

# FACT SHEET

## INCOME TAX EXEMPTION FOR CHARITIES



Under current legislation in order for an entity to income tax exempt, it must meet the following requirements:

1. Have an ABN.
2. Be registered as a charity with ACNC.
3. Comply with all the substantive requirements in its governing rules.
4. Apply its income and assets solely for the purposes for which it was established.
5. Be endorsed by ATO for income tax exemption (and be entitled to that endorsement).

In order for a charity to be entitled to endorsement for income tax exemption by the ATO (point 5 above), it must meet **at least one** of following three tests:

- **“in Australia” test**
- **Deductible Gift Recipient (DGR) test**
- **prescribed by law test**

### **In Australia test:**

To satisfy the *In Australia* test, the charity must have a physical presence in Australia and, to the extent of its Australian presence, pursue its objectives and incur its expenditure principally in Australia.

### **Deductible Gift Recipient (DGR):**

To satisfy the DGR test, the whole entity must be endorsed as a DGR or listed by name in income tax law as a DGR. If the organisation is endorsed as a DGR only for a fund or institution it operates, it does not meet the DGR test.

Even if the organisation is endorsed as a public benevolent institution (PBI), it will not meet the DGR test unless it is also endorsed as a DGR.

### **Prescribed by law (applicable to MI Members – see below):**

To pass this test, a charity must be prescribed in the income tax regulations and one of the following applies:

- It has a physical presence in Australia but incurs its expenditure and pursues its objectives principally outside Australia; or
- It is located outside Australia and is income tax exempt in its country of residence

See: <https://www.ato.gov.au/Non-profit/Getting-started/In-detail/Types-of-charities/Rules-and-tests-for-charity-tax-concessions-endorsement/?page=2>

### **INCOME TAX EXEMPTION: MI Member organisations**

If an Australian charity does not meet the “in Australia” test and is not a DGR, it will need to be prescribed by law in order to be income tax exempt. This applies to most organisations involved in overseas mission, very few of which are endorsed as DGR entities even when they operate DGR fund(s).

Missions Interlink and its Members pass the “prescribed by law” test as they are prescribed as income tax exempt under Section 50.50 (d) of the Income Tax Assessment Act 1936 [Income Tax Assessment Regulations 1997 (Regulation 50.50.02)]. See:

[http://www.austlii.edu.au/au/legis/cth/consol\\_reg/itar1997349/s50.50.02.html](http://www.austlii.edu.au/au/legis/cth/consol_reg/itar1997349/s50.50.02.html)

### **FOREIGN SERVICE INCOME TAX EXEMPTION: MI Member Personnel**

The income of personnel (if an Australian resident for income tax purposes) may be declared as tax exempt foreign-service income, if the payments are for service of a continuous period of not less than 91 days, and is directly attributable to an assignment by an organisation that is prescribed by law as exempt from Australian income tax. Organisations that are Members of Missions Interlink are prescribed for income tax exemption under Regulation 50.50.02 of the Income Tax Assessment Act (1997). See: <https://www.ato.gov.au/Individuals/International-tax-for-individuals/In-detail/Foreign-income-of-Australian-residents/Exempt-foreign-employment-income/>