

This Bulletin explains the amendments to section 48 of the *Payroll Tax Act 2007* which come into effect from 1 July 2012.

Exemption for wages paid by non-profit organisations and religious and public benevolent institutions

Payroll Tax Bulletin

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Purpose

Section 48 of the *Payroll Tax Act 2007* (the Act) provides an exemption for wages paid by religious institutions, public benevolent institutions and non-profit organisations.

Section 48 of the Act was amended by the *State Taxation Acts Further Amendment Act 2011* with effect from 1 July 2012.

The purpose of this Bulletin is to explain the amendments and to clarify the operation of the exemption in section 48 of the Act. Although the amendments apply to all requisite institutions and non-profit organisations, for convenience this Bulletin refers to charitable organisations in explaining the changes.

Background

For the period 1 July 2008 to 30 June 2012, section 48 of the Act (the Previous Provision) provided that wages were exempt from payroll tax if they were paid^{FN1} by a religious institution, a public benevolent institution or a non-profit organisation having as its sole or dominant purpose a charitable, benevolent, philanthropic or patriotic purposes (but not including a school, an educational institution, an educational company or an instrumentality of the State).

For wages to be exempt under the Previous Provision, they were also required to be paid to a person engaged exclusively in work of a kind ordinarily performed in connection with the requisite purposes of that institution or organisation. The intention of this requirement was to limit the exemption to persons engaged exclusively in the religious, charitable, benevolent, philanthropic or patriotic work of the institution or organisation. Furthermore, the intention was that if the charitable organisation conducted both charitable activities and unrelated commercial activities, only wages paid to persons engaged in the charitable activities would be exempt.

FN1 - All references in this Bulletin to wages being paid include wages being payable.



Impact of decision in *Word Investments*

The High Court of Australia decision in *Commissioner of Taxation v Word Investments Ltd* [2008] HCA 55 (*Word Investments*) expanded the common law definition of a charitable organisation to include non-profit organisations that conduct unrelated commercial activities to fund their charitable purposes or to donate their profits to another charity.

The impact of this decision was that wages paid by charitable organisations to persons engaged exclusively in work of a kind ordinarily performed in connection with the unrelated commercial activities (of the charitable organisation) were also treated as exempt under the Act.

Restoring the pre-*Word Investments* position

With effect from 1 July 2012, section 48 has been amended to restore the long-standing position that wages paid to persons engaged in commercial activities that are unrelated to a charitable organisation's charitable purposes are not exempt wages.

Amendments to section 48

From 1 July 2012, section 48 of the Act provides that:

1. Wages are exempt wages if the Commissioner is satisfied that the wages are paid or payable
 - a. By any of the following –
 - (i) A religious institution; or
 - (ii) A public benevolent institution (but not including an instrumentality of the State); or
 - (iii) A non-profit organisation having as its whole or dominant purpose a charitable, benevolent, philanthropic or patriotic purpose (but not including a school, an educational institution, an educational company or an instrumentality of the State); and



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- b. To a person engaged exclusively in work of a religious, charitable, benevolent, philanthropic or patriotic nature for the institution or non-profit organisation.

The effect of the amendment is that only wages paid to persons engaged exclusively in work of a religious, charitable, benevolent, philanthropic or patriotic nature for the institution or non-profit organisation are exempt.

The Commissioner of State Revenue (the Commissioner) is aware that charitable organisations may conduct certain activities of a commercial nature that are directly related to the charitable purposes of the organisation. These activities are regarded as 'directly related commercial activities' and wages paid in respect of such activities are considered to be exempt wages for the purposes of section 48 of the Act.

By contrast, wages paid to persons engaged in 'unrelated commercial activities' which are intrinsically non-charitable are not exempt wages regardless of whether the proceeds from those activities are applied to further the charitable purposes of the organisation.

Examples of 'directly related commercial activities'

The following examples are illustrative of the types of activities that are considered to be directly related commercial activities for the purposes of section 48 of the Act.

Example 1

A charitable organisation which has purposes to assist disabled persons conducts a sheltered workshop or social enterprise. Such activities are conducted primarily to provide gainful employment for people with disabilities. The operation of a sheltered workshop is regarded as intrinsically charitable because it is conducted with the primary purpose of providing relief and assistance to disadvantaged persons in the community. Therefore wages paid by the charitable organisation to persons engaged in the operation of the sheltered workshop are

regarded as wages paid to persons engaged exclusively in work of a charitable nature of the organisation.

Example 2

A charitable organisation which has purposes to advance its religious faith operates a store which sells religious books and publications. The sale of religious material is regarded as intrinsically charitable because it is conducted with the primary purpose of advancing its religious faith. Therefore wages paid by the charitable organisation to persons engaged in the operation of the religious bookstore are regarded as wages paid to persons engaged exclusively in work of a charitable nature of the organisation.

