

APPENDIX 6

Extract of ITAA1997 – Division 50

Part 2-15—Non-assessable income

Division 50—Exempt entities

Table of Subdivisions

- 50-A Various exempt entities
- 50-B Endorsing charitable entities as exempt from income tax

Subdivision 50-A—Various exempt entities

Table of sections

- 50-1 Entities whose ordinary income and statutory income is exempt
- 50-5 Charity, education, science and religion
- 50-10 Community service
- 50-15 Employees and employers
- 50-20 Funds contributing to other funds
- 50-25 Government
- 50-30 Health
- 50-35 Mining
- 50-40 Primary and secondary resources, and tourism
- 50-45 Sports, culture, film and recreation
- 50-50 Special conditions for items 1.1 and 1.2
- 50-52 Special condition for items 1.1, 1.5, 1.5A, 1.5B and 4.1
- 50-55 Special conditions for items 1.3, 1.4, 6.1 and 6.2
- 50-57 Special condition for item 1.5
- 50-60 Special conditions for items 1.5A and 1.5B
- 50-65 Special conditions for item 1.6
- 50-70 Special conditions for items 1.7, 2.1, 9.1 and 9.2
- 50-72 Special condition for item 4.1
- 50-75 Certain distributions may be made overseas
- 50-80 Testamentary trusts may be treated as 2 trusts

50-1 Entities whose ordinary income and statutory income is exempt

The total *ordinary income and *statutory income of the entities covered by the following tables is exempt from income tax. In some cases, the exemption is subject to special conditions.

Note 1: Ordinary and statutory income that is exempt from income tax is called exempt income: see section 6-20. The note to subsection 6-15(2) describes some of the other consequences of it being exempt income.

Note 2: Even if you are an exempt entity, the Commissioner can still require you to lodge an income tax return or information under section 161 of the *Income Tax Assessment Act 1936*.

50-5 Charity, education, science and religion

Charity, education, science and religion		
Item	Exempt entity	Special conditions
1.1	charitable institution	see sections 50-50 and 50-52
1.2	religious institution	see section 50-50
1.3	scientific institution	see section 50-55
1.4	public educational institution	see section 50-55
1.5	fund established for public charitable purposes by will before 1 July 1997	see sections 50-52 and 50-57
1.5A	trust covered by paragraph 50-80(1)(c)	see sections 50-52 and 50-60
1.5B	fund established in Australia for public charitable purposes by will or instrument of trust (and not covered by item 1.5 or 1.5A)	see sections 50-52 and 50-60
1.6	fund established to enable scientific research to be conducted by or in conjunction with a public university or public hospital	see section 50-65
1.7	society, association or club established for the encouragement of science	see section 50-70
1.8	Global Carbon Capture and Storage Institute Ltd	only amounts included in assessable income: (a) on or after 1 July 2009; and (b) before 1 July 2013

Note 1: Section 50-52 has the effect that certain charitable institutions, funds and trusts are exempt from income tax only if they are endorsed under Subdivision 50-B.

Note 2: Section 50-80 may affect which item a trust is covered by.

50-10 Community service

Community service		
Item	Exempt entity	Special conditions
2.1	society, association or club established for community service purposes (except political or lobbying purposes)	see section 50-70

50-15 Employees and employers

Employees and employers		
Item	Exempt entity	Special conditions
3.1	(a) employee association; or (b) employer association	the association: (a) is registered or recognised under the <i>Fair Work (Registered Organisations) Act 2009</i> or an *Australian law relating to the settlement of industrial disputes; and (b) is located in Australia, and incurs its expenditure and pursues its objectives principally in Australia
3.2	trade union	located in Australia and incurring its expenditure and pursuing its objectives principally in Australia

50-20 Funds contributing to other funds

Funds contributing to other funds		
Item	Exempt entity	Special conditions
4.1	fund established by will or instrument of trust solely for a purpose referred to in paragraph (a) or (b) of the column headed "Recipient" in item 2 of the table in section 30-15 (and not covered by item 1.5, 1.5A or 1.5B of the table in section 50-5)	see sections 50-52 and 50-72

50-25 Government

Government

Item	Exempt entity	Special conditions
5.1	(a) a municipal corporation; or (b) a *local governing body	none
5.2	a public authority constituted under an *Australian law	none
5.3	a *constitutionally protected fund	none

Note: The ordinary and statutory income of a State or Territory body is exempt: see Division 1AB of Part III of the *Income Tax Assessment Act 1936*.

