IT 2674 - Income tax: gifts to missionaries, ministers of religion and other church workers - are the gifts income?

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Generated on: 21 November 2026, 12:18:36 AM

Taxation Ruling

Income tax: gifts to missionaries, ministers of religion and other church workers - are the gifts income?

other Rulings on this topic

IT 198; IT 2612; IT 2650

Income Tax Rulings do not have the force of law. Each decision made by the Australian Taxation Office is made on the merits of each individual case having regard to any relevant Ruling.

contents para

What this Ruling is about 1
Legislative scheme 5
Subsection 25(1) 5
Paragraph 26(e) 6
FBT not covered in this Ruling 8
Ruling 11
General principles 11
When gifts are assessable income 12
When gifts are not assessable income 20
Date of effect 25
Explanations 26
General principles 26
When gifts are assessable income 28
When gifts are not assessable income 32
Examples 33
When gifts are assessable income 33
When gifts are not assessable income 37

What this Ruling is about

1. This Ruling provides guidelines for determining whether gifts received by church workers (including missionaries and ministers of religion) are assessable income under the *Income Tax Assessment Act 1936* (ITAA).

2. The Ruling includes in its scope gifts to church workers on a posting to another country if they remain residents of Australia. Whether they remain residents of Australia depends on the application of the principles discussed in Taxation Ruling IT 2650.

3. The Ruling is mainly concerned with whether gifts received by church workers are assessable income under subsection 25(1) of the ITAA because the gifts are 'income' in the ordinary sense of that word. However, the gifts may alternatively be assessable income under paragraph 26(e) of the ITAA - see paragraphs 6 to 7.

4. The principles that apply in determining whether gifts received by church workers are assessable income are no different from those which apply in determining whether gifts received by taxpayers in other callings or occupations are assessable income. However, the practical application of the principles to the particular circumstances in which church workers receive gifts is often different from its application to taxpayers in other callings or occupations who receive gifts. The Ruling therefore deals with gifts received by church workers.

Legislative scheme

Subsection 25(1)

5. A gift received by a church worker is assessable income under subsection 25(1) of the ITAA if it is 'income' in the ordinary sense of that word. This is usually the case only if the gift is money or

convertible into money (*FC of T v. Cooke & Sherden* 80 ATC 4140 at 4148; (1980) 10 ATR 696 at 704). However, section 21A of the ITAA has removed the requirement of convertibility into money for property or services provided in the context of a business relationship (for example, where a self-employed evangelist receives a gift in the course of carrying on a business of evangelism).

Paragraph 26(e)

6. Broadly speaking, paragraph 26(e) of the ITAA provides that a taxpayer's assessable income includes the value to the taxpayer of all allowances, gratuities, compensations, benefits, bonuses and premiums which are allowed, given, or granted to the taxpayer in respect of, for, or in relation (directly or indirectly) to any employment of or services rendered by the taxpayer.

7. There is a marked overlap between subsection 25(1) and paragraph 26(e) of the ITAA. However, our view is that paragraph 26(e) has a slightly wider scope than subsection 25(1). For example, paragraph 26(e) can apply even if a benefit is not convertible into money. This is because paragraph 26(e) includes in assessable income the *value to the taxpayer* of the benefit.

FBT not covered in this Ruling

8. A gift received by a church worker is exempt from income tax if either of the following conditions is satisfied:

- It is a fringe benefit within the meaning of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA); or
- It is an exempt benefit for fringe benefits tax purposes.

(See subsection 23L(1) and subparagraphs 26(e)(iv) and (v) of the ITAA.)

9. Broadly stated, a benefit is a fringe benefit within the meaning of the FBTAA if it satisfies all of the following conditions:

- It is provided to an employee or associate; and
- It is provided in respect of the employee's employment; and
- It is provided by the employee's employer, an associate of the employer or another person under an arrangement with the employer; and
- It is not a payment of salary or wages.

(See the definition of 'fringe benefit' in subsection 136(1) of the FBTAA.)

10. If a gift received by a church worker is a fringe benefit, there are at least 2 fringe benefits tax exemption provisions that could apply

to employers for benefits provided to their employee church workers - namely, the exemption of certain benefits provided by religious institutions (section 57 of the FBTAA) and the exemption of certain minor benefits (section 58P of the FBTAA). The religious institution exemption is to be the subject of a separate Ruling. However, further consideration of fringe benefits tax is outside the scope of this Ruling.

