

# **ATO Submission**

# Inquiry into Not-for-profit entities —Tax assessments

11 October 2024

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## Introduction

- 1. The ATO welcomes the opportunity to provide a submission to the Inquiry into Not-for-profit entities—Tax assessments.
- 2. This submission focuses on the intent of the measure, the ATO's engagement and communication with the not-for-profit (NFP) sector, support provided to NFPs required to meet the new reporting requirements and outcomes from the lodgment of returns.

## **Overview**

- 3. Not-for-profits can be entitled to a tax exemption, either if they meet one of eight designated types of NFP, or if they have an eligible charitable purpose and are registered with the Australian Charities and Not-For-Profits Commission (ACNC).
- 4. Under the self-assessment system, many NFPs were self-assessing, or perhaps had simply assumed, that they were exempt, even though they were not actually eligible.
- 5. As part of the federal 2021-22 Budget<sup>1</sup>, the government announced reform to the administration of self-assessed income tax exempt not-for-profits (NFP), which requires non-charitable NFPs with an active Australian Business Number (ABN) to lodge an annual self-review return from 1 July 2023.
- 6. While eligibility requirements haven't changed, what's changed is the need to report annually. There are around 155,000 ABN registered NFPs who are required to submit this new return annually. These NFPs broadly fall in three categories:
  - a. Eligible as a non-charitable NFP with a designated purpose: lodge an annual selfreview return
  - b. Eligible as a charitable NFP: register with the ACNC
  - c. Not eligible: either change governing documents and operations to fall within categories a or b; or lodge as a taxpaying entity
- 7. The ATO undertook extensive consultation, engagement, and communication to raise awareness of the self-review return and to develop support tailored to NFP needs. It involved research, user-testing and over 60 presentations at key sector events and conferences.
- 8. The ATO developed numerous transitional support measures to assist NFPs lodging their first return. This includes allowing lodgment up to 31 March 2025.
- 9. Careful attention was taken to make the self-review return streamlined and quick to submit, with an average of 5 questions to complete. In addition, following year returns will be simpler as NFPs will be able to check their pre-populated responses from the previous return before lodging. A sample return is provided at **Attachment A**.
- 10. The return went live on 1 July 2024 and to date around **10,000** NFPs have successfully submitted their lodgment, via Online Services or the NFP phone service. Most of these lodgments were submitted by small NFPs.

<sup>&</sup>lt;sup>1</sup> Budget 2021-22, *Budget Measures Budget Paper No. 2 2021-22*, p.22, accessed 2-October-2024 at <a href="https://archive.budget.gov.au/2021-22/bp2/download/bp2\_2021-22.pdf">https://archive.budget.gov.au/2021-22/bp2/download/bp2\_2021-22.pdf</a>

- 11. These results, together with ABN updates and an increase in NFPs with charitable purposes registering with the ACNC and being endorsed by the ATO to access tax concessions, demonstrate improved transparency and integrity of the income tax exemption as intended by the reform.
- 12. The ATO is applying a practical compliance approach to assist thousands of NFPs who mistakenly assumed an entitlement and incorrectly self-assessed as exempt, in some cases for many years. The ATO is focusing its efforts on assisting these NFPs to correct their tax status and meet their reporting obligations from the 2023-24 income year. In many cases they may not have tax to pay as they may have a loss for tax purposes, or their revenue comes mainly from member fees which is "mutual income".
- 13. NFPs can access updated public advice and guidance on our website at <a href="https://www.ato.gov.au/NFPtaxexempt">https://www.ato.gov.au/NFPtaxexempt</a>. NFPs that require further assistance can contact our NFP Advice Service on 1300 130 248, Monday to Friday, 8:00 am to 6:00 pm AEST.

#### **About the measure**

- 14. The 2021-22 budget papers<sup>2</sup> outlined the measure 'will ensure that only eligible NFPs are accessing income tax exemptions.' The papers also outlined the measure was estimated to have an unquantifiable impact on the underlying cash balance over the forward estimates period, given its intention to provide greater transparency and integrity that includes ineligible NFPs having to lodge tax returns where applicable.
- 15. The ATO was provided capital funding to build an online system to support the measure. The outcomes sought were to provide increased visibility of NFPs accessing income tax concessions and assurance those accessing are eligible for the income tax exemption.
- 16. The government's announcement also supported its response to recommendation 24 from the Australian Charities and Not-for-Profits Commission (ACNC) Legislation Review 2018<sup>3</sup>, to strengthen the ATO's existing regulatory oversight of NFPs.
- 17. Non-charitable NFPs have always been able to self-assess as income tax exempt if they meet 1 of 8 categories set out in Division 50 of the <u>Income Tax Assessment Act 1997</u><sup>4</sup>. Enabling legislation was not required to implement the measure given the criteria for income tax exemption are already set out in Division 50.