50-30 Health**Health**

Item	Exempt entity	Special conditions
6.1	public hospital	see section 50-55
6.2	hospital carried on by a society or association	not carried on for the profit or gain of its individual members, see also section 50-55
6.3	private health insurer within the meaning of the <i>Private Health Insurance Act 2007</i>	not carried on for the profit or gain of its individual members

50-35 Mining**Mining**

Item	Exempt entity	Special conditions
7.1	the Phosphate Mining Company of Christmas Island Limited (incorporated in the Australian Capital Territory)	none
7.2	the British Phosphate Commissioners Banaba Contingency Fund (established on 1 June 1981)	none

50-40 Primary and secondary resources, and tourism**Primary and secondary resources, and tourism**

Item	Exempt entity	Special conditions
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Primary and secondary resources, and tourism

Item	Exempt entity	Special conditions
8.1	a society or association established for the purpose of promoting the development of: (a) aviation; or (b) tourism	not carried on for the profit or gain of its individual members
8.2	a society or association established for the purpose of promoting the development of any of the following Australian resources: (a) agricultural resources; (b) horticultural resources; (c) industrial resources; (d) manufacturing resources; (e) pastoral resources; (f) viticultural resources; (g) aquacultural resources; (h) fishing resources	not carried on for the profit or gain of its individual members
8.3	a society or association established for the purpose of promoting the development of Australian information and communications technology resources	not carried on for the profit or gain of its individual members

50-45 Sports, culture, film and recreation

Sports, culture, film and recreation

Item	Exempt entity	Special conditions
9.1	a society, association or club established for the encouragement of: (a) animal racing; or (b) art; or (c) a game or sport; or (d) literature; or (e) music	see section 50-70
9.2	a society, association or club established for musical purposes	see section 50-70

Sports, culture, film and recreation		
Item	Exempt entity	Special conditions
9.3	the Australian Film Finance Corporation Pty Limited (incorporated under the <i>Companies Act 1981</i> on 12 July 1988)	none
9.4	the Commonwealth Games Federation	only income * derived on or after 1 January 2000 and before 1 July 2007

50-50 Special conditions for items 1.1 and 1.2

An entity covered by item 1.1 or 1.2 is not exempt from income tax unless the entity:

- (a) has a physical presence in Australia and, to that extent, incurs its expenditure and pursues its objectives principally in Australia; or
- (b) is an institution that meets the description and requirements in item 1 of the table in section 30-15; or
- (c) is a prescribed institution which is located outside Australia and is exempt from income tax in the country in which it is resident; or
- (d) is a prescribed institution that has a physical presence in Australia but which incurs its expenditure and pursues its objectives principally outside Australia.

Note 1: Certain distributions may be disregarded: see section 50-75.

Note 2: The entity must also meet other conditions to be exempt from income tax: see section 50-52.

50-52 Special condition for items 1.1, 1.5, 1.5A, 1.5B and 4.1

- (1) An entity covered by item 1.1, 1.5, 1.5A, 1.5B or 4.1 is not exempt from income tax unless the entity is endorsed as exempt from income tax under Subdivision 50-B.

Note: The entity will not be exempt from income tax unless it also meets other conditions: see section 50-50 (for an entity covered by item 1.1), 50-57 (for an entity covered by item 1.5), 50-60 (for an entity covered by item 1.5A or 1.5B) or section 50-72 (for an entity covered by item 4.1).

- (3) This section has effect despite all the other sections of this Subdivision.

Note: This means that an entity covered both by an item other than 1.1, 1.5, 1.5A, 1.5B or 4.1 and by one of those items is not exempt from income tax unless the entity is endorsed under Subdivision 50-B as

exempt from income tax and the entity meets the requirements of whichever of sections 50-50, 50-57, 50-60 and 50-72 is relevant.

