

IMPLICATIONS OF IRD TAX ISSUES PAPER FOR PLAY, ACTIVE RECREATION AND SPORT SECTOR

Introduction

Inland Revenue (IRD) has published an Issues Paper looking at some potential changes to the way that charities and not-for-profits are taxed.

This document sets out our understanding of the potential impact that the changes discussed in the proposed Issues Paper could have for the play, active recreation and sport sector. This document is not a substitute for independent legal advice but is intended to help sector organisations understand the potential implications of the changes proposed to assist in any submissions that organisations may wish to make to IRD. The closing date for submissions is Monday 31 March and submissions can be made by email to policy.webmaster@ird.govt.nz.

Summary of implications for our sector

Two key points emerge from the Issues Paper for our sector:

- There are no proposals to change the income tax exemption (section CW 46 of the Income Tax Act 2007) that many amateur sport and recreation clubs benefit from because they have been set up to promote an amateur game or sport. Organisations may however need to ensure that their constitution clearly includes reference to amateur sport in the organisation's purpose. The [constitution templates](#) on the Sport NZ website provide examples of suggested wording that can be used. While there are no proposals to change the existing amateur sport income tax exemption, organisations may wish to submit on the importance of this exemption, especially given the significant financial pressures currently facing the sector.
- The potential change that could affect some organisations in our sector is the proposal to remove the tax exemption for business income received by a charity where this income is '*unrelated to the entity's charitable purpose*'. This change could affect registered charities who were unable to meet the separate income tax exemption noted above (section CW 46 of the Income Tax Act 2007). Should the current proposals go ahead, registered charities – including most regional sports trusts, National Education Organisations, National Disability Organisations, National Recreation Organisations, and sports related foundations – may become subject to tax on their "business income", to the extent this income is considered "unrelated" to charitable purposes. Business income could include any trading activity

intended to earn a surplus, or any donation, disposal, or investment activity related to a “business activity”. A minimum threshold is proposed whereby this would only apply to those organisations with annual accounting expenditure of \$5 million or more (the largest 1,300 of charities, making up approximately 11% of all charities, according to IRD figures). The proposed threshold of \$5 million annual accounting expenditure is the example provided in the Issues Paper but this could change. The amount could vary and it is also possible that any threshold could relate to business income rather than to annual accounting expenditure. Organisations who could potentially be impacted by this proposal may wish to provide their views on the need to ensure that the threshold does not increase administrative and compliance costs.

Organisations that are established as not for profits or charities but receive some commercial revenue through functions or events in order to subsidise community use (e.g. some sports hubs and facilities) may still be eligible for the income tax exemption referred to above. This is because the income tax exemption is based on whether the entity is established mainly to promote an amateur sport or game. Some level of other revenue would not automatically disqualify an entity from relying on the income tax exemption in section CW 46 of the Income Tax Act 2007 (provided the other criteria are met).

Council-Controlled Organisations may be affected by the proposed changes to the treatment of business income noted above if they could not meet the criteria for the income tax exemption in section CW 46 of the Income Tax Act 2007 (unless the CCO has been provided with an exemption in legislation outside of the Income Tax Act 2007 in which case it would be likely to fall into Category E in Appendix 1).

There are also some other changes that could affect organisations of particular types. Appendix 1 includes examples of the different organisational forms and the potential implications that the proposals in the issues paper could have for each of these organisational forms.



Appendix 1: Overview of potential impact of changes for different organisational types

Label	Type of organisation	Description	Potential changes	Examples
Registered Charities				
A	Not donor controlled	A registered charity is an entity registered as a charitable entity under the Charities Act 2005; and Not donor controlled, see Category B below.	Business income “unrelated” to charitable purposes potentially subject to tax. Business income is not defined in the Act but may include trading activities intended to generate a surplus, disposal of income earning assets and donations or investment activity related to a business activity. Scope of “unrelated business activities” still to be defined. Potential exemptions may preserve tax free status for some charities (e.g. via a de minimis threshold).	<p>Registered charitable trusts / foundations associated with some sports in New Zealand, for example:</p> <ul style="list-style-type: none"> • New Zealand Rugby Foundation • New Zealand Olympic Foundation • The New Zealand Football Foundation <p>Regional Sports Trusts, for example:</p> <ul style="list-style-type: none"> • Nuku Ora • Aktive Auckland • Sport Northland <p>National Education Organisations, for example:</p> <ul style="list-style-type: none"> • Physical Education New Zealand • School Sport New Zealand <p>National Disability Organisations, for example:</p> <ul style="list-style-type: none"> • Halberg Foundation • Special Olympics New Zealand <p>National Recreation Organisations, for example:</p>

			Tax exemption for “Non-Business Income” is expected to remain.	<ul style="list-style-type: none"> • Recreation Aotearoa • Duke of Edinburgh • New Zealand Mountain Safety Council
Registered Charities				
B	Donor controlled	A charity, as above, but where the entity is controlled by an individual, family trust, or associated persons (NB: a specific definition of “donor controlled” is not yet provided in the Consultation Paper)	<p>Same as Category A above, but additionally:</p> <ul style="list-style-type: none"> • Transactions between donor controlled registered charities and their associates may be prohibited or else required to take place on arm’s length terms. • Minimum distribution rules may apply to prevent income accumulation. 	See Category A above.
Not for Profits (NFPs) that are not charitable				
C	Bodies established to promote amateur games and sports	Any club, society, association, or trustee of a trust; established mainly to promote an amateur game or sport. Provided the game or sport is conducted for the recreation or entertainment of the public and no part of the club’s funds is available to be used for the private benefit of a member,	Inland Revenue’s expectation is that these organisations’ tax-exempt status should not be affected by the proposals. Entities reliant on this exemption should ensure their constitutions and activities align with s CW 46.	<p>We expect many national, regional or local governing bodies for sport would apply the tax exemption in section CW 46. Some examples (based on published financial statements) include:</p> <ul style="list-style-type: none"> •Netball New Zealand •New Zealand Cricket •New Zealand Football <p>May include other amateur sports clubs and incorporated societies.</p>

		proprietor, shareholder, beneficiary, or associate (per s CW 46).		
Label	Category	Description	Potential changes	Examples
NFPs (that are not charitable)				
D	NFPs with a tax-exempt status available outside of the Act	Certain relevant entities may have a tax-exempt status available outside of the Act.	We would not expect tax-exempt status provided outside of the Act to be affected by the proposals. However, where separate legislation only provides for the entity's charitable status, the Category A proposals will likely apply.	Examples will depend on other statutory exemptions that may apply.
E	NFPs for whom there is no specific tax exemption available	Entities reliant on the mutuality principle and / or capital treatment of payments for their tax-exempt status.	Inland Revenue's revised view is that many "mutual transactions", such as subscriptions and levies on club/association members, should be subject to tax. This would likely apply on a prospective basis.	Clubs, associations and societies that are not: <ul style="list-style-type: none"> - Registered charities; - Promoters of amateur sports; - Horse racing clubs; or - Subject to a tax exempt status available outside of the Act. Broadly, this category includes entities not covered by any of the categories above.