



Australian Government

Australian Taxation Office

Income tax guide for non-profit organisations

This guide helps non-profit organisations understand their income tax obligations and entitlements.



This guide is for non-profit organisations including charities, clubs, societies and associations. You should use this guide if you are a voluntary treasurer, office bearer or employee administering a non-profit organisation.



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If you feel this publication does not fully cover your circumstances, please seek help from the Tax Office or a professional adviser.

The information in this publication is current at March 2007.

We regularly revise our publications to take account of any changes to the law, so make sure that you have the latest information. If you are unsure, you can check for a more recent version on our website at www.ato.gov.au or contact us.

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ABOUT THIS GUIDE

This guide has been prepared for non-profit organisations including charities, clubs, societies and associations. You should use this guide if you are a voluntary treasurer, office bearer or employee administering a non-profit organisation. Only certain types of non-profit organisations are exempt from income tax, so this guide will help you work out if your organisation is exempt.

If your organisation is a charity or income tax exempt fund, it will need to meet special requirements to be exempt from income tax. Charities and income tax exempt funds are not automatically exempt – there is an endorsement process under which they apply to the Tax Office. This guide includes detailed information about what is a charity and an income tax exempt fund and the endorsement requirements that apply to these organisations.

We also explain the income tax treatment of non-profit organisations that are not exempt – that is, taxable organisations. Many non-profit organisations are taxable and may have to lodge income tax returns and pay income tax. They may also have special rules for calculating taxable income, lodging income tax returns and special rates of income tax.

ORGANISATIONS NOT COVERED

This guide does not cover friendly societies or the special arrangements for certain trade unions and employee associations (registered organisations) that are exempt for only some of their income.

Regardless of whether your non-profit organisation is exempt from income tax, other taxes and concessions may apply – for example, in relation to goods and services tax, fringe benefits tax and pay as you go.

We have also highlighted recent changes in the income tax law relating to non-profit organisations.

HOW TO USE THIS GUIDE

Where do you start?

Only certain types of non-profit organisations are exempt from income tax. To check that your organisation is a non-profit organisation and get an overview of income tax exemption, see chapter 1 – ‘Getting started’.



Is your organisation exempt from income tax?

You need to work out if your organisation falls within one of the exempt entity types. The types are explained, along with any tests that apply. See chapter 2 – ‘Is your organisation exempt from income tax?’



Is your organisation a charity?

Charities need to meet special requirements to be exempt from income tax. Charities are entities that are established for purposes that the law regards as charitable. These purposes are broader than most people would think. See chapter 3 – ‘Is your organisation a charity?’



What are the special requirements for charities?

There is an endorsement system under which charities apply to the Tax Office to be exempt from income tax. Charities are not automatically exempt. See chapter 4 – ‘Endorsement as an income tax exempt charity’.



Is your organisation an income tax exempt fund?

Income tax exempt funds are non-charitable funds established by will or instrument of trust, solely for the purpose of providing money, property or benefits to, or establishing, income tax exempt deductible gift recipients (DGRs). There is an endorsement system under which these funds apply to the Tax Office to be exempt from income tax. See chapter 5 – ‘Income tax exempt funds’.



How is your non-profit organisation treated if it is not exempt?

Non-profit organisations that are not exempt are taxable, but they may be entitled to some concessions. See chapter 6 – ‘Taxable organisations’.



Are there other tax issues to consider?

Whether or not your non-profit organisation is exempt from income tax, it may have obligations for other taxes such as GST, fringe benefits tax and pay as you go. Other concessions may also apply. See chapter 7 – ‘Other tax issues’.



How can you get more information?

The Tax Office has a range of publications and services specifically for non-profit organisations. See ‘More information’ on the inside back cover to find out how to access our publications and services.

GETTING STARTED

01

This chapter:

- introduces key ideas and processes about income tax exemption that will be used in later chapters
- outlines income tax issues for non-profit organisations that are taxable
- outlines other tax issues for all non-profit organisations, and
- summarises recent changes in the income tax law relating to non-profit organisations.

INCOME TAX EXEMPTION – AN OVERVIEW

IS YOUR ORGANISATION NON-PROFIT?

The basic premise of a non-profit organisation is that it is not operating for the profit or gain of its individual members, whether these gains would have been direct or indirect. This applies both while the organisation is operating and when it winds up.

The Tax Office accepts an organisation as non-profit where its constituent or governing documents prevent it from distributing profits or assets for the benefit of particular people – both while it is operating and when it winds up. These documents should contain **acceptable clauses** showing the organisation's **non-profit character**. The organisation's actions must be consistent with this requirement.

EXAMPLES

Acceptable clauses that indicate non-profit character include:

Non-profit clause

'The assets and income of the organisation shall be applied solely in furtherance of its above-mentioned objects and no portion shall be distributed directly or indirectly to the members of the organisation except as bona fide compensation for services rendered or expenses incurred on behalf of the organisation.'

Dissolution clause

'In the event of the organisation being dissolved, the amount that remains after such dissolution and the satisfaction of all debts and liabilities shall be transferred to another organisation with similar purposes which is not carried on for the profit or gain of its individual members.'

A non-profit organisation can still make a profit, but this profit must be used to carry out its purposes. As explained earlier, the profits must not be distributed to owners, members or other private people.

EXAMPLE

A society makes a \$40,000 profit for the year. It uses the profit to reduce its debts and provide for its activities in the following year.

ARE ALL NON-PROFIT ORGANISATIONS EXEMPT FROM INCOME TAX?


No. The income tax law provides that only certain types of non-profit organisations are exempt. If a non-profit organisation does not fall within one of the types of exempt entity it cannot be exempt.

TYPES OF EXEMPT ENTITY

The first issue for your non-profit organisation to consider in working out whether it can be exempt from income tax is whether it falls within one of the types of exempt entity.

There are more than 30 types of exempt entity. They range from registered employer associations to non-profit societies for the encouragement of music, from charitable institutions to non-profit sports clubs, and from public educational institutions to non-profit hospitals.

The table on pages 12 to 13 lists the types of exempt entities.

 The types of exempt government entities are not considered in this guide. Also omitted is the handful of individual organisations that are exempted by name in the law.

HOW DO YOU WORK OUT IF YOUR ORGANISATION IS EXEMPT?

Chapter 2 takes you through the steps to determine whether your organisation is exempt from income tax.

The following organisations must be endorsed by the Tax Office to be exempt from income tax:

- charities, and
- non-charitable funds that distribute solely to deductible gift recipients (DGRs) that are income tax exempt.

Other organisations can self-assess whether they are exempt from income tax.

Charities

A detailed description of charities is provided in chapter 3 – ‘Is your organisation a charity?’ It will help you work out whether your organisation is a charity.

Briefly, a charity is an institution or fund established and operated for altruistic purposes that the law regards as charitable.

These purposes are much broader than most people would think. Charitable purposes are:

- the relief of poverty or sickness or the needs of the aged
- the advancement of education
- the advancement of religion
- other purposes beneficial to the community, and
- the provision of child care services on a non-profit basis.

Charities include most religious institutions, aged persons homes, homeless hostels, organisations relieving the special needs of people with disabilities and societies that promote the fine arts.

To be exempt from income tax, charities must be endorsed by the Tax Office as income tax exempt charities. Chapter 4 sets out the requirements an organisation must meet to be endorsed as an income tax exempt charity.

Income tax exempt funds

Income tax exempt funds are non-charitable funds that:

- are established by will, or instrument of trust, solely for the purpose of providing money, property or benefits to, or establishing, deductible gift recipients
- distribute solely to income tax exempt deductible gift recipients, and
- are endorsed by the Tax Office to be exempt from income tax.

Chapter 5 sets out the requirements an organisation must meet to be endorsed as an income tax exempt fund.

Other organisations

Organisations that are not charities or income tax exempt funds do not need to be endorsed by the Tax Office to be exempt from income tax. They can self-assess their exemption. Most have additional tests and rules that must be met before the organisation can be exempt.

TAXABLE ORGANISATIONS

Non-profit organisations that are not exempt are taxable and are generally treated as companies for income tax purposes whether they are incorporated or not. Non-profit companies may have special rules for lodging income tax returns and special rates of income tax.

The principle of mutuality may apply to a non-profit organisation’s dealings with its members. This affects the amount of assessable income and deductions.

Capital gains tax and GST can also affect the calculation of an organisation’s taxable income.

For more information, see chapter 6 – ‘Taxable organisations’.

OTHER TAX ISSUES

Irrespective of whether your organisation is exempt from income tax or taxable, it may have obligations for other taxes such as goods and services tax (GST), fringe benefits tax (FBT) and pay as you go (PAYG). Concessions may also apply.

For an overview of other tax issues that may affect your non-profit organisation, see chapter 7 – ‘Other tax issues’.

WHAT'S NEW?

This publication applies from 1 July 2006 and replaces the *Income tax guide for non-profit organisations* (NAT 7967-09.2006) issued in September 2006.

This publication incorporates the following recent changes in the income tax law relating to non-profit organisations.

COPYRIGHT COLLECTING SOCIETIES

From 1 July 2002, copyright collection societies are not taxed on income they collect on behalf of copyright owners and held, pending allocation to them.

This means that tax on the copyright income will be levied in the hands of the copyright owner, at the copyright owner's marginal tax rate, when the copyright owner receives a payment from the copyright collection society.

CHARITABLE FUNDS – DISTRIBUTIONS TEST

From 1 July 2005, charitable funds can be endorsed as income tax exempt whether they provide money, property and benefits solely to charities based in Australia, solely to charities that are also deductible gift recipients (DGRs), or to a combination of these charities.

INCOME TAX EXEMPT FUNDS

From 1 July 2005, non-charitable funds can be endorsed as income tax exempt where they:

- are established by will or instrument of trust, solely for the purpose of providing money, property or benefits to, or establishing, deductible gift recipients, and
- distribute solely to income tax exempt deductible gift recipients.

From 1 July 2005, non-charitable funds that are endorsed as income tax exempt are entitled a refund of franking credits.

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Type of exempt entity – description	14
Explanation of the three tests	28

IS YOUR ORGANISATION EXEMPT FROM INCOME TAX?

02

This chapter:

- will help you work out if your organisation is exempt from income tax
- provides a list of descriptions and examples of the types of exempt entities, and
- includes checklists of key points to work through.

WORKING OUT IF YOUR ORGANISATION IS EXEMPT

Only certain types of non-profit organisations are exempt from income tax. Others are taxable and need to lodge income tax returns.

The 'Type of exempt entity' table on pages 12 to 13 provides an overview of the types of organisations that can be exempt from income tax. All these categories, with the exception of charitable institutions, charitable funds and income tax exempt funds, can self-assess their income tax status.

ENDORSEMENT

Organisations that fall within the exempt entity types that cover charitable institutions, charitable funds and income tax exempt funds need to be endorsed by the Tax Office to be exempt from income tax.

If your organisation falls in a charity type of exempt entity, it will need to be endorsed as an income tax exempt charity (charitable institution or charitable fund). If your organisation falls in both a charity and non-charity type of exempt entity, it still needs endorsement.

EXAMPLE

The ABC School falls in the public educational institution type of exempt entity. However, it is also a charitable institution.

This means, the school will need to apply to the Tax Office for endorsement. If it is not endorsed by the Tax Office as an income tax exempt charity, it will not be exempt from income tax.

Briefly, a charity is an institution or fund established and operated for charitable purposes. Charitable purposes are much broader than most people would think. Charitable purposes are the relief of poverty or sickness or the needs of the aged, the advancement of education, the advancement of religion, other purposes beneficial to the community, and the provision of child care services on a non-profit basis.

Most clubs, societies and associations are not charities. Your organisation is not a charity if:

- it is not carried on primarily for charitable purposes
- its purpose is not for the public benefit or the relief of poverty
- it is primarily for sporting, recreational or social purposes, or
- it is primarily for political, lobbying or promotional purposes.

Is your organisation a charity?

YES

See 'Endorsement as an income tax exempt charity' on page 49. Do not self-assess your income tax status.

NO

Read on.



If you are not sure whether your organisation is a charity, refer to chapter 3 – 'Is your organisation a charity?'

If your organisation is an income tax exempt fund, it will need to be endorsed to be exempt from income tax. If your organisation is both an income tax exempt fund and a scientific research fund, it still needs endorsement.

SELF-ASSESSMENT

The self-assessment system allows organisations to work out for themselves what their income tax status is.

You will need to take the following steps to determine whether your organisation is exempt from income tax.

- 1 Check the 'Type of exempt entity' table on pages 12 to 13 to see if your organisation fits within any of the categories listed. For convenience, the types have been grouped under general headings.
- 2 If you think your organisation fits within any of the categories, turn to the page referred to in the table and follow the directions to see if you meet the requirements for exemption. Many of the categories will require your organisation to be 'non-profit' and pass certain tests. You will be directed to further information if these requirements apply.
- 3 Complete 'Worksheet 1 – working out your organisation's income tax status' on page 85 for your organisation's records.

If you work out your organisation is income tax exempt

- Your organisation does not need to pay income tax or lodge income tax returns, unless specifically asked to.
- Your organisation does not need to get confirmation of its exemption from the Tax Office.
- You should carry out a yearly review to check if your organisation is still exempt. You should also do this when there are major changes to your organisation's structure or activities. 'Worksheet 1 – working out your organisation's income tax status' on page 85 will help you self-review.

If you work out your organisation is not income tax exempt

- Go to chapter 6 – 'Taxable organisations'. Your organisation may have the benefit of special rules for calculating taxable income, lodging income tax returns and special rates of tax.

If you cannot work out if your organisation is income tax exempt

- Contact the Tax Office. We will need information and copies of documents relevant to your organisation's possible exemption. Check the requirements for exemption in this chapter before contacting us. You can use the *Application for private ruling* if you want a private ruling from us on the exemption of your organisation's income. The application is available by phoning us on **1300 130 248**.

Irrespective of whether your organisation is income tax exempt

- Other taxes and concessions may apply to your organisation. See chapter 7 – 'Other tax issues'.

TYPE OF EXEMPT ENTITY – LIST

	Page
Charity	31
Charitable institution – an establishment, organisation or association instituted and run to advance or promote a charitable purpose. The entity will need to be endorsed by the Tax Office as an income tax exempt charity to have exempt status.	
Charitable fund – a fund established under an instrument of trust or a will for a charitable purpose. Charitable funds mainly manage trust property, and/or hold trust property to make distributions to other entities or people. The entity will need to be endorsed by the Tax Office as an income tax exempt charity to have exempt status.	
Community service organisations	14
Community service – a non-profit society, association or club established for community service purposes, except political or lobbying purposes. The entity can self-assess its exempt status provided it is not also a charity. Tests apply.	
Cultural organisations	15
Art – a non-profit society, association or club established for the encouragement of art. The entity can self-assess its exempt status provided it is not also a charity. Tests apply.	
Literature – a non-profit society, association or club established for the encouragement of literature. The entity can self-assess its exempt status provided it is not also a charity. Tests apply.	
Music – a non-profit society, association or club established for the encouragement of music. The entity can self-assess its exempt status provided it is not also a charity. Tests apply.	
Musical purposes – a non-profit society, association or club established for musical purposes. The entity can self-assess its exempt status provided it is not also a charity. Tests apply.	
Educational organisations	17
Public educational institution – the entity can self-assess its exempt status provided it is not also a charity. Tests apply.	
Employment organisations	18
Employee association – registered under an Australian law relating to the settlement of industrial disputes. The entity can self-assess its exempt status provided it is not also a charity. Tests apply.	
Employer association – registered under an Australian law relating to the settlement of industrial disputes. The entity can self-assess its exempt status provided it is not also a charity. Tests apply.	
Trade union – the entity can self-assess its exempt status provided it is not also a charity. Tests apply.	
Health organisations	18
Public hospital – the entity can self-assess its exempt status provided it is not also a charity. Tests apply.	
Non-profit hospital – a hospital carried on by a non-profit society or association. The entity can self-assess its exempt status provided it is not also a charity. Tests apply.	
Health benefits – a non-profit health benefits organisation registered for the purposes of the <i>National Health Act 1953</i> . The entity can self-assess its exempt status provided it is not also a charity. Tests apply.	
Hospital benefits – a non-profit hospital benefits organisation registered for the purposes of the <i>National Health Act 1953</i> . The entity can self-assess its exempt status provided it is not also a charity. Tests apply.	
Medical benefits – a non-profit medical benefits organisation registered for the purposes of the <i>National Health Act 1953</i> . The entity can self-assess its exempt status provided it is not also a charity. Tests apply.	
Income tax exempt fund	65
Income tax exempt fund – a non-charitable fund established by will or instrument of trust, solely for the purpose of providing money, property or benefits to, or establishing deductible gift recipients. The entity will need to be endorsed by the Tax Office as an income tax exempt fund to have exempt status.	

	Page
Religious organisations	20
Religious institution – the entity can self-assess its exempt status provided it is not also a charity. Tests apply.	
Resource development organisations	22
Agricultural resources – a non-profit society or association established for the purpose of promoting the development of Australian agricultural resources. The entity can self-assess its exempt status provided it is not also a charity.	
Aquacultural resources – a non-profit society or association established for the purpose of promoting the development of Australian aquacultural resources. The entity can self-assess its exempt status provided it is not also a charity.	
Aviation – a non-profit society or association established for the purpose of promoting the development of aviation. The entity can self-assess its exempt status provided it is not also a charity.	
Fishing resources – a non-profit society or association established for the purpose of promoting the development of Australian fishing resources. The entity can self-assess its exempt status provided it is not also a charity.	
Horticultural resources – a non-profit society or association established for the purpose of promoting the development of Australian horticultural resources. The entity can self-assess its exempt status provided it is not also a charity.	
Industrial resources – a non-profit society or association established for the purpose of promoting the development of Australian industrial resources. The entity can self-assess its exempt status provided it is not also a charity.	
Manufacturing resources – a non-profit society or association established for the purpose of promoting the development of Australian manufacturing resources. The entity can self-assess its exempt status provided it is not also a charity.	
Pastoral resources – a non-profit society or association established for the purpose of promoting the development of Australian pastoral resources. The entity can self-assess its exempt status provided it is not also a charity.	
Tourism – a non-profit society or association established for the purpose of promoting the development of tourism. The entity can self-assess its exempt status provided it is not also a charity.	
Viticultural resources – a non-profit society or association established for the purpose of promoting the development of Australian viticultural resources. The entity can self-assess its exempt status provided it is not also a charity.	
Information and communications technology resources – a non-profit society or association established for the purpose of promoting the development of Australian information and communications technology resources. The entity can self-assess its exempt status provided it is not also a charity.	
Scientific organisations	23
Scientific institution – the entity can self-assess its exempt status provided it is not also a charity. Tests apply.	
Science association – a non-profit society, association or club established for the encouragement of science. The entity can self-assess its exempt status provided it is not also a charity. Tests apply.	
Scientific research fund – a fund established to enable scientific research to be conducted by or in conjunction with a public university or public hospital. The entity can self-assess its exempt status provided it is not also a charity or income tax exempt fund. Tests apply.	
Sporting organisations	26
Animal racing – a non-profit society, association or club established for the encouragement of animal racing. The entity can self-assess its exempt status provided it is not also a charity. Tests apply.	
Game or sport – a non-profit society, association or club established for the encouragement of a game or sport. The entity can self-assess its exempt status provided it is not also a charity. Tests apply.	

TYPE OF EXEMPT ENTITY – DESCRIPTION

COMMUNITY SERVICE ORGANISATIONS

Your organisation will be exempt from income tax and can self-assess its exemption if:

- it is a non-profit society, association or club ('non-profit' is explained on page 6)
- it is established for community service purposes, except political or lobbying purposes
- it is not a charity, and
- it meets at least one of three tests.

Type of organisation

The main purpose of the organisation must be community service purposes. To work out your organisation's main purpose, you should look at your organisation's constituent documents, activities, use of funds, and history. Any other purpose of the organisation must be incidental, ancillary or secondary to the community service purpose.

Community service purposes are altruistic – that is, community service organisations are established and operated with regard to the wellbeing and benefit of others.

Community service organisations promote, provide or carry out activities, facilities or projects for the benefit or welfare of the community or any members who have a particular need by reason of youth, age, infirmity or disablement, poverty or social or economic circumstances.

Community service organisations include:

- associations of Justices of the Peace
- associations of play groups
- traditional service clubs
- community service clubs, and
- pensioner or senior citizens associations.

Organisations that seek to advance the common interests of their members are not altruistic and so cannot be community service organisations. If an organisation's main purpose is lobbying or political, its income will not be exempt.

Non-community service organisations include:

- clubs that promote public speaking or debating
- clubs that provide a social forum for retired or semi-retired business people, senior public servants and the like
- clubs that provide a social forum for expatriates of a particular country
- pensioner associations that conduct significant political or lobbying activities
- military service unit organisations, and
- social clubs for newcomers to a particular residential area.

MORE INFORMATION

Refer to Taxation Determination 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*.

To obtain this publication, see 'More information' on the inside back cover.

Charity

If your organisation is a community service organisation, it might also be a charity. Refer to chapter 3 – 'Is your organisation a charity?' for more information.

If a community service organisation is also a charity, it must meet the special requirements for charities to be income tax exempt. See chapter 4 – 'Endorsement as an income tax exempt charity'.

Many community service organisations will be charities. Organisations that have the purpose of advancing the common interests of their members are not charities. From 1 July 2004 the law has been clarified to ensure that certain open and non-discriminatory self-help groups will not be excluded from being charities. See 'Legislative extension to the meaning of charity' on page 34.

Three tests

For a community service organisation that is not a charity to be exempt from income tax, it must pass one of the following tests:

- 1 physical presence in Australia test
- 2 deductible gift recipient test, or
- 3 prescribed by law test.

Does your organisation exist, operate and incur its expenditure solely and entirely in Australia?

YES

Your organisation meets the physical presence in Australia test. You do not need to read any further about the three tests.

NO

See the explanation of the three tests on page 28.

CHECKLIST

Your organisation will be exempt from income tax if it meets all of the following requirements:

- it is a non-profit society, association or club
- it is established for community service purposes (except political or lobbying purposes)
- it is not a charity, and
- it meets one of the three tests.

Entitlements and responsibilities

Being exempt from income tax gives your organisation important income tax entitlements:

- it does not need to lodge an income tax return (unless specifically asked to), and
- it does not need to get confirmation of its exemption from the Tax Office.

To make sure your organisation is exempt from income tax, you should:

- complete 'Worksheet 1 – working out your organisation's income tax status' on page 85 for your organisation's records, and
- carry out a yearly review to check if your organisation is still exempt. You should also do this when there are major changes to your organisation's structure or activities (Worksheet 1 on page 85 will help you self-review).

Irrespective of whether your organisation is income tax exempt, other taxes and concessions may apply to your organisation. See chapter 7 – 'Other tax issues'.

If your organisation does not meet all the requirements for exemption, you should check the other exemption categories in the table on pages 12 to 13. Organisations that are not exempt are taxable – see chapter 6 – 'Taxable organisations'.

CULTURAL ORGANISATIONS

Your organisation will be exempt from income tax and can self-assess its exemption if:

- it is a non-profit society, association or club ('non-profit' is explained on page 6)
- it is established for
 - the encouragement of art, literature or music, or
 - musical purposes
- it is not a charity, and
- it meets at least one of three tests.

Types of organisation

The main purpose of your organisation must be the encouragement of art, literature or music, or musical purposes. To work out your organisation's main purpose you should look at your organisation's constituent documents, activities, use of funds, and its history. Any other purpose of the organisation must be incidental, ancillary or secondary to the musical purposes or encouragement of art, literature or music.

The words art, literature and music are not defined in the legislation and take their natural meaning.

