



Charitable Exemptions

INTRODUCTION

1. This ruling outlines the Commissioner's interpretation of certain terms for the purpose of determining an application for a charitable exemption from tax.

BACKGROUND

Charitable exemptions

2. The *Duties Act 2008* ('Duties Act'), the *Land Tax Assessment Act 2002* ('LTA Act') and the *Pay-roll Tax Assessment Act 2002* ('PTA Act') (together 'the Acts') each provide an exemption from liability to tax for certain charitable bodies, institutions or purposes.
3. However, each of the Acts prohibits an exemption from being available to a *relevant body* unless a *beneficial body determination* is in force in respect of that relevant body.

Duties

4. Section 95(1) of the Duties Act provides an exemption from transfer duty for a dutiable transaction that has been entered into or occurred for charitable or similar public purposes.¹
5. If the transaction is exempt from transfer duty or landholder duty, the transaction will also be exempt from foreign transfer duty or foreign landholder duty if it were to otherwise apply to the transaction.
6. Section 95(2) of the Duties Act provides that the exemption does not apply if the person liable to pay duty on the transaction is a relevant body, or is related to a relevant body, unless a beneficial body determination is in force in respect of that relevant body.
7. Section 95(3) of the Duties Act provides that a person liable to pay duty on a dutiable transaction is related to a relevant body if –
 - (a) the person holds the dutiable property the subject of the transaction as trustee of a trust; and
 - (b) the relevant body is a beneficiary under the trust, whether it has a vested share, is contingently entitled or is a potential beneficiary under a discretionary trust, unless –
 - (i) the trust is a discretionary trust; and
 - (ii) the Commissioner decides in a particular case that it would be inequitable for the person to be treated as related to the relevant body.

¹ Section 168 of the Duties Act provides that a landholder acquisition is exempt from landholder duty in circumstances where, if the landholder's land were to be taken to be the property of the relinquishing person, a transfer of that land from the relinquishing person to the acquiring person would be exempt from transfer duty.

Land tax

8. Section 37(2) of the LTA Act provides an exemption from land tax for land that is owned by, vested in or held in trust for a *public charitable or benevolent institution* and that is used solely for the public charitable or benevolent purposes for which the institution was established.
9. Under section 37(1) of the LTA Act, a public charitable or benevolent institution does not include a relevant body unless a beneficial body determination in respect of that relevant body is in force.

Payroll tax

10. Section 41(1A) of the PTA Act provides that a *charitable body or organisation* is exempt from liability to payroll tax if the Commissioner has given the body or organisation an exemption under section 41(2) or it is a relevant body in respect of which a beneficial body determination is in force.
11. Section 41(3A) of the PTA Act provides that the Commissioner cannot give an exemption under section 41(2) to a charitable body or organisation that is a relevant body.
12. The Glossary to the PTA Act defines *charitable body or organisation* to be a body or organisation established or carried on for charitable purposes except –
 - (a) a body or organisation whose sole or principal purpose is the provision of tertiary education; or
 - (b) a college or other vocational education and training institution under the *Vocational Education and Training Act 1996*.

Relevant body

13. A *relevant body* is defined in the Acts² to be any of the following –
 - (a) a political party;
 - (b) an industrial association;
 - (c) a professional association;
 - (d) a body, other than a body referred to in (a), (b), (c) or (e), that promotes trade, industry or commerce, unless the main purposes of the body are charitable purposes that fall within the first 3 categories (being relief of poverty, advancement of education and advancement of religion) identified by Lord Macnaghten in *Commissioners for Special Purposes of Income Tax v Pemsel* [1891] AC 531 as developed by the common law of Australia from time to time;
 - (e) a body that is a member of a class of bodies prescribed for the purposes of this paragraph;
 - (f) a body that:
 - (i) is a member of a payroll tax group (as defined in the PTA Act Glossary) of which a body referred to in another paragraph is also a member; or

² Duties Act s 96A(1); LTA Act s 38AA(1); PTA Act s 42A(1).

