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## **Submission on Taxation and the not-for-profit sector: Targeted consultation on detailed design**

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### **Introduction**

1. Thank you for the opportunity to provide feedback on the proposed changes to taxation for the not-for-profit sector. Thank you also for the extension of the submission deadline that allowed us to make this submission.
2. Energy Resources Aotearoa is New Zealand's peak energy sector advocacy organisation. We are an incorporated society, not-for-profit ('NFP') entity. We represent participants from right across the energy system, providing a strategic sector perspective on energy issues and their adjacent portfolios such as tax issues. Our purpose is to enable constructive collaboration to bring coherence across the energy sector through and beyond New Zealand's journey to net-zero carbon emissions by 2050.
3. This submission is our response to the Inland Revenue Department's (the 'IRD') draft operational statement ED0265 entitled '*Mutual transactions of associations (including clubs and societies)*' and consultation document entitled *Taxation and the Not-for-Profit Sector: Targeted Consultation on Detailed Design*. We also refer the IRD to our earlier submissions on the matter - <https://www.energyresources.org.nz/dmsdocument/343> and <https://www.energyresources.org.nz/dmsdocument/337>.
4. While we cover some similar points below, we strongly support BusinessNZ's position on these issues and were a co-signatory to the BusinessNZ letter to Ministers dated 2<sup>nd</sup> July 2025.

## Key messages

5. There is one issue in particular that our submission focusses on. As a membership-based organisation, we are steadfast in the view that the Government should not tax membership subscriptions as doing so will have potentially ruinous financial consequences for the NFP sector and wider economy. However, while it is clear the IRD is searching for workable solutions, and we welcome this, we do not think that an appropriate landing zone has yet been found.
6. We still hold the view that, on balance, the new proposal will fail to adequately achieve its objectives which include simplifying tax rules, reducing compliance costs, and addressing integrity risks. The proposals are unlikely to help the NFP sector; indeed potentially they could achieve the reverse.
7. We hold this view in relation to the proposal to introduce legislation to define NFP membership subscriptions in a way that distinguishes taxable and non-taxable amounts as the proposal:
  - a is a significant regulatory overreach and would increase complexity and compliance costs for the sector, and burden entities with arduous and costly additional administration and financial reporting requirements;
  - b moves New Zealand further away from, and not closer to, international practices and introduces far more stringent measures than other comparable countries; and
  - c will disproportionately impact advocacy and membership based NFPs. If implemented such changes would severely undermine the contributions these entities and their members make to our society and ultimately, our democracy, risking the vital role these entities play in professional standard setting and democratic engagement.
8. Again, there needs to be a clear evidence-based approach adopted when reviewing and setting the taxation of charities and NFP organisations to ensure any potential new policies are fit-for-purpose. Our view is that the proposal under consideration deviates from this objective.
9. We **recommend** the introduction of a legislative change that would render all membership subscriptions non-taxable for all NFPs.

## Submission

10. We remain concerned about the position reached in the consultation document. We, and other mutual membership organisations, strongly object to the proposed changes to define a “membership subscription” and the potential to tax traditional memberships subscriptions should they not meet the new definition terms. The consequences of these proposed changes would have a detrimental financial and administrative effect on associations, clubs and local communities.
11. As stated in our earlier submissions, incorporated societies are often financially fragile organisations running almost as a matter of course on thin margins and dependent on annual membership revenue to survive. Any taxation as a result of introducing a “definition” on membership subscriptions will - even for organisations such as ours who are already taxed on non-membership income - diminish the entities’ ability to deliver on their stated, industry or public-good purposes.

### **Misalignment with international best practice**

12. To date there has been no reasonable need to define membership subscriptions as they were all non-taxable. To our knowledge, there is no other jurisdiction that international definition of membership subscriptions that exist for tax purposes or otherwise.
13. Many countries recognise the importance of the tax-exempt status of NFP’s. In jurisdictions such as Australia, the UK and the United States these organisations are typically exempt from income taxes so long as they operate within the defined NFP purposes. These polices acknowledge the broader economic and community benefits these associations provide. Therefore, the proposed changes would make New Zealand an outlier.

### **Increasing the administrative burden**

14. The IRD proposal is not only novel (domestically and internationally), but likely to be administratively burdensome, adding to, not reducing compliance costs.
15. It would be hard to create a clear and easily administered definition of membership income, even for those such as Energy Resources Aotearoa who already pay tax on other income earned, the proposed apportionment rules will be more costly to ensure compliance with the proposed changes.
16. This definitional ambiguity will add administrative burden to both the IRD and the NFP, leading to the possibility that membership subscriptions will need to be raised with the prospect of membership losses and a harmful impact on overall service delivery and impact on behalf of members (creating a vicious cycle).

## Wider Impacts

17. Focusing on a narrow sliver of potential tax revenue 'foregone' raises the risks of wider economic damage. Focusing solely on revenue risks overlooking the total costs and benefits to the economy, including compliance burdens, potential distortions to business behaviour, impacts on employment, and overall market efficiency.
18. Any proposed taxation or regulation must be assessed not only by the revenue it might raise but also its broader economic impact. Focusing purely on revenue overlooks the total costs and benefits to the economy. Placing additional complexity and administrative burdens on NFPs does not reconcile with the current Government's emphasis on the importance of lowering compliance costs for New Zealand's businesses.

## Positive changes

19. We support the increase in the tax-free threshold from \$1,000 to \$10,000, as a standalone measure independent of the consideration of the other matters set out in the consultation document, but IRD needs to be aware of the potentially perverse incentives created by only just breaching the taxable threshold.

## Perverse incentives

20. Energy Resources Aotearoa are concerned that tax changes that are misaligned with underlying economic activity might create a perverse set of incentives that will ultimately result in sub optimal outcomes. These might be incentives to:
  - a change operational behaviour to avoid a tax burden that didn't previously exist (e.g., changing organisational structure, or alter service provision); or
  - b make complex and often uncomfortable decisions, with a high risk of unintended negative consequences for both the association and its members.

## Concluding remarks

21. This is the third time Energy Resources Aotearoa has submitted on this matter.
22. We urge the Government and the IRD to reconsider the proposed definition changes and instead restore the long-standing approach to the taxation of NFP associations by introducing legislation to ensure all membership subscriptions are treated as non-taxable income. This would re-establish the cornerstone of fair and reasonable tax treatment for membership associations.
23. Instead, the proposed direction would erode the purpose of membership organisations, unfairly increase compliance costs and would undermine independent, democratic advocacy.

24. We ask the Government to acknowledge the critical role thriving NFP and membership-based organisations such as ours play now and into the future as we transition to a sustainable, low emissions economy.
25. Subject to where the definition lands, even NFPs like our own who also submit tax returns would face an additional administrative burden by likely needing to restructure subscription offerings, separate taxable and non-taxable components, revise invoices, redesign accounting systems, and adopt new processes to meet apportionment requirements. This, of course, would be magnified by some factor for those who do not. This outcome would be wholly undesirable and counterproductive to the very goals being sought.