

# ***TR 2019/3 - Fringe benefits tax: benefits provided to religious practitioners***

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⚠ There is a Compendium for this document: **TR 2019/3EC** .



## Taxation Ruling

### Fringe benefits tax: benefits provided to religious practitioners

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#### **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.

Further, if we think that this Ruling disadvantages you, we may apply the law in a way that is more favourable to you.

#### **Summary – what this Ruling is about**

1. This Ruling explains when certain benefits provided by registered religious institutions to religious practitioners will be exempt from fringe benefits tax (FBT) under section 57 of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA).<sup>1</sup>
2. Views in this Ruling on the meaning of the terms ‘registered religious institution’ and ‘religious practitioner’<sup>2</sup> also apply for the purposes of other FBT provisions where those terms appear.<sup>3</sup>

#### **Previous rulings**

3. This Ruling finalises the Commissioner’s view expressed in draft Taxation Ruling TR 2018/D2 *Fringe benefits tax: benefits provided to religious practitioners*.
4. This Ruling replaces Taxation Ruling TR 92/17 *Income tax and fringe benefits tax: exemptions for ‘religious institutions’* and takes account of law changes, mainly relating to the commencement of the Australian Charities and Not-for-profits Commission (ACNC), that have occurred since that Ruling issued.

<sup>1</sup> All legislative references are to the FBTAA unless otherwise indicated.

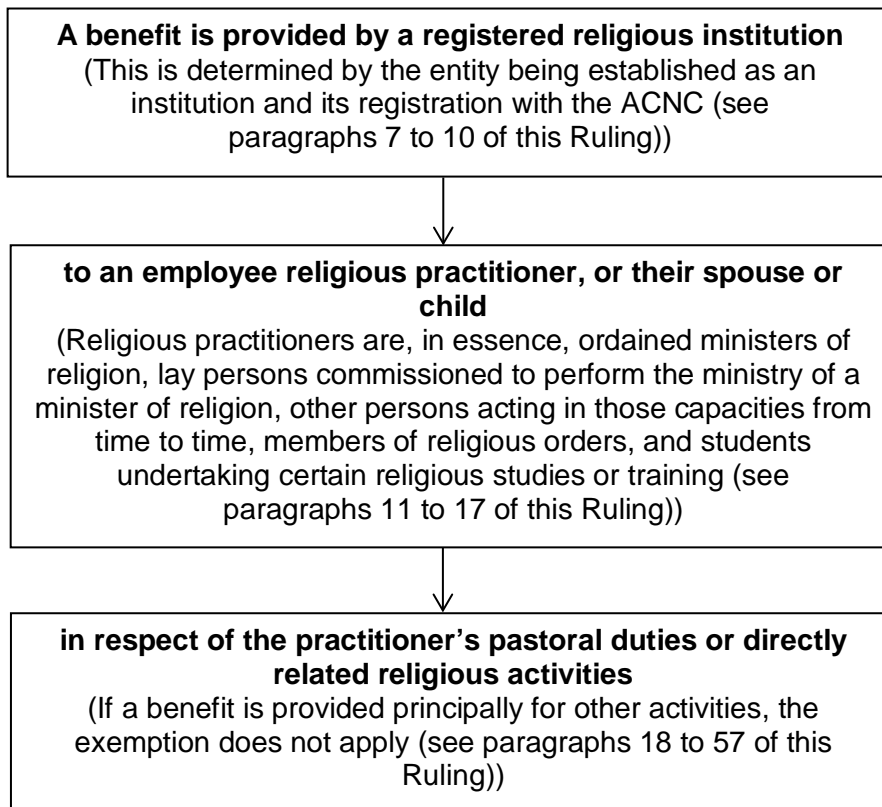
<sup>2</sup> ‘Religious practitioner’ is defined in subsection 136(1).

<sup>3</sup> Sections 58, 58T and 58V for, respectively, live-in residential care workers, live-in domestic workers and other providers of domestic services.