- (ii) is a related body corporate as defined in section 9 of the *Corporations Act 2001* (Cth) of a body referred to in another paragraph; or
 - (iii) has as its sole or dominant purpose or object the conferral of a benefit on a body referred to in another paragraph.
14. The Acts relevantly define the following terms³ –
- (a) *industrial association* – means any of the following –
 - (i) an organisation registered under the *Industrial Relations Act 1979* section 53 or 54;
 - (ii) an association of employees, or an association of employers, registered as an organisation or recognised under the *Fair Work (Registered Organisations) Act 2009* (Cth);
 - (iii) an association of employees registered or recognised as a trade union (however described) under the law of another State or Territory;
 - (iv) an association of employers registered or recognised as such (however described) under the law of another State or Territory;
 - (v) an association of employees a principal purpose of which is the protection and promotion of the employees' interests in matters concerning their employment;
 - (b) *political party* – means a body or organisation, whether incorporated, having as one of its objects or activities the promotion of the election to the Parliament of the Commonwealth, or a State or Territory, of a candidate or candidates endorsed by it or by a body or organisation of which it forms part;
 - (c) *professional association* – means a body or organisation, whether incorporated or unincorporated, having as one of its objects or activities the promotion of the interest of its members in any profession; and
 - (d) *promote trade, industry or commerce* – includes to carry out an undertaking a purpose of which includes the promotion of, or the advocacy for, trade, industry or commerce, whether generally or in respect of any particular kind of trade, industry or commerce.

Beneficial body determination

15. An application may be made to the Minister for Finance for a beneficial body determination where the Commissioner has refused to give a charitable exemption on the sole ground that the taxpayer is⁴ a relevant body.⁵ A relevant body that is an industrial association or political party is not entitled to make an application for a beneficial body determination.
16. The Minister, with the Treasurer's concurrence, may make a beneficial body determination in respect of a relevant body only where the Minister is of the opinion that it is in the public interest to do so and after considering information that the

³ Duties Act s 3; LTA Act Glossary; PTA Act Glossary.

⁴ Or is related to a relevant body under section 95(3) of the Duties Act.

⁵ Duties Act s 96B; LTA Act s 38AB; PTA Act s 42B.

Minister considers relevant.⁶ The effect of a beneficial body determination is to reinstate the entitlement to the charitable exemptions.

17. For further information regarding the beneficial body determination process, including the conditions that must be met in order for a relevant body to make an application, please refer to the Acts.

RULING

Charitable or similar public purposes

Charitable purpose

18. The term 'charitable purpose' is not defined in the Duties Act or the PTA Act and is therefore to be given its technical legal meaning.⁷ Similarly, a body will be a *public charitable institution* for the purposes of the LTA Act when it has a charitable purpose.
19. To be a charitable purpose within its technical meaning, the purpose must be within the scope of those recognised by the common law of Australia as being charitable. The common law of Australia only recognises as charitable those purposes that fall within the spirit and intendment of the preamble of the *Statute of Charitable Uses Act 1601* (Imp) and that are of general public utility (i.e. beneficial to the public).⁸
20. In *Commissioners for Special Purposes of Income Tax v Pemsel*,⁹ Lord Macnaghten identified that the purposes set out in the preamble fell within four heads of charity which have subsequently developed into –
 - (a) the relief of the aged, impotent and poor;
 - (b) the advancement of education;
 - (c) the advancement of religion; and
 - (d) other purposes beneficial to the community.
21. To be of general public utility, the purpose must be to benefit the public generally (or a section of the public) as opposed to individual members of the community, although the fulfilment of the purpose may directly or indirectly incidentally benefit such individuals.¹⁰ The benefit must be available for the community generally or a section of the community that is not numerically insignificant. There must not be any relationship between the beneficiaries and the person(s) setting up the body.¹¹
22. A group of individuals ascertained by reference to some personal tie by blood or contract, such as the relations of a particular individual, members of a particular

⁶ Duties Act s 96C; LTA Act s 38AC; PTA Act s 42C.

