

2015

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Treasurer)

Revenue (Charitable Organisations) Legislation Amendment Bill 2015

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Revenue (Charitable Organisations) Legislation Amendment Bill 2015

A Bill for

An Act to amend legislation about charitable organisations

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Revenue (Charitable Organisations) Legislation*
4 *Amendment Act 2015*.

5 **2 Commencement**

6 This Act commences on the day after its notification day.

7 *Note* The naming and commencement provisions automatically commence on
8 the notification day (see [Legislation Act](#), s 75 (1)).

9 **3 Legislation amended**

10 This Act amends the following legislation:

- 11 • [Duties Act 1999](#)
- 12 • [Payroll Tax Act 2011](#)
- 13 • [Rates Act 2004](#)
- 14 • [Taxation Administration Act 1999](#).

1 **Part 2** **Duties Act 1999**

2 **4** **Transfer of property from one superannuation fund to**
3 **another**
4 **Section 62 (4)**

5 *omit*

6 hospital, school or charitable organisation

7 *substitute*

8 hospital or school

9 **5** **Transfers between trustees and custodians of**
10 **superannuation funds or trusts**
11 **Section 63 (3)**

12 *omit*

13 hospital, school or charitable organisation

14 *substitute*

15 hospital or school

16 **6** **Transfer of land to certain authorities and other bodies**
17 **Section 64 (2)**

18 *omit*

19 hospital, school or charitable organisation

20 *substitute*

21 hospital or school

1 **7 Ch 3 transactions—concessional duty**
2 **Section 91 (1) (a)**

3 *omit*
4 hospital, school or charitable organisation
5 *substitute*
6 hospital or school

7 **8 Insurance exempt from duty generally**
8 **Section 201 (1) (f)**

9 *omit*
10 hospital, school or charitable organisation
11 *substitute*
12 hospital or school

13 **9 Charitable organisations**
14 **Section 210A**

15 *omit*

16 **10 New section 232**

17 *in chapter 11, insert*

18 **232 Charitable organisations**

19 (1) Duty under this Act is not payable if the duty would be payable by a
20 charitable organisation.

21 (2) In this section:

22 *charitable organisation*—

23 (a) for a tax law—see the [Taxation Administration Act](#),
24 section 18B; but

1 (b) does not include an organisation that is related to an excluded
2 organisation unless a beneficial organisation determination is
3 in force for the excluded organisation.

4 *Note 1* **Beneficial organisation determination**—see the [Taxation](#)
5 [Administration Act](#), dictionary.

6 *Note 2* **Excluded organisation** and **organisation**—see the [Taxation](#)
7 [Administration Act](#), pt 3A (Charitable organisations).

8 (3) For subsection (2), an organisation is *related* to an excluded
9 organisation if—

10 (a) the organisation holds dutiable property as trustee of a trust;
11 and

12 (b) the excluded organisation is a beneficiary under the trust,
13 whether it has a vested share or is contingently entitled or is a
14 potential beneficiary under the trust.

15 **11 Dictionary, definition of *charitable organisation***

16 *omit*

1 **Part 3 Payroll Tax Act 2011**

2 **12 Meaning of *charitable organisation*—pt 2.2**
3 **Schedule 2, section 2.12, definition of *charitable***
4 ***organisation***

5 *substitute*

6 *charitable organisation*, for a tax law—see the [Taxation](#)
7 [Administration Act 1999](#), section 18B.

1 Part 4 Rates Act 2004

2 **13 Section 8**

3 *substitute*

4 **8 Meaning of *rateable land***

5 (1) In this Act:

6 *rateable land*—

- 7 (a) means all land in the ACT, including Commonwealth land; but
- 8 (b) does not include—
- 9 (i) commons, public parks and public reserves not held
 - 10 under lease or licence; and
 - 11 (ii) sites of cemeteries and public hospitals; and
 - 12 (iii) land leased to charitable organisations and used
 - 13 exclusively for religious, educational, benevolent or
 - 14 charitable purposes; and
 - 15 (iv) sites of churches and other buildings used exclusively for
 - 16 public worship; and
 - 17 (v) sites of buildings used for free public libraries; and
 - 18 (vi) land leased from the Commonwealth that is occupied by,
 - 19 or used in connection with, a school; and
 - 20 (vii) Commonwealth land that is not leased and is unoccupied
 - 21 (other than land that, immediately before becoming
 - 22 unoccupied, was occupied by a lessee of the Territory or
 - 23 Commonwealth on a weekly or fortnightly tenancy).

