

23 June 2025

IRD Commissioner  
Inland Revenue Department  
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CC:

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Dear Commissioner

**Re: ED0265 Mutual Transactions of Associations (including clubs and societies)**

**1. Background**

I am writing to you regarding the draft operational statement entitled *Mutual Transactions of Associations (including clubs and societies)* (referred to as 'the Statement').

BusinessNZ previously took the opportunity to submit on the consultation document entitled *Taxation and the not-for-profit Sector* earlier this year, which first outlined IRD's updated views on mutual transactions of associations.

While we support the Government reviewing elements of charities and not-for-profits (NFPs) from a taxation policy perspective as and when required, we remain deeply concerned that some of the ideas put forward in the consultation document that are subsequently outlined in the Statement will lead to regulatory overreach and

significant adverse outcomes for individual businesses and business associations, including BusinessNZ.

We are also concerned that there would be significant flow-on effects from the position reached in the Statement that do not appear to be based on any evidence of a problem that needs to be solved, beyond a general view that tax changes are needed in the charity and NFP sector.

In short, BusinessNZ believes that the Statement represents a significant instance of unnecessary regulatory intervention. It does not take into account the work of the NFP sector, will lead to increased tax compliance costs, and is unlikely to achieve its fiscal goal by providing a noteworthy amount of additional tax revenue to the Government.

## **2. Reasoning behind the Statement**

We note that the Statement *"explains that the mutual association provisions override the mutuality principle for trading stock and services supplied to members. It also explains that subscriptions and levies will not be covered by the mutuality principle if the association is not able to distribute to members. Such amounts may be business income or income under ordinary concepts, depending on the circumstances"*.

Furthermore, the Statement also points out that *"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"*.

BusinessNZ took the opportunity to outline our strong objection to this unsound position in our submission on the consultation document. Since the issue at hand and the views of the Commissioner remain so, we again outline below the majority of our concerns given little has changed since the consultation document was released.

BusinessNZ does not believe the conclusion reached by the Commissioner is anywhere near sound as it fails to take into account the core of what NFP's stand for and provide the country, as well as unintended consequences of such actions and what is typically considered best practice offshore to ensure a sensible and pragmatic outcome.

As alluded to above, the rationale for both the consultation document subsequent Statement is that IRD's draft guidance departs from its previous views on the taxation of mutual associations. This has ultimately led to the key change being that trading, and other normally non-taxable transactions with members, including some subscriptions, should be taxable income regardless of whether the common law principle of mutuality would apply.

While the discussion above outlines issues that may affect the organisational structure of certain businesses, the key change in guidance would impact the very nature of BusinessNZ's operations and would also impact a significant number of its direct members. Overall, we are deeply concerned that taxing the profits of BusinessNZ and

similar business associations would undermine our purpose, reduce the capacity to serve, and ultimately harm the sectors that we support.

### 3. BusinessNZ’s main concerns

#### About BusinessNZ

BusinessNZ is itself an NFP organisation that engages with government officials, community groups, MPs, and Ministers on a daily basis to ensure business interests are represented throughout the policy making process. We believe that what we do affects all New Zealanders, because when business is going well, it affects the wellbeing of our economy, our environment, our jobs, our communities, our families and our futures.

Figure 1 below outlines BusinessNZ’s structure, which is the most comprehensive organisational structure in New Zealand for business representation. It includes a significant number of other NFP business associations, including four regional associations and 74 Affiliated Industry Group (AIG) members.

We note that while the four regional associations and around 10-15 of our AIG members would be relatively large in terms of staff numbers by New Zealand standards (although still very small when compared with equivalents offshore), most industry associations are 1-2 person operations at most. The reality for almost all business associations is that their predominant funding mechanism is member subscriptions, which typically provide just enough revenue to keep their operations running from year to year.

**Figure 1**



## **What business associations stand for**

The Statement clarifies the position taken by IRD that subscription income would be taxable for many not-for-profits currently viewed as mutual associations.

This change in IRD's operational position during the first half of 2025 has come as a complete surprise to not only BusinessNZ, but also the wider business association community.

This proposed change by Inland Revenue to what is a well understood and accepted policy position making logical and intuitive sense, has created a high degree of angst and uncertainty for business associations.

In short, BusinessNZ is at a loss to understand why the Government is potentially seeking to tax the perceived profits of not-for-profit organisations.

BusinessNZ believes the principle of mutuality should continue to apply, based on the current law, noting that this has been the position for decades and well understood by all NFP entities.

BusinessNZ and its regional and AIG members all share a focus on reinvesting any surplus revenue into future options that directly benefit their members and industries in line with the purpose detailed in their constitutions. These include, but are not limited to, professional training, industry research, policy advocacy, and engagement. Any surplus generated by a business association is almost always reinvested into the association's mission rather than allocated to owners or shareholders. Therefore, we believe taxing these funds would be counterproductive, as it would reduce the resources available for the very initiatives that benefit businesses and the broader economy.

## **Statement of clarification**

We note that IRD has previously released a question-and-answer statement to provide some further certainty around issues relating to NFPs. One deals with whether bodies promoting amateur games and sport will likely be affected, which states that *"over 20,000 sports clubs and societies currently have an income tax exemption because they have been set up to promote an amateur game or sport."*

While this change will be a relief for those NFPs, BusinessNZ questions why sports clubs and societies promoting amateur sports are treated differently from special interest clubs and societies that promote other pursuits. For example, a local stamp club shares many similarities with a local sports club, with both having committees, member responsibilities, regular meetings, and being largely run by volunteers. The difference is simply that one focuses on sports while the other does not.