Ruling

General principles

11. Whether a gift is assessable income depends on the quality or the character of the gift in the hands of the recipient. Consideration is necessary of the whole of the circumstances in which the gift is received. For example, the following factors need to be taken into account:

(a) how, in what capacity, and for what reason the recipient received the gift; and

(b) whether the gift is of a kind which is a common incident of the recipient's calling or occupation; and

(c) whether the gift is made voluntarily ; and

(d) whether the gift is solicited; and

(e) if the gift can be traced to gratitude engendered by some service rendered by the recipient to the donor, whether the recipient had already been remunerated fully for that service; and

(f) the motive of the donor (but it is seldom, if ever, decisive); and

(g) whether the recipient relies on the gift for regular maintenance of himself or herself and any dependants.

When gifts are assessable income

12. If a church worker receives a gift because of, in respect of, for, or in relation to any income-producing activity of the church worker , the gift is assessable income. The income-producing activity can arise from the church worker's office or occupation or some service rendered or to be rendered by the church worker. In other words, a gift (even if it is a receipt of a one-off nature) is assessable income if it is possible to:

(a) relate the receipt of the gift by the church worker to any income-producing activity on his or her part; or

(b) point to any employment, personal exertion or other income-earning activity by the church worker of which the receipt of the gift is in a relevant sense a product or incident.

13. A gift received in these circumstances is assessable income even if:

(a) the donor is not legally obliged to make the gift; or

(b) gift is made by a family member, friend or fellow worker; or

(c) if the church worker is an employee, the gift comes not from the employer but from somebody else; or

(d) the gift is made so that the church worker can acquire a capital asset; or

(e) the gift is received in kind rather than in money; or

(f) the gift is received on a special occasion such as Christmas or a birthday (but see paragraph 21); or

(g) the church worker is not in any way motivated by the prospect of receiving the gift but is motivated only by a genuine commitment to religious beliefs.

14. Gifts are often made to church workers both as an expression of goodwill towards them personally and also as a reward for some income-producing activity of the church worker or in recognition of the church worker's calling or occupation. If a substantial reason - it does not have to be the dominant reason - a gift is received by a church worker is his or her occupation or some income-producing activity on his or her part, the gift is income, even though the gift is also received on personal grounds.

15. If a gift is made to a church or missionary society (including a gift to a fund established by the church or missionary society) as an agent for a church worker or for a group of church workers, the gift is assessable to the church worker(s) at the time the church or society receives the gift on their behalf.

16. Sometimes, a donor makes a gift to a church or missionary society and merely expresses a preference that it be passed on to a church worker. The church or society owns the gift at the time it is made and retains an unfettered discretion about whether or not it acts in accordance with the donor's preference. In these circumstances, we consider that the gift is assessable to the church worker if, and to the extent to which, the church or society actually passes on the gift to the church worker or otherwise deals with it on his or her behalf. The church worker derives the income in these cases when he or she receives the gift from the church or society or it is otherwise dealt with on his or her behalf.

17. Like taxpayers in other callings or occupations, the activities of a church worker can be of such a nature and extent that he or she is carrying on a business - for example, a business of evangelism. An example of such a business arose in the case of *G v. C of IR (NZ)* (1961) 12 ATD 378. In these circumstances, gifts received in the course of carrying on the business are assessable income.

18. If a church worker does his or her church work as an employee or as a person rendering services in circumstances that fall short of carrying on a business (see *Brent v. FC of T* (1971) 125 CLR 418 at 429; 71 ATC 4195 at 4200; (1971) 2 ATR 563 at 570), assessability of the gifts received in the circumstances outlined in paragraphs 12 to 16 is supported by both subsection 25(1) and paragraph 26(e) of the ITAA. There is an exception to assessability under subsection 25(1) in these circumstances where a non-cash gift is not convertible into money. In this situation, the gift is assessable only under paragraph 26(e) of the ITAA.

