SUBMISSION BY THE

Housing Industry Association

To

The Treasury

In relation to the

Not-for-profit Sector Tax Concession Working Group

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1. INTRODUCTION.

1. HIA is the premier industry organisation in the home building sector of the Australian economy, and represents some 30,000 members throughout Australia. It employs a professional staff of some 270 persons and forms its policies through an internal democratic system of committees made up of its members serving in a voluntary capacity. HIA Members are the builders and contractors with whom consumers deal when contracting for domestic building projects.
2. HIA is a Not for Profit association incorporated as a company limited by guarantee. Under its Constitution HIA is an organisation whose purpose is the development of the industrial resources of Australia under para 50-40 8.2 of the ITAA. HIA had previously sponsored a couple of DGR programs (Colyton and Marsden) which were run through Youthbuild Ltd, a company owned by HIA and it currently also sponsors the HIA Charitable Foundation which is a DGR.

2. GENERAL COMMENTS.

3. HIA has serious concerns about much of the Government's current approach to reform of the NFP sector, and considers that regulation of charities and DGRs should be on a completely separate basis from the regulation of other NFPs. HIA also considers that NFPs which are companies should continue to be regulated by ASIC. HIA has previously made submissions on these issues.
4. HIA also has doubts whether a serious debate is possible about taxation of charities and NFPs when the Commonwealth has not yet announced its proposed legal definition of what is a 'charity'. As the boundary between what for tax purposes is a charity and what is a NFP may significantly change as a result of the enactment of such a definition, it is difficult to be sure that any comments made will remain valid in the light of the proposed new definition (which owing to the vagaries of politics may, when ultimately enacted, be neither what the Treasury nor the NFP sector wanted or expected).
5. HIA also considers that the comments in the DP under the heading "Rationales for Providing Tax Concessions" are a very top down, government's eye view of the sector, which sees the sector as merely providing services on behalf of, or supplementing those of government. Rather than assessing and justifying the appropriate incidence of tax on the community, the DP presumes that any money which the government does not collect in tax from the community is a "concession" which must be justified.
6. While labelling all tax not collected as a 'concession' is common in the literature, it should be remembered that this is merely economist's shorthand which tends to obscure the truth, that in a democracy tax represents private wealth conceded by the community to the government for expenditure on necessary or desirable public purposes. In principle, as well as in politics, the onus is on government to demonstrate that both the incidence and level of a tax is justified rather than on the taxpayer to prove that they should be entitled to retain some part of their wealth for private purposes. This is a fundamental truth that should not be lost sight of in the debate about practical issues.
7. Unfortunately, the DP's laudable aims of a 'fairer, simpler and more effective" tax regime for NFPs have been undermined by this tendency to regard NFPs as a surrogate arm of government being 'funded' by concessions, rather than altruistic organisations whose publicly beneficial activities are those on which tax moneys would otherwise have to be spent.
8. This leads to unfair, impractical and unsustainable proposals such as the suggestion

that existing tax concessions -

> "be replaced with direct government funding, to be administered by …… government portfolio agencies or the charities commission. All NFP organisations eligible for tax concessions should be able to apply to the relevant body for funding for specific projects or for assistance with the costs of recruiting specialist staff."

