

State tax exemptions

Legal information for Western Australian community organisations

This fact sheet covers:

- state 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, Western Australian groups may also be subject to state taxes. In Western Australia, 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')

What are duties?

Duties (or stamp duties) are taxes that the Western Australian government charges on certain transactions, known as dutiable transactions. The legislation in which these duties are set out is called the *Duties Act 2008 (WA)* (**Duties Act**). The most commonly known transaction that duty is charged on is the transfer of land. However, in Western Australia duties are also charged on an acquisition of an interest in a partnership, a declaration of a trust over property, transfer of a motor vehicle, certain leasing transactions, dealings in "new" and "special" dutiable property, 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 have 'charitable purposes' under Western Australian law are eligible for exemptions from some of 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):

- transfer of dutiable property (e.g. land)
- acquisition of an interest in a partnership

- a declaration of trust over property
- the grant or transfer of a licence for a vehicle dealer if the vehicle is to be loaned by the dealer to a charitable organisation to be used solely for providing assistance to underprivileged or disadvantaged persons or used solely for providing emergency assistance.

Exemption is not available for certain institutions (called **relevant bodies**) or if the organisation is related to that institution (such as political parties, industrial, professional and trade associations) unless the OSR has issued a "beneficial body determination" (**BBD**) in respect of that association. An application must be made to the OSR for such a determination by filing of an "Application for Beneficial Body Determination" (and providing supporting information as set out in that form). The OSR will apply a public interest test when considering whether the institution should be granted the exemption.

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

To get an exemption from state stamp duties, it is not sufficient to be a registered charity with the ACNC. Your organisation will have to apply for the exemption to the Western Australia OSR, and provide documentation to prove its charitable status under Western Australian law (including rules or constitution and other supporting documents). Applications should be made after a dutiable transaction is entered into and must be submitted with Application Form FDA2 'Charitable Exemption'. You can seek advice from the OSR regarding your charitable status if you are unsure. We have included a link to the application process in the Resources section below.

CAUTION

State tax laws are not linked to federal tax laws, and the OSR applies the technical legal (i.e. common law) definition of 'charity' and 'charitable', so your organisation may need advice to make sure that it meets both state 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 Western Australian law.



Payroll tax

What is payroll tax?

Payroll tax is a tax that the Western Australia government charges on 'wages' paid or payable by an employer to its employees and deemed employees. The tax is calculated as a percentage of the 'wages'. 'Wages' is defined very broadly and includes salaries, commissions, bonuses, allowances, employer superannuation contributions, fringe benefits, etc. The legislation in which this tax is set out is called the *Pay-roll Tax Act Assessment 2002* (WA) (**Payroll Tax Act**).

Unless exempt, not-for-profit community organisations that employ people in Western Australia will be required to pay payroll tax if the amount they pay in employee wages exceeds the 'threshold amount' set by 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.

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.

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 charitable, benevolent, philanthropic and religious purposes (but not including tertiary education providers in Western Australia) may be exempt from paying payroll tax in relation to wages paid to people who are engaged exclusively in work of a charitable, benevolent, philanthropic or a religious nature. To be exempt from paying state payroll tax it is not sufficient to be a registered charity with the ACNC. The Western Australian government will need to be satisfied that your organisation has a charitable or similar public purpose.

The exemption excludes certain relevant bodies unless an OSR issued BBD is in force.

We have included a link to the application process in the Resources section at the end of this page.

How does our organisation access the exemption?

If you think your organisation may be eligible for an exemption from paying payroll tax, contact the OSR to apply for an exemption. You will need to lodge a written application and the Application Form FPRT41 'Application: Charitable Exemption', together with any supporting documents (for example, a constitution, memorandum of association or other establishing documents, any amending documents and recently published annual reports or financial statements). You may need the assistance of a lawyer to make the application.

Land tax

What is land tax?

Land tax is a tax that the Western Australian government imposes on the 'total unimproved value' of land owned by the organisation in Western Australia. The legislation which imposes the tax is called the *Land Tax Assessment Act 2002 (WA)*.

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 exception. Exemptions from land tax are available in some circumstances for land owned by, vested in or held in trust for:

- public charitable or benevolent institutions (although only when the land is used solely for the public charitable or benevolent purposes for which the institution was established) religious bodies (if the land is in good faith reserved or used as a site for religious purposes (such as a church or

chapel, for public worship, educational purposes or as the residence of a minister of the religious body)

- certain prescribed educational institutions (it is in good faith used or reserved as a site for the purpose of providing facilities necessary for or conducive to the attainment of the objects of the institution and the performance of its functions)
- sports associations (where the site is used for providing facilities necessary for the attainment of the sporting objects of the association)
- any non-profit association (except a sports association) (where the site is used for providing facilities necessary for the attainment of the objects of the association and are not available for use on a paying basis by any one except members of the association and their guests)

The exemption excludes certain relevant bodies unless an OSR issued BBD is in force.

Even if an exemption does not apply, a not-for-profit organisation may be entitled to a concessional rate of tax if the whole of a lot or parcel of land is not used as required for the purposes of the exemption. A concession from land tax means an organisation pays a lower rate of tax for land on which they must pay land tax (eg a concessional rate may apply where at least half the land is owned and occupied by a club or association that is carried on exclusively to provide for the social, cultural, recreational, literary or educational interests of its members).

How does our organisation access the exemption or concession?

If you believe that your community organisation may be eligible for a land tax exemption or a concessional rate, you should contact the OSR to apply for the exemption. You will need to lodge a written application and the Application Form FLT37 'Exemption Application: Public Charitable or Benevolent Institutions', together with any supporting documents (for example, a constitution, memorandum of association or other establishing documents, any amending documents and recently published annual reports or financial statements). You may need the assistance of a lawyer to make the application.

If your organisation has received a land tax assessment notice and believes it is entitled to an exemption from the tax or a concessional rate, 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 date of the assessment notice.

Other taxes

Duties, payroll and land tax are three of the main taxes that the Western Australia government levies. There may be other state taxes that apply to not-for-profit community organisations (such as the Perth parking licence payments and the metropolitan region improvement tax, which is a special purpose tax used to finance the cost of providing land for roads, open spaces, parks and similar public facilities).

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

Related Not-for-profit Law Resources

The Not-for-profit Law Information Hub (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 2008 \(WA\)](#)

✔ [Pay-Roll Tax Assessment Act 2002 \(WA\)](#)

✔ [Land Tax Assessment Act 2002 \(WA\)](#)

Related Resources

✔ [Western Australia Office of State Revenue](#)

✔ [Application Form FDA2 - Charitable Exemption](#)

✔ [Application Form FPRT41 - Application: Charitable Exemption](#)

✔ [Application Form FLT37 - Exemption Application: Public Charitable or Benevolent Institutions](#)

✔ [Application for Beneficial Body Determination](#)

A Not-for-profit Law Information Hub resource. Access more resources at www.nfplaw.org.au. Justice Connect Not-for-profit Law acknowledges the generous support of our funders and supporters. Find out more at www.nfplaw.org.au

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