



Status: **legally binding**

Class Ruling

Royal Institute for Deaf and Blind Children – arrangements for donations of medical fees from participating ear, nose and throat surgeons

❶ Relying on this Ruling

This publication (excluding appendix) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

Table of Contents	Paragraph
What this Ruling is about	1
Who this Ruling applies to	4
When this Ruling applies	6
Ruling	7
Scheme	9
Appendix – Explanation	22

What this Ruling is about

1. This Ruling sets out the income tax treatment of fees collected on behalf of ear, nose and throat surgeons (ENT surgeons) by the Royal Institute for Deaf and Blind Children (RIDBC) and donated to the RIDBC under the arrangements described in this scheme.
2. Details of this scheme are set out in paragraphs 9 to 21 of this Ruling.
3. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997*, unless otherwise indicated.

Note: By issuing this Ruling, the ATO is not endorsing these arrangements. Potential participants must form their own view about the arrangements.

Who this Ruling applies to

4. This Ruling applies to you if you are an ENT surgeon who performs medical services for patients under arrangements with the RIDBC (referred to in this Ruling as 'RIDBC linked services') and:
 - you have a separate Medicare Provider Number (MPN) that is used when billing for those services

Status: **legally binding**

- Medicare benefits that are payable in respect of those services are assigned to you by patients and collected from Medicare on your behalf by the RIDBC and held for your benefit by the RIDBC, and
- you have instructed the RIDBC to retain all or part of those funds held on your behalf as a donation to the RIDBC to further its mission and objectives.

5. This Ruling does not apply to anyone who is subject to the taxation of financial arrangements rules in Division 230 in relation to the scheme outlined in paragraphs 9 to 22 of this Ruling.

Note: Division 230 will not apply to individuals unless they have made an election for it to apply.

When this Ruling applies

6. This Ruling applies from 15 February 2023 to 30 June 2028.

Ruling

Assessability of the Medicare benefits assigned to ear, nose and throat surgeons and collected on their behalf by the Royal Institute for Deaf and Blind Children

7. The Medicare benefits paid in respect of the RIDBC linked services that are assigned by patients to the ENT surgeon and collected on the surgeon's behalf by the RIDBC is income according to ordinary concepts and is assessable income of the ENT surgeon under section 6-5.

Deductibility of amounts donated to the Royal Institute for Deaf and Blind Children

8. ENT surgeons are entitled to claim a deduction under section 30-15 for the donation of amounts they instruct the RIDBC to retain as a donation out of the Medicare benefits that are collected and held on their behalf by the RIDBC in respect of the RIDBC linked services.

Scheme

9. The following description of the scheme is based on information provided by the applicant. If the scheme is not carried out as described, this Ruling cannot be relied upon.

Background

10. The RIDBC is incorporated under the *Royal Institute for Deaf and Blind Children Act 1998 No 6* (NSW) (RIDBC Act) as an Australian charity whose primary object is '... the advancement in life, to the greatest extent practicable, of deaf and blind children', as stated in section 6 of the RIDBC Act.

11. The RIDBC is a registered public benevolent institution (PBI) and endorsed as a deductible gift recipient (DGR).

Status: **legally binding**

12. In accordance with its primary object, the RIDBC offers a broad range of services to people with hearing and vision loss, including cochlear implant (CI) services.

13. CI services are provided to patients by the RIDBC under the supervision of ENT surgeons as part of a shared-care model.

14. The RIDBC CI Program is a comprehensive service (or program) offered by the RIDBC that involves the following:

- A CI assessment is conducted on patients predominantly by audiologists, with other health professionals engaged if required and under the supervision of an ENT surgeon.
- If a CI candidate is identified following the CI assessment and they are keen to proceed, the ENT surgeon will determine the appropriate treatment and, if suitable, operate on the patient to implant a hearing device. If a candidate is not suitable, they will consider other options outside of the program.
- Post-implantation, the ENT surgeon, audiologist and other health professionals continue to work together to ensure the best outcomes for the patient throughout their hearing journey.

