TR 2021/D6 - Income tax: the games and sports exemption

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This document has been finalised by TR 2022/2.

There is a Compendium for this document: **TR 2022/2EC** .

Status: **draft only – for comment**

Taxation Ruling

Income tax: the games and sports exemption

Relying on this draft Ruling

This publication is a draft for public comment. It represents the Commissioner's preliminary view on how a relevant provision could apply.

If this draft Ruling applies to you and you rely on it reasonably and in good faith, you will not have to pay any interest or penalties in respect of the matters covered, if this draft Ruling turns out to be incorrect and you underpay your tax as a result. However, you may still have to pay the correct amount of tax.

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What this draft Ruling is about

1. This draft Ruling[1] applies to societies, associations or clubs (referred to collectively as 'clubs') seeking to determine whether they are exempt from income tax under table item 9.1(c) of section 50-45 of the *Income Tax Assessment Act 1997*.[2] In this Ruling, we call this the 'games and sports exemption'.

2. A club qualifies for the games and sports exemption where it:

- is established for the main purpose of the encouragement of a game or sport
- is not carried on for the purposes of its individual members' profit or gain, and
- meets other special conditions.[3]

3. This Ruling does not cover the special conditions. For more information, refer to:

- Taxation Ruling TR 2015/1 *Income tax: special conditions for various entities whose ordinary and statutory income is exempt*, and
- Taxation Ruling TR 2019/6 *Income tax: the 'in Australia' requirement for certain deductible gift recipients and income tax exempt entities*.

4. As part of good governance practices, it is recommended that clubs self-review their entitlement to income tax exemption each year or when there is a major change in the structure or activities of the club. When conducting self-review, clubs should consider how the law explained in this Ruling applies to their circumstances. From 1 July 2023, clubs with an active Australian business number will need to complete an annual online self-review form.

5. This Ruling replaces Taxation Ruling TR 97/22 *Income tax: exempt sporting clubs.* This Ruling does not reflect a change in the Commissioner's view on the application of the games and sports exemption; rather, it refreshes the view expressed in TR 97/22 to make it more contemporary. This Ruling also takes into account relevant case law[4] that has occurred since TR 97/22 published.

[1] All further references to 'this Ruling' refer to the Ruling as it will read when finalised. Note that this Ruling will not take effect until finalised.
[2] All legislative references in this Ruling are to the *Income Tax Assessment Act 1997*, unless otherwise indicated.
[3] Section 50-70.
[4] Specifically, *Commissioner of Taxation of the Commonwealth of Australia v Word Investments Limited* [2008] HCA 55 (*Word Investments*).

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Ruling

Society, association or club

6. The phrase 'society, association or club' refers to a voluntary organisation of people associated together for a common or shared purpose.[5] This description is consistent with the Macquarie Dictionary[6] definition of each word:

- **Society** '… an organisation of persons associated together for religious, benevolent, literary, scientific, political, patriotic or other purposes'.
- **Association** '… an organisation of people with a common purpose and having a formal structure'.
- **Club** '… a group of persons organised for a social, literary, sporting, political, or other purpose, regulated by rules agreed by its members'.

7. A society, association or club may be constituted as an unincorporated association[7] or be formally recognised by incorporation.[8]

Example 1 – not a society, association or club

8. *Sporting Foundation is a private discretionary trust established in July 2021. The duties and powers of the trustee, and objects of the trust, are decribed in the trust deed.*

9. *Neither Sporting Foundation, nor its trustee, qualify as a society, association or club as neither satisfies the description of a voluntary organisation of people that have associated together for a common or shared purpose.*

Non-profit

10. To qualify for the games and sports exemption, a club must be not-for-profit (the 'not-for-profit requirement' in this Ruling). The club must not be carried on for the purposes of individual members' profit or gain, either while the club is operating or on its winding up.[9]

11. Club members may receive communal membership benefits, such as the use of the facilities, that are incidental to the club's objects. This will not prevent the club meeting the not-for-profit requirement. The club may also pay members reasonable remuneration for services they perform for the club.

12. Clubs can use various mechanisms to ensure they meet the not-for-profit requirement. 'Not-for-profit' clauses in governing documents are the most common way.

[5] *Douglas & Ors v Federal Commissioner of Taxation* [1997] FCA 724, 97 ATC 4722, at [4726].
[6] Macmillan Publishers Australia, *The Macquarie Dictionary* online, www.macquariedictionary.com.au, accessed 27 August 2021.
[7] An unincorporated association usually shows that their group has associated for a common or shared purpose by adopting a constitution, set of rules or other governing document.
[8] For instance, as an incorporated association under the various associations incorporation acts of the States and Territories (for example, the *Associations Incorporation Act 2009* (NSW)) or as a company limited by guarantee under the *Corporations Act 2001*.
[9] For example, *Cremation Society of Australia Ltd v Commissioner of Land Tax (NSW)* [1973] 2 NSWLR 704 and *Repromed Pty Ltd v Lucas and Anor* (2000) 76 SASR 575.

