



MINISTRY OF REVENUE & CUSTOMS: Income Tax Public Ruling01/20

Income Tax: Gratuities

BINDING SECTION:	
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Protection Label

! This ruling provides you with the following level of protection:

This publication (excluding any appendices) is a public ruling for the purposes of section 50 of the *Revenue Services Administration Act 2002 (RSAA)*.

A public ruling is an expression of the Minister's opinion about how the law applies, or will apply to persons, or a class of persons in relation to a particular arrangement or transaction, or a class of arrangements or transactions.

If you rely on this ruling, we must apply the law to you in the way set out in the ruling (or in a way that

is more favourable to you if we are satisfied that the ruling is incorrect and disadvantages you, and we are not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any under-paid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the law applies to you.

Introduction

1. This ruling is with reference to section 20 and section 13(1) of the *Income Tax Act 2007* (ITA).
2. The ruling is to determine the treatment of the gratuities paid out of an approved retirement fund under section 20 and gratuities paid out under section 13(1) of the Act.

What this ruling is about?

Class of person/Arrangement or transaction

3. This ruling applies to employees and employees who are members of an approved retirement fund.

The Law

4. The ITA prescribes in section 20 that “any amount received by way of gratuity or lump sum from an approved retirement fund shall be exempt income if it is paid to the approved fund member who ceased employment on the following grounds –
 - (a) retirement;
 - (b) death;
 - (c) migration; or
 - (d) medical reasons
5. The word gratuity is not defined in the Act so the common definition applies which is an amount of money paid to an employee at the end of a period of employment.
6. The retirement age prescribed in the *Retirement Fund (Administration) Regulations 1999* (RFAR) is 60 years old.

7. The gratuity paid out from an approved retirement fund is exempt under section 20.
8. The gratuity in the above paragraph is different from gratuity paid by employers to their employees in the normal course of employment as in section 13(1) of the Act.

Ruling

9. Gratuity pay outs from a retirement fund to a member are exempt if satisfy the following elements –
 - (i) the fund must be an approved retirement fund under the taxation law;
 - (ii) the member must be an approved member of the fund; and
 - (iii) the payout received by the member from the fund was on the ground of retirement, death, migration or medical reasons.
10. Gratuities paid out based on discontinuance or dissolution of employment due to expiration of contract, leaving Tonga because of expiration of contract for non-Tongan nationals, resignation or any other reason apart from the reasons listed in paragraph 9 are not exempt.
11. Evidence required for exemption purposes –
 - (i) For retirement age, the birth certificate or any other identification that contains the date of birth of the member;
 - (ii) For death, the death certificate of the member;
 - (iii) For migration, the member must show evidence of leaving Tonga permanently with no intention of returning; and
 - (iv) For medical reasons, must show doctor's report or confirmation of diagnosis and medical treatment required.
12. Gratuities paid by employers to their employees other than that from an approved retirement fund on the grounds stated above, are subject to tax.

Date of effect

13. This ruling is effective on the 1st July 2020.

14. This ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute before the date of issue of this ruling.

Minister of Revenue & Customs