

## 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 exempt 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'.

## 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.

## 02 IS YOUR ORGANISATION EXEMPT FROM INCOME TAX?

### 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
<b>Charity</b>	<b>31</b>
<b>Charitable institution</b> – 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.	
<b>Charitable fund</b> – 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.	
<b>Community service organisations</b>	<b>14</b>
<b>Community service</b> – 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.	
<b>Cultural organisations</b>	<b>15</b>
<b>Art</b> – 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.	
<b>Literature</b> – 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.	
<b>Music</b> – 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.	
<b>Musical purposes</b> – 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.	
<b>Educational organisations</b>	<b>17</b>
<b>Public educational institution</b> – the entity can self-assess its exempt status provided it is not also a charity. Tests apply.	
<b>Employment organisations</b>	<b>18</b>
<b>Employee association</b> – 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.	
<b>Employer association</b> – 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.	
<b>Trade union</b> – the entity can self-assess its exempt status provided it is not also a charity. Tests apply.	
<b>Health organisations</b>	<b>18</b>
<b>Public hospital</b> – the entity can self-assess its exempt status provided it is not also a charity. Tests apply.	
<b>Non-profit hospital</b> – 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.	
<b>Health benefits</b> – 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.	
<b>Hospital benefits</b> – 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.	
<b>Medical benefits</b> – 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.	
<b>Income tax exempt fund</b>	<b>65</b>
<b>Income tax exempt fund</b> – 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
<b>Religious organisations</b>	20
<b>Religious institution</b> – the entity can self-assess its exempt status provided it is not also a charity. Tests apply.	
<b>Resource development organisations</b>	22
<b>Agricultural resources</b> – 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.	
<b>Aquacultural resources</b> – 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.	
<b>Aviation</b> – 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.	
<b>Fishing resources</b> – 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.	
<b>Horticultural resources</b> – 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.	
<b>Industrial resources</b> – 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.	
<b>Manufacturing resources</b> – 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.	
<b>Pastoral resources</b> – 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.	
<b>Tourism</b> – 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.	
<b>Viticultural resources</b> – 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.	
<b>Information and communications technology resources</b> – 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.	*
<b>Scientific organisations</b>	23
<b>Scientific institution</b> – the entity can self-assess its exempt status provided it is not also a charity. Tests apply.	
<b>Science association</b> – 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.	
<b>Scientific research fund</b> – 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.	
<b>Sporting organisations</b>	26
<b>Animal racing</b> – 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.	
<b>Game or sport</b> – 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.	

**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.



## 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.

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### WORKSHEET 1

1 **Full name of the organisation**

CAcert Incorporated

2 **Australian business number (ABN) (if held)**

3 **Period of review**

1 / 7 / 2007 to 30 / 6 / 2008

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

ROBERT CRUIKSHANK

Position held

TREASURER & PUBLIC OFFICER

Signature



Date

01/05/2008

Approval by Board/Committee