For this exemption, art includes drama and ballet as well as painting, architecture and sculpture. It does not include exhibition of stamps by philatelic clubs and associations.

Literature includes a wide range of written or printed works. It includes works in different languages, on particular subjects or by particular authors.

Music includes the performance of vocal or instrumental works, and covers various styles (for example, classical, jazz, popular and liturgical).

Encouragement can include training, performing, displaying, providing information, studying, judging and critiquing. Professional associations set up to advance the common interests of their members (for example, artists or performers) do not have the required purpose.

EXAMPLES

Example 1

A non-profit society is set up to give people access to the writings of John Dennis. It lends books to members, runs a reading circle and helps people doing tertiary study on the author.

The society is established to encourage literature.

Example 2

A non-profit association is set up to perform Indian music written by contemporary Queensland composers. It liaises with composers, gets instruments and performs the music.

The association is established for musical purposes.

If your organisation's main purpose is providing social and recreational facilities and activities it will not be exempt. This is the case even if your organisation also gives money to encourage the arts, literature or music.

EXAMPLE

A non-profit club's main operations are providing dining, gaming and leisure facilities at its clubhouse. It gives a yearly grant to an associated singing club, but is not involved with the singing itself.

It is not exempt.

Charity

If your organisation is a cultural organisation it might also be a charity. Refer to chapter 3 – 'Is your organisation a charity?' for more information.

If a cultural organisation is also a charity it must meet the special requirements for charities to be income tax exempt. See chapter 4 – 'Endorsement as an income tax exempt charity'.

Cultural organisations that operate for the public benefit to advance the arts or educate the public in the arts are likely to be charities. Organisations will not be charities if they are primarily recreational, for entertainment, or for the benefit of their members.

EXAMPLES

Example 1

A non-profit society is set up for study of Henry Lawson's writings. It operates only for subscribing members.

The society is not a charity because it is not operated for the public benefit.

Example 2

A non-profit club is set up to provide a venue for jazz musicians to jam.

The club is not a charity. It is primarily recreational and for the benefit of its members.

Three tests

For a cultural organisation that is not a charity to be exempt from income tax, it must pass one of the following tests:

- 1 physical presence in Australia test
- 2 deductible gift recipient test, or
- 3 prescribed by law test.

Does your organisation exist, operate and incur its expenditure solely and entirely in Australia?

YES Your organisation meets the physical presence in Australia test. You do not need to read any further about the three tests.

NO See the explanation of the three tests on page 28.

CHECKLIST

Your organisation will be exempt from income tax if it meets all of the following requirements:

- it is a non-profit society, association or club
- it is established for
 - the encouragement of art, literature or music, or
 - musical purposes
- it is not a charity, and
- it meets one of the three tests.

Entitlements and responsibilities

Being exempt from income tax gives your organisation important income tax entitlements:

- it does not need to lodge an income tax return (unless specifically asked to), and
- it does not need to get confirmation of its exemption from the Tax Office.

To make sure your organisation is exempt from income tax, you should:

- complete 'Worksheet 1 – working out your organisation's income tax status' on page 85 for your organisation's records, and
- carry out a yearly review to check if your organisation is still exempt. You should also do this when there are major changes to your organisation's structure or activities (Worksheet 1 on page 85 will help you self-review).

Irrespective of whether your organisation is income tax exempt, other taxes and concessions may apply to your organisation. See chapter 7 – 'Other tax issues'.

If your organisation does not meet all the requirements for exemption, you should check the other exemption categories in the table on pages 12 to 13. Organisations that are not exempt are taxable – see chapter 6 – 'Taxable organisations'.

EDUCATIONAL ORGANISATIONS

Your organisation will be exempt from income tax and can self-assess its exemption if:

- it is a public educational institution
- it is not a charity, and
- it meets at least one of three tests.

Public educational institution

A public educational institution is an institution that is available or open to the public or a section of the public and whose sole purpose is providing education. Any other purpose of the organisation must be incidental or ancillary to providing public education. Education in this context does not extend to merely providing information or lobbying.

Public educational institutions include:

- universities or colleges managed by public bodies
- grammar schools
- primary and secondary schools run by churches or religious bodies, and
- non-profit business colleges.

Non-public educational institutions include:

- colleges run for the profit of the private owners
- associations operated for their members' professional benefit, and
- promotional and lobbying bodies.

Many other organisations connected with education are not public educational institutions. Examples are a parents and friends committee and a scholarship provider. These organisations should check chapter 3 – 'Is your organisation a charity?' to see if they can be exempt as charities.

Charity

If your organisation is an educational organisation, it might also be a charity. Refer to chapter 3 – 'Is your organisation a charity?' for more information.

If a public education institution is also a charity, it must meet the special requirements for charities to be income tax exempt. See chapter 4 – 'Endorsement as an income tax exempt charity'.

Most public educational institutions are likely to be charities.

Three tests

For an educational organisation that is not a charity to be exempt from income tax, it must pass one of the following tests:

- 1 physical presence in Australia test
- 2 deductible gift recipient test, or
- 3 prescribed by law test.

Does your organisation exist, operate and incur its expenditure solely and entirely in Australia?

YES Your organisation meets the physical presence in Australia test. You do not need to read any further about the three tests.

NO See the explanation of the three tests on page 28.

CHECKLIST

Your organisation will be exempt from income tax if it meets all of the following requirements:

- it is a public educational institution
- it is not a charity, and
- it meets at least one of the three tests.

Entitlements and responsibilities

Being exempt from income tax gives your organisation important income tax entitlements:

- it does not need to lodge an income tax return (unless specifically asked to), and
- it does not need to get confirmation of its exemption from the Tax Office.

To make sure your organisation is exempt from income tax, you should:

- complete 'Worksheet 1 – working out your organisation's income tax status' on page 85 for your organisation's records, and
- carry out a yearly review to check if your organisation is still exempt. You should also do this when there are major changes to your organisation's structure or activities (Worksheet 1 on page 85 will help you self-review).

Irrespective of whether your organisation is income tax exempt, other taxes and concessions may apply to your organisation. See chapter 7 – 'Other tax issues'.

If your organisation does not meet all exemption requirements, you should check the other exemption categories in the table on pages 12 to 13. Organisations that are not exempt are taxable – see chapter 6 – 'Taxable organisations'.

EMPLOYMENT ORGANISATIONS

Three types of employment organisations can be exempt:

- trade unions
- employee associations that are registered under a Commonwealth, state or territory law relating to the settlement of industrial disputes, and
- employer associations that are registered under a Commonwealth, state or territory law relating to the settlement of industrial disputes. (An employer association that is not registered cannot qualify as a trade union.)

To be exempt, these three types of organisations must:

- be located in Australia, and
- pursue their objectives and incur their expenditure principally in Australia.

Limit on exemption

The exemption does not apply to the investment income from superannuation, life assurance and accident and disability insurance business of some registered trade unions and some employee associations.

HEALTH ORGANISATIONS

A hospital can be exempt from income tax and can self-assess its exemption if:

- it is
 - a public hospital, or
 - a hospital that is carried on by a non-profit society or association ('non-profit' is explained on page 6)
- it is not a charity, and
- it meets at least one of three tests.

A hospital is an institution in which patients are received for continuous medical care and treatment for sickness, disease or injury. The provision of accommodation is integral to a hospital's care and treatment.

Clinics that mainly treat ambulatory patients who return to their homes after each visit are not hospitals. However, day surgeries that provide beds for patients to recover after surgery may be hospitals.

Homes to provide nursing care for feeding, cleanliness and the like are not hospitals. However, nursing homes for people suffering from illness are accepted as hospitals.

Hospices for the terminally ill will generally be hospitals. Minor outpatient and nursing care will not prevent an institution being a hospital.

Non-profit hospitals include those run by churches and religious orders.

Charity

If your organisation is a health organisation it might also be a charity. Refer to chapter 3 – 'Is your organisation a charity?' for more information.

If an organisation is also a charity, it must meet the special requirements for charities to be income tax exempt. See chapter 4 – 'Endorsement as an income tax exempt charity'.

Many hospitals, including many run by religious organisations, are charities. If your hospital is a public benevolent institution, it is a charity. A hospital is not a charity if it is run only to treat the members of its controlling association or society.

EXAMPLE

A non-profit hospital is set up by an employer to treat its staff and their families.

The hospital is not a charity because it is only for a private group and not for the benefit of the community.

Three tests

For a hospital that is not a charity to be exempt from income tax, it must pass one of the following tests:

- 1 physical presence in Australia test
- 2 deductible gift recipient test, or
- 3 prescribed by law test.

Does your organisation exist, operate and incur its expenditure solely and entirely in Australia?

YES Your organisation meets the physical presence in Australia test. You do not need to read any further about the three tests.

NO See the explanation of the three tests on page 28.

CHECKLIST

Your organisation will be exempt from income tax if it meets all of the following requirements:

- it is
 - a public hospital, or
 - a hospital that is carried on by a non-profit society or association
- it is not a charity, and
- it meets at least one of the three tests.

Entitlements and responsibilities

Being exempt from income tax gives your organisation important income tax entitlements:

- it does not need to lodge an income tax return (unless specifically asked to), and
- it does not need to get confirmation of its exemption from the Tax Office.

To make sure your organisation is exempt from income tax, you should:

- complete 'Worksheet 1 – working out your organisation's income tax status' on page 85 for your organisation's records, and
- carry out a yearly review to check if your organisation is still exempt. You should also do this when there are major changes to your organisation's structure or activities (Worksheet 1 on page 85 will help you self-review).

Irrespective of whether your organisation is income tax exempt, other taxes and concessions may apply to your organisation. See chapter 7 – 'Other tax issues'.

If your organisation does not meet all the requirements for exemption, you should check the other exemption categories in the table on pages 12 to 13. Organisations that are not exempt are taxable – see chapter 6 – 'Taxable organisations'.

Benefits organisations

Non-profit medical, health and hospital benefits organisations registered for the purposes of the *National Health Act 1953* are also exempt from income tax.

RELIGIOUS ORGANISATIONS

Your organisation will be exempt from income tax and can self-assess its exemption if:

- it is a religious institution
- it is not a charity, and
- it meets at least one of four other conditions.

Religious institution

Your organisation will be a religious institution if it is an establishment, organisation or association that is instituted to advance or promote religious purposes.

An institution may have the legal structure of an unincorporated association or a corporation. However, incorporation is not enough, on its own, for an organisation to be an institution. Its activities, size, permanence and recognition will be relevant.

An organisation that is established, controlled and operated by family members and friends would not normally be an institution.

EXAMPLE

A corporation is set up and controlled by a family. Its object is to spread the gospel. The only activities are holding assets and arranging for the father of the family to speak at churches on some Sundays.

The corporation is not an institution.

An institution will be a religious institution if:

- its objects and activities reflect its character as a body instituted for the promotion of some religious object, and
- the beliefs and practices of the members constitute a religion.

The term 'religion' is not confined to major religions such as Christianity, Islam, Judaism, but also extends to Buddhism, Taoism, Jehovah's Witness, the Free Daist Communion of Australia and Scientology. The categories of religion are not closed. Nonetheless, to be a religion there must be:

- belief in a supernatural being, thing or principle, and
- acceptance of canons of conduct that give effect to that belief, but that do not offend against the ordinary laws.

Charity

If your organisation is a religious organisation it might also be a charity. Refer to chapter 3 – 'Is your organisation a charity?' for more information.

If a religious institution is also a charity, it must meet the special requirements for charities to be income tax exempt. See chapter 4 – 'Endorsement as an income tax exempt charity'.

The vast majority of religious institutions are charities. An example of a religious institution that is not a charity could be a closed group that is conducted only for the benefit of its members and not for the public.

EXAMPLES

Example 1

A scriptural college was established for descendants of Northern Ireland Protestants who had settled in New South Wales before 1880.

The college would not be a charity because it was not established for the public benefit. Those to benefit were selected on the basis of relationship to particular people.

Example 2

A group of 13 families formed an association 80 years ago. It solely owns and runs a shrine. Use of the shrine is limited to members of the families.

The association is not a charity because it is not for the public benefit.

From 1 July 2004 the law has been clarified to ensure that closed or contemplative religious orders that regularly undertake prayerful intervention at the request of members of the public are accepted as providing a public benefit. Provided the religious order's purposes are charitable such entities are likely to be charities. See 'Legislative extension to the meaning of charity' on page 34 for more information.

If you have worked out that you are not a charity, continue reading.

Four other conditions

There are further conditions a religious institution must meet to be exempt from income tax. The religious institution:

- must meet one of the three tests, or
- must be listed by name in the income tax regulations for these purposes, and have a physical presence in Australia but pursue its objectives and incur its expenditure principally outside Australia.

The three tests are:

- 1 physical presence in Australia test
- 2 deductible gift recipient test, or
- 3 prescribed by law test.

Does your organisation exist, operate and incur its expenditure solely and entirely in Australia?

YES Your organisation meets the physical presence in Australia test. You do not need to read any further about the three tests.

NO See the explanation of the three tests on page 28.

CHECKLIST

Your organisation will be exempt from income tax if it meets all of the following requirements:

- it is a religious institution
- it is not a charity, and
- it meets at least one of four other conditions.

Entitlements and responsibilities

Being exempt from income tax gives your organisation important income tax entitlements:

- your organisation does not need to lodge an income tax return (unless specifically asked to), and
- it does not need to get confirmation of its exemption from the Tax Office.

To make sure your organisation is exempt from income tax, you should:

- complete 'Worksheet 1 – working out your organisation's income tax status' on page 85 for your organisation's records, and
- carry out a yearly review to check if you are still exempt.

You should also do this when there are major changes to your organisation's structure or activities (Worksheet 1 on page 85 will help you self-review).

Irrespective of whether you are income tax exempt, other taxes and concessions may apply to your organisation. See chapter 7 – 'Other tax issues'.

If your organisation does not meet all the requirements for exemption, you should check the other exemption categories in the table on pages 12 to 13. Organisations that are not exempt are taxable – see chapter 6 – 'Taxable organisations'.

RESOURCE DEVELOPMENT ORGANISATIONS

A range of resource development organisations can be exempt from income tax and can self-assess their exemption if they are not charities. The organisations must be non-profit ('non-profit' is explained on page 6). They must also be established for the purpose of promoting the development of:

- aviation
- tourism
- agricultural resources of Australia
- aquacultural resources of Australia
- fishing resources of Australia
- horticultural resources of Australia
- industrial resources of Australia
- manufacturing resources of Australia
- pastoral resources of Australia
- viticultural resources of Australia, or
- Australian information and communication technology resources.

Types of organisation

Aviation, tourism and the various resources have their ordinary meaning. Industrial resources include building, mining, quarrying, shipping and transport, but do not include business and commercial resources such as insurance and services such as surveying.

EXAMPLE

Pastoral resources include infrastructure, facilities, plant and equipment, personnel, knowledge, expertise and skills.

Promoting development can be by various means, including research, providing facilities, training, improving marketing methods, facilitating cooperation, and similar activities.

EXAMPLE

A non-profit association's purpose is to run a tourism information booth. Its volunteers provide brochures and information to tourists and residents about all the tourism opportunities in the district.

The association is promoting the development of tourism.

The main purpose of the society, association or club must be promoting the development of the relevant resources. To work out your organisation's main purpose you should look at its constituent documents, activities, use of funds, and its history. Any other purpose of the organisation must be incidental, ancillary or secondary to promoting development of the relevant resources.

If the organisation's main purpose is merely to provide services to its members, it will not be exempt. This is the case even if the services result in better use of resources by those members.

EXAMPLE

A non-profit association is set up by a group of horticulture businesses. Its purpose is to buy supplies for the members in bulk and undertake joint marketing of their businesses.

The association is not promoting the development of horticultural resources.

Charity

If your organisation is a resource development organisation, it might also be a charity. For more information, see chapter 3 – 'Is your organisation a charity?'

If an organisation is also a charity, to be income tax exempt it must meet the special requirements for charities. See chapter 4 – 'Endorsement as an income tax exempt charity'.

Many resource development organisations are charities. To be a charity, your organisation's sole purpose must be for the benefit of the community. Any other purposes must be incidental to that purpose.

EXAMPLE

A community board is set up to market an agricultural product grown by farmers in the district. The board comprises community, grower, government, union and business representatives.

The board is not a charity because it provides benefits to particular businesses.

From 1 July 2004 the law has been clarified to ensure that certain open and non-discriminatory self-help groups will not be excluded from being charities. See 'Legislative extension to the meaning of charity' on page 34.

CHECKLIST

Your organisation will be exempt from income tax if it meets all of the following requirements:

- it is a non-profit society or association
- it is not a charity, and
- it is established for the purpose of promoting the development of
 - aviation
 - tourism
 - agricultural resources of Australia
 - aquacultural resources of Australia
 - fishing resources of Australia
 - horticultural resources of Australia
 - industrial resources of Australia
 - manufacturing resources of Australia
 - pastoral resources of Australia
 - viticultural resources of Australia, or
 - Australian information and communications technology resources.

Entitlements and responsibilities

Being exempt from income tax gives you important income tax entitlements:

- your organisation does not need to lodge an income tax return (unless specifically asked to), and
- your organisation does not need to get confirmation of its exemption from the Tax Office.

To make sure your organisation is exempt from income tax, you should:

- complete 'Worksheet 1 – working out your organisation's income tax status' on page 85 for your organisation's records, and
- carry out a yearly review to check if your organisation is still exempt. You should also do this when there are major changes to your organisation's structure or activities (Worksheet 1 on page 85 will help you self-review).

Irrespective of whether your organisation is income tax exempt, other taxes and concessions may apply to your organisation. See chapter 7 – 'Other tax issues'.

If your organisation does not meet all the requirements for exemption, you should check the other exemption categories in the table on pages 12 to 13. Organisations that are not exempt are taxable – see chapter 6 – 'Taxable organisations'.

SCIENTIFIC ORGANISATIONS

Three types of entity can be exempt from income tax:

- scientific institutions
- non-profit societies, associations or clubs established for the encouragement of science ('non-profit' is explained on page 6), and
- funds established to enable scientific research to be conducted by or with a public university or public hospital.

Types of organisation

For these purposes, science has its ordinary meaning. It is not limited to the physical sciences and includes the human and applied sciences.

Scientific institutions

Scientific institutions are set up and operated primarily to advance science. Common ways of advancing science include research, exploration and teaching. Disseminating information will often be involved.

Scientific institutions do not include:

- organisations run for the profit of their individual owners or members, and
- professional associations primarily run for the professional or business interests of their members.

EXAMPLES

Example 1

An institution is set up to hold conferences and meetings on an aspect of engineering. Any professional advantage the engineer members gain is only through the institution's advancement of science.

The institution is a scientific institution.

Example 2

A non-profit organisation is set up to carry out scientific research. All research is carried out under contract, with the client owning the intellectual property and the organisation bound not to disclose any information about the research.

The organisation is not a scientific institution.

Scientific associations

The main purpose of the society or association must be encouragement of science. Recreational or hobby clubs do not qualify. The main purpose must not be promoting the professional or business interests of members.

EXAMPLES

Example 1

A group of frog enthusiasts sets up a non-profit society to observe frogs in the district and record changes in their types, numbers and habits.

The society is established for the encouragement of science.

Example 2

A non-profit organisation is set up to advance the profession of surveying, raise professional standards and represent the profession to government and industry.

The organisation is not a scientific association.

Scientific research funds

The organisation must be no more than a fund, and it must have sufficient links with public universities or public hospitals. The fund itself does not conduct the scientific research. It is conducted by the university or hospital or by other bodies in conjunction with them. The fund may enable the research by various means including providing money or facilities.

EXAMPLE

A fund's sole object is to provide money to a public university for it to carry out medical research. The fund's investment income is given to the university under an agreement requiring it to be used only for medical research.

The fund can qualify for income tax exemption if it meets the other conditions.

Charity and income tax exempt fund

If your organisation is one of these types of organisation it might also be a charity. See chapter 3 – 'Is your organisation a charity?' for more information.

Scientific organisations that are charities must also meet the special requirements for charities to be income tax exempt. See chapter 4 – 'Endorsement as an income tax exempt charity'.

While most scientific institutions are likely to be charities, a scientific association will not be a charity if it is carried on for the benefit of its members rather than for the community.

If your organisation is a scientific research fund that also meets the requirements to be endorsed as an income tax exempt fund, it needs to be endorsed by the Tax Office to be income tax exempt. See chapter 5 – 'Income tax exempt funds'.

Other conditions

Scientific institutions and scientific associations

For a scientific institution or scientific association that is not a charity to be exempt from income tax, it must pass one of the following tests:

- 1 physical presence in Australia test
- 2 deductible gift recipient test, or
- 3 prescribed by law test.

Does your organisation exist, operate and incur its expenditure solely and entirely in Australia?

YES Your organisation meets the physical presence in Australia test. You do not need to read any further about the three tests.

NO See the explanation of the three tests on page 28.

Scientific research funds

For a scientific research fund, that is not a charity and not an income tax exempt fund, to be exempt from income tax, the fund must be applied for the purposes for which it was established. If it is being applied for other purposes it will not be exempt.

The scientific research fund must also meet at least one of two conditions.

One condition is that the fund is a deductible gift recipient (DGR). DGRs are entitled to receive income tax deductible gifts.

To meet the other condition, the fund must:

- be established to enable the scientific research to be conducted principally in Australia by, or in conjunction with, the public university or public hospital
- be located in Australia, and
- incur its expenditure principally in Australia.

In working out whether expenditure is principally incurred in Australia, the fund can disregard any distributions it makes of amounts it received as gifts or government grants.

CHECKLIST

Your organisation will be exempt from income tax if it meets all of the following requirements:

- it is
 - a scientific institution
 - a non-profit society, association or club established for the encouragement of science, or
 - a fund established to enable scientific research to be conducted by or with a public university or public hospital
- it is not a charity
- it is not an income tax exempt fund, and
- it meets the other conditions for exemption.

Entitlements and responsibilities

Being exempt from income tax gives your organisation important income tax entitlements:

- it does not need to lodge an income tax return (unless specifically asked to), and
- it does not need to get confirmation of its exemption from the Tax Office.

To make sure your organisation is exempt from income tax, you should:

- complete 'Worksheet 1 – working out your organisation's income tax status' on page 85 for your organisation's records, and
- carry out a yearly review to check if your organisation is still exempt. You should also do this when there are major changes to your organisation's structure or activities (Worksheet 1 on page 85 will help you self-review).

Irrespective of whether your organisation is income tax exempt, other taxes and concessions may apply to your organisation. See chapter 7 – 'Other tax issues'.

If your organisation does not meet all the requirements for exemption, you should check the other exemption categories in the table on pages 12 to 13. Organisations that are not exempt are taxable – see chapter 6 – 'Taxable organisations'.

SPORTING ORGANISATIONS

Your organisation will be exempt from income tax and can self-assess its exemption if:

- it is a non-profit society, association or club ('non-profit' is explained on page 6)
- it is established for the encouragement of
 - a game or sport, or
 - animal racing
- it is not a charity, and
- it meets at least one of three tests.

Type of organisation

The main purpose of the society, association or club must be encouragement of a game or sport, or animal racing. To work out your organisation's main purpose, you should look at its constituent documents, activities, use of funds, and history. Any other purpose of the organisation must be incidental, ancillary or secondary to encouragement of the game, sport or animal racing.

MORE INFORMATION

Refer to Taxation Ruling TR 97/22 Income tax: exempt sporting clubs.

To obtain this publication, see 'More information' on the inside back cover.

If your organisation's main purpose is providing social and recreational facilities and activities, it will not be exempt. This is the case even if your organisation also gives money to encourage games, sports or animal racing.

