



Australian Capital Territory

Revenue (Charitable Organisations) Legislation Amendment Act 2015

A2015-48

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Australian Capital Territory

Revenue (Charitable Organisations) Legislation Amendment Act 2015

A2015-48

An Act to amend legislation about charitable organisations

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Part 1 Preliminary

1 Name of Act

This Act is the *Revenue (Charitable Organisations) Legislation Amendment Act 2015*.

2 Commencement

This Act commences on the day after its notification day.

Note The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](#), s 75 (1)).

3 Legislation amended

This Act amends the following legislation:

- [Duties Act 1999](#)
- [Payroll Tax Act 2011](#)
- [Rates Act 2004](#)
- [Taxation Administration Act 1999](#).

Part 2 Duties Act 1999

4 Transfer of property from one superannuation fund to another Section 62 (4)

omit

hospital, school or charitable organisation

substitute

hospital or school

5 Transfers between trustees and custodians of superannuation funds or trusts Section 63 (3)

omit

hospital, school or charitable organisation

substitute

hospital or school

6 Transfer of land to certain authorities and other bodies Section 64 (2)

omit

hospital, school or charitable organisation

substitute

hospital or school

**7 Ch 3 transactions—concessional duty
Section 91 (1) (a)**

omit

hospital, school or charitable organisation

substitute

hospital or school

**8 Insurance exempt from duty generally
Section 201 (1) (f)**

omit

hospital, school or charitable organisation

substitute

hospital or school

**9 Charitable organisations
Section 210A**

omit

10 New section 232

in chapter 11, insert

232 Charitable organisations

(1) Duty under this Act is not payable if the duty would be payable by a charitable organisation.

(2) In this section:

charitable organisation—

(a) for a tax law—see the [Taxation Administration Act](#), section 18B; but

- (b) does not include an organisation that is related to an excluded organisation unless a beneficial organisation determination is in force for the excluded organisation.

Note 1 **Beneficial organisation determination**—see the [Taxation Administration Act](#), dictionary.

Note 2 **Excluded organisation** and **organisation**—see the [Taxation Administration Act](#), pt 3A (Charitable organisations).

- (3) For subsection (2), an organisation is *related* to an excluded organisation if—
- (a) the organisation holds dutiable property as trustee of a trust; and
 - (b) the excluded organisation is a beneficiary under the trust, whether it has a vested share or is contingently entitled or is a potential beneficiary under the trust.

11 Dictionary, definition of *charitable organisation*

omit

Part 3 Payroll Tax Act 2011

12 Meaning of *charitable organisation*—pt 2.2 Schedule 2, section 2.12, definition of *charitable organisation*

substitute

charitable organisation, for a tax law—see the [Taxation Administration Act 1999](#), section 18B.

Part 4 Rates Act 2004

13 Section 8

substitute

8 Meaning of *rateable land*

(1) In this Act:

rateable land—

- (a) means all land in the ACT, including Commonwealth land; but
- (b) does not include—
 - (i) commons, public parks and public reserves not held under lease or licence; and
 - (ii) sites of cemeteries and public hospitals; and
 - (iii) land leased to charitable organisations and used exclusively for religious, educational, benevolent or charitable purposes; and
 - (iv) sites of churches and other buildings used exclusively for public worship; and
 - (v) sites of buildings used for free public libraries; and
 - (vi) land leased from the Commonwealth that is occupied by, or used in connection with, a school; and
 - (vii) Commonwealth land that is not leased and is unoccupied (other than land that, immediately before becoming unoccupied, was occupied by a lessee of the Territory or Commonwealth on a weekly or fortnightly tenancy).

(2) In this section:

charitable organisation, for a tax law—see the *Taxation Administration Act 1999*, section 18B.

charitable purposes does not include community housing purposes.

community housing—see the *Duties Act 1999*, section 73A (4).

school means a non-government school under the *Education Act 2004*, and includes a playground belonging to, or used in relation to, the school.

