



INLAND REVENUE BOARD MALAYSIA

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CLUBS, ASSOCIATIONS OR SIMILAR INSTITUTIONS

PUBLIC RULING NO. 5/2012

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OR SIMILAR INSTITUTIONS**

**Public Ruling No. 5/2012
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DIRECTOR GENERAL'S PUBLIC RULING

A Public Ruling as provided for under section 138A of the Income Tax Act 1967 is issued for the purpose of providing guidance for the public and officers of the Inland Revenue Board Malaysia. It sets out the interpretation of the Director General of Inland Revenue in respect of the particular tax law, and the policy and procedure that are to be applied.

A Public Ruling may be withdrawn, either wholly or in part, by notice of withdrawal or by publication of a new ruling which is inconsistent with it.

**Director General of Inland Revenue,
Inland Revenue Board Malaysia.**

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1. The purpose of this Ruling is to explain the taxation of clubs, associations or similar institutions which are established and controlled by its members.
2. The provisions of the Income Tax Act 1967 (ITA 1967) related to this Ruling are sections 2, 20, 21, 53A and Schedule 1.
3. The words used in this Ruling have the following meaning:
 - 3.1 “Members” in relation to a body of persons, means those persons who are entitled to vote at a general meeting of the body at which effective control is exercised over its affairs.
 - 3.2 “Body of persons” means an unincorporated body of persons which carries on a club, association or similar institution other than a trade association.
 - 3.3 “Year of assessment” means calendar year.
 - 3.4 “Basis period” for a year of assessment in relation to a source of a club, association or similar institution is the basis year for that year of assessment.
4. **Clubs, Associations Or Similar Institutions**
 - (a) Clubs, associations or similar institutions are formed not for commercial purposes but for social, recreational, sports, arts, science, literature or other purposes for the interest and benefit of their members. Examples of such clubs, associations or similar institutions are an athletic club, an antique car collectors club and a historical society. However, the activities of some clubs, associations or similar institutions are trade dealings which are run for a profit that is subject to tax as business profits. Examples of such clubs, associations or similar institutions are a fitness centre or a professional football club.
 - (b) Clubs, associations or similar institutions also include Joint Management Bodies, Management Corporations and Residents’ Association which are community associations of property owners. The growth and development of strata titled properties have posed challenges in the field of management of subdivided buildings. Joint Management Bodies and Management Corporations are formed by statute under the Strata Titles Act 1985 and the Building and Common Property (Management and Maintenance) Act 2007 for the proper maintenance and management of buildings and the common property. On the other hand, residents’ associations are voluntary organisations that are registered as societies.

For further explanation, a guideline entitled the tax treatment of charges for maintenance and joint property management received by developers, Joint Management Bodies and Management Corporations dated 21.5.2012

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(Bahasa Malaysia version only) can be downloaded from Inland Revenue Board Malaysia's website at [http:// www.hasil.gov.my](http://www.hasil.gov.my).

5. Ownership And Membership Of Clubs, Associations Or Similar Institutions

In order to distinguish whether a body of persons carrying on a club, association or similar institution is a trading/business enterprise or run for the benefit of its members, the ownership and membership of that body of persons and its dealings have to be examined as follows:

- (a) If the ownership of that body of persons is different from its membership, the club is likely to be a trading enterprise. On the other hand, if a club, association or similar institution is established and owned by its members for the benefit of its members, this would mean that all the assets belong to the membership which controls the club and its dealings. Such control may be exercised through an elected committee.
- (b) Transactions with members are not considered as trade dealings. Any surplus of receipts over expenditure in respect of income from transactions with members must be used for the benefit of all the members of the club, association or similar institution (e.g. to buy new equipment or to pay for social occasions open only to the membership). However, when a club, association or similar institution provides its facilities (e.g. restaurant, golf course) to non-members on a commercial basis, it is deemed to be carrying on a trade and income from trading with non-members is taxable.