EXAMPLE

A non-profit club's main operations are providing dining, gaming and leisure facilities at its clubhouse. It gives a yearly grant to an associated rowing club, but is not involved in rowing itself.

It is not exempt.

Game or sport

The words 'game' and 'sport' are not defined and take their ordinary meaning. Games and sports extend to athletic games or sports (such as football and swimming), and non-athletic games (such as chess and bridge). They do not extend to stamp-collecting, keeping and showing pets, making model railways, maintaining vintage cars, and various social and recreational pursuits. For more information, refer to Taxation Ruling TR 97/22 Income tax: exempt sporting clubs.

Encouragement of the games or sports extends to less direct means such as research or testing, developing referees, and providing sporting facilities.

EXAMPLE

A non-profit association's purpose is to provide a sports ground for use by the local hockey, soccer and cricket clubs.

The association will be exempt if it is not a charity and also meets one of the three tests.

Animal racing

The exemption covers horse racing and trotting, and greyhound racing, but also extends to the racing of other animals.

Charity

If your organisation is one of these types of organisation it might also be a charity. Refer to chapter 3 – 'Is your organisation a charity?' for more information.

If your sporting organisation is also a charity, it must meet the special requirements for charities to be income tax exempt. See chapter 4 – 'Endorsement as an income tax exempt charity'.

The vast majority of sporting clubs are not charities. Your organisation will only be a charity if its encouragement of the game, sport or animal racing is wholly integrated in carrying out purposes that are charitable. Such charitable purposes include advancing education and relieving the condition of the sick or disabled.

EXAMPLE

Sporting clubs that are charities include:

- a club wholly integrated in a school or university and furthering its educational aims
- a club that primarily uses a game to help rehabilitate the sick, and
- a club that primarily uses a sport to relieve disability.

Three tests

For a sporting organisation that is not a charity to be exempt from income tax, it must pass one of the following tests:

- 1 physical presence in Australia test
- 2 deductible gift recipient test, or
- 3 prescribed by law test.

Does your organisation exist, operate and incur its expenditure solely and entirely in Australia?

YES Your organisation meets the physical presence in Australia test. You do not need to read any further about the three tests.

NO See the explanation of the three tests on page 28.

CHECKLIST

Your organisation will be exempt from income tax if it meets all of the following requirements:

- it is a non-profit society, association or club
- it is established for the encouragement of
 - a game or sport, or
 - animal racing
- it is not a charity, and
- it meets one of the three tests.

Entitlements and responsibilities

Being exempt from income tax gives your organisation important income tax entitlements:

- your organisation does not need to lodge an income tax return (unless specifically asked to), and
- your organisation does not need to get confirmation of its exemption from the Tax Office.

To make sure your organisation is exempt from income tax, you should:

- complete 'Worksheet 1 – working out your organisation's income tax status' on page 85 for your organisation's records, and
- carry out a yearly review to check if your organisation is still exempt. You should also do this when there are major changes to your organisation's structure or activities (Worksheet 1 on page 85 will help you self-review).


Irrespective of whether your organisation is income tax exempt, other taxes and concessions may apply to your organisation. See chapter 7 – 'Other tax issues'.

If your organisation does not meet all the requirements for exemption, you should check the other exemption categories in the table on pages 12 to 13. Organisations that are not exempt are taxable – see chapter 6 – 'Taxable organisations'.

EXPLANATION OF THE THREE TESTS

Some organisations must pass **one of three** tests to be exempt from income tax. The tests are:

- physical presence in Australia test
- deductible gift recipient test, and
- prescribed by law test.

 You do not need to read this section if your organisation is not required to meet one of the three tests.

The description of exempt entities on pages 14 to 27 advises whether an organisation must pass one of these tests.

PHYSICAL PRESENCE IN AUSTRALIA TEST

This test has two elements.

- 1 Does your organisation have a physical presence in Australia?
- 2 To the extent your organisation has a physical presence in Australia, does it pursue its objectives and incur its expenditure principally in Australia? If your organisation does not meet these requirements, it may still satisfy the test – see ‘Disregarded amounts’ on page 29.

Physical presence

An organisation has a physical presence in Australia if it is wholly in Australia, or it has a division, branch or sub-division in Australia.

It does not have a physical presence in Australia if it is present in Australia only through an agent, or it merely owns investment property in Australia.

Objectives and expenditure principally in Australia

If your organisation has a physical presence in Australia only, it must pursue its objectives and incur its expenditure principally in Australia.

‘Principally’ means mainly or chiefly. Less than 50% is not principally.

The pursuit of objectives in Australia can include things done offshore if they are only a means of pursuing those objectives. For example, sending employees to an offshore conference to aid their efficiency for the Australian objectives will be pursuing objectives in Australia.

EXAMPLE

A community service association is physically present only in Australia, but it also sends materials to organisations overseas. As long as these activities and expenditure are not major, it will meet the physical presence in Australia test.

If your organisation has a physical presence in Australia as well as another country, it is necessary to work out the extent to which it is physically present in Australia. Then it is only to that extent that the purposes and expenditure must be principally in Australia.

This means an organisation that, when viewed as a whole, does not principally have its purposes and expenditure in Australia, can still meet the physical presence in Australia test.

EXAMPLES

Example 1

A sports club operates two centres, one in Australia and one in Papua New Guinea. Each centre operates separately, with general administration being done in Papua New Guinea.

If the Australian activities and expenditure are mainly for the Australian centre, it will meet the physical presence in Australia test.

Example 2

BNM Welfare is a community service organisation. It runs four centres, one in Australia and three in Malaysia. All funding comes from Australia and a similar amount is spent on each centre.

To the extent BNM Welfare has a physical presence in Australia, it is not principally pursuing its objectives and incurring its expenditure in Australia. It could only meet the physical presence in Australia test through the distribution of disregarded amounts (see page 29).

Disregarded amounts

An organisation may still meet the physical presence in Australia test even if it does not, in fact, pursue its purposes and incur its expenditure principally in Australia, to the extent it has a physical presence in Australia. This will depend on its distribution of its disregarded amounts.

Disregarded amounts are amounts that the organisation receives as:

- gifts, including testamentary gifts (that is, gifts made under a will)
- proceeds from raffles, dinners, auctions, jumble sales and similar fundraising activities, or
- government grants.

Distributions of these amounts are disregarded when working out where the entity pursues its objectives and incurs its expenditure.

The Tax Office assumes any offshore distributions are made first from any disregarded amounts that are able to be distributed offshore. The assumption does not apply if a disregarded amount cannot be distributed offshore. For example, government grants made only for use in Australia, or if a gift of land is physically in Australia, are not assumed to be distributed offshore.

The effect of making this assumption is that offshore distributions can be made up to the total of these amounts without jeopardising entitlement to exemption.

EXAMPLE

An Australian musical association also provides funding to a school in the Philippines to enable the purchase of musical instruments. The association hopes to promote and nurture musical education there. The distribution does not exceed its disregarded amounts.

Because the disregarded amounts are assumed to pay for the Philippine activities, the association can still meet the physical presence in Australia test.

Does your organisation meet this test and meet the requirements of an exempt entity type? For example, is it non-profit, does it satisfy the exempt entity type description, and is it not a charity?

YES Your organisation is exempt from income tax.

Go to the section 'If you work out your organisation is income tax exempt' on page 11.

NO Read on.

DEDUCTIBLE GIFT RECIPIENT TEST

The deductible gift recipient test requires that your organisation is a deductible gift recipient (DGR). The following is a brief explanation of DGRs.

DGRs are entities to which donors can make income tax deductible gifts. The income tax law determines which organisations and types of organisations can qualify as DGRs.

Some DGRs are listed by name in the income tax law. They include organisations like Amnesty International Australia and Landcare Australia. There are also prescribed private funds listed by name in the income tax regulations.

For other organisations to be DGRs, they must fall within a general DGR category set out in the income tax law. Examples are public benevolent institutions, public universities, public hospitals, school building funds, public libraries, registered cultural and environmental organisations, and ancillary funds.

All DGRs except those listed by name in the income tax law (including prescribed private funds) need to be endorsed by the Tax Office.

MORE INFORMATION

Deductible gift recipients are explained in detail in *GiftPack for deductible gift recipients & donors* (NAT 3132).

To obtain this publication, see 'More information' on the inside back cover.

If your organisation is a DGR listed by name in tax law or it is endorsed as a DGR in its own right, your organisation meets the deductible gift recipient test.

An organisation will not meet the deductible gift recipient test if it is endorsed as a DGR only for a fund or institution that it operates.

EXAMPLE

A community service organisation is endorsed as a DGR for a necessitous circumstances fund it operates. Gifts made to its necessitous circumstances fund could be tax deductible.

The community service organisation would not meet the deductible gift recipient test because it is a DGR only for the necessitous circumstances fund.

Does your organisation meet this test and meet the requirements of an exempt entity type? For example, is it non-profit, does it satisfy the exempt entity type description, and is it not a charity?

YES Your organisation is exempt from income tax.

Go to the section 'If you work out your organisation is income tax exempt' on page 11.

NO Read on.

PRESCRIBED BY LAW TEST

Organisations can be prescribed by name in the income tax regulations. The government decides which organisations will be prescribed. You can send applications for prescription to the Tax Office and we will forward them to the government for consideration.

If your organisation is not listed by name in the income tax regulations for exemption purposes, it does not meet this test.


If your organisation is prescribed by name, to meet this test, it must also be located outside Australia and be exempt from income tax in its country of residence.

Does your organisation meet this test and meet the requirements of an exempt entity type? For example, is it non-profit, does it satisfy the exempt entity type description, and is it not a charity?

YES Your organisation is exempt from income tax.

Go to the section 'If you work out your organisation is income tax exempt' on page 11.

NO See below.

 If your organisation has failed to meet the requirements of any exempt entity type, see the section 'If you work out your organisation is not income tax exempt' on page 11.

If you are unsure whether your organisation meets the requirements for income tax exemption see the section, 'If you cannot work out if your organisation is income tax exempt' on page 11.

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IS YOUR ORGANISATION A CHARITY?

03

This chapter helps you work out if your organisation is a charity and:

- explains the characteristics of charities
- outlines purposes that are not charitable
- includes a checklist of key points to work through, and
- provides lists of descriptions and examples of charities and non-charities.

WHAT IS A CHARITY?

A charity is an entity established for altruistic purposes that the law regards as charitable. The Tax Office does not set the criteria to decide whether or not an organisation is a charity. Criteria for deciding what is a charity have been established by case law.

Charities include most religious institutions, aged persons homes, homeless hostels, organisations relieving the special needs of people with disabilities and societies that promote the fine arts.

The characteristics of a charity are:

- it is an entity that is also a trust fund or an institution
- it exists for the public benefit or the relief of poverty
- its purposes are charitable within the legal sense of that term
- it is non-profit, and
- its sole purpose is charitable.

WHAT IS AN ENTITY?

An entity, for these purposes, includes a corporation, unincorporated association, trust or partnership. A charity must be an entity. A part of an entity – like a branch, division or account – is not treated as a charity.

The entity must be a trust fund or an institution. Whether an entity has the character of an institution will depend on a range of features including its activities, size, permanence, purposes and recognition. Incorporation is not enough, on its own, to show an entity is an institution. A charitable institution would not usually include an entity that is established, controlled and operated by family members and friends.

CHARITIES ARE FOR THE PUBLIC

Charities are altruistic and exist for the benefit of the community or the relief of poverty. If an entity places limits on those who can benefit from its activities, it may still be a charity if those limits are only to enable it to better carry out its charitable purposes.

Charities sometimes limit their activities to a particular segment of the community. Such groups include residents of a particular geographic area, people who practice a particular religion, or sufferers of a particular disability or condition. If the nature of the benefits provided by an organisation is compatible with such a limit, the purpose can be charitable.

EXAMPLE

Limiting access to a library to residents of a particular town could be for the public benefit, but limiting the use of a bridge to followers of a particular religion would not.

Charities often limit access so as to better provide their services to the community. Examples can include the enrolment procedures of schools, the membership procedures of a police and citizens youth club, referral policies of medical clinics, and the borrowing rules of libraries. The continuation and efficient administration of a charity can make such limits necessary.

EXAMPLE: Charity

A religious school only educates children who go through its enrolment procedure. If this is merely a means of enabling the school to provide its services to the community, the enrolment process does not disentitle the school from being a charity.

If an entity limits benefits on the basis of family ties, employment with a particular employer or membership of a particular association, it will not be a charity unless its purpose is solely to relieve poverty.

EXAMPLE: Non-charity

A fund is set up to provide scholarships for children of employees of a particular company. The fund is not charitable.

A business association is set up to advance the common interests of its members. It is not a charity because its purpose is to benefit its members and not the public. This is the case even though it funds research.

Certain organisations are accepted as meeting the public benefit requirement see 'Legislative extension to the meaning of charity' on page 34.

WHAT ARE CHARITABLE PURPOSES?

Charitable purposes are the relief of poverty, the relief of the needs of the aged, the relief of sickness or distress, the advancement of religion, the advancement of education, other purposes beneficial to the community, and the provision of child care services on a non-profit basis.

Not all entities that are of benefit to the community are charitable. The entity must be set up for purposes the law regards as charitable. These purposes are not limited to a finite list. As new community needs arise, the courts may recognise particular purposes as charitable.

We have provided examples of charities in the 'Type of organisation – list' on page 37.

The list introduces the characteristics of charities with further details, and examples of charities and non-charities are also provided.

CHARITIES ARE NON-PROFIT

An entity is not charitable if it is carried on for profit or gain to particular people, including its owners or members. This is the case, irrespective of the number of owners or members, or whether charitable consequences flow from the entity's activities.

EXAMPLE: Non-charity

A hospital is operated to distribute dividends to private shareholders. The hospital is not a charity even though it cares for the sick.

For a more detailed explanation of the meaning of non-profit see chapter 1 – 'Getting started'.

SOLE PURPOSE

The sole purpose of the entity must be charitable.

If an entity has an independent non-charitable purpose, it is not a charity even if that purpose is secondary.

EXAMPLE: Non-charity

An association has been set up to be a social club and to look after injured animals. It is not a charity even though it mainly cares for animals, with lesser attention given to the social club.

EXAMPLE: Charity

A religious congregation holds occasional sporting activities among members. These activities are designed to advance and foster religion among the group. The religious congregation is a charity. The sporting activities are incidental to its religious purpose.

A charity can also have purposes which, when viewed in isolation, would not be charitable, so long as they are no more than incidental or ancillary to the charitable purposes. That is, they are only done for the sake of, or in furtherance of, the charitable purposes. Such a charity is described as having a sole charitable purpose, with purposes that are incidental or ancillary to that charitable purpose.

The characteristics of each entity will determine whether it is a charity. An entity's governing or constituent documents (constitution, memorandum and articles of association, trust deed, rules, charter etc) must show that it is a charity. For entities that are not merely trust funds, their activities must also show they are charities.

EXAMPLE: Charity

A corporation limited by guarantee has the object of operating a volunteer disaster relief service for the public. Its activities are consistent with its object. The corporation is a charity.

A trust fund's object is to provide scholarships to disadvantaged Aboriginal school students. The trust fund is a charity.

Evidence supporting an organisation's purpose can be found in the following:

- written governing document/s such as trust deeds, memorandums and articles of association, constitutions, rules or charters
- copies of annual reports and financial statements (including detailed income and expenditure statements)
- activities undertaken
- minutes of relevant meetings, and
- pamphlets, brochures, newsletters, advertisements or any other literature that provides details or advertises an organisation's activities.

LEGISLATIVE EXTENSION TO THE MEANING OF CHARITY

A statutory extension to the common law meaning of charity introduced from 1 July 2004 allows:

- open and non-discriminatory self-help groups that are for charitable purposes only, and
- closed or contemplative religious orders that offer prayerful intervention for the public,

to meet the public benefit test. To be considered charities, these entities must satisfy all other characteristics of a charity. That is, these entities will also need to be non-profit, and have a sole purpose that is charitable.

Open and non-discriminatory self-help groups are associations established for the purpose of assisting individuals affected by:

- a particular disadvantage or discrimination, or
- a need, arising out of a particular disadvantage or discrimination, that is not being met.

It is expected that the association would be made up of, and controlled by, individuals who are affected by the disadvantage or discrimination, and that all of the criteria for membership to the group relate to its purpose. Membership should be open to any individual who satisfies the criteria.

The statutory extension also provides closed and contemplative religious orders that regularly undertake prayerful intervention at the request of members of the public to meet the public benefit requirement.

The provision of child care services on a non-profit basis is a charitable purpose under the statutory extension. Entities providing child care services on a non-profit basis must satisfy all other characteristics of a charity. For example, these entities will also need to meet the public benefit requirement.

MORE INFORMATION

See *Non-profit childcare providers and access to charity tax concessions* (NAT 11975).

To obtain this publication, see 'More information' on the inside back cover.

ORGANISATIONS THAT ARE NOT CHARITIES

Many community organisations are not charities. An entity is not a charity if:

- it is primarily for sporting, recreational or social purposes
- it is primarily for political, lobbying or promotional purposes
- its purpose is illegal or against public policy, or
- it is primarily for carrying on a commercial enterprise to generate surpluses.

Government departments and instrumentalities carrying out the ordinary functions of government are unlikely to be charities.

SPORTING, RECREATIONAL OR SOCIAL

Entities that are primarily for sporting and recreational purposes are not charities.

EXAMPLE: Non-charity

Organisations that are not charities include: rowing, football, dancing, bridge, card, athletic, horse racing, gem, boating and fishing, boxing, callisthenics, golf, ski, car, scuba-diving and motor-racing clubs, as well as model train societies and snooker centres.

Entities that are primarily for social or entertainment purposes are not charitable.

EXAMPLE: Non-charity

Organisations that are not charities include social clubs run by veterans organisations and religious institutions, ethnic cultural associations, wine societies, cinema, nudist, singles, friendship and fan clubs.

Sporting, recreational or social activities can be carried out by a charity if they are merely a means used to achieve charitable purposes.

EXAMPLE: Charity

A rehabilitation service organises swimming sessions to help its clients regain full use of their limbs. It is a charity as its swimming activities are a means of carrying out its sole purpose of helping people recover from their injuries.

An organisation has been set up to facilitate sporting programs run by universities in Queensland. The organisation is a charity if the sporting programs are a means of advancing education among the universities' students.

POLITICAL, LOBBYING OR PROMOTIONAL

An entity is not charitable if its purpose is advocating a political party or cause, attempting to change the law or government policy, or promoting a particular point of view.

However, if an entity's purpose is otherwise charitable, the presence of political, lobbying or promotional activity that is incidental to the charitable aims will not prevent it being a charity.

EXAMPLE: Charity

An animal shelter's main purpose is looking after sick, stray and unwanted animals. Around budget time it sometimes lobbies politicians for funding. As long as the lobbying remains no more than incidental to the charitable purpose, the animal shelter will continue to be a charity.

A group of state-based health charities form a national peak body having the same objects. The activities of the peak body are various means of coordinating and supporting the state charities' activities, including by lobbying. As long as the lobbying is incidental to its charitable health purposes, the peak body can be a charity.

Political parties and organisations promoting political parties or their policies are not charitable.

EXAMPLE: Non-charity

An institute formed to educate people in the platform of a political party is not a charity.

An entity whose purpose is to change the law or government policies is not charitable. This is so even if the subject matter of the change may be beneficial to the community or is of great concern to the community.

EXAMPLE: Non-charity

A residents action group is formed to lobby against a proposed rubbish dump near a suburb. It is not a charity.

An entity seeking to maintain existing law or government policy is also considered not charitable.

An entity that aims to promote a particular point of view or endeavours to convince the public of the correctness of such a view is not charitable. This is irrespective of whether the view seeks to change law or government policy, or uses educational means to achieve its aims.

EXAMPLE: Non-charity

An organisation is set up to convince the public that pornography is detrimental to society. It is not a charity.

An organisation has been established to promote a 40-letter alphabet to be used by the community. It believes the alphabet will result in a great benefit to the community because it will be cheaper and easier to use. The organisation is not a charity.

➤ MORE INFORMATION

See our webpage *Charities – political, lobbying and advocacy activities* at www.ato.gov.au/nonprofit and under Getting started, select Tax concessions – Charities.

ILLEGAL

If a purpose is unlawful, or a lawful purpose is to be carried out by unlawful means, it is not charitable. For example, a school for thieves might, in a sense, advance education, but it is not a charitable institution.

However, this is not to say that any breach of the law would cause a charity to lose its charitable status. In the course of carrying out their charitable purposes, actions may occur that are not in accordance with the law.

➤ MORE INFORMATION

See our webpage *Charities – if unlawful actions occur* at www.ato.gov.au/nonprofit and under Getting started, select Tax concessions – Charities.

COMMERCIAL

The purpose of carrying on a commercial enterprise to generate surpluses is not charitable.

Charities can carry out commercial and business-like activities where they are only carried out for the sake of, or in aid of, or in furtherance of the charitable purposes.

There are incidental ways in which charities can raise funds to carry out their charitable purposes, and carry out their purposes using business-like opportunities and methods.

EXAMPLES: Charities

A youth development organisation regularly runs biscuit and chocolate sale drives. The biscuits and chocolates are purchased in bulk and packets are allocated to the children's families for sale to the public.

A college's hospitality students prepare and serve meals, while being assessed as part of their course, at the college's campus restaurant.

An agricultural charity, which has developed a new vaccine to protect livestock, manufactures and sells the vaccine. The prices are set to cover costs and fund future research and expansion.

➤ MORE INFORMATION

See our webpage *Charities – business-like activities* on our website at www.ato.gov.au/nonprofit and under Getting started, select Tax concessions – Charities.

If a company is controlled by a charity, it is not automatically a charity. The company itself will need to satisfy the requirements of being a charity. In determining this, the company's integration with the charity could be relevant.

EXAMPLE: Charity

A charity sets up and controls a non-profit company. The company's purpose is to operate a shop located in the controlling charity's museum. The shop is to sell souvenirs and collectibles of the museum. Surpluses from its operations are to be distributed to advance charitable purposes.

➤ MORE INFORMATION

See our webpage *Exempt entities – companies controlled by exempt entities* at www.ato.gov.au/nonprofit and under Tax topics explained, select Income tax – Working out if your organisation is exempt.

See Taxation Ruling TR2005/22 Income tax: companies controlled by exempt entities.

GOVERNMENTAL

Government departments and instrumentalities are unlikely to be charitable institutions. They are simply carrying on the ordinary activities of a government department. This is so even if the activities are such that if carried on by private people they would be charitable.

EXAMPLE: Non-charity

A state welfare department helps homeless people. The department is not a charity.

However, charities frequently receive government funding. This does not stop them being charities.

EXAMPLE: Charity

A migrant resource centre receives government funding and has a service agreement with a government department.

The centre is still a charity despite having been funded by a government department.

CHECKLIST: Is your organisation a charity?

To be a charity your organisation must:

- be an entity (corporation, unincorporated association, trust or partnership etc)
- be a trust fund or an institution
- be able to demonstrate from its constituent or governing documents and the organisation's activities (if applicable) that it is carried on for the public benefit or the relief of poverty
- be non-profit. This means the organisation is not carried on for the profit or gain of its owners, members or other private people
- not be
 - carried on for sporting, recreational or social purposes
 - carried on for political, lobbying, promotional or illegal purposes
 - carried on for a commercial purpose to generate surpluses, or
 - a government instrumentality carrying out the ordinary functions of government
- from the listing that applies to your organisation ('Types of organisation listing'), have a sole purpose
 - within the characteristics in the 'Description'
 - the same as, or equivalent to, that of any organisation in the 'Charities – examples', and
 - not the same as, and not equivalent to, any in the 'Non-charities – examples'.

