

DRAFT INTERPRETATION NOTE

DATE:

ACT : INCOME TAX ACT 58 OF 1962
SECTION : SECTION 1(1) – DEFINITION OF “GROSS INCOME”
SUBJECT : TAXATION OF AMOUNTS RECEIVED BY OR ACCRUED TO MISSIONARIES

Preamble

In this Note unless the context indicates otherwise –

- “**missionary organisation**” includes a missionary society, agency, association, fellowship or similar organisation;
- “**section**” means a section of the Act;
- “**the Act**” means the Income Tax Act 58 of 1962;
- any other word or expression bears the meaning ascribed to it in the Act.

1. Purpose

This Note provides clarity on the tax treatment of amounts received by or accrued to missionaries who are performing religious or related activities in South Africa.

2. Background

A missionary is a member of a religious mission.¹ A religious mission comprises a group of people sent by a religious body to perform religious and social work,² educational or hospital work,³ or to spread that religious body’s faith.⁴ Often, missionaries operate under the “banner” of a missionary society, agency, association, fellowship or some denominational body.

Typically, a missionary is not employed by a specific congregation, religious organisation or missionary organisation, and is dependent on contributions to meet costs related to both the missionary work undertaken as well as expenditure of a personal nature. The contributions are normally made by a community, members of a religious congregation, or members of a missionary organisation, of which the missionary is a member. Often these amounts are paid directly by the donors to the missionary or similar organisation, which controls and administers the amounts received for its own benefit and on its own behalf, and then on-pays all or part of the donations to the relevant missionary. In other instances, the contributions are made

¹ *Collins English Dictionary*. 3rd Edition. Glasgow: Harper Collins, 1991.

² *Collins English Dictionary*. 3rd Edition. Glasgow: Harper Collins, 1991.

³ www.dictionary.com/browse/missionary?s=ts [Accessed 3 February 2020].

⁴ *Concise Oxford English Dictionary*. Edited by Catherine Soanes, Angus Stevenson. 11th Edition Revised. New York: Oxford University Press, 2006.

directly to the missionary, or the missionary organisation simply acts as a conduit for the amounts received.

This Note clarifies the correct income tax treatment of the donations received by missionaries. The donations tax implications of donations made to missionaries are beyond the scope of this Note.

3. The law

The relevant provision of the Act is the definition of “gross income” in section 1(1), and is quoted below.

<p>“gross income”, in relation to any year or period of assessment, means—</p> <ul style="list-style-type: none"> (i) in the case of any resident, the total amount, in cash or otherwise, received by or accrued to or in favour of such resident; or (ii) in the case of any person other than a resident, the total amount, in cash or otherwise, received by or accrued to or in favour of such person from a source within the Republic, <p>during such year or period of assessment, excluding receipts or accruals of a capital nature, but including, without in any way limiting the scope of this definition, such amounts (whether of a capital nature or not) so received or accrued as are described hereunder, namely—</p> <p>.....</p> <ul style="list-style-type: none"> (c) any amount, including any voluntary award, received or accrued in respect of services rendered or to be rendered or any amount...received or accrued in respect of any employment or the holding of any office:
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4. Application of the law

An amount is included in paragraph (c) of “gross income”⁵ if it is received or accrued in respect of services rendered or to be rendered by the recipient, notwithstanding that it may constitute a voluntary award, and arises from a source within the Republic. These requirements are often misunderstood in the context of missionaries, and are explained below.

4.1 Amounts “in respect of” services rendered or to be rendered

The phrase “in respect of” in paragraph (c) of the “gross income” definition connotes a causal relationship between the amount received and the taxpayer’s services or employment.⁶

In *Stevens v Commissioner, South African Revenue Service*⁷ certain key employees had been awarded share options by the employer. They had made losses on those option transactions because the company board had exercised its discretion to declare a special dividend. The employer decided to voluntarily make good the losses sustained by the employees, by means of an *ex gratia* payment. Howie P said the following at paragraph 22 of his judgement regarding the taxpayer’s argument that it

⁵ Defined in section 1(1).

⁶ *Stevens v Commissioner, South African Revenue Service* 2007 (2) SA 554 (SCA). See also *Stander v Commissioner for Inland Revenue* 1997 (3) SA 617 (C), 59 SATC 212; and *De Villiers v Commissioner for Inland Revenue* 1929 AD 227, 4 SATC 86.

⁷ *Stevens v Commissioner, South African Revenue Service* 2007 (2) SA 554 (SCA).

was not employment that was the effective cause of the payment, but the board's decision to declare the special dividend:

“The question which requires answering is not: what was the factor or event which prompted the board to decide to make the *ex gratia* payment?...The question to answer is rather: why was the payment made to those who received it?”

The court held that the amounts were received by the recipients because they were employees who had received a benefit directly linked to their employment, and concluded that the payments were therefore taxable.

This reasoning applies equally to payments made in respect of services rendered. The payer's motivation for making the payment is not the determining factor. What is important is the reason why the recipient received the payment.