## Ruling

5. From 3 December 2012<sup>4</sup>, an entity which is an institution can provide exempt fringe benefits to certain employees if it is registered as a charity with the ACNC with the subtype 'advancing religion'.<sup>5</sup>

6. The requirements for exemption under section 57 are summarised as follows:



### **A benefit is provided by a registered religious institution**

7. In considering whether a benefit is provided by a registered religious institution<sup>6</sup>, administration by the ATO is limited to determining that the entity is an institution that maintains current ACNC registration with a subtype 'advancing religion'. It does not matter if the entity is also registered under another subtype, provided one of the subtypes is 'advancing religion'.

8. In its ordinary sense, an 'institution' is an establishment, organisation, or association, instituted for the promotion of an object, especially one of public or general utility. Such a body is called into

<sup>4</sup> Prior to 3 December 2012, it was necessary for the entity to qualify as a 'religious institution'. This Ruling omits discussion of what a 'religious institution' is.

<sup>5</sup> Section 57 and definition of 'registered religious institution' in subsection 136(1).

<sup>6</sup> As defined in subsection 136(1).

existence to translate a defined purpose into a living and active principle.<sup>7</sup>

9. In the context of the FBTA, the word 'institution' refers to a significant body which is a recognised part of society, and for which the grant of an exemption is seen to provide a public benefit.<sup>8</sup> Whether a body has these characteristics depends on the facts in each case. Relevant factors include an entity's activities, size, permanence and recognition. A structure which conducts activities of limited scale, controlled and operated by family members or friends is not an 'institution' in this context.<sup>9</sup>

10. An institution may take various forms, including a company limited by guarantee, an incorporated association, an unincorporated association, a trust, or a body established under statute or letters patent.

### **To an employee religious practitioner, or their spouse or child**

#### ***Employee***

11. To be exempt, the benefit must be provided by a registered religious institution to an employee who is a religious practitioner.<sup>10</sup> 'Employment' is given a wider meaning than its ordinary meaning and includes holding an office or appointment.<sup>11</sup> Employees are recipients of salary or wages.<sup>12</sup> Here the term 'salary or wages' has a wider meaning than might ordinarily be the case. It includes payments and non-cash benefits<sup>13</sup> made by a religious institution to a religious practitioner for activities done as a member of the institution in pursuit of the practitioner's vocation.<sup>14</sup>

<sup>7</sup> See *Stratton v Simpson* [1970] HCA 45, per Gibbs J and Taxation Ruling TR 2011/4 *Income tax and fringe benefits tax: charities*.

<sup>8</sup> *Pamas Foundation (Inc) v Deputy Federal Commissioner of Taxation* [1992] FCA 299, per Davies J.

<sup>9</sup> *Pamas Foundation (Inc) v Deputy Federal Commissioner of Taxation* [1992] FCA 299.

<sup>10</sup> Paragraph 57.

<sup>11</sup> Definition of 'employment' in subsection 136(1).

<sup>12</sup> Definitions of 'employee' and 'current employee' in subsection 136(1).

<sup>13</sup> Section 137.

<sup>14</sup> Section 12-47 of Schedule 1 to the *Taxation Administration Act 1953* (TAA) and paragraph (b) of the definition of 'salary and wages' in subsection 136(1). The further requirement in paragraph 12-47(c) of Schedule 1 to the TAA, that the payment be made in the course or furtherance of an enterprise that the institution carries on, is taken to be satisfied for a payer that is a religious institution. See subsection 3AA(2) to the TAA, definitions of 'carrying on' and 'enterprise' in subsection 995-1(1) of the *Income Tax Assessment Act 1997* (ITAA 1997) and paragraph 9-20(1)(e) of *A New Tax System (Goods and Services Tax) Act 1999*.

***Religious practitioner***

12. 'Religious practitioner'<sup>15</sup> is defined to mean:

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

13. The expressions 'minister of religion' and 'member of a religious order' included in the definition of 'religious practitioner' take their ordinary meaning in the context of where they appear. They cover members of the clergy (or their equivalent) across religions.