⁷ *Chamber of Commerce and Industry of Western Australia (Inc) v Commissioner of State Revenue* [2012] WASAT 146 [13] (Chaney J), quoting *Central Bayside General Practice Association Ltd v Commissioner of State Revenue* (2006) 228 CLR 168 [18] (Gleeson CJ, Heydon and Crennan JJ).

⁸ *Commissioner of Taxation v Triton Foundation* (2005) 147 FCR 362 [21].

⁹ [1891] AC 531.

¹⁰ *Commissioner of Taxation v Triton Foundation* (2005) 147 FCR 362.

¹¹ See, eg, *Powell v Compton* (1945) Ch 123; *Oppenheim v Tobacco Securities Trust Co. Ltd* (1951) AC 297.

family, persons employed by a particular firm or the members of a particular association, does not amount to the public or a section of it.¹²

Similar public purposes

23. The term 'similar public purposes' in section 95 of the Duties Act is not defined. Use of the words 'similar' and 'public' denote that the purpose must be analogous with a charitable purpose. That is, an organisation will have a similar public purpose when its objects are for the benefit of the community and all of its profits are directed to those publicly beneficial purposes.

Public benevolent institutions

24. A public benevolent institution is not synonymous with a charitable institution and is considered to be a subset of charitable institutions.¹³
25. Where a taxpayer that is recognised as a public benevolent institution applies for a charitable exemption, the Commissioner must still determine whether the body (or purpose) is charitable by reference to the factors set out below.

Heads of charity

26. Although the Commissioner will consider the individual facts of each case when determining an application for charitable exemption, the following paragraphs contain examples of the types of purposes that have been found to fall within each of the heads of charity.

First head of charity

27. The first head, often referred to as the relief of poverty, encompasses providing relief to the aged, the impotent (that is, persons who suffer a disability or sickness or persons who are helpless) and the poor. Examples of purposes that have been found to be charitable under the first head include –
- (a) providing low cost accommodation to persons in needy circumstances;
 - (b) caring for the physically disabled or mentally afflicted;¹⁴
 - (c) providing health and welfare services;
 - (d) non-profit hospitals;
 - (e) providing care for persons afflicted by the disabilities and infirmities of old age;¹⁵ and
 - (f) providing services for Indigenous communities.

¹² *Thomson v Federal Commissioner of Taxation* [1959] HCA 66, 322 (Dixon CJ), quoting *In re Scarisbrick; Cockshott v Public Trustee* (1951) Ch 622, 649 (Jenkins LJ).

¹³ G A Dal Pont, *Law of Charity* (LexisNexis Butterworths, 2010) 36.

¹⁴ G A Dal Pont, *Law of Charity* (LexisNexis Butterworths, 2010) 183.

¹⁵ *City of Hawthorn v Victoria Welfare Association* [1970] VR 205.

Second head of charity

28. The second head is directed towards the advancement of education, which goes beyond 'the mere acquisition or increase of knowledge, but requires its propagation, publication, dissemination or diffusion'.¹⁶ The term 'education' is to be interpreted broadly, and 'extends to the improvement of a useful branch of human knowledge and its public dissemination'.¹⁷ Education is not limited to formal education of the type supplied by schools or universities.¹⁸ Examples of purposes been found to be charitable under the second head include –
- (a) educational institutions such as schools, universities and colleges;
 - (b) establishing, maintaining and contributing to educational institutions, for example, establishing teaching positions or providing student accommodation, scholarships or prizes;¹⁹
 - (c) scientific research, for example cancer research, geriatric research or research work into curing human diseases;²⁰ and
 - (d) increasing public appreciation for art, music or literature.²¹
29. It should be noted that the PTA Act specifically excludes providers of tertiary education from the definition of *charitable body or organisation* under the PTA Act notwithstanding that such a body or organisation will have a charitable purpose under the second head.

