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# Income tax exemption and sporting clubs

A guide for office bearers and advisers of non-profit clubs for self-assessing if their club is exempt from income tax.

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# To qualify for exemption

Requirements your sporting organisation must meet to self assess your exemption from income tax.

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Your sporting organisation will be exempt from income tax, and can self-assess its exemption, if it is not a charity and meets all of the following requirements:

- it is a not-for-profit society, association or club
- it is established for the purpose of encouragement of either
  - a game or sport
  - animal racing
- it meets one of the 3 following tests
  - physical presence in Australia test
  - deductible gift recipient (DGR) test
  - prescribed by law test
- it applies its income and assets solely for the purpose for which it is established.

It also must comply with all the substantive requirements in its governing rules. This means that your organisation must operate only in a manner consistent with its rules of core importance to its operation, including those related to its object and purpose and those relating to its not-for-profit (NFP) status.

For more information to help you determine what type of NFP your organisation is and if you're exempt from income tax, see:

- What type of NFP is your organisation?
- [Worksheet – Working out your club's income tax status \(PDF, 220KB\)](#)  includes *Schedule for multiple purpose clubs*.
- *Taxation Ruling TR 2022/2 Income tax: the games and sports exemption*

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## Self-assessment

What happens if your sporting club is income tax exempt and how self assessment works.

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### About self-assessment

The self-assessment system allows you to work out if your club meets the requirements of an income tax exempt category. You do not need to seek ATO endorsement of your club's status unless your club is a charity.

If your club is income tax exempt:

- Your club does not need to pay income tax or lodge an income tax return, unless specifically asked to.
- Your club does not need to get confirmation of its exemption from the ATO.
- You should self-assess your club's status each year to check if your club is still exempt – you should also do this when there are major changes to your club's structure or activities.

If your club is **not** a tax-exempt sporting club it may fall in another type of exempt entity or it may be taxable. If it is taxable, it may have the benefit of special rules for calculating taxable income, lodging tax returns and special rates of tax.

## Your responsibilities

It's your responsibility to assess if your club is exempt from income tax or if it's taxable. If it's not exempt your club must lodge a signed, complete and correct tax return (subject to mutuality and the tax-free threshold for non-profit companies).

Even if someone else, including a tax agent, helps you assess your income tax status or prepare your tax return and any related schedules, you are still legally responsible for the accuracy of your information.

## If you find your assessment is incorrect

If you become aware that you have incorrectly assessed your club as income tax exempt or that your club's tax return is incorrect, you must contact us straight away.

## Initiatives to complement self-assessment

There are several systems and entitlements that complement self-assessment, including:

- the private ruling system
- the amendment system (if you lodge tax returns and find you have left something out of your tax return)
- your entitlement to interest on early payment or overpayment of a tax debt.

## When you may need a private ruling

If you are uncertain about how a tax law applies to your club's affairs, you can apply for a private ruling or phone us on **1300 130 248**.

Lodge your tax return by the due date, even if you are waiting for the response to your application. You may need to request an amendment to your tax return once you have received the private ruling.

Further information can be found by going to [Applying for a private ruling](#).

# How I can tell if my sporting club can be tax exempt

Details of requirements your sporting organisation must meet to self assess your exemption from income tax.

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Your club will be exempt from income tax and can self-assess its exemption if during the year of income it is an entity that:

- is a not-for-profit society, association or club
- is established for the encouragement of a game, sport or animal racing
- is not a charity
- meets at least one of the 3 tests.

## The type of entity my organisation is

An entity for the purposes of income tax exemption as a tax-exempt sporting club includes a:

- corporation
- unincorporated association
- trust
- partnership.

Income tax exemption will not apply to a group of entities collectively described as 'the club'. Each particular entity in the group must assess its own income tax exempt status.

### Example: incorporated associations

A sporting group includes 2 incorporated associations. One association operates a leagues club and the other a football club.

Each entity, the leagues club and the football club, must assess its own income tax exempt status. This would be the case irrespective of whether the sporting group was referred to collectively as 'the club'.

