

EXPOSURE DRAFT - FOR COMMENT AND DISCUSSION ONLY

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Notes: This draft operational statement outlines technical views on how income tax laws apply to various transactions between a not-for-profit association (NFP or, as also referred to in this statement, a mutual association) that is not subject to a specific tax exemption (such as the charity or sports exemption) and its members. The statement contains a proposal for prospective application when finalised.

Consultation on this statement follows consultation by Policy, Inland Revenue on the officials' issues paper [Taxation and the not-for-profit sector](#), which closed 31 March 2025. Chapter 4 of the paper (integrity and simplification) asked for submissions on how to reduce the impact of the Commissioner's updated view on NFPs, particularly smaller NFPs. This was on the assumption that the conclusions in the draft statement were correct and in recognition that many affected customers would experience an increase in compliance costs. Many helpful submissions were received, and Policy is considering them.

The view that supplying trading stock or services to members results in taxable income is not new but has not been communicated clearly or consistently, and Inland Revenue is aware affected customers take different approaches. We are hoping to increase awareness of the correct treatment and achieve certainty and consistency by finalising a statement on this aspect following consultation.

The conclusion that member subscriptions may be subject to tax represents a change in the Commissioner's view, and an object of this consultation is to test whether the reasoning for that conclusion is sound. Therefore, we welcome feedback on the interpretative approach and operational proposals in this statement. While it might be correct to interpret the law as taxing member subscriptions, submitters may also have feedback on policy issues or legislative settings relating to this (or any other) aspect and such comments are also welcome.

Send feedback to Public.Consultation@ird.govt.nz

OPERATIONAL STATEMENT

Mutual transactions of associations (including clubs and societies)

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Operational statements set out the Commissioner of Inland Revenue's view of the law in respect of the matter discussed and deal with practical issues arising out of the administration of the Inland Revenue Acts.

This statement clarifies the tax rules concerning amounts received by associations from transactions with their members and discusses the current scope for application of the mutuality principle to such amounts.

All legislative references in this statement are to the Income Tax Act 2007, unless specified otherwise.

START DATE

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Scope of this statement

1. This operational statement concerns the income tax treatment of interactions between groups of persons (associations) and their members.
2. A central issue covered is whether the “principle of mutuality” applies. Briefly, this is the rule developed by the courts that amounts derived by an association from “mutual” interactions with its members are not subject to income tax. As is discussed in this statement, tax legislation largely overrides the mutuality principle.
3. For convenience (and because it is a term used in the relevant tax legislation), affected groups are described in this statement as “mutual associations”.

4. Because “association” is very broadly defined, the statement covers a broad variety of groups and organisations, incorporated and unincorporated, from large corporate bodies and institutions to small clubs and societies. This statement covers an entity if it is a body or association of persons acting together to further an object, often being to provide benefit to members, and it supplies or receives goods or services to or from members.
5. Many mutual associations are commonly referred to as “not-for-profits” or “non-profit” organisations. This operational statement only covers the income tax treatment of transactions between not-for-profits and their members. It does not cover other tax or tax administration issues such as GST or return filing requirements.
6. Examples of the varied nature of relevant bodies include chartered clubs, cooperatives, trade associations, professional and regulatory bodies, trade unions, cultural societies, and industry councils and associations.
7. Other examples of associations potentially affected include mutual insurance groups, many institutes, and body corporates for unit title developments.
8. Groups or associations not covered by the statement include trusts (unless they are members of an association) and partnerships. The statement also has limited relevance to associations with some or all income that is exempt income. Examples include charities registered under the Charities Act 2005, friendly societies and amateur sports promoters. For friendly societies (which include credit unions), income is exempt unless it is from a business carried on beyond the membership of the society.