Third head of charity

30. The third head is directed towards the advancement of religion, which has been interpreted to mean the promotion of spiritual teaching, to spread its message, or to take positive steps to sustain and increase religious beliefs.²² Examples of purposes that have been found to be charitable under the third head include –
- (a) churches and other places of worship;
 - (b) the maintenance and promotion of religion;²³
 - (c) gifts directed to enhancing the conduct or quality of religious services;²⁴ and
 - (d) providing accommodation, support, aid or relief for clergy, ministers, nuns or teachers of religion.²⁵

¹⁶ G A Dal Pont, *Law of Charity* (LexisNexis Butterworths, 2010) 196.

¹⁷ *Incorporated Council of Law Reporting for England and Wales v Attorney-General* [1972] Ch 73 [102].

¹⁸ *Alice Springs Town Council v Mpweteyerre Aboriginal Corporation* (1997) 139 FLR 236 [253].

¹⁹ G A Dal Pont, *Law of Charity* (LexisNexis Butterworths, 2010) 194.

²⁰ G A Dal Pont, *Law of Charity* (LexisNexis Butterworths, 2010) 197.

²¹ G A Dal Pont, *Law of Charity* (LexisNexis Butterworths, 2010) 199.

²² G A Dal Pont, *Law of Charity* (LexisNexis Butterworths, 2010) 232.

²³ See, eg, *Attorney-General v Eagar* (1864) 3 SCR (NSW) 234; *Re Hargreaves* [1973] Qd R 448.

²⁴ *Re Royce (deceased)* [1940] 1 Ch 514 [518].

²⁵ See, eg, *Re Drummond's Trusts* (1907) 4 Tas LR 9; *Re Burton's Charity* [1938] 3 All ER 90.

Fourth head of charity

31. The fourth head recognises other purposes beneficial to the community that do not fall within the first three heads.²⁶ Examples of the broad classes of purposes that have been found to be charitable under the fourth head include²⁷ –
- (a) relief of human distress;
 - (b) safety and protection of the community;
 - (c) locality cases, for example, land and facilities for public use;
 - (d) protection of the environment;
 - (e) protection of animals;
 - (f) improvement of agriculture; and
 - (g) promotion of trade, industry or commerce.

Promotion of trade, industry or commerce

32. Examples of organisations that have been recognised as having a purpose that is the promotion of trade, industry or commerce include –
- (a) an organisation whose main purpose is the promotion of industry or commerce in Western Australia and Australia;²⁸
 - (b) a company whose main object is to provide research and development facilities to help the business community to adopt electronic commerce and to compete in the international marketplace;²⁹
 - (c) a society formed for the general improvement or general advancement of agriculture;³⁰
 - (d) an organisation whose object is to preserve and improve craftsmanship;³¹ and
 - (e) an organisation that promotes an aspect of commerce through the promotion of a culture of innovation and entrepreneurship.³²

Non-charitable purposes

33. Examples of purposes that will not usually be considered charitable include –
- (a) services provided by a body that exists solely or dominantly to benefit its members, for example, health insurance funds and other member-based associations;
 - (b) providing education or training where the education or training is merely an activity that the body carries out in the furtherance of its main purpose of promoting trade, industry or commerce; and

²⁶ G A Dal Pont, *Law of Charity* (LexisNexis Butterworths, 2010) 247.

²⁷ G A Dal Pont, *Law of Charity* (LexisNexis Butterworths, 2010) 254 – 279.

²⁸ *Chamber of Commerce and Industry of Western Australia (Inc) v Commissioner of State Revenue* [2012] WASAT 146.

²⁹ *Tasmanian Electric Commerce Centre Pty Ltd v Commissioner of Taxation* (2005) 142 FCR 371.

³⁰ See, eg, *Inland Revenue Commissioners v Yorkshire Agricultural Society* [1928] 1 KB 611; *Royal Agricultural Society of England v Wilson* (1924) 9 TC 62.

³¹ *Commissioner of Inland Revenue v White and Others* (1980) 55 TC 651.

