

## Exempt Benefits for Pastors

### Understanding Exempt Benefits

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This benefit is a very specialised piece of legislation that only applies to pastors, making it quite unique. Also, despite there being a legislative framework for Exempt Benefits in the Frings Benefits Tax Act, the ATO has given very little guidance as to how such benefits ought to be administered or controlled.

And yet, Exempt Benefits are exceptionally valuable. If a Senior Pastor is paid according to the QB Remuneration Guidelines, they would receive over \$13,000 extra per annum cash in their pockets due to this facility.

#### Eligibility for “Ministerial Exempt Benefits”

Section 57 of the Fringe Benefits Tax Assessment Act 1986 defines a series of conditions that must be met for a payment made to a pastor to be considered an “exempt benefit”. It states:

“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.”

Or if paraphrasing this into wording that makes sense in our context (and removing the double-negative in the fourth point) it might end up saying:

Where:

- (a) a church is a registered religious institution; and
- (b) the pastor is a religious practitioner; and
- (c) a stipend is provided to the pastor or their family; and
- (d) the stipend is for doing pastoral or other religious duties;

the benefit is an exempt benefit.

Looking at it like this, the most simple scenario is therefore fairly easy to understand. “A church appoints a pastor to undertake pastoral duties, then they can provide them with exempt benefits.” Or in a QB context, we would therefore point out that a Registered Pastor serving at a Constituent Church



can receive exempt benefits. No problems! But what if it wasn't a constituent church or what if the person was not a registered pastor? This is when the definition of the terms in this section of the Act might need some closer attention.

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

This definition has updated in recent times to reflect the impact of the ACNC. The definition refers to institutions that are a "registered charity; and are registered under the ACNC Act 2012 as an entity with the purpose that is the advancement of religion." If your church has registered with ACNC in accordance with the guides we have provided, then there are no problems. But if you have chosen not to register with ACNC, then your church cannot provide exempt benefits to its Pastors. If a person is employed by an entity which is for profit, again they would not be eligible.

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

The definition of this term provides four alternatives: The person can be "a minister of religion; or a student at an institution who is undertaking a course of instruction in the duties of a minister of religion; or 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". I'd summarise this as 'a pastor or a trainee pastor'. You can see that registration with QB ticks this box easily, but it could also apply to unregistered pastors. Training and calling are critical issues to consider – for example if you have not completed any recognised biblical studies, it would be hard to meet this definition.

### **3. What are religious duties?**

This is elaborated on in the clause itself as "activities that are directly related to the practice, study, teaching or propagation of religious beliefs". The key question is whether the role influences the religious practice of the entity. This is perhaps the most controversial of the three points. We have interpreted it to mean that people performing administrative tasks (even including the organising of functions of a religious nature) are not eligible, but people involved with or influencing the nature of these activities would be eligible.

***The important issue with this definition is that all three of these definitions must apply to ensure eligibility for exempt benefits.*** Thus –

- A pastor working for a church in an administrative role would not be eligible.
- An untrained person working in a church in a religious capacity would not be eligible.
- A pastor performing pastoral responsibilities in a corporate or non-religious charity would not be eligible either.

Where eligibility is not clear, there is the option of requesting a private ruling from the ATO on the matter. Paperwork about the nature of the entity, the person and the job must be submitted, but this would then give a definitive ruling where there was any question.

### **Application Issues**

Ministerial Exempt Benefits are a mechanism by which a church can give a benefit to a pastor without needing to pay tax. Perhaps to illustrate with an example: if you are in secular employment - imagine if one day you wanted to buy a new television, and your boss says "I'll buy that for you and just pay you a bit less this month". He sends you out to buy the TV on his credit card, then only deducts the purchase price, net of GST from your gross wage. Your



taxable income drops significantly so you pay much less tax. In fact you have just avoided paying PAYG tax and GST on the TV, and a \$3,000 purchase may only reduce your income by \$1,800.

This might sound very unusual, but it is not at all illegal - in fact it is envisaged in tax law. Your employer has just provided you with what is referred to as a fringe benefit. There is an entire act of Federal Parliament dealing with this: the Fringe Benefits Tax Act 1986. So while your boss can do this for you, your employer then needs to pay Fringe Benefits Tax (FBT) on the transaction. FBT is calculated so the amount of tax equals or exceeds the amount of savings if you just purchased the TV for yourself using your after-tax pay. In other words, no-one saves anything, but there is a lot of paperwork to do! Considering this – most employers do not offer such a deal.

But for pastors such benefit is exempt and no FBT is payable - so the pastor can get the benefit, and the church doesn't get penalised.

This represents a considerable benefit, especially considering there is no legislatively defined limit in dollar or proportional terms. Such a generous scheme is wide open for abuse, and there are instances where this has occurred. To address this, most denominations have developed guidelines as to how Exempt Benefits are to be used. A similar benefit for employees of Public Benevolent Institutions was later capped in the legislation because of widespread over-use. Across many denominations, including Queensland Baptists, these recommendations are very similar to one another.