Charities are not automatically exempt from income tax.

There is an endorsement system under which charities apply to the Tax Office to be income tax exempt charities.

Is your organisation a charity?

YES See chapter 4 – 'Endorsement as an income tax exempt charity' on page 49.

NO Your organisation does not need to apply for endorsement. See 'Self-assessment' on page 11.

TYPE OF ORGANISATION – LIST

For each group of charities, the following list provides:

- a description of the characteristics of organisations that are charities, and
- examples of typical charities and non-charities.

The list of examples of charities and non-charities in this chapter is not exhaustive.

Your organisation could fall within more than one group of charity. You should check other groups.

Use the 'Checklist – is your organisation a charity?' on this page to confirm whether your organisation is a charity.

Type of organisation	Page
Aged persons	38
Animals	38
Cultural	39
Defence and public order	39
Disaster relief	40
Education	40
Environment	41
Health	42
Indigenous people	42
Industry, commerce, agriculture	43
Locality or neighbourhood	43
Moral improvement	44
People with disabilities	44
Poverty	45
Public works and utilities	45
Religion	46
Research	46
Science	47
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TYPE OF ORGANISATION – DESCRIPTION

AGED PERSONS

Non-profit entities that operate for the public benefit to relieve needs arising from old age are charities. Needs can involve accommodation, nursing and health care, security, isolation and loneliness.


Social, recreational and lobbying groups are not charities. Organisations that are primarily for the benefit of members are not charitable. See also 'Legislative extension to the meaning of charity' on page 34.

Charities – examples

- Alzheimer's associations
- arthritis foundations
- community services that provide food, home visits and assistance with shopping for the elderly and infirm
- home maintenance services for the elderly and frail
- respite services
- senior citizen organisations if they are not lobbying or merely social or recreational, and
- trust funds distributing solely to charities that relieve the needs of the aged.

Non-charities – examples

- lobbying bodies including lobbying of government on social security benefits and entitlements
- political bodies, and
- social, sporting and recreational bodies even where the majority of participants are aged people.

 Some organisations will be charitable where the social, sporting and recreational purpose is ancillary to a charitable purpose of alleviating the needs of the elderly in terms of health, isolation and loneliness. Each case will depend on the circumstances.

ANIMALS

Non-profit organisations that operate for the public benefit to protect, care for, preserve, or study animals, or improve the community's moral feelings towards them, are charities.

Recreational, sporting, lobbying and private bodies are not charities. Organisations that are primarily for the benefit of members are not charitable. See also 'Legislative extension to the meaning of charity' on page 34.

Charities – examples

- animal protection societies
- animal refuges and shelters that help lost, sick or injured animals including organisations that care for unwanted and deserted pets
- cat protection societies involved in caring for and finding homes for unwanted kittens and cats and promoting the de-sexing of animals
- endangered species organisations whose purpose is to conserve particular animal species and look after their wellbeing, for example koala preservation societies
- guide dog associations
- scientific bodies studying animal behaviour and disseminating information to the public
- wildlife hospitals that provide care and sanctuary for injured wildlife, and
- wildlife protection societies involved in protecting and preserving wildlife and organising wildlife rescues.

Non-charities – examples

- animal racing organisations, for example horse racing, greyhound racing and pigeon racing
- animal rights bodies that are lobbying in nature
- anti-vivisection societies
- breeders associations that represent the interests of breeders and help members in their breeding activities
- fanciers and owners associations, for example canary clubs and beekeepers associations
- fishing and angling clubs
- funds for particular animals, for example a trust under a will for a deceased person's cat, and
- lobbying and political bodies.

CULTURAL

Non-profit entities that operate for the public benefit to advance the arts or educate the public in the arts are charities.

Recreational, entertainment, lobbying and private bodies are not charities. Organisations that are primarily for the benefit of members are not charities. See also 'Legislative extension to the meaning of charity' on page 34.

Charities – examples

- arts societies that encourage and promote cultivation and appreciation of the fine arts
- ballet foundations to promote and encourage interest in ballet
- bodies promoting culture and the arts in schools
- choral and orchestral societies
- friends of public museums and art galleries
- opera companies that are non-profit
- public art galleries
- public libraries
- public museums, and
- trust funds distributing solely to charities that promote the arts.

Non-charities – examples

- antique or vintage car clubs
- bridge and other card clubs
- camera clubs
- cinema clubs
- doll clubs
- ethnic social and cultural associations
- historical re-enactment societies
- professional associations of artists, dancers, musicians, curators, educators in the cultural arts field, and the like
- science fiction clubs
- social clubs and organisations
- stamp-collecting clubs, and
- trade unions.

DEFENCE AND PUBLIC ORDER

Non-profit entities that operate for the public benefit to contribute to the defence of Australia and to help maintain public order are charities.

Social and recreational groups are not charities. Government instrumentalities carrying out the ordinary functions of government are unlikely to be charities.

Charities – examples

- defence research organisations that provide research into aspects of Australian defence and national security
- disabled soldier associations that care for soldiers injured or maimed during service, for example blinded soldiers associations and limbless soldiers associations
- family support organisations that help the families of deceased veterans or police personnel
- historical societies that record and research the history of the armed forces
- social welfare organisations for the benefit of armed forces personnel and their dependants
- veterans organisations if their purpose is to provide welfare services for veterans, and
- volunteer emergency rescue bodies.

Non-charities – examples

- government instrumentalities carrying out the ordinary functions of government
- homing pigeon associations
- pistol and rifle clubs
- social or cultural groups set up by defence force members, police or emergency personnel, and
- trade unions and employee associations for members of the police force and other emergency personnel.

DISASTER RELIEF

Non-profit entities that operate for the public benefit to relieve or prevent the distresses caused by natural and man-made catastrophes are charities.

Government instrumentalities are unlikely to be charities.

Charities – examples

- cyclone relief funds
- flood relief funds
- public funds for disaster relief
- public funds relieving necessitous circumstances
- surf lifesaving clubs, and
- volunteer emergency rescue bodies.

Non-charities – examples

- employee associations that protect the industrial interests of employees in the emergency services sector
- funds for private people who have been in natural or man-made disasters, and
- government instrumentalities carrying out the ordinary functions of government.

EDUCATION

Non-profit entities that operate for the public benefit to advance education are charities.

Organisations run for the profit of their owners or the common interests of members (for example professional and business associations) are not charities. Lobbying and political bodies are not charities.

Charities – examples

- bursary and prize funds set up to reward academic excellence that are for a section of the public and not for private interests such as the employees of an employer
- childbirth education bodies
- child care centres
- educational institutes that are not party political and whose purpose is to stimulate debate on cultural, political, economic, moral or philosophical issues
- grammar schools
- health education bodies, for first aid and resuscitation
- historical societies whose purpose is to preserve historical items and educate the public in history
- industry training organisations if they are for the public benefit and not only for particular businesses
- kindergartens
- parents and friends groups of non-government schools
- parents and citizens groups of government schools
- pre-schools
- public universities
- schools and colleges run by religious denominations
- school and university sports organisations where they are integrated with the advancement of education in charitable education institutions
- scholarship trust funds set up to give scholarships for students of a particular school
- Scouts and Guides
- student union bodies if they are integrated in a particular university or college
- Sunday school associations, and
- trust funds distributing solely to educational charities.

Non-charities – examples

- computer users clubs
- educational trusts for individuals, family members or employees of particular employers
- lobbying bodies that promote a particular view, for example organisations promoting euthanasia, the rights of the unborn child or funding of education
- occupational associations that educate only members
- professional associations for accountants, lawyers, writers, sales people, etc
- public speaking associations
- social clubs and organisations including ex-student associations
- sporting organisations even where they involve school-age children as participants, for example a junior football club
- teachers associations that further the professional interests of teachers or represent their views, and
- trade unions such as academic staff associations and teachers unions.

ENVIRONMENT

Non-profit entities that operate for the public benefit to protect, preserve, care for, and educate the community about the environment are charities.

Lobbying and political bodies are not charities.

Charities – examples

- conservation bodies that help protect the environment provided they are not for lobbying or political purposes
- environmental associations whose purpose is to educate the public about environmental issues
- flora and fauna conservation societies that are not political or lobbying in nature
- friends of botanic gardens
- Landcare groups and other greening organisations involved in tree-planting and revegetation
- marine conservation societies that are involved in the conservation of Australia's coastal areas or coral reefs
- natural resource organisations that educate the public about the wise use of Australian resources, such as soil, water and forests, and
- support groups for national parks.

Non-charities – examples

- bushwalking clubs
- government instrumentalities carrying out the ordinary functions of government
- lobbying bodies even if their activities may have consequences for the environment
- outdoor recreation clubs
- political bodies
- resident action groups set up to oppose planning policies detrimental to their lifestyle, and
- watersports clubs.

HEALTH

Non-profit entities that operate for the public benefit to advance health are charities.

Organisations run for the profit of their owners or the common interests of members (for example health funds) are not charities. Lobbying and political bodies are not charities.

Charities – examples

- accommodation services for the relatives of hospital patients
- alcohol and drug education bodies
- alcohol drug rehabilitation services
- Alzheimer's associations
- arthritis foundations
- auxiliaries of public hospitals
- family planning services and contraception organisations
- family support services providing services such as counselling
- health promotion bodies for example cancer councils, diabetes societies, epilepsy associations, heart and asthma foundations
- medical counselling organisations for psychiatric illnesses and disorders
- medical research bodies
- natural family planning organisations
- nursing mothers associations
- nursing services
- patient transport services
- pregnant women support services
- support groups for sufferers of a particular disease or disorder, for example drug dependence or chronic fatigue syndrome
- trust funds distributing to charities that promote health or relieve sickness, and
- women's shelters.

Non-charities – examples

- friendly societies that are not carried on solely for the relief of poverty
- health benefit funds
- hospitals run by mutual societies or for-profit entities
- hospital benefit funds, and
- medical benefit funds.

INDIGENOUS PEOPLE

Non-profit entities that operate for the public benefit to advance the condition and welfare of Australian Indigenous people are charities.

Organisations run for the profit of their owners or the common interests of members (for example business associations) are not charities. Lobbying and political bodies are not charities.

Charities – examples

- Aboriginal and Islander health and welfare bodies
- Aboriginal and Islander legal services
- cultural organisations for Indigenous art, dance or history
- educational and resource centres for Aborigines and Islanders
- family support services for Aborigines and Islanders
- housing cooperatives for Aborigines and Islanders
- research organisations into Aboriginal and Islander affairs, and
- youth services for Aborigines and Islanders.

Non-charities – examples

- lobbying and political bodies.

INDUSTRY, COMMERCE, AGRICULTURE

Non-profit entities that operate for the public benefit to advance industry, commerce or agriculture are charities.

Organisations run for the profit of their owners or the common interests of members (for example business associations) are not charities. Providing services to, and furthering the private interests of, businesses or agriculturalists are not charitable purposes. Lobbying and political bodies are not charities.

Charities – examples

- agricultural show societies
- apprenticeship and traineeship organisations if they are for the public benefit and not for particular businesses
- industry training organisations if they are for the public benefit and not for particular businesses, and
- research organisations that make the benefits of their research publicly available.

Non-charities – examples

- aviation clubs
- breeders associations that represent the interests of breeders and help members in their breeding activities
- business associations that exist for the benefit of members
- cooperatives that provide buying and selling services for members
- development or progress associations campaigning on governmental or planning issues
- employer associations
- farmers and growers bodies advancing the business interests of their farmer or grower members
- hobby farmers associations
- industry regulators
- marketing agencies
- professional associations set up to advance a profession or its members, for example associations of accountants, administrators, doctors, engineers, surveyors, lawyers, secretaries and executives
- retailer or seller associations promoting or marketing businesses and their products, and
- trade unions.

LOCALITY OR NEIGHBOURHOOD

Non-profit entities that operate for the public benefit to provide charitable benefits for a particular town, city or region are charities.

Organisations will not be charities simply because they operate in a particular region. For example, a social club for the residents of a particular suburb is not a charity.

Charities – examples

- accommodation providers for the needy
- citizens advice bureaus
- community information and referral services that make people aware of rights and responsibilities and the services and facilities available to them
- community justice and mediation centres that provide informal dispute resolution services
- crisis accommodation services
- family support services providing services such as counselling
- health information organisations that collect and disseminate health information
- historical societies whose purpose is to preserve historical items and stimulate interest in history
- information, translating and interpreting services for migrants
- marriage counselling organisations
- migrant resource centres
- multiple birth organisations
- neighbourhood centres
- public radio stations
- relationships counselling organisations
- surf lifesaving clubs
- telephone crisis counselling services
- women's shelters, and
- associations supporting the work of the United Nations.

Non-charities – examples

- expatriate organisations providing a social forum for people from a particular country
- lobbying groups
- political parties
- republican or monarchist organisations
- recreational clubs promoting sporting or recreational activities in a region
- resident action groups lobbying on development or planning issues
- social clubs for newcomers to a particular residential area, and
- traditional service clubs.

MORAL IMPROVEMENT

Non-profit entities that operate for the public benefit to advance moral improvement in society are charities.

Lobbying and political bodies are not charities.

Charities – examples

- alcohol and drug education bodies
- community justice and mediation centres that provide informal dispute resolution services
- ethical societies
- marriage counselling organisations
- relationships counselling organisations
- road safety organisations that educate on dangers of drink-driving, fatigue or dangers of speeding
- temperance societies, and
- associations supporting the work of the United Nations.

Non-charities – examples

- lobbying and political bodies on issues such as morals, animals, the environment, and
- fraternal associations.

PEOPLE WITH DISABILITIES

Non-profit entities that operate for the public benefit to relieve needs arising from physical or mental disability are charities.

Organisations catering for people with disabilities, but not for the relief of their special needs, (such as purely social or recreational bodies) are not charities. Lobbying and political bodies are not charities.

Charities – examples

- Braille libraries
- carer support services
- community organisations that provide food, home visits and assistance with shopping for people with disabilities
- disability resource centres
- disability employment services
- guide dog associations
- information support services for people with disabilities and their carers
- intellectually handicapped associations
- respite care services
- sheltered workshops
- spastic societies
- support organisations for people with particular disabilities, for example autism, cerebral palsy, Down's syndrome, hearing or sight impairment, and paraplegia
- toy libraries for the handicapped, and
- trust funds distributing solely to charities that relieve disability.

Non-charities – examples

- lobbying bodies.

POVERTY

Non-profit entities that operate solely to relieve poverty are charities.

Charities – examples

- accommodation providers for the needy
- community services that provide food to the elderly and infirm
- crisis accommodation services
- hostels for the homeless
- overseas aid organisations
- prisoners aid associations
- refugee relief bodies
- soup kitchens, and
- trust funds distributing solely to charities that relieve poverty.

Non-charities – examples

- lobbying and political bodies.

PUBLIC WORKS AND UTILITIES

Non-profit entities that operate for the public benefit by providing socially necessary facilities for use by the community are charities.

Government instrumentalities carrying out the ordinary functions of government are unlikely to be charities.

Charities – examples

- botanic gardens
- halls provided for public use
- law reporting councils
- public art galleries
- public libraries
- public museums
- observatories
- trusts for places of historic interest
- providers of public recreational facilities, such as sporting fields and public parks
- public radio stations, and
- showground societies.

Non-charities – examples

- fee-for-service providers of normal amenities such as cinemas and shops, and
- government instrumentalities carrying out the ordinary functions of government.

RELIGION

Non-profit entities that operate for the public benefit to advance religion in a direct and immediate sense are charities. Religion involves belief in a supernatural being, thing or principle and acceptance of canons of conduct that give effect to that belief.

Charities – examples

- Bible colleges
- Bible societies distributing religious literature
- building funds for constructing, maintaining or furnishing church buildings, mosques, synagogues etc
- church choirs
- churches and other religious congregations
- clergy funds to maintain priests, pastors, ministers of religion, students for the ministry etc
- institutions of missionaries
- religious instruction funds for teaching religion in schools
- religious orders that act for the public benefit including closed or contemplative religious orders that regularly undertake prayerful intervention at the request of members of the public
- religious retreat bodies for lay people
- seminaries, and
- Sunday school associations.

Non-charities – examples

- family companies controlled by family members and friends, even where they practice religion
- for-profit entities that sell religious books, artefacts and other materials
- fraternal associations
- lobbying bodies, for example groups applying pressure on church governance issues
- self-betterment groups that are designed to enhance personal success, and
- social clubs for followers of a particular religion.

RESEARCH

Non-profit entities that operate for the public benefit by carrying out research are charities. The subject matter of the research must be useful to the community (for example agriculture, education, health, Indigenous culture, public administration or water) and the results must be made publicly available.

Lobbying bodies that carry out research to promote their aims are not charities.

Non-charities – examples

- business research bodies if the research is primarily for particular businesses or groups of businesses, and
- lobbying bodies whose research is only a means for their lobbying aims.

SCIENCE

Non-profit entities that operate for the public benefit by advancing science are charities.

Professional associations carried on for the benefit of a profession or its members (such as engineers, doctors, or surveyors) and other organisations run for the benefit of members are not charities. Hobby groups are not charities.

Charities – examples

- archaeological societies
- astronomical societies that are not hobby groups
- botanical societies
- geographical societies
- herpetological societies that are not hobby groups, and
- scientific research organisations.

Non-charities – examples

- business associations
- employer associations
- industry regulators
- professional associations, and
- trade unions.

UNEMPLOYMENT

Non-profit entities that operate for the public benefit to relieve needs arising from unemployment are charities.

Organisations run for the profit of their owners or the common interests of members are not charities. Lobbying and political bodies are not charities.

Charities – examples

- apprenticeship or traineeship organisations if they are for the public benefit and not for particular businesses
- vocational guidance counselling bodies that are non-profit
- disabled peoples employment services
- prisoner employment services for recently released prisoners, and
- training organisations if they are non-profit and operate for the public benefit.

Non-charities – examples

- commercial enterprise entities are not charities merely because they take on unemployed people
- employers will not be charities merely because they provide employment opportunities for disadvantaged people, and
- recruitment organisations for employers.

YOUNG PEOPLE

Non-profit entities that operate for the public benefit to assist, educate and develop young people are charities.

Sporting, social and recreational groups are not charities.

Charities – examples

- child abuse associations that exist to prevent cruelty to, or exploitation of, children and are not political or lobbying in nature
- child care centres
- children's disease organisations, such as asthma foundations and cancer foundations
- child health associations
- children's disability organisations that provide services and information to carers of children with disabilities
- information services for young people providing advice and support on a range of issues such as health and accommodation
- youth development programs, for example Scouts, Brownies and Guides
- youth orchestras
- youth leadership associations, and
- youth suicide organisations.

Non-charities – examples

- sporting organisations for the young, for example cricket and junior football.

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ENDORSEMENT AS AN INCOME TAX EXEMPT CHARITY

04

This chapter explains:

- the need to be endorsed as an income tax exempt charity
- the different requirements for charitable institutions and charitable funds
- how to apply for endorsement
- the income tax consequences once your charity is endorsed
- your charity's income tax obligations if it is not endorsed, or its endorsement is revoked, and
- endorsement information disclosed on the Australian Business Register.

! THIS CHAPTER IS FOR CHARITIES

If you are unsure whether your organisation is a charity, see chapter 3 – 'Is your organisation a charity?'

IS YOUR ORGANISATION ENTITLED TO ENDORSEMENT AS AN INCOME TAX EXEMPT CHARITY?

Charities are not automatically exempt from income tax. There is a system of endorsement under which charities apply to the Tax Office to be exempt from income tax. If the Tax Office gives your organisation notice that it is endorsed as an income tax exempt charity:

- it is exempt from income tax, and
- it does not need to lodge income tax returns, unless specifically asked to.

This chapter will help you work out whether your charity is entitled to endorsement as an income tax exempt charity. If you are not sure whether your organisation is a charity you should read chapter 3 – ‘Is your organisation a charity?’

⚠ EXTENDED ENDORSEMENT REQUIREMENTS

From 1 July 2005 additional endorsement requirements commence for charities. A charity will need to be endorsed to access charity tax concessions available under fringe benefits tax and GST laws. This is in addition to the existing endorsement requirement for income tax exemption.

See ‘Endorsement requirements for FBT and GST charity concessions’ on page 80.

ENDORSEMENT

The following requirements are conditions which a charity must satisfy if it wants to be endorsed as income tax exempt.

To be endorsed as an income tax exempt charity, your organisation must have an ABN, and it must be the ABN of the entity itself. An ABN held for GST purposes by a non-profit sub-entity is not sufficient.

➔ MORE INFORMATION

Further information on ABN and non-profit sub-entities is available in *Australian business number (ABN) – an overview for non-profit organisations* (NAT 4450).

To obtain this publication, see ‘More information’ on the inside back cover.

Your organisation must also meet other requirements to be entitled to endorsement as an income tax exempt charity. There are different requirements for:

- charitable institutions, and
- charitable funds.

The requirement for endorsement applies even if the institution or fund also falls within some other type of exempt entity, as listed in the table ‘Type of exempt entity’ on pages 12 to 13.

Other types of exempt entities include religious institutions, scientific institutions and public educational institutions.

EXAMPLE

Assume a charitable institution is also a religious institution. To be exempt, it must be endorsed as an income tax exempt charity.

IS YOUR ORGANISATION A CHARITABLE INSTITUTION OR A CHARITABLE FUND?

This section will help you work out if your organisation is a charitable institution or a charitable fund.

Charitable institution

Your organisation will be a charitable institution if it is an establishment, organisation or association that is instituted to advance or promote charitable purposes. Charitable purposes are explained in chapter 3 – ‘Is your organisation a charity?’

Types of organisations that may be charitable institutions include welfare agencies, churches, public libraries, parents and citizens associations, refugees and research institutes.

A charitable institution can include an organisation established by will or instrument of trust, or its legal structure might be an unincorporated association or a corporation. Incorporation is not enough, on its own, to show an organisation is an institution: its activities are also relevant.

A charitable institution would not usually include an organisation that is established, controlled and operated by family members and friends.

EXAMPLE

The object of an association is to advance charitable education. Its members are two engineers and their families. Funding comes from the members, and investments include leases made to the two engineers. Profits are used to make charitable distributions. The association is not a charitable institution.

Is your organisation a charitable institution?

YES

See ‘Requirements to be entitled – charitable institutions’ on page 51.

NO

Read on.

Charitable fund

To be a charitable fund your organisation must be established under an instrument of trust or a will. Also, it must mainly:

- manage trust property, and/or
- hold trust property to make distributions to other entities or people.

In contrast, if your organisation mainly carries on charitable activities it will be treated as a charitable institution and not as a charitable fund.

EXAMPLES

Example 1

A charity was established by a deed of trust and manages assets to pay scholarships from the trust's income. It is a charitable fund.

Example 2

A charity was established by a deed of trust and operates a hostel for the homeless. It is more than simply a fund that is being administered for a charitable purpose. It is a charitable institution.

The following are common types of charitable funds.

- **Holding property for charitable use:** a charity that holds and maintains a church building and the surrounding land for use for religious worship and related purposes.
- **Distributions to other charities:** a charity that manages an investment portfolio with returns being distributed to educational charities which apply for grants.
- **Distributions to people in need:** a charity that solicits donations and uses them to make grants to help disabled people.
- **Distributions for other charitable purposes:** a charity that holds income-producing property and solicits donations and uses them to pay for constructing and maintaining buildings for cultural charities.

Is your organisation a charitable fund?

YES See 'Requirements to be entitled – charitable funds' on page 54.

NO If your organisation is not a charitable institution or a charitable fund, it is not entitled to endorsement. See 'Organisations that are not charities' on page 34.