The following features on their own will not be sufficient to show that your club is exempt where:

- control of your club by an exempt entity or entities
- common membership of the board of both your club and the exempt entity
- use of your club's surplus funds for exempt entities or their purposes
- the commitments of members of your club being related to those of an exempt entity or entities
- common motives inspiring your club and associated exempt entities
- the providing of free services to associated exempt entities
- the holding of property by your club on trust for exempt entities.

The consolidation regime, under which a consolidated group of entities is treated as a single entity for income tax purposes, does **not** apply to income tax exempt entities.

## If my organisation is non-profit

To qualify for income tax exemption as a sporting organisation your club must be non-profit.

An organisation is non-profit if it is not carried on for the profit or gain of its individual members. This applies for direct and indirect gains and both while the organisation is being carried on and on its winding up.

The income tax law does not prescribe a form of words that a non-profit company must have in its constituent documents. The following example clauses would be acceptable, as long as other clauses were not contrary to them. The organisation's activities must be consistent with the clauses.

### Example: non-profit clause

The assets and income of the organisation shall be applied solely in furtherance of its above-mentioned objects and no portion shall be distributed directly or indirectly to the members of the organisation except as bona fide compensation for services rendered or expenses incurred on behalf of the organisation.

### **Example: dissolution clause**

In the event of the organisation being dissolved, the amount that remains after such dissolution and the satisfaction of all debts and liabilities shall be transferred to another organisation with similar purposes which is not carried on for the profit or gain of its individual members.

The following do not prevent a club from being non-profit such as:

- benefits received by members communally as members, such as use of club's facilities
- benefits received by members incidental to the pursuit of a club's objects, such as sports uniforms
- payment of reasonable remuneration to members for services they provide to the club.

A non-profit organisation can still make a profit, but this profit must be used to carry out its purposes and must not be distributed to owners, members or other private people.

### **What a society, association or club is**

The term 'society, association or club' is not defined in the tax law and takes the ordinary meaning of the words. It can include incorporated bodies.

The 3 words describe bodies made up of people who have come together to implement common purposes and objects. Consequently:

- An individual is not a society, club or association and will not qualify as an exempt sporting club.

- An incorporated body having one member may also not be a society, association or club and not qualify as an exempt sporting club.
- The members of a society, association or club need not be natural persons. The term therefore includes associations of sporting clubs.
- An entity that is a fund is not considered a society, association or club.

### **Example: fund under a trust**

A fund is established under an instrument of trust to manage and/or hold property on trust for a sporting organisation. The fund is not a society, association or club.

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## **The main purpose of a club**

What we mean when we talk about your club's main purpose.

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### **Identifying a club's main purpose**

The main purpose of your club must be encouragement of a game, sport or animal racing. Any other purpose of the organisation must be incidental, ancillary or secondary to encouragement of the game or sport or animal racing.

Your club's constituent documents will help identify the purpose for which the club was set up and should be consistent with the aim of encouraging a game, sport or animal racing. Your club's activities in the year of income must then demonstrate that the club's main purpose is the encouragement of its game, sport or animal racing.

If your club's main purpose is providing social and recreational facilities and activities for its members, it will not be exempt. This is the case even if your club also gives money to encourage games, sports or animal racing.

Other club records which will help indicate your club's activities and purpose include:

- resolutions made by the persons controlling your club, such as the board, committee or directors
- minutes of meetings of the board, committee or directors
- business plans
- promotional material concerning your club's activities, and
- published reports about the club, such as its annual report.

If the main purpose of a club is the carrying out of non-sporting activities, the club is not exempt. This is the case even if your club also gives money to encourage games, sports or animal racing.

### **Example: main purpose not sport**

The Sandy Shores Country Club's constitution states that the club's object is to provide social and sporting facilities for its members.

The club's main activity is the operation of its clubhouse as a social, gaming and entertainment facility. A small number of members play in bridge, darts and snooker teams sponsored by the club. The club allocates a proportion of its surpluses to local sports and community associations in order to meet certain requirements under state gaming laws.