# Administrative settings

- 18. There are over 220,000 ABN registered NFPs in Australia. Of these, around 155,000 are currently self-assessing as income tax exempt and are now required to lodge the new annual self-review return. The remaining ABN registered NFPs are either registered as charities with the ACNC or are currently taxable, neither of which is required to lodge the new annual self-review return.
- 19. Some ABN registered NFPs entities who are currently self-assessing as income tax exempt will as a result of completing the new annual self-review return identify that they do not

<sup>&</sup>lt;sup>2</sup> Budget 2021-22, *Budget Measures Budget Paper No. 2 2021-22*, p.22, accessed 2-October-2024 at https://archive.budget.gov.au/2021-22/bp2/download/bp2\_2021-22.pdf

<sup>&</sup>lt;sup>3</sup> Treasury, Government response to Australian Charities and Not-for-profits Commission legislation review 2018, 6 March 2020, p.18, accessed 2-October-2024 at <a href="https://treasury.gov.au/publication/p2020-61958">https://treasury.gov.au/publication/p2020-61958</a>

- meet the relevant legislative criteria and have mistakenly assumed an entitlement. Of these, some will satisfy the legal requirements for registration as a charity with the ACNC.
- 20. Since 2012, the tax law requires NFPs with only charitable purposes that meet the legal definition of a charity, to register with the ACNC and be endorsed by the ATO to be income tax exempt. Whilst an NFP with charitable purposes can choose not to register as a charity, they're not then eligible to self-assess as income tax exempt and need to report to the ATO as a taxable NFP<sup>4</sup>. The ATO is working closely with the ACNC to assist NFPs who choose to register as a charity as a result of the new annual self-review return process.
- 21. NFPs who identify they don't meet the relevant legislative criteria for income tax exemption as a result of completing the new annual self-review return and are not eligible to register as a charity with the ACNC, may not necessarily be liable to pay income tax. Under the principle of mutuality, a taxable NFP is not assessed on income derived from dealings with members of the organisation.
- 22. Taxable NFP companies with a taxable (non-mutual) income less than \$416 can notify the ATO they are not required to lodge an income tax return by submitting a non-lodgment advice. The \$416 threshold does not apply to other taxable NFP entity types, and they are required to lodge an income tax return from the first dollar of taxable (non-mutual) income.
- 23. The ATO is focused on applying a practical compliance approach and assisting all such entities meet their obligations from the 2023-24 income year onwards. Further details of relevant transitional support measures are outlined in **Table 2** below.
- 24. Separately, some otherwise taxable NFP companies may be in a position to amend their governing documents and operations to fall within an exemption eligibility category.

## **Consultation and transitional measures**

- 25. The ATO formally registered *Self-assessed income tax exempt not-for-profits* under its 'Matters under consultation' home page in February 2022. Between March 2022 and October 2023, the ATO completed sector research and 3 rounds of user-testing with 44 NFPs and 25 sector representatives and intermediaries to design a return that was simple, streamlined, and intuitive.
- 26. The ATO engaged our NFP sector networks and ATO stewardship groups in the design, development and testing of the return, public advice and guidance and transitional arrangements. This included the NFP Stewardship Group, Tax Professional Stewardship Group, Small Business Stewardship Group and Digital Services Provider Strategic Working Group. **Table 1** provides a summary of key consultations.
- 27. The ATO has consulted with the ACNC as a key stakeholder since the measure's announcement and continue to meet regularly with the ACNC to share information and support implementation.

