



Australian Government
Australian Taxation Office

Helping not-for-profits get it right

What you need to know!

Sport Financial Advisory – Australian Sports Commission
Thursday 9 May 2024

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Not-for-profit, Government and New Measures
Australian Taxation Office

EXTERNAL





Australian Government
Australian Taxation Office

- ✓ National administrator for taxation and superannuation
- ✓ Assesses not-for-profits and charities seeking access to Commonwealth tax exemptions and concessions - such as DGR endorsement and income tax and GST concessions

NOT-FOR-PROFIT CENTRE AND GOVERNMENT

- We are a direct point of contact for government and not-for-profit clients and stakeholders.
- We work with clients, intermediaries, peak bodies, scrutineers, government, other agencies and all relevant ATO business areas.

OUR ROLE

To confirm the integrity of NFP and Government tax administration by:

- Providing clients with timely and tailored advice that assists them to understand and meet all their tax and super obligations.
- Assuring clients are operating for purpose and accessing concessions appropriately, that justifies the trust placed in them by the Australian community.
- Supporting clients to deliver important services for the Australian community, especially in times of need during disaster periods or critical instances.
- Influencing the shape of the tax and superannuation system.

OVERVIEW NOT-FOR-PROFIT POPULATION



SOURCES

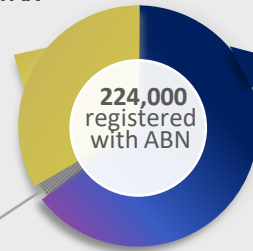
1. Productivity commission research report 2010
2. ATO data warehouse as at 19 Feb 2024, figures are approx.
3. Taxation statistics 2020-21,
4. Australian charities report 9th edition 2020-21
5. ATO Digital Identity Services as at Feb 24

REGISTERED NOT-FOR-PROFITS ²

Registered not-for-profits have an active ABN

57,700 (26%) ENDORSED TAX CONCESSION CHARITIES

To access charity concessions, charities must be registered with the Australian Charities and Not-for-profit Commission and endorsed by the ATO



155,300 (70%) SELF-ASSESSED INCOME TAX EXEMPT

Not-for-profits can self-assess exemption from income tax if they are not a charity and they meet the requirements of one of eight categories

28,700 (13%) DEDUCTIBLE GIFT RECIPIENTS

Not-for-profits and government organisations endorsed as entitled to receive tax deductible donations. Includes 2,200 government entities.

66,000 (29%) GST REGISTERED

Not-for-profits with \$150,000 turnover must register for GST.

40,600 (18%) PAYGW REGISTERED

Not-for-profits register and report PAYGW where they make payments subject to withholding.

9,300 (4%) TAXABLE NOT-FOR-PROFITS

Not-for-profits that lodge an income tax return include social clubs, certain professional associations, clubs whose main purpose is providing hospitality for members, and political parties



About **47,000** entities generated an estimated **\$232.5 billion** in sales in 2021-22 ²



\$4.4 billion donations from **4.2 million** Australian taxpayers ³



In 2021-22 approximately:
 ■ **2.0 million** employees ³
 ■ **\$24.1 billion** PAYGW reported ²
 ■ **35,000** registered for Single Touch Payroll ²



7,100 of all employers are registered for FBT
12,800 have an FBT exemption
31,300 have an FBT Rebate ²



■ **\$900 million** in franking credits refunded in 2021-22 ³



■ **\$97.2 billion** in revenue received by charities from the Government (including grants) ⁴
 ■ **\$13.4 billion** in donations and bequests ⁴



■ **52,000** NFP and GOV entities registered with myGovID to use online services (as at 20 Feb 2024) ⁵

NEW REPORTING REQUIREMENT POPULATION OVERVIEW









AROUND
224,000
NOT-FOR-PROFITS
ABN REGISTERED
as at 19 Feb 2024

AROUND
155,300
SELF-ASSESSING
NFPs WITH
AN ABN







AROUND
57,700
ENDORSED TAX
CONCESSION
CHARITIES

AROUND
9,300
TAXABLE
NOT-FOR-
PROFITS

EIGHT TYPES OF INCOME TAX
EXEMPT ENTITIES THAT CAN
SELF-ASSESS EXEMPTION

-  Community Service
-  Sporting
-  Cultural
-  Educational
-  Health
-  Employment
-  Scientific
-  Resource development

SELF-ASSESSED INCOME TAX NOT-
FOR-PROFITS WITH REPORTING
OBLIGATIONS *As at 19 Feb 2024*

-  Around **24,200 (16%)** GST registered
-  Around **12,800 (8%)** PAYGW registered with over **224,900** workers
-  Around **17,000 (11%)** hold a linked myGovID
-  Around **10,800 (7%)** have used online services since January 2021
-  Around **12,700 (8%)** engage a tax agent
-  Around **31,900 (21%)** engage a BAS agent

CONNECTING WITH SELF-
ASSESSING INCOME TAX
EXEMPT NOT-FOR-PROFITS



NSW	28%	SA	9%
QLD	20%	TAS	3%
VIC	25%	NT	1%
WA	11%	ACT	2%

We are developing a targeted engagement and multi-channel out-reach program, with a focus on connecting with remote and regional not-for-profits

Exempt sporting clubs



EXEMPT SPORTING CLUBS REQUIREMENTS

A club qualifies for the games and sports exemption where it:

- is established for the main purpose of the encouragement of a game or sport or animal racing
- is not carried on for the purposes of its individual members' profit or gain
- meets other special conditions.

