


***TD 97/D5 - Income tax: is commission income derived by registered clubs from Keno operations, the TAB (or similar bodies), vending machines and other third party sources subject to the principle of mutuality?***

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This document has been finalised by TD 1999/38.

Draft Taxation Determinations (TDs) represent the preliminary, though considered, views of the ATO. Draft TDs may not be relied on; only final TDs are authoritative statements of the ATO.

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## Draft Taxation Determination

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**Income tax: is commission income derived by registered clubs from Keno operations, the TAB (or similar bodies), vending machines and other third party sources subject to the principle of mutuality?**

1. No. These commissions are fully assessable. They are not subject to the principle of mutuality.
2. The principle of mutuality is based on the proposition that a taxpayer cannot derive income from itself. Generally, under this proposition, income derived by registered clubs from their members is not treated as assessable income for taxation purposes.
3. Conversely, income derived from 'external sources', i.e., from sources other than the members, is not mutual income and is therefore not subject to the principle of mutuality. Accordingly, such income is fully assessable.
4. Keno commissions are paid or allowed to clubs by the licensees of the Keno game and are not derived from club members. They are therefore fully assessable. Similarly, commissions paid to clubs by the Totalisator Agency Board (TAB) or similar bodies that conduct TAB-type operations, and by vending machine operators are also fully assessable. We consider such commissions to be similar to the insurance commissions which were held not to be mutual income in *Royal Automobile Club of Victoria (RACV) v. FC of T* 73 ATC 4153; (1973) 4 ATR 567. Accordingly, clubs should not apply their member/non-member percentage to these or other types of commission income in calculating their assessable income.

### *Note*

5. This Taxation Determination relates to registered clubs that are not exempt from income tax.

### *Example*

6. *The ABC club conducts Keno operations, has food and drink vending machines and operates a TAB outlet on its premises. The commissions derived from these activities are not mutual income and are therefore fully assessable to the club. These amounts should not be reduced by the application of the member/non member percentage in calculating the club's assessable income.*

**Your comments**

7. If you wish to comment on this draft Determination, please send your comments by **25 July 1997** to:

Contact Officer: Mr Chris Adams  
Telephone: (02) 9374 5112  
Facsimile: (02) 9374 5426  
Address: Australian Taxation Office  
Small Business Income  
Law Clarification Network  
PO Box 1750  
CHATSWOOD NSW 2057.

**Commissioner of Taxation**

25 June 1997

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FOI INDEX DETAIL: Reference No.

Not previously released in draft form

Related Determinations:

Related Rulings:

Subject Ref: assessable income; clubs; mutual income; principle of mutuality

Legislative Ref:

Case Ref: Royal Automobile Club of Victoria (RACV) v. FC of T 73 ATC 4153; (1973) 4 ATR 567

ATO Ref: NAT 97/3176-8

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ISSN 1038 - 8982