

# **FRINGE BENEFITS FOR CHURCHES**

## **Exempt Benefits and Fringe Benefits Tax**

### **INDEX**

- 1. The FBT Act**
  - 1.1. The Basis for Exempt Benefits**
  - 1.2. Churches Responsibility**
- 2. Tax Exempt Benefits**
  - 2.1. Remuneration Package**
  - 2.2. Ministry related benefits**
- 3. Reporting requirements**
  - 3.1. Religious Practitioners**
  - 3.2. Non-Pastoral Staff**
- 4. Calculation of FBT Payable**
- 5. Practical issues**
- 6. Providing exempt benefits**
  - 6.1 Use of a separate bank account (eg A Ministers Benefits account)**
  - 6.2 Use of a salary packaging card**
  - 6.3 Use of a debit card or credit card in the name of the church**
  - 6.4 GST and Exempt Benefits**
- 7 Paid Allowances**
- 8 Religious Practitioners and Centrelink**
  - 8.1 Accommodation Expenses**
  - 8.2 Employment Income**
  - 8.3 Fringe Benefits and PAYG Summary**

## 1 The FBT Act

The Fringe Benefits Tax Assessment Act 1986 (the "Act") taxes the provision of all fringe benefits provided to employees by their employers.

*Subsection 136(1) of the Act indicates that:*

- *'Employment' is given a wider meaning than its ordinary meaning and includes holding an office or appointment and*
- *Employees are recipients of salary or wages.*

Although from a theological perspective a pastor is not 'employed' by a church, for the purposes of the Act, a church is deemed to be the employer of a pastor *as the pastor holds an office or appointment in the church.*

*When a church pays salary or wages or provides benefits to a pastor , that person is an employee for the purposes of the Act.*

Fringe benefits are the provision of such things as - motor vehicles, housing, subscriptions, and other non-cash employment benefits. The employer normally pays the tax levied upon these "fringe benefits". However, **Section 57 of the Act** makes special provision for certain employees of 'religious institutions'.

*"Exempt benefits--employees of religious institutions*

*Where:*

- (a) the employer of an employee is a registered religious institution; and*
- (b) the employee is a religious practitioner; and*
- (c) a benefit is provided to, or to a spouse or a child of, the employee; and*
- (d) the benefit is not provided principally in respect of duties of the employee other than:*
  - (i) any pastoral duties; or*
  - (ii) any other duties or activities that are directly related to the practice, study, teaching or propagation of religious beliefs;*

*the benefit is an exempt benefit.*

### 1.1 The Basis for Exempt Benefits

The special provisions for 'religious institutions' under the Act exempts a religious institution from the obligation to pay Fringe Benefits Tax where **all of the above conditions are met.**

**The exemption does not extend** to benefits paid by a church to employees who are not religious practitioners or to religious practitioners who are not performing pastoral duties or directly related religious activities

For example, benefits provided to religious practitioners who perform principally an administrative function are **not** exempt from FBT liability.

This *Section 57* exemption from Fringe Benefits Tax does not extend to not-for-profit organisations associated with churches, such as public benevolent institutions, schools and aged care facilities. *They may receive more limited concessions under other parts of the Act.*

### ***What is a registered religious institution?***

*A registered religious institution 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'.*

*For example a school may be both an educational and a religious institution and be registered with subtypes of advancing education and advancing religion.*

*Such an entity needs to have religious purposes evident in its constitution or similar foundation document.*

### ***Who is a religious practitioner?***

*A 'Religious practitioner' 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.*

*A minister of religion would need all of these characteristics:*

- *be a member of a religious institution*
- *be recognised by ordination or other admission or commissioning, or, where the religion does not require formal ordination, has authority to carry out the duties of a minister based on theological training or experience*
- *be officially recognised as having authority on doctrine or religious practice*
- *be distinct from ordinary adherents of the religion*
- *be an acknowledged leader in spiritual affairs of the institution, and*
- *be authorised to act as a minister or spiritual leader, including the conduct of religious worship and other religious ceremonies.*

*A religious order needs all of the following characteristics:*

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

### **Can a missionary be a religious practitioner?**

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

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

*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.*

### **What are directly related religious activities?**

*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.*

*Examples of directly related religious activities are*

- *training and mentoring church pastors to make them more effective leaders*
- *teaching religious studies*
- *lecturing in a bible college*
- *leading a radio station dedicated to promoting Christianity*
- *providing instruction on spiritual meditation techniques*

### **What are duties that are predominantly administrative?**

*Administration has its ordinary meaning as the process of dealing with or controlling things or people and includes leadership.*

*For example a minister of religion who is appointed principal of a private school that is a registered religious institution. The duties are related predominantly to the administration of the school.*

## **1.2 Churches Responsibility**

Whilst the church is exempt from payment of FBT on benefits provided to a "religious practitioner" where the conditions described above are met, it is still not exempt from an ATO audit to ensure compliance with the Act. The financial records, *such as paid invoices for expenses, credit card statements, rent payment statements and mortgage statements*, need to be readily available.