19. If the church worker receives the gift as part of services rendered in the course of carrying on a business of church work (for example, as a self-employed evangelist), the gift is assessable under both subsection 25(1) and paragraph 26(e) of the ITAA (in relation to paragraph 26(e), see paragraph 8 of Taxation Ruling IT 198). Section 21A of the ITAA ensures, in the case of subsection 25(1), that a gift of property or services provided in the context of a business relationship is assessable income under that subsection even if the gift is not convertible into money.

When gifts are not assessable income

20. A personal gift received by a church worker for personal reasons, not related to any income-producing activity on the part of the church worker, is not assessable income under subsection 25(1) or paragraph 26(e) of the ITAA. In other words, a gift received only on grounds personal to the church worker is not assessable income. Nor is a gift assessable income if it is referable exclusively to the attitude of the donor personally to the church worker personally. A personal gift given to a church worker on personal grounds (in a situation where there is no connection between the receipt of the gift and any income-producing activity by the church worker) is not assessable income if, for example:

    (a) the gift is given because the church worker is in dire physical or financial circumstances; or

    (b) the church worker's personal qualities or attributes occasion the gift.

21. A gift received on an occasion such as a birthday or Christmas is a gift received for personal reasons if it is not linked to, and motivated by, some income-producing activity on the part of the

church worker as discussed in paragraph 12. However, the factual circumstances may indicate that particular gifts received are not in the ordinary category of Christmas or birthday gifts but in fact have the essential characteristics of gifts made to the church worker in recognition of his or her income-producing activities and not merely as personal gifts. The repetition and size of the gifts are relevant factors in deciding whether this is the case. A gift received by a church worker from his or her parents or other close relatives out of natural love and affection is not assessable income in the church worker's hands. Similarly, a personal gift that is made purely as a mark of affection, esteem or respect is not assessable income.

22. As indicated in paragraph 14, gifts are often received by church workers both on grounds personal to the church workers and also as a reward for some income-earning activity on their part or in recognition of their calling or occupation as church workers. If a gift is a personal one, it does not lose its character as a personal gift that is not assessable income, provided any income-producing aspect is merely an insubstantial factor in the making and receipt of the gift .

23. A gift made to a church or missionary society itself, rather than to a church worker, is not assessable income of the church worker if the gift is owned by the church or society (but see paragraphs 15 and 16).

24. If a person undertakes unremunerated missionary work, occasional gifts received for the missionary's upkeep and support are not assessable income because they have no connection with any employment, services rendered or business on the missionary's part. This situation is to be contrasted with that of a church worker whose activities are of such a nature and extent that he or she is carrying on a business - see paragraph 17.

Date of effect

25. This Ruling sets out the current practice of the Australian Taxation Office and is not concerned with a change in interpretation. Consequently, it applies (subject to any limitations imposed by statute) for years of income commencing both before and after the date on which it is issued.

Explanations

General principles

26. The courts have identified certain relevant criteria to assist in determining the character of a particular gift. The case of *G v. C of IR (NZ)* (1961) 12 ATD 378 is particularly relevant to this Ruling. In that case, the Supreme Court of New Zealand held that voluntary, unsolicited gifts received by an evangelist, apart from purely personal gifts, were assessable income. The Court concluded that the taxpayer was carrying on a business as an evangelist. We consider that this case also reflects the law in Australia.

27. The general principles stated at paragraph 11 are supported by the following decisions:

    (a) Whether a gift is assessable income depends on the quality or character of the gift in the hands of the recipient: *The Squatting Investment Co. Ltd. v. FC of T* (1953) 86 CLR 570 at 627; (1953) 10 ATD 126 at 149; *Scott v. FC of T* (1966) 117 CLR 514 at 526; (1966) 14 ATD 286 at 293; *Kelly v. FC of T* 85 ATC 4238 at 4288; (1985) 16 ATR 478 at 483;

    (b) Consideration is necessary of the whole of the circumstances in which the gift is received: *The Squatting Investment* case 86 CLR at 627; 10 ATD at 146; *FC of T v. Dixon* (1952) 86 CLR 540 at 555; (1952) 10 ATD 82 at 85;

    (c) How, in what capacity, and for what reasons the recipient received the gift are material: *The Squatting Investment* case 86 CLR at 628; 10 ATD at 146

    (d) Whether the gift is of a kind which is a common incident of the recipient's calling or occupation is material: *Scott* case 117 CLR at 526; 14 ATD at 293;