These prevent the distribution of profits or assets for the benefit of particular persons while the club is operating and on winding up.[10]

13. Examples of suitable not-for-profit clauses are:

- Not-for-profit clause – the assets and income of the club shall be applied solely in furtherance of its objects and no portion shall be distributed directly or indirectly to the members of the club except as bona fide compensation for services rendered or expenses incurred on behalf of the club.
- Dissolution clause – in the event of the club being dissolved, the amount that remains after dissolution and the satisfaction of all debts and liabilities of the club shall be transferred to any organisation that is carried on for a similar purpose, which is not carried on for the profit or gain of its individual members.

14. If a club is prohibited by statute from distributing profits or assets (for example, state or territory laws for incorporated associations) for the benefit of particular persons while the club is operating and on winding up[11], the club's governing documents are taken to contain the appropriate not-for-profit clauses.

15. To meet the not-for-profit requirement, a club's actions must also be consistent with its non-profit clauses which prohibit distributions for the private benefit of its members.

Game or sport

16. 'Game' and 'sport' are not defined terms and take their ordinary meaning, shaped by the statutory context in which they appear. Some activities are obviously games or sports; for example, netball or football. For other activities, characterisation as a game or sport can be demonstrated by evidence of a competitive[12] element, and by participants' compliance with the conventions and rules of the activity.

17. The meanings of game or sport also extend to:

- non-athletic activites, such as chess or bridge
- activities where people use machines to participate, such as motor racing, and
- non-competitive activities, such as mountaineering.[13]

18. 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. While written or defined rules are not essential, 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).

19. While competition is a very common feature of a game or sport, it is not essential or determinative. The presence of competition can be an important indicator where the activity is not obviously a game or sport.[14]

[10] This includes where a club adopts the model rules for an incorporated association and these rules contain not-for-profit clauses.
[11] For example, the club is an incorporated association and the state or territory law that applies to incorporated associations includes not-for-profit clauses.
[12] Following the amendments in the *Taxation Laws Amendment Act (No. 2) 1990*, competition is not always a required element for the definition of a game or sport.
[13] Notes on Clauses in the Explanatory Memorandum to the Taxation Laws Amendment Bill (No. 2) 1990.
[14] *Adcock and Others v Wilson* (*Adcock*) [1967] 1 All ER 1028, as per Widgery J, at [1037].

20. To qualify as a game or sport, participants must share a common understanding that the activities they perform are the activities of a particular game or sport.[15]

Sporting or game-like activities

21. Games and sports can be contrasted with activities where a thing, object or animal is the essential focus, or where the activities are merely a means to some other end.

22. Activities such as stamp and coin collecting, body building and train modelling are not games or sports. The activities that give rise to the desired results lack the features of competitions or rules and are not games or sports by their nature. Similarly, keeping guinea pigs or fish is not a game or sport. The activities of participants in car owner clubs are not participation in sports for similar reasons. Those participants' focus is on their common interest in a type or make of motor vehicle and not on any sport or game-like activity.

23. Activities that could appear to be a game or sport may be merely a means to other ends. Where the activities are not organised in a sport or game-like way, and some other purpose is predominant, the activity will not be a game or sport. For example, dancing can be organised in a game or sport-like way but it is often a means of promoting sociability, participation and relaxation. In such cases, it does not constitute a game or sport.

24. The fact that a game or sport is undertaken by club members, or within a club, does not mean that the club is established for the encouragement of that game or sport. The activity must also be considered in the context of determining the club's main purpose. For example, a fishing competition can be a sport. However, a fishing competition conducted by a club may be a minor activity incidental to its main purpose, such as promoting sociability, communal activities or some other purpose.

