Guideline: Gifts to the University

Purpose

To provide a detailed definition of what constitutes a gift to the University, as well as resources to determine what categories of income (including research grants) may be counted as philanthropic.

Guideline

Gifts to the University

1. A gift to the University is defined (in accordance with ATO Taxation Ruling 2005/13) as a transfer of the beneficial interest in property, in which the transfer is made voluntarily and arises by way of benefaction, and from which the giver receives no material benefit or advantage.

2. All gifts to the University are accounted for through the ANU Foundation. Established by the Australian National University (ANU Foundation) Statute 2018, the ANU Foundation ensures that all gifts made to the University are properly used and appropriately accounted for.

3. Gifts to the University are often monetary (see *Philanthropic income*, below), but also include the following:

    a. **Gifts-in-kind** (GIK): gifts made to the University in any form other than cash or cash equivalents. GIK may include real property, or personal property, such as special collections, artwork, equipment, securities, and cultural property.

    b. **Cultural gifts**: cultural items donated to public art galleries, museums, libraries and archives in Australia, eligible for tax deductible status per the ATO Cultural Gifts Program.

    c. **Bequests**: a gift by Will, Trust, life insurance policy or retirement benefit, which may be cash, cash equivalent or GIK.

Philanthropic income

4. Philanthropic income refers to all gifts to the University of cash or cash equivalents. Philanthropic income are directed towards a range of purposes, such as scholarships, prizes, research and academic positions.

5. For income or other contributions to the University to be counted as philanthropic, they need to meet the criteria outlined below.

Criteria for philanthropic income

6. The University follows higher education sector best practice (per agreement of the Group of Eight Directors, *Reporting for Advancement,* updated 2015) by defining philanthropic income according to the rules established for the Ross-CASE Survey, the annual sector-wide survey on philanthropic giving to Universities.

7. According to the Ross-CASE rules, income is only counted as philanthropic if it meets **BOTH** of the following criteria, that the:

a. <u>source</u> of the income is eligible; **AND**

b. <u>nature</u> of the income meets the definitions of philanthropic intent.

Eligible sources of philanthropic income

8. For the purpose of accounting and reporting, eligible sources of philanthropic income include the following:

a. Individuals (such as alumni, students, staff, and friends of the University), in Australia and overseas.

b. Actual bequest/legacy income received in year from deceased individuals.

c. Actual crowdfunding income received in year.

d. Philanthropic entities (such as charitable trusts, private ancillary funds, and foundations) in Australia and overseas.

e. Affiliated support foundations (such as the ANU (USA) Foundation USA and ANU (UK) Foundation, and equivalent entities in other countries).

f. Business and industry, in Australia and overseas;

g. Overseas governments.

Ineligible sources of philanthropic income

9. For the purpose of accounting for and reporting philanthropic income to the University, the following sources are considered ineligible:

a. All funding from Australian federal, state and local government and their agencies, including the Australian Research Council (ARC), the National Health and Medical Research Council (NHMRC).

b. Royalties and other funds generated by the exploitation of the University's intellectual property.

c. Internal transfers within the University.

Philanthropic intent

10. Qualifying as an eligible source is not enough to determine income as philanthropic – the gift must also be made with philanthropic intent.

11. For a monetary gift to be considered as having philanthropic intent, the income must be *owned and controlled absolutely by the recipient institution* once received.

12. Per Australian Taxation law, monetary gifts:

a. are made to a Deductible Gift Recipient;

b. are made voluntarily; and

c. provide no material benefit, advantage or control to the giver.