The following types of church employees cannot receive exempt benefits

- Administrators
- Secretaries
- Caretakers

If fringe benefits are provided to the latter group of employees, then FBT is payable by the employer (the church) and returns and payments of tax must be submitted to the Tax Office. If you

consider that your church should be making these payments please contact the ATO before payments are made.

## **2 Tax Exempt Benefits**

### **2.1 Remuneration Package**

*Whilst it is technically possible to pay 100% of a religious practitioner's remuneration as tax-exempt benefits, commonly churches and denominations take a more conservative approach and limit the proportion of remuneration that may be paid as exempt benefits.*

*In any case the tax-free threshold is the first **\$18,200** of a religious practitioner's income'. Unless the person has special circumstances there is no taxation advantage in packaging the first \$18,200 in remuneration. This is normally paid by direct bank transfer to the person's account.*

The current tax concessions/exemptions are very generous and *there is a risk* that the government may take steps to cap the exempt benefits as they have done with Public Benevolent Institutions (PBI's) and hospitals.

It is recommended that the exempt proportion of the religious practitioner's package be no more than 75% of the total remuneration package and may include *but not limited to* the following items;

- notional rental value of residence where provided by the Church
- manse running costs (eg. gas, electricity).
- rent, mortgage repayments, running costs and maintenance in respect to the religious practitioners pastor's own residence.
- ministry related hospitality expenses to the extent that they are of benefit to the religious practitioner. (Where identifiable by invoice).
- Subject to Church policy other personal expense payments or reimbursement/reimbursements
- Credit card and other loan expenses (where statements are provided)
- Salary packaging debit card expenses (where an ATO approved card is used).

### **2.2 Ministry Related Benefits**

The ministry related (work related) portion of the following items would be tax deductible to the *religious practitioner*, subject to the supporting documents being available. Therefore, while they can be packaged, it may be preferable for the pastor/employee to pay them and then claim a tax deduction.

- motor vehicle running costs and loan repayments.
- telephone and Internet costs
- course fees, materials and other costs.
- books, journals and magazines, computer software for the pastor's use and other ministry resources including computers.
- subscriptions to ministry associated organisations.
- travel costs related to the pastor's ministry duties.

Please note, that contributions to a complying superannuation fund, such as Christian Super, do not constitute fringe benefits. Such contributions are exempt under a different part of the FBT Act.

It is recommended that the following benefits are never provided as tax-exempt benefits;

- cash withdrawals from a ministry benefits bank account – *such cash would be untaxed cash income to the religious practitioner and the church may incur a withholding tax liability for failing to deduct tax*
- church offerings, mission giving and “love” gifts. *These cash gifts may be assessable income (see “Tax ruling IT 2674 Income tax: gifts to missionaries, ministers of religion and other church workers - are the gifts income?”*
- expenses in relation to an investment property *unless a declaration is provided by the religious practitioner that the expenses would have been otherwise deductible as an expense in their income tax return*

### 3 Reporting Requirements

#### 3.1 Religious Practitioners

For *religious practitioners* whose benefits are exempt, as defined in point 1.1, there are no reporting requirements for the benefits paid to the religious practitioner. *A payment summary is issued identifying only the gross cash paid less any PAYG tax when the religious practitioner leaves the church or at the end of the relevant financial year. No entry is made in the reportable fringe benefits box on the payment summary*

The exemption from Fringe Benefits Tax and reporting requirements does not extend to not-for-profit organisations associated with churches, such as public benevolent institutions, schools and aged care facilities.

#### 3.2 Non-Pastoral Staff

For benefits provided to staff that perform an administrative or other function, the church is not exempt from reporting these benefits or the payment of Fringe Benefits Tax. (This includes ministers of religion who perform an administrative function).

Benefits paid to non-pastoral staff need to be recorded separately for each staff member.

