

**Senate Economics Committee**  
**ANSWERS TO QUESTIONS ON NOTICE**  
**Australian Taxation Office**

Tax Laws Amendment (Public Benefit Test) Bill 2010

29 June 2010

**Question 2**

**Topic:** ATO rulings in relation to charities and religious institutions

**Hansard Page:** E41

**Senator Xenophon asked:**

**Senator XENOPHON**—Let us stick to the issue of income tax. The only way a religious organisation would be subject to income tax would be if there was an inquiry as to their status as a religion and that was taken away from them.

**Mr Hardy**—Yes. If they were found not to be a religious organisation, they could not continue to claim that status and then you would look at them as to what they are. They still may not be a business—for example, they may have no income that is assessable—but they could perhaps no longer claim to be exempt as a religious organisation.

**Senator XENOPHON**—And you would be guided by that in relation to taxation ruling 2005/21.

**Mr Hardy**—Yes.

**Senator XENOPHON**—That ruling makes reference to a charity being for the benefit of the community, so if an organisation which has tax-free status by virtue of being a religion were charging a high amount in fees for services—and the fact that fees are charged is not in itself determinative, as I understand it—would you look into the extent of the fees that are being charged and whether you consider them to be reasonable or not?

**Mr Hardy**—There is an overlap there between a religious organisation claiming to be exempt but not claiming any charity concessions and that particular ruling, which is more about charity concessions. So there is a slight mismatch of conversation. As for a charitable organisation, religious or otherwise, that had fees for some of the services it performed, potentially if it had particularly large or non-commercially large fees for a particular service that might be an area of concern for the tax office to look at as to whether their activities were truly charitable.

**Senator XENOPHON**—What are the rulings we could go to apart from this one for religious and charitable organisations?

**Mr Hardy**—There are a number of rulings. You referred to tax ruling 2005/21. Tax ruling 2005/22 also discusses some aspects of charity. There are a number I can provide.

**Senator XENOPHON**—If you could take that on notice. Also, in terms of religious organisations, which is the main ruling that you say would be relevant?

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***Answer***

The Australian Taxation Office (ATO) has issued four taxation rulings on income tax and fringe benefits tax relating to charities and religious institutions and all four are equally relevant.

**Attachment A:** Taxation Ruling TR 92/17 *Income tax and fringe benefits tax: exemptions for 'religious institutions'* - paragraphs 4 to 10 inclusive discuss what is a 'religious institution' (that is, a religious institution in accordance with section 50-5 item 1.2 of the *Income Tax Assessment Act (ITAA) 1997* as distinct from a 'charitable institution' under section 50-5 item 1.1 of the *ITAA*).

**Attachment B:** Taxation Ruling TR 2000/11 *Income tax: endorsement of income tax exempt charities* - sets out the requirements for endorsement including the 'in-Australia' requirement and revocation of endorsement.

**Attachment C:** Taxation Ruling TR 2005/21 *Income tax and fringe benefits tax: charities* - public benefit as a requirement of the technical, legal meaning of 'charity' is discussed, and charities for the advancement of religion are discussed in paragraphs 212 to 217 inclusive.

**Attachment D:** Taxation Ruling TR 2005/22 *Income tax and fringe benefits tax: companies controlled by exempt entities* - discusses the eligibility for exemption of entities which are controlled by other entities which are exempt. Religious institutions and charities for the advancement of religion feature in some of the cases used to explain the principles.

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**Attachment A**



TR 92-17.pdf (141  
KB)

**Attachment B:**



TR 2000-11.pdf  
(229 KB)

**Attachment C:**



TR 2005-21.pdf (1  
MB)

**Attachment D:**



TR 2005-22.pdf  
(330 KB)