

# FRINGE BENEFITS FOR CHURCHES

Bob Campbell

Director

**Australian Audit**

CA, CPA, GAICD, MSW

Registered Auditor

Registered Tax Agent

0410424433

[rjcampbell@ausaudit.com.au](mailto:rjcampbell@ausaudit.com.au)

# The Fringe Benefits Tax Assessment Act 1986 (“ the FBT Act”)

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".

# Section 57 of the Act

## ► Exempt benefits--employees of religious institutions

Where:

- (a) *the employer of an employee is a **registered religious institution**;*
  - (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.*

# The meaning & application of Section 57

- ▶ The meaning and application of this section of the Act are set out in
- ▶ Tax ruling
- ▶ **TR 2019/3**
- ▶ *Fringe benefits tax: benefits provided to religious practitioners* (“the Tax Ruling”).
- ▶ This narrowed the interpretation of section 57 from the previous tax ruling
- ▶ **TR 92/17**
- ▶ *Income tax and fringe benefits tax: exemptions for 'religious institutions'*

# 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**



# What is a registered religious institution?

- ▶ A registered religious institution is an institution that maintains current **ACNC registration** with a subtype ‘**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.
- ▶ *religious purposes must be evident in its constitution*

# Who is a religious practitioner?

- ▶ 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 chaplain in a school that is both an educational institution and a religious institution.

# A minister of religion

- ▶ would need **all of these characteristics except in rare cases:**
- ▶ 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 member of a religious institution

- ▶ 'Member' is not defined and takes its ordinary meaning as 'each of the persons composing a society, party, community, or other body'.
- ▶ The Minister **does not have to be a member who is listed the register of members** of the geal structure – association, company or trust.

# Recognised by ordination or other admission or commissioning

- ▶ This means that there must be evidence of
- ▶ Ordination event or certification by a religious denomination who has the power to certify a religious practitioner
- ▶ An Admission or Commissioning event - date
- ▶ It must be documented.

# Officially recognised as having authority on doctrine or religious practice

- ▶ This may be present in
  - ▶ Constitution or rules of the Church
  - ▶ The role description of the minister
  - ▶ The practice on discernment on matters of doctrine
  - ▶ Teaching scripture
  - ▶ Teaching doctrine
  - ▶ Adult religious education
  - ▶ even Sunday School classes if they have a curriculum that includes doctrine.
- ▶ It must be documented

# Be distinct from ordinary adherents of the religion

- ▶ This is often evident in
  - ▶ The title of the minister -
  - ▶ Pastor, Youth pastor, Children's Ministry Leader
- ▶ Be careful of other titles which may not indicate easily that the person is a religious practitioner
  - ▶ Chief Executive
  - ▶ Program Director
  - ▶ Director engagement

# Be an acknowledged leader in spiritual affairs of the institution

- ▶ This may be evident in
  - ▶ Leading a Church Service
  - ▶ Leading prayer groups
  - ▶ Preaching
  - ▶ Leading retreats and camps for religious purposes
  - ▶ Spiritual direction counselling
- ▶ It must be documented.



# Authorised to act as a minister or spiritual leader, including the conduct of religious worship and other religious ceremonies

- ▶ This may be evident in
  - ▶ The formal gatherings for religious purposes
  - ▶ the leading of any specific religious ceremonies or worship
  - ▶ Communion
  - ▶ Marriage
  - ▶ Funerals
- ▶ This must be documented and probably authorised in a role description

## Evidence : Are the employees receiving benefits religious practitioners? - example

Criteria	CEO	Operations officer	Director engagement	Program manager
1: a member of a religious institution	Yes	Yes	Yes	Yes
2: is recognised by ordination or other admission or commissioning	Ordination and Annual Commissioning	Annual Commissioning	Annual Commissioning	Annual Commissioning
3: officially recognised as having authority on doctrine or religious practice	Yes	Probably not	Probably not	Probably not
4: distinct from ordinary adherents of the religion	The title of the position is not a usual religious title and may be perceived as administrative	The title of the position is not a usual religious title and may be perceived as administrative	The title of the position is not a usual religious title and may be perceived as administrative	The title of the position is not a usual religious title and may be perceived as administrative