Benefits paid for the FBT year ending 31 March must be reported on the employee’s group certificate/PAYG Summary for the year ended 30 June.

The amount reported on the employee’s payment summary is the **grossed up** amount of benefits provided.

Fringe benefit x Gross-up factor

The Gross-up factor for reporting benefits is *1.8868 for the year ending 31 March 2019*

The amount of benefits churches can provide on a concessional basis to non-pastoral employees is capped at \$30,000 (grossed-up value). This equated to **\$15,900** cash value, i.e. \$15,900 x 1.88868 = \$30,000 grossed up.

### 4 Calculation of FBT Payable

The church is required to pay Fringe Benefits Tax on benefits paid to non-pastoral employees at a tax rate of *47% of the grossed-up value less a 48% rebate of the FBT payable.*

*Churches* are known as ‘rebateable employers’. The rebate of 48% is applied to each employee only up to the \$30,000 grossed-up cap.

For example: If a non-pastoral church employee receives fringe benefits of \$15,000 in the year to 31 March 2019:

**Step 1** Gross up by factor of 1.8868 (for benefits where no GST is deductible by the employer) or by a factor of 2.0802 (for benefits where GST is deductible)

Say \$10,000 x 1.8868 (no GST)	=	18,868
+ \$5,000 x 2.0802 (with GST)	=	<u>10,401</u>
Grossed-up value		<u>\$29,269</u>

## Step 2

\$29,269 x FBT rate 47%	=	13,756.43
less 48% rebate	=	<u>6,603.09</u>
FBT payable by employer		<u>\$7,153.34</u>

*Note the effective tax rate is 48% (\$7,153.34/\$15,000).*

*This is higher than the employees marginal tax rate*

## 5 Practical Issues

The practical implications of exemptions from FBT are that the church can provide a religious practitioner with a more effective remuneration package by providing a mix of cash stipend plus selected benefits, rather than paying all of the remuneration by regular *cash* transactions which then come within the ambit of PAYG tax legislation.

Treasurers should note that when preparing a minister's PAYG Summary the exempt fringe benefits provided should **NOT** be shown on the Summary. The tax law specifically provides a special category for ministers engaged by religious institutions (refer to Item 1). However recent changes require salary sacrifice superannuation to be recorded in a separate box on the Summary

Each church should establish its own local policy and have it approved by its board. When determining the policy, consideration needs to be given to the increase in workload on the church treasurer or administrator.

## 6 Providing exempt benefits

### 6.1 Use of a separate bank account (e.g. A Ministers Benefits account)

*The exempt benefits portion of the remuneration package is transferred by the church from its operating bank account into a separate **church** "ministers benefits" bank account each pay period while the cash portion is paid from the operating bank account directly to the religious practitioner's nominated personal bank account.*

*Personal expenses incurred by the religious practitioner can then be paid by the church from this "ministers benefits" account in a manner, which simplifies record keeping and control, and without giving rise to a tax liability to either pastor or church. While church officers should be co-signatories on this account for oversight purposes, the day-to-day record keeping could beneficially be in the hands of the pastor or spouse. In such a situation the church treasurer will need these records for BAS preparation and for audit purposes. The records should be filed, preferably in date order of payment.*

*The church treasurer would record the transfer between bank accounts and a journal to recognise the benefits expense and the unutilised funds owing to the religious practitioner as a Ministers Benefit Liability.*

*As the funds are to provide benefits to the religious practitioner the unused liability funds are reduced with each payment to a mortgage, to a landlord, to a credit card or to reimburse the religious practitioner for other types of personal expenses paid.*

## **6.2 Use of a salary packaging card**

*A simpler alternative procedure is possible through the use of a salary packaging debit card issued by the major banks. Salary packaging debit cards are designed to meet the needs of religious institutions, public or private hospitals, not for profits and benevolent institutions and their employees.*

*An example of this is the Westpac Everyday Purchase Card. This product is setup with eftpos vendor so employees can use the card to purchase anything that is able to be paid on the VISA Network throughout Australia.*

*In summary the Everyday Purchase Card:*

- \* Is a VISA Card*
- \* Is supplied by Westpac*
- \* Comes with full ATO Class Rulings*
- \* Provides employees with online access to a comprehensive Westpac card holder portal for access to*
- \* Online statements*
- \* Online transaction disputes*
- \* Allows employees to access 24 hour phone banking*
- \* Allows employees to check card balance at Westpac ATMs*
- \* Enables employees to salary sacrifice benefits exempt from FBT*
- \* Blocks employees from withdrawing cash*
- \* The card may be used to purchase anything.*

The advantage to the Church is the simplicity of one payment to the card each pay period and no other substantiation requirements. The disadvantage is that no GST can be reclaimed from the expenses paid for on the card.