More information

- **Taxation Ruling TR 2022/2** *Income tax: the games and sports exemption.*
- **Taxation Ruling TR 2015/1** *Income tax: special conditions for various entities whose ordinary and statutory income is exempt*
- **Taxation Ruling TR 2019/6** *Income tax: the 'in Australia' requirement for certain deductible gift recipients and income tax exempt entities.*



Key questions to consider

Is the NFP a 'society, association or club'?

- The term 'society, association or club' is not defined in the tax law and takes the ordinary meaning of the words.
- We accept that a society, association or club is an organisation of persons who come together for a common purpose/common purposes.
- The members of a society, association or club need not be natural persons. The term includes associations of sporting clubs.

The following are not a society, club or association for the purpose of the exemption:

- An individual
- An entity that is a fund
- An incorporated body having one member

Is the activity a 'game or sport'?

- 'Game' and 'sport' are not defined terms and take their ordinary meaning
- Some activities are obviously games or sports; for example, netball or football.
- For other activities, characterisation as a game or sport can be demonstrated by evidence of a competitive element and by participants' compliance with the conventions and rules of the activity.

Is the NFP encouraging the 'game or sport'?

The following activities are some of the ways a club can indicate the encouragement a game or sport:

- forming, preparing and entering teams and competitors in competitions in the game or sport
- coordinating activities
- organising and conducting tournaments
- improving the abilities of participants
- improving the standard of trainers and coaches
- providing purchased or leased facilities for the activities of the game or sport for the use of club members and visitors
- marketing
- initiating or facilitating research and development **and**
- facilitating the above activities by making a financial or in-kind contribution to an organisation that performs them.

Is the encouragement of a 'game or sport' the NFP's main purpose?

Determining the main purpose of a club requires an objective evaluation of all material facts and circumstances.

There is no set formula for weighing up the characteristics of a club to determine its main purpose.

EXEMPT SPORTING CLUBS WHAT IS A 'GAME OR SPORT'?

Game or Sport

- The terms 'game' and 'sport' are not defined and take their ordinary meaning.
- Characterisation as a game or sport can be demonstrated by evidence of a competitive element and by participants' compliance with the conventions and rules of the activity.
- Games and sports extend to:
 - athletic games or sport, such as football and swimming
 - non-athletic games, such as chess and bridge
 - activities where people use machines to participate, such as motor racing, and
 - non-competitive activities, such as mountaineering.
- A common feature of a game or sport is a set of conventions, expectations and rules.
- To qualify as a game or sport, participants must share a common understanding that the activities they perform are the activities of a particular game or sport

Animal racing

The income tax exemption includes horse racing, trotting and greyhound racing, and the racing of other animals.



Examples of games or sports

- **Athletic activity** – competitive ballroom dancing, athletics, amateur wrestling, martial arts, water based sports
- **Played with a ball or projectile** – baseball, bocce, bowling, bowls, golf, hockey, netball, football (all codes), table tennis, tennis
- **Involving animals** – equestrian activities, polo, rodeo, pony club activities
- **Using equipment to achieve mobility** – canoeing, cycling, dragon boat racing, drag racing, go kart racing, motor-car racing, yachting
- **Using other equipment** – abseiling, archery, billiards, darts, fencing, gymnastics, power lifting, snooker, skateboarding, snow sports including bobsled, luge, skiing, ski-jumping and snowboarding, target shooting, water skiing, weightlifting, windsurfing, woodchopping, e-sports
- **Card games and board games** – such as bridge and mah-jong (provided they satisfy the features of a game or sport)



Not considered a game or sport

The following non-exhaustive examples are activities that would not be considered a game or sport:

- bird-raising, bird-keeping and bird-watching
- bodybuilding
- car owners' clubs/associations
- dancing as a social activity (including ballroom dancing, line dancing, square dancing and Highland dancing)
- modelling of railways
- stamp and coin collecting
- playing of gaming or gambling machines and gambling generally, and
- breeding and showing of animals.

SPORTING CLUBS DETERMINING MAIN PURPOSE

This requires us to weigh all material facts and circumstances together to reach an objective evaluation of the NFP's main purpose.



There is no set formula for weighing up the characteristics of a club to determine its main purpose.

The **main** purpose of the society, association or club must be **encouragement of a game, sport or animal racing**.

To work out a club's main purpose, look at its:

- constituent documents
- activities
- use of funds
- history.

All other purposes must either be:

- **secondary** (the purpose is independent of, but less important/significant than its sporting or gaming purpose); or
- **ancillary and incidental** (the purpose tends to assist, or naturally goes with, the NFP achieving its sporting or gaming purpose).

Determining main purpose

Factors to consider

No one factor on its own will determine the main purpose of a club. A weighing of all the factors is needed.

