



# ***TR 92/17 - Income tax and fringe benefits tax: exemptions for 'religious institutions'***

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## Taxation Ruling

### Income tax and fringe benefits tax: exemptions for 'religious institutions'

#### other Rulings on this topic

MT 2021

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*This Ruling, to the extent that it is capable of being a 'public ruling' in terms of Part IVAAA of the **Taxation Administration Act 1953**, is a public ruling for the purposes of that Part. Taxation Ruling TR 92/1 explains when a Ruling is a public ruling and how it is binding on the Commissioner.*

## What this Ruling is about

1. The income of a 'religious institution' is exempt from income tax under paragraph 23(e) of the *Income Tax Assessment Act 1936* (ITAA).
2. Benefits provided to certain employees of a 'religious institution' are exempt benefits under section 57 of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA). A benefit provided by a religious institution to an employee is an exempt benefit under section 57 of the FBTAA if:
  - (a) the employee is a religious practitioner (i.e. a minister of religion, a full-time member of a religious order, or a person training to become a minister of religion or a member of a religious order); and
  - (b) the benefit is provided to the employee, the employee's 'spouse' as defined in subsection 136(1) of the FBTAA, or the employee's 'child' as defined in subsection 136(1) of the FBTAA; and
  - (c) the benefit is not provided principally in respect of duties of the employee, other than pastoral duties or any other duties or activities directly related to the practice, study, teaching or propagation of religious beliefs.
3. This Ruling discusses:
  - (a) the meaning of the term 'religious institution' as it appears in the ITAA and the FBTAA; and

- (b) the conditions which must be met before a benefit provided to an employee by a religious institution is exempt from the application of the FBTAA.

## Ruling

### Religious institution

4. A body is an 'institution' for the purposes of both the ITAA and the FBTAA if it is an establishment, organisation or association, instituted for the promotion of some object (especially one of public or general utility) that is religious, charitable, educational, etc. That definition was accepted by the High Court of Australia in *YMCA of Melbourne v. FC of T* (1926) 37 CLR 351 and later in *Stratton v. Simpson* (1970) 125 CLR 138.

5. A body is a 'religious institution' if it is instituted for religious purposes. For a body to be regarded as a religious institution:

- (a) its objects and activities must reflect its character as a body instituted for the promotion of some religious object; and
- (b) the beliefs and practices of the members of that body must constitute a religion.

6. The two most important factors for determining whether a particular set of beliefs and practices constitute a religion are:

- (a) belief in a supernatural Being, Thing or Principle; and
- (b) acceptance of canons of conduct which give effect to that belief, but which do not offend against the ordinary laws.

7. These factors were established by the High Court in *The Church of the New Faith v. Commissioner of Pay-roll Tax (Vic)* 83 ATC 4652; (1983) 14 ATR 769 (the *Scientology* case). Although other relevant criteria were discussed by the members of the Court in that case, if those two main criteria are satisfied it is likely that the body will be characterised as religious. On the other hand, if those two criteria are not satisfied it is unlikely that the body will be characterised as religious.

8. The expression 'religious institution' is not confined to the major religions such as Christianity, Islam, Judaism and Buddhism; it extends also to religions less well known in Australia, such as Taoism.

9. Private schools, private universities and residential university colleges established or conducted by religious institutions generally

are not religious institutions for the purposes of the ITAA and the FBTAA. That question must be determined having regard to the primary or dominant object of the body as ascertained by reference to the objects as stated in its memorandum of association or other constituent documents and by consideration of its activities: see *Commissioner for ACT Revenue Collections v. Council of the Dominican Sisters of Australia* 91 ATC 4602; (1991) 22 ATR 213.

10. On the other hand, seminaries, theological colleges and Bible colleges may come within the scope of the term 'religious institution'. Where the primary or dominant object of such a body is religious in character, the body will be treated as a religious institution for the purposes of the ITAA and the FBTAA.

### **Religious practitioner**

11. A 'religious practitioner' is defined in subsection 136(1) of the FBTAA to mean:

- (a) a minister of religion;
- (b) a student at an institution who is undertaking a course of instruction in the duties of a minister of religion;
- (c) a full-time member of a religious order; or
- (d) a student at a college conducted solely for training persons to become members of religious orders.