<sup>&</sup>lt;sup>4</sup> Income Tax Assessment Act (ITAA) 1997, Section 50-5, Table item 1.1

Table 1: Summary of key consultations with the NFP sector

Туре	Details	Session times	
Targeted sector consultation			
Sector research to understand:  level of existing awareness of legislated income tax exemption eligibility requirements, and impacts of the changes.	<ul> <li>15 NFPs likely to self-assess under an eligible category of sporting, cultural, community service, health, educational, employment, or resource development.</li> <li>9 intermediaries representing NFPs as a tax practitioner, legal professional or peak body</li> </ul>	<ul> <li>Mar-2022 to May-2022</li> </ul>	
<ul> <li>Three rounds of user-testing to:</li> <li>collate insights, and</li> <li>iteratively refine the NFP self-review return prototype.</li> </ul>	<ul> <li>29 NFPs likely to self-assess under an eligible category of sporting, cultural, community service, health, or educational.</li> <li>16 intermediaries representing NFPs as a tax practitioner, legal professional or peak body.</li> </ul>	• Jul-2023, Aug-2023 and Oct- 2023	
ATO stewardship groups			
Not-for-profit Stewardship Group	Engaged in the co-design, development and testing of the return, public advice and guidance and transitional arrangements	<ul> <li>Jun-2021</li> <li>Mar-2022</li> <li>Jul-2022</li> <li>Sep-2022</li> <li>Oct-2022</li> <li>Nov-2022</li> <li>Mar-2023</li> <li>Jul-2023</li> <li>Nov-2023</li> <li>Mar-2024</li> <li>Jul-2024</li> </ul>	
Digital Service Providers Strategic Working Group	Consulted on the design needs and public advice and guidance available for NFPs and tax professionals using accounting and bookkeeping software	<ul><li>Aug-2022</li><li>Sep-2023</li></ul>	
Tax Practitioner Stewardship Group	Consulted on the design, development and testing of the return, public advice and guidance and transitional arrangements	<ul><li>Jul-2023</li><li>Apr-2024</li><li>May-2024</li></ul>	
BAS Agent Association Group	<ul> <li>Consulted on the public advice and guidance and transitional arrangements available to support BAS Agents assist their NFP clients</li> </ul>	• Jun-2024	
Small Business Stewardship Group	Raising awareness of the new reporting requirements	• Sep-2024	

28. Insights gleaned from our engagements led to targeted implementation of additional measures to support NFPs experiencing difficulty lodging their first return. **Table 2** provides a summary of these additional support measures.

Table 2: Transitional support measures addressing potential key lodgment barriers

Potential barrier to lodgment	Transitional support measures
Key contacts cannot access the NFP's account, and cannot access Online Services, as they have not notified us of changes to their ABN registration details to reflect current associates and addresses for many years <sup>5</sup>	<ul> <li>A downloadable 'Change of registration details' form was published to make it easier to request an update of contacts.</li> <li>A self-help phone service on 13 72 26, is available for NFPs that are not yet digitally ready to lodge their self-review return.</li> <li>While NFPs are encouraged to lodge by 31 October 2024, lodgment is allowed up to 31 March 2025 and NFPs do not need to contact the ATO to receive this extra time.</li> </ul>
The NFP does not have clauses in its governing documents that prohibit the distribution of income or assets to individuals or members	<ul> <li>Streamlining the NFP self-review return to accept lodgment of the 2023-24 return, on the basis the NFP has not distributed assets or income to members and updates their governing documents before 30 June 2025.</li> </ul>
NFPs undertaking a review of their eligibility are unsure if they need to register as a <b>charity</b> to be endorsed by the ATO to be income tax exempt	<ul> <li>Streamlining the NFP self-review return to accept lodgment from potentially charitable NFPs.</li> <li>Notifying the NFP the ATO will work with them and the ACNC post-lodgment to determine their tax status.</li> </ul>
NFPs discover they are not eligible to self-assess income tax exemption under 1 of the 8 categories in tax law, and are a <b>taxable</b> not-for-profit	<ul> <li>Streamlining the NFP self-review return to accept lodgment from organisations that discover they are ineligible for income tax exemption when completing the return.</li> <li>Providing a new non-lodgment advice proforma to make it easier for taxable NFPs to notify the ATO their taxable income is below the \$416 threshold for NFPs companies. The proforma is expected to be published in November.</li> </ul>

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<sup>&</sup>lt;sup>5</sup> ABN registered organisations including NFPs who self-assess as income tax exempt, have a legal requirement to tell the Registrar of the Australian Business Register within 28 days of changes to organisational details.