14. Except in rare cases, a minister of religion would have all of these characteristics:

- is a member<sup>16</sup> of a religious institution
- is recognised by ordination or other admission or commissioning, or has authority from the religious institution to carry out the duties of a minister based on theological training or other relevant experience
- is officially recognised as having authority on doctrine or religious practice
- is distinct from ordinary adherents of the religion
- is an acknowledged leader in spiritual affairs of the institution, and
- is authorised to act as a minister or spiritual leader, including the conduct of religious worship and other religious ceremonies.

15. Except in rare cases, a religious order would have all of these characteristics:

- members are part of a religious community and are pursuing a religious life on a full-time basis
- members regularly participate in activities such as private and public prayer, religious study, teaching, care of the aged, missionary work or church reform

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<sup>15</sup> Defined in subsection 136(1) by adopting the definition in subsection 995-1(1) of the ITAA 1997.

<sup>16</sup> 'Member' is not defined and takes its ordinary meaning as 'each of the persons composing a society, party, community, or other body'. Macmillan Publishers Australia, *The Macquarie Dictionary Online*, [www.macquariedictionary.com.au](http://www.macquariedictionary.com.au). (*Macquarie Dictionary Online*), viewed 12 June 2019.

- controlled by, or supervised by, or affiliated with, or partially or wholly funded by a religious institution
- in principle, members renounce the possession of private property, and
- members make a long-term commitment to the order.

16. A period of probation (for instance, after completing the prescribed training course before being ordained or otherwise commissioned) does not prevent a person from being a religious practitioner.

17. A missionary will only be a religious practitioner where they also fit within one of the categories in the definition of the term.

#### **In respect of the religious practitioner's pastoral duties or directly related religious activities**

18. To be exempt, the benefit must be provided principally in respect of the following employee duties:

- pastoral duties<sup>17</sup>, or
- other duties or activities that are directly related to the practice, study, teaching or propagation of religious beliefs.<sup>18</sup>

19. For convenience, in this Ruling we refer to this latter category of duties or activities as 'directly related religious activities'.

20. The word 'principally' is not defined and takes its ordinary meaning of 'mainly' or 'chiefly'.<sup>19</sup>

21. In order to determine whether a benefit has the required connection with a religious practitioner's duties, it is necessary to identify what that benefit is in respect of.

22. The test is concerned with the connection between the benefit and a religious practitioner's duties or activities, rather than the nature of the advantage the benefit represents. Therefore, a benefit can be exempt from FBT, even though it represents a private benefit in the hands of the religious practitioner or their associates, for example, the payment of school fees.

23. A benefit which is provided only in respect of duties which are solely or predominantly pastoral, or which are directly related religious activities, will satisfy the test.

24. This would also be the case where the benefit is in respect of the practitioner's duties generally, and those duties are solely or predominantly pastoral.

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<sup>17</sup> Subparagraph 57(d)(i).

<sup>18</sup> Subparagraph 57(d)(ii).

<sup>19</sup> *Macquarie Dictionary Online*, viewed 12 June 2019, (at 1.).

25. It would also be the case where the benefit is distinctly related to the practitioner's pastoral duties or directly related religious activities, despite other duties or activities being predominant overall.

*Example 1 – duties that are predominantly pastoral*

26. *Ted is a pastor in a church that is registered with the ACNC. His duties are predominantly of a pastoral nature.*

27. *The church provides Ted with a residence and a motor vehicle in addition to a stipend for his pastoral duties.*

28. *These benefits are exempt from FBT. Similarly, if the church pays the school fees for Ted's children, these benefits are exempt.*

*Example 2 – duties that are both pastoral and non-pastoral*

29. *Ismail is a full-time member of a religious order supervised by a religious institution registered with the ACNC. As part of his duties, and during most of his working hours, he teaches non-religious subjects at a private school, for which he is separately remunerated. This is not a pastoral or a directly related religious activity.*

30. *The institution also undertakes to meet Ismail's living expenses, including accommodation and meals. The institution states that these benefits are being provided in respect of Ismail's religious duties. Ismail's benefits are of the same kind and amount as benefits provided to other members of the religious order who perform similar religious duties (of a comparable kind and amount to Ismail) who do not perform any non-religious duties (such as teaching).*

31. *The benefits provided to Ismail in the form of payments for living expenses are exempt from FBT. They are in respect of his religious duties or activities that are directly related to the practice, study, teaching or propagation of religious beliefs.*

**Duties that are not pastoral or directly related religious activities**

32. In contrast, a benefit provided in respect of duties which are not solely or predominantly pastoral, or directly related religious activities, will fail the test. This includes cases where the benefit is in respect of the practitioner's duties generally, and those duties are not solely or predominantly pastoral or directly related religious activities.