12. While the expressions 'minister of religion' and 'member of a religious order' clearly include members of the clergy in the Christian denominations, they are also intended to include persons who hold equivalent positions in other religions.

13. In determining whether a person is a minister of religion, many, if not all, of the following characteristics should be present:

- (a) the person is a member of a religious institution;
- (b) the person is recognised officially by ordination or other admission or commissioning, or, where the particular religion does not require a minister to be formally ordained, the person is authorised to carry out the duties of a minister based on a specified level of theological or other relevant training or experience;
- (c) the person is recognised officially as having authority in matters of doctrine or religious practice;
- (d) the person's position is distinct from that of the ordinary adherents of the religion;

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- (e) the person has acknowledged leadership in the spiritual affairs of the religious institution;
- (f) the person is authorised to discharge the duties of a minister or spiritual leader, including the conduct of religious worship and other religious ceremonies.

14. In determining whether a person is a member of a religious order, it is necessary to consider what constitutes a religious order. In a religious order, many, if not all, of the following characteristics will be present:

- (a) members generally are separated from secular society to pursue the religious life on a full-time basis and normally live together as part of a community;
- (b) members participate regularly in activities such as private and public prayer, religious study, teaching, care of the aged, missionary work or church reform;
- (c) the order is related to a particular religious institution and generally is directly or indirectly under the control and supervision of, or is funded, either partially or wholly, by that body;
- (d) members renounce in principle any possession of property and they live under a strict set of rules requiring moral and spiritual self-sacrifice and dedication to the goals of the organisation at the expense of their material well-being;
- (e) members of the order make a long-term commitment to the order.

15. Religious practitioners who receive a stipend or other form of remuneration (including non-cash benefits) are employees for the purposes of the FBTAA (see the definitions of 'current employee' in subsection 136(1) of the FBTAA and 'employee' in subsection 221A(1) of the ITAA). Consequently, if the requirements of section 57 of the FBTAA are satisfied, any fringe benefits provided to a religious practitioner who is an employee of a religious institution are exempt benefits. (It should be noted that the consequence of a view that religious practitioners are not employees is that non-cash benefits provided to a religious practitioner generally would be assessable income on ordinary concepts in the hands of the religious practitioner.)

16. It does not follow that a religious practitioner who comes within the meaning of 'employee' in subsection 221A(1) of the ITAA is an employee at common law. That question must be determined in accordance with common law principles: for example, see *Davies v. Presbyterian Church of Wales* [1986] 1 WLR 323.

17. Lay persons acting in the capacity of a minister of religion or equivalent position may be treated as a minister while acting in that capacity. For example, a lay person may be directed to work in a parish where there is no ordained minister. Provided that the lay person comes within the meaning of 'religious practitioner' and is an 'employee' for FBT purposes, fringe benefits provided to that person are exempt.

18. A person training to be a minister of religion or member of a religious order is a religious practitioner only if that person is attending a course, either full-time or part-time, conducted by a religious institution. If a person who has completed the prescribed course of training is required to serve a specified period of probation before being ordained or otherwise admitted, that person will be regarded as a religious practitioner during the probation period.

19. Missionaries who are not:

- (a) ministers of religion; or
- (b) members of a religious order; or
- (c) students at a college conducted solely for training persons to become members of religious orders

are not religious practitioners for the purposes of the FBTAA.

### **Pastoral duties and directly related religious activities**

20. For a benefit to be exempt, it must not be provided principally in respect of duties of the employee other than pastoral duties (subparagraph 57(d)(i) of the FBTAA), or other duties or activities that are directly related to the practice, study, teaching or propagation of religious beliefs (subparagraph 57(d)(ii) of the FBTAA). The latter duties and activities are referred to in this Ruling as 'directly related religious activities'.