Potential barrier to lodgment	Transitional support measures
An NFP identifies they are taxable after incorrectly self-assessing as income tax exempt for many years	<ul> <li>A practical compliance approach has been implemented to support NFPs to get it right with assistance available for NFPs who have made a genuine mistake, which means:</li> <li>where a NFP thinks they may be charitable, they can still complete the NFP self-review return, and the ATO will work with them and the ACNC to sort out their status</li> <li>for NFPs with a taxable outcome on their NFP self-review return, the ATO will provide a concessional due date of 15 May 2025 to lodge their income tax return, pay any income tax liability or notify a non-lodgment advice</li> <li>applicable general interest charges and penalties may be remitted and these NFPs can enter a flexible payment plan to allow any income tax liability to be paid progressively</li> <li>while NFPs work to correct their tax status and transition to correct reporting, they can expect the ATO to focus resources on the 2023-24 income year onwards.</li> </ul>
Not able to find <b>tailored and</b> refreshed guidance with detailed information about the return and reporting requirements.	Providing information through multiple channels, including:  updated public advice and guidance on our website <a href="https://www.ato.gov.au/NFPtaxexempt">https://www.ato.gov.au/NFPtaxexempt</a> videos on our ATOtv channel about how the new reporting requirements apply, at <a href="https://www.ato.gov.au/ATOtv">https://www.ato.gov.au/ATOtv</a> our NFP Advice Service (1300 130 248) provides technical advice for NFPs and their representatives, Monday to Friday, 8:00 am to 6:00 pm AEST.  a streamlined fact sheet already widely distributed and expected to be published on the ATO's website in November.

# **Communication and support**

- 29. An extensive network of NFP advisors were engaged to share key messages and identify additional issues impacting the effective implementation of the return.
- 30. The network also assisted in identifying NFP cohorts that do not meet the self-assessing income tax exempt criteria. These groups are now actively engaged with the ATO, and the ACNC if charitable, to ensure they are meeting their required obligations.
- 31. The ATO communicated the new reporting requirements through two rounds of letters posted to impacted NFPs, emails, ATO newsletters, media releases, social media and public relations campaigns. **Table 3** provides a summary of key communications delivered.
- 32. The sector continues to be supported with ongoing face-to-face and virtual presentations. This has included far-reaching presentations with NFPs, peak associations and members,

- government departments and other stakeholders including culturally and linguistically diverse communities.
- 33. The ATO has responded to thousands of enquiries through a dedicated NFP advice service assisting NFPs who need help in updating their details and understanding the requirements for income tax exemption.
- 34. Similarly, referrals received through parliamentary channels have been effectively resolved, ensuring taxpayers understand and are supported to meet their obligations.
- 35. The ATO has worked closely with the ACNC since the measure's announcement. To support the ACNC in managing anticipated increased charity registrations, the ATO has:
  - I. shared relevant insights to inform ACNC of likely impacts from the NFP self-review return reporting obligations
  - II. refined the return structure to enable NFPs to submit a charitable outcome, to lessen impacts and smooth workflows through to the ACNC
  - III. encouraged the ACNC to redirect inquiries about the return to our NFP Advice Service phone number
  - IV. reviewed ACNC web guidance as requested
  - V. provided responses to frequently asked questions for ACNC staff to use when assisting NFPs
  - VI. reinforced ACNC messages in ATO communication
  - VII. regularly attend the ACNC sector and ACNC advisor forums to present keynote messages and answer questions
  - VIII. advised ACNC the ATO will provide budget support for an estimated additional 20 staff for 2 years to resource enquiries and assess applications from NFPs around charitable status, as required.

Table 3: Key communications delivered

Key communications	High-level details	Time
ATO NFP communications via:  Straight from the source social media post  NFP Newsletter  NFP Newsroom	<ul> <li>Budget announcement</li> <li>Raise awareness of the new requirement to report</li> <li>Detail who the changes apply to</li> <li>How to prepare NFPs to lodge</li> </ul>	<ul> <li>Jul-2021</li> <li>Mar, Apr, July, Aug, Oct, Nov, Dec-2022</li> <li>Mar-2023</li> <li>Every month between May-2023 and Dec-2023</li> <li>Every month between Feb-2024 and Oct-2024</li> </ul>