When considering the factors together, an objective conclusion must be reached that a club has a main purpose of encouraging a game or sport.

The following factors have been identified by courts and tribunals as relevant when considering purpose:

- emphasis in the club's constituent documents that the main purpose is to encourage a game or sport
- extent of sporting activities
- the conduct of activities directly related to the game or sport
- a high level of member participation in the game or sport
- promotion of the organisation to patrons and the public as one that encourages a game or sport
- involvement of the committee of management in the promotion of sport
- the use of surplus funds for encouraging the game or sport, and
- the provision of financial and in-kind support for encouraging the game or sport.



If a club's **main purpose** is providing social and recreational facilities and activities, it will not be exempt.

This is the case even if the club also gives money to encourage games, sports or animal racing.

What you need to know

An overview of the new requirement for non-charitable not-for-profits



NEW ANNUAL NFP SELF-REVIEW RETURN

FOR NON-CHARITABLE NOT-FOR-PROFITS SELF-ASSESSING AS INCOME TAX EXEMPT

ABOUT THE RETURN

- From the 2023-24 income year, **non-charitable** not-for-profits with active ABN are required to lodge an annual self-review return to notify us of its eligibility to income tax exemption.
- The new return is important because entities inaccurately self-assess income tax exemption for a range of reasons, which can be due to common misunderstandings or assumptions.
- The requirement to lodge will be established by an update to the *Taxation Laws (Requirement to Lodge a Return for the 2024 Year) Instrument 2024 – expected to be registered by Parliament in May-June 2024*.
- The first lodgment is due for the 2023-24 income year, as part of Tax Time.
- If a return is not lodged, penalties may apply under the ATO's penalty framework.



Focus is on making it **simple, quick** and **automated** using the existing *Online Services* secure platform

Go to ato.gov.au/NFPtaxexempt

WHO NEEDS TO LODGE

Existing tax law sets-out **specific criteria** for eight types of income tax exempt entities eligible to self-assess



COMMUNITY SERVICE



SPORTING



CULTURAL



EDUCATIONAL



HEALTH



EMPLOYMENT



SCIENTIFIC



RESOURCE DEVELOPMENT

WHO DOESN'T NEED TO LODGE AN NFP SELF-REVIEW RETURN

GOVERNMENT ENTITIES

- Not required to lodge a *NFP self-review return*

NOT-FOR-PROFITS WITH ONLY CHARITABLE PURPOSES

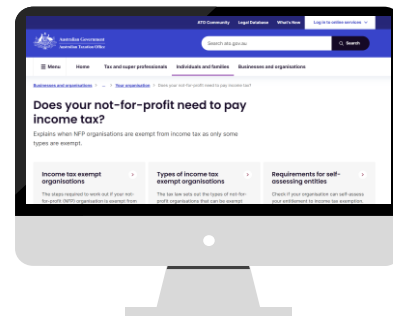
- Only eligible for income tax exemption **if** registered as a charity with the *Australian Charities and Not-for-profits Commission* (ACNC) **and** endorsed by the ATO.
- They are required to report annually to the ACNC, via the **Annual Information Statement**.
- NFPs can self-check if they have charitable purposes at acnc.gov.au/selfassessing

TAXABLE NOT-FOR-PROFITS

- Not all NFPs are exempt from income tax.
- Taxable NFPs are required to lodge an income tax return, or notify us of a return not necessary each year.

NON-PROFIT SUB-ENTITIES FOR GST PURPOSES ONLY

- Under Division 63 of the *GST Act 1999*, eligible not-for-profits can elect to establish a parent entity and sub-entity structure for **GST purposes only**.
- **Non-profit sub-entities** are not required to lodge a *NFP self-review return*, as their parent is the entity recognised for income tax purposes.



More information

ato.gov.au/NFPtaxexempt

ato.gov.au/NFPincometax

COMPLETING THE NFP SELF-REVIEW RETURN

SECTIONS TO COMPLETE



1

ORGANISATION DETAILS

- Authorised contact and address details
- Estimated annual gross revenue range:
 - Small* \$0 - \$150K
 - Medium* \$150K - \$3m
 - Large* >\$3m



2

INCOME TAX EXEMPTION SELF-ASSESSMENT

- Advise the type of exempt category the NFP is self-assessing against
- Around five questions testing eligibility
- Primarily yes/no style questions
- Links to guidance to assist completion



3

SUMMARY AND DECLARATION

- Save and print

DUE DATE



The first 2023-24 return will be open for lodgment between **July and October 2024**

HOW TO GET READY

1

CONDUCT AN EARLY SELF-REVIEW

- Review the NFP's main purpose and its governing documents
- Go to ato.gov.au/NFPselfreviewguide

2

CHECK ABN DETAILS ARE UP TO DATE

- The NFP needs to have up to date **associates**, **authorised contacts** and **addresses** recorded with us
- Go to ato.gov.au/NFPnotifyofchanges

3

GET READY TO ACCESS ONLINE SERVICES

- The NFP's associate needs to set up a myGovID with either **Standard** or **Strong** identity strength
- They then need to link it to your organisation's ABN in Relationship Authorisation Manager (RAM)
- Go to ato.gov.au/mygovid

WHAT DOES THE RETURN LOOK LIKE? EXAMPLE PAGES

While there is some preparation work required

The return has been designed to be as quick and straightforward and user friendly as possible

2023-24 NFP self-review return

Organisation details Income tax self-assessment Summary

1 2 3

Organisation details

All fields marked with * are mandatory.

