

Submission to Tax White Paper Task Force

On the current arrangement of tax concessions as a support to the not-for-profit sector and how it may be improved to achieve a lower, simpler and fairer tax system

Introduction

The Chinese Australian Services Society Limited (CASS) welcomes the Government's initiative to start a national conversation on how the current tax system should be reformed in order to achieve a better, simpler and fairer tax system. As a long standing community organisation, CASS has a first-hand experience on the values as well as the problems of the current system of tax concessions for non-profit organisation. Hence, we would like to use this opportunity to express our opinions focusing on this particular aspect of the current tax system for the Government to consider.

About CASS

CASS was founded in 1981. Its main service objective is to provide a wide range of welfare services to the community, assisting migrants to settle and integrate into the Australian society. CASS provides a comprehensive range of community services and activities, including residential aged care, home ageing and disability services, vocational training, health and settlement, volunteering and family and children's services. Our services currently cover Inner West, South Eastern, South Western and Northern Region of Sydney as well as Wollongong. CASS serves the Chinese, Korean, Indonesian, Vietnamese and people from other backgrounds in the community. More than 2,000 families access our services and activities weekly.

The value of the non-profit community sector and the importance of income tax concessions

As the Productivity Commission's Report on *Contribution of the Not-for-Profit Sector* stated, the non-profit community sector has made a significant contribution to combating social exclusion and enhancing the economic, social, cultural and environmental wellbeing of society. A non-profit organisation, however, has a limited ability to attract investment when compared with a profit making organisation, as the latter can attract investment by the promise of profit return.

Hence, tax concessions, including deductible gift recipient status (DGR), income tax exempt charity status (ITEC) and fringe benefits tax (FBT) concession, are essential to the sustainable operation of non-profit organisations. DGR is important in providing an incentive for donation to non-profit organisations, while ITEC allows non-profit organisations to invest their income fully on improving the scope and quality of services to recipients. Any attempts to tighten these concessions will have a detrimental impact to the sector.

The importance of tax concession in retaining the best talents in the sector

Non-profit community organisations face a strong obstacle in attracting and retaining their talents. According to Seek’s annual Salary Review, the average annual salary of management positions of community service is lower than most industries (Please refer to table 1).

Table 1: Average annual salary of management positions by selected industries 2013

	\$ (AUD)
Information & Communication Technology	128800
Marketing & Communications	112141
Banking & Financial Services	108819
Manufacturing, Transport & Logistics	106895
Sales	106383
Advertising, Arts & Media	101377
Healthcare & Medical	99453
Community Services & Development	90170
Call Centre & Customer Service	82629
Sport & Recreation	68119
Hospitality & Tourism	63142

Source: *Guardian interactive data (2014), cited in taxpayer.com.au*¹

Apart from competition from other industries, non-profit community organisations also face competition from the government and business sector. According to the Productivity Report on *Contribution of the Not-for-Profit Sector*, ‘many non-for-profit organisations (NFPs) in the community services sector can only offer Award wages considerably lower than comparable positions in government and business...low wages contribute to the substantial movement of employees from NPFs to the public sector..’². The benefit of FBT concessions, therefore, serves only as a small remedy against a very disadvantaged position faced by the non-profit community organisations in a competitive labour market.

Ideas for reforming the current tax concession policies

While it is important to keep the arrangement of FBT concessions for the public benevolent institution, it does not mean that this is a perfect system with no rooms for improvement. It is in our view that the current tax arrangement will be benefited from simplifying the administrative arrangements of the current FBT exemption for public benevolent Institutions (PBIs), health promotion charities (HPCs), public hospitals, non-profit hospitals and public ambulance services. Currently, there are two major methods for an organisation to ‘package’ salary for employees so that they can enjoy FBT exemption. The employees can either apply an employee benefit debit card from an issuing company, or they can submit receipts of

¹ Please refer to: <http://interactive.guim.co.uk/australia/2014/february/salaries/salaries-table/>; also, http://www.taxpayer.com.au/News/27988/SEEK%E2%80%99s_annual_Salary_Review_charts_industries_and_states_with_highest_and_lowest_salaries

² Productivity Commission 2010, *Contribution of the Not-for-Profit Sector*, Research Report, Canberra.

eligible expenses to a company who help to arrange these expenses into ‘pre-tax’ incomes. In both cases, significant administration cost is involved. As stated in the *Tax Discussion Paper*, the government acknowledges the importance of FBT exemption in assisting community organisations in talent recruitment and retention (p.125). Then, the government can simply transfer the system of FBT exemption into a simple tax concession on personal income for employee from PBIs. Hence, when a person is reported to be an employee of a PBI, the person will be granted an amount of income tax concession, capped at \$16,000, when lodging a tax return each year. This is a simpler and direct system, which can avoid the issue raised in the *Tax Discussion Paper*, in which employees with more than one employer can receive benefits with multiple caps (p.126).