The test is therefore whether there is a causal relationship between the missionary services that a person renders, and the payments received. If the missionary services that the person is rendering is the reason that the payments are being received, that is sufficient to create a causal connection and such amounts are included in the missionary's "gross income" under paragraph (c) of that definition in section 1(1).

In many instances, contributions are actively solicited from communities and congregations to fund the missionary services that missionaries perform or are intending to perform. In some instances, these contributions are sought via international missionary organisations or religious denominations, which advertise and conduct fundraising activities to raise funds for the specific missionary work that the missionary is undertaking or intends to undertake. In other instances, the missionaries themselves actively undertake these fundraising activities. However, there is always a link when seeking such funds to the missionary work that the missionary has committed to perform. This is sufficient to create the link between the contributions sought for, and the missionary services performed or to be performed.

Missionaries generally render social services to needy communities, or ministry services to those communities, and not to the person making the payment to them. However, it is not a requirement that the services be rendered to the person making the payment.⁸ It is sufficient if the payment is made because of the services, even if they are rendered to a person other than the payer.

Amounts received by or accrued to a missionary from the community, church or missionary organisation are therefore sufficiently closely linked to the missionary services rendered or to be rendered for those amounts to be included in paragraph (c) of the "gross income" definition.

⁸ *Verrinder Ltd v Commissioner for Inland Revenue* 1949 (2) SA 147 (T), 16 SATC 48.

4.2 Voluntary awards

Paragraph (c) of the definition of “gross income” includes any “voluntary award” received or accrued in respect of services rendered. In *Commissioner, South African Revenue Service v Kotze*,⁹ it was stated regarding a voluntary award that –

“services need not be rendered by virtue of any contract, nor need the amount received or accrued be by reason of any contract or obligation: it can be a purely voluntary payment.”

It is clear that a “voluntary award” is wide enough to include a donation. A donation is a gratuitous disposal of property, the underlying motive being one of pure liberality or disinterested benevolence.¹⁰ In ITC 1018 the appellant was employed by and was a director of a South African company that was a subsidiary of an English holding company. The English holding company also owned a company in Rhodesia (as it was then known). The South African company and the Rhodesian company were to be amalgamated and the appellant was to be offered shares in the new company. The amalgamation never materialised, and the appellant was then gratuitously allocated 250 fully paid up shares in the English holding company.

The court held that the donation made by the English holding company was made in appreciation of the services rendered by the appellant to the group, and as a voluntary award fell to be included in “gross income” under the predecessor to paragraph (c) in the Income Tax Act 31 of 1941.¹¹

It is also clear from the Act that an amount may be a donation in the hands of the payer, but nevertheless be included in paragraph (c) of “gross income” in the hands of the recipient. Section 56(1)(k)(i) exempts from donations tax –

“...any property which is disposed of under a donation as a voluntary award ... the value of which is required to be included in the gross income of the donee in terms of paragraph (c) of the definition of “gross income” in section 1”.

This exemption contemplates a form of remuneratory donation, which is –

“...not inspired solely by a disinterested benevolence but, as a rule, made in recognition of, or in recompense for, benefits or services received, and therefore are akin to an exchange or discharge of a moral obligation.”¹²

This statutory provision exempts the payer from paying donations tax on amounts paid voluntarily or under a moral obligation to a missionary, in recognition of the missionary work that the missionary performs, but only to the extent that the amount donated is included in the missionary’s gross income.

For these reasons, donations or gifts made to missionaries constitute “voluntary awards” to those missionaries. Whilst it might be that the payment is validly a donation in the hands of the payer, it will nevertheless be included in paragraph (c) of “gross income” in the hands of the missionary if it is closely connected to the missionary services rendered.

⁹ 64 SATC 447 at 453-454.

¹⁰ *Welch’s Estate v Commissioner, South African Revenue Service* 2005 (4) SA 173 (SCA), 66 SATC 303.

¹¹ See also *ITC 1359* (1981) 44 SATC 165 (C) and *ITC 938* (1960) 24 SATC 375 (T).

¹² Per Watermeyer ACJ in *Avis v Verseput* 1943 AD 331.

4.3 Source of income

Income received or accrued in respect of services rendered has its source where those services are rendered.¹³ If the missionary services are rendered in South Africa, the source of any income that arises from those services will therefore be South African, even though the donations may be made in a foreign jurisdiction.

5. Conclusion

Amounts received by or accrued to missionaries for missionary services rendered in South Africa must be included in the missionary's "gross income".¹⁴

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¹³ *Commissioner for Inland Revenue v Lever Bros and Unilever Ltd* 1946 AD 441, 14 SATC 1; *ITC 837* (1957) 21 SATC 413 (C); *ITC 1088* (1966) 28 SATC 202 (R); and *ITC 1104* (1967) 29 SATC 46 (R).

¹⁴ Paragraph (c) of that definition in section 1(1).