15. Generally, the following steps occur as part of the RIDBC CI Program:

- A patient's doctor (that is, a general practitioner) provides a referral to an ENT surgeon of the patient's choice for assessment regarding the suitability of a CI.
- The ENT surgeon liaises with the RIDBC's audiology team to perform the CI assessment on the patient. The ENT surgeon undertakes certain quality assurance procedures and supervises the services carried out by the RIDBC audiologist, who will deliver a report for review and sign off.
- Where a patient is identified as suitable for a CI, the ENT surgeon will perform the required CI surgery on the patient.
- Post-implantation care is provided by the ENT surgeon, audiologists and other health professional to ensure the best outcomes immediately and throughout the patient's life as part of the 'shared-care' model.

16. The administration of the RIDBC CI Program is as follows:

- The RIDBC provides the audiology services to patients under the CI program at no 'out of pocket' expense to the patient.
- The RIDBC is not paid directly by Medicare in respect of the provision of the audiological services they provide to patients. These services are financed by the RIDBC primarily from donations.
- RIDBC audiologists and other professionals within the RIDBC are remunerated by the RIDBC for their services rendered as an RIDBC employee.
- There are 2 separately administered services that are provided by the ENT surgeon to patients and in respect of which fees and Medicare benefits are payable
 - Fees in respect of services that are linked directly to the CI surgery. These fees are billed directly by the ENT surgeon to the patients and Medicare benefits are payable for the relevant item numbers. There may be a 'gap' payable by the patient directly to the surgeon for

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these services. These Medicare benefits are claimed under the ENT surgeon's primary MPN. Fees are paid directly into the ENT surgeon's bank account from Medicare (CI Surgery services).

- Fees that are linked to services provided in conjunction with the RIDBC (for example, hearing assessments, device activation and programming) and under the supervision of the ENT surgeon (RIDBC linked services). These fees consist of amounts that are fully covered by Medicare; there is currently no 'gap' payable by the patient and the patient assigns their right to the Medicare benefit to the ENT Surgeon. These fees are billed by the RIDBC on the ENT surgeon's behalf, using a separate MPN that the ENT surgeon obtains for the provision of these services which lists the RIDBC's bank account for payment. However, ENT surgeons are free to nominate another bank account at any time.

17. The RIDBC issues periodic statements to the ENT surgeon informing them of the funds received from Medicare in respect of the RIDBC linked services that are being held on their behalf.

18. The ENT surgeon then instructs the RIDBC on how to apply the funds held on their behalf. This could include making a donation to the RIDBC or otherwise applying the funds in accordance with the ENT surgeon's instructions. There is no obligation, contractual or otherwise, on the ENT surgeon to make a donation to the RIDBC.

19. Where an ENT surgeon has elected to make a donation to the RIDBC of some or all of the funds held by the RIDBC on their behalf, a deductible gift receipt is provided to the ENT surgeon each year acknowledging the donations which have been made within the income year.

20. There are no incentives, gifts, marketing, referrals, recognition or any other rights, privileges, benefits or advantages afforded to ENT surgeons who participate in the RIDBC CI Program or make donations to the RIDBC.

21. Where donations are made to the RIDBC, they are made wholly at the discretion of the ENT surgeon in order to support the mission and objectives of the RIDBC.

Commissioner of Taxation

15 February 2023

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Appendix – Explanation

❶ *This Explanation is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.*

Table of Contents	Paragraph
Assessability of the Medicare benefits assigned by patients to ear, nose and throat surgeons and collected on their behalf by the Royal Institute for Deaf and Blind Children	22
Donation of fees by ear, nose and throat surgeons to the Royal Institute for Deaf and Blind Children	27
<i>Transfer of money or property</i>	32
<i>Transfer made voluntarily</i>	37
<i>Arises by way of benefaction</i>	41
<i>No material benefit or advantage</i>	47
<i>Donation amounts are gifts</i>	52
Tax deduction on donation amounts	53
<i>Gift recipient</i>	54
<i>Type of gift</i>	60
<i>Amount of gift that can be deducted</i>	62
Gift receipts	68

Assessability of the Medicare benefits assigned by patients to ear, nose and throat surgeons and collected on their behalf by the Royal Institute for Deaf and Blind Children

22. Subsection 6-5(1) provides that the assessable income of a taxpayer includes income according to ordinary concepts, which is called 'ordinary income' and includes amounts received in respect of providing personal services or from carrying on a business.

