

FACT SHEET | PUKA MEKA

Income tax: Income – when gifts are assessable income

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IS 23/11 FS

This fact sheet accompanies Interpretation Statement [23/11](#) which considers the circumstances in which a gift may be assessable income under the Income Tax Act 2007.

Introduction | Whakataki

1. A recipient of a gift of money or money's worth¹ does not usually have to pay income tax on the gift. This is because, generally, a gift is made as a mark of affection, esteem or respect for a recipient.
2. However, in some circumstances a gift may be assessable income if it is derived:
 - in connection with employment;
 - from a business or profit-making activity;
 - in undertaking a voluntary activity (and is not a reimbursement of expenditure); and
 - as income under ordinary concepts.
3. Whether a gift is assessable income must be decided objectively on a case-by-case basis, considering all the circumstances of how and why the gift was made. Each gift must be considered on its own facts.
4. The courts weigh up a number of factors to decide whether a gift is assessable income in a particular case. Several factors may be influential. Several factors in the same case can point in different directions and some factors may have greater relevance in some cases than in others. This fact sheet summarises the factors the courts have considered in different contexts.

Employment income

5. The following are some factors the courts have considered support a conclusion that a gift is employment income:
 - The amount of the gift reflects the extent of any services provided.
 - The gift is made in the hope of future services or to encourage further efforts by employees.
 - The recipient's employment agreement contemplates the payment (although a payment of employment income could be under the terms of a separate agreement).
 - The gift has recurred, or it is foreseeable that it will recur.

¹ "Money's worth" includes non-cash or in-kind gifts. However, in an employment context, such gifts are generally considered under the fringe benefit tax rules.

- The payment is related to duties that are expected of the employee.
 - The gifts are commonplace as a matter of practice in the occupation, profession or industry (eg, tips or gratuities).
 - The payment is one commonly provided to the holder of a position or office that has a degree of continuance and independence from the current incumbent.
6. The following factors support a conclusion that the gift is not employment income:
- The payer expresses the payment in terms of a mere personal gift. However, the payer's motive is seldom determinative. Simply stating a payment is a personal gift does not rule out the possibility that it is employment income.
 - The recipient has already been fully remunerated for any services to which the gift might be related.
 - The employment relationship has ended at the time of the payment and is unlikely to resume (although a payment may be employment income where it is connected with a past, present or future employment relationship).
 - The payer is a person with whom the taxpayer has an employment relationship. However, a payment may be employment income even where the payer is a person with whom the recipient has no employment relationship.

Business or profit-making activity

7. Gifts are business income or income from a profit-making activity when they are a financial product of the business or profit-making activity. That is, where the payment can be attributed to the activities or specific work the recipient has carried out.
8. The collective understanding of the parties as to how and why the payment was made may be determinative of the character of the payment.
9. The motive of the payer is relevant, but on its own it will seldom be determinative. However, a gift may be assessable income from a business or profit-making activity if the payer has an interest in the business or the activity continuing and makes the payment with the intent of helping the business or activity.
10. The following factors support a view that a gift is income of a business or profit-making activity:
- The payer and recipient are both carrying on a business or profit-making activity.
 - The recipient cannot continue to carry on the activity without the gift.
 - The recipient is not a charity.

11. The following are some factors that support a conclusion that a gift is not business income or income from a profit-making activity:
- The gift is unexpected or unsolicited.
 - The gift is made in recognition of past services that have been fully remunerated for at the time.
 - The gift is made in recognition of, or consolation for, the severance of a business connection that has no prospect of resuming.
 - The business or profit-making activity had ended at the time of the gift.
 - The recipient is unaware of how the payer calculated the amount of the gift.
 - The calculation of the gift is not linked to trading between the parties.
 - The parties undertake no correspondence, bargaining or negotiations with each other.

Voluntary activities

12. A gift is income under s CO 1 when the gift and the activity of the recipient have a sufficient connection.
13. The following are some relevant factors that support a view that the gift is derived from a voluntary activity:
- The amount of the gift reflects the amount of the recipient's personal exertions in undertaking the voluntary activity.
 - The payer makes the gift in the hope that the recipient will undertake future activities or to encourage them to make further efforts.
 - The gift has recurred or has a foreseeable element of recurrence.
 - Such gifts are expected or asked for or are commonplace as a matter of practice in undertaking the voluntary activity.
14. The following are some relevant factors that support a view that the gift is not derived from a voluntary activity:
- The gift is expressed in terms of being a mere personal gift inspired by personal goodwill.
 - The recipient is not undertaking the voluntary activity at the time the gift is made.

Income under ordinary concepts

15. "Income" does not have a precise meaning in tax law but generally is:
 - something that comes in (ie, it does not include a savings in expenditure);
 - ascertained and judged in relation to the recipient (rather than the payer);
 - often shown by its periodicity, regularity and recurrence;
 - something that the recipient receives beneficially; and
 - a gain from carrying on an organised activity where the gain is, in a relevant sense, a product of that activity.
16. In many cases, a gift that occurs periodically, regularly and recurs is income because these qualities allow gifts to become part of the funds the recipient may expect to depend on for meeting living expenses. A single gift is income if, at the time of the gift, the gift is the first of a series of expected periodic and regular gifts.
17. If a recipient expects that, because of their activity, they will receive gifts that will provide for the maintenance of the recipient's and their family, this may show the gifts will be income. This is more likely where multiple payers are involved, or the recipient is actively soliciting gifts.
18. A series of gifts may be income under ordinary concepts where:
 - The gifts have the necessary periodicity, and the payer makes them for the recipient to rely on for regular living expenses and they are relied on by the recipient in this way.
 - The necessary periodicity of the gifts refers to gifts made with such regularity, recurrence, amount and frequency that they amount to "an income".
 - The gifts are connected with some activity or personal exertion of the recipient, even though that exertion or activity does not necessarily arise in the context of an employment relationship or a business or a profit-making activity.

About this document | Mō tēnei tuhinga

Some of the Tax Counsel Office's longer or more complex items are accompanied by a fact sheet that summarises and explains an item's main points. While it summarises the Commissioner's considered views, a fact sheet should be read alongside the full item to completely understand the guidance. Fact sheets are not binding on the Commissioner. See further [Status of Commissioner's advice](#) (December 2012).