#### ***What are pastoral duties?***

21. Pastoral duties generally are duties associated with the spiritual care of the members of the congregation of a religious body. The following are examples of pastoral duties:

- (a) communication of religious beliefs;
- (b) teaching and counselling adherents and members of the surrounding community;
- (c) providing adherents and members of the surrounding community with spiritual guidance and support;

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- (d) attendance at an in-service training seminar by a person or persons conducting the seminar, provided that the seminar is of a spiritual nature; and
- (e) meeting with and visiting adherents, the sick, the poor, or persons otherwise in need of emotional and spiritual support.

***What are directly related religious activities: i.e. practice, study, teaching or propagation of religious beliefs?***

22. The duties or activities must be related directly to the practice, study, teaching or propagation of religious beliefs to meet the requirements of paragraph 57(d) of the FBTAA. The duties or activities may include secular activities if it can be shown that there is a direct link between those activities and the religious beliefs of the person concerned.

23. Although a full-time member of a religious order may not be involved exclusively or predominantly in pastoral duties, he or she generally is engaged in duties or activities that are directly related to the practice, study, teaching or propagation of their religious beliefs.

24. Missionary work, to the extent that it is not pastoral in character, is, in any event, directly related to the teaching or propagation of religious beliefs.

***What are not pastoral duties or directly related religious activities?***

25. The following examples, which are not intended to be exhaustive, are duties or activities which are not pastoral duties or directly related religious activities:

- (a) the administration of a church; and
- (b) work undertaken by a director of a department of a Diocese or similar unit of ecclesiastical administration; and
- (c) the administration of a school.

***The 'principally' test***

26. If the benefit has not been provided principally in respect of pastoral or directly related religious activities, the benefit is not exempt.

27. Whether the benefit has been provided principally in respect of pastoral duties or directly related religious activities depends on the facts of each particular case. A benefit provided to a minister of

religion whose duties are exclusively or predominantly pastoral generally satisfies the 'principally' test.

28. On the other hand, a benefit generally is not an exempt benefit if the duties of the employee to whom it is provided are exclusively or predominantly non-pastoral duties.

29. However, if an employee who is a religious practitioner undertakes both pastoral and non-pastoral duties (even where the non-pastoral duties predominate), it is possible for a benefit to be provided to the employee solely or principally in respect of the employee's pastoral duties, and, therefore, be exempt under section 57 of the FBTA.

## **Date of effect**

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

31. However, if a taxpayer has received from the ATO a private ruling which is contrary to the views expressed in this Ruling, with respect to that taxpayer this Ruling will apply only from and including the 1993-94 year of income or the 1993-94 fringe benefits tax year (as the case may be) unless the taxpayer asks that it apply to earlier years.

## **Examples**

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32. A minister of religion, whose duties are exclusively or predominantly of a pastoral nature, is provided with a residence and a motor vehicle in addition to a stipend. Those benefits are not provided principally in respect of duties other than the minister's pastoral duties, and the benefits are exempt from fringe benefits tax. Similarly, if the religious institution pays the school fees for a child of that minister, that benefit is an exempt benefit.

33. A full-time member of a religious order is required to teach non-religious subjects at a private school. In the normal course, the cost of that person's living expenses, including accommodation and meals, is met by the religious institution. The teaching activity is not, itself, pastoral or a directly related religious activity. However, any benefits provided to that person are not provided principally in respect of the teaching duties, but in respect of their duties or activities directly

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related to the practice, study, teaching or propagation of religious beliefs as a member of the religious order. Accordingly, any benefits provided to that person are exempt.

34. A minister of religion is engaged exclusively or predominantly in performing duties of an administrative nature and the religious institution pays the costs of educating a child of the minister. That benefit is not exempt because it is not provided principally in respect of pastoral duties or directly related religious activities.

35. A minister of religion is appointed headmaster of a private school and his or her duties are related exclusively or predominantly to the administration of the school. As part of the remuneration package, the minister is provided with a residence and a motor vehicle. Those benefits are not exempt, either because the minister is not an employee of a religious institution, or the benefits are provided principally in respect of duties other than pastoral duties or directly related religious activities.

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*legislative references*

- ITAA 23(e); ITAA 221A(1)
- FBTAA 57; FBTAA 136(1)

*case references*

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(1926) 37 CLR 351
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