REQUIREMENTS TO BE ENTITLED – CHARITABLE INSTITUTIONS

Charitable institution tests

A charitable institution can be entitled to income tax exempt charity endorsement if it meets **at least one** of three tests.

These tests are the:

- physical presence in Australia test
- deductible gift recipient test, or
- prescribed by law test.

Does your charitable institution exist, operate and incur its expenditure solely and entirely in Australia (and meet the other requirements for endorsement)?

YES Your charitable institution is entitled to be endorsed as an income tax exempt charity. See 'Applying for income tax exempt charity endorsement' on page 61. You do not need to read any further about the three tests.

NO For all other charitable institutions, read on.

Briefly the requirements of the three tests are that the charitable institution:

- has a physical presence in Australia and, to the extent it has a physical presence in Australia, it pursues its objectives and incurs its expenditure principally in Australia (see this page)
- is a deductible gift recipient (see page 53), or
- is prescribed by law in income tax regulations, and
 - is located outside Australia and is exempt from income tax in its country of residence, or
 - has a physical presence in Australia but incurs its expenditure and pursues its objectives principally outside Australia.

Physical presence in Australia test

This test has two elements:

- 1 Does the charitable institution have a physical presence in Australia?
- 2 To the extent the charitable institution has a physical presence in Australia, does it pursue its objectives and incur its expenditure principally in Australia? If the charitable institution does not meet these requirements it may still satisfy the test – see 'Disregarded amounts' on page 52.

Physical presence

A charitable institution has a physical presence in Australia if it is wholly in Australia, or it has a division, branch or sub-division in Australia.

It does not have a physical presence in Australia if it is present in Australia only through an agent, or it merely owns investment property in Australia.

Objectives and expenditure principally in Australia

If a charitable institution has a physical presence in Australia only, it must pursue its objectives and incur its expenditure principally in Australia.

'Principally' means mainly or chiefly. Less than 50% is not principally.

The pursuit of objectives in Australia can include things done offshore if they are only a means of pursuing those objectives. For example, sending employees to an offshore conference to aid their efficiency for the Australian objectives will be pursuing objectives in Australia.

EXAMPLE

An association is a religious charity. It is physically present only in Australia, but it also sends materials to missionaries overseas. As long as these activities and expenditure are not major, it will meet the physical presence test.

If the charitable institution has a physical presence in Australia as well as another country, it is necessary to work out the extent to which it is physically present in Australia. Then it is only to that extent that the purposes and expenditure must be principally in Australia. This means a charitable institution that, when viewed as a whole, does not principally have its purposes and expenditure in Australia can still meet the physical presence test.

EXAMPLES*Example 1*

A society is a medical charity. It operates two clinics, one in Australia and one in Papua New Guinea. Each clinic operates separately, with general administration being done in Papua New Guinea. If the Australian activities and expenditure are mainly for the Australian clinic it will meet the physical presence test.

Example 2

VBN Welfare runs support programs through four centres, one in Australia and three in Malaysia. All funding comes from Australia and a similar amount is spent on each centre. To the extent VBN Welfare has a physical presence in Australia, it is not principally pursuing its objectives and incurring its expenditure in Australia. It could only meet the physical presence test through the disregarded amounts.

Disregarded amounts

A charitable institution may still meet the physical presence test even if it does not, in fact, pursue its purposes and incur its expenditure principally in Australia, to the extent it has a physical presence in Australia. This will depend on its distributions of disregarded amounts.

Disregarded amounts are amounts the charitable institution receives as:

- gifts, including testamentary gifts (that is, gifts made under a will)
- proceeds from raffles, dinners, charity auctions, jumble sales and similar fundraising activities, or
- government grants.

Distributions of these amounts are disregarded when working out where the charitable institution pursues its objectives and incurs its expenditure.

The Tax Office assumes any offshore distributions are made first from any disregarded amounts that are able to be distributed offshore. The assumption does not apply if a disregarded amount cannot be distributed offshore. For example, government grants made only for use in Australia and gifts of land physically in Australia are not assumed to be distributed offshore.

The effect of this assumption is that offshore distributions can be made, up to the total of these amounts, without jeopardising entitlement to endorsement.

EXAMPLES*Example 1*

A corporation provides religious instruction in Australia and New Zealand. The amounts it uses for the New Zealand teaching are never more than the disregarded amounts. Because the disregarded amounts are assumed to pay for the New Zealand activities, the corporation can still meet the physical presence test.

Example 2

Continuing the earlier example of VBN Welfare that runs support programs in Australia and Malaysia. If its disregarded amounts substantially cover funding of the Malaysian programs, it could meet the physical presence test. This is because the disregarded amounts are assumed to be the first spent offshore.

Does your charitable institution meet this test (and the other requirements for endorsement)?

YES Your charitable institution is entitled to be endorsed. See 'Applying for income tax exempt charity endorsement' on page 61. You do not need to read any further about the three tests.

NO For all other charitable institutions, read on.

Deductible gift recipient test

Deductible gift recipients (DGRs) are entities to which donors can make income tax deductible gifts.

MORE INFORMATION

Deductible gift recipients are explained in detail in *GiftPack for deductible gift recipients & donors* (NAT 3132).

To obtain this publication, see 'More information' on the inside back cover.

Deductible gift recipients (DGRs):

- are listed by name in the income tax legislation, or
- have received a notice from the Tax Office stating they have been endorsed as a DGR.

If a charitable institution is a DGR it is entitled to income tax exempt charity endorsement, but it will still need to apply for this endorsement separately.

However, if the charitable institution is endorsed as a DGR only for a fund or institution it operates, it does not meet the DGR test.

EXAMPLE

A charitable school could be endorsed as a DGR for a building fund it operates and deductible gifts could be made to its building fund. But the school would not meet the DGR test because it would be a deductible gift recipient only for the building fund.

Does your charitable institution meet this test (and the other requirements for endorsement)?

YES Your organisation is entitled to be endorsed. See 'Applying for income tax exempt charity endorsement' on page 61.

NO Read on.

Prescribed by law test

Charitable institutions can be prescribed by name in the income tax regulations. The government decides which institutions will be prescribed. You can send applications for prescription to the Tax Office and we will forward them to the government for consideration.

Prescribed charitable institutions need to be endorsed to retain their exemption from income tax from 1 July 2005.

Does your charitable institution meet this test (and the other requirements for endorsement)?

YES Your organisation is entitled to be endorsed. See 'Applying for income tax exempt charity endorsement' on page 61.

NO Read on.

Conclusion

Is your organisation entitled to be endorsed?

YES See 'Applying for income tax exempt charity endorsement' on page 61.

NO See 'Income tax – if your organisation is not an income tax exempt charity' on page 64.

REQUIREMENTS TO BE ENTITLED – CHARITABLE FUNDS

The flow chart on page 55 summarises the requirements charitable funds must meet to be entitled to endorsement as an income tax exempt charity.

! Charitable funds that cannot be endorsed are:

- charitable funds established by will from 1 July 1997 that are not established in Australia, and
- charitable funds established by instrument of trust that are not established in Australia.

These charitable funds will only be exempt from income tax if they fall within some other type of exempt entity and meet the special conditions applying to that type of exempt entity (excluding 'not a charity'). Most are likely to be taxable and so must lodge income tax returns.

All other charitable funds must be endorsed to be exempt from income tax. They are:

- charitable funds established by will before 1 July 1997
- charitable funds established in Australia by will on or after 1 July 1997, and
- charitable funds established in Australia by instrument of trust.

To be entitled to endorsement:

- all charitable funds must be applied for the purposes for which they were established,
- some funds will also need to meet additional tests. Tests vary depending upon when and how the fund was established. Some funds will be deemed to consist of two separate trusts – an 'old trust' and a 'new trust'. Different tests apply to the new and old trust.

Applied for its purposes

To be entitled to endorsement as an income tax exempt charity, a charitable fund must be applied for the purposes for which it was established. If it is not being applied for those purposes, it is not entitled to endorsement.

If a charitable fund uses its property and income only and fully for its charitable purposes, it will meet this requirement.

Examples where a charitable fund is not being applied for its purposes include:

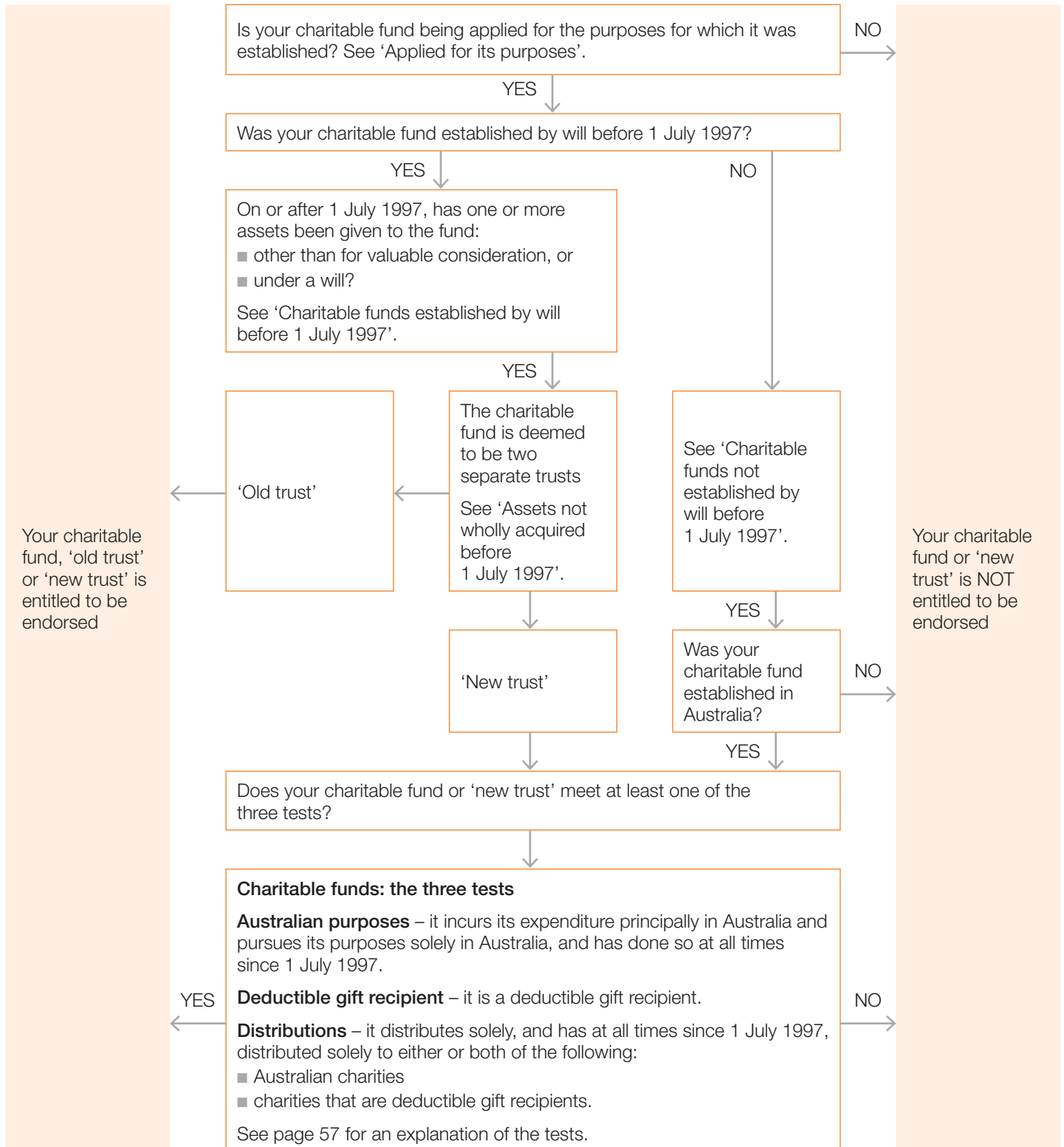
- where distributions are made for non-charitable purposes, for example money is given to an associate of the trustee
- where trust property is being invested in ways to confer private benefits on particular people, for example a trust asset is being leased to a business associate of a trustee at an uneconomic rent, or
- where income is being accumulated excessively, for example no income has been distributed and the accumulation is not under a particular plan designed to better serve the charitable purposes.

Is your charitable fund being applied for its purposes?

YES Read on.

NO Your fund is not entitled to be endorsed. See 'Income tax – if your organisation is not an income tax exempt charity' on page 64.

CHARITABLE FUNDS – REQUIREMENTS TO BE ENTITLED



Charitable funds not established by will before 1 July 1997

To be endorsed as an income tax exempt charity, charitable funds that were not established by will before 1 July 1997 must be established in Australia.

These charitable funds must meet at least one of three additional tests that are explained in 'Charitable funds – the three tests' on page 57.

Charitable funds established by will before 1 July 1997

If a charitable fund is established by will before 1 July 1997, its entitlement to endorsement as an income tax exempt charity will depend on the assets it has received from 1 July 1997.

Provided a charitable fund has an ABN and is being applied for the purposes for which it was established, it will be entitled to endorsement if, on or after 1 July 1997, it:

- has paid real and substantial value for all new assets it received, and
- has not received any assets under a will.

Does your charitable fund meet this test (and the other requirements for endorsement)?

YES Your charitable fund is entitled to be endorsed. See 'Applying for income tax exempt charity endorsement' on page 61.

NO Read on.

Assets not wholly acquired before 1 July 1997

If your charitable fund has received assets under a will on or after 1 July 1997 or it has not paid real and substantial value for any new assets received on or after 1 July 1997, it is deemed to consist of two separate trusts, called an 'old trust' and a 'new trust'.

The 'new trust' consists of the following property:

- assets given to the charitable fund after 30 June 1997 for which it did not pay valuable consideration
- assets becoming part of the charitable fund under a will after 30 June 1997
- assets received in substitution for those assets, and
- any income derived from these assets.

'Valuable consideration' is a payment of real and substantial value.

The 'old trust' consists of the remainder of the charitable fund. Effectively this will be all of the fund as at 30 June 1997, and property acquired from that date that:

- is received in substitution for assets held before 1 July 1997
- was given in return for valuable consideration, or
- is income derived from that property.

The charitable fund will need to prepare accounts for both the 'old trust' and the 'new trust'. Costs will reduce the part of the fund to which they relate. Charitable distributions can be streamed from the 'old trust' or the 'new trust', unless the facts indicate otherwise.

EXAMPLE

A foundation was established by will on 1 January 1995. At 30 June 1997 it held cash at bank. After that date it received:

- land under a will
- rent on letting the land, and
- interest on cash at bank.

It made distributions of money to other charities each year. The foundation is deemed to be:

- the 'new trust' comprising the land, rents and any interest on the rents, reduced by the distributions but not more than the amount of rent and interest it has available for distribution, and
- the 'old trust' comprising the remainder of the trust property.

The 'old trust' is entitled to endorsement, provided its charitable fund has an ABN and is being applied for the purposes for which it was established.

Does your charitable fund meet this test (and the other requirements for endorsement)?

YES Your charitable fund is entitled to be endorsed for its old trust. See 'Applying for income tax exempt charity endorsement' on page 61.

NO For your fund's 'new trust' read on.

The 'new trust' has to meet additional tests as set out in 'Charitable funds – the three tests'. The charitable fund, of which the 'new trust' is a part, must have an ABN. The 'new trust' does not need a separate ABN.

If the 'new trust' meets the additional tests, the whole charitable fund will effectively be entitled to income tax exempt charity endorsement.

CHARITABLE FUNDS – THE THREE TESTS

Charitable funds that are not established by will before 1 July 1997 and ‘new trusts’ must meet at least one of three tests. This is in addition to the requirement that they are applied for the purposes for which they were established.

The three tests are:

Australian purposes test – the charitable fund incurs its expenditure principally in Australia and pursues its purposes solely in Australia and has done so at all times since 1 July 1997.

or

Deductible gift recipient – the charitable fund is a deductible gift recipient (DGR).

or

Distributions test – it distributes solely, and has at all times since 1 July 1997 distributed solely, to either or both of the following:

- charities that, to the best of the trustee’s knowledge, are located in Australia and pursue their purposes solely in Australia and incur their expenditure principally in Australia
- charities that, to the best of the trustee’s knowledge, are deductible gift recipients.

Australian purposes test

This test has two elements. The charitable fund or ‘new trust’ must:

- pursue its purposes solely in Australia, and have done so at all times since 1 July 1997, and
- incur its expenditure principally in Australia, and have done so at all times since 1 July 1997.

If the charitable fund or ‘new trust’ does not meet these requirements it may still satisfy the disregarded amounts test – see ‘Disregarded amounts’ on this page.

The charitable fund or ‘new trust’ must pursue its purposes exclusively in Australia. However, carrying out activities outside Australia can be acceptable if those activities are only for the sake of pursuing the purposes in Australia. For example, sending an employee to an overseas conference would be acceptable if it was to improve the efficiency of the Australian operations.

Expenditure must be principally incurred in Australia. Less than 50% is not ‘principally’. Expenditure includes distributions made for charitable purposes.

EXAMPLE

WER Trust holds and maintains church property. It manages three sites in Australia and one in the Solomon Islands. It does not meet the Australian purposes test because it does not pursue its purposes solely in Australia.

Disregarded amounts

If a charitable fund or ‘new trust’ does not, in fact, pursue its purposes solely and incur its expenditure principally in Australia, it might still, in some situations, meet the Australian purposes test. This will depend on its distributions of disregarded amounts.

Disregarded amounts are amounts the charitable fund or ‘new trust’ received as:

- gifts, including testamentary gifts (that is, gifts made under a will)
- proceeds from raffles, dinners, charity auctions, jumble sales and similar fundraising activities, or
- government grants.

Distributions of these amounts are disregarded when working out whether the charitable fund or ‘new trust’ meets the Australian purposes test.

The Tax Office assumes any offshore distributions are made first from the disregarded amounts that are able to be distributed offshore. The assumption does not apply if a disregarded amount cannot be distributed offshore. For example, government grants made only for use in Australia and gifts of land physically in Australia are not assumed to be distributed offshore.

The effect of this assumption is that offshore distributions can be made, up to the total of these amounts, without jeopardising entitlement to endorsement.

EXAMPLES

Example 1

A fund provides educational scholarships. The students are in Australia and New Zealand. The amounts it uses for the New Zealand scholarships are never more than the disregarded amounts that are available for offshore distribution.

Because the disregarded amounts are assumed to pay for the New Zealand scholarships, the fund is taken to be only providing scholarships for students in Australia. Given that this is solely pursuing purposes in Australia, the fund can still meet the Australian purposes test.

Example 2

Continuing the example of the WER Trust that manages church property. The fact that distributions might be less than the disregarded amounts will not help it meet the Australian purposes test. Its holding and managing of property in the Solomon Islands indicates its purpose is not solely in Australia, irrespective of the disregarded amounts.

At all times since 1 July 1997

If a charitable fund or 'new trust' fails to meet the Australian purposes test at any time from 1 July 1997, it cannot meet that test at any time in the future. Changes of activity cannot overcome an earlier failure to meet this test.

A charitable fund established after 1 July 1997 would have to meet the test at all times that it has existed.

If a charitable fund or 'new trust' ceases to meet this test and does not meet any other test, it ceases to be entitled to endorsement. It must notify the Tax Office so its endorsement can be revoked. The Tax Office does not have any discretion to ignore a cessation of entitlement.

Does your charitable fund or 'new trust' meet this test (and the other requirements for endorsement)?

YES Your charitable fund or 'new trust' is entitled to be endorsed. See 'Applying for income tax exempt charity endorsement' on page 61.

NO Read on.

Deductible gift recipient test

If a charitable fund is a deductible gift recipient (DGR) it meets this test.

A DGR is an entity to which donors can make income tax deductible gifts.

➤ MORE INFORMATION

Deductible gift recipients are explained in detail in *GiftPack for deductible gift recipients & donors* (NAT 3132).

To obtain this publication, see 'More information' on the inside back cover.

Deductible gift recipients:

- are listed by name in income tax law, or
- have received a notice from the Tax Office stating they have been endorsed as a DGR.

Does your charitable fund meet this test (and the other requirements for endorsement)?

YES Your charitable fund is entitled to be endorsed. See 'Applying for income tax exempt charity endorsement' on page 61.

NO Read on.

Distributions test

To meet this test the charitable fund or 'new trust' must distribute solely, and at all times since 1 July 1997 have distributed solely, to either or both of the following:

- charities, that, to the best of the trustee's knowledge, are located in Australia and pursue their purposes solely in Australia and incur their expenditure principally in Australia
- charities that, to the best of the trustee's knowledge, are deductible gift recipients.

All distributions must be made to charities. Distributions do not include reasonable payments for goods and services received, for example, insurance or administration and accounting costs.

Distributions to Australian charities

The charitable recipients must be located in Australia. They do not need to be located exclusively in Australia, but must have an enduring and substantial presence. If they pursue their purposes offshore they will not be acceptable recipients. For example, a charity spreading the gospel in Australia and Papua New Guinea would not be acceptable. The recipient must also incur its expenditure principally in Australia.

These requirements are 'to the best of the trustee's knowledge'. It will be sufficient if the trustee receives written confirmation from the recipient, and the trustee does not have reasonable grounds for doubt. A charitable fund or 'new trust' could satisfy this requirement through suitably worded questions in the forms through which applicants apply for funding. However, if the answers to these questions are unsatisfactory, and the trustee still distributes to the applicant, its entitlement to endorsement may be jeopardised.

If the charitable fund or 'new trust' does not meet these requirements it may still satisfy the disregarded amounts test – see 'Disregarded amounts' on page 59.

EXAMPLES**Example 1**

A fund is set up to give money to scientific charities. Its application procedures exclude all non-acceptable applicants. The fund can meet the distributions test.

Example 2

The RTY Foundation does not get information from recipients about their location, purpose or expenditure. One of the recipients funds projects in Australia and the Philippines. The foundation's trustee has asked to not receive the recipient's newsletters and has asked to be removed from the recipient's mailing list.

The Tax Office would not, in these circumstances, accept the trustee claiming a lack of knowledge of the recipient's activities. If the foundation is to meet the distributions test it will only be through disregarded amounts.

Distributions to deductible gift recipients (DGRs)

From 1 July 2000, the Tax Office must endorse DGRs. The only exceptions are those funds listed by name in income tax law. The gift status of all endorsed DGRs, and others that have an ABN, will be entered on the Australian Business Register (ABR). If an endorsed DGR is endorsed only for a fund, authority or institution it operates, the distribution must be made for that fund, authority or institution.

If the charitable recipients of the distributions are not, in fact, DGRs, the requirement will be satisfied provided the trustee has exercised reasonable care and was of the genuine belief that the recipient was a DGR. A charitable fund or 'new trust' can satisfy itself of the recipient's status:

- by checking the ABR to see if the recipient is a DGR at www.abn.business.gov.au
- through suitably worded questions in its application forms for funding, or
- by checking the status of recipients with the Tax Office by phoning **1300 130 248**.

If the charitable fund or 'new trust' does not meet these requirements it may still satisfy the disregarded amounts test – see 'Disregarded amounts' on this page.

EXAMPLE

A fund has procedures in place to always check that applicants for funding are charitable DGRs. Even if the trustee is misled by the information received and some of the applicants turn out not to be DGRs, the fund will still meet the distributions test because the trustee has acted to the best of its knowledge.

➤ MORE INFORMATION

DGRs are explained in detail in *Giftpack for deductible gift recipients & donors* (NAT 3132).

To obtain this publication, see 'More information' on the inside back cover.

Disregarded amounts

If a charitable fund or 'new trust' does not, in fact, distribute solely in the required ways it might still meet the Australian distribution test. This will depend on its distributions of disregarded amounts.