If taken a step further, one could also argue that sports clubs and business associations also share key similarities as membership-based organisations with a common mission, often funded through subscriptions. Both are governed by a board

or committee, host events to foster engagement, and advocate for their members. They also depend on subscriptions, fees, sponsorships, and fundraising for financial sustainability.

From a tax policy perspective, BusinessNZ believes that sports clubs and business associations should have equal tax treatment as membership-based, not-for-profit organisations that support their communities. Since neither operates for private profit, taxing them differently creates an unfair distinction and from BusinessNZ's perspective highlights the inadequacy of simply carving out certain groups for preferential tax treatment.

### **Compliance and revenue implications**

Last, adjustments to the NFP tax settings can lead to not only increased tax payment obligations, but also increased compliance costs, causing increased strain on limited resources. Higher compliance costs will force many business associations to divert resources from core activities like advocacy, training, and networking to tax management. This may lead to increased fees, reduced services, thus weakening their ability to support businesses.

If NFP's are taxed on additional activities, many will restructure to minimise their tax exposure, ultimately resulting in the government collecting less revenue than anticipated. This could involve shifting commercial operations into separate entities, adjusting membership models, or scaling back taxable services. Rather than increasing the tax base, these changes may lead to greater administrative complexity and reduced transparency, while still achieving the same or lower revenue outcomes. In effect, the policy may prompt behaviour that undermines its fiscal intent, as NFPs adapt to preserve their resources and continue fulfilling their community-focused missions.

### **Alignment with offshore practices**

Last, as also outlined in our discussion regarding charities above, any changes in New Zealand need to be done in a way that takes into account typical offshore practices. Many countries recognise the importance of tax-exempt status for not-for-profit business associations. In jurisdictions such as the United States, the United Kingdom, and Australia, these organisations are typically exempt from income tax as long as they operate within their defined not-for-profit purposes. These policies acknowledge the broader public and economic benefits that business associations provide and reinforce the principle that they should not be taxed like commercial enterprises.

Indeed, we understand that IRD have heavily relied on one of the Australian cases referenced in the Statement - *Coleambally Irrigation Mutual Co-operative Ltd v FCT (2004) ATC 4,126 (FCA)* - as the rationale for the position they have ultimately taken. However, this completely ignores the fact that following the decision and feedback from the NFP sector in Australia, the federal government recognised the risk that the Australian Tax Office (ATO) might apply the decision broadly, potentially taxing membership income of a wide range of those in the NFP sector.

In response, the Australian Government undertook to clarify the law to protect the mutuality principle and ensure that genuine NFP organisations would not be taxed on member receipts such as membership fees, subscriptions and ordinary contributions from members for mutual benefits.

### **Options going forward**

We note that the consultation document included a number of future options to reduce the impact of the Commissioner's updated view on NFPs, particularly smaller NFPs.

One such option includes increasing the current \$1,000 deduction to remove small scale NFPs from the tax system, which would be a relatively simple and easy change to make. However, given what we outlined above, any targeted change like this, including modifying the income tax return requirements or resident withholding tax exemption, does not take into account the very nature of what NFPs are set up for and the significant value they provide many New Zealanders. Possible solutions such as the threshold change means that while a large proportion of NFPs would be able to continue in their current settings, it does nothing for those outside the threshold that have the same structure and purpose in place yet would find themselves having to pay tax on any surplus they make. From BusinessNZ's perspective this again seems to represent an inconsistent policy outcome.

What all these associations typically have in common is that they serve their members without a commercial profit motive. This means the margins between making a profit or loss can be minimal. Associations strive towards making an annual surplus, but the reality for many business associations is that the subscriptions and other member funds received are typically enough for only a small surplus if everything goes according to plan, with little room for unexpected costs.

There are also many instances where a loss is made, either for a single year or over multiple years. This means the association must dip into reserves they have built up to make up the financial shortfall. However, the ability of these associations to build up reserves during more favourable economic times and/or membership pick-up so that there is a buffer to continue operations would obviously be curtailed by changes to the tax treatment of NFPs.

The issue of economic conditions often plays a sizeable role in the financial fortunes of business associations. We note that the current economic environment has been especially challenging for many business associations, even more so than during the Global Financial Crisis in 2008-2010. Since membership fees are often among the first expenses cut during cost-saving measures, business associations tend to feel the impact of an economic downturn more acutely, and with a delay. Each membership cancellation typically affects revenue for an entire year, extending the financial strain over time.

Overall, BusinessNZ believes that outlining potential policy changes to reduce the impact of the Commissioner's updated view on NFPs does not address the core

problem regarding a fundamentally different stance taken by the Commissioner that does not align with the day-to-day reality and practices of NFPs, including business associations.

## **Summary**

In summary, BusinessNZ believes that IRD's departure from its previous views on the taxation of mutual associations represents a stance that does not align with the intent and purpose of what almost all NFPs stand for. Proposed options to alleviate the impact of the Commissioner's updated view are piecemeal at best and fail to fully address the core of what NFPs, including business associations, provide both its membership and the wider economy on a daily basis.

Therefore, we believe the Statement should not form the basis of future tax changes for NFPs. Instead, the Government seeks to clarify the law to protect the mutuality principle and ensure that NFP organisations would not be taxed on member receipts such as membership fees, subscriptions and ordinary contributions from members for mutual benefits.

***Recommendation: The Government does not proceed with the draft operational statement regarding the Commissioner's updated view on the tax status for not-for-profit entities.***

***Recommendation: The Government seeks to clarify the law to protect the mutuality principle and ensure that NFP organisations would not be taxed on member receipts such as membership fees, subscriptions and ordinary contributions from members for mutual benefits.***

Thank you for the opportunity to submit, and we hope that common sense ultimately prevails in this instance.

Yours sincerely,



Katherine Rich  
**Chief Executive**  
BusinessNZ