*Example 3 – duties that are not pastoral or directly related religious activities*

33. *Bob is a minister of religion. His only duties are performed in the accounting division of the church and are predominantly of an administrative nature.*

34. *A registered religious institution pays the costs of educating Bob's daughter.*

35. *This benefit is not exempt from FBT, because it is not provided principally in respect of pastoral duties or directly related religious activities.*

*Example 4 – duties that are predominantly administrative*

36. *Kate is a minister of religion who is appointed principal of a private school that is a registered religious institution. Kate's duties are related predominantly to the administration of the school.*

37. *As part of her remuneration package, Kate is provided with a residence and a motor vehicle.*

38. *Those benefits are not exempt from FBT, because the benefits are provided principally in respect of duties that are not pastoral duties or directly related religious activities.*

**Test applies separately to each benefit**

39. The test must be applied separately to each benefit which is provided. An arrangement which once provided benefits in respect of pastoral duties or directly related religious activities may lose that connection as circumstances change – compare Example 5 and Example 6 of this Ruling.

*Example 5 – duties that are solely or predominantly pastoral*

40. *Rod is a lay person commissioned to perform the ministerial duties of a church and meets all the criteria to be a minister of religion.*

41. *Rod is also employed by a private school to teach religious studies and to perform other duties as a spiritual guidance officer. The private school is a registered religious institution, which also maintains registration under another ACNC subtype.*

42. *The school provides Rod with the use of a car in relation to his employment.*

43. *The benefit is exempt from FBT, as the school is a registered religious institution and the benefit is provided principally in respect of pastoral and directly related religious activities that Rod solely or predominantly performs.*

*Example 6 – duties that are not solely or predominantly pastoral or directly related religious activities*

44. Following from the facts of Example 5, in a subsequent year there is a restructure of the teaching duties at the school and Rod commences teaching the Mathematics and English curricula in addition to providing religious instruction.

45. Rod's role as a spiritual guidance officer is now shared with several other teaching staff. His teaching duties in subjects other than religious instruction take up the majority of his working time.

46. The school continues to provide Rod with benefits on the same basis.

47. The benefits are not exempt from FBT, as the arrangement between the school and Rod does not show that the benefits are provided principally for the pastoral duties or the directly related religious activities that he performs.

**Pastoral duties**

48. Pastoral duties are duties associated with the spiritual care of people.<sup>20</sup> Examples of pastoral duties undertaken by religious practitioners are:

- communication of religious beliefs
- teaching and counselling adherents and members of the community
- providing adherents and members of the community with spiritual guidance and support
- conducting an in-service seminar of a spiritual nature
- meeting with or visiting adherents, the sick, the poor, and others who need emotional and spiritual support, and
- providing pastoral supervision to those engaged in pastoral duties.

**Directly related religious activities**

49. The words 'directly related' point to a close connection between the duties or activities of the religious practitioner and the practice, study, teaching and propagation of religious beliefs. In this context, duties and activities will be directly related where, in their

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<sup>20</sup> The phrase 'pastoral duties' is not defined and so takes its ordinary, contextual meaning. *Macquarie Dictionary Online*, viewed 12 June 2019, relevantly defines 'pastoral' as 'relating to a priest, minister, or other member of the Christian clergy, or to their duties, especially those associated with the care of the people of their congregation' (at 6.).

essential nature, they promote the practice, study, teaching and propagation of religious beliefs.<sup>21</sup>

50. Directly related religious activities may include incidental secular activities, provided there is a direct link between the conduct of those activities and the religious beliefs of the participants (see Example 7 of this Ruling).