23. Subsection 6-5(2) provides that the assessable income of a resident taxpayer includes ordinary income derived directly or indirectly from all sources, whether in or out of Australia, during the income year.

24. Subsection 6-5(4) provides that in working out whether a taxpayer has derived an amount of ordinary income, and (if so) when it has been derived, the taxpayer is taken to have received the amount as soon as it is applied or dealt with at the direction of the taxpayer.

25. ENT surgeons receive the Medicare benefits as payment for the services rendered in the RIDBC CI assessment process. The patient has assigned their right to the Medicare benefits to the ENT surgeon as payment for services rendered. The services are provided in the course of the ENT surgeon's private practice business and the payment is included in their assessable income under subsection 6-5(2).

26. The RIDBC makes the claim with Medicare on the ENT surgeon's behalf. The ENT surgeon nominates for the Medicare benefits payable to be paid into the RIDBC's bank

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account. Accordingly, Medicare is dealing with or applying the income as directed by the ENT surgeon and the income is taken to have been received by the ENT surgeon at the time it is paid into the RIDBC's bank account, pursuant to subsection 6-5(4).

Donation of fees by ear, nose and throat surgeons to the Royal Institute for Deaf and Blind Children

27. Relevantly, Division 30 deals with the deductibility of gifts and contributions. Section 30-15 provides that you can deduct a gift that you make in the situations set out in the tables contained in that section.

28. The meaning of gift for the purposes of Division 30 is dealt with in Taxation Ruling TR 2005/13 *Income tax: tax deductible gifts – what is a gift*.

29. The word 'gift' is not defined in the *Income Tax Assessment Act 1997*. For the purposes of Division 30, the word 'gift' has its ordinary meaning.

30. As stated in paragraph 13 of TR 2005/13, the Courts have described a gift as having the following characteristics and features:

- the donor transfers money or property
- the donor makes the transfer voluntarily
- the transfer arises by way of benefaction, and
- there is no material benefit or advantage for the donor.

31. These characteristics are not absolute and may involve a matter of degree. In determining whether a transfer is a gift, it is necessary to consider the whole set of circumstances surrounding the transfer that provide the context and explanation for the transfer.

Transfer of money or property

32. The making of a gift involves the transfer of a beneficial interest in property to the recipient of the gift.

33. In each case, it is necessary to ascertain whether a transfer has occurred, what property has been transferred and when the transfer took place. This is to ensure that ownership of identifiable property has been divested and transferred to the recipient.

34. The giver must have proprietary rights in the property just prior to its transfer. When money or property is transferred to the recipient, the recipient must receive full title, custody and control of the property so that the recipient is entitled to deal with the property in its own right.

35. Under the arrangements, ENT surgeons direct the RIDBC to retain the donation from the funds comprising Medicare benefits held by the RIDBC on their behalf. Following that direction, ownership of the money transfers to the RIDBC.

36. The donation is made when the direction is made to the RIDBC and it no longer holds those funds on the ENT surgeon's behalf but acquires full ownership of those funds.

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Transfer made voluntarily

37. A transfer must be made voluntarily in order for it to be a gift. It must be the act and will of the giver and there must be nothing to interfere with or control the exercise of that will. However, a transfer made under a sense of moral obligation is still made voluntarily.

38. A transfer is not made voluntarily if it is made for consideration or because of a prior obligation imposed on the giver by statute or by contract. Nonetheless, a transfer that has the other attributes of a gift will not fail to be considered a voluntary transfer merely because the means to give effect to the benefaction have contractual or similar features.