Contact details

Provide the details for who is lodging this return on behalf of the organisation. This could be a trustee, partner, director, public officer or office bearer of a club, association or society, or anyone authorised by the organisation's primary contact.

Name *

Email *

Provide at least one contact phone number *

Mobile phone *

Business hours phone

Area * Number *

Additional details

We will use this information to give tailored support to not-for-profits of different sizes.

What was the **estimated** annual gross revenue for the organisation? * ⓘ

Small - \$0 - \$150,000

Medium - Over \$150,000 - \$3,000,000

Large - Over \$3,000,000

Cancel Next

Help

Hide >

What is annual gross revenue? ^

Annual gross revenue is all the money that passes through the organisation in a financial year. This includes sales, interest, receipts from government, grants, donations and bequests, investment income and receipts from members.

A financial year means from July to June. However, organisations can provide estimates for approved [substituted accounting periods](#) (†), for example October to September.

You will have the option to view more detailed **help content in a smart panel.**

You do this by selecting a **blue question mark ⓘ button** at the end of each question

EXAMPLE ONLY
There may slight formatting changes one the return goes live on 1 July 2024

WHAT DOES THE RETURN LOOK LIKE? EXAMPLE PAGES

You will be asked to:

- Choose a category that best reflects the main purpose of the organisation
- If you chose *Sporting*, this example shows all questions that could expand for you.
- If you [click next](#) you will be taken to a **summary and declaration** screen, where you can view all of your answers **and print to a PDF**.
- This enables you to can share the outcome with your board or tax agent, before you submit.

Sporting

A society, association or club whose main purpose is encouraging a game, sport or animal racing. The organisation won't be income tax exempt if its main purpose is providing non-sporting facilities and activities that are social or recreational in nature. ⓘ

Does the organisation have and follow clauses in its governing documents that prohibit the distribution of income or assets to individuals or members? *

Yes No

Does the organisation exist, operate and incur its expenditure entirely in Australia? * ⓘ

Yes No

Does the organisation incur expenditure and pursue objectives principally in Australia? * ⓘ

Yes No

Is the organisation a Deductible Gift Recipient (DGR)? * ⓘ

Yes No

Is the organisation located outside Australia and prescribed by name as income tax exempt in income tax regulations? * ⓘ

Yes No

Does the organisation have any charitable purposes? * ⓘ

Yes

No

Unsure

i The ATO may contact the organisation to provide guidance to help determine its charitable status.

[Back](#) [Cancel](#) [Next](#)

It is an interactive format

If the answer is **yes** to this question, the following three questions **shaded in orange** below will not display

EXAMPLE ONLY
There may slight formatting changes one the return goes live on 1 July 2024

NFP SELF-REVIEW RETURN GUIDE PUBLISHED TO ATO.GOV IN DEC-23

KEY POINTS

- The published guide closely mirrors the navigational structure and guided logic of the *NFP self-review return*
- The questions are the same as what will appear on the *NFP self-review return* (with only a few minor exceptions to ensure flow in a static form)
- Due to the static nature of a published web-content - the [published guided logic](#):
 - is facilitated by providing [hyperlinks](#) to the appropriate next question a not-for-profit will need to answer
 - enables the not-for-profit to reach a self-assessed eligibility [outcome](#) based on their responses
- The guide includes [help-text](#) that will be viewable from within the *NFP self-review return* (using Online Services)
- Clients can review eligibility using the newly published guide to get their answers ready - in preparation for lodgment from July 2024
- The guide is available at ato.gov.au/NFPselfreviewguide

The screenshot shows the Australian Taxation Office (ATO) website. The top navigation bar includes links for 'ATO Community', 'Legal Database', 'What's New', and 'Log in to online services'. The main header features the Australian Government logo and the text 'Australian Taxation Office'. A search bar is located on the right side of the header. Below the header, there is a navigation menu with options: 'Menu', 'Home', 'Tax and super professionals', 'Individuals and families', and 'Businesses and organisations'. The 'Businesses and organisations' section is expanded, showing a list of topics: 'How to prepare a NFP self-review return', 'Franking credit refunds', 'Annual GST returns for not-for-profits', 'PAYG withholding for not-for-profits', 'In detail', 'Activity statements for not-for-profits', 'Income tax returns for not-for-profits', 'Ancillary fund returns', and 'Not-for-profits and the Common Reporting Standard'. The 'How to prepare a NFP self-review return' page is selected and highlighted. The main content area displays the title 'How to prepare a NFP self-review return' and a sub-header 'Businesses and organisations > ... > How to prepare a NFP self-review return'. The text below the title reads: 'See the NFP self-review return questions so you can prepare your answers before the return is available on 1 July 2024.' It also includes a 'Last updated 22 December 2023' notice and a 'Print or Download' button. Below this, there is a section titled 'On this page' with two links: 'Before you complete this return' and 'Completing your return'. The next section is titled 'Before you complete this return' and 'Who needs to complete this return', with the text: 'If your not-for-profit (NFP) has an active Australian business number (ABN), you must lodge an annual NFP self-review return starting with the 2023-24 income year.'