Example 2 – minor sporting activity incidental to club's main purpose

25. *The One That Got Away Club provides services and amenities for people who like to fish in the bay near the clubhouse and in surrounding watercourses. The services provided include weather and boating information, guest speakers, and a bar and canteen which opens daily. Members-only competitions are held once a month. While a fishing competition might of itself be a sport, it is conducted as a part of The One That Got Away Club's wider activities. As the club is not formed for the main purpose of encouraging a game or sport, the fishing competition held is not a game or sport.*

Examples of games or sports

26. The following non-exhaustive list provides examples of activities that would be considered a 'sport'[16] if they satisfy the features of a game or sport[17]:

- **athletic activity** – aerobics (if competitive); amateur wrestling; athletics including hurdling, jumping, running and walking; boxing; dancing, such as ballroom dancing (if competitive); 'field games', including discus, javelin, shot put and hammer throwing; martial arts such as judo, kung fu, ju-jitsu and karate; mountaineering; orienteering; rogaining; water-based sports

[15] *Adcock*.
[16] For the purposes of section 50-45.
[17] See paragraphs 17 to 20 of this Ruling.

including diving, swimming, surfing, surf life-saving, synchronised swimming and water polo

- **played with ball or projectile** – badminton; baseball; basketball; bocce; bowling (ten-pin); bowls; cricket; croquet; football (all codes); golf; handball; hockey; ice hockey; lacrosse; marbles; netball; softball; squash; table tennis; tennis; underwater hockey; volleyball
- **involving animals** – equestrian activities; polo; pony club activities; rodeo activities
- **using equipment to achieve mobility** – canoeing; cycling; dragon-boat racing; drag racing; go-kart racing; hang gliding; kayaking; motor-car racing (circuit, rally); motor cross; motorcycle racing; mountain-bicycle riding; rowing; yachting
- **using other equipment** – abseiling; archery; billiards; darts; fencing; gymnastics; pool; power lifting; snooker; skateboarding; snow sports including bobsled, luge, skiing, ski-jumping and snowboarding; target shooting; water skiing; weightlifting; windsurfing; woodchopping; e-sports
- **contests involving combinations of activities** – swimming/running/cycling; swimming/surf-ski/running; Highland Games; Olympic Games; any outdoor sport when played indoors; and any indoor sport when played outdoors.

27. Similarly, the following non-exhaustive list provides examples of activities that would be considered a 'game', provided they satisfy the features of a game or sport[18]:

- **card games** – such as bridge
- **board games** – such as backgammon, chess and mah-jong.

28. The following non-exhaustive examples are activities that would not be considered a game or sport:

- bird-raising, bird-keeping and bird-watching
- bodybuilding
- car owners' clubs/associations
- dancing as a social activity (including ballroom dancing, line dancing, square dancing and Highland dancing)
- modelling of railways
- stamp and coin collecting
- playing of gaming or gambling machines and gambling generally, and
- breeding and showing of animals.

[18] See paragraphs 17 to 20 of this Ruling.

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Main purpose established for the encouragement of a game or sport

29. For a club to be established for the encouragement of a game or sport, the main purpose of the club in the relevant income year must be the encouragement of a game or sport.[19] 'Encouragement' is not a defined term and takes its ordinary meaning.[20] The ordinary meaning of encouragement (or the act of encouraging) has been described as stimulating by assistance or approval, including through direct or indirect means.[21]

30. Determining the main purpose of a club requires an objective evaluation of all material facts and circumstances. There is no set formula for weighing up the characteristics of a club to determine its main purpose.

31. The subjective motives or intentions of the founders or members of the club are relevant but do not necessarily determine the main purpose of the club. The stated purpose of a club is also significant but not decisive. Other important considerations include the activities and history of the club and how the club is controlled.[22]

32. It is the main purpose of the club in the year under examination that is the relevant consideration. It is not enough to examine the purpose of a club at the time of formation (or in past years), as its main purpose may change from year to year.

Other purposes

33. A club that has both sporting and non-sporting purposes will not qualify for the games and sports exemption unless the non-sporting purpose is:

- merely ancillary and incidental to its sporting purpose (that is, a purpose that is related to carrying out its sporting purpose), or
- secondary to its sporting purpose (that is, a purpose that is independent to, but less important or less significant than, the sporting purpose).[23]

34. A club can have both sporting and independent non-sporting purposes and still qualify for the games and sports exemption. For example, a club that provides secondary non-sporting related services or facilities to members will not automatically be disqualified for the games and sports exemption.

Factors to be considered for determining main purpose

35. No one factor on its own will determine the main purpose of a club. A weighing of all the factors is needed. When considering the factors together, an objective conclusion must be reached that a club has a main purpose of encouraging a game or sport.

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[19] *Cronulla Sutherland Leagues Club v. Commissioner of Taxation* [1990] FCA 108 *(Cronulla Sutherland)*, per Lockhart J.

[20] *South Sydney Junior Rugby League Club Limited and Commissioner of Taxation* [2006] AATA 265 (*South Sydney*), at [4].

[21] *South Sydney*, at [4].

[22] *Cronulla Sutherland*, as per Lockhart J at 23 FCR 95-96.

