NTT Tower
Level 13, 157 Lambton Quay
Wellington 6011
New Zealand

Email: info@infrastructure.org.nz

Taxation and the not-for-profit sector
C/- Deputy Commissioner, Policy
Inland Revenue Department
PO Box 2198
Wellington 6140

Email: policy.webmaster@ird.govt.nz

Infrastructure New Zealand's Submission on IRD's Official's Issues Paper:

Taxation and the not-for-profit sector

---

1. Introduction

1.1. Infrastructure New Zealand (INZ) welcomes this opportunity to submit on IRD's Issues Paper: Taxation and the not-for-profit sector.

1.2. INZ is New Zealand's membership organisation for the infrastructure sector. INZ's vision is to promote, the provision of world class infrastructure by both the public and private sectors for the benefit of New Zealanders.

1.3. We do this by promoting best practice in national infrastructure development through undertaking robust original research, developing public policy, advocacy, and encouraging public and private sector collaboration. Our 150 member organisations come from diverse sectors across New Zealand and include infrastructure service providers, investors, and operators.

1.4. This submission relates to Question 12 of the Issues Paper and represents the views of Infrastructure New Zealand as a collective whole and may not necessarily represent the views of individual member organisations.

2. General Remarks

2.1. INZ supports the government's undertaking of a review of its taxation policy and concession settings including those for charities and not-for-profits (NFPs). INZ acknowledges that the Issues Paper is designed to stimulate discussion and allow Inland Revenue to gain a better understanding of the issues, including practical concerns affecting taxpayers.

2.2. However, INZ is concerned that some of the potential setting changes discussed in the Issues Paper could lead to regulatory overreach and significant adverse outcomes for most business associations and their members, including INZ.

2.3. If some of the recommended changes are implemented, then INZ expects that there would be significant flow-on effects that do not appear to be based on any evidence of a problem that needs to be solved. While there may be a general view that tax changes are needed in the charity and NFP sector, this potential changing landscape leaves submitters with a high degree of uncertainty also.

2.4. Infrastructure New Zealand Initiative strongly recommends retaining the income tax exemption for bodies promoting scientific or industrial research (Section CW 49) as it applies to independent public policy think tanks. The exemption is not a historical anachronism but remains vital to New Zealand's research and policy development ecosystem.

3. Specific Comment on Chapter 4 – Integrity and simplification

Q12. What are the likely implications if the following exemptions are removed or significantly reduced:
• local and regional promotional body income tax exemption,
• herd improvement bodies income tax exemption,
• veterinary service body income tax exemption,
• bodies promoting scientific or industrial research income tax exemption, and
• non-resident charity tax exemption?

3.1. The rationale for the proposals outlined in the Issues Paper is that Inland Revenue has developed draft guidance (which will not be released until after submissions on the issues paper) that departs from its previous views on the taxation of mutual associations. The paper notes one of the key changes in Inland Revenue's draft guidance is 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.

3.2. The Issues Paper advises that under Inland Revenue's revised interpretation, subscription income would be taxable for many not-for-profits currently viewed as mutual associations. This change in Inland Revenue's operational position has come as a complete surprise to not only INZ, but also the wider industry 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 associations.

3.3. The issues outlined in Chapter 4 would impact the very nature of INZ. Overall, we are deeply concerned that taxing the profits of INZ and similar industry associations would undermine our purpose, reduce the capacity to serve, and ultimately harm the sectors that we support.

INZ's Research and Policy Contrition

3.4. INZ is an NFP organisation that engages with government officials, community and industry groups, research organisations, MPs, and Ministers on a daily basis to ensure industry interests are represented throughout the policy making process. We believe that there is a benefit from what we do which flows through to all New Zealanders.

3.5. Section CW 49 of the Income Tax Act 2007 serves a crucial structural purpose in New Zealand's knowledge ecosystem by supporting organisations that produce public benefit research. The exemption recognises that independent research constitutes a public good that would not necessarily be provided without appropriate policy frameworks. Independent research bodies like INZ operate on a fundamentally different model from commercial entities. They:

- generate knowledge primarily for public benefit, not private gain.
- publish research findings freely and openly.
- operate without pecuniary gain to members, shareholders or associates.
- reinvest any surpluses into future research activities.

3.6. INZ reinvests any surplus revenue into future options that directly benefit their members and wider industry. These include, but are not limited to, professional training, industry research, policy advocacy, supporting international study tours and delegations and publishing reports and policy papers. Therefore, we believe taxing these funds would be counterproductive, as it would reduce the resources available for the very initiatives that benefit industry and the broader economy.

3.7. For these organisations, income is not profit in the commercial sense but rather the means to fulfil their research mission. Taxing such income would directly reduce the resources available for research and public engagement without serving the usual redistributive or behavioural functions of taxation.

3.8. The reality for the majority of industry associations is that their predominant funding mechanism is member subscriptions, which typically provides just enough revenue to keep their operations running from year to year. Member also volunteer their time and resources to assist with INZ's operations and events. It should be noted that INZ does still pay tax on its non-member operations and other revenue.

3.9. INZ believes the principle of mutuality should continue to apply, based on the current law, noting that this has been the position for decades. If Inland Revenue has formed a view that the principle of mutuality should not apply, then we would expect a law change is warranted to reinstate the position that most membership organisations have been operating under (i.e. that subscriptions are not taxable and expenditure on membership activities are not deductible).

Clarification on Sports Clubs

3.10. Inland Revenue have provided a clarification in respect to amateur sports clubs. However, one could also argue that sports clubs and industry 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.

3.11. From a tax policy perspective, INZ believes that sports clubs and industry 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 INZ's perspective highlights the inadequacy of simply carving out certain groups for preferential tax treatment.

Alignment with offshore practices

3.12. INZ also notes that many countries recognise the importance of tax-exempt status for not-for-profit industry 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.

4. Summary

4.1. Industry Associations, such as INZ, all serve their members without a commercial profit motive. The margins between making a profit or loss can be minimal. Associations strive towards making an annual surplus, but the reality for many associations is that the subscriptions and other member funds received are typically enough to achieve a small surplus if everything goes according to plan, with little room for unexpected costs.

4.2. There are also many instances where a loss is made, either for a single year or over multiple years. In these cases, the association must dip into reserves they have built up to make up the financial shortfall. Any ability for associations to build up reserves during more positive economic times and/or membership increase so that there is a buffer to continue operations would severely restricted by changes to the tax treatment of NFPs.

4.3. Economic conditions impact directly on the financial fortunes of industry associations. The current economic environment has been especially challenging for many industry associations, as membership fees are often among the first expenses cut during cost-saving measures. Consequently industry associations tend to feel the impact of an economic downturn more acutely, and with a delay, reducing revenue levels against projected budgets.

4.4. Overall, INZ 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 industry associations.

4.5. In summary, INZ believes that Inland Revenue'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 industry associations, provide both its membership and the wider economy on a daily basis.

5. **Recommendations**

5.1. ***INZ's recommendations are that:***

i. The Government does not proceed with a draft operational statement regarding the Commissioner's updated view on the tax status for not-for-profit entities; and

ii. The Government make any necessary legislative changes so that the principle of mutuality continues to apply and reinstate the position that most membership organisations have been operating under (i.e. that subscriptions are not taxable and expenditure on membership activities are not deductible).

Thank you for the opportunity to submit, and we look forward to any updates in the near future.

Yours sincerely

Michelle McCormick

Policy Director

Infrastructure New Zealand