TRANSITIONAL SUPPORT ARRANGEMENTS

We are taking a practical compliance approach

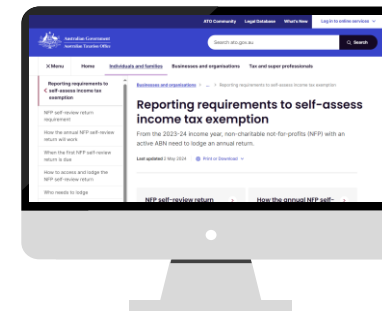
- Transitional support arrangements will be available if you need more time to meet your obligations. This may include:
 - Education and support, rather than a penalty first approach for the 2023-24 income year
 - lodgment deferrals
 - payment plans for organisations that identify they are a taxable not-for-profit (NFP) for the 2023–24 income year
 - remission of general interest charges and other penalties that may apply
- We are focusing our resources on the lodgment of the 2023–24 income year onwards.

If you've made a mistake, and it wasn't intentional or driven by evasion or fraud, you can expect the ATO to support you in meeting your obligations going forward.

If you have difficulty lodging online

If you have difficulty lodging online, you may be able to submit using an Interactive Voice Response (IVR) Self-help phone service.

- This service is available as an interim lodgment channel for the 2023-24 transitional year.
- More information on how to use this service will be available in July 2024.



More information

ato.gov.au/NFPtaxexempt

HOW TO REQUEST A CHANGE OF REGISTRATION DETAILS

Go to ato.gov.au/NFPnotifyofchanges

- The page includes refreshed guidance on how to update your NFP associates, authorised contacts and addresses.
- It includes new sections outlining:
 - *Who can notify us of changes - including newly appointed associates*
 - *What we accept as items of proof*
 - *A fillable paper form for NFPs to use*
 - *How to complete and submit the form - including the declaration*
- NFPs can:
 - Download the form and type in their new details, which improves readability for processing the updates
 - Save and print the PDF form, attach evidence to the back, and post it to us
- Our internal procedures have been updated to ensure our staff have necessary information to assist clients
- We are communicating availability of the fillable PDF form through our usual channels

The screenshot shows the ATO website interface. The top navigation bar includes 'ATO Community', 'Legal Database', 'What's New', and 'Log in to online services'. The main header features the Australian Government logo and a search bar. Below the header, a navigation menu lists 'Home', 'Individuals and families', 'Businesses and organisations', and 'Tax and super professionals'. The 'Businesses and organisations' section is expanded to show 'Not-for-profit key personnel', 'Structure and activities', 'Ending your organisation', and 'Notifying us of changes to your not-for-profit'. The main content area is titled 'Notifying us of changes to your not-for-profit' and includes a sub-header 'Businesses and organisations > ... > Notifying us of changes to your not-for-profit'. The text states: 'You must notify us if your not-for-profit's (NFP) organisation details or authorised contact details change.' It also includes a 'Last updated' date of 13 March 2024 and options to 'Print or Download'. A section titled 'On this page' contains links for 'Changes to your NFP' and 'How to notify us of changes'. Below this, a section titled 'Changes to your NFP' lists the following details to be updated: entity name or registered business name, associates or official position holders, authorised contact person, and financial institution account details. A note states that users are required by law to notify the Registrar within 28 days of any changes, including postal, email or business address, associates, and main business activity.

The screenshot shows the 'Change of registration details' form from the Australian Taxation Office. The form is titled 'Change of registration details' and includes the following sections:

- Use this form to change the following registration details for the entity:**
 - entity name
 - main business activity
 - postal, email or business location address
 - authorised contact person
 - associates
 - financial institution account details.
- Instructions for completing this form:**
 - Print clearly using a black or dark blue pen.
 - Use BLOCK LETTERS.
 - Place X in all applicable boxes.
- After completing the form:**
 - Check you have signed and dated the declaration.
 - Make a copy for your records.
 - Mail your completed form to the address shown on the last page of this form.
- More information:**
 - If you need help completing this form or for more information about updating your details, phone 13 92 26 between 8.00am and 6.00pm, Monday to Friday.
 - For general information, visit ato.gov.au
- Change your registration details online:**
 - Using our online services is the quickest and easiest way to change your registration details.
 - If you have a myGovID, you can change your registration details online using:
 - the Australian Business Register at abr.gov.au
 - Online services for business at ato.gov.au/OSB
 - Online services for agents at ato.gov.au/OSFA
- Section A: Entity information – this section is compulsory**
 - When the term 'entity' is used on this form, it refers to the sole trader, partnership, company, trust or other type of organisation that is changing its registration details.
 - 1 What is the entity's Australian business number (ABN) or withholding payer number?** [Input field]
 - 2 If the entity has a GST or PAYG branch and these changes relate to it, provide the branch account number.** [Input field]
 - 3 What is the entity's legal name as it appears on the Australian Business Register?** [Input field]

Taxable clubs and the mutuality principle



WHAT IS A TAXABLE NOT FOR PROFIT?



