



Office of State Revenue
NSW TREASURY
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Revenue Ruling No. DUT 7

Exemption from Duty - Societies or Institutions of a Charitable or Benevolent Nature or for the Promotion of Aborigines

Ruling history

Ruling no.	Issued date	Dates of effect		Status
		From	To	
DUT 7	01 July 1998	01 July 1998	08 March 2007	Replaced by DUT 34

Preamble

1. Section 275 (b) of the *Duties Act 1997* provides that duty is not chargeable on certain transactions by or on behalf of societies or institutions of a charitable or benevolent nature, or for the promotion of the interests of Aborigines. The exemption is limited by reference to the nature of the society or institution and the purposes of the transaction. Those purposes must be in accordance with guidelines approved by the Treasurer.
2. This ruling gives general examples as to what societies or institutions might, in the opinion of the Chief Commissioner, qualify as being of a charitable or benevolent nature. The ruling also outlines the guidelines approved by the Treasurer, together with information as to what evidence might be required when making application for exemption.
3. The guidelines apply to transactions effected or instruments executed on or after 1 July 1998. A separate ruling discusses the exemption in section 275 (a), which grants an exemption "for the time being" to certain societies or institutions for the relief of poverty or promotion of education.

Ruling

Exempt transactions

4. The following transactions or instruments are eligible for exemption:
 - a transfer of dutiable property to an approved society or institution
 - an agreement for the sale or transfer of dutiable property to an approved society or institution
 - a lease of dutiable property to an approved society or institution
 - a declaration of trust over dutiable property held or to be held in trust for an approved society or institution
 - a mortgage given by or on behalf of an approved society or institution.

Nature of the society or institution

5. The society or institution must be, in the opinion of the Chief Commissioner, of a charitable or benevolent nature, or have as its primary object the promotion of the interests of Aborigines.
6. The applicant must be a non-profit organisation. That is, its rules should provide that its income is not distributed to its members by way of profit and that, on dissolution or winding up of the organisation, its assets would be distributed to another organisation with similar rules and objects.

7. Registered charities or organisations approved under other legislation relating to charitable purposes do not automatically qualify for exemption.
8. The words 'any society or institution' can include a wide range of organisations with varying degrees of formal structure. While a 'mere trust' is not an institution, a fund raised by public contributions and administered by trustees for specific charitable purposes could be an institution [see *Stratton v Simpson* (1970) 125 CLR 138]. Accordingly, trustees who are actively involved in administration of a charitable trust fund could be granted an exemption under section 275 (b).

Purposes of the transaction

9. Even if the society or institution is of a charitable or benevolent nature, the transaction also must be for such charitable or benevolent purposes of the organisation as are approved. The following are purposes which may be approved in accordance with guidelines approved by the Treasurer:
 - the relief of poverty
 - the relief and prevention of sickness and disability
 - the relief of suffering and distress caused by old age
 - the promotion of education
 - the establishment of organisations to assist sections of the community with special needs
 - the relief of distress caused by natural disasters or sudden catastrophes.
10. The transaction for which exemption is claimed must be used for the charitable or benevolent purposes of the organisation. It cannot be let or sold for profit.
11. Property acquired for use as the headquarters of a charitable or benevolent organisation will qualify for exemption if the use of the property is part of continuing charitable or benevolent work.
12. A transaction by which property is donated will qualify for exemption if it is to be used for approved purposes, or is to be sold and the proceeds applied to a specific proposal which is for approved purposes.
13. Property acquired by religious organisations must be used for approved charitable and benevolent purposes of the organisation and not for predominantly religious purposes.

Other requirements

14. The application for exemption may be made prior to the duty being paid or within 5 years of the initial assessment of duty.
15. Where the applicant organisation seeks exemption on the basis that, although the organisation is not, of itself, of a charitable or benevolent nature, the transaction is for re-channelling into charitable or benevolent purposes, the transaction will not qualify for exemption. The property must be used directly by the applicant for the purpose of promoting whatever charitable or benevolent purpose is claimed.
16. Exemption is either total or not at all. Consequently, properties used partially for purposes which do not qualify for exemption are not exempt, but may be considered for ex gratia relief in appropriate circumstances.

17. The following are examples of institutions that may qualify.

Charitable or benevolent society or institution

Private hospital, retirement home or nursing home, including those operated by religious organisations (see paragraphs 18 & 19 below)

Approved purpose

Providing accommodation for the sick, aged or infirm

Special features

Entry and accommodation must not be restricted to persons with the financial capacity to make a substantial initial payment or to pay fees which are not considered reasonable in the circumstances

Charitable or benevolent society or institution

Organisations for the welfare of disabled or physically or mentally impaired persons

Approved purpose

Property used as schools, hospitals, sheltered workshops

Special features

Sheltered workshops accepted as educational although there is some commercial activity. While often subsidised by government, this is not a pre-requisite for exemption

Charitable or benevolent society or institution

Community support enterprise

Approved purpose

Hostels, sheltered workshops, clothing and food centres

Special features

For the poor and needy, homeless persons etc.

Charitable or benevolent society or institution

Private schools

Approved purpose

Property to be used for school purposes, playing fields, classrooms

Special features

Not restricted to a particular sector of the community

Charitable or benevolent society or institution

Scouts, Girl Guides etc.

Approved purpose

Halls etc.

Special features

Development of youth in physical, mental and social attributes

Charitable or benevolent society or institution

Pre-schools

Approved purpose

Establishing or conducting a pre-school

Special features

Non-profit making, community based pre-schools qualifying for government financial assistance

18. Private hospitals, retirement homes and nursing homes may still qualify for exemption even if financial restrictions are placed on entry and accommodation, provided that a 'fair' proportion of units or beds will be available for persons who do not have the financial capacity to pay the usual fees and charges.
19. Premises providing accommodation for the aged will be considered on the basis of how the right to live in such premises is acquired, such as a requirement to pay regular levies, or to assign pension cheques. Consideration will be given to how reasonable the fees are as

compared to the ability of an average member of the community to meet such a commitment. Premises where a condition of entry is a substantial initial contribution by way of premium or loan would not qualify for exemption if it could be concluded that financially disadvantaged persons would be excluded. What constitutes a 'substantial' initial contribution will vary with the prevailing economic conditions.

20. The following are examples of organisations or purposes that may not qualify:
- religious bodies - property used for churches, residences, religious activities
 - sporting bodies or sporting institutions generally, including those conducting activities on the sporting periphery such as equine research projects.
21. Applications for exemption should contain relevant supporting information, such as
- (a) the instrument effecting or evidencing the transaction for which exemption is requested (a full photocopy may be submitted in the first instance)
 - (b) a full copy of the rules, regulations and objectives of the applicant organisation;
 - (c) full details as to how the property or borrowing in question will be used
 - (d) any promotional material associated with the project
 - (e) any other information that might indicate that the purposes for which the property or borrowing will be used are of a charitable or benevolent nature or for the promotion of the interests of Aborigines.

B Buchanan

Chief Commissioner of State Revenue
1 July 1998