


CR 2015/7 - Income tax: assessability of income and expenses incurred by clubs and societies co-ordinated by the University of Sydney Union

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Class Ruling

Income tax: assessability of income and expenses incurred by clubs and societies co-ordinated by the University of Sydney Union

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❶ This publication provides you with the following level of protection:

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid 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 relevant provision applies to you.

What this Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provision(s) identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

Relevant provision(s)

2. The relevant provisions dealt with in this Ruling is:

- Section 6-5 of the *Income Tax Assessment Act 1997* (ITAA 1997)
- Section 59-35 of the ITAA 1997
- Section 6-23 of the ITAA 1997
- Section 15-10 of the ITAA 1997, and
- Section 8-1 of the ITAA 1997.

All subsequent legislative references are to the ITAA 1997 unless otherwise indicated.

Class of entities

3. The class of entities to which this Ruling applies is:
- All clubs and societies established under the clubs and societies program co-ordinated by the University of Sydney Union (USU).

Qualifications

4. The Commissioner makes this Ruling based on the precise scheme identified in this ruling.
5. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 8 to 25 of this Ruling.
6. If the scheme actually carried out is materially different from the scheme that is described in this Ruling, then:
- this Ruling has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled, and
 - this Ruling may be withdrawn or modified.

Date of effect

7. This Ruling applies from 1 July 2012 to 8 December 2019. The Ruling continues to apply after 8 December 2019 to all entities within the specified class who entered into the specified scheme during the term of the Ruling. However, this Ruling will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Scheme

8. The following description of the scheme is based on information provided by the applicant. The following documents, or relevant parts of them form part of and are to be read with the description: the application for Class Ruling dated 9 April 2014:
- The Constitution of the USU
 - Terms and Conditions of the USU membership and access benefits program
 - Information provided by the client on 1 September 2014 and 8 October 2014, and
 - C&S Regulations.

9. The USU is seeking clarification from the Commissioner of Taxation regarding the receipt of funding from faculties' and the deductibility of expenses incurred by the various Clubs and Societies established under the Clubs and Societies Program co-ordinated by the USU.

10. The USU administers the Clubs and Societies Program on behalf of the University of Sydney (USYD).

11. There are currently 163 active clubs within the Clubs and Societies Program of the USU. This number does fluctuate from time to time and has reached approximately 200 active clubs and societies at any one time. These clubs and societies undertake various educational, recreational, cultural, sport and social activities for students.

12. The Clubs and Societies Regulations (Regs) is an overarching document issued by the USU. This document specifies the rules and regulations that each individual club or society must abide to.

13. In accordance with clause 3 of the Regs the objective of the Clubs and Societies program is as follows:

1. Enrich the student experience at the University.
2. Foster a campus community at the University.
3. Provide students at the University with opportunities for personal growth.
4. Provide leadership skills and training for students at the University.
5. Support the faculties, departments and colleges of the University.
6. Encourage interaction between student groups.

14. As stated in Clause 5 the categories of clubs and societies that fall under the USU umbrella will be the following:-

- a. There shall be the following categories of Clubs and Societies:
 - i. Faculty Clubs and Societies
 - a) A Faculty Club or Society that is a registered body open to the entire student body and staff of a particular Faculty of the University endorsed by the Dean of that Faculty.
 - b) There shall be up to one Club or Society representing each of the following Faculties:
 - a. Agriculture, Food and Natural Resources
 - b. Architecture, Design and Planning
 - c. Arts and Social Sciences
 - d. Dentistry

- e. School of Business
 - f. Education and Social Work
 - g. Engineering and Information Technologies
 - h. Health Sciences
 - i. Law
 - j. Medicine
 - k. Music (Sydney Conservatorium of Music)
 - l. Nursing and Midwifery
 - m. Pharmacy
 - n. Science
 - o. Veterinary Science
 - p. Visual Arts (Sydney College of the Arts)
- ii. Affiliated Site Clubs and Societies
 - a) A Club or Society that exists primarily for the benefit of a recognised campus of the University of Sydney that is not the Camperdown/Darlington Campus.
 - b) There shall be no more than one Affiliated Site Clubs or Society per campus.
- iii. College Clubs and Societies
 - a) A college Club or Society that is a registered body of the entire membership of a particular residential college located within and recognized by the University.
 - b) There shall be no more than one College Club or Society per residential college.
- iv. Revue Clubs and Societies
 - a) A Club or Society that exists primarily to produce an annual Revue as part of the USU Revues Season.
 - b) All Revue Clubs and Societies shall be endorsed by the Revues Coordinator and administered in accordance with the Revues Handbook.
 - c) All Revue Clubs and Societies shall be run in accordance with the Revue funding regulations. Section 7 does not apply to Revue clubs.
- v. Standard Clubs and Societies
 - a) Any Club or Society that is a registered body that is not a Faculty, Affiliated Site, Revue or College Club or Society.

