

TD 93/73 - Income tax: will a strata title body corporate be taxed as a non-profit company if it includes non-profit clauses in its by-laws?

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 This document has changed over time. This is a consolidated version of the ruling which was published on *29 April 1993*

This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVA of the *Taxation Administration Act 1953*, is a public ruling for the purposes of that Part. Taxation Ruling TR 92/1 explains when a Determination is a public ruling and how it is binding on the Commissioner. Unless otherwise stated, this Determination applies to years commencing both before and after its date of issue. However, this Determination does 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 the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Taxation Determination

Income tax: will a strata title body corporate be taxed as a non-profit company if it includes non-profit clauses in its by-laws?

1. No.
2. The question arose out of the decision in *Case 5544*, 21 ATR 3117 at page 3119; *Case X11*, 90 ATC 160 at page 161 which referred to the 'need for an express prohibition of distributions to members being found in the constituent documents' even though the earlier decision in *Case 44*, 18 ATR 3279; *Case U57*, 87 ATC 370 confirmed the view that a strata title body corporate does not qualify as a non-profit company.
3. Taxation Ruling IT 2505 also examined the nature and income tax treatment of a strata title body corporate and is consistent with the decisions in these cases.
4. A non-profit company is defined in subsection 3(1) of the *Income Tax Rates Act 1986* and means, among other things, a company that:
 - (a) is not carried on for the purposes of profit or gain to its individual members; and
 - (b) is, by the terms of its constituent documents, prohibited from making any distribution, whether in money, property or otherwise, to its members (the prohibition refers to the capacity, measured on an annual basis, of a strata title body corporate to distribute to its members both in the current year and in future years).
5. We accept as a general proposition that a strata title body corporate is not carried on for the purposes of profit or gain to its individual members. However, a non-profit company must also be prohibited from making any distribution to its members.
6. A strata title body corporate fails this second requirement because, under the various State and Territory strata title legislation governing its operation (which is listed at paragraph 2 of IT 2505), a strata title body corporate can make distributions to its members in certain circumstances, e.g., on winding up. The by-laws of a strata title body corporate are made under, and are subject to the operation of, its governing State or Territory legislation. Consequently, a by-law to prohibit any distribution to members cannot be created to over-ride or limit the ability of a body corporate to distribute to members in the circumstances permitted by the legislation. The practical effect of the State and Territory legislation is to 'set at nought' any conflicting by-law (see *Nadir Pty. Ltd. v FC of T* (1973) 3 ATR 655 at page 660; 73 ATC 4074 at page 4079; 129 CLR 595 at page 603).
7. It is because of the inability of a strata title body corporate to provide this prohibition that it will not be taxed as a non-profit company.

Commissioner of Taxation

29/04/93

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Related Determinations:

Related Rulings: IT 2505

Subject Ref: body corporate; non-profit company; strata title.

Legislative Ref: Income Tax Rates Act 1986 3(1)

Case Ref: Nadir Pty. Ltd. v. FC of T (1973) 3 ATR 655; 73 ATC 4074; 129 CLR 595; Case 44, 18 ATR 3279; Case U57, 87 ATC 370; Case 5544, 21 ATR 3117; Case X11, 90 ATC 160

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