Baptist Financial Services (BFS) provide a Visa Pre-Paid Pay Card which has similar features. BFS provides services to a wide spectrum of Christian organisations.

## **6.3 Use of a debit card or credit card in the name of the Church**

*Such a debit or credit card is specifically set aside for recording fringe benefits transactions. It is preferable, but not essential, for the card to be in the name of the church itself. The pastor would then pass to the church treasurer on a monthly basis, the statement, card slips and invoices where appropriate, to support the expenditure. The obvious advantage of a debit card is that expenditure cannot exceed the benefits sum placed in the account by the church.*



Any GST on expenditure on these cards may be reclaimed through the Business Activity Statement provide a valid tax invoices are obtained for each transaction claimed.

A disadvantage of such cards is that the privacy of the religious practitioner may be infringed with full visibility of all transactions on the cards.

It is anticipated that the account will be fully spent each year. However, if required, any excess balance can be paid to *the religious practitioner* as stipend, having first deducted PAYG tax.

## 6.4 GST and Exempt Benefits

GST can be claimed by the church on benefits provided to a *religious practitioner*, if the church is registered for GST.

The church can only claim GST where the *religious practitioner* has provided relevant tax invoices. However the religious practitioner should provide receipts for all expenses *where* the GST is to be claimed. These need to be available for the church auditor and also for an Australian Taxation Office audit.

While the GST law is not clear in this area, it is our view that the GST claimed is the property of the church, not the religious practitioner This is because the intention of the law is for the end user (in this instance the religious practitioner) to pay the GST. The recoup of GST also assists in reducing the cost to the church of administering the complex FBT and GST compliance obligations.

## 7 Paid Allowances

The religious practitioner's remuneration package could be made up of

- Cash salary
- Cash allowances, and
- Exempt benefits.

If cash allowances are paid for ministry expenses they need to be incorporated in the regular remuneration to the religious practitioner. The total payments are subject to PAYG income tax provisions, i.e. income tax to be deducted, and the gross amount included in the PAYG summary at year-end.

In some instances, employees can justify tax deductibility of expenses incurred when preparing their annual tax returns. These expenses must be properly documented with:

- Receipts
- Diary entries
- Demonstration that the expenses were incurred in the earning of income.
- Demonstration that the payment was made by the employee, and not reimbursed by the employer.

Where the employee can demonstrate that the allowance will be fully expended in the intended manner, then he/she may apply to the Tax Office for authority to reduce the amount of PAYG instalments required to be collected. Unless a specific authority is held, then PAYG instalments must be deducted from the cash amounts paid, including:

- Car allowance
- House allowance
- Book allowance
- Study allowance
- Phone allowance
- Entertainment/hospitality allowance

**Note:** No deductions are permitted for entertainment allowance in terms of current income taxation legislation.

## **8 Religious Practitioners and Centrelink**

There can be misunderstandings over how Centrelink assesses payments to *religious practitioners*.. This relates to the intention that Centrelink income support payments are intended for those on low incomes.

*It may appear that a religious practitioner is on a low income if only the cash component of their remuneration is declared to Centrelink.*

This can be a confusing area so be prepared for some need to explain.

After discussion with Centrelink the following information is provided to assist religious practitioners and Treasurers in their interaction with Centrelink.

*Centrelink uses the term “minister of religion” rather than “religious practitioner”. Ministers of religion are considered to be 'holders of religious office' rather than employees or self-employed. This means that the gross income of the minister is counted as income for social security purposes. This ensures a consistent income test treatment of income of ministers of religion for income support payments*

When contacting or dealing with Centrelink

- *The religious practitioner should ensure that Centrelink is aware that they are a minister of religion*
- Never refer to the tax-free portion as fringe benefits, always refer to it as the “exempt fringe benefit” portion. This avoids confusion with reportable fringe benefits which are grossed up for income test purposes. Exempt fringe benefits should not be grossed up.
- “Exempt fringe benefits” are not required to be shown on the PAYG Summary of eligible religious practitioners and therefore are **not** Reportable Fringe Benefits.
- Centrelink will allow a reasonable percentage to be deducted from the exempt benefit portion for expenses directly related to Pastoral duties. This should be supported by the basis on which it is calculated.
- Reimbursement of expenses incurred as a part of ministry, and which do not form part of the package, are not treated as income. e.g. reimbursement of mileage/travel expenses, out of pocket expenses etc.