There is a common **misconception** that all not-for-profits are exempt from income tax.

Not all NFPs are exempt from income tax

The tax law tells us the types of NFP organisations that can be exempt from income tax.

Organisations that aren't exempt are taxable, and may have to lodge tax returns and pay income tax.

Examples of taxable NFP organisations include:

- social clubs
- some business and professional associations
- clubs whose main purpose is providing hospitality services for members
- political parties.

Mutuality

Understanding **mutuality** and **taxable income** is important as it affects lodgment obligations and what NFPs pay tax on.

- Visit ato.gov.au and search for [QC 23099](#) for a useful guide that explains who can apply the principle.

To work out if you need to lodge a tax return and what rate of tax you pay, you'll need to work out if your organisation is an **NFP company** or **other taxable company**.

The distinction is important because NFP companies have special arrangements for lodging tax returns and special rates of income tax.

NFP Companies

If the organisation's constituent documents prohibit it from making any distributions – whether in money, property or otherwise – to its members, the organisation is treated as an **NFP company**.

An NFP company with taxable income of:

- \$416 or less a year is not required to lodge a tax return if an Australian resident (unless specifically requested to do so)
- more than \$416 a year is required to lodge a tax return for that year, but may notify us of a **return not necessary**.

Other taxable companies

Clubs, societies and associations whose constituent documents don't prohibit them from making distributions to their members are treated as **other taxable companies**.

Other taxable companies must lodge a tax return each year, regardless of their taxable income. They have the same rates of tax applied as other companies.

There is no tax-free threshold for other taxable companies – they are taxable from the first dollar. That is, they are taxable on all levels of taxable income.

MUTUALITY KEY CONCEPTS



Mutuality principle

The mutuality principle is a legal principle established by case law. It is based on the proposition that an organisation cannot derive income from itself.

The principle provides that where a number of persons contribute to a common fund created and controlled by them for a common purpose, any surplus arising from the use of that fund for the common purpose is not income.

The principle does not extend to include income that is derived from sources outside that group.

Organisations that can access mutuality

The characteristics of organisations that can access mutuality typically include:

- The organisation is carried on for the benefit of its members collectively, not individually.
- The members of the organisation share a common purpose in which they all participate or are entitled to do so.
- The main purpose for which the organisation was established, and is operated, is the common purpose of the members.
- There is a common fund that gives effect to the common purpose and all the members contribute to it.
- All the contributions to the common fund are applied for the collective benefit of all the members, in line with the common purpose.
- Different classes of memberships may exist with varying subscription rates, rights and entitlements to facilities.
- The members have ownership and control of the common fund.
- The contributors to the common fund must be entitled to participate in any surplus of the common fund.*

** If an organisation's constituent document prevents it from making any distribution to its members, and this is the only thing that prevents an amount of its income from being a mutual receipt, the organisation is not prevented from accessing mutuality for income tax purposes.*

Mutual Dealings

As a result of the mutuality principle:

- receipts derived from mutual dealings with members are not assessable income (these are called mutual receipts)
- expenses incurred to get mutual receipts are not deductible.

Not all dealings involving members are mutual dealings.

The principle of mutuality does not apply to dealings between an organisation and member that go beyond a mutual arrangement and are in the nature of trade. In this situation, the fact the organisation is dealing with a member is not relevant.

Members vs non-members

For the purposes of mutuality, we accept that a person is a member of an organisation where the person has done all of the following:

- applied for membership (which may entail being nominated and paying the appropriate nomination fee)
- been accepted by the organisation (for example, by the board of directors)
- paid the appropriate membership subscription.

[Search ato.gov.au](https://ato.gov.au) for QC 81932

SEEK SUPPORT AND STAY INFORMED

Visit the ATO website



Go to:

- ato.gov.au/NFPtaxexempt
- ato.gov.au/NFPnotifyofchanges
- ato.gov.au/atowebinars

NFP advice service

Our dedicated advice service for not-for-profits operates from 8.00am to 6.00pm, Monday to Friday
Phone 1300 130 248
Email atoendorsements@ato.gov.au

Subscribe to NFP News

Visit ato.gov.au/nfpnews and subscribe for:

- monthly updates on the latest tax and superannuation news for NFPs
- notifications of upcoming webinars

NFP self-review return guide



Complete an early self-review using the new return guide at ato.gov.au/NFPselfreviewguide

Government

Government
Phone 13 28 66 from 8.00am to 6.00pm, Monday to Friday
Email PWGovernment@ato.gov.au



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Visit the ACNC website



Go to:

- acnc.gov.au/selfassessing
- acnc.gov.au/for-charities/start-charity

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Straight from the source

This month, Assistant Commissioner Jennifer Moltisanti talks about 2 significant pieces of public advice and guidance we're about to release for the sector.