15. The clubs and societies generate funding from the following sources:

- membership fees/contributions from members
- general funding from the USU
- funding from the Faculty
- funding from the USU based on Access card holder numbers, and
- sponsorship from third parties.

16. The union provides funding to Clubs and Societies to subsidise the participation of Access Card Holders in the Program.

17. All students of USYD are eligible to become members of the USU. Students can purchase an access card for an annual fee of \$75 for the 2014 year (\$99 for the 2013 year) which allows them to access various benefits provided by the USU including membership.

18. All clubs have separate rules regarding membership fees. Ordinary club members are undergraduates who hold access cards. Associate club members are access card holders only. For example; in the case of the 'Law Society', all law students at the USYD are automatically members of the 'Law Society'. Law students are not required to pay any membership fees.

19. In other clubs in the Program, membership (ordinary and associate) fees are required to be paid in order to become a member.

20. USU funding to the Clubs and Societies is generally based on the actual expenditure incurred by that club. To be eligible for the USU funding, the Club or Society is required to submit a Post-Event Form within ten business days after the event. Faculty funding is also based on the expenditure incurred or budgeted. The Faculty funding amount is determined via discussions between the Treasurer of the particular Club or Society and that particular Faculty management.

21. To the extent that a Club or Society member is also a member of the USU (and therefore holds an Access card), the Club or Society **may** receive an annual contribution per Access card from the USU as an incentive to encourage membership to the USU.

22. All of Clubs and Societies are not for profit organisations. This has been formally recognised in the model constitution (the Model Constitution), to be used by all clubs and societies by the end of 2015.

23. The Model Constitution contains a non-profit clause and a dissolution clause which prevents distributions to members during operation and upon winding up.

Ruling

24. Section 59-35 extends the principle of mutuality to organisations, such as non-profit entities, whose constituent document prevent them from making distributions to its members by making otherwise mutual receipts non-assessable non-exempt income.

25. The principle of mutuality will not apply to receipts from the USU, the USYD or third party sponsors to USU clubs. As such, receipts by the Clubs and Societies from the USU, the USYD or third party sponsors will not be non-assessable non-exempt income by virtue of section 59-35.

26. Receipts received from the USU, the USYD or third party sponsors which are in the nature of ordinary income are considered assessable income.

27. Expenses directly connected to the receipt of USU and Faculty funding are wholly deductible for tax purposes.

28. Expenses associated with holding a USU Club event, where the receipts relating to that event are from both members and non-members are considered apportionable expenditure based on the mutuality principle.

29. It is considered appropriate to apportion expenditure relating to the USU Club event, where receipts are from members and non-members as a proportion of total receipts of the event.

Commissioner of Taxation

4 February 2015

Appendix 1 – Explanation

❶ *This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.*

Ordinary income

30. Section 6-5 provides that the assessable income of a taxpayer includes income according to ordinary concepts (ordinary income).

31. The legislation does not define 'income according to ordinary concepts'. However, there exists a considerable body of case law which identifies factors indicating the nature of ordinary income.

32. Case law on the topic has identified various factors which may be relevant in determining whether an amount is income according to ordinary concepts. These include:

- whether the amount has the characteristics of periodicity, recurrence or regularity
- whether it is convertible into money or money's worth
- whether it is associated with business activities or services rendered, as distinct from the mere sale of property, and
- whether it is solicited, as distinct from a windfall.

33. Presence of these factors will assist in a conclusion that the amount is more likely to be ordinary income. However, none of these factors is exhaustive or conclusive, and their relative importance varies significantly according to the circumstances and to the presence of any countervailing factors.

34. Whether a receipt is ordinary income depends upon its quality in the hands of the recipient as noted in these cases: *Scott v. Federal Commissioner of Taxation* (1966) 117 CLR 514; and *GP International Pipecoaters Pty Ltd v. Federal Commissioner of Taxation* (1990) 170 CLR 124; 90 ATC 4413. Generally, payments or other benefits received for, in respect of, or in connection with services provided are assessable as ordinary income.

