

MT 2002 - Bank account debits tax : exemption guidelines

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TAXATION RULING NO. MT 2002 (as amended 14/4/83)

BANK ACCOUNT DEBITS TAX : EXEMPTION GUIDELINES

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BANK ACCOUNT DEBITS
TAX
EXEMPTIONS

BANK ACCOUNT
DEBITS TAX
ADMINISTRATION
ACT 1982
3(1), 3(4), 11

PREAMBLE

The Bank Account Debits Tax Administration Act 1982 provides in section 11 that, on application, a certificate of exemption may be issued by the Commissioner in respect of a cheque account with a bank in the name of a person, body or institution eligible for exemption from the bank account debits tax.

RULING

Exempt accounts

2. An exempt account is an account in Australia in respect of which a certificate of exemption under section 11 is in force. To qualify for issue of a certificate of exemption the account must be one in respect of which the Commissioner is satisfied that all debits to it have been or will be either exempt debits or excluded debits. An exempt debit is, broadly, a debit which reverses a credit previously made to the account, a debit made for the purpose of recovering tax payable by the bank in respect of the account or a debit which has been reversed by a credit. A debit which has a dual purpose (e.g. one which both recovers tax payable and makes an account keeping charge) or one which is not wholly reversed is not to be regarded as an exempt debit. An excluded debit is defined in sub-section 3(1) - and this ruling is concerned with those excluded debits dealt with by the various sub-paragraphs of paragraph (a) of the definition.

Religious Institutions

3. Religious institutions are exempt from some other Commonwealth taxes, for example, from income tax by virtue of paragraph 23(e) of the Income Tax Assessment Act which provides for exemption of the income of a religious institution. The income tax exemption applies to incorporated and unincorporated bodies and trusts formed to administer the temporalities of the various religions.

4. To ensure uniformity in the application of taxation laws administered by the Commissioner, the approach to be taken

for the purposes of determining which organisations are religious institutions for the purposes of the bank debits tax is to be the same as is taken in respect of the income tax law. Therefore, if a body would be exempt from income tax under paragraph 23(e) on the grounds that it is a religious institution, that body will be eligible for exemption from the bank debits tax in respect of debits to cheque accounts which otherwise qualify under the definition of "excluded debit".

5. Which particular beliefs constitute a religion was considered by the Full Court of the Victorian Supreme Court in *The Church of the New Faith v. Commissioner of Pay-roll Tax* (Vic) 82 ATC 4198, 11 ATR 451, and the judgments in this case provide a useful discussion of the criteria to be considered, particularly in relation to those bodies or groups which might be described as "fringe religions".

6. An excluded debit is defined, in the context of religious institutions, to be a debit made in relation to a transaction or transactions carried out by or on behalf of the institution wholly and exclusively in furtherance of the objects of the religious institution.

7. It has been decided that, if an institution satisfies the requirement of being a religious institution it should as a general rule be accepted that debits to bank accounts operated by or on its behalf arise from transactions wholly or exclusively in furtherance of its objects. This applies equally to transactions of a commercial nature to such accounts as it is accepted that such activity will ordinarily be found to be primarily a means of giving expression to a religious principle or as an adjunct to work of a charitable or evangelical nature. In any event, profits from business undertakings are invariably directed to furthering the religious objects of the particular institution concerned or its parent institution. (See, for example, *Christian Enterprises Ltd v. Commissioner of Land Tax (NSW)* (1968) 72 SR (NSW) 90). (If, however, a religious institution were to use its exempt status to process transactions through its bank accounts for tax avoidance purposes, such transactions would not be regarded as being in furtherance of its objects.)

8. Many churches have various groups operating under their control or within their constitutional framework. Examples of these are men's and women's guilds and societies and various youth groups. These groups are centred on religious principles or the advancement of the particular religion which they represent. It is accepted that these bodies are themselves to qualify as religious institutions and be entitled to exemption on the basis referred to in paragraph 7. Those that are not separately constituted are also to be accepted as such institutions because they are in effect a part of the church which itself qualifies as an institution.