Summary of the Commissioner’s view

9. The mutual association provisions in the Income Tax Act 2007 **override the principle of mutuality** for amounts that would be income under the Act if they were not covered by the principle.
10. Except for associations deriving exempt income, the mutual association provisions, therefore, may result in income tax for an association with profits from trading transactions, whether trading is with members or non-members. Distributions of profits made from member trading may be deductible to the association.
11. Membership subscriptions, fees and levies are not necessarily part of the statutory override in the mutual association provisions, so may not be subject to income tax if they are mutual in nature.
12. However, based on Australian case law (discussed at [27], [50] and [59]), membership subscriptions, fees and levies paid to associations that are unable to distribute

anything to members (because of a prohibition in their constituting documents or statute, for example) are not mutual in nature and are not covered by the mutuality principle. Instead, such subscriptions, fees and levies may be income under ordinary concepts or business income, with deductibility of related expenditure determined as for any other expenditure. Therefore, whether such subscriptions, fees and levies are income depends on the circumstances of the association.

13. This statement has examples at [68] to illustrate the application of the above.
14. All previous statements by the Commissioner on this topic are withdrawn, including [Taxation of clubs, societies, etc](#) *Tax Information Bulletin* Vol 4, No 8 (April 1993): 7.
15. Guidance, including [Clubs or societies return guide 2025 – IR 9G](#) (guide, Inland Revenue, March 2025), will be updated to state expressly that the principle of mutuality has limited application because of the mutual association provisions (and no application for bodies that can't distribute to members).
16. This statement applies prospectively from [date of publication]. The Commissioner will not devote resources to identifying and adjusting the assessments of associations that, for income years before the year ended 31 March [to be determined], have filed tax returns that are incorrect because they did not include income derived from mutual transactions or subscriptions or levies as assessable income. This statement's application will be prospective only.

Introduction

17. Under the common law principle of mutuality, an association of people (such as a club or society) does not derive taxable income from transactions within the circle of membership of the association. Truly mutual transactions do not generate profits for the association because the amounts received by the association come from members transacting with themselves.
18. However, the principle does not apply where legislation provides otherwise.
19. Under the mutual association provisions (ss CB 33, CB 34 and DV 19 and subpart HE), amounts derived from a variety of transactions with members are taxable income of an association. This is despite the transactions being otherwise covered by the principle of mutuality.
20. Therefore, for transactions such as supplying goods and services to members and borrowing or lending money, the mutual association provisions override the principle of mutuality.

21. In some cases, mutual associations pay rebates to members. Where this happens, profits distributed through payments of rebates to members are deductible to the association so the result can be essentially the same as if the principle of mutuality applied.
22. The application of the mutual association provisions, and their implications for clubs, societies and other mutual associations, have not been made clear in material published by Inland Revenue.
23. Evidence suggests mutual associations often take different approaches to meeting their tax obligations in this area. Some organisations treat transactions with members as not giving rise to income while others return income from all transactions.
24. This statement confirms the correct legal position and discusses the implications for future tax positions taken by clubs and societies and other mutual associations, which may need to differ from positions taken previously.

Discussion

Mutuality

25. The common law principle of mutuality developed through a series of court cases including some from the 19th century. In brief, the principle is that a group of persons cannot derive assessable income from a mutual transaction on the basis that group members cannot make a taxable gain from trading with themselves.
26. A mutual transaction generally is one confined to the circle of membership of the group. When the group enters into transactions with persons who are not members it is no longer transacting within the circle of membership. Any profits from those transactions are potentially assessable income.
27. Not all transactions within the circle of membership are mutual in nature. For mutuality to apply, it is important that any surplus remains the property of the contributors, whether it is returned to the member in that year or carried to reserve for their benefit in a future year (see discussion at [50]).
28. A more detailed description and analysis is not required for this statement. This is because the scope for operation of the principle has been substantially reduced by specific legislation. The mutual association provisions in the Income Tax Act 2007 override the common law principle in the situations the provisions apply to.