6. Taxability Of Clubs, Associations Or Similar Institutions

6.1 Prior to the year of assessment 2009, there was no specific provision on the tax treatment of clubs, associations or similar institutions. Clubs, associations or similar institutions have been subject to tax based on the following general taxation principles:

- (a) members fee and income from transactions with members are not subject to tax based on the principle of mutuality; and
- (b) income derived from transactions with non-members is subject to tax.

6.2 With effect from the year of assessment 2009, section 53A of the ITA 1967 was introduced to enhance the transparency in the tax treatment of clubs, associations or similar institutions. This provision applies to clubs, associations or similar institutions which are established and controlled by its members and run not for business purposes.

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7. Tax Treatment Of Clubs, Associations Or Similar Institutions

7.1 Income from transactions with members

- (a) Clubs, associations or similar institutions are run either for the benefit of their own members, or for the wider public good. If a club, association or similar institution is meant for the benefit of members only, any income arising from mutual dealings with the members is not subject to tax. Examples of mutual receipts from members of clubs, associations or similar institutions include:
- (i) entrance fees and member subscriptions;
 - (ii) drinks and food sold at the clubs, associations or similar institution's bar /restaurant to its members;
 - (iii) amounts paid by members to attend dinners or social functions organised by the clubs, associations or similar institutions; and
 - (iv) amounts paid by members to attend a talk, presentation or workshop organised by the clubs, associations or similar institutions.

Such income and any expenses or capital allowances attributable to such income is to be disregarded for the purposes of the ITA 1967 pursuant to subsection 53A(2) of the ITA 1967.

- (b) Even though income derived from transactions with members are not subject to tax, not all transactions involving members are necessarily mutual receipts.

Example 1

A recreation club in Malaysia whose members comprise of tax agents enters into an agreement with an independent gymnasium operator to operate on the club's premises. The club receives rental from the gymnasium operator. The gymnasium operator imposes a fee for the use of its facilities in the gymnasium.

Income received by the club from the rental of the gymnasium is taxable, even though patrons of the gymnasium are club members.

7.2 Income from transactions with non-members

- (a) Although a club, association or similar institution is generally formed not with the aim to make profits, it may receive income from

activities or transactions with non-members which are taxable income. Examples of such receipts include:

- (i) proceeds from fund raising drives to the public, e.g. sale of homemade cakes, cookies or handicraft;
 - (ii) drinks sold to non-members visiting the club;
 - (iii) fees received for hiring out of the club's hall, facilities or equipment to the public;
 - (iv) amounts paid by non-members to attend dinners or social functions organised by the club;
 - (v) amounts paid by non-members to attend a talk, presentation or workshop organised by the club;
 - (vi) non-member proceeds from a raffle or lucky draw; and
 - (vii) selling souvenirs to non-members.
- (b) The spouse and parents of members of clubs, associations or similar institutions are considered non-members. Therefore, income derived from transactions with spouse and parents of members is subject to tax.

Example 2

An association of retired armed forces officers built 100 units of link houses and 10 units of shop houses. The association offered the link houses for sale to its members and the immediate family of these members only whereas the shop houses were open to the public for sale. The immediate family comprising of the members' spouse, parents, siblings and children were extended the same purchase price that was offered to the members for the property.

The profits from the sale of the houses to the members' immediate families are taxable as the receipts are from transactions with non-members. Immediate families of members of the association are not considered members of the association.

7.3 Income from investment and external sources

- (a) Income from investment of clubs, associations or similar institutions such as interest, rent, dividend being non-mutual receipts is taxable.
- (b) There may be clubs, associations or similar institutions that enter into arrangements with external parties under which the external party conducts or provides particular operations on the premises of the club, association or similar institution. These arrangements with

the external parties may include installation of vending machines for drinks, catering, restaurant, bar, gymnasium and entertainment.

- (c) If the clubs, associations or similar institutions enter into such an arrangement with the external party, the income derived by the external party from the patrons of the above mentioned facilities is in accordance with the contractual arrangements. The amounts paid to the clubs, associations or similar institutions by the external party for operating on their premises is income derived by the clubs, associations or similar institutions from external sources and not from members/non-members. Therefore, such income is fully taxable to the clubs, associations or similar institutions.