[23] Notes to Clauses of the Explanatory Memorandum to the Taxation Laws Amendment Bill (No. 2) 1990*; Cronulla Sutherland*; *South Sydney*; *North Suburban Club Inc and Commissioner of Taxation* [1999] AATA 463. An organisation will not be disqualified from the games and sports exemption where the non-sporting purpose is just a collateral or independent purpose. It must also be the main purpose: *Cronulla Sutherland*, as per Lockhart J; *"The Waratahs" Rugby Union Football Club v Federal Commissioner of Taxation* 79 ATC 4337 at [4341], per Waddell J.

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36. The following factors have been identified by courts and tribunals as relevant when considering purpose:

- emphasis in the club's constituent documents that the main purpose is to encourage a game or sport[24]
- extent of sporting activities[25]
- the conduct of activities directly related to the game or sport[26]
- a high level of member participation in the game or sport[27]
- promotion of the organisation to patrons and the public as one that encourages a game or sport[28]
- involvement of the committee of management in the promotion of sport[29]
- the use of surplus funds for encouraging the game or sport[30]
- the provision of financial and in-kind support for encouraging the game or sport.[31]

Activities and purpose

37. The activities undertaken by a club are an important consideration in determining whether it qualifies for the games and sports exemption. However, activities considered in isolation do not demonstrate the purpose of a club.

38. Activities are commonly a means to an end. Activities can serve the purpose of encouraging a game or sport and other independent non-sporting purposes. All of the club's activities must be objectively weighed against the objects, history and control of the club to determine the main purpose for which it is established in a particular year.

39. An activity like the organisation of, or participation in, sporting competitions can be readily understood as advancing a purpose of encouraging a game or sport.

40. Where a club derives its revenue from commercial operations, the club needs to objectively determine the extent to which commercial operations are a means to the end of advancing the sporting purpose, or are advancing some other purpose.[32]

41. A club can demonstrate a purpose of encouraging a game or sport where it provides financial and in kind contributions to other organisations that directly conduct those activities.[33] To demonstrate a main purpose of encouraging a game or sport, a club that does not directly conduct any games or sports will need to objectively show that the activities it carries out are a means to that end.

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[24] *Terranora Lakes Country Club Limited v. Commissioner of Taxation* [1993] FCA 80 (*Terranorra Lakes*); *Re Tweed Heads Bowls Club v FC of T* 92 ATC 2087 (*Tweed Heads*); *St Marys Rugby League Club Ltd v Commissioner of Taxation* [1997] FCA 581 (*St Marys*).
[25] *Terranorra Lakes*; *Tweed Heads*; *St Marys*.
[26] *Terranorra Lakes*; *Tweed Heads*; *St Marys*.
[27] *Case W114* 89 ATC 891, at [894]; *AAT Case 5452* (1989) 20 ATR 4125, at [4133;] *Terranorra Lakes*; *Tweed Heads*; *St Marys*.
[28] *Terranorra Lakes*; *Tweed Heads*; *St Marys*.
[29] *AAT Case 8267* (1992) 24 ATR 1068; *Tweed Heads*; *St Marys*.
[30] *Cronulla Sutherland* at 90 ATC 4226, 36 ATR 313; *Terranorra Lakes*; *Tweed Heads*; *St Marys*.
[31] *Cronulla Sutherland*.
[32] *Word Investments*; *Terranora Lakes*.
[33] *Word Investments*; *Inland Revenue Commissioners v Helen Slater Charitable Trust Ltd* [1982] Ch 49, per Oliver LJ at [56].

42. Direct or indirect activities that indicate the encouragement of a game or sport can include:

- forming, preparing and entering teams and competitors in competitions in the game or sport
- coordinating activities
- organising and conducting tournaments
- improving the abilities of participants
- improving the standard of trainers and coaches
- providing purchased or leased facilities for the activities of the game or sport for the use of club members and visitors
- encouraging increased and wider participation and improved performance
- marketing
- initiating or facilitating research and development, and
- facilitating the activities above by making a financial or in-kind contribution to an organisation that performs them.

Surplus funds and purpose

43. The use of surplus funds from a club's activities is also a factor to consider when determining the club's main purpose. Surplus funds can serve both the purpose of encouraging a game or sport and other independent non-sporting purposes. When considering purpose, it is how the surplus funds are used, or retained for future use, in line with the objects, activities and other characteristics of the club that matters.