Disregarded amounts are amounts the charitable fund or 'new trust' received as:

- gifts, including testamentary gifts (that is, gifts made under a will)
- proceeds from raffles, dinners, charity auctions, jumble sales and similar fundraising activities, or
- government grants.

Distributions of these amounts are disregarded when working out whether the charitable fund or 'new trust' meets the distribution test.

The Tax Office assumes distributions to charities that are not located in Australia, or not solely pursuing their purposes in Australia, or are not DGRs, are made first from any disregarded amounts that can be distributed from them. The assumption does not apply if a disregarded amount cannot be distributed to them. For example, government grants that must be used for a specified purpose may not be assumed to be distributed to them.

The effect of this assumption is that distributions can be made to other charities up to the total of these amounts without jeopardising entitlement to endorsement.

EXAMPLES

Example 1

A trust provides funding for educational charities. It uses its investment income to fund Australian charities and it funds Canadian charities up to the amount of the gifts it receives. As long as the distributions to Canadian charities do not exceed the amount of gifts it could distribute offshore, the trust can still meet the distributions test.

Example 2

Continuing the earlier example of RTY Foundation, the foundation made a distribution to a charity that funds projects in the Philippines. If the distribution to this charity is less than the disregarded amounts it has available for offshore distribution, it can still meet the distributions test.

At all times since 1 July 1997

If a charitable fund or 'new trust' fails to meet the distribution test at any time from 1 July 1997, it cannot meet that test at any time in the future. Changes of activity cannot overcome an earlier failure to meet this test.

A charitable fund established after 1 July 1997 would have to meet the test at all times that it has existed.

If a charitable fund or 'new trust' ceases to meet this test and does not meet any other test, it ceases to be entitled to endorsement. It must notify the Tax Office so its endorsement can be revoked. The Tax Office does not have any discretion to ignore a cessation of entitlement.

Does your charitable fund or 'new trust' meet this test (and the other requirements for endorsement)?

YES Your charitable fund or 'new trust' is entitled to be endorsed. See 'Applying for income tax exempt charity endorsement' on page 61.

NO Read on.

Conclusion

Is your organisation entitled to be endorsed?

YES See 'Applying for income tax exempt charity endorsement' on page 61.

NO See 'Income tax – if your organisation is not an income tax exempt charity' on page 64.

APPLYING FOR INCOME TAX EXEMPT CHARITY ENDORSEMENT

If your organisation satisfies the requirements discussed at ‘Is your organisation entitled to endorsement as an income tax exempt charity?’ on page 50, this section explains how to apply.

! EXTENDED ENDORSEMENT REQUIREMENTS

From 1 July 2005 additional endorsement requirements commence for charities. A charity will need to be endorsed to access charity tax concessions available under fringe benefits tax and GST laws. This is in addition to the existing endorsement requirement for income tax exemption.

See ‘Endorsement requirements for FBT and GST charity concessions’ on page 80.

APPLICATION FORM

Only charities with an ABN can seek endorsement to access charity tax concessions. If you indicate on the ABN registration form that your organisation wants to be endorsed as a tax concession charity, you will automatically be sent an *Application for endorsement as a tax concession charity or income tax exempt fund* (NAT 10651) and its accompanying instructions (NAT 10652).

Charities can apply for income tax exempt charity endorsement on this form using the accompanying instructions.

A charity can apply for endorsement to access fringe benefits tax (FBT) and GST charity concessions on the same form. If a charity is entitled to endorsement, it should lodge the completed application with the Tax Office.

Charities that already have an ABN, and did not indicate their charity status on the ABN application, will need to contact the Tax Office for an endorsement application form.

The application form and its accompanying instructions are available from the Tax Office by phoning **1300 130 248**.

WHEN DOES ENDORSEMENT START?

The application will ask you for the date from which you want your organisation to be endorsed.

The earliest possible date a charity can apply for endorsement to access income tax concessions is 1 July 2000. From that date it will only be exempt if it is endorsed. If your organisation became entitled to endorsement after that date it should use the date from which it became entitled.

EXAMPLE

A non-profit child care service provider has existed since 1 January 1998. Laws introduced from 1 July 2004 recognise the provision of child care services on a non-profit basis as a charitable purpose. If the child care service provider meets all the characteristics of a charity from this date, and meets the endorsement requirements explained earlier in this chapter it can apply for endorsement to access income tax charity concessions from 1 July 2004.

The endorsement date can be retrospective. Income earned from the effective date of endorsement is exempt from income tax.

EXAMPLES

Example 1

A charity lodges its application for endorsement in January 2005. As long as it has an ABN and has met the conditions for entitlement from 1 July 2004, its endorsement starts from that date. Income earned from 1 July 2004 is then exempt.

Example 2

A charity is established and operates from 2 October 2002. If it has an ABN and meets the conditions for entitlement from that time, its endorsement date can be 2 October 2002.

WE WILL NOTIFY YOU IN WRITING

Once the Tax Office has processed your application, we will send you written confirmation that:

- your organisation is endorsed as exempt from income tax, or
- endorsement has been refused.

If your organisation is endorsed, it is exempt from income tax from the date the endorsement starts.

IF THERE ARE DELAYS IN NOTIFYING YOU

If you believe the Tax Office is too slow in notifying you about whether your organisation is endorsed, you can have your organisation's application treated as if it had been refused. The deemed refusal will trigger formal review rights.

The earliest you can notify the Tax Office of your wish to have your organisation's application treated as if it had been refused is the later of:

- the end of the 60th day after you made the application, or
- the end of the 28th day after the last day on which you gave the Tax Office information or documentation it had asked for.

To have your application treated as if it had been refused, you must give the Tax Office written notice that you want it treated in that way. Your application will be deemed to be refused on the day you give such a notice.

You then have a right to lodge an objection to the deemed refusal and have the decision reviewed.

REVIEW RIGHTS

If endorsement is refused, the Tax Office will provide you with a clear explanation of our decision. At your request, we will review any of our decisions or actions affecting your organisation and try to resolve any problems quickly and informally. If you want us to do this, you should contact the person handling your case or the Tax Office where the decision was made or action was undertaken.


You also have the right under the law to ask the Tax Office for a review by lodging an objection against the refusal, or deemed refusal. Your objection must be:

- in writing, signed and dated
- lodged within 60 days of the date of notice of decision – although you may be granted an extension of time
- addressed to the Tax Office, and
- explain the grounds that you rely on.

This will enable us to consider all the facts when conducting the review.

We will advise you in writing of our decision on your objection and provide reasons for the decision.

If you are dissatisfied with our decision in relation to your objection, you may have the right to a review by the Administrative Appeals Tribunal or you can appeal to the Federal Court. The Tax Office letter that accompanies the notice of decision on your objection will explain the steps you need to follow to exercise your rights of review or appeal.

 Endorsement as an income tax exempt charity does not entitle you to receive income tax deductible gifts. There is a separate endorsement process for deductible gift recipients (DGRs).

Refer to *GiftPack for deductible gift recipients & donors* (NAT 3132) for comprehensive information on DGR endorsement and income tax deductible gifts. To obtain this publication, see 'More information' on the inside back cover.

INFORMATION DISCLOSED ON THE AUSTRALIAN BUSINESS REGISTER

From 1 July 2005, the Australian Business Register at www.abn.business.gov.au will display the following details for charities that have been endorsed to access charity tax concessions.

- The type of charity, for example charitable fund, charitable institution, public benevolent institution or health promotion charity.
- The charity tax concessions the organisation has been endorsed to access, for example
 - income tax exemption
 - GST concessions
 - FBT rebate or FBT exemption.
- The date of effect of each endorsement.

If a charity does not want this information publicly displayed, it will need to waive its entitlement to the related concessions.

Office bearer information is not disclosed on the ABR.

INCOME TAX – IF YOUR ORGANISATION IS AN INCOME TAX EXEMPT CHARITY

INCOME TAX EXEMPT CHARITY ENDORSEMENT GIVES YOUR ORGANISATION IMPORTANT INCOME TAX CONCESSIONS

An endorsed income tax exempt charity:

- does not pay income tax, and
- does not have to lodge income tax returns unless specifically asked to do so.

However, there is also an important obligation. If your organisation ceases to be entitled to endorsement, it must tell the Tax Office in writing.

This section will help you work out whether your organisation is still entitled to income tax exemption after endorsement. It also explains:

- your obligations if the Tax Office decides to carry out its own review of your organisation's entitlement to endorsement, and
- revocation of endorsement and the rights to have a revocation reviewed.

REGULARLY REVIEW YOUR ORGANISATION'S ENTITLEMENT TO ENDORSEMENT

You will need to carry out regular reviews of your organisation's status because you must tell the Tax Office if it ceases to be entitled to endorsement.

The law does not require any particular intervals between self-reviews, but the Tax Office recommends a yearly review. There should also be a review when there is a major change in your organisation's structure or operations.

To help you carry out a self-review, we have provided a worksheet on page 88 of this guide. It will take you through the essential points. If you go through the worksheet and find your organisation is not entitled to endorsement, you must tell the Tax Office. You must do this before entitlement ceases or as soon as practicable afterwards. If, after self-review, you find the organisation is entitled, you do not have to contact the Tax Office and your organisation's status continues unchanged.

A log has also been included to give you a snapshot of the reviews you have carried out over the years. It will help future office-bearers of your organisation and will also help if the Tax Office conducts a review of your organisation's status.

TAX OFFICE REVIEW

As part of its general administration of tax laws, the Tax Office will carry out reviews of endorsed income tax exempt charities. The reviews will help establish whether your organisation is in fact entitled to endorsement.

The Tax Office may request that you provide information and documents that are relevant to your organisation's entitlement to endorsement. While you must comply with this request, you will be given at least 28 days to provide the required information and documents. Failure to comply can lead to endorsement being revoked, and to prosecution.

REVOKING ENDORSEMENT

The Tax Office can revoke an income tax exempt charity's endorsement if:

- it is not entitled to be endorsed, or
- it has not provided information or documents within the specified time after a request by the Tax Office.

The Tax Office will provide written notice of the revocation, with effect from a date we have specified. The date may be retrospective.

EXAMPLE

A training organisation changes its governing documents to remove the non-profit clause and provide for dividends to members. It began to operate on a for-profit basis from 1 September 2000. The organisation is no longer a charity, as it operates for the profit of its owners.

The Tax Office will revoke its endorsement with effect from 1 September 2000.

The consequences of having income tax exempt charity endorsement revoked are outlined in 'If endorsement is revoked, income tax returns must be lodged' on page 64.

REVIEW OF REVOCATION

If you are dissatisfied with the revocation of your charity's income tax exempt charity endorsement, you can lodge an objection against the revocation in writing to the Tax Office, giving the grounds for the objection.

⚠ Endorsement as an income tax exempt charity does not entitle you to receive income tax deductible gifts. There is a separate endorsement process for deductible gift recipients (DGRs).

Refer to our publication *GiftPack for deductible gift recipients & donors* (NAT 3132). To obtain this publication, see 'More information' on the inside back cover.

TAX AVOIDANCE SCHEMES

Although endorsed income tax exempt charities are exempt from income tax, they will be subject to tax under the *Income Tax (Diverted Income) Act 1981* if they are used for diverting income as part of a tax avoidance scheme.

INCOME TAX – IF YOUR ORGANISATION IS NOT AN INCOME TAX EXEMPT CHARITY

TAXABLE CHARITIES MUST LODGE INCOME TAX RETURNS

From 1 July 2000 a charity that is not endorsed as an income tax exempt charity is subject to income tax if it is a:

- charitable institution
- charitable fund established by will before 1 July 1997 or the 'new trust' part of such a fund
- charitable fund established in Australia by will on or after 1 July 1997, or
- charitable fund established in Australia by instrument of trust.

If these charities are not endorsed as income tax exempt charities, they need to lodge income tax returns.

Charitable funds cannot be endorsed as income tax exempt charities if they are:

- charitable funds established by will from 1 July 1997 that are not established in Australia, or
- charitable funds established by instrument of trust that are not established in Australia.

These charitable funds will only be exempt from income tax if they fall within some other income tax exempt category and meet the special conditions for it (excluding 'not a charity'). Most are likely to be taxable and so must lodge income tax returns.

INCOME TAX RETURNS

There are different returns for different types of taxpayers, including the company tax return and the trust tax return. The instructions for the different types of returns explain their requirements.

A taxable charity should use the appropriate form that is available (with instructions) from the Tax Office.

IF ENDORSEMENT IS REVOKED, INCOME TAX RETURNS MUST BE LODGED

If an organisation's income tax exempt charity endorsement is revoked, it is taxable from the date the endorsement ceases. That date may be earlier than when the revocation is notified. If this occurs during an income tax year, a tax return should be lodged for the period from that date to 30 June.

The income tax law makes special provision for entities that cease to be exempt and become taxable. Income, outgoings, gains and losses are attributed to the periods before and after the loss of exemption.

If the 'new trust' part of a charitable fund is not endorsed but the 'old trust' part is, the charitable fund must lodge an income tax return. The part of the fund's income that is attributable to the 'old trust' will not be taxable. Only amounts attributable to the 'new trust' need to be included.

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INCOME TAX EXEMPT FUNDS

05

This chapter explains:

- the characteristics of income tax exempt funds
- the need to be endorsed as an income tax exempt fund
- how to apply for endorsement
- the income tax consequences once your fund is endorsed
- your fund's income tax obligations if it is not endorsed, or its endorsement is revoked, and
- endorsement information disclosed on the Australian Business Register.

WHAT IS AN INCOME TAX EXEMPT FUND?

An income tax exempt fund (ITEF) is a non-charitable fund established by will or instrument of trust solely for:

- the purpose of providing money, property or benefits to income tax exempt deductible gift recipients (DGRs), or
- establishing DGRs.

These non-charitable funds must be endorsed by the Tax Office to be exempt from income tax.

IS YOUR FUND ENTITLED TO ITEF ENDORSEMENT?

To be entitled to ITEF endorsement, your fund must:

- have an Australian business number (ABN)
- not be a charitable fund
- be established by will or instrument of trust solely for
 - the purpose of providing money, property or benefits to deductible gift recipients (DGRs), or
 - the establishment of DGRs
- not provide for, or establish DGRs that are ancillary funds or prescribed private funds
- be applied for the purposes for which it is established, and
- distribute solely, and have at all times since 1 July 2005, distributed solely to income tax exempt entities that are DGRs.

AUSTRALIAN BUSINESS NUMBER

If your fund does not have an ABN, you can apply for an ABN:

- electronically, through
 - the Australian Business Register at www.abr.gov.au, if all your fund wants to do is apply for an ABN
 - the Australian Government business website at www.business.gov.au where your fund can access a range of information and services
- on a paper application, available by phoning the Tax Office on **1300 130 248**, or
- through a tax agent, who will lodge your fund's application using the electronic lodgment service (ELS).

WHAT IS A NON-CHARITABLE FUND?

If a fund can be applied for purposes that are not charitable, it is not a charitable fund.

For non-charitable funds, the choice of DGRs which they can distribute to is not limited to DGRs which are charities, or for charitable purposes in benefiting DGRs.

The beneficiaries of non-charitable funds can include DGRs that are charities and DGRs that are not charities. A non-charitable fund could also distribute only to DGRs that are not charities.

Applied for its purposes

To be endorsed for income tax exemption, a fund must be applied for the purposes for which it is established. If it is not being applied for those purposes, it is not entitled to be endorsed for income tax exemption.

Examples where a fund is not being applied for its purposes include:

- where distributions are made for purposes other than the purposes for which the fund is established
- where trust property is being invested in ways to confer private benefits on particular people, or
- where income is being accumulated excessively.

Distributions to DGRs

An ITEF must only distribute to DGRs that are income tax exempt.

Examples where a fund is not distributing correctly include where distributions are made to taxable entities, or where distributions are made to an entity that is not a DGR.

If a DGR is endorsed only for a fund, authority or institution that it operates, an ITEF will only be able to assist such a fund, authority or institution. It must not assist other parts of that DGR.

EXAMPLE

An ITEF receives requests for funding from a school. The school is a DGR for its school building fund. The ITEF will only be able to make distributions to the school's building fund.

For some DGRs, the tax law adds extra conditions affecting the type of deductible gifts they can receive. For example, the gift may only be tax deductible for a specific use. If a condition applies to a DGR, an ITEF must only provide money, property or benefits to it for the purposes allowed by the condition.

➤ You can check if an organisation is a DGR or is income tax exempt (if it is a charity) by:

- visiting the ABN Lookup website at www.abn.business.gov.au or
- phoning the Tax Office on **13 28 61**.

APPLYING FOR ITEF ENDORSEMENT

If your fund satisfies the requirements discussed at 'Is your fund entitled to ITEF endorsement?' this section explains how to apply.

APPLICATION FORM

Your fund can only apply for endorsement as an ITEF if it has an ABN. If you indicate on the ABN registration form that your fund wants to be endorsed as an ITEF, you will automatically be sent an *Application for endorsement as a tax concession charity or income tax exempt fund* (NAT 10651) and its accompanying instructions (NAT 10652).

You can apply for endorsement on this form using the accompanying instructions.

Funds that already have an ABN, and did not indicate their intention to seek endorsement on the ABN registration form, will need to contact the Tax Office for an application form.

The application form and its accompanying instructions are available from the Tax Office by phoning **1300 130 248**.

WHEN DOES ENDORSEMENT START?

The application will ask you for the date from which you want your fund to be endorsed.

The earliest possible date a fund can be endorsed as an ITEF is 1 July 2005. From that date it will only be exempt if it is endorsed. If your fund became entitled to endorsement after that date it should use the date from which it became entitled.

WE WILL NOTIFY YOU IN WRITING

Once the Tax Office has processed your application, we will send you written confirmation that:

- your fund is endorsed as exempt from income tax, or
- endorsement has been refused.

If your fund is endorsed, it is exempt from income tax from the date the endorsement starts.

IF THERE ARE DELAYS IN NOTIFYING YOU

If you believe the Tax Office is too slow in notifying you about whether your fund is endorsed, you can have your fund's application treated as if it had been refused. The deemed refusal will trigger formal review rights.

The earliest you can notify the Tax Office of your wish to have your fund's application treated as if it had been refused is the later of:

- the end of the 60th day after you made the application, or
- the end of the 28th day after the last day on which you gave the Tax Office information or documentation it had asked for.

INCOME TAX – IF YOUR FUND IS ENDORSED AS INCOME TAX EXEMPT

To have your application treated as if it had been refused, you must give the Tax Office written notice that you want it treated in that way. Your application will be deemed to be refused on the day you give such a notice.

You then have a right to lodge an objection to the deemed refusal and have the decision reviewed.

REVIEW RIGHTS

If endorsement is refused, the Tax Office will provide you with a clear explanation of our decision. At your request, we will review any of our decisions or actions affecting your fund and try to resolve any problems quickly and informally. If you want us to do this, you should contact the person handling your case or the Tax Office where the decision was made or action was undertaken.

You also have the right under the law to ask the Tax Office for a review by lodging an objection against the refusal, or deemed refusal. Your objection must:

- be in writing, signed and dated
- be lodged within 60 days of the date of notice of decision – although you may be granted an extension of time
- be addressed to the Tax Office, and
- explain the grounds that you rely on.

This will enable us to consider all the facts when conducting the review.

We will advise you in writing of our decision on your objection and provide reasons for the decision.

If you are dissatisfied with our decision in relation to your objection, you may have the right to a review by the Administrative Appeals Tribunal or you can appeal to the Federal Court. The letter we send you with the notice of decision on your objection will explain the steps you need to follow to exercise your rights of review or appeal.

INFORMATION DISCLOSED ON THE AUSTRALIAN BUSINESS REGISTER

The Australian Business Register (ABR) at www.abn.business.gov.au will indicate that your fund is endorsed as income tax exempt and show the date of effect.

If your fund does not want this information publicly displayed, it will need to waive its entitlement to endorsement.

INCOME TAX EXEMPT ENDORSEMENT GIVES YOUR FUND IMPORTANT INCOME TAX CONCESSIONS

If your fund is endorsed as an ITEF it:

- does not pay income tax, and
- does not have to lodge income tax returns unless specifically asked to do so.

However, there is also an important obligation. If your fund ceases to be entitled to endorsement, it must tell the Tax Office in writing.

This section will help you work out whether your fund is still entitled to income tax exemption after endorsement. It also explains:

- your obligations if the Tax Office decides to carry out its own review of your fund's entitlement to endorsement, and
- revocation of endorsement and the rights to have a revocation reviewed.

REGULARLY REVIEW YOUR FUND'S ENTITLEMENT TO ENDORSEMENT

You will need to carry out regular reviews of your fund's status because you must tell us if it ceases to be entitled to endorsement.

The law does not require any particular intervals between self reviews, but we recommend a yearly review. There should also be a review when there is a major change in your fund's structure or operations.

To help you carry out a self-review, we have provided worksheet 3 on page 93 of this guide. It will take you through the essential points. If you complete worksheet 3 and find your fund is not entitled to endorsement, you must tell the Tax Office. You must do this before entitlement ceases or as soon as practicable afterwards. If, after self-review, you find the fund is entitled, you do not have to contact the Tax Office and your fund's status continues unchanged.

A log has also been included to give you a snapshot of the reviews you have carried out over the years. It will help future office bearers of your fund and will also help if we conduct a review of your fund's status.

TAX OFFICE REVIEW

As part of its general administration of tax laws, the Tax Office will review endorsed income tax exempt funds. The reviews will help establish whether your fund is in fact entitled to endorsement.

We may request that you provide information and documents that are relevant to your fund's entitlement to endorsement. While you must comply with this request, you will be given at least 28 days to provide the required information and documents. Failure to comply can lead to endorsement being revoked, and to prosecution.

REVOKING ENDORSEMENT

The Tax Office can revoke an ITEF's endorsement if:

- it is not entitled to be endorsed, or
- it has not provided information or documents within the specified time after a request by the Tax Office.

The Tax Office will provide written notice of the revocation, with effect from a date we have specified. The date may be retrospective.

The consequences of having ITEF endorsement revoked are outlined under 'If endorsement is revoked, income tax returns must be lodged' on this page.

REVIEW OF REVOCATION

If you are dissatisfied with the revocation of your fund's ITEF endorsement, you can lodge an objection against the revocation in writing to the Tax Office, giving the grounds for the objection.

TAX DEDUCTIBLE GIFTS

Endorsement as an ITEF does not entitle you to receive income tax deductible gifts. There is a separate endorsement process for deductible gift recipients (DGRs).

If your fund is a public fund, there is a separate endorsement process. For more information, see our fact sheet *The endorsement process for deductible gift recipients* (NAT 3193).

If your fund is a private fund, it must be a prescribed private fund to receive tax deductible gifts. For information about prescribed private funds, see our web only document *Guidelines for prescribed private funds*, available from www.ato.gov.au

MORE INFORMATION

Refer to *GiftPack for deductible gift recipients & donors* (NAT 3132) for comprehensive information on DGR endorsement and income tax deductible gifts.

To obtain this publication, see 'More information' on the inside back cover.

INCOME TAX – IF YOUR FUND IS NOT INCOME TAX EXEMPT

TAXABLE FUNDS MUST LODGE INCOME TAX RETURNS

From 1 July 2005, a non-charitable fund that is not endorsed as income tax exempt could be subject to income tax. This can depend upon whether its beneficiaries are presently entitled to all of the fund's income.

INCOME TAX RETURNS

A fund that is not income tax exempt may need to lodge a trust tax return. The instructions explain its requirements. The trust tax return and its instructions are available from the Tax Office.

