

TD 93/190 - Income tax: what is the scope of the exemption from income tax provided by subparagraph 23(g)(v) of the Income Tax Assessment Act 1936 ?

 This cover sheet is provided for information only. It does not form part of *TD 93/190 - Income tax: what is the scope of the exemption from income tax provided by subparagraph 23(g)(v) of the Income Tax Assessment Act 1936 ?*

This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVAAA 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: what is the scope of the exemption from income tax provided by subparagraph 23(g)(v) of the *Income Tax Assessment Act 1936*?

1. Subparagraph 23(g)(v) provides that the income of a society, association or club that is established for community service purposes (not being political purposes or lobbying purposes), and that is not carried on for the purposes of profit or gain to its individual members, shall be exempt from income tax.
2. The purpose of enacting subparagraph 23(g)(v) was to create a category of exemption for community bodies whose activities are not accepted as being charitable for the purposes of subparagraph 23(e), but which, nevertheless, conduct activities of benefit to the community. In other words, some organisations that do not qualify for exemption under subparagraph 23(e) may, nevertheless, be exempt under subparagraph 23(g)(v).
3. There are four heads of charitable purpose, one of which is other purposes beneficial to the community; but this is limited by the common law to those purposes which are also charitable within the meaning of the Statute, 43 Elizabeth, Ch. 4. The term 'community service purposes' has a broader meaning than other purposes beneficial to the community which are also charitable. The Explanatory Memorandum to subparagraph 23(g)(v) confirms that the words 'community service purposes' are to be given a wide interpretation. Those words extend to a range of altruistic purposes that are not otherwise charitable, such as promoting, providing or carrying out activities, facilities or projects for the benefit or welfare of the community or any members of the community who have a particular need by reason of youth, age, infirmity or disablement, poverty, or social or economic circumstances.
4. However, the provision does not give exemption from income tax to a broad range of organisations that are established within the community, but whose purposes are not of an altruistic nature. Altruistic purposes are an essential element of even the widest interpretation of 'community service purposes'.
5. It is not accepted that common association as such is altruistic. Neither the purposes of members, nor the purposes of their organisation, are altruistic merely because the members form a non-profit organisation to advance their common interests. Members who seek to advance their common interests are not therefore motivated by an unselfish regard for others, and neither is their organisation. It follows that an organisation established for the purposes of its members is not

therefore established for community service purposes. Only when the purposes of the organisation are altruistic can they be community service purposes.

6. Political or lobbying activities often are said to be motivated by altruism. Even if this is so, organisations established for political or lobbying activities are excluded from exemption under the provision. Political or lobbying activities are not limited to party political activities; they include activities directed to influence changes to the law or its administration: cf *National Anti-Vivisection Society v. Inland Revenue Commissioners* [1948] AC 31.

7. The purposes for which an organisation is established are demonstrated by its current operations and activities, which may show different purposes to those suggested by a cursory reading of its constitution: cf *Royal Australasian College of Surgeons v. Federal Commissioner of Taxation* (1943) 68 CLR 436.

Examples:

Traditional service clubs such as Apex, Rotary, Lions, Zonta, Quota and the like and community service organisations such as the Country Women's Association of Australia and its constituent Associations are considered to be exempt from income tax under 23(g)(v).

Other examples of organisations that are considered to be exempt under this provision include:

- (a) non-profit child care centres, including those providing long day care facilities, after school care and day child care in activity caravans;*
- (b) age pensioner or senior citizens associations;*
- (c) associations of play groups; and*
- (d) associations of Justices of the Peace.*

Examples of organisations that are not considered to be exempt under this provision include:

- (a) clubs that promote public speaking or debating;*
- (b) clubs that provide a social forum for retired and semi-retired business people, senior public servants and the like;*
- (c) clubs that provide a social forum for expatriates of a particular country;*
- (d) bodies established to promote tourism;*
- (e) military service unit organisations; and*
- (f) social clubs for newcomers to a particular residential area.*

Commissioner of Taxation

30/9/93

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Related Determinations:

Related Rulings:

Subject Ref: income tax; exempt income; community service societies

Legislative Ref: ITAA 23(g)(v); ITAA 23(e)

Case Ref: *National Anti-Vivisection Society v. Inland Revenue Commissioners* [1948] AC 31; *Royal Australasian College of Surgeons v. Federal Commissioner of Taxation* (1943) 68 CLR 436

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