

Senate Economics Committee

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

Tax Laws Amendment (Public Benefit Test) Bill 2010

29 June 2010

Question 1

Topic: What are the ATO's views about whether a retirement home for rich people would be considered charitable?

Hansard Page: E18, E19 & E50

Senator Cameron asked:

Father Lucas (E18):

Father Lucas— ... The basis for that is the very meaning of the word charity itself, from its origins in caritas and its translation as love. Charity by its very definition is about the other. If you do something for yourself, good though that might be, that is not charitable. So charity is about the other.... The fact that those people need to be people of some means because a small home requires a fee structure that excludes poorer people, in my view, does not exclude it from being charitable. Caring for rich people is as charitable as caring for poor people.

Senator Cameron and Fr Lucas (E19):

Senator CAMERON— ... I want to ask you about the public benefit test and the example you gave in the UK. If a group of merchant bankers sets up a retirement home and says it is a charitable organisation, does that meet the test?

Father Lucas—It depends on what the purpose of the group of merchant bankers—

Senator CAMERON—It is to look after burnt-out merchant bankers.

Father Lucas—If the group of merchant bankers establishes an institution that meets all the not-for-profit tests and is open to a wide range of burnt-out merchant bankers, not simply the few merchant bankers who have set it up and run it and control it, it could meet the test...

Senator Cameron (E48):

Senator CAMERON—Father Lucas said that caring for rich people is as charitable as caring for poor people. I was a bit surprised and said that I thought charity was about caring for those who did not have the means to look after themselves. I may want to get your view on that. But I then went on to ask him if a retirement home for burnt-out merchant bankers would meet the test of tax-free status. Father Lucas said, basically, yes. I am a bit appalled about that. I wonder if a group of rich people can come together with obvious means, not in need of charity, and establish an aged-care home with the best of everything available to them, living out their life in luxury, and get a tax-free status. Is that possible?

Mr Hardy—I respect that Father Lucas has his own opinion. I think it is improbable.

Senator Cameron (E50):

Senator CAMERON—I do not have *Hansard* on it yet, but it is reported in the media under quotations, so someone was monitoring it. That is the argument: if you are rich, you can still be entitled to charity. It is a foreign consideration to me, I must say.

Mr Hardy—Without the benefit of seeing the transcript or the exchange, I could not comment further.

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Senator CAMERON—Can I ask you then, when *Hansard* is available, to have a look at it and advise me what your view is on that?

Answer

Where a "...group of rich people come together with obvious means, not in need of charity, and establish an aged-care home [for themselves or people in similar circumstances] with the best of everything available to them, living out their life in luxury..." such an aged care home would not be endorsed for charity tax concessions.

'Relief of poverty' as a charitable head is a short-hand version for purposes that are specifically mentioned in the preamble to the *Statute of Charitable Uses 1601*. The purposes are the 'relief of the poor, aged and impotent'. The terms 'poor', 'aged' and 'impotent' are to be read disjunctively according to [legal] authority. Accordingly, an aged person may receive charitable relief regardless of whether they are also 'poor'. In *Charity Law in Australia and New Zealand*, Dal Pont notes however, that the courts seem to have been reluctant to accept a disjunctive reading in those dispositions for the wealthy aged (page 111). Dal Pont considers that the requirement that *relief* be afforded by the purpose connotes the requirement of providing a necessity or quasi-necessity, and that this is the reason behind the reluctance to accept the disjunctive approach (page 112).

The ATO's public ruling, TR 2005/21, summarises the court decisions on the relief of needs arising from old age at paragraph 199. To be charitable, the purpose of the relief must be to relieve the 'needs' arising from old age and the purpose must also be for the public benefit and not constrained by family relationships or in other ways.

A home for retired people could be charitable and eligible for tax concessions available for charities if the purpose of the organisation running the retirement home was to relieve the needs of aged persons. However, a retirement home would not qualify for tax concessions if the retired people occupying it had no needs that they could not otherwise address for themselves.

A retirement home for "burnt-out" merchant bankers could be relieving some of their needs if the "burnt-out" merchant bankers were poor.

However, the courts have held that there must also be a public benefit when responding to the needs arising from old age for the purpose to be considered charitable. If a retirement home only provides relief for a section of the community, such as poor retired merchant bankers, this may not be a sufficiently broad sector of the public to meet the public benefits test to be considered a charitable purpose.