IF ENDORSEMENT IS REVOKED, INCOME TAX RETURNS MUST BE LODGED

If a fund's ITEF endorsement is revoked, it could be taxable from the date the endorsement ceases. That date may be earlier than when the revocation is notified. If this occurs during an income tax year, your organisation should lodge a tax return for the period from that date to 30 June.

The income tax law makes special provision for entities that cease to be exempt and become taxable. Income, outgoings, gains and losses are attributed to the periods before and after the loss of exemption.

TAX AVOIDANCE SCHEMES

Although funds endorsed as ITEFs are exempt from income tax, they will be subject to tax under the *Income Tax (Diverted Income) Act 1981* if they are used for diverting income as part of a tax avoidance scheme.

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TAXABLE ORGANISATIONS

06

This chapter is for taxable non-profit organisations – those that are not income tax exempt.

It explains:

- whether a taxable organisation is a non-profit company
- what rate of income tax applies
- whether income tax returns need to be lodged, and
- how to calculate taxable income.

! ORGANISATIONS NOT COVERED

This guide does not cover friendly societies or the special arrangements of certain trade unions and employee associations (registered organisations) which are exempt for only some of their income.

IS YOUR ORGANISATION A NON-PROFIT COMPANY?

Clubs, societies and associations are generally treated as companies for income tax purposes.

There may be situations where, due to the relationship between members, an organisation is more correctly treated as a partnership. A club, society or association that is exempt from tax (see 'Is your organisation exempt from income tax?' on page 9) will be exempt whether it is a partnership or a company.

A club, society or association that is taxable and is more correctly treated as a partnership, will not itself be taxable. Its members will disclose in their individual returns their share of the net income of the partnership. As circumstances where such organisations will fall within this category are rare, partnerships are not further discussed in this chapter.

This chapter looks at the income tax consequences for clubs, societies and associations that are not exempt.

Clubs, societies and associations that are not exempt are referred to as either 'non-profit companies' or 'other taxable companies'.

! A non-profit organisation does not need to be incorporated to be treated as a company for income tax purposes.

Non-profit companies and other taxable companies have some different tax obligations. Non-profit companies have special rates of income tax and special arrangements for lodging income tax returns.

NON-PROFIT COMPANIES

For your organisation to be a non-profit company:

- it must be a company that is not carried on for the purposes of profit or gain to its individual members, and
- its constituent documents must prohibit it from making any distribution, whether in money, property or otherwise, to its members.

Your organisation can be a non-profit company and still make a profit. However, any profits it makes must be used to carry out its purposes. The profits must not be distributed to the members.

EXAMPLE

A society makes a \$40,000 profit for the year. It uses the profit to reduce its debts and provide for the activities it will carry on next year.

The prohibition on distributions applies while the organisation is operating and on its winding up. If it permits the organisation's members to transfer the assets to themselves on winding up, it is not a non-profit company.

A non-profit company can make payments to its members as bona fide remuneration for services they have provided to it, and as reasonable compensation for expenses incurred on behalf of the organisation.

Income tax law does not prescribe a form of words that a non-profit company must have in its constituent documents. The following example clauses would be acceptable, as long as other clauses were not contrary to them. The organisation's activities must be consistent with the clauses.

EXAMPLES

Non-profit clause

'The assets and income of the organisation shall be applied solely in furtherance of its above-mentioned objects and no portion shall be distributed directly or indirectly to the members of the organisation except as bona fide compensation for services rendered or expenses incurred on behalf of the organisation.'

Dissolution clause

'In the event of the organisation being dissolved, the amount that remains after such dissolution and the satisfaction of all debts and liabilities shall be transferred to another organisation with similar purposes and which has rules prohibiting the distribution of its assets and income to its members.'

Organisations carried on for the joint or common benefit of their members can qualify as non-profit companies. An example would be a professional association established to advance the professional interests of its members. However, the association must not be carried on for the profit or gain of its individual members.

OTHER TAXABLE COMPANIES

Clubs, societies and associations that do not meet the non-profit requirement are treated as 'other taxable companies'.

! Strata title bodies corporate do not qualify as non-profit companies – see Taxation Determination 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?

Non-profit company also includes a friendly society dispensary.

RATES OF INCOME TAX

NON-PROFIT COMPANIES HAVE SPECIAL RATES OF INCOME TAX

Income year	Non-profit companies		Other taxable companies
	Taxable income	Rate of tax	Rate of tax
2001–02 and later years	\$0 – \$416	Nil	30%
	\$417 – \$915	55% for every \$1 over \$416	
	\$916 and above	30% for every \$1 Note: If the taxable income is \$916 or more, the whole amount is taxable.	

NON-PROFIT COMPANIES

For non-profit companies, the income tax payable depends on the level of taxable income.

If the taxable income is \$416 or less for a year, no tax is payable.

EXAMPLE

A non-profit company has taxable income of \$380 in 2001–02.
The income tax is nil.

If a non-profit company has a taxable income between \$417 and the threshold, the amount in excess of \$416 is taxed at 55%.

EXAMPLE

A non-profit company has taxable income of \$900 in 2001–02.
The income tax is \$266.20.
It is calculated as $(\$900 - \$416) \times 0.55$

If the taxable income is more than the threshold, the ordinary company tax rate is applied to all the taxable income at 30%.

EXAMPLE

A non-profit company has taxable income of \$2,000 in 2001–02.
The income tax is \$600.
It is calculated as $\$2,000 \times 0.30$

OTHER TAXABLE COMPANIES

Other taxable companies are taxable from the first dollar. That is, they are taxable on all levels of taxable income and there is no threshold. The rate of tax for 2001–02 and later years is 30%.

EXAMPLE

Another taxable company has taxable income of \$1,100 in 2001–02.

The income tax is \$330.

It is calculated as $\$1,100 \times 0.30$

SPECIAL RATES

There are special rates of tax for life assurance companies, credit unions and registered organisations (including trade unions and friendly societies) carrying on insurance business. They are not discussed in this guide.

LODGING INCOME TAX RETURNS

NON-PROFIT COMPANIES

Non-profit companies with a taxable income of \$416 or less a year that are Australian residents will not be required to lodge an income tax return because the income is below the taxable threshold. However, the Tax Office may notify a particular company that it is required to lodge a return.

Non-profit companies with a taxable income of more than \$416 a year must lodge an income tax return for that year.

Organisations will need to use the company tax return to lodge a return. These forms and the accompanying instructions are available from the Tax Office.

OTHER TAXABLE COMPANIES

Other taxable companies are taxed on any amount of taxable income. They must lodge an income tax return each year.

They will need to use the company tax return. These forms and the accompanying instructions are available from the Tax Office.

CALCULATING TAXABLE INCOME

Taxable income is calculated as the difference between the organisation's assessable income and deductions.

$$\text{Taxable income} = \text{Assessable income} - \text{Deductions}$$

The taxable income of a club, society or association is calculated in the same way as for other companies. Three particular aspects affecting many clubs, societies and associations are:

- mutual dealings with members – see 'Assessable income' below and 'Deductions' on page 75
- capital gains tax – see 'Capital gains tax' on page 76, and
- the effect of goods and services tax – see 'Goods and services tax' on page 77.

An example of calculating taxable income is given on page 78.

ASSESSABLE INCOME

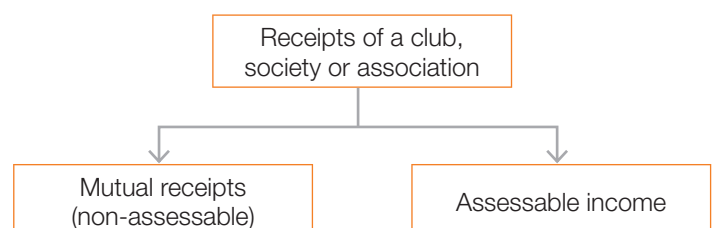
Assessable income is, broadly speaking, the income derived by your organisation. It can also include some capital gains made on the disposal of assets. The instructions for the company tax return and the trust tax return, and other information available from the Tax Office, will help you.

Receipts treated as assessable income

Many amounts received by your organisation will be assessable income.

Receipts that are assessable income include:

- bank interest
- dividends and other income from investments
- proceeds from fundraising drives to the public, for example sale of lamingtons, cakes, or chocolates
- drinks sold at the bar to non-members visiting the club
- fees received for hiring out the club's hall, facilities or equipment to the public
- amounts non-members pay to attend dinners, parties, dances or social functions organised by the club
- amounts non-members pay to attend a talk, presentation or workshop organised by the club
- non-member proceeds from a raffle
- selling souvenirs to non-members, and
- gaming income derived by a club under arrangements entered into with an external gaming or keno operator.



Receipts not treated as assessable income (mutual receipts)

Not all amounts of money or property your organisation receives will necessarily be assessable income. Receipts derived from mutual dealings with members of your organisation are not assessable income. They are called mutual receipts.

Mutual receipts include:

- member subscriptions
- drinks sold at the bar to club members
- amounts members pay to attend dinners, parties, dances or social functions organised by the organisation, and
- amounts members pay to attend a talk, workshop or presentation organised by the club.

Not all dealings involving members are necessarily mutual receipts.

EXAMPLE

A recreation club enters an agreement with an independent gymnasium to operate on the club’s premises. Income received by the club from the gymnasium is assessable, even though patrons of the gymnasium may be club members.

Dividing receipts into mutual receipts and assessable income

In most situations, it is easy to identify and separate the receipts. However, if identification and separation is not possible, you may use a practical and suitable method for apportioning the receipts. The method you choose is likely to depend on the type of receipts. We will accept your method of apportionment provided:

- there is a reason for apportioning the receipts
- the method chosen is reasonable and is not arbitrary, and
- it gives a correct reflection of the income earned.

DEDUCTIONS

Deductions are, broadly speaking, operating expenses that are incurred in earning the assessable income. The instructions for the company tax return, and other guides available from the Tax Office, will help you.

The deduction your organisation will be able to claim for expenses incurred in earning both assessable income and non-assessable amounts, will be limited to the extent the expenditure was incurred in deriving the assessable income. Therefore, your organisation may need to apportion its expenses.

Expenses that could be deductions, but that could require apportionment, include:

- printing
- postage
- stationery
- telephone
- electricity
- bank charges
- rent, and
- insurance.

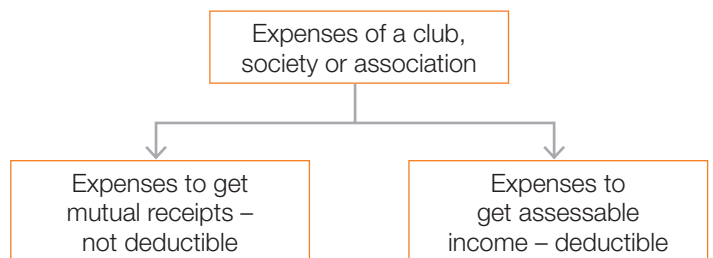
Decline in value (depreciation) may be allowable on capital items like cars, furniture and equipment.

Some expenses may be wholly incurred in deriving your organisation’s assessable income.

Deductions include:

- costs of running a function solely for non-members
- fees for earning bank interest or dividends, and
- costs of fundraising drives to the public.

However, there are some deductions that do not have to be incurred in deriving assessable income. They include tax deductible gifts and superannuation contributions for employees. Rates and land taxes are deductible to the extent that premises are used to get mutual receipts or derive assessable income.



Expenses against mutual receipts

If your organisation has mutual receipts, not all the operating expenses will be deductible. The part of the expenses that were incurred to get the mutual receipts will not be deductible.

Expenses that are not deductible include the costs of:

- running member-only functions
- collecting subscriptions, and
- increasing membership.

In most situations, it is easy to identify and separate the expenditure into deductible and non-deductible amounts. For example, the costs of buying badges for members (not deductible) could be separated easily from the costs of buying promotional buttons sold to the public as part of a fundraising drive (deductible).

However, there may be situations where identification and separation is not possible, or where the expenditure may relate to earning both assessable income and mutual receipts. In such situations, you may choose to use a practical and suitable method of apportioning the expenses. The method of apportionment is likely to depend on the type of expenses in question. We will accept your method provided:

- there is a reason for apportioning the expenditure
- the method chosen is suitable for that type of expenditure
- the method chosen is reasonable and is not arbitrary, and
- it gives a correct reflection of the expenditure incurred.

LICENSED AND REGISTERED CLUBS

If your organisation is a licensed club or registered club, calculation of its taxable income may be more involved.

➤ MORE INFORMATION

The calculation is explained in Taxation Determination TD 93/194 Income tax: how should a licensed club apportion its expenses when calculating its taxable income? and in *Guidelines for registered and licensed clubs*.

Clubs that derive income under arrangements with third parties to conduct gaming or other activities on the club's premises should read Taxation Determination 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? It discusses the assessability of such income.

To obtain these publications, see 'More information' on the inside back cover.

CAPITAL GAINS TAX

Capital gains tax is the tax a person or organisation pays on any capital gain it makes and includes in its annual income tax return. There is no separate tax on capital gains – it is just a component of income tax. An organisation is taxed on its net capital gain at the company tax rate.

➤ MORE INFORMATION

Detailed information on how to work out your organisation's net capital gain or net capital loss is available in *Guide to capital gains tax* (NAT 4151).

To obtain this publication, see 'More information' on the inside back cover.

Some of the particular capital gains tax issues that can affect non-profit organisations include:

- the sale of assets used in carrying on its activities
- changes to the form of an organisation's incorporation
- amalgamation of organisations, and
- availability of CGT concessions such as the CGT discount and small business concessions.

➤ MORE INFORMATION

Refer to *Non-profit clubs, societies and associations: does my organisation have to pay capital gains tax?* (NAT 8281).

To obtain this publication, see 'More information' on the inside back cover.

GOODS AND SERVICES TAX

The effect of GST on the calculation of taxable income differs depending on whether your organisation is registered for GST, or is required to be registered.

Registered or required to be registered

If your organisation is registered for GST, or required to be registered, adjustments to assessable income and allowable deductions may be needed to calculate the taxable income.

Your organisation's assessable income will not include the GST payable on a taxable supply it makes.

EXAMPLE

A recreational association is registered for GST. It supplies equipment to non-members for \$220 per item. The price includes \$20 GST.

The association's assessable income would include \$200 for each item. The \$20 GST would not be included.

Your organisation's allowable deductions will not include the input tax credits to which your organisation is entitled.

EXAMPLE

A community club is registered for GST. It buys goods for \$550 for a fundraising drive to non-members. It is entitled to an input tax credit of \$50 on the purchase.

The club's allowable deduction would be \$500. It cannot claim a deduction for the part of the purchase price that it can claim as an input tax credit, in this case \$50.

Not registered and not required to be registered

If your organisation is not registered for GST and is not required to be registered, no adjustment for GST is needed in calculating taxable income.

EXAMPLES

Example 1

A social club is not registered for GST and not required to be registered. It supplies equipment to non-members for \$330 per item.

The club would include \$330 per item as assessable income.

Example 2

A lobbying association is not registered for GST and not required to be registered. It buys goods for \$220 to help in deriving its assessable income. The \$220 included \$20 GST.

The association's allowable deduction would be \$220.

MORE INFORMATION

Information on GST and registration is available in *Tax basics for non-profit organisations* (NAT 7966).

To obtain this publication, see 'More information' on the inside back cover.

EXAMPLE Calculating taxable income

ABCD Society is a non-profit company with the following receipts and expenditure for year ended 30 June 2005.

It is not registered for GST and not required to be registered.

Total receipts	\$	Total expenditure	\$
Subscriptions	\$3,000	Postage	\$100
Term deposit interest	\$800	Photocopying	\$100
Christmas dinner*	\$5,000	Christmas dinner*	\$4,000
Lamington sale to public	\$2,500	Cost of lamingtons	\$1,800
		Term deposit charges	\$50
Total	\$11,300		\$6,050

* The Christmas dinner was attended by 70 members and 30 non-members who paid \$50 each. It cost \$40 per person to cater for the dinner.

The taxable income of ABCD Society is calculated as follows:

1. Determine the assessable income

	Mutual receipts (not assessable income)	Assessable income	Total
Subscriptions	\$3,000	–	\$3,000
Term deposit interest	–	\$800	\$800
Sale of lamingtons	–	\$2,500	\$2,500
Christmas dinner	\$3,500	\$1,500	\$5,000
Total	\$6,500	\$4,800	\$11,300

2. Determine the allowable deductions

	Non-allowable deductions	Allowable deductions	Total
Postage**	\$90	\$10	\$100
Photocopying**	\$90	\$10	\$100
Christmas dinner	\$2,800	\$1,200	\$4,000
Cost of lamingtons	–	\$1,800	\$1,800
Term deposit charges	–	\$50	\$50
Total	\$2,980	\$3,070	\$6,050

** The postage and photocopying expenses have been apportioned. For ABCD Society, the basis used (from an examination of its records) was that 10% of communication during the year had been with non-members.

3. Taxable income

Assessable income less allowable deductions

= \$4,800 – \$3,070

= \$1,730

OTHER TAX ISSUES

07

This chapter outlines other tax issues that may affect your non-profit organisation, such as:

- tax concessions – an overview
- registering your organisation
- refunds of imputation credits
- goods and services tax
- employees and other workers
- tax deductible gifts and fundraising
- record keeping, administration and payment, and
- state government contacts.

TAX ISSUES THAT MAY ARISE

If you are a voluntary treasurer, office bearer or employee administering a non-profit organisation, you will need to familiarise yourself with the various tax issues that may have an impact on your organisation.

The Tax Office publication *Tax basics for non-profit organisations* (NAT 7966) provides an overview of tax issues for non-profit organisations. You can use it to find out:

- which taxes and concessions affect your non-profit organisation, and
- where you can find more detailed information.

A brief explanation of tax issues that may arise is listed below.

TAX CONCESSIONS – AN OVERVIEW

In addition to the income tax concessions explained in this publication, some types of non-profit organisations are entitled to:

- exemption from paying FBT or a rebate to reduce the amount of FBT payable
- deductible gift recipient status
- refunds of imputation credits, and
- concessions available for GST.

These concessions are discussed in *Tax basics for non-profit organisations* (NAT 7966).

Endorsement requirements for FBT and GST charity concessions

From 1 July 2005, endorsement requirements apply for charities wanting access to charity tax concessions available under fringe benefits tax and GST laws. The requirements to be eligible for endorsement to access FBT and GST charity concessions include that the organisation:

- be a charity, and
- have an ABN.

It is not necessary for a charity to meet the additional tests required for income tax exemption endorsement in order to be eligible for FBT and GST endorsement. Charities can apply to the Tax Office for endorsement to access income tax exemption, FBT and GST charity concessions using the one form *Application for endorsement as a tax concession charity or income tax exempt fund* (NAT 10651) and its accompanying instructions (NAT 10652).

Endorsement is different to registration

Endorsement provides a charity with access to concessions. For example, endorsement as an income tax exempt charity means that a charity is exempt from paying income tax, removing the need to lodge income tax returns. Endorsement for FBT exemption allows eligible charities to provide FBT-free benefits to their employees (subject to capping thresholds) from 1 July 2005.

If a charity is 'registered' for a tax, it is generally a payer of that tax. However, access to charity concessions can often reduce the amount payable. There will be situations where an entity is endorsed and registered for a tax. For example, a GST endorsed charity that exceeds the relevant registration turnover threshold must register for GST.

REGISTERING YOUR ORGANISATION

In order to access various concessions and comply with your organisation's tax obligations, you may need to register for an ABN, GST, FBT and PAYG withholding.

Tax basics for non-profit organisations (NAT 7966) explains the importance of keeping your registration details up-to-date (for example, so the Tax Office can speak to your organisation's representative about its tax affairs) and how to cancel registration if you need to.

REFUNDS OF FRANKING CREDITS

If your organisation receives franked dividends, it may be eligible for a refund of franking credits.

From 1 July 2000, franking credits attached to franked dividends received by endorsed income tax exempt charities and/or deductible gift recipients (DGRs) are generally refundable. Endorsed income tax exempt charities and/or DGRs might receive these franked dividends either directly as a shareholder or indirectly as a beneficiary of a trust.

GOODS AND SERVICES TAX

Your non-profit organisation may need (or may want) to register for GST. *Tax basics for non-profit organisations* (NAT 7966) provides information on:

- when you are required to register for GST
- ways you can register for GST to suit the structure of your organisation, and
- the types of goods and services that are subject to GST.

EMPLOYEES AND OTHER WORKERS

If your organisation has employees, you need to know about the PAYG withholding system and other responsibilities in relation to:

- withholding tax from your employees' wages
- employees who receive fringe benefits
- salary sacrifice arrangements
- the superannuation guarantee
- employees with debts to the Higher Education Contribution Scheme (HECS)
- employees with child support obligations, and
- eligible termination payments for staff leaving your organisation.

Non-profit organisations often depend on volunteers to provide and maintain services. *Volunteers and tax* (NAT 4612) will guide you to additional information about tax issues that may have an impact on your organisation in relation to volunteers. It explains the tax treatment of transactions that commonly occur between non-profit organisations and volunteers.

TAX DEDUCTIBLE GIFTS AND FUNDRAISING

If your organisation wants to receive tax deductible gifts, you will need to familiarise yourself with:

- the types of organisations that can qualify
- maintaining a gift fund
- information to be recorded on receipts for donations, and
- the types of gifts that are tax deductible.

State and territory government regulations, GST and its impact on your organisation's fundraising activities are outlined in *Tax basics for non-profit organisations* (NAT 7966).

RECORD KEEPING, ADMINISTRATION AND PAYMENT

You will need to know the types of records your organisation should keep and what information to give financial institutions about your organisation's bank accounts and other investments. For organisations seeking discounts from commercial suppliers, the Tax Office provides information on proving your organisation's non-profit income tax status.

If a supplier of goods and services does not quote their Australian business number to you, you may have to withhold an amount from the payment you make to them. If your organisation has a tax liability, you should know how to report, pay and budget for its tax obligation.

STATE GOVERNMENT CONTACTS

Stamp duty, payroll tax, land tax, financial institutions duty, debits tax and public fundraising are governed by individual state and territory governments. *Tax basics for non-profit organisations* (NAT 7966) provides a list of contact details for the respective departments.

MORE INFORMATION

Refer to:

- *Tax basics for non-profit organisations* (NAT 7966), or
- *GiftPack for deductible gift recipients & donors* (NAT 3132) for comprehensive information on income tax deductible gifts.

To obtain these publications, see 'More information' on the inside back cover.

Log of status reviews	84
Record of key information	84
Worksheet 1 – working out your organisation's income tax status	85
Worksheet 2 – reviewing your organisation's endorsement as an income tax exempt charity	88
Worksheet 3 – reviewing your organisation's ITEF endorsement	93

APPENDIXES



LOG OF STATUS REVIEWS

We recommend you make an entry in the log below each time you conduct a review of your organisation's income tax status.

Worksheets have been provided to help you with these reviews.

Charities should refer to Worksheet 2 – reviewing your organisation's endorsement as an income tax exempt charity, see page 88.

Income tax exempt funds should refer to Worksheet 3 – reviewing your organisation's ITEF endorsement, see page 93.

Non-charities should refer to Worksheet 1 – working out your organisation's income tax exempt status, see page 85.

Period reviewed		Income tax status <input type="checkbox"/> Exempt <input type="checkbox"/> Non-profit company <input type="checkbox"/> Other taxable company	Person conducting review	Position held	Signature	Date
Start date	End date					

RECORD OF KEY INFORMATION

Record your organisation's key information in the table below.

Name of organisation	
Australian business number (ABN)	
Tax file number (TFN)	
Public officer	
Authorised contact person	

WORKSHEET 1

WORKING OUT YOUR ORGANISATION'S INCOME TAX STATUS

This worksheet has been prepared to help you work out your organisation's income tax status. **Do not write on the original worksheet – keep it as a template so you can make copies whenever you carry out a self-review.**

You should use this worksheet whenever you want to check your organisation's income tax status. The Tax Office recommends that you review the status of your organisation each year. You should also review when there has been a major change in structure or activities. It is the organisation's responsibility to ensure any changes that may alter its status are considered at the time the changes become evident.