Centrelink have provided us with the following statement which sets out their approval to reimbursements and allowances:

### ***“Assessment of income and assets for ministers of religion***

#### ***Work related expenses including reimbursements and allowances***

*Allowances and reimbursements of ministry related expenses are deducted from the minister's gross employment income, but fringe benefits which are for the minister's own private benefit are 'valuable consideration' and must be included.*

*Reimbursements made to a minister of religion by the church or organisation for out-of-pocket expenses paid by the minister for directly related ministry work, are not counted as income. However, any portion of reimbursements paid to a minister to meet expenses not directly related to ministry work is counted as income.*

*Similarly, allowances paid to a minister of religion to cover expenses directly related with the minister's work are not counted as employment income. If the church or an organisation pays more than the amount actually incurred by the minister, the extra is included as income.*

*Income for the minister's own use and benefit is counted under the income test. For example, a stipend or fringe benefit provided to a minister to meet general living expenses such as grocery items, private health cover or children's school fees is counted as income."*

## **8.1 Accommodation Expenses**

*When a customer receives free accommodation or free board and lodging, the value of the accommodation or board and lodging is not income for social security purposes. This includes free accommodation provided by an employer or provided to a minister of religion.*

*However, when an employer or other organisation pays the mortgage repayments on a customer's property, the value of the mortgage payments is assessed as income. In a targeted income support system it is not the intention to assist people to acquire assets.*

*If an employer or organisation pays an allowance to cover the costs of private accommodation or pays the rent on accommodation leased by the customer, the amount of the allowance or rent paid is income.*

*All personally owned assets of a minister are treated in the same manner as assets personally owned by any other customer.*

## **8.2 Employment Income**

### ***Employment income of members of religious organisations under a vow of poverty***

*When a person is employed as a member of a religious organisation, the employing organisation sets the rate of pay, and pays the member. The amount earned is treated as employment income for social security purposes. The income amount earned, derived or received is paid for the member's own use or benefit regardless of their subsequent divesting themselves of the money after payment.*

*Sustentation Benefit, and payments from the Clergy Sustentation Fund and Clergy Foundation, are examples of gratuitous payments made to members of certain churches (both pastors/ministers and other non-pastoral members of their church) based on the years of service to the church. It is not classified as superannuation as the amount of the payment to the member has no direct relationship to the amount paid by the member, if any. It is assessed as other income for the income test and therefore does not deplete working credits. Other ordinary income is coded on the Other Income Summary (OINS) screen.*

### ***An organisation employs a religious organisation to supply any member of their organisation***

*If an organisation employs a religious organisation to supply any member of their organisation and the religious organisation sets the rate of pay and the employing organisation pays the religious organisation the amount earned is income of the religious organisation and not of the individual member.*

*The assessment of income for a minister of religion differs between Family Tax Benefit (FTB) and income support payments.*

### **8.3 Fringe Benefits and PAYG Summary**

*For FTB purposes, the amount of fringe benefits to be assessed is determined by the Australian Taxation Office (ATO). Certain benefits received by a minister of religion are exempt under section 57 of the Fringe Benefits Tax Assessment Act. This means any fringe benefits received would not appear on the Pay As You Go (PAYG) Summary or be declared to the ATO. As certain fringe benefits are exempt for ATO purposes, they are exempt for FTB assessment purposes.*

*FTB entitlement is based on a person's Adjusted Taxable Income, which includes taxable income, adjusted fringe benefits, foreign income, net rental property loss and tax free pensions or benefits such as Disability Support Pension (less any deductible child maintenance expenditure).*

*For income support payments the assessment of fringe benefits for a minister of religion is different. Note: A fringe benefit is a benefit received as part of employment conditions that is not a wage or salary, this does not include reimbursement of work related expenses or allowances for work related expenses. All fringe benefits are personal income (valuable consideration) and need to be declared for assessment purposes.*

*As ministers of religion are not self employed, they cannot claim reductions of business income. Thus if a minister's salary package includes any expense payments (for example, books, telephone calls and petrol) it is in the minister's interests to have these payments identified and excluded from assessment."*

#### **Add-Ministry Inc**

**January 2019**

**NOTE: While this information is current as at this date, we recommend obtaining independent advice**