Case Notes: Yachting Australia Incorporated v Chief Commissioner of State Revenue [2005] NSWADT

Yachting Australia Incorporated, the national governing body for yachting in Australia, objected to a decision of the New South Wales’ Chief Commissioner of State Revenue that it was not entitled to an exemption from payroll tax for the period extending from the 1st July, 1998, to the 30th November, 2003. The basis for its objection related to section 10(1)(j) of the Payroll-Tax Act 1971 (NSW) which stated that, “Subject to subsections (1A) and (2), the wages liable to pay-roll tax under this Act do not include wages paid or payable: ………(j) by a non-profit organisation (other than a school or college, statutory body or an instrumentality of the state) having as one of its objects a charitable, benevolent, philanthropic or patriotic purpose.” As a non-profit organisation, Yachting Australia claimed it was entitled to the exemption under the charitable head or, failing that, the patriotic head.

It is well-established that four classes of charitable purposes are recognized. These are the advancement of education, the advancement of religion, the relief of poverty and other purposes beneficial to the community. Yachting Australia sought exemption on the basis that it was heavily involved in educational activity, providing the only system of nationally endorsed training and certification to a common Australian standard for recreational users of both sail craft and power boats. To this end, a network of Yachting Australia Training Centres had been authorised Australia wide. Approximately 1300 instructors had met standards pre-determined by Yachting Australia. In addition, following the tragic deaths in the 1998 Sydney to Hobart Yacht Race, Yachting Australia had played a vital role in the development of a Safety and Sea Survival Course for the crews of racing yachts.

Such activities lead the New South Wales’ Administrative Decisions Tribunal to conclude in paragraph 27 that Yachting Australia was not merely involved in sport, a non-charitable pursuit, but clearly carried on a “significant” educational activity which enhanced public welfare. Because the charitable head was made out, the Tribunal didn’t attempt to address whether the exemption was justified on patriotic grounds.

Nevertheless, the Chief Commissioner of State Revenue argued that Yachting Australia failed to qualify under section 10(1) (j) because its objects as defined in its constitution were too narrow to include its educational aims and training courses. The Tribunal adopted a broader approach indicating that an organisation’s objects were not necessarily restricted to what was actually written in the constitution, but could also encompass its unwritten goals. Therefore, the Tribunal was justified in taking into account Yachting Australia’s activities during the period under consideration. As a result, Yachting Australia was entitled to an exemption from pay-roll tax for the relevant period since its training activities were not merely sporting in nature, but also both educational for and beneficial to the community. The only qualification was that, in accordance with section 10(2) of the Act, an apportionment had to be made in respect of Yachting Australia’s actual engagement in its charitable as opposed to its other commitments, the exemption being valid only for the former.