WHO SHOULD USE THIS WORKSHEET

Clubs, societies and associations should use this worksheet. It is not to be used by charities, friendly societies, employee associations, employer associations, trade unions, or health, hospital or medical benefits organisations. Charities should use 'Worksheet 2 – reviewing your organisation's endorsement as an income tax exempt charity' on page 88. Income tax exempt funds should use Worksheet 3 – reviewing your organisation's ITEF endorsement on page 93.

Employment organisations should refer to page 18.

What you will need

- a copy of the *Income tax guide for non-profit organisations* (NAT 7967)
- your organisation's constituent or governing documents (for example, constitution, rules, memorandum and articles of association), and
- information about your organisation's activities, finances, plans, advertisements and history.

Once you have worked out your organisation's income tax status, you do not need to apply to the Tax Office to have it confirmed. When you have completed this worksheet do not send it to the Tax Office. Keep it with the records of your organisation. It will show why and how you arrived at the decision of your organisation's income tax status and help future office bearers.

WORKSHEET 1

1 Full name of the organisation

2 Australian business number (ABN) (if held)

3 Period of review

 / / to / /

4 Reason for review (please tick)

Change in activity

Annual review

Other: please specify

CHARITY OR INCOME TAX EXEMPT FUND**5 Is your organisation a charity or a non-charitable fund that distributes solely to deductible gift recipients that are income tax exempt?**

Yes Do not continue with this worksheet. There is an endorsement process for these organisations to be exempt from income tax. Your entity may be eligible for endorsement as an income tax exempt charity. Chapter 4 – ‘Endorsement as an income tax exempt charity’ and chapter 5 – ‘Income tax exempt funds’ explain conditions attached to obtaining endorsement as an income tax exempt charity or income tax exempt fund.

No Go to question 6

See also chapter 3 – ‘Is your organisation a charity?’

A charity is an organisation whose sole purpose is carrying on charitable purposes. Charity has a legal meaning for tax purposes that differs from how it is used in ordinary language. Charitable purposes fall within several broad categories:

- the relief of poverty, sickness and the needs of the aged
- the advancement of education
- the advancement of religion
- other purposes beneficial to the community, and
- the provision of child care services on a non-profit basis.

An income tax exempt fund is a non-charitable fund that:

- is established by will or instrument of trust solely for the purpose of providing money, property or benefits to, or establishing, deductible gift recipients
- distributes solely to income tax exempt deductible gift recipients, and
- is endorsed by the Tax Office to access income tax exemption.

Notes:

EXEMPT ORGANISATION

6 Does your organisation fall within one of the types of exempt entities listed in the ‘Type of exempt entity’ table on pages 12 to 13?

Yes Go to question 7

No The entity is not income tax exempt. Go to chapter 6 – ‘Taxable organisations’.

7 Does your organisation meet all the requirements of one type of exempt entity, as specified in the relevant section of the chapter ‘Is your organisation exempt from income tax?’

Yes Your organisation is income tax exempt. Your organisation does not need to pay income tax or lodge income tax returns and it will not need to get confirmation of its exemption from the Tax Office.
Go to the end of the worksheet.

No Your organisation is not income tax exempt. Go to chapter 6 – ‘Taxable organisations’.

Chapter 2 – ‘Is your organisation exempt from income tax?’ provides a checklist for each type of exempt entity. To ensure your organisation meets all the requirements of one of the types of exempt entities, you should work through the relevant checklist.

You will need your organisation’s constituent or governing documents and information about its activities, finances, plans, advertisements and history.

Notes:

ONCE YOU HAVE COMPLETED THE WORKSHEET YOU SHOULD:

sign it and keep it with your organisation’s other records, and

make an entry in the ‘Log of status reviews’ on page 84.

Name of person conducting review

Position held

Signature

Date

Approval by Board/Committee

WORKSHEET 2

REVIEWING YOUR ORGANISATION'S ENDORSEMENT AS AN INCOME TAX EXEMPT CHARITY

This worksheet will help you work out whether your organisation is still entitled to endorsement as an income tax exempt charity.

Do not write on the original worksheet – keep it as a template so you can make copies whenever you carry out a self-review.

Charities that have been endorsed to access income tax charity concessions must tell the Tax Office if they stop being entitled to endorsement. Things that can affect your organisation's entitlement are changes to its purpose and operations, physical presence in Australia, loss of endorsement as a deductible gift recipient (DGR) and where it incurs its expenditure. You should self-review each year and whenever there is a major change in your organisation's structure or operations.

Keep it with your organisation's records, as it will help future office bearers.

WHO SHOULD USE THIS WORKSHEET

All charities that have been endorsed to access income tax charity concessions should use this worksheet.

What you will need

- a copy of *Income tax guide for non-profit organisations* (NAT 7967)
- the Tax Office notice that states you are endorsed to access income tax charity concessions, and
- your organisation's governing or constituent documents, and information about its activities and finances.

WORKSHEET 2

1 Full name of the organisation

2 Australian business number (ABN)

3 Tax file number (TFN)

4 Period of review

 / / to / /

5 Reason for review (please tick)

Annual review

Change in circumstances

Other: please specify

6 Date of endorsement on Tax Office notice

 / /

AUSTRALIAN BUSINESS NUMBER (ABN)**7 Is your organisation's ABN still current?**

Yes Go to question 8.

No Your organisation is no longer entitled to be endorsed as an income tax exempt charity. The Tax Office will notify you that your endorsement has been revoked.

Your organisation must have a current ABN to be entitled to endorsement as an income tax exempt charity.

For an explanation of ABNs, refer to *Tax basics for non-profit organisations* (NAT 7966). The ABN is a single business identifier used for dealings with government departments and agencies.

Your organisation can check its ABN by searching the Australian Business Register (ABR) internet site at **www.abn.business.gov.au** or by phoning the Tax Office on **1300 130 248**. If your organisation's ABN has been cancelled, you will have received written notification of this.

CHARITY**8 Is your organisation a charity?**

Yes Go to question 9.

No Your organisation is no longer entitled to be endorsed as an income tax exempt charity. You must tell the Tax Office that you have ceased to be entitled to endorsement and give the date you ceased to be a charity.

It is possible that an organisation can cease to be a charity. You must verify if your organisation is still a charity.

The meaning of 'charity' is explained in, chapter 3 – 'Is your organisation a charity?'

A charity is an institution or fund established and operated for purposes that are charitable. Charity has a legal meaning for tax purposes that differs from how the term is used in everyday language.

Notes:

CHARITABLE INSTITUTION OR CHARITABLE FUND**9 Is your organisation a charitable institution or a charitable fund?**

Charitable institution Go to question 10.

Charitable fund Go to question 11.

The distinction between charitable institutions and charitable funds is explained in, 'Is your organisation a charitable institution or a charitable fund?' on page 50.

To be a charitable fund your organisation must be established under an instrument of trust or a will for public charitable purposes. Charitable funds mainly manage trust property and/or hold trust property to make distributions to other entities or people.

Charitable institutions mainly carry out charitable activities rather than holding or managing property.

Notes:

CHARITABLE INSTITUTIONS

10 Does your organisation meet at least one of the three tests – physical presence, deductible gift recipient, and prescribed by law?

Yes Your organisation is eligible to retain its endorsement as an income tax exempt charity. Go to the end of the worksheet.

No Your organisation is no longer entitled to be endorsed. You must tell the Tax Office in writing and give the date your organisation ceased to be entitled.

Your organisation must meet at least one of the following tests:

Physical presence:

Your organisation has a physical presence in Australia, and to the extent of its Australian presence, it pursues its objectives and incurs its expenditure principally in Australia

Deductible gift recipient:

Your organisation is a deductible gift recipient (DGR), or

Prescribed by law:

Your organisation is a prescribed institution listed by name in the income tax regulations, and

- it is located outside Australia and is income tax exempt in its country of residence, or
- it has a physical presence in Australia and incurs its expenditure and pursue its objectives principally outside Australia.

These tests are explained further in, ‘Charitable institution tests’ on page 51.

Notes:

CHARITABLE FUNDS

11 Is the charitable fund being applied for the purposes for which it was established?

Yes Go to question 12.

No Your organisation is no longer entitled to endorsement. You must tell the Tax Office in writing and give the date it ceased to be entitled.

Endorsed charities that are charitable funds must be applied for the purposes for which they were established.

If your organisation uses all its property and income only and fully for its charitable purposes it will meet this requirement.

This is explained further in ‘Applied for its purposes’ on page 54.

Notes:

12 Which of these three best describes your organisation?

- Established by will before 1 July 1997 and after that date your organisation has received assets under a will or assets for which it did not give valuable consideration. Go to question 13.
- Established by will before 1 July 1997. You continue to be entitled to endorsement as an income tax exempt charity. Go to the end of the worksheet.
- Established in Australia and:
 - established by instrument of trust, or
 - established by will on or after 1 July 1997.
 Go to question 14.

Different conditions apply for different sorts of charitable funds.

If your organisation was established by will before 1 July 1997 there are two different situations. You must decide whether the first or second box best describes your organisation. Do not choose the second box if the first box applies. If the first box applies, your organisation will be treated as two separate parts: an 'old trust' and a 'new trust'. Your organisation will need to meet further requirements to be entitled to endorsement for the 'new trust'. The 'new trust' and the further requirements are explained in the instructions for question 13. The 'old trust' does not need to meet the further requirements.

If you are best described by the third box, you will have to meet further requirements to be entitled to endorsement.

The instructions for question 14 explain this.

Notes:

13 Does the part of the charitable fund that is the 'new trust' meet at least one of the three tests: Australian purposes, deductible gift recipient and distributions?

- Yes Your organisation continues to be entitled to endorsement. Go to the end of the worksheet.
- No The 'old trust' continues to be entitled endorsement. However, the 'new trust' is not entitled. You must tell the Tax Office in writing that the 'new trust' is not entitled to endorsement and give the date it ceased to be entitled.

The tests are explained in 'Charitable funds: the three tests' on page 57.

The 'new trust' must meet at least one of these tests to retain endorsement as an income tax exempt charity. You will need to work through the three tests.

The 'new trust' is the part of the charitable fund that comprises:

- assets that become part of your organisation's trust property under a will on or after 1 July 1997
- assets your organisation received on or after 1 July 1997 for which it did not give valuable consideration (for example, distributions received from other trusts), and
- income derived from these assets.

This is explained further in the section on the 'new trust'.

The part of your organisation that is not the 'new trust' is the 'old trust'. Even if your organisation is no longer entitled to be endorsed for the 'new trust', its endorsement for the 'old trust' continues.

Notes:

14 Does your organisation meet at least one of the three tests: Australian purposes, deductible gift recipient and distributions?

Yes Your organisation is entitled to endorsement as an income tax exempt charity.

No Your organisation is not entitled to endorsement as an income tax exempt charity. Your organisation will need to tell the Tax Office in writing and give the date it ceased to be entitled.

The tests are explained in 'Charitable funds: the three tests' on page 53. You will need to work through them to determine your organisation's eligibility to endorsement as an income tax exempt charity.

Notes:

ONCE YOU HAVE COMPLETED THE WORKSHEET YOU SHOULD:

sign it and keep it with your organisation's other records, and

make an entry in the 'Log of status reviews' on page 84.

Name of person conducting review

Position held

Signature

Date

Approval by Board/Committee/Trustee

WORKSHEET 3

REVIEWING YOUR ORGANISATION'S ITEF ENDORSEMENT

This worksheet will help you work out whether your fund is still entitled to ITEF endorsement. **Do not write on the original worksheet – keep it as a template so you can make copies whenever you carry out a self-review.**

Funds that have been endorsed as ITEFs must tell the Tax Office if they stop being entitled to endorsement. Things that can affect your fund's entitlement are changes to its purpose and operations. You should self-review each year and whenever there is a major change in your fund's structure or operations.

WHO SHOULD USE THIS WORKSHEET

All endorsed ITEFs should use this worksheet.

What you will need

- a copy of *Income tax guide for non-profit organisations* (NAT 7967)
- the Tax Office notice that states you are endorsed as an ITEF, and
- your fund's governing or constituent documents, and information about its activities and finances.

WORKSHEET 3

1 Full name of the fund

2 Australian business number (ABN)

3 Tax file number (TFN)

4 Period of review

 / / to / /

5 Reason for review (please tick)

Annual review

Change in circumstances

Other: please specify

6 Date of endorsement on Tax Office notice

 / /

AUSTRALIAN BUSINESS NUMBER (ABN)

7 Is your fund's ABN still current?

Yes Go to question 8.

No Your fund is no longer entitled to be endorsed as an ITEF. The Tax Office will notify you that your endorsement has been revoked.

Your fund must have a current ABN to be entitled to ITEF endorsement.

For an explanation of ABNs, refer to *Tax basics for non-profit organisations* (NAT 7966). The ABN is a single business identifier used for dealings with government departments and agencies.

Your fund can check its ABN by searching the Australian Business Register (ABR) website at www.abn.business.gov.au or by phoning the Tax Office on **1300 130 248**. If your organisation's ABN has been cancelled, you will have received written notification of this.

Notes:

NON-CHARITABLE FUND

8 Is your fund a non-charitable fund?

Yes Go to question 9.

No Your fund is no longer entitled to ITEF endorsement. You must tell the Tax Office that you have ceased to be entitled to endorsement and give the date you ceased to be entitled.

If a fund can be applied for purposes that are not charitable, it is not a charitable fund.

For non-charitable funds, the choice of DGRs which they can distribute to is not limited to DGRs that are not charities.

This is explained further in chapter 5 'Income tax exempt funds'.

Notes:

APPLIED FOR ITS PURPOSES

9 Is your fund applied for the purposes for which it was established?

Yes Go to question 10.

No Your fund is no longer entitled to ITEF endorsement. You must tell the Tax Office that you have ceased to be entitled to endorsement and give the date you ceased to be entitled.

To be endorsed as an ITEF your fund must be applied for the purposes for which it was established. If it is not being applied for those purposes, it is not entitled to ITEF endorsement.

Notes:

DISTRIBUTIONS TO DGRS

10 Does your fund only distribute to DGRs that are income tax exempt?

Yes Your fund is eligible to retain its endorsement as an ITEF. Go to the end of the worksheet.

No Your fund is no longer entitled to ITEF endorsement. You must tell the Tax Office that you have ceased to be entitled to endorsement and give the date you ceased to be entitled.

An ITEF must only distribute to DGRs that are income tax exempt.

For non-charitable funds, the choice of DGRs to which they can distribute is not limited to DGRs which are charities or for charitable purposes in benefiting DGRs.

Notes:

ONCE YOU HAVE COMPLETED THE WORKSHEET YOU SHOULD:

sign it and keep it with your organisation's other records, and

make an entry in the 'Log of status reviews' on page 84.

Name of person conducting review

Position held

Signature

Date

Approval by Board/Committee/Trustee

DEFINITIONS

Activity statements

You use an activity statement to report your business tax entitlements and obligations, including GST, PAYG instalments, PAYG withholding and FBT instalments. You can offset tax payable against tax credits to arrive at a net amount.

Associates

Associates include people and entities closely associated with you, such as relatives, or closely connected companies or trusts. A partner in a partnership is an associate of the partnership. A non-profit sub-entity of an entity is an associate of the entity and every other non-profit sub-entity of that entity.

Australian business number

Your Australian business number (ABN) is your identifier for certain dealings with the Tax Office and other government departments and agencies.

Australian Business Register (ABR)

The Australian Business Register is a public register which contains details of all Australian business number (ABN) registrations.

Charity

A charity is an institution or fund established for a charitable purpose. Examples of charities include:

- religious institutions
- aged persons homes
- homeless hostels
- organisations relieving the special needs of people with disabilities, and
- societies that promote the fine arts.

Charitable fund

A charitable fund is a fund established under an instrument of trust or a will for a charitable purpose. The purposes set out in the will or instrument of trust must be charitable. Charitable funds mainly manage trust property, and/or hold trust property to make distributions to other entities or people. In contrast, if the trustee mainly carries on activities that are charitable, the fund will be treated as a charitable institution and not as a charitable fund.

Charitable institution

A charitable institution is an establishment, organisation or association that is instituted and operated to advance or promote a charitable purpose. An organisation's purposes can be found in its governing document/s and from its activities, history and control. A charitable institution will carry on charitable activities whilst a charitable fund mainly manages, and/or holds trust property.

Charitable purposes

A charitable purpose is one which the law regards as charitable. The term 'charitable' has a technical legal meaning which is different from its everyday meaning. Charitable purposes are any of the following purposes:

- the relief of poverty or sickness or the needs of the aged
- the advancement of education
- the advancement of religion
- other purposes beneficial to the community, and
- the provision of child care services on a non-profit basis.

A statutory extension to the meaning of charity applies from 1 July 2004. The provision of child care services on a non-profit basis is accepted as a charitable purpose from this date.

Deductible gift recipient (DGR)

A DGR is an entity that is entitled to receive income tax deductible gifts. All DGRs have to be endorsed, unless they are named specifically in the income tax law. There are two types of endorsement. One is for entities that are DGRs in their own right. The other is for an entity that is a DGR only in relation to a fund, authority or institution it operates. For the second type, only gifts to the fund, authority or institution are tax deductible.

Entity

For the purposes of this publication, an entity means an individual, a body corporate, a corporation sole, a body politic, a partnership, an unincorporated association or body of people, a trust or a superannuation fund.

In addition, the trustee of a trust or superannuation fund is taken to be an entity consisting of the people who are trustees at the time. That entity is a different entity to the person acting in their personal capacity. If reference is made to an entity of a particular kind (for example, trustee), it refers to the entity only in its capacity as that kind of entity.

Fringe benefits tax (FBT)

FBT is a tax payable by employers who provide fringe benefits to their employees or associates of their employees.

Goods and services tax (GST)

GST is a broad-based tax of 10% on the supply of most goods, services and anything else consumed in Australia and the importation of goods into Australia.

GST-free sales

You do not include GST in the price of GST-free sales that you make, but you are entitled to GST credits for things you have purchased or imported for use in carrying on your activities. Some examples of GST-free sales include basic food, exports, sewerage and water, the sale of a business as a going concern, non-commercial activities of charities and most education and health services.

GST (input tax) credit

An input tax credit is what you claim to get back the GST you pay in the price of goods and services you purchase for your business or enterprise. You are entitled to a GST credit for the GST included in the price you pay for purchases or importations you make for use in your business. But you are not entitled to a credit to the extent you use the purchase or importation for private purposes or, in many cases, to make input taxed sales. You will need to have a tax invoice to claim a GST credit (except for purchases with a GST-exclusive value of \$50 or less, although you should have some documentary evidence to support these claims).

Health promotion charity

A health promotion charity is a non-profit charitable institution whose principal activity is promoting the prevention or control of diseases in human beings. The characteristics of a health promotion charity are:

- its principal activity is promoting the prevention or the control of diseases in human beings, and
- it is a charity which is a charitable institution.

Examples of activities that can promote the prevention or control of disease include:

- providing relevant information to sufferers of a disease, health professionals, carers and to the public
- researching how to detect, prevent or treat diseases, and
- developing or providing relevant aids and equipment to sufferers of a disease.

For more information on health promotion charities, refer to our publication *GiftPack for deductible gift recipients & donors* (NAT 3132).

Income tax exempt charity

An income tax exempt charity is a charity that has been endorsed by the Tax Office as exempt from income tax.

Income tax exempt fund

An income tax exempt fund is a non-charitable fund that:

- is established by will or instrument of trust solely for the purpose of providing money, property or benefits to, or establishing, deductible gift recipients
- distributes solely to income tax exempt deductible gift recipients, and
- is endorsed by the Tax Office to access income tax exemption.

Input taxed sales

You do not include GST in the price of input taxed sales you make, but neither are you entitled to GST credits for things you have purchased or imported that relate to making those input taxed sales. In some cases, you may be entitled to claim reduced GST credits. Some examples of input taxed sales include most financial supplies and supplies of residential rent and residential premises.

Non-profit

An organisation is non-profit for determining income tax exempt status if it is not carried on for the profit or gain of its individual members. This applies for direct and indirect gains, and both while the organisation is being carried on and on its winding up. The Tax Office accepts an organisation as non-profit if its constitution or governing documents prohibit distribution of profits or gains to individual members and its actions are consistent with the prohibition.

Non-profit company

A non-profit company for determining rates of income tax and whether to lodge income tax returns is:

- a company that is not carried on for the purposes of profit or gain to its individual members and is, by the terms of the company's constituent document, prohibited from making any distribution, whether in money, property or otherwise, to its members, or
- a friendly society dispensary.

Non-profit sub-entity

Certain non-profit organisations, with independent branches (units), have the option of treating their units as if they were separate entities for GST purposes and not part of the main organisation. For income tax exempt charity and DGR endorsement, it is the main organisation and not the non-profit sub-entity that must apply.

Public benevolent institution (PBI)

A PBI is a non-profit institution organised for the direct relief of poverty, sickness, suffering, distress, misfortune, disability or helplessness. The characteristics of a PBI are:

- it is set up for needs that require benevolent relief
- it relieves those needs by directly providing services to people suffering them
- it is carried on for the public benefit
- it is non-profit
- it is an institution, and
- its dominant purpose is providing benevolent relief.

Examples of PBIs are organisations that:

- provide hostel accommodation for the homeless
- treat sufferers of disease
- provide home help for the aged and the infirm
- transport the sick or disabled, or
- rescue people who are lost or stranded.

For more information on PBIs, refer to our publication *GiftPack for deductible gift recipients & donors* (NAT 3132).

Pay as you go (PAYG) instalments

PAYG instalments is a system for paying amounts towards the tax you expect to owe on your business and investment income for the financial year.

Pay as you go (PAYG) withholding

PAYG withholding requires an entity to withhold an amount if it makes certain listed payments including salary, wages, commission, bonuses or allowances to an employee, directors' fees, payments for a supply (goods or services) to another business that does not quote an ABN, and certain dividend, interest and royalty payments.

Religious institution

A religious institution is a non-profit institution operated for the public benefit to advance religion in a direct and immediate sense. Religion involves belief in a supernatural being, thing or principle and the acceptance of canons of conduct which give effect to that belief. Examples of religious institutions include:

- Bible colleges
- churches and other religious congregations
- institutions of missionaries, and
- seminaries.

Sales (supplies)

For GST, a sale or supply includes a sale of goods or services, a lease of premises, hire of equipment, giving of advice, export of goods and the supply of other things.

Self-assessment

The self-assessment system allows organisations to work out for themselves what their income tax status is. All organisations, with the exception of charities, are able to determine for themselves whether their organisation is taxable or income tax exempt.

The self-assessment system currently allows organisations to work out (self-assess) their entitlement to GST and FBT charity concessions. However, from 1 July 2005, charities will need to be endorsed to access GST and FBT charity tax concessions. Access to income tax charity concessions is only available to charities that have been endorsed as income tax exempt charities. This requirement was introduced from 1 July 2000.

Taxable sales (supplies)

The term is widely defined to include most supplies (goods, services and anything else) you make. A sale is not a taxable supply if it is GST-free, input taxed or otherwise non-taxable.

Tax invoice

A tax invoice is a document generally issued by the seller. It shows the price of a sale, indicating whether it includes GST, and may show the amount of GST. It must show other information, including the Australian business number of the seller. You must have a tax invoice before you can claim a GST input tax credit on your activity statement for purchases of more than \$50 (excluding GST).

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