

Taxation of Strata Schemes – What is TR2015/3?

The ATO has clarified its position regarding a number of income tax issues pertaining to bodies corporate constituted under strata title legislation, issuing taxation ruling TR 2015/3. TR 2015/3 replaces the earlier draft ruling TR 2015/D1. The ATO considered numerous submissions and comments in relation to the draft ruling and made a number of changes in the final ruling, but these in virtually all cases involved clarifications and reframing of examples. TR 2015/3 represents the ATO's current position regarding the assessment of income and the deduction of expenses.

The position will differ between States, which are different strata title legislation and these comments reflect the position in New South Wales. The key points are as follows:

- Tax status - a strata owners corporation will be taxed as a "for profit" company and the Commissioner will exercise discretion to treat the owners corporation as a public company where the owners corporation is substantially in compliance with its obligations and responsibilities as set out in the applicable governing legislation.
- Mutuality – The ruling is premised on the concept of mutuality. Key points:
 - An amount that is otherwise assessable to the strata title body will not be included in its assessable income where the principle of mutuality applies
 - Amounts levied on proprietors by a strata title body in accordance with the State legislation which form part of a fund used for the day to day expenses, general maintenance and repair of common property or for the establishment of special purpose funds are mutual receipts and are not assessable to the strata title body.
 - Whether other receipts from members are mutual receipts depends on the nature of the transaction and must be decided on the facts and circumstances of each dealing by a process of evaluating and weighing a range of factors. Relevant considerations include:
 - The relationship between an amount received by the strata title body and the common fund – that is, whether it is within matters that govern the mutual relationship between members such that it has the requisite link to the common fund.

- The purpose for which the payment is made – that is, whether the payment of an amount by a member to the strata title body is to meet the member's proportion of their mutual liabilities.
 - The capacity in which an amount is paid – that is, whether the member is dealing with the strata title body in their role as a member
- Owners corporation assessable receipts – certain receipts by the owners corporation will not be mutual receipts and will be assessable to the owners corporation. These include:
 - Receipts from individual owners by way of the payment of Tribunal imposed penalties against owners, e.g. for by-law breaches.
 - Receipts from third parties by way of payment for use of personal property of the owners corporation, e.g. interest on investment of funds and charges for use of equipment.
 - Receipts from third parties by way of payment of fees for inspection of records, but not where received from an individual owner.
- Owners corporation non assessable receipts - certain receipts by the owners corporation will be mutual receipts and will not be assessable to the owners corporation. These include:
 - Receipts from individual owners by way of administration and capital works fund levy contributions.
 - Receipts from individual owners by way of late payment interest in relation to levy contributions.
- Lot owner assessable receipts - certain receipts by the owners corporation will be assessable to individual owners. These include:
 - Receipts from third parties by way of payment for use of common property, e.g. common property licence fees.
- Deductibility of expenses:
 - Capital allowances - individual owners will be the holders of such assets for the purposes of Division 40 of the Income Tax Assessment Act 1997.
 - Capital works — to the extent that the particular area is used for income earning purposes, a deduction for the appropriate portion of construction expenditure is available to the entity incurring the expenditure if they own or lease the area.
- Distributions to members:
 - Distributions to individual owners that are return of surplus contributions are not assessable income.

- Distributions to individual owners out of profits derived by the owners corporation are dividends which are assessable income of the individual owners and are able to be franked.

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