News highlights

[Directors of clubs and NFP organisations need a](#)

Appendix

- NFP tax and super obligations
- Key focus areas and what attracts our attention
- Improving assurance
- Reviewing compliance

NOT-FOR-PROFITS TAX AND SUPER OBLIGATIONS

ATO registrations, lodgments and payments not-for-profits may have

GST obligations



- NFPs are required to register for GST if their turnover is **\$150,000 or more**. NFPs under the \$150,000 threshold can choose to register.
- NFPs registered for GST must lodge Business Activity Statements (BAS), usually on a quarterly basis.
- This can be done using *Online Services for Business* or through a tax or BAS agent.
- NFPs are required to report and pay GST amounts and claim any GST credits they may be entitled to via the BAS.

Employer obligations

PAYG Withholding (PAYGW)

- NFPs with employees have the same PAYGW obligations as for-profit businesses.
- NFPs must register when they are required to withhold tax from payments to others - including employees, directors and office holders.

Single Touch Payroll (STP)

- All NFPs should now be using STP to report salaries and wages, PAYGW and superannuation.
- The end-of-year finalisation process using STP has replaced lodging a payment summary annual report.

Fringe Benefits Tax (FBT)

- NFPs liable for FBT on benefits provided to employees are required to:
 - register for FBT
 - lodge an annual FBT return
 - pay the resulting FBT liability.
- Examples of benefits provided may include:
 - use of a car
 - meal allowance
 - direct payments of employees' personal expenses (rent, mortgage, utility bills).
- NFPs may need to pay FBT instalments each quarter.



Superannuation

- NFPs must provide eligible employees with super contributions of at least the super guarantee rate by the quarterly cut-off date.
- Most employees are covered by the super guarantee legislation. It covers those who are full time, part-time or casual. It also covers certain independent contractors.
- The super guarantee rate is 10.5% for the 2022-23 financial year and is currently increasing by 0.5% each financial year.



Payday Super measure

- On 9 May 2023, as part of Budget 2023-24, the government announced the 'Securing Australians' Superannuation Package' – increasing the payment frequency of the super guarantee.
- The measure will require super to be paid at the same time as salary and wages from 1 July 2026.
- Treasury will lead the policy consultation period. A consultation paper in relation to the policy is expected to issue in August.
- The ATO will consult and co-design with all stakeholder groups in relation to its administration, impacts on stakeholders and any changes that need to be made.

KEY FOCUS AREAS WHAT ATTRACTS OUR ATTENTION

1. OPERATING FOR PURPOSE

- Are entities applying income and assets solely for purpose?
- Are entities operating in accordance with their governing documents?

DGR ENTITLEMENT

- Are deductible gift recipients (DGR) meeting their purpose and activity requirements?
- In entity groups with a mix of DGR and non-DGRs, do donation reach the correct entity?

REFUND OF FRANKING CREDITS

- Are charities claiming correct amounts?
- Do they meet all technical eligibility requirements?
- download the claim form at ato.gov.au

MEETING TAX AND SUPER OBLIGATIONS

- Are FBT concessions and calculations correct?
- Are NFP entities meeting their obligations for PAYGW, Single Touch Payroll and Super?

WIND-UP

- Are surplus funds and assets distributed according to the NFPs governing rules, upon wind-up?

MUTUALITY

- Is the principle of mutuality being applied correctly and are members correctly classified?
- Are tax returns being lodged as required?

INTERNATIONAL TRANSACTIONS

- Are funds being sent overseas for non-charitable purposes?
- Are there indicators of Terrorism financing or money laundering in NFP sector?

2. PRIVATE AND PUBLIC ANCILLARY FUNDS

- Are ancillary funds established to facilitate philanthropic giving or for other purposes?
- Are ancillary funds meeting the requirements of the guidelines?
- Are external auditors confirming compliance with the Guidelines as part of their annual audit of accounts?

Key aspects

- Minimum annual distributions of 5% (Private funds) and 4% (Public funds)?
- Maintaining a diverse investment strategy that has regard to the risk of holding certain assets and meeting strict annual distribution requirements
- Loans/valuations are accurately recorded and in line with guidelines?

3. SELF-ASSESSING INCOME TAX EXEMPTION

Not-for-profits correctly access and use the significant concessions available to the sector.

Key aspects

- Are self-assessing entities regularly reviewing their entitlement to self-assess as income tax exempt (e.g. purpose must align to 1 of 8 categories)?
- Are self-assessing entities meeting their other taxation obligations, such as:
 - GST registration, lodgment and payment
 - Super and PAYGW payments

New Reporting requirements – risks in focus

The lodgment requirement on ABN registered SAITE entities commences on 1 July 2024 (for the 23-24 year) and will result in new risk behaviours, including:

- Non-lodgment of self-review return
- Late lodgment of self-review return
- SAITEs not eligible to self-assess:
 - Entity has charitable purposes and should be endorsed by ACNC and the ATO to access Income Tax exemption
 - Entity has no entitlement to Income Tax exemption and should be lodging an annual tax return or Return Not Necessary

4. EMERGING RISKS

STRUCTURING AND A LACK OF TRANSPARENCY

- Are structures that contain ‘for-profit’ entities operating at arms-length and for the ultimate benefit of the NFP?
- Are structures appropriate for operations, or being put in place to impede transparency or exploit generous tax concessions?
 - Use of Basic Religious Charity Trust structures to access uncapped fringe benefits and avoid financial reporting
 - Use of Public Benevolent Institution (PBI) structure to access FBT concessions for ineligible employees
 - Creation of ‘Private’ NFP foundations to stream untaxed income – see [Taxpayer Alert - TA 2016/5](#)

GST REPORTING BY NFP ENTITIES

- Are NFP entities meeting requirements to be registered for GST, and correctly classifying/reporting GST supplies?

