treatment, disseminating the research findings to health professionals and carers, and liaising with their teachers and schools about their health needs. A subsidiary activity is helping parents of the children.*

32. *This institution qualifies. Its principal activities are to promote the control of the disease.*

## *Example 5*

33. *A charitable institution's purpose is to prevent the parents of seriously ill children suffering from stress-related illnesses that may arise from their long-term care responsibilities. Its activities are providing information to the parents on recognising the onset of stress-related illnesses, professional counselling on coping with stress and depression for parents who are at risk, and referrals to organisations that treat particular stress-related illnesses.*

34. *This institution qualifies. Its activities are directed to preventing and treating stress-related diseases.*

## *Example 6*

35. *A charitable institution educates young people on the health risks associated with the consumption of drugs, alcohol and other harmful substances. It provides them with the skills necessary to understand and overcome the pressure to engage in substance abuse. It also provides training and specialised facilities as part of these activities.*

36. *This institution qualifies. Its principal activity is promoting the prevention of drug and alcohol addiction.*

37. Situations where an institution would not qualify include:

- where the health promotion activities are not the principal activities;
- where the institution's objects may be for the prevention or the control of disease, but its actual principal activity is not;
- where the principal activity has changed such that it has ceased to promote the relevant prevention or control; and
- where the principal activity is too remote from the relevant prevention or control.

*Example 7*

38. *An organisation is set up for parents of children suffering from a serious disease. It runs social functions for the parents, including dinners, movies, trivia nights and dances. It arranges child-minding (including for the children suffering the disease) while the parents attend the functions.*

39. *This organisation does not qualify, even if it was a charitable institution. Its principal activity is not to promote the prevention or the control of disease. In the circumstances of this organisation, the fact that its services are only available to parents of children suffering from a disease, and that there may be some care of the sufferers, would not be sufficient for it to qualify. Also, the activities of the organisation are too remote from controlling disease in the children and from preventing the onset of disease in the parents.*

*Example 8*

40. *An institution's principal activity is conducting sporting activities (involving training, development and competition) for schools and other organisations.*

41. *This institution does not qualify, even if it is a charitable institution. Although the consequences of participating in healthy sports can include reduced susceptibility to disease, the activities of the institution are too remote from the prevention and the control of diseases.*

*Example 9*

42. *A charitable institution educates the public on child 'stranger-danger' safety issues, with visits to schools and pre-schools, and the publication of brochures and material on the Internet.*

43. *This institution does not qualify. Its activities are directed to particular issues and dangers which (while they could possibly lead to disease) are too remote from the prevention and the control of diseases.*

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**Commissioner of Taxation**

30 June 2004

*Previous draft:*

TD 2003/D14

- Sales Tax (Exemptions and Classifications) Act 1992 Schedule 1 Item 140A

*Related Rulings/Determinations:*

TR 92/1; TR 97/16; TR 92/20

*Case references:**Subject references:*

- charitable organisations
- charities
- deductible gift recipients
- gifts & donations
- health organisations
- health promotion charities
- public benevolent institutions
- sales tax exemptions Schedule 1 ST(E&C) Act

- Re Ford [1945] 1 All ER 288
- IRC v. Trustees of Roberts Marine Mansions (1927) 43 TLR 270
- Kennedy Cleaning Service Pty Ltd v. Petkoska (2000) 200 CLR 286; [2000] HCA 45
- Kytherian Association of Queensland v. Sklavos (1958) 101 CLR 56
- McGregor v. Commissioner of Stamp Duties [1942] NZLR 164
- Re Resch's Will Trusts; Le Cras v. Perpetual Trustee Co. [1969] 1 AC 514; [1967] 3 All ER 915
- Zickar v. MGH Plastic Industries Pty Ltd (1995 – 1996) 187 CLR 310

*Legislative references:*

- Extension of Charitable Purpose Bill 2004
- FBTAA 1986 57A(5)
- FBTAA 1986 136(1)
- ITAA 1997 2-10
- ITAA 1997 30-20(1) item 1.1.6
- ITAA 1997 34-20
- ITAA 1997 34-20(3)
- ITAA 1997 950-100(2)
- ITAA 1997 995-1(1)
- ITAA 1936 78(4) item 1.1.6
- TAA 1953 Part IVAAA

*Other references:*

- Explanatory Memorandum to the Taxation Laws Amendments Bill (No.2) 2001
- The Macquarie Dictionary, Macquarie University, 3rd Ed, 1998

**ATO references**

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