Example 3

A golf club, made arrangements with external parties to:

- (i) operate a restaurant,
- (ii) operate a gymnasium, and
- (iii) install vending machines for drinks on the clubs premises.

The income received by the club from the restaurant, gymnasium and vending machine operator is derived from an external source and is taxable.

7.4 Expenses incurred and qualifying capital expenditure for claiming capital allowances

- (a) Outgoings or expenses incurred and qualifying capital expenditure attributable to income from transactions with non-members.

Some outgoings or expenses may be wholly incurred in deriving the club, association or similar institution's taxable income from non-members. Such expenses can be allowed as deductions in determining the adjusted income of the club, association or similar institutions from transaction with non-members. Allowable deductions that may be included are outgoings or expenses incurred for earning dividends or bank interest, expenses incurred in running a function for non-members only and expenses incurred in fundraising drives to the public.

Capital expenditure incurred on assets used in business transactions with non-members to derive income from non-members only will qualify for capital allowances.

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- (b) Outgoings or expenses incurred and qualifying capital expenditure for claiming capital allowances attributable to income from transactions with members.

The outgoings or expenses incurred by clubs, associations or similar institutions in deriving income from transactions with members are not allowed as deductions and are to be disregarded for the purposes of the ITA 1967. The expenses that are not allowable deductions may include the cost of running solely for members, collecting subscriptions and increasing memberships.

Capital expenditure incurred on assets used in transactions with members to derive income from members only will not qualify for capital allowances.

- (c) Outgoings or expenses and capital allowances common to income from transactions with members and non-members.

If outgoings or expenses are incurred in deriving income from transactions with both members and non-members, the deduction of outgoings that can be allowed as a deduction will be restricted to the portion attributable to non-members. The same principle is applicable to claims for capital allowances. Therefore, the outgoings or expenses and capital allowances common to the income from transactions with members and non-members need to be apportioned into:

- (i) outgoings or expenses and capital allowances attributable to income from transactions with members; and
- (ii) outgoings or expenses and capital allowances attributable to income from transactions with non-members.

Generally, common expenses that may require apportionment include printing, postage, stationery, telephone, electricity, rent and bank charges.

The apportionment of the common expenses to ascertain the amount of outgoings or expenses to be allowed or capital allowances that shall be made to a club, association or similar institution shall be determined in accordance with the Income Tax (Deduction Relating to Transaction with Non-Members for Club, Association Or Similar Institution) Rules 2011[P.U.(A) 360/2011].

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7.5 Determination of outgoings or expenses relating to transactions with non-members

In ascertaining the adjusted income of a club, association or similar institution relating to transactions with non-members for the basis period for a year of assessment, the amount allowed as a deduction in respect of outgoings or expenses incurred by that club, association or similar institutions shall be determined in accordance with the following formula:

$$A \quad X \quad \frac{B}{C}$$

Where

- A is the amount of outgoings or expenses incurred by the club, association or similar institutions in the basis period for a year of assessment;
- B is the gross income from transactions with non-members of the club, association or similar institutions in the basis period for a year of assessment;
- C is the gross income from transactions with both members and non-members of the club, association or similar institutions in the basis period for a year of assessment.

7.6 Determination of capital allowances relating to transactions with non-members

In ascertaining the statutory income of a club, association or similar institution relating to transactions with non-members for the basis period for a year of assessment, the amount of capital allowances deductible from the adjusted income shall be determined in accordance with the following formula:

$$D \quad X \quad \frac{E}{F}$$

Where

- D is the capital allowances allowed to the club, association or similar institutions for the basis period for a year of assessment;

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- E is the gross income from transactions with non-members of the club, association or similar institutions in the basis year for a year of assessment; and
- F is the gross income from transactions with both members and non-members of the club, association or similar institutions in the basis period for a year of assessment.