COMMERCIAL ACTIVITIES BY NFP ENTITIES

- Are commercial activities being treated correctly in GST?
- Are assets and income being applied solely for the purpose for which the NFP was established, or to provide private benefits to individuals?
- At wind-up, are assets being distributed in accordance with the entity’s governing documents?

RISING DEBT LEVELS

- Do NFP entities with significant debt have appropriate payment arrangements in place? Are entities viable?

IMPROVING ASSURANCE

What not-for-profits can do to achieve higher assurance



Keeping good records

- Evidence how and why the entity treated tax and superannuation matters in a certain manner
- Document how the entity self-assessed as eligible for income tax exemption
- Setup an annual review process to evidence ongoing eligibility to income tax exemption
- Notate details of activities that encourage sport as the main purpose (i.e. for a sporting club)
- Monitor continued eligibility and record the factors for determining entitlement to concessions (e.g. for claiming franking credit refunds)
- Keep BAS calculation worksheets or any other workings of calculations. For example, how current and projected turnover is calculated in order to determine the requirement to register (and remain registered) for GST
- Maintain valid tax invoices to support any GST credit claims made on the BAS
- Check calculations are accurate and amounts have been transferred correctly from system records to the BAS



Risks communicated to market

- Self-review DGR entitlement by checking that the entity continues to operate for purpose and meets the principal activity test
- Review ancillary fund guidelines to ensure all requirements are met
- Record how the taxable value of fringe benefits to employees was calculated and applies to the appropriate concessions claimed



Significant transactions with a tax or superannuation impact

- Payments between related entities are applied for purpose and do not result in private benefit
- Ensure government grants are applied for purpose and any GST obligations are clearly understood by all parties
- Prevent errors that will have a large consequential impact on tax and super outcomes by adhering to governance standards (i.e. for FBT and GST transactions)
- Setup arrangements to protect the entity from terrorism finance and money laundering
- For non-routine or complex GST transactions that are less familiar e.g. property, international or product classification transactions, seek assistance early from the ATO or a Tax or BAS advisor



Accounting and tax results

- The distribution of funds by an entity meets the special conditions for income tax exemption (i.e. assets and income are applied solely for purpose)
- Surplus funds and assets, at time of wind-up, are distributed according to governing rules and charitable assets remain within the charitable domain
- Apply the principle of mutuality and ensure members are classified correctly
- Record the determining factors for decisions (i.e. how uncertain tax positions are accounted for)

ATO OVERSIGHT REVIEWING COMPLIANCE

TAX CONCESSIONS AND ENDORSEMENTS

- Organisations with a charitable purpose must be registered with the ACNC and endorsed by the ATO in order to access Commonwealth tax concessions.
- There are 52 general categories of DGR set out in the tax law each with specific criteria.
- DGR endorsed organisations are required to:
 - apply income and assets solely for the purpose for which they're endorsed, and
 - operate in accordance with their governing documents.
- DGR endorsed organisations are reviewed as part of our broader compliance program.
- The ATO will revoke entitlement to tax concessions including DGR endorsement when we come to the view that an organisation does not meet the eligibility requirements set out in the tax law.



You can help by notifying us of anyone you believe is using not-for-profits to access concession incorrectly at ato.gov.au/tipofform

CHECK YOUR OBLIGATIONS

- It's important that you regularly check how well your organisation is managing its tax and super obligations.
- We recommend you review your organisation annually, and whenever your organisation makes changes to its governing rules, structure or activities.
- Use our checklists and worksheets to:
 - review your organisation's status as a not-for-profit
 - check how well your organisation understands its tax and super obligations
 - check you are still eligible for deductible gift recipient (DGR) endorsement or the income tax exemption.
- You can find our worksheets on ato.gov.au by searching for **QC 46359**
- A good record keeping system will help you manage your tax obligations. Find out what types of records you need to keep as a not-for-profit and for how long. You can find more information at ato.gov.au and search for **QC46359**

Registered for GST or have employees?

- Have you correctly calculated and reported GST on your taxable supplies and creditable acquisitions?
- Have you withheld the right amount from employee wages and paid the right amount of super?



ARE NFPs SELECTED FOR RANDOM ENQUIRY PROGRAMS?

- Random Enquiry Programs (REPs) are conducted on a regular basis, in order to assess overall compliance.
- Cases are randomly selected, not based on risk, and not-for-profits may be selected.
- REPs are generally run on a tax product basis, such as GST or SEO.
- Results assist us to:
 - develop tax gap estimates
 - identify where risk models may not be operating to capture emerging risk.





Australian Government
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Thank you