For QB, we recommend that a level of remuneration is determined for a pastor based on a benchmark figure we provide each year, with some increases pertaining to experience and qualifications. It is recommended that 50% of the agreed figure is paid as normal taxable income, and the balance may be taken as exempt benefits. Why 50%? It is our view that this is a reasonable compromise position that takes advantage of this benefit while not pressing so hard as to make it feel like it is being abused. It probably represents a good objective to limit spending to this proportion of income while the balance is saved for a "rainy day". The proportion is not legislated, but it is the same figure that all state Baptist Unions recommend as well as many other denominations and is now widely established in the sector.

***There are a few specific issues to note:***

**(a) The benefit can be any goods or services.**

The ATO's examples (notably in tax ruling 92-17) only talks about housing, cars and school fees, but these are not an exhaustive list. A pastor eligible for exempt benefit may literally purchase any items they desire and claim them as exempt benefits if they choose. Historically, QB has produced lists of "suitable" items which may be funded from Exempt Benefits but we have stopped doing this as a pastor's individual circumstances will dictate what they need to spend money on at various stages of their lives – and the legislation is open ended. You can buy any goods or services and claim as a benefit.

**(b) The 'Can't Do's!**

- ◆ You can't take exempt benefits as cash. If you like to carry \$80 or so in your pocket to cover incidental expenses involved with life, then you need to draw this down from your normal pay, and NOT your exempt benefits. Of course, in theory you could draw \$200, then buy \$200 worth of goods and keep the receipts for that – but this is really messy. Far better just to not take it as cash, and purchase your goods and services using a credit card linked directly to the exempt benefit account. Not sure



how? Baplink can assist you with setting these things up, so that you can be sure you have all the processes covered.

- ◆ You cannot surreptitiously (secretly) take it as cash. The most common such option is to use your exempt benefits to make home loan repayments into a mortgage facility with a line of credit or draw-down facility which allows you to re-access the funds. The exempt benefits have correctly been used to fund the housing repayment, but you have tricked the system by drawing it back. A similar “trick” can be performed by purchasing goods which you then on-sell or return for a credit. Most stores will only refund you back into the same account anyway, but this approach is inappropriate to get around the restrictions on exempt benefits.
- ◆ You cannot give the money away. This includes your tithe to the church. You must pay this out of your normal pay, NOT your exempt benefit account. The reason is that a gift does not receive anything in exchange – there is no good or service that you receive for that gift. So, it does not comply with the regulations.
- ◆ You cannot transfer exempt benefits to another account. Again, a transfer to another bank account is a transaction where there are no goods or services received, and therefore it is not an eligible transaction. But, you might argue, I intend to buy things with it from the other account. I admit, you could do this... but this would require some very complicated paper work and it is far better simply to avoid this complication.
- ◆ You cannot save up your exempt benefits. Well, in practice you could – if you had something big you were about to buy in a year or so’s time. For example, to purchase the airline tickets for a big overseas holiday, you could save up your exempt benefits and use it for this. But don’t just let your funds accumulate. The problems start if you decide to leave your ministry context, and there is a large sum in your exempt benefit account. They cannot transfer it for you or give it to you – so the only alternative would be to tax it when it is being transferred. Far better to simply keep using it and keep the balance low.

To regulate all these in our guidelines would be overkill – instead we simply ask Pastors to be respectful of the regulation that exempt benefits are not taken as cash.

**(c) The exempt benefit is not actually income to the pastor, but an amount they may use to obtain benefits.**

This has significant consequences. It means for example that the exempt benefit component does not need to be declared on your tax return. But it may also mean your bank may not be comfortable with counting that amount in your income when you are applying for a home loan. We deal with some of the specific implications of this in the Remuneration Guidelines.

**(d) “Unspent” exempt benefits are not actually the Pastor’s money, but still the church’s money.**

The pastor therefore cannot regard them as an asset, and by rights the church ought to. This is a very good reason to not allow the funds to build up in an exempt benefit account – especially at the end of a financial year. Hence we encourage pastors to use their exempt benefit amounts and not let it build up (unless you have a specific significant expense coming up).

**(e) Record Maintenance.**

If a church was audited by the ATO, they could legitimately ask



to review how Exempt Benefits are being handled. Churches are therefore responsible for ensuring good records of the use of exempt benefits are maintained, although they often outsource this responsibility to the pastor. The practice of accurate recording and diligent maintenance cannot be overemphasized. There is a responsibility to keep a paper trail for all money spent – copies of receipts or credit card statements – that can clearly demonstrate how the benefits are used. One of these days, one of the churches will be audited by the Tax Office and the question will be asked.

While legislative provision for Exempt Benefits has been made, as outlined above there is very little regulatory support for how this legislation applies, and even less (effectively none) about the practical implementation. Thus, this final step is assumed to be the responsibility of the church and pastor to work out for themselves. To this end - QB has provided input through the Remuneration Guidelines document with details in how to process these amounts.

Of course, if you have any questions or need further help, please do not hesitate to contact us in the office:

## Queensland Baptists

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