7.7 Determination of gift of money relating to transactions with non-members

Where a club, association or similar institution is entitled for a deduction under subsection 44(6) of the ITA 1967 for the basis period for a year of assessment, the portion of gift of money to be deducted from the aggregate income relating to transactions with non-members for the basis period for a year of assessment, shall be determined in accordance with the following formula:

$$G \times \frac{H}{I}$$

Where

- G is the gift of money made by the club, association or similar institution for the basis period for a year of assessment;
- H is the aggregate income from transactions with non-members of the club, association or similar institution in the basis year for a year of assessment; and
- I is the aggregate income from transactions with both members and non-members of the club, association or similar institution in the basis period for a year of assessment;

Provided that the amount to be deducted shall not exceed 7% of the aggregate income of the club, association or similar institution for the basis period of that year of assessment.

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- 7.8 Illustrations for determination of tax payable by clubs, associations or similar institutions

Example 4

A senior citizens club in Kuala Lumpur has the following income and expenditure account for the year ended 31.12.2010:

Receipts	RM	Expenditure	RM
Members subscription	20,000	Maintenance of club house	6,000
Members entrance fees	8,000	Magazines and newspaper	360
Sale of tickets for annual dinner: Members Non-members	10,000 8,000	Annual dinner: Members Non-members	12,000 4,000
Interest from fixed deposits	8,000	Depreciation	11,000
Rent from subletting of club premises	21,000	Postage and stationery	1,800
		Surplus	39,840
Total	75,000	Total	75,000

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The gross taxable and non-taxable income are as follows:

Receipts	Gross Non-Taxable Receipts (Mutual Receipts) RM	Gross Taxable Receipts (Non-Mutual Receipts) RM
Members subscription	20,000	-
Entrance fees	8,000	-
Annual dinner	10,000	8,000
Other income:	-	
- Interest from fixed deposits		8,000
- Rental from tenant		21,000
Total	38,000	37,000

Although the club is not deemed to be carrying on a business, the club remains liable to tax on the gross receipts received from non-members.

Computation of the tax payable for year of assessment 2010

	RM
Sale of tickets for annual dinner to non-members	8,000
Less: Annual dinner expenses of non-members	<u>4,000</u>
	4,000
Interest	8,000
Rental	<u>21,000</u>
Chargeable income	<u>33,000</u>

	RM
Tax on the first RM20,000	475.00
Tax on the next RM13,000 @ 7%	<u>910.00</u>
Tax payable	<u>1,385.00</u>

Example 5

A Chinese Calligraphy Society in Malaysia has the following income and expenditure account for the year ended 31.12.2010:

Total Receipts	RM	Total Expenditure	RM
Members subscription	5,000	Postage	300
Interest from fixed deposits	1,000	Bank charges	120
Annual dinner: Members – 8,000 Non-members – 2,000	10,000	Annual dinner: Members – 7,200 Non-members – 1,800	9,000
Sale of calligraphy works	8,000	Cost of calligraphy works	1,000
Rental from tenant	65,000	Utilities and rates	2,400
Fees charged to non-members for calligraphy classes	1,000	Repairs	5,000
		Wages & salaries	24,000
		Photocopying	180
		Depreciation	31,000
		Excess of income over expenditure	17,000
Total	90,000	Total	90,000

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The Chinese Calligraphy Society kept separate accounts in respect of income and expenditure related to its dealings and communications with members and non-members during the year ended 31.12.2010. The details of expenditure are as follows:

Expenses	Non-Allowable Deductions (Expenses Related To Transactions With Members) RM	Allowable Deductions (Expenses Related To Transactions With Non-Members) RM	Expenses Related To Rental RM
Postage	240	60	-
Bank charges	100	20	-
Annual dinner	7,200	1,800	-
Photocopying	144	36	-
Utilities and rates	2,100	300	-
Repairs	-	-	5,000
Wages & salaries	23,500	500	-
Total	33,284	2,716	5,000

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The gross taxable and non-taxable income are as follows:

Receipts	Non-Taxable Receipts (Mutual Receipts) RM	Taxable Receipts (Non-Mutual Receipts) RM
Members subscription	5,000	-
Annual dinner	8,000	2,000
Sale of calligraphy works	-	8,000
Fees charged to non-members for calligraphy classes	-	1,000
Other income:	-	
- Interest from fixed deposits		1,000
- Rental from tenant		65,000
Total	13,000	77,000