50-55 Special conditions for items 1.3, 1.4, 6.1 and 6.2

An entity covered by item 1.3, 1.4, 6.1 or 6.2 is not exempt from income tax unless the entity:

- (a) has a physical presence in Australia and, to that extent, incurs its expenditure and pursues its objectives principally in Australia; or
- (b) is an institution that meets the description and requirements in item 1 of the table in section 30-15; or
- (c) is a prescribed institution which is located outside Australia and is exempt from income tax in the country in which it is resident.

Note: Certain distributions may be disregarded: see section 50-75.

50-57 Special condition for item 1.5

A fund covered by item 1.5 is not exempt from income tax unless the fund is applied for the purpose for which it was established.

Note: The fund must also meet another condition to be exempt from income tax: see section 50-52.

50-60 Special conditions for items 1.5A and 1.5B

A fund covered by item 1.5A or 1.5B is not exempt from income tax unless the fund is applied for the purposes for which it was established and:

- (a) incurs, and has at all times since 1 July 1997 incurred, its expenditure principally in Australia and pursues, and has at all times since 1 July 1997 pursued, its charitable purposes solely in Australia; or
- (b) is a fund which is referred to in a table in Subdivision 30-B or in item 2 of the table in section 30-15; or
- (c) distributes solely, and has at all times since 1 July 1997 distributed solely, to either or both of the following:
 - (i) a charitable fund, foundation or institution which, to the best of the trustee's knowledge, is located in Australia and incurs its expenditure principally in Australia and pursues its charitable purposes solely in Australia;
 - (ii) a charitable fund, foundation or institution that, to the best of the trustee's knowledge, meets the description and requirements in item 1 or 2 of the table in section 30-15.

Note 1: Certain distributions may be disregarded: see section 50-75.

Note 2: The fund must also meet other conditions to be exempt from income tax: see section 50-52.

50-65 Special conditions for item 1.6

A fund covered by item 1.6 is not exempt from tax unless the fund is applied for the purposes for which it was established and is:

- (a) a fund that is located in, and which incurs its expenditure principally in, Australia and that is established for the purpose of enabling scientific research to be conducted principally in Australia by or in conjunction with a public university or public hospital; or
- (b) a scientific research fund that meets the description and requirements in item 1 or 2 of the table in section 30-15.

Note: Certain distributions may be disregarded: see section 50-75.

50-70 Special conditions for items 1.7, 2.1, 9.1 and 9.2

An entity covered by item 1.7, 2.1, 9.1 or 9.2 is not exempt from tax unless the entity is a society, association or club that is not carried on for the purpose of profit or gain of its individual members and that:

- (a) has a physical presence in Australia and, to that extent, incurs its expenditure and pursues its objectives principally in Australia; or
- (b) is a society, association or club that meets the description and requirements in item 1 of the table in section 30-15; or
- (c) is a prescribed society, association or club which is located outside Australia and is exempt from income tax in the country in which it is resident.

Note: Certain distributions may be disregarded: see section 50-75.

50-72 Special condition for item 4.1

(1) A fund covered by item 4.1 is not exempt from income tax unless the fund:

- (a) is applied for the purposes for which it is established; and
- (b) distributes solely, and has at all times since the time mentioned in subsection (2) distributed solely, to a fund, authority or institution that:
 - (i) meets the description and requirements in item 1 of the table in section 30-15; and
 - (ii) is an *exempt entity.

- (2) The time is the start of the income year after the income year in which the *Tax Laws Amendment (2005 Measures No. 3) Act 2005* receives the Royal Assent.

50-75 Certain distributions may be made overseas

- (1) In determining for the purposes of this Subdivision whether an institution, fund or other body incurs its expenditure or pursues its objectives principally in Australia, distributions of any amount received by the institution, fund or other body as a gift (whether of money or other property) or by way of government grant are to be disregarded.
- (2) In determining for the purposes of this Subdivision whether an institution, fund or other body incurs its expenditure or pursues its objectives principally in Australia, distributions of any amount from a fund that is referred to in a table in Subdivision 30-B and operated by the institution, fund or other body are to be disregarded.
- (3) In determining for the purposes of section 50-60 whether a fund:
 - (a) incurs, and has at all times since 1 July 1997 incurred, its expenditure principally in Australia and pursues, and has at all times since 1 July 1997, pursued its charitable purposes solely in Australia; or
 - (b) distributes solely, and has at all times since 1 July 1997 distributed solely, to a charitable fund, foundation or institution described in subparagraph 50-60(c)(i) or (ii);distributions of any amount received by the fund as a gift (whether of money or property) or by way of government grant are to be disregarded.

