Straight from the source - February 2025

This month, AC Jennifer Moltisanti emphasises the importance of compliance, transparency and tailored guidance for NFPs.

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Happy 2025! I'm back after an extended break, refreshed and eager to continue our work with the sector.

I've been on leave for about 6 weeks and had the opportunity to spend time with family both in Melbourne and Sydney. My husband and I drove to Sydney travelling along the south coast of New South Wales. As we drove, my husband pointed out all the NFPs we passed, some of which we visited. These included community centres and libraries, religious organisations, op shops, men's sheds, country women association centres, RSLs, social clubs, lifesaving clubs, sports clubs and yacht clubs.

Small and regional towns really amplify the importance of NFPs, and it was great to see some thriving organisations. While on the road I called into our Parramatta office to farewell Director Joy Tillman who retired after 22 years in the ATO and many years prior in merchant banking.

I also took the opportunity to explain the new reporting requirements for self-assessing income tax NFPs with Rotary members and small educational associations. It was music to their ears when I reinforced that while the first lodgment may take some time, especially if their governance has lapsed, the forward year returns will be pre-populated. Significantly, I recommended our newly published **NFP tax, super and registry responsibilities checklist** which I think should form part of every NFP's annual health check.

All NFPs are required to meet their tax and super obligations in addition to other federal, state or territory obligations that may apply. This is imperative to maintaining integrity in the sector. Our aim is to make compliance with tax obligations as streamlined as possible.

Our focus for 2025 is threefold:

1. strengthen transparency and integrity
2. provide timely and tailored advice and guidance
3. identify and address sector issues and risks.

We provide tailored advice and guidance through multiple channels and my staff are always happy to speak to you personally. We publish this monthly newsletter and we are active on social media. We also liaise with tax professionals, including registered tax agents and BAS agents and the legal profession. Here is a quick overview with top tips as they apply to all categories of NFPs.

Charitable NFPs

Since 2012, NFPs with charitable purposes have been required to be registered with the Australian Charities and Not-for-profits Commission (ACNC) to access tax concessions. The ATO endorses registered charities for tax concessions including income tax exemption. While registered charities report annually to the ACNC via an annual information statement, they are still subject to ATO oversight in relation to entitlement to tax concessions and for all their tax obligations. This includes lodging activity statements to report and pay obligations like GST, PAYG withholding and FBT instalments, and lodging FBT returns if required.

Charities should always ensure they are operating for the purpose for which they are established as this is vital to meeting the requirements with respect to Divisions 30 and 50 of the *Income tax Assessment Act 1997* (ITAA 1997). Division 30 outlines the requirements for each of the DGR categories while Division 50 outlines the types of income tax exempt entities and their obligation to apply income and assets solely for the purpose for which they were established.

Some people question why both the ATO and ACNC undertake compliance activities, which sometimes includes reviews of registered charities at around the same time. While we may each collect similar information to assess compliance, the ATO is responsible for ensuring entitlement to income tax exemption under Division 50 of the ITAA 1997, whereas the ACNC is responsible for the registration of charities under the *Australian Charities and Not-for-profits Commission Act 2012* (Cth). The ATO's reviews and audits test whether an entity is applying income and assets solely for purpose, while the ACNC's reviews test whether a charity meets their registration governance standards.

Top tips for charitable NFPs

- Meet all your ongoing obligations with the ACNC to remain registered. This includes keeping records, notifying the ACNC of changes, reporting to the ACNC annually and complying with governance standards.
- If your organisation is endorsed as a DGR, inform us in writing if your organisation stops being entitled to endorsement. This means you need to undertake regular reviews of your endorsement status. Our **worksheets** can help you review your DGR status.
- If you can't pay on time, there are multiple support options you can access to meet your tax and super obligations. Make sure you reach out early for assistance.

Self-assessing income tax exempt NFPs

Non-charitable NFPs can self-assess their income tax exemption if they have purposes that fit within the 8 exempt categories in Division 50 of the ITAA 1997. While eligibility requirements haven't changed for income tax exemption, lodgment of the annual NFP self-review return will be the first time NFPs need to notify us of their eligibility.

It's true that NFPs that self-assess as income tax exempt have always been required to review their entitlement to the exemption and maintain **governing documents**, or rules, to satisfy their operation as an NFP. But for many NFPs, the self-review return may be the first time they've reviewed their eligibility and may find they had incorrectly believed they were automatically entitled.

There are around 155,000 ABN registered NFPs who are required to submit this new return annually for the 2023–24 income year onwards. We know the self-review return represents a period of transition for many NFPs. It's an opportunity for the sector to review and reset.

The return went live on 1 July 2024 and, to support NFPs, we have provided additional time to lodge until 31 March 2025. Over 17,500 NFPs have already lodged their first annual NFP return and we're expecting a surge in the lead up to 31 March 2025.

Of the lodgments received so far, more than three quarters are from smaller entities with an estimated gross revenue of below $150,000. Of these, the significant majority have indicated they're eligible for income tax exemption, either under a self-assessment category or by registering as a charity. Most NFPs have also submitted the return on their first attempt, indicating the return is easy to lodge once you have your required information at hand.

Top tips for self-assessing income tax exempt NFPs

- Check the requirements of the exempt categories to make sure your NFP qualifies. Our **NFP self-review return question guide** will help you to determine your eligibility for income tax exemption.
- Locate and review your NFP's governing documents to ensure they contain an appropriate NFP clause and a dissolution clause. You also need to confirm that your purpose meets the requirements of one of the exempt categories.
- Use our new step by step overview (PDF, 781KB) for instructions on how to update your ABN details, connect to ATO online services for business and lodge the NFP self-review return.
- Create a standing agenda item for your annual general meeting to review your tax status and keep your ABN details updated. Our **NFP tax, super and registry responsibilities checklist** will help your NFP stay on top of its tax, super and registry obligations.

Taxable NFPs

If you don't meet any of the income tax categories outlined in Division 50 of the ITAA 1997, you are a taxable NFP. Taxable NFPs may have to lodge income tax returns and pay income tax, or in some instances notify us of a non-lodgment advice.

To work out if you need to lodge an income tax return or if you should notify us of a 'non-lodgment advice', check if your organisation is:

- a **taxable NFP company**, including incorporated and unincorporated associations whose governing documents prohibit distributions to members

- a **taxable trust or partnership**
- an **other taxable company**, including incorporated and unincorporated associations whose governing documents don't prohibit distributions to members.

Top tips for taxable NFPs

- Identify all sources of income. This may include income from your members such as membership fees, income from non-members, and income earned from other sources such as bank interest.
- Use our **mutuality guide** to find out if you can apply the mutuality principle when calculating taxable income. The guide will help you to identify your members and non-members, and how to correctly classify revenue and expenses.
- If you are a taxable NFP company and your taxable income is $416 or less, you can meet your lodgment obligation by downloading and completing the **non-lodgment advice** form.
- If you do have income tax to pay but can't pay on time, reach out to us early to discuss support options you can access to meet your tax and super obligations.

I know that most NFPs want to do the right thing. This year, I'll meet with as many NFPs as I can so we can help them get it right. Helping NFPs to get it right remains our mantra, and we are committed to our relationships with other regulators, peak bodies, intermediaries and the broader sector. I'm looking forward to working with our refreshed NFP stewardship group as we begin mapping what tax and super obligations look like on the future NFP roadmap. You can help strengthen integrity by reviewing your governance practices and leveraging our tailored advice to minimise issues and risks for your NFP.

PS: Don't forget to contact us if you're having difficulty with any of your NFP obligations on **1300 130 248**.

Take care and stay safe.

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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.

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