Computation of tax payable for year of assessment 2010

	RM
Sale of annual dinner tickets to non-members	2,000
Sale of calligraphy works to non-members	8,000
Fees charged to non-members	1,000
	<u>11,000</u>
Less: Allowable expenses	<u>2,716</u>
Adjusted income	8,284
Other income –	
Interest	1,000
Rental	65,000
Less: Expenses	<u>5,000</u>
Aggregate income / Chargeable income	<u>69,284</u>

	RM
Tax on first RM50,000	3,325.00
Tax on next RM19,284 @ 19%	<u>3,663.96</u>
Tax payable	<u>6,988.96</u>

Example 6

A sports club has the following income and expenditure account for the year ended 31.12.2010:

Total Receipts	RM	Total Expenditure	RM
Members subscription	180,000	Rental of hall for seminar	80,000
Seminar fees for non-members	60,000	Wages and salaries (*)	250,000
Interest from fixed deposits	300,000	Administration and stationery (*)	15,000
		Transportation for workers (*)	15,000
		Excess of income over expenditure	180,000
Total	540,000	Total	540,000

(*) Common outgoings or expenses related to transactions with members and non-members.

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The sports club's expenditure records related to transactions with members and non-members during the year ended 31.12.2010 are:

Expenses	Non- Allowable Deductions (Expenses Related To Transactions With Members) RM	Allowable Deductions (Expenses Related To Transactions With Non- Members) RM	Expenses Common To Income From Transactions With Both Members And Non- Members RM
Wages and salaries	-	-	250,000
Rental of hall for seminar	-	80,000	-
Administration and stationery	-	-	15,000
Transportation for workers	-	-	15,000
Total	-	80,000	280,000

The gross taxable and non-taxable receipts are as follows:

Receipts	Non-Taxable Receipts (Mutual Receipts) RM	Taxable Receipts (Non-Mutual Receipts) RM
Members subscription	180,000	-
Seminar fees	-	60,000
Interest from fixed deposits	-	300,000
Total	180,000	360,000

Computation of tax payable for the year of assessment 2010

		RM	RM
Seminar fees		60,000	
Less:			
Rental for hall	80,000		
Common expenses ⁽¹⁾	<u>70,000</u>	<u>150,000</u>	
Adjusted business loss		(90,000)	
Adjusted income			NIL
Other income:			
Interest			<u>300,000</u>
Aggregate income			<u>300,000</u>
Less: Current year loss			<u>90,000</u>
Total income / Chargeable income			<u>210,000</u>

	RM
Tax on first RM150,000	27,325.00
Tax on next RM60,000 @ 26%	<u>5,600.00</u>
Tax Payable	<u>42,925.00</u>

⁽¹⁾ Apportionment of common expenses

(refer to paragraph 7.5 for the formula)

$$280,000 \times \frac{60,000}{240,000 (180,000 + 60,000)} = 70,000$$

Example 7

The facts are the same as in Example 6 except that the transactions with non-members amounted to RM100,000 and the capital allowance claimed by the club for the year ended 31.12.2010 is RM12,000. The club also made a gift of money of RM10,000 to an approved institution.

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The gross taxable and non-taxable receipts are as follows:

Receipts	Non-Taxable Receipts (Mutual Receipts) RM	Taxable Receipts (Non-Mutual Receipts) RM
Members subscription	180,000	-
Seminar fees	-	60,000
Transactions with non-members	-	100,000
Interest from fixed deposits	-	300,000
Total	180,000	460,000

Computation of tax payable for the year of assessment 2010

	RM	RM
Transactions with non-members	100,000	
Seminar fees	<u>60,000</u>	
	160,000	
Less:		
Rental of hall	80,000	
Common expenses ⁽³⁾	<u>131,765</u>	
Adjusted business loss	<u>211,765</u>	
Adjusted income	(51,765)	NIL
Less:		
Capital allowance - 5,647 ⁽⁶⁾ (Capital allowance c/f 5,647)		NIL
Statutory income ⁽⁷⁾		<u>NIL</u>
Other income: Interest		<u>300,000</u>
Aggregate income		300,000
Less: Current year loss		<u>51,765</u>
		248,235
Less: Donations ⁽⁹⁾		<u>NIL</u>
Total income / Chargeable income		<u>248,235</u>
	RM	
Tax on first RM150,000	27,325.00	
Tax on next RM98,235 @ 26%	<u>25,541.10</u>	
Tax Payable	<u>52,866.10</u>	

