

Advanced Income Tax Law

Chapter 7

Clubs, Societies and Associations

Tax Status

The term “society, association or club” is not defined in the tax law and takes the ordinary meaning of the words.

All incorporated clubs, societies and associations are regarded as companies for tax purposes.

Unincorporated clubs, societies, associations and organisations that cannot be classified as partnerships are also regarded as companies for tax purposes.

Tax Status

Exempt Clubs, Societies and Associations

Certain types of *non-profit organisations* are exempt under taxation law. The following types of organisations must be endorsed by the ATO to be exempt from income tax:

- charities, and,
- certain non-charitable funds (e.g. religious, health, cultural, educational, community service, scientific and sports organisations).

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

Tax Status

Exempt Clubs, Societies and Associations

Non-profit organisations

Not operating for the profit or gain of its individual members, whether these gains would have been direct or indirect.

A non-profit organisation can still make a profit, but this profit must be used to carry out its purposes.

The profits must not be distributed to owners, members or other private people.

Tax Status

Exempt Clubs, Societies and Associations

Non-profit sporting clubs, societies and associations

s.50-45 provides an exemption from tax on all of income of non-profit sporting clubs, societies and associations provided they are *"established for the encouragement or promotion of a sport or game"*.

Tax Status

Exempt Clubs, Societies and Associations

To be a tax exempt sporting club, a club must pass one of the following tests:

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

Tax Status

Exempt Clubs, Societies and Associations

Other clubs, societies or associations whose main purpose is not the encouragement of a sport or game are not exempted from tax by s.50-45.

However, where such a club, etc. fails to qualify for an exemption from tax under s.50-45, it still can escape tax liability on at least part of its income under the *principle of mutuality*.

Principle of Mutuality Exemption

The principle of mutuality is that an entity cannot derive assessable income from trading with itself.

In relation to clubs, societies and associations the principle means that a club cannot derive assessable income from trading with its own members.

The principle of mutuality also recognises that any surplus arising from contributions to a common fund created and controlled by people for a common purpose is not income.

Assessable Income of Clubs

Clubs, societies or associations whose main purpose is not the encouragement of a sport or game are not exempted from tax by s.50-45 and are regarded as companies for tax purposes.

Thus, assessable income will consist only of receipts derived from sources external to the club.

Assessable Income of Clubs

Receipts from members are exempt income

Examples include:

- subscriptions, membership fees.
- receipts from members for services provided by the club.
(e.g. bar sales, raffle monies, poker machines, food/dining receipts, equipment sales).

Assessable Income of Clubs

Receipts from non-members are assessable

Examples include:

- receipts from non-members for services provided by the club (e.g. bar sales, raffle monies, poker machines, dining receipts, sales of equipment or goods).
- Investment income (e.g. dividends, interest, rental income).

A difficulty obviously arises where clubs derive income from both club members and non-members. Such income, therefore, needs to be apportioned between members and non-members for tax purposes.

Calculation of Taxable Income

If complete details are known re income from non-members

Therefore, the formula to calculate taxable income is:

$$\text{Taxable income} = \text{Receipts from non-members} \text{ less } \left(\text{Expenditure} \times \frac{\text{Receipts from non-members}}{\text{Total receipts}} \right)$$

Calculation of Taxable Income

Complete details are not known re income from members

Where a club is unable to distinguish between its receipts from members and non-members, the Commissioner provides a formula to determine the percentage of receipts and relevant expenses attributable to non-members.

The formula, called *Waratah's formula*, is :

$$\frac{(B \times 75\%) + C}{(R \times S \times T) + A} \times \frac{100}{1}$$

Calculation of Taxable Income

where:

A - total visitors for the year of income

B - total members' guests for the year of income

C - A less B

R - average number of subscribed members for the year

S - the percentage of members that attend the club on a daily basis

T - the number of trading days for the year

Calculation of Taxable Income

The formula can be also expressed as follows:

$$\frac{75\% \text{ of members' guests} + (\text{total visitors} - \text{members' guests})}{(\% \text{ daily attendance} \times \text{no. of members} \times \text{no. of days club is open p.a.}) + \text{total visitors}} \times \frac{100}{1}$$

Rates of Tax

Not-for-profit companies

The majority of clubs, associations and societies generally qualify as not-for-profit companies.

Not-for-profit companies that are SBE's:

Taxable income	Tax Rate
\$0 to \$416	Nil
\$417 to \$832	55% on excess over \$416
\$833 +	27.5% flat on the whole of taxable income

Rates of Tax

Not-for-profit companies

Other not-for-profit companies (not SBE's):

Taxable income	Tax Rate
\$0 to \$416	Nil
\$417 to \$915	55% on excess over \$416
\$916 +	30% flat on the whole of taxable income

Rates of Tax

Other taxable companies

If a club, association or society does not qualify as a non-profit company, then it is classified as an “other taxable company”.

The **whole** of its taxable income is taxed at the rate of tax applicable to companies – 27.5% or 30% flat.