13. A requirement for unspent monies to be returned may not prevent a gift from being philanthropic.

Exclusions from philanthropic intent

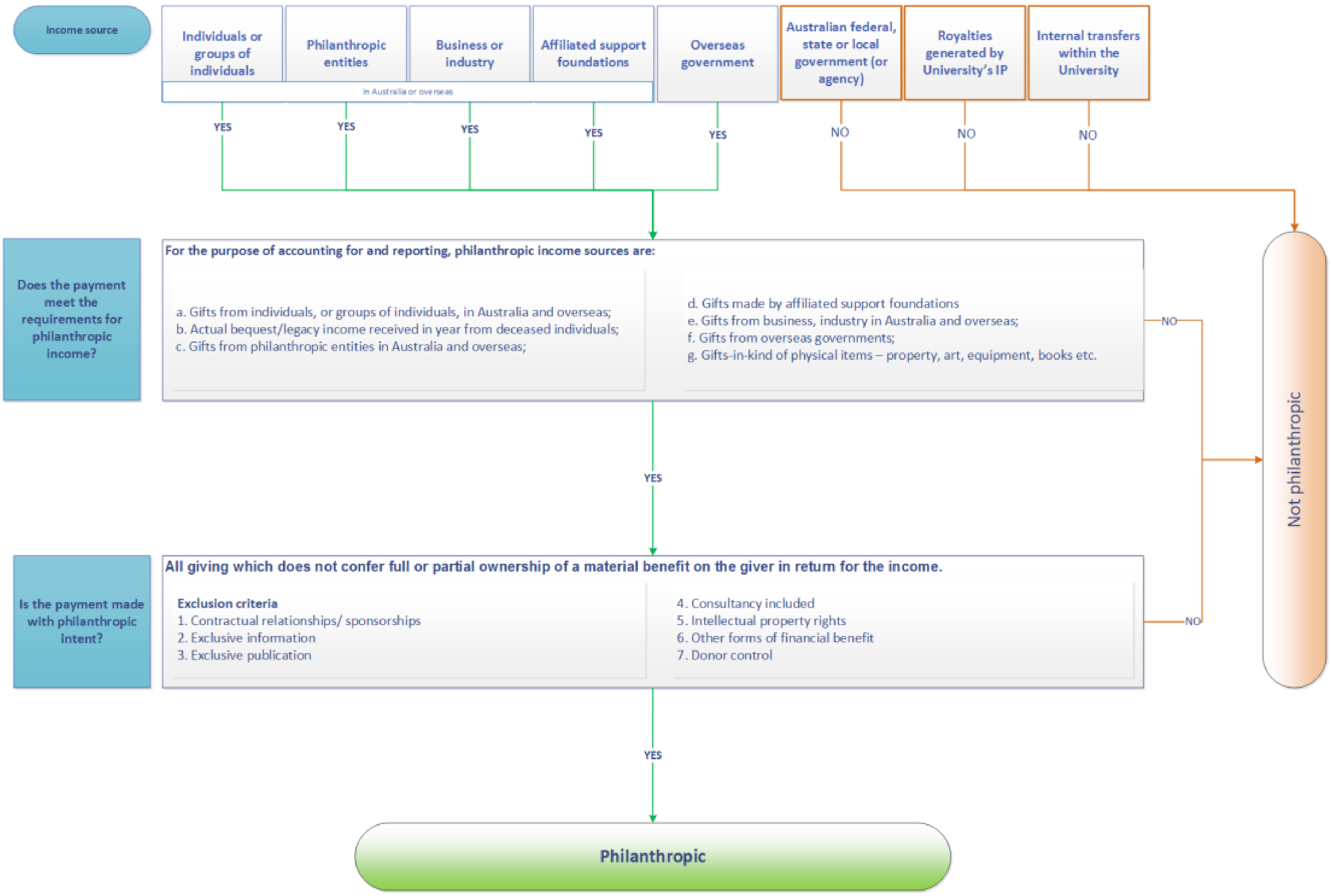
14. If any of the seven exclusion criteria outlined below apply, the *whole of the income* associated with an agreement/arrangement becomes ineligible for reporting as philanthropic income.

Table 1. Exclusion criteria

Exclusion criteria	**Description**
Contractual relationships / sponsorships	A contract exists between the two parties, which commits the recipient institution to provide a material benefit for compensation where the agreement is binding and creates and quid pro quo relationship between the recipient institution and the donor.
Exclusive information	The grantor is entitled to receive exclusive information or other privileged access to data or results emerging from the program of activity e.g. copy of thesis or research report. It is important to note that the provision of reporting does not constitute exclusive information unless the results are to be used by the donor. Appropriate philanthropic reporting includes financial statements, recipient information and

	outcome/impact as stewardship reporting.
Exclusive publication	The grantor is entitled to exclusive rights to publication of research or other results through their own branded communication channels (website, report etc.). Donors highlighting the gift to the institution via their website/annual report is acceptable.
Consultancy included	The agreement includes the provision of consultancy services for the grantor or a linked organisation.
Intellectual property rights	The agreement assigns to the grantor any full or partial rights to intellectual property that may result from the program of activity. This exclusion extends to the provision of royalty-free licenses (whether exclusive or not exclusive) to the funder, and also to granting the funder first option or similar exclusive rights to purchase the rights to any subsequent commercial opportunities. If the written agreement includes any actual or potential future benefit of this kind, the gift must be excluded.
Other forms of financial benefit	Any other direct financial benefits required by the grantor as a condition of the agreement e.g. discounted courses, training, use of facilities, invitation to social functions etc.
Grantor control	The grantor retains control over operational decisions relating to the use of funds once the grant has been made. This includes control over appointment and selection procedures to academic post and student scholarships. It is important to note that this clause has nothing to do with a donor’s right to know that a gift will be used for a designated purpose, where applicable, which is entirely consistent with a philanthropic gift.