Mutual association provisions in the Income Tax Act 2007

29. The relevant provisions are ss CB 33 and CB 34 (mutual associations), s DV 19 (association rebates) and subpart HE (mutual associations). In this statement, these are collectively referred to as the “mutual association provisions”.
30. Section CB 33 applies where an association enters a “mutual transaction” with members or with members and non-members. The section makes an amount income of the association “if the association derives from the transaction an amount that would, in the absence of this subsection, be income under a provision in this Part [Part C] but for the mutual character of the transaction” (s CB 33(2)).
31. This means only amounts that are covered by both the principle of mutuality and a provision in Part C will be affected by s CB 33. Therefore, amounts are not income under s CB 33 if they do not independently also meet the requirements to be income under Part C. Some amounts are not income under Part C because, for example, they are of a capital nature or are not income under ordinary concepts.
32. It also follows that the principle of mutuality, if it applies to a situation, does not determine the income tax treatment of a mutual transaction; instead, the mutual association provisions do.
33. Section HE 2(1) defines mutual transaction:

- (1) ... a mutual transaction arises when an association—
 - (a) enters into a transaction with members of the association, or a transaction with members of the association and other persons; and
 - (b) the association takes the transaction into account in an income year in determining its net income or net loss under section BC 4 (Net income and net loss).
34. Therefore, mutual transactions involve transactions with members and transactions with members and non-members. They are transactions involving amounts that are income that the association must take into account for s BC 4 purposes (that is, they are income under Part C). Supplies of goods and services between an association and members (or members and other persons), therefore, may be mutual transactions, and they will be mutual transactions if they are trading in nature or for some other reason (such as being income under ordinary concepts under s CA 1(2)) meet the requirements to be income under Part C. Borrowing and lending transactions are expressly included (by s HE 2(2)).

35. As well as including in income amounts that would not otherwise be income (because of the principle of mutuality), the mutual association provisions provide for an “association rebate” paid by an association to a member to be income to the member. This is where the mutual transaction to which the rebate relates is taken into account in determining the taxable income of the member (s CB 34). The result is that a rebate may be income to a member who carries on a business.
36. An association rebate is a payment that is made “through a distribution of profits of the association” (s HE 3).
37. An association rebate is deductible to the association (s DV 19). The effect of deductibility for the association is that profits an association makes from member trading do not give rise to a tax liability for the association (or for the member who does not have to include it in income, basically members not in business).
38. Where the full amount of surplus is paid back to a member as an association rebate (in the same income year) the net effect of the statutory scheme should be the same as the net effect of the common law principle of mutuality. That is, the net income from the transaction, being the gross income less the expenditure incurred in earning that income, and less the deductible association rebate (full profit on the transaction returned to the member), is nil – a similar tax treatment to “exempting” the transaction under the common law principle of mutuality.

Associations covered by the mutual association provisions

39. The mutual association provisions (ss CB 33, CB 34 and DV 19 and subpart HE) apply to an association. The Act defines “association” broadly as “a body or association of persons, whether incorporated or not” (s YA 1).
40. The mutual association provisions do not apply just to organisations such as cooperatives or statutory producer boards. Clubs and societies are also bodies or associations of persons. Therefore, they are associations for the purposes of the provisions.
41. Subpart HE expressly states that ss CB 33 and CB 34 apply to a “mutual association”. That is not a defined term, but the Commissioner’s view is that a mutual association is any body or association of people that is engaged in the type of mutual transaction with members that is covered by subpart HE. As discussed further below, this includes a wide variety of supplies that an association might make to its members and that its members might make to an association, such as the sale or purchase of trading stock, the supply of services, and borrowing from or lending to members.