## Evidence: Are the employees receiving benefits religious practitioners? - example

Criteria (continued)	CEO	Operations manager	Director of engagement	Programs manager
5: acknowledged leader in spiritual affairs of the institution	Yes - drives religious ethos and Christian context of the work as ministry	Probably not apart from leading occasional prayer groups	Probably not apart from leading occasional prayer groups	Probably not apart from leading occasional prayer groups
6: authorised to act as a minister or spiritual leader, including the conduct of religious worship and other religious ceremonies	Yes  in so far that ceremonies and worship are less formal than church functions.	Yes  to a lesser degree in occasional prayer groups	Yes  to a lesser degree in occasional prayer groups	Yes  to a lesser degree in occasional prayer groups
OUR CONCLUSION	May be a minister of religion if title is changed	On balance is probably not unless duties and title are reformulated and re-focussed on ministry	On balance is probably not unless duties and title are reformulated and re-focussed on ministry	On balance is probably not unless duties and title are reformulated and re-focussed on ministry

# 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
- ▶ a minister of religion or
- ▶ A member of a religious order



# What are pastoral duties?

- ▶ *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?

- ▶ a close connection between the duties or activities of the religious practitioner and the practice, study, teaching and propagation of religious beliefs.
- ▶ 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.

# Churches Responsibility

- ▶ **Maintain financial records**, such as paid invoices for expenses, credit card statements, rent payment statements and mortgage statements, need to be readily available
- ▶ **Ensure other church employees do not receive exempt benefits**
  - ▶ Administrators
  - ▶ Secretaries
  - ▶ Caretakers

# The amount of Tax Exempt Benefits

- ▶ 100% of a religious practitioner's remuneration may be paid 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
- ▶ **The first \$18,200 may be paid as tax free cash**
- ▶ The remainder may be paid as exempt benefits
- ▶ The recommended amount is often **75% of remuneration as exempt benefits** and the remainder as taxable cash/

# Typical items for exempt benefits

- ▶ notional rental value of residence where provided by the Church
- ▶ manse running costs (e.g.. 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).



# Ministry Related Benefits

- ▶ The ministry related (work related) portion of the following items would be tax deductible to the religious practitioner
  - ▶ 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.
- ▶ may be preferable for the pastor/employee to pay them and then claim a tax deduction.
- ▶ Thus these may be part of the cash component of remuneration
- ▶ **Not normally part of the exempt benefits paid to a minister**

# Please avoid

- ▶ **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

# ATO Reporting Requirements

## *Religious Practitioners*

- ▶ 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

# ATO Reporting Requirements

## Non religious practitioners - other 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.
- ▶ 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

# 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.
- ▶ Gross up by factor of 1.8868 (for benefits where no GST is claimable by the employer) or
- ▶ by a factor of 2.0802 (for benefits where GST is claimable)
- ▶ See paper for an example



# Providing exempt benefits

- ▶ **Use of a separate bank account (e.g. A Ministers Benefits account)**
  - ▶ For payments of expenses - but no cash withdrawals
  - ▶ The treasurer would record the transfer between bank accounts and record a journal to recognise the benefits expense and the unutilised funds owing to the religious practitioner as a Ministers Benefit Liability.
- ▶ **Use of a debit card or credit card in the name of the Church**
  - ▶ set aside for recording fringe benefits transactions
  - ▶ GST is claimable by the Church
  - ▶ But no privacy for the minister

# Providing exempt benefits

## ▶ Use of a salary packaging card

- ▶ ATO approves the card which is used for expense payments and no cash withdrawals - examples are:
  - ▶ Westpac Visa Everyday Purchase card
  - ▶ Visa Pre-Paid Pay Card
- ▶ No GST is claimable by the Church
- ▶ No other record keeping is required except evidence of the transfers paid to the card.

# GST and Exempt Benefits

- ▶ The church can only claim GST where the *religious practitioner* has provided relevant tax invoices
- ▶ It is our view that the GST claimed is the property of the church, not the religious practitioner - although the law is unclear.
- ▶ 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

# Paid Allowances

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

- ▶ Cash salary
- ▶ Cash allowances, - for housing, books, car, study, telephone, hospitality etc.
- ▶ Exempt benefits
- ▶ When 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.

# Religious Practitioners and Centrelink eligibility for social security payments

- ▶ Centrelink takes exempt benefits paid into consideration for social security purposes
- ▶ Centrelink will allow a reasonable percentage to be deducted from the exempt benefit portion for expenses directly related to Pastoral duties.
- ▶ Reimbursements for out-of-pocket expenses paid by the minister for directly related ministry work, are not counted as income
- ▶ Allowances paid to a minister of religion to cover expenses directly related with the minister's work are not counted as employment income



# Religious Practitioners and Centrelink eligibility for social security payments

- ▶ Free accommodation or free board and lodging is not income
- ▶ An allowance to cover the costs of private accommodation is income.
- ▶ For Family tax benefits (FTB)
  - ▶ Adjusted Taxable Income includes taxable income & adjusted fringe benefits

# Questions

