

# State tax exemptions

Legal information for New South Wales community organisations

## This fact sheet covers:

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- ▶ state duties and exemptions
  - ▶ payroll tax and exemptions
  - ▶ land tax and exemptions, and
  - ▶ other taxes.
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**In addition to the various taxes that are imposed on community organisations by the Federal Government, New South Wales groups may also be subject to state taxes. In New South Wales the main government agency that is responsible for state taxes is called the Office of State Revenue (OSR).**

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

## Duties ('stamp duty')

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### What are duties?

Duties (or stamp duties) are taxes that the New South Wales government charges on certain transactions, known as dutiable transactions. The legislation in which these duties are set out is called the *Duties Act 1997* (NSW) (**Duties Act**). The most commonly known transaction that duty is charged on is the transfer of land. However, in New South Wales duties are also charged on other dealings in land, certain lease transactions, declarations of trust over property, transfers of motor vehicles and purchasing insurance, 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 as any other organisation or individual unless they qualify and have applied for an exemption.

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

An organisation that is an 'exempt charitable or benevolent body' may be eligible for exemption from some of the duties listed in the Duties Act. Exempt charitable or benevolent bodies include those whose resources are used and whose purposes are wholly or predominantly for one or more of the following, amongst other things, the relief of poverty in Australia, the promotion of education in Australia or, in certain circumstances, those with the primary object of the promotion of the interests

of Indigenous Australians, and which is approved by the Chief Commissioner of State Revenue (NSW) (**the Commissioner**) as such.

Where an organisation meets the requirements for an exempt charitable or benevolent body, duty is not chargeable on the following transactions (where they would normally attract duty):

- transfers and agreements to transfer property to a charitable or benevolent body (e.g. land)
- a declaration of trust over dutiable property held or to be held on trust for a charitable or benevolent body
- a surrender of an interest in land in New South Wales to a charitable or benevolent body
- a declaration of trust over non-dutiable or non-identified property held or to be held for a charitable or benevolent body (for example, on establishment of the charitable or benevolent body)
- a vesting of dutiable property in a charitable or benevolent body
- a lease of dutiable property to a charitable or benevolent body
- a mortgage given by or on behalf of a charitable or benevolent body
- acquisition of an interest in a landholder by a charitable or benevolent body, and
- application for registration or transfer of registration of a vehicle used to convey incapacitated persons.

Where your organisation acquires land to be used partly for charitable or benevolent purposes, and partly for other purposes (eg commercial purposes), a partial exemption may be available (referable to the part of the land used for the charitable purposes).

There are also some limited duty exemptions set out in other legislation. For example, the *Associations Incorporations Act 2009* (NSW) provides for an exemption from duty under the Duties Act in relation to transfers of assets in certain circumstances as stated in that Act (for example, when an unincorporated body incorporates, or where two or more associations amalgamate to form the association).

### What does our organisation have to do to access an exemption?

To qualify for exemption from stamp duties (and also payroll tax and land tax) it is not sufficient simply to be a registered charity with the ACNC. Your organisation will have to apply for an exemption to the OSR, and provide documentation to prove its charitable status under New South Wales law (including governing documents and other supporting documents explaining the objects and activities of your organisation).

Applications may be made before a transaction is entered into or may also be made after a dutiable transaction is completed but within 3 months of the date of the transaction. You can seek advice from the OSR regarding your charitable status if you are unsure.

A link to the Application Form can be found in the Resources section below together with further information on the exemption from duty for charitable and benevolent bodies, as set out in New South Wales OSR [Revenue Ruling No. DUT 34](#).

## CAUTION

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

In general, there may be some organisations that are considered a charity under the federal definition contained in *Charities Act 2013* (Cth) that may not meet the definition of charity under New South Wales law.



# Payroll tax

## What is payroll tax?

Payroll tax is a self-assessed tax that the New South Wales 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 "wages". "Wages" is defined very broadly and includes wages, remuneration, gross salaries, commissions, bonuses, allowances, leave payments, termination payments, employer superannuation contributions, fringe benefits, etc. The legislation in which this tax is set out is called the *Payroll Tax Act 2007* (NSW) (**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 New South Wales will be required to pay payroll tax if the amount they pay in employee wages exceeds the 'threshold amount' set by the New South Wales government. The Payroll Tax Act does not define precisely who is an 'employee' but does extend the concept to include some workers that your organisation may consider to be 'contractor' 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?

Wages are exempt from payroll tax if they are paid or payable to a person engaged exclusively in work for a religious, charitable, benevolent, philanthropic or patriotic purpose (but not a school or educational institution) by any of the following:

- a religious institution
- a public benevolent institution (but not including an instrumentality of the state), or
- a non-profit organisation having as its sole or dominant purpose a charitable, benevolent, philanthropic or patriotic purpose (but not including a school, an educational institution, an educational company or an instrumentality of the state).