Principle of mutuality

35. The principle of mutuality is based on the premise that you cannot derive income from yourself. The principle provides that where a number of people contribute to a common fund created and controlled by them for a common purpose, any surplus arising from the use of that fund for the common purpose is not income (*Bohemians Club v. Acting Commissioner of Taxation* (1918) 24 CLR 334; [1918] HCA 16).

36. Mutuality is limited in its application. It does not include 'any contributions to the fund derived from sources other than the contributors' payments, such as interest from the investment of part of the fund, or income from a business activity conducted by the members...' (*Revesby Credit Union Co-operative Ltd v. Federal Commissioner of Taxation* (1965) 112 CLR 564 at 574).

37. In *Carlisle and Silloth Golf Club v. Smith* [1912] 2 KB 177 it was held that to the extent that the club received payment for green fees from non-members for the use of the club's golf course, these receipts were from trading and were liable to tax in respect of profits attributable to non-members' green fees. There was mutuality as far as members were concerned, but not so far as non-members were concerned (*RACV v. FCT* (1973) 4 ATR 567 at 570).

38. Thus with clubs, societies and associations in circumstances where it can be established that the mutuality principle applies, mutual receipts from associated entities sharing a common purpose, contributing to a common fund have been found not to constitute ordinary income. Whereas receipts from outsiders who are not members are not contributing to a common fund, these amounts, provided they exhibit the characteristics of income are considered ordinary income and taxable under section 6-5.

Legislative extension for non-profit entity receipts in the nature of mutual receipts – non-assessable and non-exempt income

39. For the income years commencing on or after 1 July 2000, section 59-35 provides a statutory extension to the common law principle of mutuality, making it non-assessable non-exempt income, in circumstances where:

- The amount would be a mutual receipt, but for the entities constituent document preventing the entity from making any distribution, whether in money, property or otherwise to its members, and
- Apart from this section the amount would be assessable income only because of section 6-5.

40. Because such amounts are specifically made not assessable and not exempt, they fall into the category of non-assessable non-exempt income in section 6-23. Receipt of such amounts have no tax consequences.

41. Section 59-35 only applies to ordinary income included in assessable income by section 6-5; amounts of statutory income included as assessable income by other tax law provisions are not affected by section 59-35 and as such do not become non-assessable non-exempt income.

42. Determining if a receipt is non-assessable non-exempt income under section 59-35 requires consideration of whether that receipt would be a mutual receipt if the organisation receiving the amount was not prohibited by its constituent documents from distributing to its members. If a receipt would not be a mutual receipt even if the organisation could distribute surplus funds to its members, the receipt does not fall within section 59-35.

Application to USU Clubs

43. Funding received by the USU Clubs from external parties such as the USU comes from various sources, not just its members. Funding from external parties includes general funding from the USU, Faculty funding, USU funding based on Access Card Holder numbers and funding from third party sponsors.

44. While there may well be a perceived link between the USU, the USYD and the USU Clubs the USU and the USYD do not form part of the membership base of the USU clubs. It could not be said that the USU or the USYD as members are contributing for a common fund for their own benefit as members of the USU Club.

45. Third party sponsorship also falls into this category, sponsors are not contributing to USU clubs on the basis that they are members of a common fund contributing for their own benefit as members; rather they are providing sponsorship, usually in return for recognition as a sponsor.

46. As such, the general principle of mutuality would not apply (nor the extended statutory definition in section 59-35) to receipts by USU Clubs from the USU, the USYD or third parties because, as explained, these receipts are not in the nature of a mutual receipt.

Is the USU Club funding ordinary income or a bounty or subsidy?

47. Funding received by the USU Clubs can be categorised broadly into two groups:

- general funding provided to enable the USU Club to carry out its purpose, such as general USU funding, Faculty funding and sponsorship from third parties, and
- USU event funding based on Access Card Holder numbers.

48. Under a sponsorship arrangement, where an organisation undertakes a fundraising activity it often receives support in the form of money. In return, it may provide such things as advertising, signage or naming rights or some other type of benefit of value.

49. Ultimately this means that the sponsor receives something of value in return for the sponsorship, so the sponsorship payment is not a gift. The payment is fully assessable because of the commercial nature of the sponsorship arrangement.

50. Sponsorship provided by law firms or any other corporates would constitute income and be taxable in accordance with section 6-5.

51. Thus the first category, based on its characteristics, exhibits is ordinary income and would be assessable as such under section 6-5.

52. The second category requires further analysis as it could be considered to be in the nature of a bounty or subsidy.

53. Section 15-10 states:

Your assessable income includes a bounty or subsidy that:

- (a) you receive in carrying on a business; and
- (b) is not assessable as ordinary income under section 6-5.