Key communications	High-level details	Time
ATO communications across-markets via:  ■ Business bulletin newsroom and newsletter  ■ Digital service providers newsletter  ■ BAS Agent Newsletter  ■ Tax Professionals Newsletter  ■	Messages to raise awareness of the new non-charitable NFP requirement report	<ul> <li>Nov-2023</li> <li>Mar-2024</li> <li>Apr-2024</li> <li>May-2024</li> <li>Jun-2024</li> <li>Jul-2024</li> <li>Aug-2024</li> <li>Sep-2024</li> </ul>
<ul> <li>Targeted emails with approved messages to be circulated across the NFP segment, via:</li> <li>NFP Stewardship Group members</li> <li>NFP Stewardship Group alumni and sector stakeholder consultative network</li> <li>Tax Practitioner Stewardship Group</li> <li>Indigenous Business Month</li> </ul>	<ul> <li>Messages to raise awareness of the new non-charitable NFP requirement report</li> <li>Notice of the Taxation Laws (Requirement to Lodge a Return for the 2024 Year) Instrument was registered on the Federal Register of Legislation on 17 May 2024</li> </ul>	<ul> <li>May-2021</li> <li>Apr-2022</li> <li>Jun-2023</li> <li>Jul-2023</li> <li>Oct-2023</li> <li>Dec-2023</li> <li>Mar-2024</li> <li>May-2024</li> <li>Sep-2024</li> </ul>
Targeted public relations campaign pack emailed to:  • Over 115 NFP peak bodies  • Around 30 state and local government departments  • Around 5 NFP sector publications  • Tax professional associations  • Small Business Commissioners ●	Approved key messages and images the sector can share across their networks	<ul> <li>Oct-2023</li> <li>Nov-2023</li> <li>April-2024</li> <li>May-2024</li> </ul>
ATO media release	ATO encourages NFPs to get ready for new return	• Mar-2024
Live and recorded webinars and videos	<ul> <li>Recorded webinar –         <u>New reporting</u>         requirements for NFPs</li> <li>Recorded live webinar –         <u>What to do if you are</u> <u>charitable NFP</u></li> </ul>	<ul><li>Mar-2024</li><li>Apr-2024</li></ul>
	<ul> <li>Recorded live webinar -         <u>What to do if your NFP</u> <u>is taxable?</u></li> <li>Deputy Commissioner's         video address -         <u>Changes in reporting</u></li> </ul>	<ul><li>May-2024</li><li>Jul-2024</li></ul>
	<ul> <li>requirements for NFPs</li> <li>Recorded live webinar –         Does your indigenous     </li> <li>NFP need to lodge?</li> </ul>	• Aug-2024

## **Lodgment outcomes**

- 36. To date, around 10,000 NFPs have lodged their first return. This represents around 5.5% of the potential population.
- 37. Feedback from NFPs and tax practitioners that have completed the NFP self-review return have advised that lodgment took them around 10 minutes or less to complete, once the NFP has the required information to answer eligibility questions on their tax status. The return comprises 3 sections: organisational details, income tax self-assessment and declaration. A sample return is provided at **Attachment A**.
- 38. The return can be lodged via the ATO's Online services for business or Online services for tax agents. NFPs or their representatives can prepare for lodgment by reviewing a guide at <a href="https://www.ato.gov.au/NFPselfreviewguide">https://www.ato.gov.au/NFPselfreviewguide</a>
- 39. Future year lodgments of the return will be easier to submit given the returns will be prepopulated. The prefilled return is beneficial for newly appointed associates and authorised contacts as it increases the visibility of the previous year's self-assessment results.
- 40. Sector transparency and integrity has improved, noting that:
  - I. Since 1 July 2024 approximately 4,600 NFP authorised contact details have been updated, compared to 5,200 updates for the entire 2023-24 year.
  - II. Around 2,000 NFP ABN cancellations have been processed since the issuing of the first letter to NFPs in April 2024. Of these, almost 900 have been since 1 July when NFP self-review return lodgments opened, with many advising the NFP ceased operating before the requirement to lodge the self-review return started.
  - III. An increase in charity registrations has resulted in a corresponding increase in the number of charities endorsed by the ATO to access tax concessions. This is resulting in the correct transparency and integrity intended by law.