9. Such suggestions would turn existing independent community-based NFPs into another arm of executive government, subject to detailed financial control by departmental officers, and with their funding dependent on the whim of the Minister.
10. HIA also observes that resolving questions such as how to use tax concessions for "achieving the maximum possible social good" (Para 21 of the DP, and elsewhere) are essentially political questions as to what social goals are desirable, which really should be no part of discussions relating to fairer, simpler and more effective tax laws.
11. While there may be some limited consensus across the Australian community on what is socially good, there is certainly none on how such objectives rank in importance of achievement and where scarce financial resources should best be applied in their achievement. On one view the maximum possible social good is achieved by giving the citizen the maximum possible individual freedom; on another view it is achieved by obtaining the greatest possible happiness for the greatest possible number of citizens even if this is at the expense of individual freedom.
12. Reform of NFP tax laws cannot be expected to resolve such issues, and should not try. Rather it should focus on the justification for imposing tax on NFP entities, the appropriate level and incidence of such imposition, and the practical consequences of so doing.
13. On this view the three cited rationales for providing tax concessions to the NFP sector are better looked at, not as 'concessions', but in terms of the desirability of government refraining from taxing activities that are of benefit to the public generally rather than of private benefit to individuals. On that analysis, both government and NFPs are equal players in providing public benefits to the community, and one should not unnecessarily hamper the other.
14. Likewise, under the heading "Reasons for Limiting Tax Concessions", the three reasons cited are given from a perspective that is governmental rather than societal and assumes that NFPs should necessarily share the outlook and objectives of the government of the day. This is not necessarily appropriate.
15. It is particularly ironic for the DP to cite the late British Prime Minister William Ewert Gladstone as authority for its first proposition, that 'tax concessions for one group within the community inevitably put a greater tax burden on others". Gladstone notably failed in his bid in 1863 to extend income taxation to charities in the UK owing to almost universal and violent public opposition. Public rejection was so emphatic that no British or Australian Prime Minister in the subsequent 150 years has attempted to revisit the matter, but it appears that the authors of the DP are more courageous.
16. Gladstone's simplistic proposition is in fact illogical and misleading. It has never been a principle of taxation that everyone should pay the same amount, and if amounts differ on the basis of individual differences, that necessarily means the tax burden is greater on some than on others. The whole basis of progressive scales of income tax is that there is a greater tax burden on some than on others. That is not a reason to reject any particular scheme of taxation – only if the burden is unfair, rather than unequal, should society be concerned.
17. Nor is it the case that if one group pays less tax, another group must 'inevitably' pay

more. Alternatively, the government could instead collect less tax. But this is a purely hypothetical analysis, as taxation is not a 'zero – sum' game. While it is mathematically correct that the same level of tax revenue can be collected at a lower rate from many or a higher rate from few, that proposition is a traditional tax collector's nostrum which bears no relation to reality.

18. In Australia today, as in Britain in 1863, the overall level of taxes is set by political considerations rather than arbitrarily imposed by executive decree. The resultant tax scales are enshrined in law and tax is collected in accordance with law. In law and in practice, every government in Australia seeks to match its projected expenditure to the revenue it anticipates it will collect, rather than emulate the fiscal methods of Roman Emperors by fixing an absolute amount of tax to be collected that year and imposing proportionate tax liability over the whole taxpaying population accordingly.

19. In practice, tax authorities raise as much revenue as they legally can over the whole year while hoping that this matches or exceeds expenditure, and the Treasurer borrows if it does not. Tax authorities do not, as Gladstone's proposition implies, go back to taxpayers and require arbitrary supplementary tax payments if revenue is falling short, nor do they cease to collect tax when the annual revenue target has been reached.

20. In short, Gladstone's proposition was misleading when first advanced and does not reflect contemporary Australian law and practice. In itself, it provides no justification for the imposition of any particular level of tax on any particular group of taxpayers.

21. The second reason cited for limiting tax concessions is 'competitive neutrality'. This is an important economic efficiency consideration, but there are many commercial areas where the absence of competitive neutrality co-exists with marketplace choice.

22. For example, co-operatives compete with private companies in retailing. Industry superannuation funds such as CBUS compete with publicly listed insurance companies such as MLC. Private schools compete with Public schools, and Private hospitals compete with Public hospitals to the benefit of both. Subscriber-funded radio stations such as 2MBS-FM compete with commercial networks. And in the past, large Government-owned agencies such as the State Government Insurance Office and Trans Australia Airways competed with privately owned companies.

23. Although private sector opinions have differed as to the fairness of marketplace competition from entities that are publicly funded, or do not pay tax, or do not pay dividends to investors, few in private enterprise would opt for tax-exempt status if it were conditional on giving away all of their profits to the poor. The fact is that 'unfair' competition has long been prevalent in, and accepted by, society if it leads to beneficial outcomes.

24. Thus while competitive efficiency is a valid consideration in any rational economic policy, it does not necessarily outweigh other public benefits which may flow from 'competitive non-neutrality'. And Adam Smith notwithstanding, it is not generally considered appropriate to have all of society's functions performed on a private profit-making basis. Some functions are better suited to marketplace competition than others.