42. Therefore, clubs and societies are mutual associations covered by the mutual association provisions if they transact with their members (for example, by selling members food and beverages or supplying goods that members use to carry on their businesses).
43. Other examples of transactions that could mean a body is a mutual association include charging for providing services to or on behalf of members and holding conferences or functions for members.
44. More specifically, s HE 2(1) defines mutual transactions in terms of transactions to be considered in determining the association's net income or net loss under s BC 4, in other words transactions where the association derives assessable income. Whether a transaction brings an association into the mutual association provisions, therefore, depends on whether the transaction needs to be considered for s BC 4 purposes.
45. This means a body does not enter mutual transactions just because it charges members a subscription, membership fee or levy. The amount charged needs to be assessable income that is part of the calculation of the association's net income or net loss under s BC 4.
46. Some such charges would not be mutual transactions because they represent contributions by members that are capital in nature, so are not income under any provision in Part C, including s CB 33 (for example, levies on members to build an extension to the association's offices or fund a vehicle purchase). The quality of such amounts in the hands of the association would not be as income whether the principle of mutuality applied or not. Therefore, s CB 33 would not make them income.
47. Even if not capital in nature, some subscriptions, fees and levies may also not be mutual transactions within the scope of the mutual association provisions because they are not the type of transaction covered by them. The predecessor provision to s HE 2(1) was s HF 1(8) of the Income Tax Act 2004, which made it clear that only certain types of transaction, essentially in the nature of transactions involving the supply of trading stock or services, were within scope. It is not considered that the current wording of the mutual association provisions has changed the coverage of the provisions in relation to what is a mutual transaction.
48. Generally, subscriptions are an obligation of membership and a condition of maintaining membership rather than being the price of specific goods or services. Where the true nature of payments described as subscriptions, membership fees or levies is not as payments for specific services the body supplies to members, they are not transactions to which the mutual association provisions apply (see *Case C27 (1978)* 3 NZTC 60,261 – discussed (although referenced as *Case C32*) in Tax treatment of

bodies corporate which are constituted under the Unit Titles Act 1972 *Tax Information Bulletin* Vol 6, No 4 (October 1994): 5 at page 6).

49. It follows that where subscriptions, fees and levies are mutual in nature, the principle of mutuality may still apply, and s BC 4 does not require the association to take them into account.
50. However, and this is discussed further at [59], subscriptions and levies members pay to an association that is prohibited from distributing funds to its members are not eligible to benefit from the mutuality principle. This was the conclusion of the Federal Court of Australia in *Coleambally Irrigation Mutual Co-operative Ltd v FCT* (2004) ATC 4,126, and it is considered that this case would be followed in New Zealand.
51. Instead, although they are mutual associations in terms of s HE 1, subscriptions, fees and levies paid to such associations are taxed according to the normal provisions of the Act concerning income, including (in particular) ss CA 1(2) (income under ordinary concepts) and CB 1(1) (amounts derived from a business).
52. Whether amounts are income under ordinary concepts depends on all the circumstances of the association in question relevant to characterising particular receipts as income and determining their quality in the hands of the recipient. Factors such as the regular, recurrent or periodic nature of payments may indicate the payments have become part of the receipts on which the recipient relies to meet expenses for continued operation. The arrangements between the association and its members, the intent or purpose of payments made, and what is expected of the association in return for the payments are also matters to consider in determining their quality in the hands of the association.
53. Although relevant for receipts other than subscriptions, levies or fees, it is worth noting that amounts that would ordinarily be considered gifts can be income if so related to an income-earning activity as to be a product of the income-earning activity (see IS 23/11: Income tax: Income – when gifts are assessable income (5 December 2023) *Tax Information Bulletin* Vol 36, No 1 (February 2024) 34). Often however, gifts received are more of a one-off or singular event and not specifically requested for ongoing funding purposes. They are therefore not income.
54. For more significant entities run on a commercial basis, it is expected that their receipt of subscriptions, membership fees and levies means assessable income for that entity because such receipts are income from the business. To determine whether an association's activities amount to carrying on a business involves the "two-fold inquiry" (as to the nature of the activities carried on and the intention of the association in engaging in those activities) and consideration of the factors outlined in *Grieve v CIR* (1984) 6 NZTC 61,682 (CA).

55. For smaller entities that are not run on a commercial basis, membership subscriptions, fees and levies received may not be business income or income under ordinary concepts because all they entitle the member to is membership of the association and matters incidental to membership such as the right to vote at meetings or stand for office, for example. They are not paid in return for goods or services, and their quality in the hands of the association is not as income. For such smaller entities, it may also be that even if the membership subscriptions and levies were income, s DV 8 (non-profit organisations) and the (up to) \$1,000 deduction allowed by that section may mean there is no taxable income for tax purposes (assuming the membership subscriptions and levies are set at a rate to broadly cover costs rather than to generate a surplus).