39. ENT surgeons are under no obligation to make the donations. There is nothing that interferes with the exercise of the ENT surgeon's free will.

40. Therefore, a payment under the arrangements is entirely voluntary.

Arises by way of benefaction

41. A gift should confer benefaction on the recipient. Conferring benefaction means that the recipient is advantaged materially without any detriment arising from the terms of the transfer.

42. Where the giver is aware that the transfer will result in detriments, disadvantages, obligations, liabilities or limitations to the recipient, benefaction may be missing.

43. A gift ordinarily proceeds from detached and disinterested generosity. There may be a variety of reasons and motivations behind the giver making a gift. However, the fact that the giver has a personal motive for making the gift (such as a strong interest or emotional involvement in the work of the recipient) will not disqualify a transfer from being a gift.

44. In cases where the giver gives a gift for self-interested commercial or fiscal reasons rather than conferring a benefaction on the recipient, the transfer does not proceed from detached and disinterested generosity. However, a motive of seeking a tax deduction does not, by itself, disqualify a transfer from being a gift.

45. There is no commercial benefit for the ENT surgeon as a result of making the donation to the RIDBC. The ENT surgeon can provide services to patients in conjunction with the RIDBC irrespective of whether donations are made under the arrangements.

46. It is accepted that donations made by ENT surgeons under the arrangements confer benefaction on the RIDBC.

No material benefit or advantage

47. To constitute a gift, the giver or an associate of the giver must not receive a material benefit or advantage from the transfer. It does not matter whether the material benefit or advantage comes from the recipient or another party.

48. It is a question of fact in each case whether any benefit or advantage is considered material. A benefit or advantage can be material if there is a link between the benefit and the transfer, and the benefit is sufficiently significant in relation to the value of the transfer.

49. There are no incentives, gifts, marketing, referrals, recognition or any other rights, privileges, benefits or advantages afforded to ENT surgeons who participate in the RIDBC CI Program or make donations to the RIDBC under the arrangements.

50. ENT surgeons who participate in the RIDBC CI Program receive the Medicare benefits irrespective of whether donations are made under the arrangements. The

Status: **not legally binding**

donations are made by the ENT surgeon in order to support the mission and objectives of the RIDBC.

51. It is accepted that ENT surgeons do not receive any material benefit or advantage as a result of, or in connection with, the donation.

Donation amounts are gifts

52. The donation amounts are gifts for the purposes of Division 30.

Tax deduction on donation amounts

53. A donor can claim a tax deduction for a gift if the requirements in section 30-15 are satisfied. The table in subsection 30-15(2) sets out the categories of recipients of deductible gifts and contributions, the types of deductible gifts or contributions that can be made to each category of recipients, and how much can be deducted.

Gift recipient

54. Table item 1 of subsection 30-15(2) states that deductible gifts and contributions can be made to a fund, authority or institution covered by any item in any of the tables in Subdivision 30-B.

55. Subdivision 30-B includes section 30-45. Table item 4.1.1 of subsection 30-45(1) includes recipients who are 'a registered public benevolent institution' (registered PBI).

56. Deductible gifts and contributions can therefore be made to a recipient that is a registered PBI.

57. A registered PBI is defined in subsection 995-1(1) as:

... an institution that is:

- (a) a registered charity; and
- (b) registered under the *Australian Charities and Not-for-profits Commission Act 2012* as the subtype of entity mentioned in column 2 of item 14 of the table in subsection 25-5(5) of that Act.

58. Gifts to a registered PBI will only be deductible if the registered PBI is also endorsed as a DGR under Subdivision 30-BA or is named in Subdivision 30-B (table item 1 of subsection 30-15(2) and section 30-17).

59. The RIDBC is a registered PBI that is endorsed as a DGR. Therefore, RIDBC can receive tax-deductible gifts and contributions.

