



CR 2004/151 - Income tax: capital gains tax: exempt registered clubs in New South Wales - poker machine entitlements

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 This document has changed over time. This is a consolidated version of the ruling which was published on *1 July 2004*



Class Ruling

Income tax: capital gains tax: exempt registered clubs in New South Wales – poker machine entitlements

Contents	Para
What this Class Ruling is about	1
Date of effect	8
Withdrawal	9
Arrangement	10
Ruling	17
Explanation	18
Detailed contents list	24

Preamble

The number, subject heading, **What this Class Ruling is about** (including **Tax law(s)**, **Class of persons** and **Qualifications** sections), **Date of effect**, **Withdrawal**, **Arrangement** and **Ruling** parts of this document are a 'public ruling' in terms of Part IVAAA of the **Taxation Administration Act 1953**. CR 2001/1 explains Class Rulings and Taxation Rulings TR 92/1 and TR 97/16 together explain when a Ruling is a 'public ruling' and how it is binding on the Commissioner.

What this Class Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the 'tax law(s)' identified below apply to the defined class of persons, who take part in the arrangement to which this Ruling relates.

Tax law(s)

2. The tax laws dealt with in this Ruling are:

- section 6-10 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- section 10-5 of the ITAA 1997;
- section 50-1 of the ITAA 1997;
- section 50-45 of the ITAA 1997; and
- section 102-5 of the ITAA 1997.

Class of persons

3. The class of persons to which this Ruling applies is registered clubs in New South Wales that:

- are governed by the *Registered Clubs Act 1976* (NSW) (RCA 1976);
- hold a poker machine entitlement subject to the *Gaming Machines Act 2001* (NSW) (GMA 2001); and
- are exempt from income tax under sections 50-1 and 50-45 of the ITAA 1997.

Qualifications

4. The Commissioner makes this Ruling based on the precise arrangement identified in this Ruling.

5. The class of persons defined in this Ruling may rely on its contents provided the arrangement actually carried out is carried out in accordance with the arrangement described in paragraphs 10 to 16.

6. If the arrangement actually carried out is materially different from the arrangement that is described in this Ruling, then:

- this Ruling has no binding effect on the Commissioner because the arrangement entered into is not the arrangement on which the Commissioner has ruled; and
- this Ruling may be withdrawn or modified.

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Date of effect

8. This Ruling applies to the income years ended 30 June 2005 to 30 June 2008 inclusive, or substituted accounting periods.

Withdrawal

9. This Ruling is withdrawn from 30 June 2008.

Arrangement

10. The arrangement that is the subject of the Ruling is described below. This description is based on the following documents. These documents, or relevant parts of them, as the case may be, form part of and are to be read with this description. The relevant documents or parts of documents incorporated into this description of the arrangement are:

- Letter dated 3 March 2004 from Lawler Partners Pty Ltd ('Lawler Partners') on behalf of the Registered Clubs Association of New South Wales;
- Facsimile dated 19 April 2004 from Lawler Partners; and
- Letter dated 7 June 2004 from Lawler Partners.

Background

11. The right to place a gaming machine in a club venue in NSW has been strictly controlled by the NSW government since the legalisation of gaming machines on 1 August 1956.

12. The RCA 1976 governs the operation and compliance requirements for a club to hold and operate gaming machines.

13. In December 2001, all matters pertaining to the approval of, operation and compliance requirements for, gaming machines were incorporated in the GMA 2001.

14. The GMA 2001 also formalised the creation of poker machine entitlements and allowed clubs to buy and sell such entitlements.

Exempt clubs

15. Clubs registered under the RCA 1976 include tax exempt clubs.

16. Tax exempt clubs are clubs whose ordinary and statutory income is exempt pursuant to section 50-45 of the ITAA 1997 and include non-profit clubs in Australia, carried on for the following purposes:

- (a) animal racing;
- (b) art;
- (c) a game or sport;
- (d) literature; or
- (e) music.

Ruling

17. There are no capital gains tax (CGT) consequences for persons within the specified class of persons when they dispose of a poker machine entitlement.

Explanation

18. Section 6-10 of the ITAA 1997 includes in your assessable income, amounts that are not ordinary income. Such amounts are called statutory income.

19. Section 10-5 of the ITAA 1997 includes a table that lists various provisions that include in your assessable income, amounts that are not ordinary income.

20. Net capital gains are included in your assessable income under section 102-5 of the ITAA 1997.

21. However, under section 50-1 of the ITAA 1997, the total ordinary income and statutory income of certain entities is exempt from income tax. Ordinary and statutory income that is exempt from income tax is called exempt income. Section 50-45 of the ITAA 1997 lists various entities whose income is exempt income.

22. If an entity is listed in section 50-45 of the ITAA 1997 then any capital gains it makes is exempt income.

23. Entities that are governed by the RCA 1976 and which have poker machine entitlements subject to the GMA 2001 and which are listed at section 50-45 of the ITAA 1997 will not have any CGT consequences if they dispose of their poker machine entitlements.

Detailed contents list

24. Below is a detailed contents list for this Class Ruling:

	Paragraph
What this Class Ruling is about	1
Tax law(s)	2
Class of persons	3
Qualifications	4
Date of effect	8
Withdrawal	9
Arrangement	10
Background	11
Exempt clubs	15
Ruling	17
Explanation	18
Detailed contents list	24

Commissioner of Taxation
15 December 2004

Previous draft:

Not previously issued as a draft

- non profit associations & clubs
- sports clubs

Related Rulings/Determinations:

CR 2001/1; TR 92/1; TR 97/16

Legislative references:

- Copyright Act 1968
- ITAA 1997 6-10
- ITAA 1997 10-5
- ITAA 1997 50-1
- ITAA 1997 50-45
- ITAA 1997 102-5
- TAA 1953 Pt IVA
- RCA 1976 (NSW)
- GMA 2001 (NSW)

Subject references:

- associations, organisations & societies
- capital gains tax
- CGT exemptions
- entities & taxpayer groups
- exempt income

ATO references

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