Associations exempt from tax

56. Despite coming within the mutual association provisions, many bodies are not greatly affected by them. This is because their income is exempt under other provisions. Examples of sections exempting all or some of the income of bodies from tax include ss CW 44 (friendly society), CW 41 and CW 42 (charities' business and non-business income), and CW 46 (promoting amateur games and sports). There are several other exemptions. Where all income of such a body is exempt from tax under specific provisions in subpart CW, this statement has no application.
57. Income derived by associations is exempt income only if they are covered by specific provisions such as s CW 44, s CW 41, s CW 42 or s CW 46. Income that is not exempt should be included as income in income tax returns.

Associations prohibited from distributing to members

58. Not all associations within scope of this statement are prevented from distributing to members. For example, the Unit Titles Act 2010 allows distributions by a body corporate to unit owners.
59. Bodies or associations not deriving exempt income and that are prevented by their constituent documents from paying rebates (such as by a non-distribution clause) may be affected in several ways.
60. Firstly, based on *Coleambally*, they are not able to take advantage of the principle of mutuality to the limited extent the principle might still apply despite the mutual association provisions. This is because funds members contribute must be intended to be returned eventually to the members who have contributed to the pool of funds. A non-distribution clause means the relevant amounts are effectively no longer the

property of the members as the principle of mutuality requires. It follows that if the true nature of amounts paid as subscriptions or levies is not as capital in the hands of an association or otherwise not income, the subscriptions and levies are not mutual in character and may be income that is subject to tax.

61. Secondly, the s DV 19 deduction for distributions of profits through association rebates is not available to the association because no profits from trading with members can be distributed.
62. Finally, associations can take advantage of the deduction in s DV 8 only if their constitutions prohibit distributions. The deduction is available to “organisations” that do not have a purpose of making a profit for members and the constitution of which prohibits distributions to members. The effect for any organisation that has net income (before the s DV 8 deduction) of less than \$1,000 is that there is no tax to pay. For other qualifying organisations, net income is reduced by \$1,000, reducing tax to pay.

Commissioner’s previous approach to mutual associations

63. Associations affected by the mutual association provisions and not covered by an exemption from tax include chartered clubs but also some organisations that might not ordinarily consider themselves clubs or societies (for example, trade unions, trade associations and advocacy organisations). The mutual association provisions have a broad coverage extending to all bodies or associations of people, whether incorporated or not, that trade or transact with their members.
64. Until now, the Commissioner has not published material making the correct position clear for taxpayers. The limited statements that have been published may have created uncertainty.
65. For example, [Taxation of clubs, societies, etc](#) *Tax Information Bulletin* Vol 4, No 8 (April 1993): 7 suggested clubs and societies “are not assessable on member transactions, or on non-member transactions that meet certain criteria” (at 7). In contrast, [Clubs or societies return guide 2025 – IR 9G](#) (guide, Inland Revenue, March 2025) notes that “Certain transactions the club or society does with its members may be liable for income tax. This includes the purchase of trading stock and the supply of services” (at 17).
66. Further, the Commissioner’s position has been that subscriptions and levies are not subject to tax because the mutuality principle applies. As discussed above, this is not correct as a general legal position.

Commissioner's new approach

67. The correct position is that the mutual association provisions apply to all associations that charge for goods and services supplied to members and goods and services supplied to non-members where amounts derived would be income under Part C. These transactions generate income for mutual associations (including not-for-profits) to the extent the surplus from the transaction is not distributed to members.
68. Further, subscriptions, membership fees and levies that are not mutual in nature but are income under Part C are taxable. This means income for associations that are prohibited by their constitutions from making distributions to members.

Examples

69. The following seven examples explain the application of the law.

Example 1: Trade association

New Zealand Malt Users Association (NZ Malt) is a wholesale co-operative formed to purchase malt in bulk for resale to its members, who are all craft brewers, and to non-members such as whisky producers.

