

# The endorsement process for income tax exempt charities (ITECs)

Charities must now be endorsed if they wish to gain or maintain income tax exempt status.

You will receive an application form for ITEC endorsement if you answer 'Yes' at question 10 on your application for an Australian Business Number (ABN).

If you wish to apply for an ABN, you can request an application form by phoning 13 24 78, or you can obtain one from a newsagent.

### What is endorsement?

Endorsement is the new approval process for charities that are seeking or wish to retain income tax exemption.

### What is a charity?

A charity is an institution or fund set up to relieve poverty, sickness or the needs of the aged, or to advance education, or religion or for other purposes beneficial to the community.

For further information on which organisations are charities, refer to *CharityPack*. You can request a *CharityPack* by phoning 13 24 78.

### Are you a charitable institution or charitable fund?

Charitable institutions and charitable funds have different endorsement requirements.

To be a charitable institution, you must be an institution that has been established and operates for charitable purposes.

An institution may have the legal structure of a corporation, unincorporated association or trust. An organisation's activities, size, permanence and status will help indicate whether it is an institution. An organisation established, controlled and operated by family members and friends would not normally be an institution.

To be a charitable fund, you must be established for charitable purposes under a will or instrument of trust. You mainly:

- manage trust property, and/or
- hold trust property to make distributions to other entities or persons (for example, a charity established by a deed of trust to manage assets to pay scholarships from the trust's income is a charitable fund).

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## **Which charities are entitled to endorsement?**

A charity is entitled to endorsement if it has an Australian Business Number (ABN) and satisfies the additional conditions for entitlement.

If you do not yet have an ABN, you can request an application to register for The New Tax System by phoning **13 24 78**.

Remember to indicate on your ABN application form (at question 10) that you are a charitable institution or a trustee of a charitable fund.

## **What are the additional endorsement conditions for charitable institutions?**

A charitable institution can be endorsed if it:

- has a physical presence in Australia and pursues its objectives and incurs its expenditure principally in Australia, or
- is a deductible gift recipient (DGR) in its own right and not merely for a fund or institution that it operates, or
- is prescribed by law in the income tax Regulations and
  - is located outside Australia and is exempt from income tax in its resident country, or
  - has a physical presence in Australia but incurs its expenditure and pursues its objectives principally outside Australia.

## **What are the additional endorsement conditions for charitable funds?**

A charitable fund can only be endorsed if it is being used for the purposes for which it was established. If it is being used for other purposes, it is not entitled to endorsement.

The other conditions for endorsement will depend on whether the charitable fund was established by will before 1 July 1997.

## **What about funds established by will before 1 July 1997?**

This sort of charitable fund does not need to meet any further conditions if, from 1 July 1997, no assets have become part of the trust property under a will and the fund has paid consideration for any other assets it has acquired.

If this is not the case, the charitable fund is considered to be two trusts: an 'old trust' and a 'new trust'.

## **What are 'new' and 'old' trusts?**

The 'new trust' consists of:

- assets that have become part of the trust property under a will since 1 July 1997
- assets given to the fund from 1 July 1997 (and for which the fund did not pay consideration), and
- income derived from those assets.

The 'old trust' consists of the remainder of the charitable fund.

The 'old trust' can be endorsed. However, the 'new trust' must meet the same conditions as other charitable funds.

## **What are the endorsement conditions for 'new trust' and other charitable funds?**

To be entitled to endorsement, a 'new trust' and other charitable funds must either:

- incur expenditure principally in Australia and pursue its purposes solely in Australia, and have done so at all times since 1 July 1997, or
- be a DGR, or

- distribute solely to charities that (to the best of the trustee's knowledge):
  - are located in Australia
  - incur their expenditure principally in Australia, and
  - pursue their purposes solely in Australia and have done so at all times since 1 July 1997, or
- distribute solely to charities that (to the best of the trustee's knowledge) are DGRs, and have distributed solely to such charities since 1 July 2000.

Other charitable funds must also be established in Australia.

Your endorsement starts from the date that you nominate on your endorsement application form, though this date cannot be earlier than 1 July 2000.

**When does endorsement commence?**

**What notification will you receive?**

The ATO will send you written notification of the outcome of your application, indicating whether you have been endorsed or refused endorsement.

**What if your application is refused?**

If your application for endorsement is refused, you can have the decision reviewed by the ATO. You will need to put your full reasons in writing. If endorsement is refused after the review, you will be advised of further appeal rights.

**What if there are delays in notification?**

You can notify the ATO in writing that you wish to treat your application as having been refused if the ATO has not notified you of a result by the later of:

- the end of the 60th day after you made the application, or
- the end of the 28th day after the last day on which you gave the ATO information that it requested.

You can then have this 'refusal' reviewed by the ATO.

**What if you are no longer entitled to endorsement?**

It is your responsibility to advise the ATO if you are no longer entitled to be endorsed.

Failure to notify your loss of entitlement may result in prosecution.

**Can your endorsement be revoked?**

The ATO may revoke your endorsement if:

- you are not entitled to endorsement, or
- you have not provided information or a relevant document within the time specified by the ATO.

This revocation will be given in writing and will take effect from a date specified by the ATO.

You have a right to have a revocation reviewed.

**Does endorsement entitle you to receive tax deductible gifts?**

ITEC endorsement does *not* entitle you to receive income tax deductible gifts. There is a separate endorsement for DGRs.

For information, see the fact sheet *The endorsement process for deductible gift recipients (DGRs)*.

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**Does endorsement apply only to charities?**

Only charities need to be endorsed for income tax exemption. Other exempt organisations – for example, sporting clubs and trade unions – do not need to be endorsed.

**Need more information?**

To help you understand your new tax entitlements and obligations and apply for endorsement, you can:

- phoning the business Tax Reform Infoline on **13 24 78**
- downloading information from the website at **www.taxreform.ato.gov.au**
- obtaining *A Fax From Tax* on **13 28 60**
- phoning the TTY service on **1300 130 478** if you have a hearing or speech impairment, or
- writing to us at PO Box 9935 in your capital city.

Taxpayers who do not speak English and need help from the ATO can phone the Translating and Interpreting service on **13 14 50**.

**Guarantee**

Businesses can rely on the information presented in this publication, which provides advice from the Commissioner of Taxation on the operation of the GST system.

Under the GST law, any written ruling or advice given or published by the Commissioner protects taxpayers who have followed the information provided. Rulings or advice can be issued in the form of fact sheets, information booklets, advice manuals and bulletins.

In the event that there is a change in the law or the Commissioner's position on a particular matter, you will be protected in respect of what you have done up to the date of that change. This means that if you have relied on a ruling which has later been changed and, in reliance on the earlier ruling, you have underpaid an amount of GST, you will not be liable for the shortfall prior to the later ruling. Similarly, you will not be liable to repay an amount overpaid by the Commissioner as a refund in these circumstances. Equally, no penalties or interest will apply.

You should take care to ensure that the information in this publication is the latest advice from the Tax Office. Where a change occurs, the Tax Office will be taking all steps to alert taxpayers to that change.

The information in this publication is intended to explain how the GST System will work. It may not apply fully to your circumstances. You can always get help from the Tax Office or consider using a professional tax practitioner.

The information in this publication is current at 6 July 2000.

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