Assessing philanthropic income and intent


Income source
Individuals or groups of individuals
Philanthropic entities
Business or industry
Affiliated support foundations
in Australia or overseas
Overseas government
Australian federal, state or local government (or agency)
Royalties generated by University's IP
Internal transfers within the University
YES
NO
Does the payment meet the requirements for philanthropic income?
For the purpose of accounting for and reporting, philanthropic income sources are:
a. Gifts from individuals, or groups of individuals, in Australia and overseas;
b. Actual bequest/legacy income received in year from deceased individuals;
c. Gifts from philanthropic entities in Australia and overseas;
d. Gifts made by affiliated support foundations
e. Gifts from business, industry in Australia and overseas;
f. Gifts from overseas governments;
g. Gifts-in-kind of physical items – property, art, equipment, books etc.
Is the payment made with philanthropic intent?
All giving which does not confer full or partial ownership of a material benefit on the giver in return for the income.
Exclusion criteria
1. Contractual relationships/ sponsorships
2. Exclusive information
3. Exclusive publication
4. Consultancy included
5. Intellectual property rights
6. Other forms of financial benefit
7. Donor control
Not philanthropic
Philanthropic

Separation of agreements

15. Institutions may not deduct the known or estimated value of any of the above exclusions from the overall value of the income associated with an agreement and report the net remaining balance.

16. In some circumstances it may be appropriate for philanthropic and contractual elements of a multi-faceted relationship with the University to be summarised in separate written agreements.

17. In these circumstances the funding subject to the gift deed may be treated as philanthropic, as long as:

a. none of the seven exclusion criteria apply; and

b. the income associated with the gift deed is not contingent on delivery of any activities included within the separate contractual agreement.

Corporate sponsorship

18. Exclusion criteria 1 dictates that, in the vast majority of cases, corporate sponsorship cannot be counted as philanthropic income, as sponsorship is based on a quid pro quo relationship, resulting in a material benefit for the sponsor.

19. Common forms of material benefit related to corporate sponsorship include:

- naming an event after the sponsor;
- allowing the sponsor to use the University's name or logo;
- giving free or reduced-price tickets;
- allowing access to special events such as premiers or gala evenings;
- providing entertainment or hospitality facilities; or
- giving the sponsor exclusive or priority booking rights.

20. The above is not an exhaustive list and there are many other situations in which a sponsor may be receiving tangible, material benefits.

21. Any corporate sponsorship which is subject to GST as a taxable supply cannot be counted as philanthropic income.

Research gifts

22. A gift is defined as supporting research if it meets the Higher Education Research Data Collection (HERDC) definition (per the current year HERDC Specifications for the collection of data) of research and experimental development (R&D) set out in the 2015 Frascati Manual. R&D is defined as:

'creative and systematic work undertaken in order to increase the stock of knowledge – including knowledge of humankind, culture and society – and to devise new applications of available knowledge' (OECD (s015), Frascati Manual 2015: Guidelines for Collecting and Reporting Data on Research and Experimental Development, The Measurement of Scientific, Technological and Innovation Activities, OECD Publishing, Paris, pp 44-45).

23. Costing and pricing of gifts for research purposes are subject to the same costing and pricing approval process as research grants using the ANU Costing and pricing approval online tool. Refer to Costing and pricing of externally funded research projects policy and procedure for more detail.

24. Additional assistance is provided in the colour-coded Philanthropic Income Checklist Form, which will help you to assess if research funding is philanthropic in both source and intent and therefore a gift.

25. Examples of philanthropic vs non-philanthropic research income are included at the end of this guideline.

Approaches from donors/funders/grantors

26. Companies, trusts or individuals may approach the University about a potential gift, or invite the University to apply for grants. This has no bearing on the philanthropic intent involved, and any gifts gained on that basis are philanthropic as long as none of the seven exclusion criteria apply.

Requests for report to donors/funders/grantors

27. The donor/funder often requests or requires an accounting of the use of funds and of the impact of the programs or projects undertaken.

28. Any such requirement from the donor for regular status of other reports does not negate the philanthropic intent underlying a specific gift long as long as none of the seven exclusion criteria apply.