44. A club that uses surplus funds resulting from its activities, including commercial activities, to support the conduct of sporting activities does not necessarily have the main purpose of encouraging a game or sport. The extent of those activities generating surpluses, or the other ends they achieve, may result in the club's main purpose being not about encouraging a game or sport.[34]

45. Where a club uses surplus funds to undertake a commercial activity that does not directly provide services to any of its members, the undertaking of this commercial activity is likely to be a neutral factor.[35]

46. Putting aside surpluses as a contingency fund for unexpected future events is also likely to be neutral when weighing up the factors to determine the main purpose of a club, provided the club can reasonably show the need for such a fund and at the time it is accumulated, the fund serves all the club's purposes indifferently. When the club uses the contingency fund, consideration will need to be given to how that use impacts the main purpose of the club.

47. It is a matter of objectively weighing the facts and circumstances in each case to determine whether the club has a main purpose of encouraging a game or sport.[36] Actions

[34] In *Word Investments*, the High Court found that there was only one purpose and commercial activities were a means to the end of serving that purpose. In *Cronulla Sutherland*, the majority of the Full Federal Court found that there were both sporting and non-sporting purposes, and that objectively the activities of the club involving members served a non-sporting end in themselves.
[35] *Word Investments*.
[36] *Cronulla Sutherland*; *St Marys*.

of a club to obtain and retain surplus funds, without further consideration of how surplus funds will serve the club's purposes, is not determinative.

Example 3 – surplus funds and purpose

48. *Local Club is an incorporated association which is not carried on for the profit or gain of its individual members.*

49. *Local Club has a long history of fielding Australian Rules football teams in competitions in their region and has been described as a nursery for the development of the professional sport.*

50. *Membership of Local Club includes football members and social members.*

51. *The objects of Local Club include the promotion of Australian Rules football in the region as well as independently providing social facilities for members.*

52. *Local Club provides extensive social facilities to its members which include a bar, bistro and gaming venue.*

53. *Local Club has been accumulating surplus funds for a number of years, and has a detailed business plan to develop land it acquired a number of years ago as a football oval for its junior football competition. The development plans received local council approval and the club is currently negotiating with contractors for the proposed works on the development.*

54. *Local Club has also put aside some of its surplus funds as a contingency for unexpected future events. Local Club can reasonably show the need for such a fund and that when accumulated, it serves Local Club's purposes indifferently.*

55. *These facts show that Local Club has a mixed purpose, being the encouragement of Australian Rules football and the provision of facilities for its members who do not participate in football.*

56. *Given Local Club can show detailed plans to use its surplus funds to support the football games by building further playing fields, its retention of surplus funds is consistent with a conclusion that its main purpose is to encourage Australian Rules football.*

57. *The contingency fund is likely to be neutral when weighing up the factors to determine Local Club's main purpose. This is because Local Club can reasonably show the need for a contingency fund and, at the time the fund is accumulated, it serves all Local Club's purposes indifferently. If Local Club uses the contingency fund, it will need to consider how the use of the contingency fund impacts on its main purpose at that time.*

58. *If, instead of the facts in this Example, Local Club retains surplus funds with a plan to provide additional facilities for social members who do not participate in football, the significance of these plans would need to be considered objectively in light of the objects of Local Club (and its other activities) to ascertain whether there would be a material impact to its main purpose.*

59. *In all instances, any surplus funds retained by Local Club will just be one factor of many that must be objectively weighed up to determine its main purpose. Local Club should keep appropriate records (for example, meeting minutes for important decisions or a business plan which relates to surplus funds) so it can show its plans for surplus funds and how surplus funds will serve a main purpose of encouraging a game or sport.*

Main purpose can change over time

60. The main purpose of a club can change over time, and there is an ongoing requirement to make an objective evaluation of all of the facts and circumstances that apply to that club to determine its main purpose.[37]

61. Isolated events that happen in the life cycle of a club do not necessarily mean that the main purpose of the club has changed. However, when these events are significant, the club should consider how they might impact its main purpose.

Example 4 – change in purpose over time

62. *Green Links Country Club (Green Links) was founded in 1996. Its constitution states that its objects are to provide sporting and social facilities for its members and visitors.*

63. *Green Links is not carried on for the profit or gain of its individual members.*

64. *For many years, Green Links provided a golf course as well as a clubhouse with social, gaming and entertainment facilities for its members and visitors. As time progressed, it became increasingly expensive to maintain the golf course. In 2021, the management committee decided to sell the golf course to a residential property developer.*

65. *While a substantial body of the club's membership still maintain an interest in playing golf, they now play at other golf courses not associated with Green Links. After the golf course was sold in 2021, Green Links' main activities centre on providing social facilities for its members but it also donates to other golf clubs in the region from time to time, when they have sufficient funds.*

66. *The determination of a club's main purpose is periodic and a club's main purpose may change from time to time. For the games and sports exemption to apply in an income year, Green Links must be established for the main purpose of the encouragement of a game or sport for that year. When it was set up in 1996, Green Links was established for the encouragement of golf and its activities were mainly centred on providing a golf course for members.*