- 1 (2) In this section:
- 2 *charitable organisation*, for a tax law—see the *Taxation*
- 3 *Administration Act 1999*, section 18B.
- 4 *charitable purposes* does not include community housing purposes.
- 5 *community housing*—see the *Duties Act 1999*, section 73A (4).
- 6 *school* means a non-government school under the *Education*
- 7 *Act 2004*, and includes a playground belonging to, or used in
- 8 relation to, the school.

Part 5 Taxation Administration Act 1999

14 Reassessment Section 9 (3)

substitute

- (3) The commissioner must not make a reassessment of a tax liability—
- (a) more than 5 years after the initial assessment of the liability, unless—
 - (i) the purpose of the reassessment is to give effect to a decision on an objection or appeal as to the initial assessment; or
 - (ii) at the time the initial assessment or a reassessment was made, all the facts and circumstances affecting the liability under the relevant tax law of the person in relation to whom the assessment or reassessment was made were not fully and truly disclosed to the commissioner; and
 - (b) for an excluded organisation in relation to which a beneficial organisation determination does not apply—if the purpose of the reassessment is to give effect to a decision that the organisation has a tax liability, or has no tax liability, under a relevant provision.

15 New section 9 (5)

insert

- (5) In this section:
excluded organisation—see section 18C.

- 1 (ii) an excluded organisation unless a beneficial organisation
2 determination is in force for the excluded organisation.

3 **18C Meaning of *excluded organisation*—pt 3A**

- 4 (1) In this part:

5 *excluded organisation* means—

- 6 (a) a political party; or
7 (b) an industrial organisation; or
8 (c) a professional organisation; or
9 (d) an organisation that promotes trade, industry or commerce; or
10 (e) a class of organisation prescribed by regulation.

- 11 (2) In this section:

12 *industrial organisation* means any of the following:

- 13 (a) an association of employees, or an association of employers,
14 registered as an organisation, or recognised, under the *Fair*
15 *Work (Registered Organisations) Act 2009* (Cwlth);
16 (b) an association of employees registered or recognised as a trade
17 union (however described) under the law of a State or a
18 Territory;
19 (c) an association of employers registered or recognised as such
20 (however described) under the law of another State or a
21 Territory;
22 (d) an association of employees which has an exclusive or
23 predominant purpose of protecting and promoting the
24 employees' interests in matters concerning their employment.

- 1 (c) an organisation in a class of organisation prescribed by
2 regulation under section 18C (1), definition of *excluded*
3 *organisation*, paragraph (e), if the regulation prescribing the
4 class of organisation states that this section applies to the class
5 of organisation.

6 **18F Beneficial organisation determinations—decision**

- 7 (1) If the commissioner receives an application for a beneficial
8 organisation determination from an organisation, the commissioner
9 may make the determination if satisfied that—
- 10 (a) the predominant purpose of the organisation is to advance
11 religion, advance education, relieve poverty, or otherwise
12 benefit the community; and
- 13 (b) the objects and activities of the organisation that make the
14 organisation an excluded organisation are not significant in
15 relation to the purpose of the organisation considered as a
16 whole; and
- 17 (c) the purpose of the organisation is not, or is not intended to be,
18 beneficial to a particular class of people (whether or not
19 members of the organisation) rather than the community
20 generally.

- 21 (2) A beneficial organisation determination is a notifiable instrument.

22 *Note 1* A notifiable instrument must be notified under the [Legislation Act](#).

