

## **PAY-ROLL TAX CHARITABLE EXEMPTION – MEANING OF EXCLUSIVELY**

The *Pay-roll Tax (Harmonisation Project) Amendment Act 2008*, which was assented to on 26 June 2008 and comes into operation on 1 July 2008, makes amendments to the *Pay-roll Tax Act 1971* (the “Act”) to harmonise legislative and administrative arrangements with other States and Territories. One of the areas which has been harmonised relates to exempt non-profit organisations.

Section 12(1)(cc) of the Act provides an exemption from pay-roll tax to the wages paid by a non-profit organisation having wholly charitable purposes (but not including a school, an educational institution, an educational company or an instrumentality of the State). The exemption is restricted to wages paid to a person engaged exclusively in work of a kind ordinarily performed in connection with the charitable purposes of the body.

The Commissioner of State Taxation (the “Commissioner”) is aware that uncertainty may arise where an organisation that is charitable in the legal and technical sense has undertaken commercial activities to raise funds to finance their primary charitable function.

This Circular explains the interpretation adopted by the Commissioner of the term ‘exclusively’ as referred to in section 12(1)(cc) of the Act in respect of charitable organisations. In doing so, this Circular clarifies the pay-roll tax treatment of wages paid to employees engaged in commercial activities and those who are engaged in both the charitable and non-charitable functions of the organisation.

The term ‘charitable body’ is not defined in the Act. Therefore, the question of whether or not an organisation is a charitable body is determined in accordance with common law principles.

According to common law principles, a body is charitable in the technical and legal sense if:

- i. it is established for the relief of poverty, the advancement of education, the advancement of religion or other purposes beneficial to the community; and
- ii. its objects are directed towards public benefit.

The employees of such a charitable body may belong to one of the following categories:

Category I      Persons engaged directly in the charitable work.

Category II     Persons engaged in administrative/management roles.

Category III Persons engaged wholly in the business activities undertaken to fund its charitable work.

Wages paid to persons in Category I, such as carers and counsellors, clearly satisfy the requirements of the section and are exempt from pay-roll tax.

On a strict interpretation of section 12(1)(cc) of the Act, persons in Category II are not considered to be engaged exclusively in the charitable work of the organisation. Therefore, wages paid to these personnel are technically excluded from the exemption.

However, where such persons are engaged predominantly in work associated with the body's charitable activities, the Commissioner will regard those persons as being engaged exclusively in charitable work. A Chief Executive Officer (CEO) would typically fall within this category. Others such as administrative staff or a bookkeeper who is responsible for the accounts of both the charitable body and business activities may also fall within this category. Accordingly, the Commissioner will regard wages paid to those persons as exempt from pay-roll tax.

Where a person's role and duties encompass both charitable and business activities, but he/she is not engaged predominantly in the body's charitable activities, the wages paid to that person are always subject to pay-roll tax.

Wages paid to persons in Category III are subject to pay-roll tax even if the business activities of the charitable body are incidental and ancillary to its main charitable purpose. This is because these persons are not engaged either exclusively or predominantly in charitable activities.

### Example

The Helpers is a fictitious charitable body whose 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.

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

- sixty persons are engaged directly in the provision of charitable services to the needy;
- two managers oversee the charitable services;
- eight persons provide administration and support services (five of these provide administrative/support services to the charitable activities only, two provide administrative/support services to both the charitable and the plant nursery activities and one provides administrative/support services to the plant nursery business only;
- a CEO and a Financial Controller; and
- eighteen persons engaged in the operation of plant nursery business (the profits of which are used to fund The Helpers charitable activities).

Wages paid to the following persons are clearly exempt from pay-roll tax:

- the sixty persons engaged directly in the provision of the charitable services;

- the two managers engaged to oversee the charitable services; and
- the five administrative/support staff members providing services to the charitable activities only.

Wages paid to the following persons are clearly not exempt from pay-roll tax:

- the eighteen employees engaged in the plant nursery business; and
- the administrative/support staff providing services to the plant nursery business only.

The wages paid to the CEO, the Financial Controller and the two administrative/support staff that service both the charitable activities and plant nursery business are not wages paid to persons engaged exclusively in the charitable work of the body, because their roles and responsibilities also encompass the non-charitable plant nursery business. However, the Commissioner will regard these wages as exempt from payroll tax as long as their duties and responsibilities are directed predominantly towards the charitable work of the organisation.

Unless a charitable body, such as The Helpers, pays wages to employees engaged in non charitable activities in excess of the threshold, no payroll tax is payable. If any charitable body is unsure of its liability in this regard, it should seek confirmation from RevenueSA.

This Circular is effective from 1 July 2008.

**Please note that circulars do not have the force of law.**

#### **FURTHER INFORMATION**

Further information regarding these amendments may be obtained from RevenueSA.

##### ***Location***

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ADELAIDE SA 5000

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