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Apportionment of common expenses

(refer to paragraph 7.5 for the formula)

⁽²⁾Members portion

$$280,000 \quad X \quad \frac{180,000}{340,000 (180,000 + 60,000 + 100,000)} = 148,235$$

⁽³⁾Non-members portion

$$280,000 \quad X \quad \frac{60,000 + 100,000 = 160,000}{340,000 (180,000 + 60,000 + 100,000)} = 131,765$$

Apportionment of capital allowances relating to transactions with non-members

(refer to paragraph 7.6 for the formula)

⁽⁵⁾Members portion

$$12,000 \quad X \quad \frac{180,000}{340,000} = 6,353$$

⁽⁶⁾Non-members portion

$$12,000 \quad X \quad \frac{160,000}{340,000} = 5,647$$

Computation of statutory income of members transactions for year of assessment 2010

Members subscription	RM 180,000
Less: Common expenses ⁽⁴⁾	<u>148,235</u>
Adjusted income	31,765
Less: Capital allowances ⁽⁵⁾	<u>6,353</u>
Statutory income ⁽⁸⁾	<u>25,412</u>

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⁽⁹⁾Apportionment of gift of money relating to transactions with non-members

(refer to paragraph 7.7 for the formula)

$$10,000 \quad \times \quad \frac{0^{(7)}}{25,412^{(8)}} \quad = \quad 0^{(9)}$$

7.9 Losses

Losses arising as a result of transactions with members cannot be deducted against income arising from transactions with non-members. As income from transactions with members is to be disregarded for the purpose of the ITA 1967, therefore losses arising from transactions with members is also to be disregarded for the purpose of the ITA 1967.

Example 8

A club's Income and Expenditure Account for the year ended 31.12.2011 shows that the expenses exceeded the receipts from mutual transactions with members resulting in members' loss of RM5,000. On the other hand, the receipts exceeded expenses from non-mutual transactions with non-members resulting in a surplus of RM3,000. The club actually has a net loss of RM2,000.

The club is taxable on the income from transactions with non-members amounting to RM3,000 for the year of assessment 2011. Losses from transactions with members cannot be offset against income from transactions with non-members. Such losses are to be disregarded for the purpose of the ITA 1967.

Example 9

The facts are the same as in Example 8 except that the expenses exceeded receipts from transactions with non-members resulting in a loss of RM1,000.

The loss of RM1,000 arising from transactions with non-members in the year of assessment 2011 is carried forward to the subsequent year(s) of assessment to be offset against income from the same source (transactions with non-members).

8. Tax Rates

The taxable income of a club, association or similar institution is taxed at scale rates that are applicable to individuals as in Paragraph 1, Part I, Schedule 1 of the

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ITA 1967. Clubs, associations or similar institutions are not eligible for personal reliefs that are applicable to individuals when computing their chargeable income.

9. Record Keeping

All clubs, associations or similar institutions are required to keep separate accounts in respect of income derived from transactions with members and with non-members. Records that distinguish between member and non-member functions have to be kept if clubs, associations or similar institutions do not have a limitation on dealings with non-members.

Example 10

A football association buys badges for its members and promotional pins for non-members from the same supplier as part of a fundraising drive. The purchased items are included in one invoice.

The football association would have to separate the costs incurred in purchasing the above items for members and non-members in its records.

10. Filing Of Income Tax Return Forms

Clubs, associations or similar institutions in Malaysia are required to file an Income Tax Return Form (ITRF) i.e. Form TF for each year of assessment. The ITRF should be furnished to the Director General of Inland Revenue on or before 30 June in the year following that year of assessment.

**Director General of Inland Revenue,
Inland Revenue Board Malaysia.**