Introducing a cap on meal and entertainment FBT exemption

In the 2015-16 Budget, the Government announced the introduction of a grossed up cap of \$5,000 on meal and entertainment FBT exemption. We support the introduction of a cap on meal and entertainment FBT exemption. The image of unlimited tax-free meals enjoyed by highly pay executives and specialists in the media report³ has severely undermined the creditability of the FBT exemption, which is a legitimate tool to assist workers in the industry. However, we believe that a change from no limit to a cap of \$5,000 is too drastic. Meal and entertainment FBT exemption carries the function of wage subsidy, a policy aim that is supported by the Government, therefore, a drastic change will inevitably undermine this function. We recommend the government to take a moderate step by changing the cap from the amount of \$5,000 to \$10,000, so that a balance between maintaining the integrity of our tax system and using meal and entertainment FBT exemption to support the industry can be maintained.

The definition of ‘Public Benevolent Institution’

Under the current system, only an organisation endorsed by ATO as PBI or PHC is entitled to FBT exemption. A PBI is a type of charity whose main purpose is to ‘work directly to relieve poverty, sickness, suffering or disability. It must provide its services directly to people in need of relief’. This criteria of ‘main purpose’ means that an organisation is allowed to carry out other activities as long as the ‘main purpose’ is still to work directly to relieve poverty, sickness, suffering or disability. We believe that this definition is developed out of a good intention as an organisation should have the freedom to develop other activities, especially organisational and business development, which will be beneficial to the relief work in the long term. However, in practice, the criteria of ‘main purpose’ is not defined in a clear and transparent way by ATO. Is it 50%, 60% or 70% of the man-hour should be spent in the direct provision of service to relieve poverty, sickness, suffering or disability? Or is it the number of clients who are deemed to be in the condition of poverty, sickness, suffering or disability? If it is the latter, does it give weighting to clients who require high level of care because of the seriousness of their disability or sickness? A number of unnecessary disputes

3 Anderson, Fleur, (2014, April 17), “Treasury targets tax-free salary perks”, *Australian Finance Review*, <http://www.afr.com/news/policy/tax/treasury-targets-taxfree-salary-perks-20140416-ix4dl>

between ATO and non-profit organisations in the past were the direct results of arbitrary decisions made by ATO in determining PBI status. Myles McGregor-Lowndes, Director of The Australian Centre for Philanthropy, said after the case of *The Hunger Project Australia v Commissioner of Taxation*, complaints about the arbitrary decisions by ATO in determining PBI status have been consistently made over the past 20 years by the sector, practitioners, academics and are amply evidenced in all the major sector inquiries⁴. We understand that the decision of determining PBI status has now been transferred to Australian Charities and Not-for-profits Commissions (ACNC). However, the definition of ‘main purpose’ continues to be vague according to the public information in ACNC’s website⁵. With the future of ACNC remains unclear as the current Government is still committed to abolish ACNC and move back some of the responsibilities to ATO, a clearer definition that provides guidelines for ATO (or ACNC, should it remain the body to determine PBI status) to make decisions consistently has become a matter of priority.

We, therefore, urge the government to use this opportunity of tax review to establish a more transparent system with clear yardsticks and quantitative indicators which allow the organisations to follow before submitting application. We believe this reform can minimise the time wasted by community organisations in disputing with ATO due to arbitrariness of the decision, hence, allow them to focus more on providing services and achieving better outcomes for their recipients.

Conclusion

We believe that a lower, simpler and fairer tax system is an ideal that is endorsed by the society, therefore, we welcome the Government’s initiative to open a dialogue with the public in how to achieve this. The component of tax’s concessions for the non-profit sector in the current tax system, has made a significant contribution in enabling this sector to help the people in the society who are most in need. Therefore, we believe that this part of the system should be preserved given the values it has created for our community. Having said that, it does not mean that the current arrangement is perfect. On the contrary, the benefit of this system can be maximise if the administrative arrangements can be simplified. In this submission, we have provided some ideas on reforming the current arrangement on FBT exemptions for the government to consider. In addition, we are also concerned with the negative impact of the arbitrary process in determining PBI status by ATO or ACNC. We urge the government to use the opportunity of tax reform to correct this deficiency in the system so that it can be a mechanism to assist, rather than obstruct the service delivery of community organisation. We wish the government can adopt our recommendations. We are happy to have a further discussion with the Tax White Paper Task Force to elaborate our viewpoints.

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4 Pro Bono Australia (2014, July 15), ‘No ATO Appeal on PBI Status’, *Pro Bono Australia*, <http://www.probonoaustralia.com.au/news/2014/07/no-ato-appeal-pbi-status#>

5 Please refer to:

http://www.acnc.gov.au/ACNC/Pblctns/Factsheets/FS_PBI/ACNC/FTS/Fact_PBI.aspx?hkey=6a34688c-da31-4dc8-9424-50aac699aa21