

# Income Tax

Mills Oakley *Not-for-Profit and Social Enterprise*

## Does your Not-for-Profit (NFP) entity have to pay income tax?

### A. ARE YOU A NFP?

First, do a health check and confirm that your entity is a NFP!

Regardless of an entity's legal structure, to be a NFP (whether tax exempt or tax paying):

- i. an organisation cannot operate for the profit of its committee members/directors or members whilst it is operating nor when it is wound up; and
- ii. the constitution of the NFP needs to prohibit the distribution of profits or assets to committee members/directors and members whilst it is operating and when it is wound up (unless the distribution is made to another NFP with a similar purpose).

### B. ARE YOU A REGISTERED CHARITY?

→ **Yes:** If your entity is registered with the Australian Charities and Not-for-Profits Commission (ACNC) then it is a registered charity. Registered charities need to be endorsed by the Australian Tax Office (ATO) to receive the tax concessions to which they are entitled. All registered charities which are endorsed by the ATO do not have to pay income tax.

→ **I don't know...** Go to [www.acnc.gov.au](http://www.acnc.gov.au) and see if your entity is listed on the ACNC register. The website gives some guidance about what kinds of entities can become registered charities.

→ **No:** See next question.

### C. ARE YOU AN INCOME TAX EXEMPT FUND?

→ **Yes:** All Income Tax Exempt Funds need to be endorsed by the ATO to receive the tax concessions to which they are entitled. All Income Tax Exempt Funds which are endorsed by the ATO do not have to pay income tax

→ **I don't know...** Your entity would need endorsement from the ATO to be an Income Tax Exempt Fund. The ATO endorses certain non-charitable funds as Income Tax Exempt Funds where they were established under a will or instrument of trust solely for either:

- i. the purposes of providing money, property or benefits to income tax exempt deductible gift recipients (DGRs); or
- ii. the establishment of DGRs.

→ **No:** See next question.

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## D. DO YOU FALL INTO ONE OF THE CATEGORIES OF TAX EXEMPT NFPs?

→ **Yes:** You do not have to pay income tax

→ **I don't know...** If your entity is not a charity or an Income Tax Exempt Fund, it can self-assess its income tax exemption. Only the following specified categories of organisations are exempt:

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| <ul style="list-style-type: none"> <li>i. Community Service organisations</li> <li>ii. Cultural organisations               <ul style="list-style-type: none"> <li>a. Art</li> <li>b. Literature</li> <li>c. Music</li> <li>d. Musical Purposes</li> </ul> </li> <li>iii. Public educational institution</li> <li>iv. Employment organisations               <ul style="list-style-type: none"> <li>a. Employee association</li> <li>b. Employer association</li> <li>c. Trade union</li> </ul> </li> <li>v. Health organisations               <ul style="list-style-type: none"> <li>a. Public hospital</li> <li>b. Non-profit hospital</li> <li>c. Benefit organisations</li> </ul> </li> </ul> | <ul style="list-style-type: none"> <li>vi. Resource development organisations               <ul style="list-style-type: none"> <li>a. Agricultural resources</li> <li>b. Aquacultural resources</li> <li>c. Aviation</li> <li>d. Fishing resources</li> <li>e. Horticultural resources</li> <li>f. Industrial resources</li> <li>g. Manufacturing resources</li> <li>h. Pastoral resources</li> <li>i. Tourism</li> <li>j. Viticultural resources</li> <li>k. Information and communications technology resources</li> </ul> </li> <li>vii. Scientific organisations               <ul style="list-style-type: none"> <li>a. Scientific institution</li> <li>b. Scientific association</li> <li>c. Scientific research fund</li> </ul> </li> <li>viii. Sporting Organisations               <ul style="list-style-type: none"> <li>a. Animal racing</li> <li>b. Game or sport</li> </ul> </li> </ul> |
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For an entity to be income tax exempt under one of the categories listed above, it must satisfy the criteria specific to that category. The criteria are listed in the Australian Taxation Office's publication '*Income tax guide for non-profit Organisations*' which is available at [www.ato.gov.au](http://www.ato.gov.au).

→ **No:** Your organisation has to pay income tax, but can benefit from the mutuality principle.



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