54. Following the decisions in *Squatting Investments Co Ltd v. Federal Commissioner of Taxation* (1953) 86 CLR 570; (1953) 10 ATD 126; (1953) 5 AITR 496; *Reckitt and Colman Pty Ltd v. FC of T* 74 ATC 4185; (1974) 4 ATR 501 and *First Provincial Building Society Ltd v. Federal Commissioner of Taxation* (1995) 56 FCR 320; 95 ATC 4145; (1995) 30 ATR 207 (*First Provincial Case*), it is now well accepted that a subsidy includes a financial grant made by a government.

55. The decision in *First Provincial Case* confirmed that section 15-10 may apply to payments of a capital nature.

56. The Explanatory Memorandum to Tax Law Improvement Bill 1997 also states that bounties or subsidies of a capital nature, related to carrying on of business, are assessable under section 15-10.

57. Section 15-10 specifically excludes amounts which are assessable as ordinary income under section 6-5.

58. Bounties or subsidies frequently exhibit many of the hallmarks of ordinary income. They are often received on a periodic basis and are paid as a supplement to the taxpayer's income. Accordingly, many subsidies are quite appropriately treated as an ordinary business receipt. Many bounties and subsidies will therefore comprise income according to ordinary concepts and will consequently fall within section 6-5(1) and so fall outside section 15-10.

59. If bounties and subsidies that are ordinary income are included in a taxpayer's assessable income under section 6-5, the major independent operation of section 15-10 must therefore be in relation to bounties and subsidies that are capital amounts.

60. Funding is received from the USU and the USYD in order to conduct every day affairs of the club. For the Clubs and Societies to receive the funding they must adhere to strict regulations set by the Union as documented in their C&S Regulations. Furthermore, it is the intention of those providing the funding that it be used in this manner.

61. The clubs and societies that are affiliated with the USU are many and varied but in summary it can be said that an integral element of the objectives of the club is to provide members means of professional, educational, social, cultural and recreational activities.

62. The Clubs and Societies are all non-profit organisations. Any profit made by the organisations goes back into the operation of the organisations to carry out its purposes and is not distributed to any of its members. The Clubs and Societies are considered non-profit where their constituent or governing documents prevent them from distributing profits or assets for the benefit of particular people – both while it is operating and when it winds up. These documents should contain acceptable clauses showing the organisation's non-profit character.

63. The Clubs and Societies are relying on this funding from the USU and the USYD to carry out their activities and functions. Without this money they would not be able to continue to hold events.

64. These Clubs and Societies do not appear to be operating for the profit, personal gain or any other benefit of particular people.

65. As previously mentioned a frequent characteristic of income receipts is an element of periodicity, recurrence or regularity, even if the receipts are not directly attributable to services rendered. An amount received from the USU and the USYD displays characteristics of ordinary income.

66. Following the decisions in the case law mentioned above, it can be said that the funding received by the Clubs and Societies is not capital in nature and therefore section 15-10 will not apply.

Conclusion Grant or Subsidy

67. It is considered that the USU payments and USYD payments to the Clubs and Societies is not a bounty or subsidy. The funding is assessable under section 6-5 as ordinary income and not under section 15-10.

Apportionment of deductions

68. Section 8-1 allows a deduction for all losses and outgoings to the extent to which they are incurred in gaining or producing assessable income except where the outgoings are of a capital, private or domestic nature, or relate to the earning of exempt income. Where an expense is incurred in producing assessable income and for another purpose (or purposes), it must be apportioned appropriately (*Ronpibon Tin NL v. Federal Commissioner of T* (1949) 78 CLR 47; [1949] ALR 875; (1949) 23 ALJ 139; (1949) 8 ATD 431).

69. More specifically subsection 8-1(1) states:

You can **deduct** from your assessable income any loss or outgoing to the extent that:

- (a) it is incurred in gaining or producing your assessable income; or
- (b) it is necessarily incurred in carrying on a business for the purpose of gaining or producing your assessable income.

70. The clubs and societies will need to classify its expenses as:

- non-deductible
- deductible, or
- apportionable.

71. Taxation Determination TD 93/194 *Income tax: how should a licensed club apportion expenses when calculating its taxable income?* identifies expenses being:

- non allowable (non-deductible): as those that relate specifically to members such as members functions
- wholly allowable expenses (deductible): being specifically related to non-members (for example, non-member only promotions), expenses relating to wholly assessable income (such as investment expenses) and non-apportionable deductions including contributions to staff superannuation, where the Act provides for claims to be deductible in full, and
- partially allowable (apportionable): expenses which cannot be specifically identified as either member or non-member related, relating to both.

