



TD 1999/38 - Income tax: does the principle of mutuality apply to income derived by a registered/licensed club under an arrangement entered into with an external party to conduct gaming or other activities on the club's premises?


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 This Ruling has been reviewed by the ATO and does not require any updates as at 31 March 2017.



Taxation Determination

Income tax: does the principle of mutuality apply to income derived by a registered/licensed club under an arrangement entered into with an external party to conduct gaming or other activities on the club's premises?

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Preamble

This Taxation Determination is a 'public ruling' for the purposes of Part IVAAA of the *Taxation Administration Act 1953* and is legally binding on the Commissioner. Taxation Rulings TR 92/1 and TR 97/16 together explain how a Determination is legally or administratively binding.

Date of Effect

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 settlement of a dispute agreed to before the date of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

1. No. These amounts 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 a registered/licensed club from its 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. Many registered/licensed clubs enter into arrangements with external parties under which the external party conducts or provides particular operations on the club's premises. These may include the operation of gaming machines. If a club enters into an arrangement with an external gaming operator under which gaming machines are installed on the club's premises, the gaming income is derived by the gaming operator from the players in accordance with the contractual arrangements and relevant legislation. The amounts paid or allowed to a club by the gaming operator under such an arrangement is derived by the club from the external gaming operator and not from the members/non-members. Therefore, such income is fully assessable to the club because it is derived from an external source and is not subject to the principle of mutuality.
5. Other arrangements with external parties may include Keno, TAB type facilities, catering, entertainment activities and vending machines. Amounts paid or allowed to clubs by the external

operators, such as the licensees of the Keno game in respect of Keno, under these arrangements are not derived from club members and are therefore fully assessable. We consider such amounts 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 similar types of income in calculating their assessable income.

Note:

6. This Taxation Determination applies only to registered/licensed clubs that are not exempt from income tax.

Example 1:

7. *The ABC club conducts Keno operations, has a vending machine operator's food and drink machines on the premises and also operates a TAB outlet. The amounts 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.*

Example 2:

8. *Under an arrangement with the XYZ club, an independent restaurateur operates a restaurant on the club's premises. Similarly, a gymnasium is also operated by an external party on the club's premises. The income received by the club from these business operators is derived from an external source and is therefore fully assessable.*

Example 3:

9. *Gaming machines are installed on the premises of the Goldfields Country Club by a gaming operator and the club derives income under a contract entered into with that gaming operator. The club also engages an entertainment operator to provide entertainment to attract members and visitors so that they will play the gaming machines and receives a fee from the operator. The income received by the club from these operations is fully assessable.*

Commissioner of Taxation

21 July 1999

Previous draft:

Previously issued as draft Taxation Determination TD97/D5

Related Rulings/Determinations:

Subject references:

assessable income; clubs; mutual income; principle of mutuality

Legislative references:

Case references:

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

ATO references:

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