


TD 2003/D14 - Income tax and fringe benefits tax: 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)?

 This cover sheet is provided for information only. It does not form part of *TD 2003/D14 - Income tax and fringe benefits tax: 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)?*

This document has been finalised by TD 2004/8.



Draft Taxation Determination

Income tax and fringe benefits tax: 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)?

Preamble

*This document is a draft for industry and professional comment. As such, it represents the preliminary, though considered views of the Australian Taxation Office. This draft may not be relied on by taxpayers and practitioners as it is not a ruling for the purposes of Part IVAAA of the **Taxation Administration Act 1953**. It is only final Taxation Determinations that represent authoritative statements by the Australian Taxation Office.*

1. 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 organisations¹:

- 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

¹ 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 FBTAA).

2. To qualify, the legislation provides that an organisation must have these characteristics:

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

Such a charitable institution may also be a public benevolent institution or other type of organisation entitled to gift deductibility or FBT concessions. For these purposes, the two types of institutions are not mutually exclusive.²

Charitable institution

3. The meaning of charitable institution is more fully discussed in Draft Taxation Ruling TR 1999/D21. In summary, a charitable institution has these characteristics:

- it exists for the public benefit or the relief of poverty;
- its purposes are charitable within the legal sense of that term (the relief of poverty, the advancement of education, the advancement of religion, and other purposes beneficial to the community);
- its sole or dominant purpose is charitable;
- it is non-profit; and
- it is an institution, and not an entity established, controlled and operated by family members and friends, and not merely a fund.

4. 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 (see Example 1).

Diseases in human beings

5. Disease is a morbid condition of the body, or of some organ or part; illness; sickness; ailment (*The Macquarie Dictionary*, Macquarie University, 3rd Ed, 1998). For the ITAA 1997 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

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

development and whether of genetic or other origin': subsection 34-20(3) and 995-1(1) ITAA 1997, and subsection 136(1) FBTAA.

6. 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). 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. Another example of something that is not a disease is pregnancy (see Example 3).

Principal activity to promote prevention or control

7. The institution's principal activity must promote the prevention or the control of diseases in human beings. The Macquarie Dictionary states that 'principal' as an adjective means 'first or highest in rank, importance, value, etc.; chief; foremost.' Therefore, 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. These activities must outweigh its other activities.

8. The Explanatory Memorandum 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 also extends to the management and treatment of disease. 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 lifestyle 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 the child's illness would not qualify.

9. The legislation does not limit the methods that may be adopted; they are inevitably broad, given the complexity and variety in the human and medical realm. 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 the health promotion activities of charitable institutions that principally promote the prevention or the control of the diseases.

(See also Examples 2, 4, 6 and 7.)

10. 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 is too remote from the relevant prevention or control (see Examples 5, 8 and 9); and
- where the principal activity has changed such that it has ceased to promote the relevant prevention or control.

Examples

11. The following examples illustrate how the provisions apply to some common types of organisations. Of course, the particular circumstances of each organisation must be considered to determine whether it qualifies.

Example 1

12. *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.*

13. *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.*

Example 2

14. *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.*

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

Example 3

16. *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.*

17. *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.*

Example 4

18. *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.*

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

Example 5

20. *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.*

21. *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 the 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 6

22. *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.*

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

TD 2003/D14

Example 7

24. *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.*

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

Example 8

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

27. *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

28. *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.*

29. *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.*

Date of Effect

30. When the final Determination is issued, it is proposed to apply both before and after its date of issue. However, the Determination will 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 Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).]

Your comments

31. We invite you to comment on this draft Taxation Determination. Please forward your comments to the contact officer by the due date.

Comments by date: 31 July 2003

Contact officer: Mr Bernard Mackinnon

E-mail address: bernie.mackinnon@ato.gov.au

Telephone: (07) 4753 7659
Facsimile: (07) 4753 7274
Address: PO Box 2025
Townsville QLD 4810

Commissioner of Taxation2 July 2003

Previous draft:

Not previously issued in draft form

Related Rulings/Determinations:

TR 92/20

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

Legislative references:

- FBTA 1986 57A(5)
- FBTA 1986 136(1)
- ITAA 1997 30-20(1) item 1.1.6
- ITAA 1997 34-20(3)
- ITAA 1997 995-1(1)
- ITAA 1936 78(4) item 1.1.6
- TAA 1953 Part IVAAA
- Sales Tax (Exemptions and Classifications) Act 1992 Schedule 1 Item 140A
- Taxation Laws Amendment Act (No. 2) 2001

Other references:

- The Macquarie Dictionary, Macquarie University, 3rd Ed, 1998

ATO references:

NO: 2003/06253
ISSN: 1038-8982