The club's main purpose is providing social amenities for members.

For many sporting clubs that mostly conduct activities directly related to their game, sport or animal racing, the club's main purpose will be clear.

### **Example: main purpose encouragement of sport**

A club's primary object in its constitution is the promotion of netball. In the year of income, the club entered several teams at all levels in the local competition. Its sources of income were membership subscriptions, game day food and drink sales, corporate sponsorship, 'sports and recreation' grants, raffles and functions to support representative players, and venue hire. Minutes of meetings, business plans and other club material mostly detail sporting matters.

The club's main purpose is the encouragement of sport.

The sale of a club's assets to fund its ongoing sporting commitments will not of itself disturb its encouragement of sport.

## Clubs with multiple purposes

Difficulties in working out main purpose arise if a club conducts both sporting and non-sporting activities and the non-sporting activities are not incidental or ancillary to the sporting activities.

The following activities originally offered for the recreation of sporting members may become significant themselves when:

- operating bar and dining facilities for extended periods beyond game time
- having or operating significant gaming and other recreational facilities on club premises
- owning temporary accommodation available to members and non-members for holiday rental.

If your club conducts significant non-sporting activities in addition to its sporting activities, difficulties may arise in determining your club's main purpose. You will need to review if:

- the non-sporting activities the club engages in are merely incidental or ancillary to the encouragement of the club's game, sport or animal racing
- the club can justify to its members and the public that its main purpose is the encouragement of a game, sport or animal racing.

Further information is in the *Schedule for multiple purpose clubs* in *Worksheet – Working out your club's income tax status*.

## Game or sport

The words 'game' and 'sport' are not defined in the tax law and take their ordinary meaning.

For income tax exemption purposes, 'game or sport' extends to:

- non-athletic games such as chess and bridge
- sports such as motor racing in which machines facilitate the competition of people
- non-competitive activities such as mountaineering.

The nature of the activity must also be considered in the context of determining the club's main purpose.

### Example: main purpose not game

Bingo conducted in-house may be regarded as a game. However, in most cases, a club's bingo games would be a minor activity incidental to its main purpose, such as promoting sociability, communal activities or some other purpose.

The participants must intend that the activities they perform are the activities of a particular game or sport and that the intention and activities must be shared by the other participants.

A common feature of a game or sport is a set of conventions, expectations and rules. This contributes to the element of organisation that is commonly indicative of a game or sport. The imposition of such rules and conventions in an organised group of participants can convert an otherwise ordinary leisure activity into a game or sport (for example hunting, fishing, and walking).

Competition is a very common feature although not essential. Competition is an important indicator where the activity is not obviously a game or sport.

## Examples of games or sports

Athletic activity, including:

- aerobics (if competitive)
- amateur wrestling

- athletics, including hurdling
- jumping
- running and walking
- boxing
- dancing, such as ballroom dancing (if competitive)
- 'field games' such as
  - discus, javelin, shot put and hammer throwing
  - martial arts such as judo, kung fu, ju-jitsu and karate
  - mountaineering, orienteering, rogaining
- water-based sports, including
  - diving, swimming, surfing and surf lifesaving
  - synchronised swimming and water polo.

Games or sports played with ball or projectile such as:

- badminton, baseball and basketball
- bocce, bowling (tenpin) and bowls
- cricket, croquet and football (all codes)
- golf, handball, hockey, ice and under water hockey
- lacrosse, marbles and netball
- softball, squash, table tennis, tennis and volleyball.

Activities involving animals such as:

- equestrian
- polo or pony club
- rodeo.

Sports or activities that involve using equipment to achieve mobility such as:

- canoeing, kayaking and dragon boat racing
- drag racing, go-kart racing and hang-gliding

- motor-car racing (circuit, rally), motor cross and motorcycle racing
- cycling and mountain bicycle
- rowing and yachting.

Sports or activities that involve using other equipment such as:

- abseiling, wind surfing, water skiing and skateboarding
- target shooting, archery, darts and fencing
- gymnastics
- pool, billiards and snooker
- power lifting, weight-lifting and wood-chopping
- snow sports, including
  - bobsled, luge and skiing
  - ski-jumping and snow boarding.