9. An exemption from bank account debits tax will not, however, extend to sporting clubs or groups associated with or sponsored by the churches. There is not the same impress of religion on these sporting bodies. Nor will parents and

citizens (P & C) and like bodies associated with schools or hospitals controlled by a particular church qualify for exemption on the grounds that they are religious institutions. Generally, such activities have separate bank accounts and there should be little difficulty in separating those accounts entitled to exemption from those not so entitled. Personal cheque accounts of ministers of religion and members of religious organisations do not qualify for exemption from the tax.

Public benevolent institutions and public or non-profit hospitals

10. The question of what constitutes a public benevolent institution has been dealt with in instructions issued from time to time under the income and sales tax laws. For further discussion of the indicia of a public benevolent institution see *Perpetual Trustee Company Ltd v. FCT* (1931) 45 CLR 224, *Australian Council for Overseas Aid v. FCT* 80 ATC 4575, 11 ATR 343, and *The Australian Council of Social Services Inc. v. Commissioner of Pay-roll Tax (NSW)* 82 ATC 4385, 13 ATR 290. Where a body is recognised as a public benevolent institution or public or non-profit hospital under another Act administered by the Commissioner it should also be recognised as such for the purposes of the bank debits tax.

11. As with religious institutions, some public benevolent institutions may carry on commercial activities or have associated groups operating under the umbrella of the institution. An approach similar to that to be taken in connection with exemption of religious institutions should be taken in the case of public benevolent institutions.

School, Colleges and Universities

12. There will be many instances in respect of private schools not carried on for profit or gain to individuals where the accounts will be held in the name of trustees, a board of governors or an incorporated body. It is to be accepted that where the trust deed, memorandum and articles or other constituent document substantiates that the respective body has been formed for the purposes of the administration, etc., of a non-profit school, college or university, then an exemption from the tax is to be available for relevant bank accounts of that body. In this regard it should be noted that sporting activities are normally part of the school curriculum and bank accounts relating to school sporting activities will be exempt.

13. A school, college or university refers only to a body that provides full-time education for students and includes pre-schools, but does not include child-minding centres. Cheque accounts operated by parents and citizens (P & C) groups, mothers' clubs and similar auxiliary bodies will not be exempt from the tax. There have been a number of enquiries as to whether school "tuck shop" cheque accounts will be exempt. These will only be exempt where the tuck shop is conducted by, and the account is in the name of, the school. Where the account is in the name of and controlled by an auxiliary body,

such as a P & C group, an exemption will not be available for the account.

Foreign diplomats, consular personnel and international bodies

14. It has been decided that all applications made by foreign diplomats and consular personnel for exemption from the bank debits tax are to be processed by the Deputy Commissioner, Canberra. Applications from these persons should be forwarded to the Deputy Commissioner of Taxation, Chan Street, Belconnen, ACT 2616 (PO Box 15, Belconnen, ACT).

15. Applications for exemption under sub-paragraph (a) (iii) or (iv) of the definition of "excluded debit" are to be processed in Head Office.

Governments of other countries

16. Any doubtful cases where exemption is claimed under sub-paragraph (v) should be referred to this office for decision.

Commonwealth/State/Territory departments, authorities and local governing bodies

17. Sub-paragraph (vii) provides two tests for government Departments, authorities, etc., to be eligible for exemption from bank debits tax. The first test is that the Department etc., must not have as its sole or principal function the carrying on of an activity in the nature of a business. The second test is that a debit to a government body's account will not be within the definition of "excluded debit" if it results from a transaction entered into by the body in connection with an activity in the nature of a business (whether or not carried on for profit).

