

TR 2022/2EC - Compendium

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Public advice and guidance compendium – TR 2022/2

1 Relying on this Compendium

This Compendium of comments provides responses to comments received on Draft Taxation Ruling TR 2021/D6 *Income tax: the games and sports exemption*. It is not a publication that has been approved to allow you to rely on it for any purpose and is not intended to provide you with advice or guidance, nor does it set out the ATO's general administrative practice. Therefore, this Compendium does not provide protection from primary tax, penalties or interest for any taxpayer that purports to rely on any views expressed in it.

Summary of issues raised and responses

Issue number	Issue raised	ATO response
All legislative references in this Compendium are to the <i>Income Tax Assessment Act 1997</i> .		
Reference to table item 9.1(a) in section 50-45		
1	Paragraph 1 of the draft Ruling states that 'this draft Ruling applies to societies, associations or clubs [...] seeking to determine whether they are exempt from income tax under table item 9.1(c) of section 50-45.' The views expressed in the draft Ruling seem to be equally relevant to clubs that are established for the encouragement of animal racing under table item 9.1(a). Private rulings issued to horse racing clubs refer to Taxation Ruling TR 97/22 <i>Income tax: exempt sporting clubs</i> (withdrawn). The final Ruling should cover table item 9.1(a).	The final Ruling refreshes TR 97/22 and does not reflect a change in the Commissioner's view on the application of table item 9.1(c) of section 50-45. As a refresh, it is beyond the scope of this rewrite to introduce new content on table item 9.1(a) relating to the encouragement of animal racing. To the extent that there are similarities between table items 9.1(a) and (c), the final Ruling will still be relevant to private rulings relating to the encouragement of animal racing.
Commercial activities		
2	The final Ruling should more closely align with the wording and principles from <i>Commissioner of Taxation of the Commonwealth of Australia v Word Investments Limited</i> [2008] HCA 55 (<i>Word Investments</i>) that commercial activities are a 'means to an end'. The draft Ruling classifies the conduct of extensive commercial operations and the use of surplus funds to support commercial activities as a negative feature. The	The final Ruling reflects the Commissioner's view on the application of <i>Word Investments</i> to the games and sports exemption. The final Ruling makes it clear that no one factor on its own will determine the main purpose of a club. All relevant factors must be considered together in reaching an objective conclusion about main purpose. Paragraphs 45 and 75 (the last dot point) of the final Ruling make it clearer that commercial activities involving members is a factor which must be

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	conduct and scale of commercial activities should not operate to reduce the prospect of a club qualifying as tax-exempt, if those commercial activities generate income which is used to encourage a game or sport and maintain business. The final Ruling should reflect that the commercial realities of conducting a business requires commercial investment to ensure sustainability and future delivery of sporting facilities and programs, as well as the overall costs of running a club. Using surplus funds on income-generating activities should not work against the conclusion that a club's main purpose is the encouragement of a game or sport. Also, the use of surpluses to make financial and in-kind contributions to other organisations to encourage sport should be reflected in the final Ruling and given principal weight in the assessment of whether a club has the main purpose of encouraging a game or sport. Paragraphs 44, 74 (the last dot point), 75, 78 (the last dot point) and 101 of the draft Ruling should be amended to clarify that conducting commercial activities is irrelevant to determining a club's purpose and that the principal question is whether the commercial activities further a purpose of encouraging a game or sport. Paragraph 45 of the draft Ruling should be amended to remove the implication that capital investments in facilities used by members is a negative feature when assessing the main purpose of a club. Rather, the final Ruling should clarify that capital investments may further a purpose of encouraging a game or sport if the investment is intended to generate funds which will enable game and sport activities. Consideration of any financial metric, such as investments and expenses (including the consistency of financial support discussed in paragraphs 98 and 101 (second dot point) of the draft Ruling), account for a broader set of commercial, strategic and business factors, including the 'cost of doing business' and external factors.	considered when reaching objective conclusions about the main purpose of a club.

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Income tax treatment of honorariums, coaching fees and so on for sporting clubs		
3	Has the ATO reconsidered the income tax treatment of honorariums, coaching fees and so on for sporting clubs? Most payments made to coaches and so on of junior sporting clubs were understood to be non-assessable (as they are merely reimbursement of expenses incurred, provided there is no professional coach or it is not in the course of carrying on a business) and no deductions are allowed for those incidental or incurred expenses (for example, car expenses, clothing and footwear).	The taxation treatment of honorariums, coaching fees and so on in the hands of recipients is beyond the scope of this Ruling. Paying volunteers provides general guidance on the treatment of honorariums, reimbursements and allowances paid to volunteers of not-for-profit organisations.
Encouraging spectators		
4	Paragraph 42 of the draft Ruling should be revised to include 'encouraging club members to be spectators at and to support the game or sport' as an additional direct or indirect activity that indicates the encouragement of a game or sport. The basis for this submission is summarised as follows: - Paragraph 51 of TR 97/22 (withdrawn) includes 'encouraging club members to be spectators at and to support the game or sport' in its list of activities that indicate a main purpose of encouraging a game or sport. - Example 2 in Taxation Ruling TR 2005/22 <i>Income tax: companies controlled by exempt entities</i> contains the same view. - Paragraph 5 of the draft Ruling notes that it does not reflect a change in the Commissioner's view. - The ordinary meaning of 'encouragement' is sufficiently broad to encompass the activity of encouraging members to be spectators of a game or sport.	Example 8 of the final Ruling has been updated to reflect that encouragement of spectators by arranging transport, pickup points, seating and advertising would be a factor that would work in favour of a conclusion that a club's main purpose is the encouragement of a game or sport.