23 *Note 2* The power to make the beneficial organisation determination includes
24 the power to amend or repeal the determination. The power to amend or
25 repeal the determination is exercisable in the same way, and subject to
26 the same conditions, as the power to make the determination (see
27 [Legislation Act](#), s 46).

- 1 **18G Beneficial organisation determinations—effect**
- 2 (1) If the commissioner makes a beneficial organisation determination
- 3 for an organisation, the determination takes effect on the day the
- 4 organisation applied for the determination.
- 5 (2) A beneficial organisation determination for an organisation applies
- 6 to the organisation in relation to any liability to pay—
- 7 (a) duty for a dutiable transaction entered into while the
- 8 determination is in effect; and
- 9 (b) payroll tax and rates for a financial year in which the
- 10 determination is in effect.
- 11 (3) The commissioner—
- 12 (a) must reassess an organisation’s liability to duty, payroll tax or
- 13 rates for the period beginning on the day the beneficial
- 14 organisation determination takes effect; but
- 15 (b) must not make a reassessment more than 5 years after the
- 16 determination is made.
- 17 (4) In this section:
- 18 *dutiable transaction*—see the *Duties Act 1999*, section 7 (2).
- 19 *payroll tax*—see the *Payroll Tax Act 2011*, dictionary.
- 20 *rates*—see the *Rates Act 2004*, dictionary.

17 **New part 20***insert***Part 20** **Transitional—Revenue
(Charitable Organisations)
Legislation Amendment Act 2015****300** **Meaning of *commencement day*—pt 20**

In this part:

commencement day means the day the *Revenue (Charitable Organisations) Legislation Amendment Act 2015*, section 3 commences.

301 **Reassessment for certain organisations**

- (1) This section applies to an excluded organisation in relation to which a beneficial organisation determination is not in force.
- (2) The commissioner or the ACAT must not make a reassessment of a tax liability for any period before the commencement day for the excluded organisation under section 9 if the purpose of the reassessment is to give effect to a decision that the organisation has a tax liability, or has no tax liability, because the organisation was a charitable organisation or should have been treated as a charitable organisation under the following Acts as in force immediately before the commencement day (the *pre-amendment law*):
 - (a) the *Duties Act 1999*;
 - (b) the *Payroll Tax Act 2011*;
 - (c) the *Rates Act 2004*.

Section 18

- 1 (3) This section applies regardless of—
- 2 (a) when the organisation made—
- 3 (i) any submission to the commissioner or the ACAT that
- 4 the organisation's liability under the pre-amendment law
- 5 should be decided on the basis that the organisation is, or
- 6 was, a charitable organisation or should be treated as a
- 7 charitable organisation; or
- 8 (ii) any objection or appeal about those matters; and
- 9 (b) whether the commissioner or the ACAT has decided that the
- 10 organisation was, or should have been treated as, a charitable
- 11 organisation under the pre-amendment law in the period to
- 12 which the reassessment relates.
- 13 (4) To avoid any doubt, this section does not apply to a reassessment
- 14 made before the commencement day of an organisation's tax
- 15 liability made on the basis that the organisation is, or was, a
- 16 charitable organisation, or should be treated as a charitable
- 17 organisation, under the pre-amendment law.

18 **302 Expiry—pt 20**

19 This part expires 5 years after the commencement day.

20 **18 Decisions subject to objection or review**

21 **Schedule 1, new section 1.2 (aa) and (ab)**

22 *insert*

- 23 (aa) under section 18F refusing an application for a beneficial
- 24 organisation determination; or
- 25 (ab) under section 18F revoking a beneficial organisation
- 26 determination; or

19 Dictionary, new definitions

2 *insert*

3 *beneficial organisation determination* means a determination made
4 under section 18F (Beneficial organisation determinations—
5 decision).

6 *charitable organisation*, for a tax law—see section 18B.

7 *excluded organisation*, for part 3A (Charitable organisations)—see
8 section 18C.

9 *organisation*, for part 3A (Charitable organisations)—see
10 section 18A.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 29 October 2015.

2 Notification

Notified under the [Legislation Act](#) on 2015.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

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