    (e) Whether the gift is solicited is material: *Hayes* case 96 CLR at 54; 11 ATD at 72; *Scott* case 117 CLR at 526; 14 ATD at 293;

    (f) If the gift is traceable to gratitude engendered by some service rendered by the recipient to the donor, whether the recipient has already been remunerated fully for that service is material: *The Squatting Investment* case 86 CLR at 634; 10 ATD at 149; *Scott* case 117 CLR at 526-527; 14 ATD at 293;

    (g) The motive of the donor may be relevant but it is seldom, if ever, decisive: *Scott* case 117 CLR at 526; 14 ATD at 293;

Hayes v. FC of T (1956) 96 CLR 47 at 56; (1956) 11 ATD 68 at 72;

(h) Whether the recipient relies on the gift for regular maintenance of himself or herself and any dependants is material: *Dixon* case 86 CLR at 556-557; 10 ATD at 85; *FC of T v. Blake* 84 ATC 4661 at 4664; (1984) 15 ATR 1006 at 1010.

When gifts are assessable income

28. Gifts received by a church worker are assessable income if:

(a) they are received because of, in respect of, for, or in relation to any income-producing activity of the church worker (whether the church worker's office or occupation or some service rendered or to be rendered by the church worker): *The Squatting Investment* case 86 CLR at 633; 10 ATD at149; *Hayes* case 96 CLR at 54 and 57 ; 11 ATD at 72; *Smith v. FC of T* (1987) 164 CLR 513 at 526; 87 ATC 4883 at 4890; (1987) 19 ATR 274 at 282;

(b) it is possible to relate the receipt of the gift to any income-producing activity on the part of the church worker: *Hayes* case 96 CLR at 57; 11 ATD at 73;

(c) it is possible to point to any employment, personal exertion or other income-earning activity by the church worker of which the receipt of the gift is in a relevant sense a product or incident: *Hayes* case 96 CLR at 56-7; 11 ATD at 73; *Scott* case 117 CLR at 527; 14 ATD at 293.

29. A gift received in the circumstances in paragraph 28 is assessable income even if:

(a) the donor is not under a legal obligation to make the gift: *Hayes* case 96 CLR at 56; 11 ATD at 72; *Scott* case 117 CLR at 526; 14 ATD at 293; or

(b) the gift comes, not from the employer, but from somebody else: *Dixon* case 86 CLR at 556; 10 ATD at 85;

(c) the gift is made so that the church worker can acquire a capital asset: *G* case 12 ATD at 384;

(d) the gift is received in kind rather than in money: *Cooke & Sherden* case 80 ATC at 4147; 10 ATR at 703;

(e) the gift is received on a special occasion such as Christmas or a birthday: *G* case 12 ATD at 383-384;

(f) the church worker is not in any way motivated by the prospect of receiving the gift but is motivated only by a

genuine commitment to religious beliefs: *G* case 12 ATD at 382-384.

30. If a gift is in all other respects assessable income, the fact that it is paid to a church worker by a relative, friend or fellow worker is not sufficient to alter its character as assessable income.

31. We consider that the view expressed in paragraph 14 that a gift is assessable income if a substantial (and not necessarily a dominant) reason that the gift is received by the church worker is his or her occupation or some income-producing activity is supported by the *Smith* case 164 CLR at 526; 87 ATC at 4890 ; 19 ATR at 282. The *Smith* case concerned the application of paragraph 26(e) of the ITAA. However, we consider that the principle is equally applicable to subsection 25(1) of the ITAA given the marked overlap between paragraph 26(e) and subsection 25(1).

When gifts are not assessable income

32. It is well established law in relation to subsection 25(1) and paragraph 26(e) of the ITAA that:

(a) a personal gift received for personal reasons, without any connection with any income-producing activity on the part of the recipient (in this case, the church worker), is not assessable income for income tax purposes: *Hayes* case 96 CLR at 57-8; 11 ATD at 72; *Scott* case 117 CLR at 528; 14 ATD at 294;

(b) a gift or gratuity made only on grounds personal to the recipient is not assessable income: *The Squatting Investment* case 86 CLR at 633; 10 ATD at 149;

(c) if a gift is referable exclusively to the attitude of the donor personally to the church worker personally it is not assessable income: *The Squatting Investment* case 86 CLR at 633; 10 ATD at 149;

(d) a voluntary payment received by a church worker from a family member, a friend or acquaintance, or a fellow worker is prima facie received on grounds personal to the recipient, or to assist his or her personal needs - if nothing more than this appears from a consideration of the whole circumstances of the case, the payment is not assessable income: *Hayes* case 96 CLR at 54; 11 ATD at 72.