18. Whether an activity is one in the nature of a business is a question to be determined on the facts of each case. However, as a general rule, an activity can be regarded as being in the nature of a business if that activity is one which is also carried on by non-government bodies or by individuals for profit. Examples would be activities such as the operation of bus services, swimming pools, abattoirs, caravan parks and parking stations (but not parking meters in streets).

19. By sub-section 3(4) the provision of goods and services (other than "excepted goods" and "excepted services") to the public for payment is deemed to be the carrying on of an activity in the nature of a business. The sub-section is not seen as a limitation on the second test in sub-paragraph (vii), but rather as expanding on it. If an activity is according to ordinary concepts in the nature of a business, the fact that it forms a minor or insignificant aspect of the functions of the Department, etc. will not result in it failing to satisfy the second test. Thus, a local council whose only "business" activity is to operate a local caravan park during the tourist season will not be eligible for exemption on an account through which that activity is conducted on the ground that the caravan

park forms a minor or insignificant part of its activities. Some local councils, particularly in rural areas, engage in hiring out road-making plant and equipment when such plant is surplus to day-to-day requirements. Such hiring out may be regarded as an "excepted service" provided the council does not maintain a surplus of equipment specifically for hiring purposes on a regular and full-time basis.

20. State Government and local authorities, e.g., State Electricity Commissions, County Councils, etc., which distribute gas, electricity and similar services will either be carrying on an activity in the nature of a business in fact or will be deemed to be so doing by reason of sub-section 3(4). Accordingly no exemption will be available to these bodies.

21. With respect to statutory authorities and local governing bodies, a question has been raised whether rate charges received from the public in return for certain services (such as water supply and sewerage services) would be regarded as activities in the nature of a business, either in fact or by an application of sub-section 3(4). As municipal rates are taxes and not a payment for services rendered, the view has been taken that the provision of such services in return for a special rating charge is not to be regarded as a business activity on either basis. Excess water charges (whether imposed by way of a rate or a specific charge per litre) will not affect this position. Such excess charges are generally designed to deter the excessive use of water and are not imposed as a charge for use of water, although that is a consequence. Where local councils sell water, e.g., by the tanker for domestic use, roadmaking, etc., transactions in relation to such sales should be disregarded on the basis that such sales would be a minor or insignificant part of the council's functions and excluded as "excepted goods" for the purposes of sub-section 3(4).

22. Other examples of transactions coming within the description of "excepted services" or "excepted goods" would be the Taxation Office's sale of ready reckoners to the public or the charging for copies of documents by a government Department under the FOI legislation. The operation of railway services, such as that provided by the various State Railway Authorities or the Australian National Railways Commission, while on one view not regarded as a business activity as ordinarily understood, is considered to be brought within that description by sub-section 3(4) and, as that would generally be the main activity carried on, would not be excluded as "excepted services".

23. Applications may be received from government bodies based upon a tax exemption provision contained in their enabling legislation. The bank account debits tax is a tax imposed on banks who are authorised to pass an equivalent charge on to their customers. A taxation exemption given to a customer of a bank by a particular Act does not entitle the bank to an exemption on accounts operated in the name of that customer except in cases where sub-paragraphs (ii) and (iii) apply. Those paragraphs are intended to apply mainly to international organisations and, because

government Departments and statutory authorities are covered specifically by sub-paragraph (vii), it is considered that sub-sub-paragraph (iii) (A) does not extend to exempt such Departments and authorities. Accordingly, unless exemption is available under the Bank Account Debits Tax Administration Act, no exemption from the tax will be available to these bodies.

24. It will be open to government bodies to obtain exemption on most of their governmental functions by operating exempt and non-exempt bank accounts. Similarly "non-profit" bodies can conduct their affairs through separate "exempt" and "non-exempt" accounts to obtain exemption on a substantial part of their activities.

25. The technical administration of the bank account debits tax will be handled by the Other Taxes Branch of the Interpretation Division in Head Office.

COMMISSIONER OF TAXATION
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