29. The report may contain research findings and still be philanthropic in intent, except where the grantor uses these for exclusive benefit or has the right to publish findings (per exclusion criteria 2 and 3).

Donor stewardship & impact reporting

30. Donor stewardship strategies – such as providing update reports of the progress of students supported by donors, or informal contact between donors and those supported by their gifts – do not of themselves represent a benefit to the donor.

31. Stewardship of this kind is considered best practice, and is actively encouraged. Although exclusive donor control over the gift is considered non-philanthropic in intent (per exclusion criterion 7).

Recording of gifts to the University

32. Both the income and expenditure of monetary gifts to the University are governed and accounted for in either the E or D ledger, depending on their type: perpetual (E) or term (D), using the natural code *9212 – Gifts*. Use of this code and the issue of tax-deductible receipts is restricted to ANU Advancement, and all queries about the use of this code should be referred to ANU Advancement accordingly.

33. Some projects combine funding of both philanthropic and non-philanthropic income to achieve an outcome. If there is a need for a single accounting point for expenditure and reporting purposes, all monies are managed in either the E or D ledger for governance purposes.

34. More information on the procedures by which the University governs gift funds within the ANU Foundation are found in the Gift Fund Governance Procedure.

Examples of philanthropic vs non-philanthropic research income

	Scenario	**Is the** funding **philanthropic?**
A	An individual agrees to fund a research fellowship and a PhD studentship for five years in lung cancer research, and the University offers to name the positions in memory of her husband. The gift agreement is clear that all resulting research outputs, including any intellectual property rights which emanate from the research of the funded positions or their team, remain the property of the University.	**YES**
B	A company endows a Professorship in sustainable engineering. The Chair is named after the company, but the company does not expect private access to privileged or commercially valuable data or information, or private consultancy or training, or other form of perceived or real material benefit including selection of the candidate for the position.	**YES**

C	Identical case to Scenario B, but ten days' consultancy a year is built into the agreement.	**NO: Exclusion 4 – Consultancy.** None of the funding is eligible.
D	A charitable trust funds a Professorship and a Research Associate for ten years to work in a specific field of regenerative medicine. The agreement states that all findings will be in the public domain. The agreement includes a clause stating that if intellectual property with commercial value emanates from the research program, the rights to this are split 50/50 between the University and the charity. All other clauses in the gift agreement are entirely compatible with the definitions of philanthropic intent in this document.	**NO: Exclusion 5 – IP Rights** Even though no specific IP split is agreed, inclusion of this potential financial benefit to the charity makes it ineligible.
E	A medical charity provides money for research funding. They specify in the agreement that "The grant receiving organisation hereby grants a perpetual, royalty free non-exclusive license" to the charity.	**NO: Exclusion 5 – IP Rights** Even though the IP related rights are non-exclusive, any such inclusion in the agreement makes it ineligible.
F	A charitable foundation awards a project grant to the University. The grant has a defined multi-year timeline and payment schedule; milestones to delivery along the way; and a specific purpose. An annual report and three quarterly updates must be submitted by the University each year. The Foundation may request additional reports. The Foundation "is making the grant in	**YES** None of the seven exclusion criteria apply. Neither the inclusion of detailed

	furtherance of its charitable purposes" and requires that any knowledge gained during the project "be promptly and broadly disseminated to the scientific and international development community.	reporting requirements, nor agreed milestone targets along the way, undermine the philanthropic intent of the grant.
G	A professional institute provides funding for a Principal Researcher exploring a niche area of research. The results of this research are relevant to the interests of the members of the funding institute. The funded person is required to provide the funder with a quarterly report on the progress of the research. The funder has the exclusive rights to publicise the results on their website, thereby putting them in the public domain. The University grants the funder a non-exclusive license to use the results and copyright materials generated in the course of the project.	**NO: Exclusion 3 – Exclusive Publication; and Exclusion 5 – IP Rights**
H	A major trust (e.g. Wellcome) funds both research contracts through their funding programs, as well as making philanthropic donations to the University for buildings and equipment. The research contracts bestow material benefit to the funder.	**NO** (for the research contract funding)**: Exclusion 1 – Contractual relationship** **YES** (for the donations towards the building, as long as the University owns the facility)

I	A professor has published a book and the University receives an annual royalty payment for the ongoing sale of the book. The professor says he wishes to donate this money to the University to fund research in his department.	**NO: Ineligible source royalties and internal transfer.** For the money to be considered philanthropic the professor would have to earn and declare the royalty income personally and make a personal unrestricted tax-deductible gift.

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