

State tax exemptions

Legal information for Australian Capital Territory community organisations

This fact sheet covers:

- territory duties and exemptions
- payroll tax and exemptions, and
- land tax and exemptions.

In addition to the various taxes that are imposed on community organisations by the Federal Government, Australian Capital Territory (ACT) groups may also be subject to territory taxes. In the ACT, the main government agency that is responsible for territory taxes is called the ACT Revenue Office (ACTRO).

We recommend that your organisation seek advice on its territory tax obligations. This fact sheet sets out a brief description of some of the main territory taxes and the exemptions or concessions that may be available for some community organisations.

Duties ('stamp duty')

What are duties?

Duties (or stamp duties) are taxes that the ACT government charges on certain transactions, known as dutiable transactions. The legislation in which these duties are set out is called the *Duties Act 1999* (ACT) (**Duties Act**). The most commonly known transaction that duty is charged on is the transfer of land. However, duties are also charged on a grant of a Crown lease, declarations of trust over property, transfer of a motor vehicle and certain leasing transactions, as well as on other transactions.

In general, incorporated, not-for-profit community organisations will be liable to pay duties, in accordance with the Duties Act, in the same way that any other organisation or individual is required to, unless they qualify and have applied for an exemption.

Are there any exemptions from duties available for not-for-profit community organisations?

In general, only community organisations that are 'charitable organisations' under ACT law are eligible for exemption from the duties as listed in the Duties Act. In general, charitable organisations are exempt from paying any duty on the following transactions (where they would normally attract a duty):

- an agreement to transfer and a transfer of property (e.g. land)
- declaration of trust over dutiable property
- grant of a Crown lease, a declared land sublease or a commercial lease with a premium, or
- application for registration or transfer of registration of a vehicle.

Certain types of organisations are specifically excluded from being 'charitable organisations' including broadly: political parties, industrial organisations and trade unions, organisations that promote trade, industry or commerce, professional organisations and any class of organisations prescribed by regulation (there are presently none). Some of these excluded organisations are not eligible to be treated as a charitable organisation unless the Commissioner for ACT Revenue (**Commissioner**) makes a Beneficial Organisation Determination (**BOD**) in respect of it. Political parties and industrial organisations are not entitled to make a BOD application.

What does our organisation have to do to get the exemption?

The ACTRO may issue a letter confirming the exempt status of a qualifying charitable organisation.

However, to obtain an exemption from ACT stamp duties, it is not sufficient to be a registered charity with the ACNC. Your organisation will have to write to the ACTRO (there is no prescribed form) requesting exempt status and provide documentation to prove its charitable status under ACT law (including rules or constitution and other supporting documents). Applications can be made at any time (eg. before or after a dutiable transaction is completed) and if granted, a letter will be issued by the ACTRO confirming the exempt status of the organisation. The exemption will remain in place until such time as the rules or constitution are varied, at which time a further application must be made. You can seek advice from the ACTRO regarding your charitable status if you are unsure.

CAUTION

State (territory) tax laws are not linked to federal tax laws, and the ACTRO applies a territory definition of 'charity' and 'charitable', so your organisation may need advice to make sure that it meets both territory and federal requirements.

There may be some organisations that are considered a charity under the federal definition contained in the *Charities Act 2013* (Cth), but may not meet the definition of charity under ACT law.

Payroll tax

What is payroll tax?

Payroll tax is a tax that the ACT government charges on 'taxable wages' paid or payable by an employer in relation to services performed by its employees and deemed employees. The tax is calculated as a percentage of the 'wages'. 'Wages' is defined very broadly and includes remuneration, salaries, commissions, bonuses, allowances, employer superannuation contributions, fringe benefits, termination payments, etc. The legislation in which this tax is set out is called the *Payroll Tax Act 2011* (ACT) (**Payroll Tax Act**).

All Australian states and territories have participated in the payroll tax harmonisation program which is designed to align the payroll tax provisions in a number of key areas including cross border workers, grouping of businesses and timing for lodgement of returns. Jurisdictional differences still apply on other aspects including in respect of available exemptions.

Unless exempt, not-for-profit community organisations that employ people in the ACT will be required to pay payroll tax if the amount they pay in employee wages exceeds the 'threshold amount' set by the ACT Government. The Payroll Tax Act includes quite a broad definition of 'employee' which may extend

to include some workers that your organisation considers to be 'contractors' for the purposes of other legislation. For more information about payroll tax, see the Resources section below.

