

CR 2020/58 - St Vincent's Institute of Medical Research - deductibility of donations



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Class Ruling

St Vincent's Institute of Medical Research – deductibility of donations

❶ Relying on this Ruling

This publication (excluding appendix) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

Further, if we think that this Ruling disadvantages you, we may apply the law in a way that is more favourable to you.

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What this Ruling is about

1. This Ruling sets out the tax consequences of making donations to St Vincent's Institute of Medical Research (SVI).
2. Full details of this scheme are set out in paragraphs 6 to 11 of this Ruling.

Who this Ruling applies to

3. This Ruling applies to donors who make donations to SVI.

When this Ruling applies

4. This Ruling applies from 30 June 2021 to 30 June 2026.

Ruling

5. Donations of money made to SVI, where the donor may receive an opportunity to purchase a ticket at market value to the 'For the Love for Science' dinner (the Event), are allowable deductions under Division 30 of the *Income Tax Assessment Act 1997*.¹

Scheme

6. The following description of the scheme is based on information provided by the applicant. If the scheme is not carried out as described, this Ruling cannot be relied upon.

7. SVI is a deductible gift recipient (DGR) for Australian taxation purposes.

8. SVI may choose to offer any person an opportunity to purchase a ticket to the Event, including a donor who gives a specified amount to SVI (the Donation).

9. If the donor makes the Donation, SVI is not obliged to offer the donor the opportunity to purchase a ticket to the Event.

10. If the donor makes the Donation, the donor is not entitled to receive an opportunity to purchase a ticket to the Event.

11. The sale price of the ticket to the Event will be at market value and is fully transferable by the donor.

Commissioner of Taxation

28 October 2020

¹ All legislative references in this Ruling are to the *Income Tax Assessment Act 1997*.

Appendix – Explanation

❶ *This Explanation is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.*

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Definition of gift

12. Section 30-15 of the ITAA 1997 provides that the types of non-testamentary gifts (to the value of \$2 or more) to a DGR that can be deductible include:

- money
- property (including trading stock) purchased during the 12 months before the gift was made
- property valued by the Commissioner at more than \$5,000
- an item of trading stock disposed of outside the ordinary course of business
- property under the Cultural Gifts Program
- gifts of places listed in the register of the National Estate.

13. The term 'gift' is not defined in the ITAA 1997 but the courts have described a gift as having the following characteristics and features, as listed in paragraph 13 of Taxation Ruling TR 2005/13 *Income tax: tax deductible gifts – what is a gift*.

- there is a transfer of the beneficial interest in property
- the transfer is made voluntarily
- the transfer arises by way of benefaction
- no material benefit or advantage is received by the donor by way of return.

14. The issue of what is a gift for the purposes of Division 30 of the ITAA 1997 is dealt with in TR 2005/13. In determining whether a transfer of property is a gift, it is necessary to consider each of the factors outlined in paragraph 13 of this Ruling in the context of the circumstances surrounding that transfer.

Transfer of beneficial interest in property

15. The making of a gift to a DGR involves the transfer of a beneficial interest in money or property to the DGR. It is a requirement that identifiable property has in fact been transferred to the DGR.

16. Paragraph 61 of TR 2005/13 provides:

The making of a gift to a DGR involves the transfer of money or property to that DGR: section 30-15 of the ITAA 1997. In the simplest cases this involves the delivery of money (cash, cheque or electronic transfer of funds) or goods to the DGR.

17. The donors are transferring an amount of money to SVI. Therefore, there has been a transfer of the beneficial interest in this money to the DGR.

Transfer made voluntarily

18. Paragraph 23 of TR 2005/13 provides:

In order for a transfer of property to be a gift, it must be made voluntarily, that is, it must be the act and will of the giver, and there must be nothing to interfere with or control the exercise of that will. However, a transfer made under a sense of moral obligation is still made voluntarily.

19. There is no obligation on the donor to make a gift or donation to SVI.

Arises by way of benefaction

20. Paragraph 27 of TR 2005/13 provides:

An essential attribute of a gift is that benefaction is intended, and in fact conferred on the recipient. Conferring benefaction means that the DGR is advantaged in a material sense, to the extent of the property transferred to them, without any countervailing detriment arising from the terms of the transfer.

21. Under the scheme, SVI may offer the donor an opportunity to purchase a ticket to the Event but SVI is not obligated to provide the donor with the opportunity.

22. It is accepted that SVI will be advantaged in a material sense by the gift of money and in the circumstances, covered by the scheme, there is no countervailing detriment.

No material benefit or advantage

23. In order to constitute a gift, the donor must not receive a benefit or an advantage of a material nature by way of return. It does not matter whether the material benefit or advantage comes from the DGR or another party (refer to paragraph 37 of TR 2005/13).

24. On making a Donation, a donor is not entitled to the opportunity to purchase a ticket to the Event. Further, if the donor is provided with the opportunity to purchase a ticket to the Event, the ticket is sold to the donor at the full market value. Therefore, the scheme detailed in paragraphs 6 to 11 of this Ruling, does not give rise to a material benefit for the donors.

25. Therefore, the Donations made would qualify for deduction under Division 30 of the ITAA 1997.

References

Previous draft:
Not previously issued as a draft

- ITAA 1997 30-15
- TAA 1953

Related Rulings/Determinations:
TR 2005/13

Legislative references:
- ITAA 1997 Div 30

ATO references

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