³² *Commissioner of Taxation v Triton Foundation* 147 FCR 362.

- (c) providing accommodation in general to employees of a charity where provision of the accommodation is not made for the substantial purpose of facilitating the more efficient carrying out of the body's charitable purpose.³³

Determining whether a body or purpose is charitable

Established or carried on for charitable purposes

34. To determine whether a body is established or carried on for charitable purposes, the Commissioner must look at the circumstances existing at the time of incorporation and also at the body's activities at the time when the application for charitable exemption is determined.³⁴
35. To characterise the purpose of a body, the Commissioner will have particular regard to the body's objects and to the activities it carries on to achieve those objects.³⁵ The relevant question is the purpose for which the activities are carried out rather than the nature of the activities.³⁶
36. In *Commissioner of Taxation (Cth) v Word Investments Ltd*,³⁷ the High Court held that a body that carries on commercial business activities may be charitable where those commercial activities are carried out in furtherance of a charitable purpose.

Main or dominant purpose

37. A body may have a charitable purpose if its main purpose is charitable even though it may have other purposes which are ancillary, concomitant or incidental to that purpose.³⁸ These other purposes must not be of substance in their own right and must only be something which tends to assist, or go naturally with, the achievement of the main object.³⁹ If, however, the non-charitable purpose is not merely incidental or ancillary to the charitable purpose, the body will not be regarded as charitable.⁴⁰
38. In order to have regard to the main or dominant purpose for which the body is established and carried on, the Commissioner is required to examine factors including⁴¹ –
- (a) the body's history;

³³ See, eg, *Knowles v The Council of the Municipality of Newcastle* (1909) 9 CLR 534; *Waverley Municipal Council v New South Wales Board of Jewish Education* (1959) 5 LGRA 122; *Glasgow Corporation v Johnston* [1965] AC 609.

³⁴ See, eg, *Brookton Co-operative Society Ltd v Federal Commissioner of Taxation* (1981) 147 CLR 447 [450] – [451]; *Chamber of Commerce and Industry of Western Australia (Inc) v Commissioner of State Revenue* [2012] WASAT 146 [17].

³⁵ *Chamber of Commerce and Industry of Western Australia (Inc) v Commissioner of State Revenue* [2012] WASAT 146 [27].

³⁶ As above.

³⁷ *Commissioner of Taxation (Cth) v Word Investments Ltd* (2008) HCA 55.

³⁸ See, eg, *Chamber of Commerce and Industry of Western Australia (Inc) v Commissioner of State Revenue* [2012] WASAT 146 [19]; *Stratton v Simpson* (1970) 125 CLR 138 [159] – [160].

³⁹ *Navy Heath Ltd v Deputy Commissioner of Taxation* (2007) 163 FCR 1 [65].

⁴⁰ See, eg, *Chamber of Commerce and Industry of Western Australia (Inc) v Commissioner of State Revenue* [2012] WASAT 146 [19]; *Tasmanian Electric Commerce Centre Pty Ltd v Commissioner of Taxation* (2005) 142 FCR 371 [385]; *Commissioner of Taxation v Triton Foundation* 147 FCR 362 [370].

⁴¹ See, eg, *Commissioner of Taxation v Triton Foundation* 147 FCR 362; *Royal Australasian College of Surgeons v Federal Commissioner of Taxation*; *Chamber of Commerce and Industry of Western Australia (Inc) v Commissioner of State Revenue* [2012] WASAT 146.

- (b) the statutory role(s) it has been given by Parliament, if any;
- (c) the body's constituting document; and
- (d) the activities carried out under that constituting document.

Supporting information

39. It is the taxpayer's responsibility to establish its entitlement to a charitable exemption under the Acts.⁴²
40. The taxpayer should provide the Commissioner with the following information in support of an application for an exemption –
 - (a) a completed application form;⁴³
 - (b) its constitution, memorandum of association or other establishing document, including any amending documents;
 - (c) its most recently published annual reports and/or financial statements;
 - (d) a comprehensive outline of all activities carried out by the body in the conduct of its business; and
 - (e) where applicable, the purpose for the dutiable transaction, or use of the land, for which an exemption is sought.