Contests involving combinations of activities such as:

- triathlons
- Highland Games
- Olympic Games.

Card and board games such as:

- bridge
- backgammon, chess and mah-jong.

## **Examples what are not games or sports**

These include:

- bird-raising, bird-keeping and bird-watching
- body-building
- car owners, clubs and associations
- dancing as a social activity, including
  - ballroom dancing
  - line dancing and square dancing

- cultural dancing
- modelling of railways
- coin and stamp collecting
- playing of gaming or gambling machines
- breeding and showing of animals.

## **Animal racing**

The income tax exemption includes:

- horse, trotting and greyhound racing
- the racing of other animals.

## **Defining 'encouragement'**

The term 'encouragement' is not defined in the tax law and takes its ordinary meaning. It covers both directly carrying on activities and supporting them less directly.

Encouragement can occur directly by:

- forming, preparing and entering teams and competitors in competitions in the game, sport or animal racing
- coordinating activities
- organising and conducting tournaments including providing match officials
- preparing and maintaining the rules of a game, sport or animal racing
- improving the abilities of participants
- improving the standard of trainers, coaches and other sports officials
- providing or operating the venue for a game, sport or animal racing
- providing jerseys, uniforms, scarves and flags
- encouraging increased and wider participation and improved performance

- encouraging club members to be spectators at and to support the game, sport or animal racing
- organising raffles to fund club members' participation in a specific event in the game or sport in which the club's teams or competitors are involved.

Encouragement can occur indirectly:

- through marketing
- by initiating or facilitating research and development
- by providing accounting, legal and management services that directly facilitate the sporting activities.

Other examples of encouragement are:

- a club set up to run all aspects of the controlling club's sporting activities for juniors
- a supporters club associated with a football club that operates solely to take spectators to away games
- an association whose purpose is to carry out research into ways that new technologies can help in the preparation of playing surfaces
- an association whose purpose is to produce a radio program which airs on a community station during the season that provides extensive insight into the major competitions of the game and includes educational content particularly aimed at junior players
- an association established to promote a sport by running public events to publicise and fundraise for representative players or state or national sporting events.

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## The 3 tests

Describes the physical presence in Australia test, the deductible gift recipient test and the prescribed by law test.

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To be a tax-exempt sporting club, your club must also pass **one** of the following tests:

- [physical presence in Australia test](#)
- [deductible gift recipient test](#)
- [prescribed by law test](#).

## Physical presence in Australia test

Your club will meet this test if both:

- it has a physical presence in Australia (which is greater than merely operating through an agent in Australia or holding property in Australia – a division in Australia would show the necessary physical presence)
- to the extent that it has a physical presence in Australia, it incurs its expenditure and pursues its objectives principally in Australia (in determining this, there are special rules for offshore use of amounts you received as gifts or government grants).

## Deductible gift recipient test

Your club will meet this test if either:

- it has been endorsed as a DGR in its own right and not merely for a fund, authority or institution it operates
- it is listed by name in the income tax law as a DGR.

DGRs are entities to which donors can make income tax deductible gifts. The income tax law determines which organisations and types of organisations can qualify as DGRs.

## Prescribed by law test

Your club will meet this test if it is prescribed by name in the income tax regulations, which is decided by government, and either:

- is located outside Australia and is exempt from income tax in its country of residence

- has a physical presence in Australia but incurs its expenditure and pursues its objectives principally outside Australia.

Further information can be found by going to [Explanation of the 3 tests](#).

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## **Our commitment to you**

We are committed to providing you with accurate, consistent and clear information to help you understand your rights and entitlements and meet your obligations.

If you follow our information and it turns out to be incorrect, or it is misleading and you make a mistake as a result, we will take that into account when determining what action, if any, we should take.

Some of the information on this website applies to a specific financial year. This is clearly marked. Make sure you have the information for the right year before making decisions based on that information.

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