Examples

When gifts are assessable income

33. Bronwyn reads about the work of Luke, a church worker, and is motivated to send a gift by Luke's devoted pastoral care and evangelistic commitment. Luke's employment as a church worker is a substantial reason for the gift being received, even though it is a one-off receipt. Luke should include the gift in his tax return for the year of income in which he receives the gift.

34. Paul, a member of Suburban Church, has been sent to work in a mission in a foreign country and he is supported by Suburban Church. In the particular circumstances, Paul is a resident of Australia during his posting to the foreign country. In addition to his normal remuneration, Paul receives regular gifts from Suburban Church as part of their practical support. These gifts are assessable income. Paul should include the gifts in his tax return for the year of income in which he receives them.

35. James is a missionary with Suburban Church. Because of particular interest in his work, supporters (including other churches of the same and different denominations) send him gifts. The gifts are of money which the donors require James to earmark to acquire capital assets. The assets are to be owned by James, rather than by his missionary society. They are to be used in James' missionary work and for his private purposes as occasion demands (both uses being of a substantial nature). These gifts are assessable income. James should include them in his tax return for the year of income in which they are received.

36. Matthew is a visiting evangelist who receives voluntary unsolicited gifts of money and gifts in kind called 'love offerings' when he addresses a gathering of worshippers. These gifts are received because those attending are spiritually move to make the gifts. Matthew is not in any way motivated by the prospect of receiving gifts. Rather, he is motivated only by a genuine commitment to his religious beliefs. The gifts are assessable income and should be included in Matthew's tax return for the year of income in which he receives them.

When gifts are not assessable income

37. Julie is a church worker. Her children receive birthday and Christmas gifts from various donors. These gifts are not assessable income unless they have been given as a consequence of Julie's work.

38. Ann has taken leave for one year from university where she is studying to undertake unpaid missionary work. Regular gifts that Ann receives from her parents and other close relatives out of natural love and affection during the year are not income in her hands.

39. Joan is a church minister. For Christmas her son gives her a clerical collar. Despite its nature, the gift is not income in the hands of Joan because it is given purely for personal reasons. What is determinative are the circumstances in which the gift is made and received rather than what is given.

40. Celia is a missionary working in the outback for a missionary society. She cannot afford, on her sacrificially low income, to take a holiday. Celia's grandmother makes available to her a holiday house rent-free for 3 weeks to enable Celia to take a worthwhile holiday. The gift is not income because it is made on personal grounds and because her grandmother's awareness of Celia's occupation as a missionary is only an insubstantial factor in the receipt of the gift.

Commissioner of Taxation

2 April 1992

ISSN 0813 - 3662

FOI index detail
reference number
I 1013136

ATO references
NO 90/1214-1
BO

Previously released in draft form as
EDR 61

Price $1.10

subject references
- assessable income
- church workers
- clergy
- donations
- evangelists
- gifts
- income
- ministers of religion
- missionaries

legislative references
- ITAA 21A; ITAA 25(1); ITAA 26(e)

Case references
- FC of T v. Blake 84 ATC 4661; 15 ATR 1006
- Brent v. FC of T (1971) 125 CLR 418; 71 ATC 4195; 2 ATR 563
- FC of T v. Cooke & Sherden 80 ATC 4140; 10 ATR 696
- G v. C of IR (NZ) (1961) 12 ATD 378
- Hayes v. FC of T (1956) 96 CLR 47; 11 ATD 68
- Kelly v. FC of T 85 ATC 4238; 16 ATR 478
- Scott v. FC of T (1966) 117 CLR 514; 14 ATD 286
- Smith v. FC of T (1987) 164 CLR 513; 87 ATC 4883; 19 ATR 274
- The Squatting Investment Co. Ltd v. FC of T (1953) 86 CLR 570;10 ATD