67. *After it sold the golf course, its activities changed to such an extent that in 2021 it can no longer be said that Green Links is established for the main purpose of the encouragement of a game or sport. For 2021, Green Links will not qualify for the games and sports exemption.*

Examples – main purpose is encouraging a game or sport

Example 5 – no secondary purpose – incidental fundraising activities

68. *Kids Soccer Club is a locally-based club that fields junior soccer teams in all Under-18 leagues in their region. Kids Soccer Club has junior members who are under 18, and adult members who are either the parents of the junior members, soccer coaches or former junior members.*

69. *Kids Soccer Club's objects stated in its constitution are to promote junior soccer at all levels, to enter competitions and field teams at all junior levels. It is managed by a committee of members with an active involvement in advancing soccer in the region. It has*

[37] *Cronulla Sutherland*, Lockhart J at 23 FCR 95-96, confirmed by Greenwood J in *Study and Prevention of Psychological Diseases Foundation v Commissioner of Taxation* [2015] FCA 1117 at [35], [102] and [181-182], citing *Word Investments* and *Cronulla Sutherland*.

a long history of entering competitions and has been successful over the years winning several premierships. To raise funds, Kids Soccer Club runs raffles, hosts fundraising dinners and receives sponsorship from local organisations.

70. *The following factors all lead to the conclusion that Kids Soccer Club is established for the main purpose of the encouragement of a game or sport:*

- *its constitution with emphasis on the promotion of soccer*
- *its extensive soccer activities*
- *the high level of its member participation in soccer*
- *its promotion to the public as a sporting club, and*
- *the active involvement of its management committee in soccer.*

71. *Kids Soccer Club does not have any independent secondary purposes as its fundraising activities are incidental and ancillary to its main purpose for the encouragement of a game or sport.*

Example 6 – incidental or secondary purpose – clubhouse activities

72. *Bowls Inc is a bowls club that owns and maintains a local bowling green. It has bowling members and social members. Bowling members can use the club's green and participate in competitions with other bowls clubs. Social members can use the clubhouse and green when open to social members but are not entitled to enter competitions or access the green when reserved for bowling members or competition.*

73. *Bowls Inc has a clubhouse located on its bowling green. The clubhouse has a licensed bar, dining facilities and gaming machines. The clubhouse is open to non-members. Bowls Inc members regularly participate in competition and have been successful over the years. Bowls Inc's objects stated in its constitution are to provide a bowling facility for members, enter and host competitions and provide social facilities for members. Bowls Inc is managed by members who actively play bowls.*

74. *The following factors all lead to the conclusion that Bowls Inc is established for the main purpose of the encouragement of a game or sport:*

- *emphasis in Bowls Inc's constitution on promoting bowls*
- *its bowls activities and competitions*
- *its member participation (by both bowling and social members) in playing bowls*
- *the promotion of Bowls Inc to the public as a bowls club*
- *the active involvement of the management committee in bowls, and*
- *the relative scale of the clubhouse activities compared to the larger scale sporting activities.*

75. *The extent of the non-bowls activities (such as the operation of the clubhouse with a licensed bar, dining facilities and gaming machines) when objectively considered with all of its bowls activities support a conclusion that these activities are incidental and ancillary or secondary to its main purpose of encouraging a game or sport.*

Example 7 – incidental and ancillary to main purpose – significant non-member clubhouse use

76. *Golf Lincs is a golf club that owns and maintains a local golf course. The club has golfing members and social members. Golfing members can use the club's course and participate in golf competitions with members of other clubs. Social members can use the clubhouse and green when open to social members but are not entitled to enter competitions or access the green when reserved for golfing members or competitions.*

77. *Golf Lincs has a clubhouse located on its golf course and a pro-shop that sells golfing equipment. The clubhouse has a licensed bar, dining facilities and gaming machines (clubhouse activities). The clubhouse is open to non-members and hosts a significant number of functions for non-members. Golf Lincs members regularly participate in competitions and have been successful over the years. Golf Lincs' objects stated in its constitution are to provide a golf course for members, enter and host golfing competitions and provide social facilities for members. Golf Lincs is managed by members who actively play golf.*

78. *The following factors all objectively lead to the conclusion that Golf Lincs is established for the main purpose of the encouragement of a game or sport:*

- *Golf Linc's constitution with emphasis on the promotion of golf*
- *its extensive golfing activities*
- *its member participation in playing golf*
- *the promotion of Golf Lincs to the public as a golf club*
- *the active involvement of the management committee in golf, and*
- *the relative scale of member clubhouse activities compared to the larger scale of member sporting activities.*