50-80 Testamentary trusts may be treated as 2 trusts

- (1) If:
 - (a) a trust (the *existing trust*) covered by item 1.5 was in existence immediately before 1 July 1997; and
 - (b) on or after 1 July 1997 one or more assets are given to the existing trust (other than in return for valuable consideration) or become part of the trust property under a will;then, for the purposes of this Subdivision and Subdivision 50-B, the existing trust is taken to be 2 separate trusts (the *new trust* and the *old trust*) as follows:
 - (c) the new trust is taken to be a trust created after the start of 1 July 1997 that consists of so much of the trust property as

consists of those assets together with any income * derived from those assets; and

(d) the old trust is taken to be a trust created before 1 July 1997 that consists of the remainder of the trust property.

(2) Where an asset is received in substitution for another asset, subsection (1) applies as if the substituted asset were the other asset.

Subdivision 50-B—Endorsing charitable entities as exempt from income tax

Guide to Subdivision 50-B

50-100 What this Subdivision is about

This Subdivision sets out rules about endorsement of charitable institutions and trust funds for charitable purposes as exempt from income tax. Such entities are only exempt from income tax if they are endorsed.

Table of sections

Endorsing charitable entities as exempt from income tax

50-105 Endorsement by Commissioner
50-110 Entitlement to endorsement

Endorsing charitable entities as exempt from income tax

50-105 Endorsement by Commissioner

The Commissioner must endorse an entity as exempt from income tax if the entity:

- (a) is entitled to be endorsed as exempt from income tax; and
- (b) has applied for that endorsement in accordance with Division 426 in Schedule 1 to the *Taxation Administration Act 1953*.

Note: For procedural rules relating to endorsement, see Division 426 in Schedule 1 to the *Taxation Administration Act 1953*.

50-110 Entitlement to endorsement*General rule*

- (1) An entity is entitled to be endorsed as exempt from income tax if the entity meets all the relevant requirements of this section.

Which entities are entitled to be endorsed?

- (2) To be entitled, the entity must be an entity covered by item 1.1, 1.5, 1.5A or 1.5B of the table in section 50-5 or item 4.1 of the table in section 50-20.

Requirement for ABN

- (3) To be entitled, the entity must have an *ABN.
- (4) However, for a trust:
 - (a) covered by item 1.5 of the table in section 50-5 because the trust is covered by paragraph 50-80(1)(d); or
 - (b) covered by item 1.5A of the table in section 50-5 (because the trust is covered by paragraph 50-80(1)(c));to be entitled, the existing trust mentioned in paragraph 50-80(1)(a) must have an *ABN.

Requirement to meet special conditions

- (5) To be entitled:
 - (a) the entity must meet the relevant conditions referred to in the column headed “Special conditions” of whichever of items 1.1, 1.5, 1.5A and 1.5B of the table in section 50-5 and item 4.1 of the table in section 50-20 covers the entity; or
 - (b) both of the following conditions must be met:
 - (i) the entity must not have carried on any activities as a charitable institution (if the entity is covered by item 1.1 of the table in section 50-5) or for public charitable purposes (if the entity is covered by item 1.5, 1.5A or 1.5B of that table);
 - (ii) there must be reasonable grounds for believing that the entity will meet the relevant conditions referred to in the column headed “Special conditions” of whichever of items 1.1, 1.5, 1.5A or 1.5B of the table in section 50-5 covers the entity; or
 - (c) if the entity is covered by item 4.1 of the table in section 50-20 and has not made any distributions—there must be reasonable grounds for believing that the entity will satisfy section 50-72.

- (6) To avoid doubt, the condition set out in section 50-52 (requiring the entity to be endorsed under this Subdivision) is not a relevant condition for the purposes of subsection (5