Type of gift

60. Table item 1 of subsection 30-15(2) provides that the deductible gifts and contributions that can be made to a table item 1 recipient includes gifts of money. Money can be paid in various ways, including by cash, cheque, credit card or electronically.

61. Under the arrangements, ENT surgeons direct the RIDBC to retain an amount of money for their own benefit from the funds held on behalf of the ENT surgeon. That is a gift of money to an endorsed DGR and a tax-deductible gift under Division 30.

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Amount of gift that can be deducted

62. Table item 1 of subsection 30-15(2) states that the amount that can be deducted for a gift of money is the amount that is given.

63. The value of the gift must be \$2 or more (special conditions for table item 1 of subsection 30-15(2)). A donor can add together a series of gifts in an income year to work out whether the gift is \$2 or more.

64. A deduction for a gift cannot add to or create a tax loss for the donor. Subsection 26-55(1) states there is a limit on the total amount you can deduct for the income year under Division 30. The limit is calculated pursuant to subsection 26-55(2) and, in effect, means the deduction can reduce the donor's assessable income to nil in the income year in which the gift is made, but cannot contribute to a tax loss of the donor for the income year.

65. While a deduction for a gift cannot contribute to a tax loss for the donor, Subdivision 30-DB allows donors to elect to spread a tax deduction for a gift of money of \$2 or more, over and up to 5 years.

66. If the donor chooses to spread a deduction, the election must:

- be in the approved form (subsection 30-248(5))
- be made before lodging the tax return for the income year in which the gift was made (subsection 30-248(3))
- start in the year the gift was made and can continue up to 4 years immediately following (paragraph 30-248(1)(b)), and
- contain the percentage to be claimed each year (subsection 30-248(2)), which may be different in each year, but the total percentage must not exceed 100% over the years.

67. A contributing ENT surgeon can claim a deduction for amounts of \$2 or more, provided the deduction does not contribute to a tax loss.

Gift receipts

68. Tax law does not require a DGR to issue a receipt for tax-deductible gifts it received. However, where a DGR does issue a receipt, subsection 30-228(1) sets out the information that must be included in the receipt:

If a deductible gift recipient issues a receipt for a gift described in the relevant item of the table in section 30-15 to the fund, authority or institution, the deductible gift recipient must ensure that the receipt states:

- (a) the name of the fund, authority or institution; and
- (b) the ABN (if any) of the deductible gift recipient; and
- (c) the fact that the receipt is for a gift.

69. The RIDBC will issue a receipt to each contributing ENT surgeon each year acknowledging the donations which have been made by them within the income year. The contents of each receipt must include the name and Australian business number of the RIDBC and the fact that the receipt is for a gift.

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References

Related Rulings/Determinations:

TR 2005/13

Legislative references:

- ITAA 1997 6-5
- ITAA 1997 6-5(1)
- ITAA 1997 6-5(2)
- ITAA 1997 6-5(4)
- ITAA 1997 26-55(1)
- ITAA 1997 26-55(2)
- ITAA 1997 Div 30
- ITAA 1997 30-15
- ITAA 1997 30-15(2)
- ITAA 1997 30-17
- ITAA 1997 Subdiv 30-B
- ITAA 1997 30-45
- ITAA 1997 30-45(1)
- ITAA 1997 Subdiv 30-BA
- ITAA 1997 30-228(1)
- ITAA 1997 Subdiv 30-DB
- ITAA 1997 30-248
- ITAA 1997 30-248(1)(b)
- ITAA 1997 30-248(2)
- ITAA 1997 30-248(3)
- ITAA 1997 30-248(5)
- ITAA 1997 Div 230
- ITAA 1997 995-1(1)
- Royal Institute for Deaf and Blind Children Act 1998 No 6 (NSW)

ATO references

NO: 1-VYE3YPK

ISSN: 2205-5517

BSL: PW

ATOlaw topic: Income tax ~~ Deductions ~~ Gifts / donations ~~ Other

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