Relevant bodies

41. The Commissioner will only determine whether a taxpayer is a relevant body after deciding that the taxpayer is charitable. If the Commissioner determines that a taxpayer is not charitable, the relevant body provisions will not be considered.

Political party

42. There is a distinction between a political party as defined for the purposes of the Acts and a body that has a political purpose or political objects where the underlying object of the political advocacy is charitable.
43. In *Aid/Watch Inc v Commissioner of Taxation*,⁴⁴ the High Court held that there is no general doctrine in Australia which excludes political objects from being charitable purposes. The High Court determined that Aid/Watch had a charitable purpose under the fourth head because it generated public debate by lawful means regarding the efficiency of foreign aid directed to the relief of poverty.
44. An organisation with similar objects and activities to Aid/Watch will not usually meet the definition of political party for the purposes of the relevant body provisions. However, it should be noted that this type of organisation may still fall within one of the other types of relevant body.

⁴² See, eg, *Diethelm v FCT* (1993) 44 FCR 450, 457; *Commissioner of Taxation v Word Investments* (2008) HCA 55.

⁴³ Relevant application forms are available on the website at wa.gov.au

⁴⁴ [2010] HCA 42.

Professional association

45. *Professional association* is defined in the Acts to mean a body, whether incorporated or unincorporated, having as one of its objects or activities the promotion of the interests of its members in any profession.
46. It should be noted that the definition of professional association may apply to any charitable body or organisation. It is not limited to bodies or organisations with charitable purposes under the fourth head.

Meaning of 'profession'

47. The *Macquarie Dictionary* defines 'profession' as –

A vocation requiring knowledge of some department of learning or science, especially one of the three vocations of theology, law and medicine;

Any vocation, occupation, etc.;

The body of persons engaged in an occupation or calling.

48. The *Oxford Dictionary* defines 'profession' as it relates to professional occupation to mean 'an occupation in which a professed knowledge of some subject, field or science is applied; a vocation or career, especially one that involves prolonged training and a formal qualification'.
49. There is no precise legal definition for the term profession.⁴⁵ Traditionally, the Courts considered that the word profession implied specialised knowledge as distinguished from mere skill.⁴⁶ The professions originally referred to theology, law and medicine, but over time extended to include other occupations, for example, accounting and architecture.
50. The Courts acknowledge that the use of the term varies over time and progresses with the general community's understanding and use of the term.⁴⁷
51. Professions are considered a class or subset of occupations, the size and distinguishing features of which are not fixed.⁴⁸ Factors that usually distinguish an occupation as a profession include the following –
- (a) A professional possesses special knowledge which is attained after prolonged study, training and application, as distinguished from mere skill.
 - (b) There are particular standards imposed upon the profession and certain ethical responsibilities imposed upon the professional person.

⁴⁵ *Prestia v Aknar* [1996] 40 NSWLR 165 [30] (Santow J) citing *Bradfield v Federal Commissioner of Taxation* (1924) 32 CLR 1 [7] (Isaacs J); *Bond Corp Pty Ltd v Thiess Contractors Pty Ltd* (1987) 14 FCR 215; 71 ALR 615, 619 (French J).

⁴⁶ *Prestia v Aknar* [1996] 40 NSWLR 165 [30] (Santow J) citing *Robbins Herbal Institute v Federal Commissioner of Taxation* (1923) 32 CLR 457, 461 (Starke J); *Bond Corp Pty Ltd v Thiess Contractors Pty Ltd* (1987) 14 FCR 215, 619 (French J).

⁴⁷ *Prestia v Aknar* [1996] 40 NSWLR 165 [31] (Santow J) quoting *Bradfield v Federal Commissioner of Taxation* (1924) 34 CLR 1, 7 (Isaacs J). See also *Bond Corp Pty Ltd v Thiess Contractors Pty Ltd* (1987) 14 FCR 215; 71 ALR 615, 619.