25. The final argument advanced for limiting tax concessions is that some NFP entities may not actually be providing public benefits as claimed. Again, this is not a logical reason to penalise those entities which are providing public benefits. The obvious remedy is to better identify what are public benefits and adopt an appropriate compliance regime.

26. But overwhelmingly, such concerns are misplaced. There is no evidence that any significant number of Australian NFPs are failing to generate public benefits from their

activities. To judge from media reports, complaints about lack of public benefit from NFPs seem to revolve mainly around groups claiming to be non-mainstream religions, or operating for the benefit of non-mainstream religions. This is a difficult and controversial area, but it is no justification for penalising all NFPs. HIA considers that the NFP sector, overall, has a very high public reputation, and far higher than many other sectors of society.

27. In addition, many NFP's will simply fail to exist if taxes are increased or introduced in this sector as they will barely make a surplus for beneficiaries or return a breakeven result. The non-existence of some of these NFPs has the potential to create serious implications and costs for society generally, far in excess of the revenue that would be generated through any taxes raised on those NFPs. Any plan to tax NFPs needs to take this into consideration.

28. In summary, HIA considers that there is no significant failure or deficiency of the existing system has been demonstrated, and while the possibility of reform should always be a consideration, there should be no presumption that any fundamental change of the sector is necessary or desirable. The current system might perhaps benefit from a tune-up in some areas, but it is not broken.

3. Income Tax Exemption And Refundable Franking Credits - Reform Options

3.1 HIA's Answers to Consultation questions

Q 1 What criteria should be used to determine whether an entity is entitled to an income tax exemption?

29. The current criteria are appropriate – that the entity should be prohibited from paying a dividend or making other distribution to members, have as its main purpose one that is of benefit to the community, and any surplus made by the entity must be directed towards carrying out the entity's purpose.

Q 2 Are the current categories of income tax exempt entity appropriate? If not, what entities should cease to be exempt or what additional entities should be exempt?

Q 3 Should additional special conditions apply to income tax exemptions? For example, should the public benefit test be extended to entities other than charities, or should exemption for some types of NFP be subject to different conditions than at present?

30. The list of publicly beneficial activities currently contained in s.50 onwards of the ITAA 1997 is generally appropriate, with one important exception. Entities registered under industrial laws such as trade unions and industrial associations of employers do not seem to meet the criteria of benefit to the community generally. Rather they are beneficial, if at all, to only particular sectors of the community, in as much as they are designed to improve the industrial bargaining capacity of particular economic interests by collectivisation. As such, their automatic exemption from income tax liability would not seem to be justified on community benefit grounds.

31. It appears that this exemption from income tax was provided, in the past, as part of a philosophy of encouragement of industrial collectivisation to make workable the system of national industrial conciliation and arbitration adopted by the Commonwealth in 1905, which still exists in modified form in the *Fair Work Act* 2009. So far as HIA is aware, this exemption has not been critically re-examined since 1905.

32. HIA considers that rather such industrial organisations having automatic exemption by virtue of registration under an industrial law, they should be required to demonstrate that they fall into one of the other categories in the Act (such as development of the industrial resources of Australia) or that their purpose is one otherwise beneficial to the

whole community. If necessary new and appropriate criteria could be developed, but there should be no presumption, as there is now, that industrial registration is a guarantee that the organisation is beneficial to the community as a whole.

Q 4 Does the tax system create particular impediments for large or complex NFPs?

Q 5 Should other types of NFPs also be able to claim a refund of franking credits?

Q 6 Should the ability of tax exempt charities and DGRs to receive refunds for franking credits be limited?