72. The following expenses are not deductible for tax purposes:

- expenses used to derive mutual receipts, and
- expenses classified under income tax law as non-deductible.

73. Where an organisation and a member enter into a transaction that is in the nature of trade, the expenses incurred by the organisation in relation to the transaction may be deductible.

74. It is more than likely that most of the USU Clubs will hold events for both members and non-members and therefore expenses will be incurred in producing both assessable income and mutual receipts (in this instance non-assessable non-exempt income by virtue of section 59-35). In other words there will be partly allowable or apportionable expenditure.

75. Such expenditure must be apportioned on a reasonable basis. In this situation, the organisation can choose a practical and suitable method of apportioning the expenses. The method will be acceptable provided:

1. There is a reason for apportioning the expenditure.
2. The method chosen is suitable for that type of expenditure.
3. The method chosen is reasonable and is not arbitrary.
4. It gives a correct reflection of the expenditure incurred.

76. Before choosing one or more methods, it is important that you correctly identify whether an individual is a member or non-member as the separation of the apportionable items relies on this accurate identification.

77. Apportionment methods include:

- simple methods
- the Waratahs formula, and
- other methods.

78. The method (or methods) an organisation chooses must reasonably and accurately reflect its revenue and expenses. In determining a method of apportionment, consideration of a basis for such will only relate to those expenses which cannot be identified specifically as a member or non-member expense.

79. An organisation may use one or more methods to separate its apportionable items for the year in question.

80. A number of cases have been decided on the method of apportionment of income with most relying on a basis where the non-member receipts as a portion of total income is used to apportion deductions. An example of such a method is provided in Taxation Ruling IT 2505 *Income tax: bodies corporate constituted under strata title legislation*, the formula used in this ruling is as follows:

$$\frac{\text{Non-member income}}{\text{Total income}} \times \text{Apportionable expenses}$$

81. The above method which is based on the income attributable to members and non-members is the simplest and provides a correct reflection of the clubs taxable income. As such it would be a suitable method for USU clubs to allocate their apportionable expenses.

82. Accordingly USU Club expenditure:

- which relates solely to dealings with their members will be non-deductible expenditure as it relates to mutual dealings with members
- that is directly related to the income received as funding from non-members or external parties is an outgoing that is incurred for the purposes of section 8-1(1), and
- which relates to members and non-members will need to be apportioned as outlined above.

Appendix 2 – Detailed contents list

83. The following is a detailed contents list for this Ruling:

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

IT 2505; TR 2006/10; TD 93/194

Subject references:

- mutuality principle
- non profit associations & clubs

Legislative references:

- ITAA 1997 6-5
- ITAA 1997 6-5(1)
- ITAA 1997 6-23
- ITAA 1997 8-1
- ITAA 1997 8-1(1)
- ITAA 1997 59-35
- ITAA 1997 15-10
- TAA 1953

Case references:

- Bohemians Club v. Acting Commissioner of Taxation (1918) 24 CLR 334; [1918] HCA 16
- Carlisle and Silloth Golf Club v. Smith [1912] 2 KB 177
- First Provincial Building Society Ltd v. Federal Commissioner of Taxation (1995) 56 FCR 320; 95 ATC 4145; (1995) 30 ATR 207

- GP International Pipecoaters Pty Ltd v. Federal Commissioner of Taxation (1990) 170 CLR 124; 90 ATC 4413
- RACV v. FCT (1973) 4 ATR 567
- Reckitt and Colman Pty Ltd v. FC of T 74 ATC 4185; (1974) 4 ATR 501
- Revesby Credit Union Co-operative Ltd v. Federal Commissioner of Taxation (1965) 112 CLR 564
- Ronpibon Tin NL v. Federal Commissioner of Taxation (1949) 78 CLR 47; (1949) 8 ATD 431; (1949) 4 AITR 236
- Scott v. Federal Commissioner of Taxation (1966) 117 CLR 514
- Squatting Investment Co Ltd v. Federal Commissioner of Taxation (1953) 86 CLR 570; (1953) 10 ATD 126; (1953) 5 AITR 496
- Tongkah Compound NL v. FC of T (1949) 78 CLR 47; [1949] ALR 875; (1949) 23 ALJ 139; (1949) 8 ATD 431

Other references:

- The Explanatory Memorandum to Tax Law Improvement Bill 1997

ATO references

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