⁴⁸ *Prestia v Aknar* [1996] 40 NSWLR 165 [30] (Santow J) citing *Currie v Commissioners of Inland Revenue* [1921] 2 KB 332, 340 (Scrutton LJ); *Robbins Herbal Institute v Federal Commissioner of Taxation* (1923) 32 CLR 457, 461 (Starke J); *Re Social and Community Welfare Services (State Award)* 8 IR 364; *Bond Corp Pty Ltd v Thiess Contractors Pty Ltd* (1987) 14 FCR 215, 619 (French J).

- (c) There will typically be some form of official accreditation accompanied by evidence of qualification.
 - (d) A profession will usually have an overarching governing body that provides certification, accreditation and training.
52. Whether or not an occupation can be characterised as a profession is a question of fact or degree.⁴⁹ The Commissioner will have regard to the individual facts of each case when determining whether an occupation is a profession for the purposes of the definition of professional association.

'Members' in any profession

53. Entities that are not natural persons cannot hold a profession, however, they can operate in and practice a profession and are generally referred to as practice companies. These companies are usually formed by professional persons such as medical practitioners, legal practitioners, accountants, etc. where the ethical and statutory governing bodies of the profession permit members to conduct their professional activities through incorporated bodies.⁵⁰
54. The Commissioner interprets the term 'members' in the definition of professional association to include natural persons and other entities that are not natural persons.

Promote trade, industry or commerce

55. While the promotion of trade, industry or commerce is a charitable purpose under the fourth head, a body that promotes trade, industry or commerce is a relevant body under the Acts unless the main purposes of the body are charitable purposes that fall within the first, second or third heads of charity.
56. Under the Acts, the term *promote trade, industry or commerce* includes to carry out an undertaking a purpose of which includes the promotion of, or the advocacy for, trade, industry or commerce, whether generally or in respect of any particular kind of trade, industry or commerce.
57. In taking its ordinary meaning, 'promotion' means an activity that supports or encourages a cause, venture or aim, or the publicising of a product, organisation, or venture so as to increase sales or public awareness.⁵¹ Similarly, 'advocacy' means public support for or recommendation of a particular cause or policy.⁵²
58. There is a distinction between the concept of the 'promotion' of trade, industry or commerce and the concept of 'engaging' in trade, industry or commerce. A body may engage in trade, industry or commerce by operating a business in the course of carrying out its charitable activities. However, the body will not usually be

⁴⁹ *Prestia v Aknar* [1996] 40 NSWLR 165 [30] (Santow J) citing *Currie v Commissioners of Inland Revenue* [1921] 2 KB 332, 340 (Scrutton LJ); *Robbins Herbal Institute v Federal Commissioner of Taxation* (1923) 32 CLR 457, 461 (Starke J); *Re Social and Community Welfare Services (State Award)* 8 IR 364; *Bond Corp Pty Ltd v Thiess Contractors Pty Ltd* (1987) 14 FCR 215, 619 (French J).

⁵⁰ Australian Taxation Office (Cth), Taxation Ruling No. *IT 2503 Income tax: Incorporation of medical and other professional practices* (1988).

⁵¹ Oxford University Press, *Oxford Dictionaries*.

⁵² Oxford University Press, *Oxford Dictionaries*.

considered to have a purpose that is the promotion of trade, industry or commerce where it does not have a specific object or activity directed to that purpose.