Each year NZ Malt distributes its net profits to members in proportion to their purchases of malt from the association.

Tax treatment

NZ Malt is covered by the mutual association provisions and must include all sales to members and non-members alike in income. Expenditure on purchasing malt is deductible.

NZ Malt can reduce its income by distributing (as association rebates) any of the profit it makes in a year to members to the extent the profit arises from the transactions with members. This results in income for craft brewers in business that must be included in their tax returns.

Example 2: Body promoting a cause

Change NZ for the Better (CNZB) operates as a lobby group promoting governmental action in areas its members consider would make New Zealand better. It is not incorporated, and its rules do not say what is to happen when the group ends.

Members pay subscriptions as a condition of membership.

CNZB has 300 members, who may attend a two-day conference held once a year. Usually, 100 or so non-members also attend.

Apart from subscriptions, all CNZB's other funding comes from this conference, with all attendees being charged entry fees that substantially exceed the cost to CNZB of holding the conference.

Tax treatment

Subscriptions are not included in CNZB's income because they are a contribution to the common fund allowing CNZB to operate and are mutual in nature. Also, members do not receive any goods or services for their subscription so the mutual association rules will not make subscriptions income. The conference fees must be included in income, however, because they are for services supplied by CNZB and the mutual association provisions override the mutuality principle.

CNZB can deduct the expenses of holding the conference, but no other expenditure is deductible.

Example 3: Chartered club

The South Coast Metropolitan Club Inc is an incorporated society with 3,000 members. It has clubrooms overlooking the sea and is a popular place for members to spend time in social activity, including playing a variety of games and eating and drinking in the restaurant and bar.

Members pay subscriptions to belong to the club and visit the clubrooms without further payment, but the club charges for many activities and all food and beverages must be purchased from the club.

The facilities, including the restaurant and bar, are used regularly by guests of members and others who are not club members.

The club has a written constitution providing a comprehensive set of rules governing the club, including what happens on the winding up of the club. The rule forbids any member benefitting from the distribution of any assets at that time.

Apart from subscriptions, most of the club's revenue is from the charges the club makes to members for activities and the supply of food and beverages. Non-members are also allowed to visit and pay charges for supplies made to them.

The club also regularly holds events such as housie (bingo) evenings and dances. The club sells tickets to these events for entry or fees to participate. At most of these, the club also sells raffle tickets where 50% of the price of tickets sold is paid out as prize money. The rest is kept by the club.

The club routinely has a surplus of revenue over expenditure, and each year the club applies a percentage of this surplus to making grants to assist community groups and activities.

Tax treatment

The club must return as business income the amounts it charges for activities and for food and beverage supplied, whether it is members or non-members involved in the activities or who receive supplies. Revenue from fees charged for housie, dances and raffle tickets is also income to the club.

The club must also include subscription revenue in its annual income tax return (form IR 9). This is because subscription revenue is not mutual in nature given the prohibition on members from benefitting on winding up and because the

nature of the club's activities mean it is operating on a commercial level, so the subscriptions are not capital but are income derived from a business.

The club can deduct expenditure incurred in running the restaurant and bar and events, the cost of raffle prizes, and any expenditure on activities or things that generate income, such as collecting subscriptions.

The club may also qualify for a tax deduction under s DB 41 for any grants that qualify as "charitable or other public benefit gifts" (as defined in s LD 3). Note that the club would not qualify for such deductions if it was unincorporated (because it would not be a "company").

Example 4: Professional regulatory body

The Institute of Technology Writers is a national organisation established with various objects, including promoting the interests of people who write about technological change, providing research services, educating in the disciplines of writing about technology, and regulating the activities of writers. It has 3,000 members, who pay subscriptions every year.

The institute is not a registered charity. Its constitution provides for any assets held at dissolution to be applied to objects similar to the objects of the institute and not to be transferred to members.

The institute offers a wide variety of activities and provides various services to members. Members pay a fee for services such as training courses and seminars, advisory services and legal services. In addition, the institute holds a conference every year, engages speakers to tour the country and holds networking events, all of which require members (and non-members) to pay a fee to attend.