To access an exemption from payroll tax it is not sufficient simply to be a registered charity with the ACNC. The OSR will need to be satisfied that your organisation meets the definition of charity for the purposes of the Payroll Tax Act.

To be recognised as a charity, an organisation must be non-profit, with its objects directed towards the public benefit, and be for the:

- relief of poverty or sickness or the needs of the aged
- advancement of education, religion or other purposes beneficial to the community (such as the advancement of social or community welfare, health, culture or the natural environment).

The organisation itself must be established for wholly charitable purposes, unless its non-charitable activities are merely incidental to its charitable activities. Also, even if your organisation is wholly non-profit or charitable, not all wages paid by you may be exempt. For example, wages paid or payable to a person who is not exclusively or predominately engaged in the non-profit, charitable activities of your organisation may not be exempt.

### How does our organisation access the exemption?

If you think your organisation may be eligible for an exemption from payroll tax, you should contact the OSR. To apply for an exemption you may do this on-line or you may make written application and provide the OSR with the following:

- a completed and signed Application for Exemption form
- your organisation's governing documents (which must show your organisation's objects and non-profit status)
- a copy of your organisation's last audited annual report
- details of your organisation's day to day activities
- details of any other jurisdiction where wages are paid, and
- any other supporting documents.

A link to the Application Form can be found in the Resources section below together with further information about payroll tax. You may need the assistance of a lawyer with this process.

## Land Tax

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### What is land tax?

Land tax is a tax that the New South Wales government imposes on the 'total taxable value' of land owned by an organisation in New South Wales. The legislation which imposes the tax is called the *Land Tax Act 1956* and the tax is administered through the provisions of the *Land Tax Management Act 1956* (NSW).

In general, community organisations that own land which is subject to the tax will be liable to pay the tax, unless 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 exemption. Exemptions from land tax are available in circumstances where the land is owned by or on trust for:

- a charitable body if the organisation is carried on solely for charitable, educational or religious purposes (including, in the case of a religious society, the support of the aged or infirm clergy or ministers of the society, or their wives or widows or children) and is not for pecuniary profit of members
- any person or society and used or occupied by that person or society solely as a site for a charitable organisation not carried on for pecuniary profit, and
- organisations that provide or promote sporting activities (although they must be not-for-profit organisations and some conditions apply).

It is important to note that if the Commissioner considers that your organisation's governing documents provide for the vesting of some or all of its property in its member/s during its existence or upon dissolution, a land tax exemption will not be available (although the Commissioner may permit the exemption where certain amendments are made to the governing documents within a time period set by the Chief Commissioner).

### How does our organisation access the exemption or concession?

If you believe that your community organisation may be eligible for a land tax exemption, you should contact the OSR. To apply for an exemption from land tax you may do this on-line or you may make written application and provide the OSR with the following:

- a completed and signed Application for Exemption form,
- your organisation's governing documents (which must contain objects, membership details, non-profit and non-distribution clauses)
- a copy of your organisation's financial statements for the previous 2 years
- the latest annual report, and
- any other supporting documents.

A link to the Application Form can be found in the Resources Section below together with further information about land tax.

If your organisation has received a land tax assessment notice and believes it is entitled to an exemption from the tax, 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 the issue date of the assessment notice. The application form is found on the [OSR website](#).

## Other Taxes

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Duties, payroll tax and land tax are three of the main taxes that the New South Wales government levies. There may be other state taxes that apply to not-for-profit community organisations such as:

- the parking space levy, which is a tax on non-residential car parking spaces in leviable districts in Sydney CBD, parts of North Sydney and Milsons Point (\$2,350 per year) and Bondi Junction, Chatswood, Parramatta and St Leonards (\$840 per year), and
- gaming machine tax.

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

# Resources

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## Related Not-for-profit Law Resources

The Not-for-profit Law Information Hub ([www.nfplaw.org.au](http://www.nfplaw.org.au)) has further resources on the following topics:

✔ Getting started – [www.nfplaw.org.au/gettingstarted](http://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](http://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 1997 \(NSW\)](#)

✔ [Payroll Tax Act 2007 \(NSW\)](#)

✔ [Land Tax Act 1956 \(NSW\)](#)

✔ [Land Tax Management Act 1956 \(NSW\)](#)

✔ [Associations Incorporations Act 2009 \(NSW\)](#)

## Office of State Revenue Resources

✔ [Revenue Ruling on Exemption from Duty - Charitable and benevolent bodies](#)

✔ [Duties Application for Exemption - Charitable and Benevolent Bodies](#)

✔ [Land Tax 2017 Information Booklet](#)

✔ [Land Tax Application for Exemption – Land owned by a Charitable or Educational Institution or a Religious Society](#)

✔ [Payroll Tax Exemptions Fact Sheet](#)

✔ [Payroll Tax Application for Exemption](#)

✔ [Who is an Employee for Payroll Tax Purposes](#)

A Not-for-profit Law Information Hub resource. Access more resources at [www.nfplaw.org.au](http://www.nfplaw.org.au)

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