79. *The pro-shop supports members with their golfing activities and raises funds for Golf Lincs. This activity is incidental and ancillary to carrying out Golf Lincs' purpose of encouraging golfing.*

80. *The operation of the clubhouse activities are incidental and ancillary or secondary to Golf Lincs' main purpose of encouraging a game or sport. On the facts of this Example, the conduct of clubhouse activities that involves the provision of social amenities to members is not of an extent that would cause that purpose to be other than secondary to the main sporting purpose.*

Example 8 – multi-factorial – main purpose of encouraging a game or sport

81. *Multi-Club is a company limited by guarantee which is not carried on for the profit or gain of its individual members.*

82. *Multi-Club's objectives stated in its constitution are to:*

- *promote and assist in the promotion, conduct and propagation of football and sport generally*
- *assist in the provision of training, conditioning and teaching facilities for football*
- *encourage, assist and support sport in the district, and*

- *provide a sporting and social club for members and members' guests, including providing all the usual club facilities.*

83. *In the past, Multi-Club has fielded a senior football team and later, Multi-Club fielded three junior football teams which now operate separately from Multi-Club. Multi-Club has not fielded sporting teams in any competitions for a number of years.*

84. *Multi-Club has closely-affiliated sporting clubs to which it has a history of providing substantial financial and in-kind support. Its audited accounts and other documented evidence demonstrate that Multi-Club actively supports (both financially and in-kind) the following sporting clubs:*

- *Football Club One – which fields both a men's and women's team in local competition*
- *Football Club Two – which fields a number of local under-age teams, comprising approximately 300 children*
- *Cricket Club – which uses the changing rooms and other facilities in the Multi-Club clubhouse free of charge.*

85. *The management committee of Multi-Club is comprised of a diverse group of individuals with marketing, management and football knowledge. Some of the management committee members are current or former footballers and coaches. Contemporaneous emails show that the management committee has a deliberate, implemented policy of having representative members from the management committees of its affiliated sporting clubs.*

86. *Multi-Club's website:*

- *has a prominent sporting club logo*
- *provides sports information about the club including its history and awards for teams/players*
- *provides games information*
- *has links to the websites of the affiliated sporting clubs*
- *advertises its merchandise and social activities, and*
- *details its facilities.*

87. *Two of Multi-Club's full-time employees and one of its part-time employees spend most of their time supporting the affiliated sporting clubs.*

88. *Multi-Club's clubhouse includes a licenced bar and bistro, meeting rooms, a gaming room, a function room, sports-betting machines, pool tables and video screens. It is also home to the club's administration offices and to the administrative functions of the affiliated sporting clubs (which is provided free of charge).*

89. *Multi-Club has contributed to the funding of structures near the council-owned oval used by its affiliated sporting clubs, including infrastructure on the main pavilion and sealing the carpark.*

90. *An analysis of Multi-Club's financial statements shows that member receipts always exceed expenditure relating to members and that more than 50% of its annual surplus funds from non-member sources is used to provide support to its affiliated sporting clubs.*

91. *Multi-Club has invested in residential and commercial properties over the years and now holds a substantial portfolio. These properties are leased on commercial terms.*

92. *Whether the games and sports exemption applies to Multi-Club requires an objective weighing of all the factors.*

93. *Factors that work in favour of the conclusion that Multi-Club's main purpose is the encouragement of a game or sport include:*

- *an emphasis in its constitution to promote and assist in the promotion, conduct and propagation of sport, and assist in the provision of training, conditioning and teaching facilities for football*
- *assistance and support for sport in the district*
- *a history of fielding sporting teams and participation in competition*
- *close affiliations with other sporting clubs, including a history and evidence of substantial financial and in-kind support including in the current income year*
- *a management committee with a diverse skill set and involvement in the management committee of current footballers and football coaches*
- *a deliberate policy to include members of its affiliated sporting clubs in the management committee*
- *a prominent sporting logo on its premises, in its marketing material and on its website.*

94. *Factors that work against the conclusion that Multi-Club's main purpose is the encouragement of a game or sport include:*

- *an emphasis in its constitution to provide a social club for its members*
- *the provision of social facilities to its members*
- *no direct involvement in fielding sporting teams or entering into competitions.*

95. *Factors that are neutral when considering Multi-Club's main purpose include:*

- *the provision of its facilities to non-members on a commercial basis*
- *its passive investments in residential and commercial properties.*

96. *An objective evaluation of the factors would lead to a conclusion that Multi-Club is established for the main purpose of the encouragement of a game or sport. Multi-Club should document how it has reached this conclusion and should re-evaluate whenever any material changes occur in its operations.*

