

## TERRITORY REVENUE OFFICE

### REVENUE CIRCULAR

#### RC-PRT-007

## 2015-16 Budget Measures – Payroll Tax Non-Profit Exemption

### Purpose

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1. This Circular provides information on amendments to the non-profit exemption in the *Payroll Tax Act*. The amendments form part of the 2015-16 Budget revenue measures announced by the Treasurer on 28 April 2015 and are contained in the *Revenue and Other Legislation Amendment Bill 2015*.

### Charities payroll tax exemption reform

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2. Prior to the commencement of the amending legislation, the non-profit exemption at section 48 of the *Payroll Tax Act* provided an exemption for wages paid or payable by a religious institution, public benevolent institution (other than an instrumentality of the Territory), or a non-profit organisation having as its sole or dominant purpose a charitable, benevolent, philanthropic or patriotic purpose (other than a school, educational institution, educational company or instrumentality of the Territory).
3. The exemption was also confined to wages paid or payable for work of a kind ordinarily performed in connection with the religious, charitable, benevolent, philanthropic or patriotic purpose of the institution or organisation and to a person engaged exclusively in that kind of work.
4. The *Revenue and Other Legislation Amendment Bill 2015* contains two significant reforms to the non-profit payroll tax exemption to limit the class of organisations and activities that may receive the exemption. The Bill provides that these reforms are to commence from 1 July 2015.
5. These reforms are necessary because of two court cases, *Commissioner of Taxation of the Commonwealth of Australia v Word Investments Limited* [2008] HCA 55 ('Word'); and *Chamber of Commerce and Industry of Western Australia (Inc.) and Commissioner of State Revenue* [2012] WASAT 146 ('CCI').
6. In Word, the High Court essentially ruled that commercial or profit making activities provided generally in the market place could be regarded as charitable activities if the profits of those activities were directed to a charity or charitable purpose. In CCI, the State Administrative Tribunal of Western Australia found the broad common law definition of a 'charity' could include entities with a purpose of promoting trade, industry or commerce, provided they were not run primarily to benefit their own members. Collectively, these decisions depart from traditional practice and mean that the non-profit payroll tax exemption no longer operates as originally intended.
7. To address the outcome of the Word decision, the non-profit payroll tax exemption is tightened to specifically exclude wages paid to a person engaging in commercial work, or work performed in competition with the private sector. The amendments replicate similar provisions in the *Stamp Duty Act* and mean that the exemption will not be available for wages paid to a worker who performs a commercial or for-profit activity, regardless of how the funds raised from that activity are applied (i.e. merely raising money for a charity is not in itself sufficient to attract the exemption). The amendments apply irrespective of whether the commercial or competitive activities are charitable at common law.
8. To clarify the scope of the amendments, activities that constitute a 'commercial or competitive activity' have been defined to include anything not related to the charitable purposes of the entity, any commercial activities, such as investment activities, and any activities which compete with a business carried on by another person. This definition is not intended to include small scale traditional fundraising activities that would normally be undertaken by charities, or charitable activities merely done on a cost recovery or nominal fee basis (such as an op shop or soup kitchen).
9. To address the outcomes arising from CCI, the non-profit payroll tax exemption is refocused to ensure it is not available for professional associations or entities which promote trade, industry or commerce. The amendments also confirm, consistent with current practice that industrial associations (including

employer's associations and trade unions) and political parties continue to be ineligible to receive the exemption.

10. A 'professional association' is an entity that has as one of its purposes the promotion of the interests of its members in any profession.
11. A 'trade, industry or commerce entity' is an entity that has a purpose of promoting trade, industry or commerce (whether generally or in respect of any particular kind of trade, industry or commerce). However, an entity is not a 'trade, industry or commerce entity' if it has a sole or predominant purpose of the relief of poverty or the advancement of education or religion, as those terms are understood at common law. An entity with multiple purposes that are each for the relief of poverty, advancement of education, or religion, can have those purposes aggregated to determine whether it is a trade, industry or commerce entity.
12. An 'industrial association' is defined to include:
  - an association of employees or employers registered as an organisation or recognised under the *Fair Work (Registered Organisations) Act 2009* (Cth);
  - an association of employers or employees registered or recognised under the law of a State or Territory; and
  - an association of employees, the predominant purpose of which is the protection and promotion of the employees' interests in matters concerning their employment.
13. A 'political party' is an entity that has, as one of its purposes, the promotion of the election to the Legislative Assembly, or Parliament (whether Commonwealth, State or another Territory) of a candidate, or candidates endorsed by it or by an entity of which it forms part.

#### *Commissioner's discretion*

14. A new discretion is also introduced which allows the Commissioner of Territory Revenue to deem an entity that would otherwise be excluded as a 'trade, industry or commerce entity' or a 'professional association' to be a non-profit entity. This discretion allows the Commissioner to continue to provide a payroll tax exemption to entities that are unintentionally captured by the definitions of a 'trade, industry or commerce entity' or 'professional association' as a result of these amendments.
15. In determining whether a 'trade, industry or commerce entity' or a 'professional association' will be accepted by the Commissioner as a non-profit entity, the Commissioner may have regard to a range of factors, including the following:
  - the significance of the excluding feature of the entity in relation to the purposes of the entity considered as a whole;
  - the extent to which the entity's purposes are for the relief of poverty, the advancement of education or religion, or are otherwise beneficial to the community;
  - the extent to which the entity's purposes are, or are intended to be, beneficial to any class of persons (whether or not members of the entity) rather than the community generally; and
  - any other factors the Commissioner considers relevant.
16. An excluding feature of an entity means a purpose, object or activity that would, but for a determination by the Commissioner, cause the entity to be ineligible for the non-profit payroll tax exemption.
17. An employer aggrieved by a decision by the Commissioner not to exercise this discretion, and any consequential assessment will be subject to the objection and appeals provisions at Part 11 of the *Taxation Administration Act*.

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#### **Further Information**

18. Please refer to the Revenue and Other Legislation Amendment Bill 2015 and explanatory statement for precise details of the amendments.

## Revenue Circulars

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19. Commissioner's Guideline [CG-GEN-001: Revenue Circulars, Commissioner's Guidelines and Payroll Tax Rulings: explanation and status](#), which sets out information on the revenue publication system, is incorporated into and is to be read as one with this Circular. All Circulars and Guidelines are available from TRO's website.



Grant Parsons

**COMMISSIONER OF TERRITORY REVENUE**

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