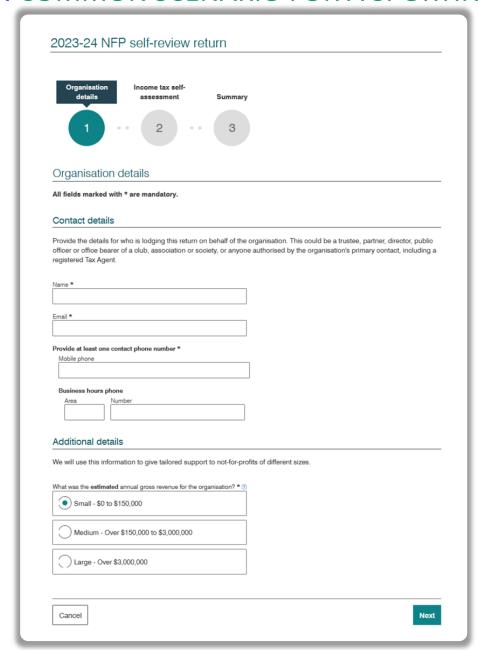
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#### **Attachment A**

## NFP SELF-REVIEW RETURN COMMON SCENARIO FOR A SPORTING CLUB

#### **STEP 1 ORGANISATION DETAILS**

- Complete contact details of who is lodging the return.
- Select the estimated annual gross revenue for the organisation small, medium or large.



#### NFP SELF-REVIEW RETURN COMMON SCENARIO FOR A SPORTING CLUB

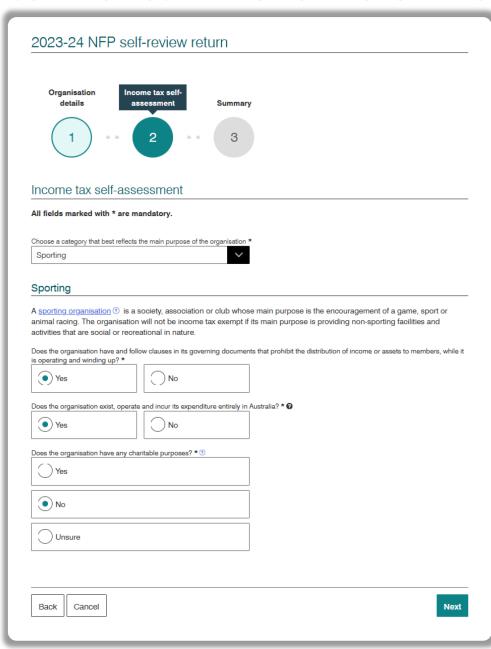
#### STEP 2 INCOME TAX SELF-ASSESSMENT

- Choose a category that best reflects the main purpose of the organisation
   Sporting
- The return will display questions to be completed that are applicable to sporting organisations. This example shows the most common scenario for sporting clubs.

#### Note

For organisations that are *Unsure* if they have charitable purposes, a note will display on-screen as follows:

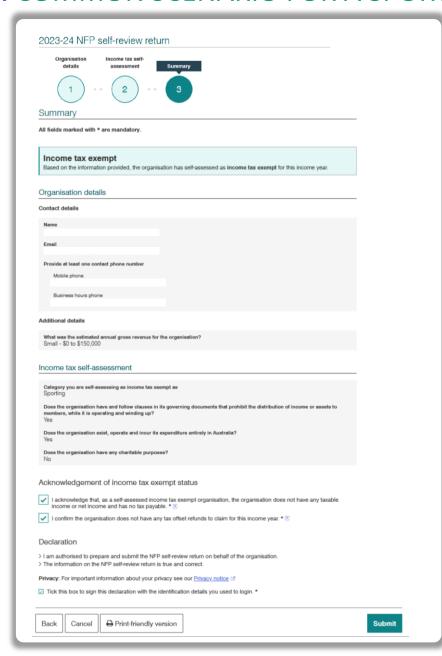
The ATO may contact the organisation to provide guidance to help determine its charitable status.



#### NFP SELF-REVIEW RETURN COMMON SCENARIO FOR A SPORTING CLUB

#### STEP 3 SUMMARY AND DECLARATION

- The self-assessment outcome is displayed. This example shows the most common scenario for sporting clubs - income tax exempt.
- A summary of all responses on the return is displayed for review.
- The person completing the return is asked to check tick boxes to complete an acknowledgment of income tax exempt status and a declaration.
- The summary can be saved or printed and used by the sporting club to check-in with their committee or tax agent, before submitting the return.



## NFP SELF-REVIEW RETURN COMMON SCENARIO FOR A SPORTING CLUB

#### **CONFIRMATION OF SUBMISSION**

- Once successfully submitted, a confirmation screen displays an ATO receipt ID and a summary around what the outcome means for the organisation.
- This screen can be saved or printed to be kept with the sporting club's records.