33. HIA, as a company with about 280 staff and an annual turnover in the region of $70m, carrying on a very varied range of service activities, considers that it is among the larger and more complex NFPs. As such, it has not found the tax system overly burdensome, although it does present certain problems.
34. One problem is that, as HIA does not pay income tax, it cannot take advantage of franked dividends from other companies. This limits its ability to invest in or engage in joint ventures with other companies, regardless of whether or not this activity is directly related to its objects.
35. There is no practical or theoretical reason why this limitation should exist - it is merely a result of the interaction of two unrelated tax laws. If it is agreed that an entity should not be required to pay income tax directly, it is difficult to see why it should be required to pay it indirectly. Regard should be had to the substance and not the form.
36. The practical effect of the current law is simply to unnecessarily complicate and add cost to the activities of non-charitable NFPs, in spite of the fact that the then Federal Government was intending to simplify tax law when it introduced franked dividends.
37. HIA supports the proposition that franking credits should be available as a cash payment from the ATO when the recipient is a NFP which does not pay income tax.
38. HIA does not support any restriction on the ability of charities and DGRs to claim franking credits. The financial ebbs and flows set out in Table B of the DP provide no logical justification for such a restriction. It is not a valid argument against a policy, merely that it has become popular, nor is it justifiable to withdraw a benefit because people begin to avail themselves of it.

Q 7 Should the ATO endorsement framework be extended to include NFP entities other than charities seeking tax exemption?

39. HIA notes that this question is unrelated to the possible extension of the ACNC regulatory framework to NFP entities that are not charities, and is purely a question of whether existing ATO responsibilities should be extended. However it is also unclear how this ATO function would interact with the ACNC, if NFPs were regulated by the ACNC. Without income tax exemption, many NFP entities would consider restructuring as for-profit companies regulated by ASIC rather than continue under ACNC.
40. In any case, HIA opposes requiring NFP entities other than charities to seek ATO endorsement of their tax status, either annually or on the basis of some other time period. Such a requirement would generate an enormous amount of extra work for both NFPs and especially the ATO without any justification having been demonstrated that the existing system of self-assessment for exemption is deficient.
41. Nor is there any reason to believe that society would be better off by increasing the amount of resources spent in ATO administrative costs and reducing the amount of resources spent on the NFP's publicly beneficial purposes.

42. It would be an enormous task for the ATO to annually read and assess hundreds of thousands of applications by NFPs for endorsement. Even if the requirement was limited to incorporated NFPs with annual turnover in excess of a significant amount, this would create significant additional ATO administrative costs without any reason to believe that sufficient additional tax could be recovered to defray these costs.

43. In fact it is the larger incorporated NFPs who are least likely to be wrongly self-assessing, as these entities have professional legal and accounting staff, and external solicitors and auditors, who are all dedicated to ensuring continuous compliance with existing law.

44. For example, like most other incorporated NFPs, HIA's Board of Directors receives annually a detailed report on HIA's tax status, including the views of its external auditors, and is required to consider that report and satisfy itself that HIA is entitled to claim the exemptions it does. The Board records its decision, and these records are retained for at least 7 years and are available should the ATO wish to audit HIA.

45. While it would not be difficult for NFPs to lodge these annual documents with the ATO, it seems very unlikely that the ATO would have the resources to critically examine them or any significant fraction of them, or even the capacity to store them if they were in paper format. The only result would be to generate a duplicate set of unassessed papers stored in the ATO.

46. In order to make such record collection useful, some standard application format would need to be developed by the ATO, allowing data analysis and comparisons and highlighting anomalies. Even so, it would probably be necessary to develop more objective and detailed criteria for exemption in the Act and Regulations if subjectivity and high case loads were to be avoided.

47. There is also the issue of delay and retrospectivity. How long would it take for the ATO to process applications for exemption, and would any assessment be retrospective? This could result in NFPs suddenly being confronted with a bill for back taxes, possibly several years in arrears. Given that most NFPs are not asset rich, it would be very difficult for them to meet this unexpected tax liability.

48. While no doubt the ATO would like to have more aggregated data about the NFP sector, there would not seem to be any justification for requiring every NFP to formally apply for exemption. Existing record keeping requirements and ATO audit powers would seem adequate to ensure compliance with the existing law. If the ATO wishes to make a case for changes to the law, it should do its own research to support that, rather than requiring the sector to provide it with the data.

49. The argument (DP, para 28) that such a change "would provide greater certainty for these organisations and prevent entities incorrectly self-assessing themselves" is ingenuous. NFPs who require certainty can under current law apply for a ruling (as HIA has done in the past) if they are uncertain. If something is really for the benefit of NFPs, they can be relied on to do it themselves and should not require compulsion.