Are there any exemptions from payroll tax available for not-for-profit community organisations?

There are a number of exemptions from payroll tax that not-for-profit community organisations can apply for. In particular, not-for-profit organisations which have religious, educational, charitable or benevolent purposes (but not including certain excluded organisations, such as political parties or industrial, professional or trade organisations, unless a BOD is in force) may be exempt from paying payroll tax. There is no requirement that those wages must be paid to people who are engaged exclusively in work of a religious, educational, charitable or benevolent nature. To be exempt from paying territory payroll tax it is not sufficient to be a registered charity with the ACNC. The ACT government will need to be satisfied that your organisation meets the definition of charitable organisation in the *Taxation Administration Act 1999 (ACT)*.

How does our organisation access the exemption?

If you think your organisation may be eligible for an exemption from paying payroll tax, contact the ACTRO to apply for an exemption. You will need to lodge a written application (there is no prescribed form), together with any supporting documents (for example, a constitution, memorandum of understanding, brochures or any other document which states the purpose of the organisation). You may need the assistance of a lawyer to make the request.

Land tax

What is land tax?

Land tax is a tax that the ACT Government imposes on the 'average unimproved value' of rateable land owned by the organisation in the ACT where that land is rented residential land or residential land owned by a corporation or trustee. The legislation which imposes the tax is called the *Land Tax Act 2004 (ACT) (Land Tax Act)*.

In general, community organisations that own rateable land which is subject to the tax will be liable to pay the tax, unless the land is exempted or they qualify for an exemption or concession.

Are there any exemptions from land tax or concessions available for not-for-profit community organisations?

An exemption from land tax means an organisation does not have to pay any tax for the land covered by the exception. Exemptions from land tax are available in some circumstances for:

- parcels of residential land owned by not-for-profit housing corporations (being a registered corporation whose main objective is the provision of housing and which is unable to make distributions to its members) and
- parcels of land leased by a religious institution or order to provide residential accommodation to a member of the institution or order and to allow the member to perform his or her duty as a member of the institution or order.

There is no general exemption from land tax for charitable organisations in the Land Tax Act. Instead, land that is leased by a charitable organisation is not "rateable land" under the *Rates Act 2004* (ACT) and therefore not subject to land tax under the Land Tax Act.

How does our organisation get the exemption or concession?

If you believe that your community organisation may be eligible for a land tax exemption or the land is not rateable land, you should contact the ACTRO. If your organisation has received a land tax assessment notice and believes it is entitled to an exemption from the tax or the tax should not apply to the land, you need to formally object to the assessment notice (on the basis that you believe the land assessed is exempt). Your organisation must object to a land tax assessment notice within 60 days from which the assessment notice was served.

Other taxes

Duties, payroll and land tax are three of the main taxes that the ACT government levies. There may be other territory taxes that apply to not-for-profit community organisations or other concessions which may be available such as the exclusion from rates under the *Rates Act 2004* (ACT) of land leased to a charitable organisation (although only when the land is used exclusively for religious, educational, benevolent or charitable purposes), or the city centre marketing and improvement levy, which is a levy applicable to all rateable commercial properties in the City and some selected areas of Braddon.

To find out more about territory taxes and whether your organisation may be eligible for any exemptions or concessions, go to the ACTRO website which has been listed in the Resources section below.

Resources

Related Resources

The Not-for-profit Law Information Hub at www.nfplaw.org.au has further resources on the following topics:

✔ Getting started – www.nfplaw.org.au/gettingstarted

Not-for-profit Law's Getting Started page on the Information Hub has information on incorporating and choosing a legal structure.

✔ Tax – www.nfplaw.org.au/tax

Not-for-profit Law's Tax page on the Information Hub has information Federal tax laws and concessions and exemptions for charities and not-for-profits.

Legislation

✔ [Duties Act 1999 \(ACT\)](#)

✔ [Associations Incorporations Act 1991 \(ACT\)](#)

✔ [Payroll Tax Act 2011 \(ACT\)](#)

✔ [Land Tax Act 2004 \(ACT\)](#)

✔ [Rates Act 2004 \(ACT\)](#)

Legislation

✔ [ACT Revenue Office](#)

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