

Land Used Exclusively for Charitable Purposes

Land Tax Act 2005 Revenue Ruling LTA 004

Preamble

Land is exempt from land tax under section 74 of the *Land Tax Act 2005* (the Act) if the Commissioner of State Revenue (the Commissioner) determines that the land is used by a charitable institution exclusively for charitable purposes. To claim this exemption, the owner of the land must apply to the Commissioner as required by section 74(3) of the Act.

The purpose of this Revenue Ruling is to explain the operation of the exemption in section 74 of the Act and how to apply for it.

Ruling

The two requirements for the exemption in section 74 of the Act are:

1. the land must be used by a charitable institution, and
2. the use must be exclusively for charitable purposes.

Charitable institution

The question of whether or not an organisation is charitable is determined in accordance with common law principles. Generally, an organisation is charitable if it is established for:

- i. the relief of poverty
- ii. the advancement of education
- iii. the advancement of religion, or
- iv. other purposes beneficial to the community.

An organisation established for the advancement of education, the advancement of religion or other purpose, must also be for public benefit. The benefit must be for the community as a whole or an appreciable section of it.

Also, an organisation must operate on a not-for-profit basis. This means that any profit or surplus income must be used solely to further the organisation's objectives and must not be distributed to its members. Generally, to be satisfied that this requirement is met, the Commissioner requires that the organisation's wind up clause prohibits distribution of any surplus assets to its members and

directs distribution of any surplus assets to another charitable institution whose wind up clause also prohibits distribution of any surplus assets to its members.

Land may be exempt under section 74 of the Act if it is:

1. leased from the Crown and used by a charitable institution exclusively for charitable purposes
2. owned by a charitable institution but leased to another charitable institution that uses the land exclusively for charitable purposes
3. leased from a non-charity by the charitable institution that uses it exclusively for charitable purposes, or
4. vacant land owned by a charitable institution which is declared for future use for charitable purposes.

Land must be used exclusively for charitable purposes

Generally, only purposes directly related to the achievement of the objectives of a charitable institution are considered charitable. A business/commercial activity carried out by a charitable institution to raise funds is not considered a use for charitable purpose even though the funds raised are used for charitable purposes.

This position was affirmed by the Victorian Civil and Administrative Tribunal (VCAT) in *Wesley Mission Melbourne Ltd v Commissioner of State Revenue* [2004] VCAT 419. In that case, Wesley Mission, a charitable institution, operated two printing businesses which derived profits used in its numerous charitable activities. Although the VCAT accepted that charitable bodies are now engaging in wider commercial activities to raise funds, it held that the two printing businesses operated by Wesley Mission were commercial activities and were not of a charitable nature.

However, in situations where the commercial activity conducted on the land by the charitable institution is incidental to its charitable purposes, the land is eligible for the exemption. In *Salvation Army (Vic) Property Trust v Shire of Fern Tree*

Gully (1951) 85 CLR 159, the lands were used for the purpose of conducting training farms for delinquent boys and homes for difficult, wayward or underprivileged boys. Activities of the training farms include raising animals and growing vegetables and flowers. Produce of the farms was sold and the revenue generated was applied towards the costs of operating the training farms and homes. The High Court held that lands were used exclusively for charitable purposes. Although revenue was generated from the farming activities, those activities were considered as merely incidental to the charitable purpose the land was being used for.

In situations where a charitable institution only uses part of the land exclusively for charitable purposes, that part of the land is exempt from land tax. The remaining part of the land is subject to land tax unless another exemption applies to that part of the land (section 74(2) of the Act).

The question as to whether running an opportunity shop by a charitable institution is considered a use for a charitable purpose is addressed in Revenue Ruling LTA005.

Evidentiary requirements

To claim the exemption under section 74 of the Act, the owner of the land must submit a written application to the Commissioner. A person entitled to land under a lease from the Crown is deemed to be the owner of the land (section 10(b) of the Act).

The written application must clearly state the grounds on which the exemption is sought and include the following information and documents:

- a. full details of the location and ownership of the land (if the property is the subject of a lease, details of the lessor must be provided)
- b. for a company, a copy of the Certificate of Incorporation and its Constitution (previously known as the Memorandum and Articles of Association)
- c. for a trust, a copy of the trust deed (including any schedules) and any amendments and alterations to the trust deed
- d. details of the organisation's aims, objectives and rules
- e. financial statements for the current and past three financial years
- f. details of previous approvals by the Commissioner for any exemptions to the organisation

- g. other information to indicate that the organisation is charitable, such as a description of services provided, and
- h. evidence of a wind-up clause stating that assets will be:
 - i. passed onto another charitable organisation in the event of wind-up and that,
 - ii. assets will not be distributed to members of either organisation.
- i. details of all the activities conducted on the land
- j. promotional material, and
- k. any relevant information on exemptions granted by other State or Commonwealth jurisdictions.

This Revenue Ruling covers land subject to land tax for the 2006 land tax period and onwards.

Please note that rulings do not have the force of law. Each decision made by the State Revenue Office is made on the merits of each individual case having regard to any relevant ruling. All rulings must be read subject to Revenue Ruling GEN.001.



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Commissioner of State Revenue