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### Edited version of your written advice

**Authorisation Number: 1051418760887**

**Date of advice: 21 August 2018**

### Ruling

**Subject: Assessable Income - gift**

### Question

Will the donation form part of the assessable income of the taxpayer under either section 6-5 or section 6-10 of the *Income Tax Assessment Act 1997*?

### Answer

No

### This ruling applies for the following period:

Year ending 30 June 20XX

### The scheme commences on:

1 July 20YY

### Relevant facts and circumstances

You operate an entertainment facility.

Operations of the business are funded by entrance fees, annual passes, café sales, merchandise sales, and other sales.

In July 20YY, you were approached by an unrelated third party who wished to make a donation to you. You had not previously had any dealings with this third party. The donation was made to satisfy the personal wishes of the third party.

The donation was a one-off contribution. An amount of \$Z was deposited into your bank account in late July 20YY.

The donation was provided with no prescription or requirements of what the funds should be used for.

You have not provided anything in return to the third party in respect of the donation.

It is not a common incidence of your business to receive gifts or donations.

### **Relevant legislative provisions**

Income Tax Assessment Act 1997 *Subsection 6-1(1)*

Income Tax Assessment Act 1997 *Section 6-5*

Income Tax Assessment Act 1997 *Section 6-10*

Income Tax Assessment Act 1997 *Section 10-5*

### **Reasons for decision**

*While these reasons are not part of the private ruling, we provide them to help you to understand how we reached our decision.*

### **Summary**

The donation will be considered a gift and will not form part of the assessable income of the taxpayer under either section 6-5 or section 6-10 of the *Income Tax Assessment Act 1997*.

### **Detailed reasoning**

All references in this ruling are to the *Income Tax Assessment Act 1997* (ITAA 1997).

Subsection 6-1(1) states that your assessable income consists of ordinary income and statutory income.

#### *Ordinary Income*

Subsection 6-5(1) describes ordinary income as income according to ordinary concepts.

To determine whether the donation to you is assessable as ordinary income, it first needs to be established whether the donation in your case is considered a gift.

Taxation Ruling TR 2005/13 provides principles relevant to the determination of whether a transfer of money constitutes a gift.

The term 'gift' is not defined in the ITAA 1997. Therefore, the word 'gift' takes its ordinary meaning.

Rather than attempting to define a 'gift', the courts have described a gift as having the following characteristics and features:

- There is a transfer of the beneficial interest in property
- The transfer is made voluntarily
- The transfer arises by way of benefaction, and
- No material benefit or advantage is received by the giver by way of return.

In applying these characteristics to your circumstances, it is considered that that the donation of \$Z to you by the third party constitutes a gift.

Taxation Ruling IT 2674 examines whether gifts received by church workers are assessable income under the ITAA 1997. The principles that apply in determining whether gifts received by church workers are assessable income can be applied in determining whether gifts received by taxpayers in other situations are assessable income.

IT 2674 states that whether a gift is assessable income depends on the character of the gift in the hands of the recipient. Consideration is necessary of the whole of the circumstances in which the gift is received. For example, the following factors need to be taken into account:

- (a) how, in what capacity, and for what reason the recipient received the gift; and
- (b) whether the gift is of a kind which is a common incident of the recipient's calling or occupation; and
- (c) whether the gift is made voluntarily; and
- (d) whether the gift is solicited; and
- (e) if the gift can be traced to gratitude engendered by some service rendered by the recipient to the donor, whether the recipient had already been remunerated fully for that service; and
- (f) the motive of the donor (but it is seldom, if ever, decisive); and

(g) whether the recipient relies on the gift for regular maintenance of himself or herself and any dependants.

In your situation, the gift was unsolicited and was made voluntarily to you in order to satisfy the third party's personal wishes. The gift was a one-off contribution, you did not rely on the gift to operate your business, and it is not a common incidence of your business to receive gifts or donations. Although the third party may have visited the entertainment facility, you have not previously had any dealings with the third party, and there is no ongoing relationship with them. It cannot be concluded that the gift was in relation to services provided by your business to the third party.

Therefore, having regard to the factors in IT 2674, and applying them to the facts of your case, the Commissioner considers that the gift of \$Z is not assessable to you as ordinary income.

#### *Statutory income*

Under subsection 6-10(2) amounts that are not ordinary income, but are included in your assessable income by provisions about assessable income are statutory income. The provisions are listed in section 10-5.

None of the provisions in section 10-5 apply to your situation.

Therefore, the gift of \$Z is not assessable to you as statutory income.

#### *Assessable income*

As the gift does not constitute either ordinary or statutory income, it is not assessable income under either section 6-5 or section 6-10 of the ITAA 1997.

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