The institute also receives money from sponsorships and selling advertising in publications.

Finally, the institute recently required members to make a "one-off" payment to fund the purchase of land for car parking next to the national office.

Tax treatment

The institute must file a tax return including as income all amounts received for the services it supplies and can deduct expenditure incurred in deriving those

amounts. It is not entitled to separate out amounts attributable to transactions with members. The institute is a mutual association, and the mutual association provisions apply to all transactions described above.

In addition, because of its constitution prohibiting distributions to members, the institute is not covered by the mutuality principle. Therefore, subscription income is taxable unless factual circumstances suggest the subscriptions are properly characterised as a contribution to the capital of the institute or are otherwise not business income or income under ordinary concepts. The one-off payment by members to fund the purchase of land is an example of something that is both capital in nature and does not have the quality of income in the hands of the institute.

Example 5: Advocacy organisation

The NZ Association of Alternative Protein Producers Incorporated represents the growing number of farmers producing insects as a protein source. The association's constitution includes among its purposes advocating for the interests of its members at national and local levels as well as encouraging good practice in all aspects of insect farming, including insect health and sustainability.

Funding for the association comes mainly from annual membership subscriptions but also from sponsorships by various organisations providing supplies to the industry, some investment income and ticket sales for an annual conference attended by members.

Tax treatment

As the association is an incorporated society, its constitution also provides for any surplus assets at the end of its life to be distributed to another not-for-profit entity, as required by the Incorporated Societies Act 2022. This means membership subscriptions are not covered by the mutuality principle, and their income tax treatment depends on whether the association carries on a business and derives subscription revenue from that business or whether subscriptions are income under ordinary concepts.

To determine whether the association's activities amount to carrying on a business involves consideration of the nature of the activities carried on and whether the association was engaging in those activities with an intention to

profit. On the facts given, this is unlikely. However, there is enough material above from which to suggest subscriptions are likely to be income under ordinary concepts in any event. This is on the basis that subscription receipts are periodic and regular and provide the association with the money it needs to carry on its advocacy and other work. This would give the receipts the quality of income in the hands of the association.

Investment income, being derived from third parties such as banks or companies, is taxable, as is sponsorship income.

Amounts received from ticket sales for the conference would have been covered by the mutuality principle if it were not for the association's constitution. However, they are income from services supplied to ticket holders. Therefore, even if the mutuality principle applied, the override in the mutual association provisions means ticket sales income would be included in taxable income of the association.

Example 6: Shared interest or recreational club

Powered Pedals of New Zealand Incorporated is an incorporated society providing services to and promoting the interests of electric bike owners and riders in New Zealand. It serves as a national body with a membership comprising representatives of various regional societies.

The objects of Powered Pedals concern promoting electric bikes as a means of transport, promoting camaraderie and social interaction among electric bike riders, and increasing safety and improving conditions for riding electric bikes in New Zealand. It runs safety training courses, information and social events, and lobbies government and local bodies for improved conditions for electric bike users.

Powered Pedals is not registered as a charity and does not otherwise qualify as exempt from tax. Its constitution does not permit distributions to members and requires all assets on winding up to vest in an organisation with similar objects concerned with electric transport.

Powered Pedals gets revenue from a variety of sources. Most of it comes from subscriptions from the regional societies, determined according to how many members each society has. The rest comes from occasional donations, interest

on deposits in bank accounts, advertisers in its monthly magazine, and a commission that a national electricity provider pays for electricity used by regional society members who are customers of the provider.

Tax treatment

Powered Pedals must return subscriptions as income because the subscription payments are not mutual in nature given the constitutional restriction on distributions to members. They are not business income because Powered Pedals does not have a business. However, they are income under ordinary concepts in the hands of the society given they are regularly occurring payments that provide Powered Pedals with the amounts it needs to offer services to members and perform its activities in the interests of members.

