

NEW NFP EXEMPT INCOME MANDATORY SELF-REVIEW LODGEMENT WITH ATO – BETTER GET READY!

An announcement made in the 2021 Federal Budget affecting many clubs has received little attention.

From 1 July 2023, the ATO will require many Clubs to lodge an online Annual Self-Review Form to confirm the clubs income tax exempt status.

In Budget Paper number 2, at page 22:-

“The Government will provide \$1.9 million capital funding in 2022-23 to the ATO to build an online system to enhance the transparency of income tax exemptions claimed by not-for-profit entities (NFPs). Currently non-charitable NFPs can self-assess their eligibility for income tax exemptions, without an obligation to report to the ATO. From 1 July 2023, the ATO will require income tax exempt NFPs with an active Australian Business Number (ABN) to submit online annual self-review forms with the information they ordinarily use to self-assess their eligibility for the exemption. This measure will ensure that only eligible NFPs are accessing income tax exemptions.

This measure is estimated to have an unquantifiable impact on the underlying cash balance over the forward estimates period”

In order for a sporting club to be exempt from income tax on all its income, the clubs **main purpose** must be the encouragement of sport(s). In addition:-

1. The club must not be carried on for the purpose of profit or gain to its individual members; and
2. Has a physical presence in Australia incurring its expenditure and objectives principally in Australia; and
3. Comply with its governing rules and apply its income and assets solely for the purposes for which the entity is established.

Frequently, the ATO approach is to question whether the main purpose is that of sport or of social activities. The case law is clear that a club may have two purposes, one for sport and one for social activities provided that the sporting activities are the **main purpose**.

At the outset we consider there are 3 major areas of concern with the announcement for clubs, namely:-

1. The ATO is yet to advise the form of the self-assessment to be lodged. The current worksheet available on the ATO website ("Income Tax Status Review Worksheet For Self-assessing Non-profit Organisations") is heavily influenced by financial factors and in our view does not prompt office holders or advisors to consider and value volunteer labour. As the court noted in *St Marys Rugby League Club Limited v FC of T 97 ATC 4528* ("St Marys"):-

"There is no doubt that the financial information and an analysis will be relevant in determining the character of a club in a relevant year. But statistics do not necessarily tell the whole story. It is obvious that the majority of the profit of the Club came from poker machines. It requires little space and even less effort on the part of the Club to derive this profit. It takes a great deal more time and effort to put on the field week after week some 32 rugby league teams involving some 450 players, not to mention fielding a first grade team and a reserve grade team in the Metropolitan Cup competition.

2. The cost to a Club in both financial terms and labour resources will be considerable, in our opinion.
3. The ATO appears to consider that, notwithstanding a club may hold a current Private Binding Ruling ("PBR") that it is exempt, the club will still be required to submit an annual review document (whichever form it takes). We believe that if this approach is adopted it will effectively devalue a PBR.

Immediate action to prepare

We believe that prudence and good governance by club officeholders will include:-

1. Review any previous PBRs or advice from the ATO on income tax exempt status, and more particularly the date.
2. Consider the clubs current protocols for self-assessment of income tax exempt status.

3. Consider whether self-assessment of income tax exempt status protocols are adequate.
4. Review the current ATO worksheet “Income Tax Status Review Worksheet For Self-assessing Non-profit Organisations” available on the ATO website.
5. Review all activities and resources devoted to the conduct of sport including volunteer labour.
6. Consider obtaining experienced professional advice to evaluate or establish self-assessment protocols.

We urge clubs to give these matters immediate attention from a planning perspective and to ensure good governance principles for your club.

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