Part 5 Taxation Administration Act 1999

14 Reassessment Section 9 (3)

substitute

- (3) The commissioner must not make a reassessment of a tax liability—
- (a) more than 5 years after the initial assessment of the liability, unless—
 - (i) the purpose of the reassessment is to give effect to a decision on an objection or appeal as to the initial assessment; or
 - (ii) at the time the initial assessment or a reassessment was made, all the facts and circumstances affecting the liability under the relevant tax law of the person in relation to whom the assessment or reassessment was made were not fully and truly disclosed to the commissioner; and
 - (b) for an excluded organisation in relation to which a beneficial organisation determination does not apply—if the purpose of the reassessment is to give effect to a decision that the organisation has a tax liability, or has no tax liability, under a relevant provision.

15 New section 9 (5)

insert

- (5) In this section:
excluded organisation—see section 18C.

relevant provision means—

- (a) the *Duties Act 1999*, section 232 (Charitable organisations); and
- (b) the *Payroll Tax Act 2011*, section 48 (Charitable organisations) and schedule 2, section 2.13 (Exemption from payroll tax—charitable organisations); and
- (c) the *Rates Act 2004*, section 8 (1) (b) (iii) (Meaning of *rateable land*).

16 New part 3A

insert

Part 3A Charitable organisations

Division 3A.1 Preliminary

18A Meaning of *organisation*—pt 3A

In this part:

organisation means an association, society, institution or body.

18B Meaning of *charitable organisation*

For a tax law:

charitable organisation—

- (a) means an organisation carried on for a religious, educational, benevolent or charitable purpose; but

- (b) does not include—
 - (i) an organisation carried on for securing pecuniary benefits to its members; or
 - (ii) an excluded organisation unless a beneficial organisation determination is in force for the excluded organisation.

18C *Meaning of excluded organisation—pt 3A*

- (1) In this part:

excluded organisation means—

- (a) a political party; or
- (b) an industrial organisation; or
- (c) a professional organisation; or
- (d) an organisation that promotes trade, industry or commerce; or
- (e) a class of organisation prescribed by regulation.

- (2) In this section:

industrial organisation means any of the following:

- (a) an association of employees, or an association of employers, registered as an organisation, or recognised, under the *Fair Work (Registered Organisations) Act 2009* (Cwlth);
- (b) an association of employees registered or recognised as a trade union (however described) under the law of a State or a Territory;
- (c) an association of employers registered or recognised as such (however described) under the law of another State or a Territory;

- (d) an association of employees which has an exclusive or predominant purpose of protecting and promoting the employees' interests in matters concerning their employment.

organisation that promotes trade, industry or commerce means an organisation that has as one of its purposes promoting, or advocating for, trade, industry or commerce, whether generally or for a particular kind of trade, industry or commerce.

political party means an organisation that has as one of its purposes the promotion of the election to the Legislative Assembly, the Commonwealth parliament or a State parliament, of a candidate endorsed by it.

Note *State* includes the Northern Territory (see [Legislation Act](#), dict, pt 1).

professional organisation means an organisation that has as one of its purposes the promotion of the interests of its members in a profession.

18D Determining the purpose of organisation

For this part, the purpose or purposes of an organisation are to be determined having regard to all the relevant circumstances including the organisation's stated objects (if any) and its activities.

Division 3A.2 Beneficial organisation determinations

18E Beneficial organisation determinations—application

The following organisations may apply to the commissioner for a beneficial organisation determination:

- (a) a professional organisation mentioned in section 18C (1), definition of *excluded organisation*, paragraph (c);

- (b) an organisation that promotes trade, industry or commerce mentioned in section 18C (1), definition of *excluded organisation*, paragraph (d);
- (c) an organisation in a class of organisation prescribed by regulation under section 18C (1), definition of *excluded organisation*, paragraph (e), if the regulation prescribing the class of organisation states that this section applies to the class of organisation.