59. A body which has a purpose that is the promotion of, or advocacy for, trade, industry or commerce will usually have clear objects directed to that purpose and will be carrying out activities in furtherance of that purpose. Determining whether a body promotes trade, industry or commerce requires a holistic examination of all of its objects and activities, however, examples of objects that indicate a purpose of promoting trade, industry or commerce include to –
- (a) promote Western Australian and Australian trade, industry and commerce;
 - (b) promote and foster the development of a particular industry both in Australia and overseas;
 - (c) promote, develop and protect the interests of all or any persons engaged in a particular trade, industry or commerce;
 - (d) consider, promote or oppose legislation, regulations, policies and by-laws directly or indirectly affecting commercial interests;
 - (e) identify and promote advancements within a particular industry, which improve systems in the industry and the advancement of the industry in Australia and overseas;
 - (f) promote sales of a particular product by encouraging the growth and utilisation of objective measurement of the product;
 - (g) foster, promote, protect and conciliate, or assist in the fostering, promotion, protection and conciliation on behalf of members' businesses and the trade in Western Australia;
 - (h) promote, represent and advocate Australian industry in discussion and negotiation with all levels of Government; or
 - (i) provide for a particular trade, industry or commerce the means of action in regard to industrial, commercial, economic, fiscal, labour, social, educational, legal and technical matters.
60. Examples of bodies that may be engaged in trade, industry or commerce that will not usually have a purpose of promoting trade, industry or commerce include –
- (a) organisations that operate not-for-profit hospitals;
 - (b) not-for-profit aged care providers;
 - (c) organisations providing disability employment;
 - (d) community housing providers; and
 - (e) not-for-profit organisations conducting scientific research, consulting and information services to a particular industry for a fee.
61. In the event that a body has a purpose of promoting trade, industry or commerce, it will not be a relevant body if its main purposes fall within the relief of poverty, advancement of religion or advancement of education. For example, while an organisation that promotes the economic development of a disadvantaged group may be considered to have a purpose that is the promotion of trade, industry or commerce, it is more likely that an organisation of this type would be pursuing purposes under the relief of poverty.

62. The Commissioner will consider the factors outlined in paragraph 37 to determine whether a body's main purpose is the promotion of trade, industry or commerce, or a purpose that falls within the first three heads of charity.

Conferring a benefit on a relevant body

63. As noted above, in *Commissioner of Taxation (Cth) v Word Investments Ltd*,⁵³ the High Court held that a body may be charitable where the benefits of the commercial activities are used to further a charitable purpose. This includes where the benefits from the body's commercial activities are conferred upon another charitable body to be used in furthering that other body's charitable purpose.
64. A taxpayer will be a relevant body where its sole or dominant purpose is to confer the benefits of its commercial activities upon a body that is one of the other types of relevant body, for example, a professional association or a body that has a main purpose that is the promotion of trade, industry or commerce.

Duties Act – discretionary trustees

65. Under section 95(3) of the Duties Act, the Commissioner may decide in a particular case that it is inequitable for a person that is the trustee of a discretionary trust to be treated as related to a relevant body that is a beneficiary under the discretionary trust.
66. The Commissioner will usually exercise this discretion when satisfied that there is only a remote, contingent possibility of the relevant body benefitting from the discretionary trust, for example, as a member of the class of general beneficiaries.
67. For the purposes of exercising this discretion, the Commissioner will consider the nature of the relevant body's entitlement under the trust and whether the relevant body does, will or may control the trust. A beneficiary will be considered to control a discretionary trust if it is in a position to directly or indirectly influence the vesting of the whole or any part of the capital of the trust property or income from the trust property.
68. Factors to which the Commissioner will have regard when determining whether it is inequitable for a discretionary trustee to be treated as related to a relevant body that is a beneficiary include –
- (a) the terms of the trust deed;
 - (b) the degree of the relevant body's affiliation and interest in the trust;
 - (c) whether the relevant body has benefited from the trust, either through the distribution of trust property or income under a power of appointment or otherwise; and
 - (d) whether the body is a taker in default under the trust.

⁵³ (2008) HCA 55.

RULING HISTORY

Revenue Ruling	Issued	Date of effect	
		From	To
DA/PT/LT 18.0	3 June 2015	3 June 2015	31 December 2018
DA/PT/LT 18.1	1 January 2019	1 January 2019	26 October 2021

SUPERSEDED