

COMMERCE AND TRADE – CHARITABLE?

On 31 August 2017, the Supreme Court of South Australia in [South Australian Chamber of Commerce & Industry Incorporated v Commissioner of State Taxation \[2017\] SASC 127](#) held, inter alia, that the appellant Chamber of Commerce had failed to prove that its dominant purpose was a charitable purpose. Consequently, Blue J dismissed the appellant's claim for exemption from payroll tax under the charitable purpose exemption in section 48 of the [Payroll Tax Act 2009 \(SA\)](#) (the Act).

The appellant argued that all its activities were undertaken for the purpose of promoting trade and commerce in SA which is a recognised charitable purpose.

The appellant's activities fell into five major categories:

1. Developing and advocating policies to government and opposition.
2. Providing services and products exclusively.
3. Selling commercial services to businesses and employers generally
4. Conducting programs funded and subsidised mainly by government grants
5. providing apprenticeships and trainee services funded by government grants.

On the evidence, the Court held that, on a stand alone basis:

1. the appellant had failed to prove that the first three activity categories were undertaken for the purpose of advancing trade and commerce in SA; (paras 237, 247 and 256) and
2. the appellant had proved that the fourth and fifth activity categories were undertaken for the purpose of advancing trade and commerce in SA. (paras 267 and 272)

If an entity fails to prove all its activities were undertaken for charitable purposes then it is necessary to undertake a holistic assessment of all its activities to ascertain whether the charitable activities are dominant.

To constitute a dominant charitable purpose within section 48 of the Act, the entity's charitable purpose must be the ruling, prevailing or most influential purpose. A charitable entity can have a non-charitable purpose provided that it is incidental to the charitable purpose. It can have a non-charitable purpose independent of its charitable purpose, but it must be so minor that the charitable purpose remains the ruling, prevailing or most influential purpose. (paras 174-180)

At para 180, the Court stated:

“Determining what is no more than a minor purpose involves a relativity assessment and questions of degree”.

The Court found, at para 276, that “on any measure” the first three activities “comprise a very substantial majority of the chamber's activities”. And, at paras 277 and 298, that these three activities were too substantial to be disregarded as minor or secondary.

Accordingly, the Chamber failed to prove its dominant purpose was the advancement of trade, and hence charitable. The appeal was dismissed.

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