18F Beneficial organisation determinations—decision

- (1) If the commissioner receives an application for a beneficial organisation determination from an organisation, the commissioner may make the determination if satisfied that—
 - (a) the predominant purpose of the organisation is to advance religion, advance education, relieve poverty, or otherwise benefit the community; and
 - (b) the objects and activities of the organisation that make the organisation an excluded organisation are not significant in relation to the purpose of the organisation considered as a whole; and
 - (c) the purpose of the organisation is not, or is not intended to be, beneficial to a particular class of people (whether or not members of the organisation) rather than the community generally.
- (2) A beneficial organisation determination is a notifiable instrument.

Note 1 A notifiable instrument must be notified under the [Legislation Act](#).

Note 2 The power to make the beneficial organisation determination includes the power to amend or repeal the determination. The power to amend or repeal the determination is exercisable in the same way, and subject to the same conditions, as the power to make the determination (see [Legislation Act](#), s 46).

18G Beneficial organisation determinations—effect

- (1) If the commissioner makes a beneficial organisation determination for an organisation, the determination takes effect on the day the organisation applied for the determination.
- (2) A beneficial organisation determination for an organisation applies to the organisation in relation to any liability to pay—
 - (a) duty for a dutiable transaction entered into while the determination is in effect; and
 - (b) payroll tax and rates for a financial year in which the determination is in effect.
- (3) The commissioner—
 - (a) must reassess an organisation's liability to duty, payroll tax or rates for the period beginning on the day the beneficial organisation determination takes effect; but
 - (b) must not make a reassessment more than 5 years after the determination is made.
- (4) In this section:

dutiable transaction—see the *Duties Act 1999*, section 7 (2).

payroll tax—see the *Payroll Tax Act 2011*, dictionary.

rates—see the *Rates Act 2004*, dictionary.

17 New part 20*insert***Part 20 Transitional—Revenue
(Charitable Organisations)
Legislation Amendment Act 2015****300 Meaning of *commencement day*—pt 20**

In this part:

commencement day means the day the *Revenue (Charitable Organisations) Legislation Amendment Act 2015*, section 3 commences.

301 Reassessment for certain organisations

- (1) This section applies to an excluded organisation in relation to which a beneficial organisation determination is not in force.
- (2) The commissioner or the ACAT must not make a reassessment of a tax liability for any period before the commencement day for the excluded organisation under section 9 if the purpose of the reassessment is to give effect to a decision that the organisation has a tax liability, or has no tax liability, because the organisation was a charitable organisation or should have been treated as a charitable organisation under the following Acts as in force immediately before the commencement day (the *pre-amendment law*):
 - (a) the *Duties Act 1999*;
 - (b) the *Payroll Tax Act 2011*;
 - (c) the *Rates Act 2004*.

- (3) This section applies regardless of—
- (a) when the organisation made—
 - (i) any submission to the commissioner or the ACAT that the organisation's liability under the pre-amendment law should be decided on the basis that the organisation is, or was, a charitable organisation or should be treated as a charitable organisation; or
 - (ii) any objection or appeal about those matters; and
 - (b) whether the commissioner or the ACAT has decided that the organisation was, or should have been treated as, a charitable organisation under the pre-amendment law in the period to which the reassessment relates.
- (4) To avoid any doubt, this section does not apply to a reassessment made before the commencement day of an organisation's tax liability made on the basis that the organisation is, or was, a charitable organisation, or should be treated as a charitable organisation, under the pre-amendment law.

302 Expiry—pt 20

This part expires 5 years after the commencement day.

18 Decisions subject to objection or review Schedule 1, new section 1.2 (aa) and (ab)

insert

- (aa) under section 18F refusing an application for a beneficial organisation determination; or
- (ab) under section 18F revoking a beneficial organisation determination; or

19 Dictionary, new definitions

insert

beneficial organisation determination means a determination made under section 18F (Beneficial organisation determinations—decision).

charitable organisation, for a tax law—see section 18B.

excluded organisation, for part 3A (Charitable organisations)—see section 18C.

organisation, for part 3A (Charitable organisations)—see section 18A.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 29 October 2015.

2 Notification

Notified under the [Legislation Act](#) on 24 November 2015.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Revenue (Charitable Organisations) Legislation Amendment Bill 2015, which was passed by the Legislative Assembly on 17 November 2015.

Acting Clerk of the Legislative Assembly

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