51. Secular or commercial activities that have a mere causative relationship to the practice, study, teaching and propagation of religious beliefs are not directly related religious activities. For example, the conduct of market research commissioned by a church to discover adherent's preferred style of worship is not a directly related religious activity.

52. Directly related religious activities include the duties or activities undertaken by a full-time member of a religious order to the extent those duties or activities are related to the practice, study, teaching or propagation of their religious beliefs.

53. Benefits provided principally for the missionary work undertaken by a religious practitioner will be exempt, as that work is either pastoral or directly related to the teaching or propagation of religious beliefs.

*Example 7 – duties that are directly related religious activities*

54. *Sam is an ordained minister and the executive officer of an inter-denominational religious organisation registered with the ACNC, which is committed to the advancement of religion through the development of church leadership.*

55. *Sam's duties mainly involve training and mentoring church pastors to make them more effective leaders and advising church denominations about their leadership development programs.*

56. *The organisation provides Sam with a residence and motor vehicle in addition to a stipend for these duties.*

57. *The benefits provided to Sam are exempt from FBT. Although generally the provision of training and mentoring in effective leadership skills is a secular activity, effective leadership skills are incidental to the conduct of the religious beliefs of the church pastors and their denominations. Sam's duties are directly related religious activities as the support he provides to pastors and denominations is directly related to their ability to practice, teach and propagate the religious beliefs of their churches.*

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<sup>21</sup> In the Explanatory Memorandum to the Fringe Benefits Tax Assessment Bill 1986, it is explained, at the Note on Clause 57 that 'The exemption does not ... extend to benefits provided in respect of duties that are not religious in nature'. In the second reading speech for the Bill, the Hon. Paul Keating MP, Treasurer, stated that the exemption was 'tightly drawn' and that 'The exemption ... for religious institutions will only apply to benefits that are given to clergy and other members of a religious order. To ensure equity between employees in like occupations, benefits will be taxable if they are given mainly in respect of secular or commercial activities and not religious duties'.

## Date of effect

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58. This Ruling applies to FBT years commencing both before and after its date of issue. However, this Ruling will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10 *Public Rulings*).

59. This Ruling replaces TR 92/17 which was withdrawn on 11 July 2018. This Ruling is intended to be consistent, in general terms, with TR 92/17. However, for the avoidance of doubt, taxpayers who relied on TR 92/17 prior to its withdrawal will have the protection of that Ruling.

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**Commissioner of Taxation**

19 June 2019

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## **Appendix – Detailed contents list**

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## References

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*Previous draft:*

TR 2018/D2

*Related Rulings/Determinations:*

TR 2006/10, TR 2011/4

*Previous Rulings/Determinations:*

TR 92/17

*Legislative references:*

- FBTA 1986
- FBTA 1986 57
- FBTA 1986 57(a)
- FBTA 1986 58
- FBTA 1986 58T
- FBTA 1986 58V
- FBTA 1986 136(1)
- ITA 1997
- ITA 1997 995-1(1)
- ANTS(GST)A 1999
- ANTS(GST)A 1999 9-20(1)(e)
- TAA 1953
- TAA 1953 3AA(2)
- TAA 1953 Sch 1 12-47

- TAA 1953 Sch 1 12-47(c)
- Australian Charities and Not-for-profits Commission Act 2012 25-5(5)

*Cases relied on:*

- Pamas Foundation (Inc) v Deputy Commissioner of Taxation [1992] FCA 299; (1992) 35 FCR 117; (1992) 106 ALR 229; 92 ATC 4161; (1992) 23 ATR 189
- Stratton v Simpson [1970] HCA 45; (1970) 125 CLR 138

*Other references:*

- Explanatory Memorandum to the Fringe Benefits Tax Assessment Bill 1986
- Second Reading Speech to the Fringe Benefits Tax Assessment Bill 1986
- The Macquarie Dictionary Online

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ATO references

NO: 1-B4GN4TU

ISSN: 2205-6122

BSL: PW

ATOlaw topic: Fringe benefits tax ~~ Not for profit ~~ Exemptions and concessions ~~ Religious institutions

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