Example 3

A charitable organisation which has purposes for the relief of poverty and destitution provides a range of services such as accommodation and support services, soup vans and food vouchers, emergency relief services, and counselling services. It also conducts an opportunity shop with the aim to relieve poverty and to preserve some semblance of dignity for its shoppers (i.e. the operation of the opportunity shop is conducted primarily for the purposes of relieving poverty by providing clothing and goods at nominal prices). Where the operation of the opportunity shop meets the following criteria, the charitable organisation will not be regarded as carrying on an unrelated commercial activity:

- the activities conducted in the opportunity shop specifically meet the aims and objectives of the organisation's charitable work (the opportunity shop must, through its operations, directly provide relief of poverty for its shoppers, as distinct from merely raising funds);
- the goods are sold at nominal prices;
- the goods sold in the opportunity shop are predominantly donated to the charitable organisation; and
- the goods sold in the opportunity shop are predominantly second-hand.



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In such circumstances, the wages paid by the charitable organisation to persons engaged in the operation of the opportunity shop are regarded as wages paid to persons engaged exclusively in work of a charitable nature of the organisation.

Examples of 'unrelated commercial activities'

The following examples are illustrative of the types of activities that are considered to be unrelated commercial activities for the purposes of section 48 of the Act.

Example 4

A charitable organisation which is established to provide direct relief of helplessness, poverty or destitution provides a range of services including residential and support services for persons in need, support and counselling to people in crisis including homelessness services, youth services and accommodation.

It also operates two commercial printing businesses and also has a small tele-marketing division which sells merchandise goods (i.e. small gifts, home and garden items and books and stationery). The proceeds of these enterprises are applied to further its services to help those in need. Although the organisation is a charitable organisation, the persons engaged in its printing and tele-marketing businesses are not engaged exclusively in work of a charitable nature. Therefore the wages paid to the persons working in these businesses are not considered to be exempt.

Example 5

A charitable organisation which has purposes to advance its religious faith also operates a commercial catering business and the proceeds of this enterprise are applied to further its services in advancing its religious faith.

As the persons engaged in the commercial catering business are not engaged exclusively in work of a charitable nature, the wages paid to those persons are not considered to be exempt.

The Commissioner's view of the term 'exclusively' in section 48

Section 48 of the Act requires that wages be paid to a person engaged exclusively in the charitable work of the charitable organisation.

The Commissioner is aware that uncertainty may arise where an organisation, which is charitable in the legal sense, may conduct both charitable work (including commercial activities directly related to its charitable purposes) and unrelated commercial activities. Some of its employees may be engaged in both the charitable work and the unrelated commercial activities. Strictly speaking, the wages paid to these employees would not be exempt because the wages are not paid to persons engaged exclusively in the charitable work.

However, the Commissioner will regard that wages are paid to persons engaged exclusively in the charitable work of the charitable organisation where the duties and responsibilities of that person are directed predominantly towards the charitable work.

An example of how section 48 would apply in such circumstances is provided below:

Example 6

The Helpers Foundation is a charitable body whose primary purpose is to provide short-term accommodation and meals to the needy. In order to generate additional funds, the organisation runs a plant nursery and employs staff to work in that business. Profits from the plant nursery business are used to fund its charitable activities. The plant nursery is a commercial activity that is unrelated to its charitable objects and therefore the wages paid to persons engaged in that activity would not be exempt.



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The Helpers Foundation employs a total of 90 persons engaged in the following capacities:

- sixty persons engaged directly in the provision of charitable services to the needy
- two managers providing management services in respect of the charitable services
- five administration and support services staff providing services for charitable activities only
- two administration and support services staff providing services for both the charitable activities and the plant nursery activities
- one administration and support services staff providing services for the plant nursery business only
- eighteen persons engaged in the operation of the plant nursery business
- one Financial Controller, and
- one Chief Executive Officer (CEO).

Wages paid to the following persons are exempt from payroll tax:

- sixty persons engaged directly in the provision of charitable services to the needy
- two managers providing management services in respect of the charitable services, and
- five administration and support services staff providing services for charitable activities only.

Wages paid to the following persons are not exempt from payroll tax:

- one administration and support services staff providing services for the plant nursery business only
- eighteen persons engaged in the operation of the plant nursery business

The wages paid to the following persons will be regarded as exempt from payroll tax as long as the duties and responsibilities of these persons are directed

predominantly towards the charitable work of the organisation:

- two administration and support services staff providing services for both the charitable activities and the plant nursery activities
- one Financial Controller, and
- one CEO.

Organisations that are uncertain as to whether their particular circumstances qualify for exemption may seek a private ruling from the State Revenue Office. Details on how to apply for a private ruling are set out in Revenue Ruling GEN.009.

Further Information

For further information on these changes, please contact the State Revenue Office:

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