Example 9 – multi-factorial – main purpose is not encouraging a game or sport

97. *Supporters Club is a club that provides social facilities to members and supports football. It was established by a number of supporters and former players. Its objects are to provide a social facility for members and raise funds for local football clubs.*

98. *Supporters Club does not field any football teams, enter any competitions or directly participate in playing football. It conducts trading activities in a licenced bar, dining facility and gaming area. It is open to members, as well as the public. Supporters Club is managed by members who are former players or have an interest in football. It provides financial support to local football clubs through sponsorships and the provision of in-kind support on an inconsistent basis when its members' needs are met.*

Status: **draft only – for comment**

99. *For Supporters Club to qualify for the games and sports exemption, an objective conclusion must be made that it is established for the main purpose of the encouragement of a game or sport. This requires an objective weighing of all the factors that apply to Supporters Club.*

100. *Factors that work in favour of the conclusion that Supporters Club's main purpose is the encouragement of a game or sport include:*

- *an emphasis in its objects that it will raise funds for local football clubs*
- *the provision of financial and in-kind support to local football clubs, and*
- *its management is by former players and people with an interest in football.*

101. *Factors that work against the conclusion that Supporters Club's main purpose is the encouragement of a game or sport include:*

- *an emphasis in its objects to provide a social facility for members*
- *funding and in-kind support are only provided on an inconsistent basis with its members taking priority*
- *no direct involvement in fielding football teams, entering competitions or direct participation in playing football, and*
- *the relative size and extent of social facilities provided for the benefit of its members compared to the financial and in-kind support provided to local football clubs.*

102. *An objective evaluation of the factors would lead to a conclusion that Supporters Club is not established for the main purpose of the encouragement of a game or sport.*

Date of effect

103. This Ruling applies to years of income commencing both before and after its date of issue. 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 *Public Rulings*).

Commissioner of Taxation
7 October 2021

Appendix – Your comments

104. You are invited to comment on this draft Ruling including the proposed date of effect. Please forward your comments to the contact officer by the due date.

105. A compendium of comments is prepared when finalising this Ruling, and an edited version (names and identifying information removed) is published to the Legal database on ato.gov.au

Please advise if you do not want your comments included in the edited version of the compendium.

Due date: **5 November 2021**

Contact officer details have been removed following publication of the final ruling.

Status: **draft only – for comment**

References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10, TR 2015/1, TR 2019/6

Previous Rulings/Determinations:

TR 97/22

Legislative references:

- ITAA 1997 50-45
- ITAA 1997 50-70
- TAA 1953
- Corporations Act 2001
- Taxation Laws Amendment Act (No. 2) 1990
- Associations Incorporation Act 2009 (NSW)

Cases relied on:

- AAT Case 5452 (1989) 20 ATR 4125
- Adcock and Others v Wilson [1967] 1 All ER 1028
- Case W114 89 ATC 891
- Commissioner of Taxation of the Commonwealth of Australia v Word Investments Limited [2008] HCA 55; 236 CLR 204; 83 ALJR 105; 251 ALR 206
- Cremation Society of Australia Ltd v Commissioner of Land Tax (NSW) [1973] 2 NSWLR 704
- Cronulla Sutherland Leagues Club v Commissioner of Taxation [1990] FCA 108; 90 ATC 4215; 21 AIR 300; 23 FCR 82
- Douglas & Ors v Federal Commissioner of Taxation (1997) 77 FCR 112; 97 ATC 4722; 36 ATR 532
- Inland Revenue Commissioners v Helen Slater Charitable Trust Ltd [1982] Ch 49
- North Suburban Club Inc and Commissioner of Taxation [1999] AATA 463; (1999) 42 ATR 1111; 99 ATC 2254
- Re Tweed Heads Bowls Club v FC of T 92 ATC 2087
- Repromed Pty Ltd v Lucas and Anor (2000) 76 SASR 575
- South Sydney Junior Rugby League Club Limited and Commissioner of Taxation [2006] AATA 265; (2006) 62 ATR 1123; 2006 ATC 2150
- St Marys Rugby League Club Ltd v Commissioner of Taxation [1997] FCA 581; 1997 ATC 4528; 36 ATR 281
- Study and Prevention of Psychological Diseases Foundation v Commissioner of Taxation [2015] FCA 1117; 330 ALR 1117
- Terranora Lakes Country Club Limited v Commissioner of Taxation [1993] FCA 80; 93 ATC 4078; 25 ATR 294
- 'The Waratahs' Rugby Union Football Club v Federal Commissioner of Taxation 79 ATC 4337

Other references:

Explanatory Memorandum to the Taxation Laws Amendment Bill (No 2) 1990

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ATO references

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