Donations will not have the quality of income in the hands of Powered Pedals because they are unsolicited and happen infrequently, and Powered Pedals cannot rely on them to meet its expenses. However, the other receipts (interest, advertising, and the commission) all must be returned as income under ordinary concepts. Powered Pedals should be able to deduct many, if not all, expenses of deriving these amounts (apart from donations).

Example 7: Private utilities scheme

Zipton Wastewater Treatment Society is an incorporated society formed to maintain and operate a wastewater treatment facility constructed in the 1960s to service the seaside town of Zipton. The members of the society are owners of properties in the town and its surrounds.

The society's revenue comprises an annual levy charged to 300 or so property owners along with passive income (interest and dividends) from funds invested. The levy is set at a rate that will more than cover the society's annual projected operational and administrative expenses and will also add to a reserved fund that will be used for major capital works needed to replace the scheme's treatment plant and pipelines carrying wastewater from homes. This work will happen within the next 20 years.

Tax treatment

As this is an incorporated society not subject to any tax exemption, returns from funds invested are subject to tax and the mutuality principle does not apply to take levies out of taxable income. The question of whether they are included in taxable income for the society depends on whether the society carries on a business (arguable but more facts would be needed) or the levies are income under ordinary concepts (likely because the levies are regular periodic payments that the society needs to function and they are received from members who get wastewater treatment services by virtue of the society's use of the levies).

The levies provide amounts the society will use for capital purposes. However, the full amount would likely be income. It is not a strong argument on the facts that a portion of the levies would be considered to have a capital character in the society's hands.

The society's operational and administrative expenditure are deductible and any surplus of income over expenses results in tax to pay unless there are losses from previous years that can be offset.

Commissioner's operational approach to the issue

70. This operational statement applies from [date of publication of this item]. It replaces all previous statements published by the Commissioner on the topics covered.
71. The Commissioner will not devote resources to identifying and adjusting the assessments of clubs and societies who, for tax years before the year ended 31 March [to be determined], have filed tax returns that are incorrect because they did not include in assessable income subscriptions, levies or membership fees or income derived from mutual transactions.
72. For general guidance on the approach the Commissioner takes when changing a previous position, see Status of the Commissioner's advice *Tax Information Bulletin* Vol 24 No 10 (December 2012): 86.
73. [Who to contact if you want to know more or need help]

This operational statement was signed on xx xxxx 2025.

[name]

Domain Lead, Legal Services

References

Legislative references

Charities Act 2005

Income Tax Act 2004, s HF 1

Income Tax Act 2007, ss BC 4, Part C, DB 41, DV 8, DV 19, subpart HE, LD 3, YA 1 ("association")

Incorporated Societies Act 2022

Unit Titles Act 2010

Case references

Case C27 (1978) 3 NZTC 60,261

Coleambally Irrigation Mutual Co-operative Ltd v FCT (2004) ATC 4,126 (FCA)

Grieve v CIR (1984) 6 NZTC 61,682 (CA)

Other references

Clubs or societies return guide 2025 – IR 9G (guide, Inland Revenue, March 2025)
ird.govt.nz/roles/not-for-profits-and-charities/types-of-nfps/sports-clubs-and-societies/file-ir9

IS 23/11: Income tax: Income – when gifts are assessable income (5 December 2023) *Tax Information Bulletin* Vol 36, No 1 (February 2024) 34

<https://www.taxtechnical.ird.govt.nz/tib/volume-36---2024/tib-vol36-no1>

Status of the Commissioner's advice *Tax Information Bulletin* Vol 24 No 10 (December 2012): 86

taxtechnical.ird.govt.nz/tib/volume-24---2012/tib-vol24-no10

Taxation of clubs, societies, etc *Tax Information Bulletin* Vol 4, No 8 (April 1993): 7

taxtechnical.ird.govt.nz/tib/volume-04---1992-1993/tib-vol4-no8

Tax treatment of bodies corporate which are constituted under the Unit Titles Act 1972 *Tax Information Bulletin* Vol 6, No 4 (October 1994): 5

taxtechnical.ird.govt.nz/tib/volume-06---1994-1995/tib-vol6-no4