50. The argument that "there is no clear rationale for requiring charities to apply for endorsement but not applying the same requirement to other NFP entities" is also misconceived. Charities were required to apply to the ATO for endorsement, not because they were income tax exempt, but because they were obtaining donations from the public and there were probity issues involved in this.

51. The creation of the ACNC has now separated the endorsement role into two parts. If anything, this is an argument for allowing charities registered by ACNC to self-assess for tax purposes, since ACNC will now be handling probity issues.

Q 8 Should the income tax exemptions for State, Territory and local government bodies be simplified and consolidated into the ITAA 1997? Which entities should be included?

Q.9 Should the threshold for income tax exemptions for taxable NFP clubs, associations and societies be increased? What would a suitable level be for an updated threshold?

52. HIA has no view on these questions

Q.10 Please outline any other suggestions you have to improve the fairness, simplicity and effectiveness of the income tax exemption regime, having regard to the terms of reference.

53. HIA observes that it is neither fair, simple nor effective for the Commonwealth to impose by media release on NFPs a retrospective tax whose incidence and content is unspecified and unascertainable. No NFP is in a position to say, at the end of 2012 (which is the end of the financial year for many NFPs), what their true financial position is, given that they may be subject to a retrospective tax on what the ATO at some future time considers was their 'income from unrelated business activities' in that year.

54. Such a distinction between 'related' and 'unrelated' business activities is wrong in principle, given that all proceeds of any business activities by charities and NFPs must be spent on objects which are by definition publicly beneficial. The source of the funding should not matter provided the destination of the funding is correct.

55. HIA strongly urges the Government to immediately drop this vague and unformulated (but retrospective and dangerous) proposal.

4. Deductible Gift Recipients

Q.11 Should all charities be DGRs? Should some entities that are charities (for example, those for the advancement of religion, charitable child care services, and primary and secondary education) be excluded?

Q 12 Based on your response to Q11, should charities endorsed as DGRs be allowed to use DGRs funds to provide religious services, charitable child care services, and primary and secondary education?

Q 13 Would DGR endorsement at the entity level with restrictions based on activity address the behavioural distortions in Australia's DGR framework? Could unintended consequences follow from this approach?

Q 14 If DGR status is extended to all endorsed charities, should this reform be implemented in stages (for example, over a period of years) in line with the PC's recommendations, or should it be implemented in some other way?

56. HIA considers that the existing arrangements should not be altered. Allowing all charities to be DGRs would simply create a facility for the transfer to the taxpayer of part of a burden currently met by private individuals for private purposes e.g. school and child care fees. It would also create a strong financial incentive for entrepreneurs to push the limits of the envelope of what is regarded as 'charitable'.

57. Proposals to put limits on to what extent gifts to charities would be deductable based on the nature of the charity or the purpose to which the gift would be put are likely to be difficult to monitor and open to abuse.

58. In neither case has any justification been provided for changing the existing arrangements, other than 'fairness and simplicity'. HIA considers that in this case, it is doubtful if the anticipated gains in fairness and simplicity would exceed the losses arising out of the moral hazard created thereby.

Q 15 Would a fixed tax offset deliver fairer outcomes? Would a fixed tax offset be more complex than the current system? Would a fixed tax offset be as effective as the current system in terms of recognising giving?

Q 16 Would having a two tiered tax offset encourage giving by higher income earners?

Q 17 What other strategies would encourage giving to DGRs, especially by high income earners?

Q 18 Should testamentary giving be encouraged through tax concessions and what mechanisms could be considered to address simplicity, integrity and effectiveness issues?

59. HIA considers that the existing arrangements should not be altered, as the additional complication involved would not seem to provide sufficient public benefit. In addition, some options (such as a hybrid system using private ancillary funds or recognition of testamentary bequests) are an open invitation to manipulation of the system for tax avoidance purposes.

60. So far as offsets are concerned, there is no unfairness involved if a donor on a higher marginal rate of tax obtains a larger tax deduction than a donor on a lower marginal tax rate – that is something inherent in a progressive tax scale. If, as is generally conceded, progressive tax scales are fair, then it is fair for the gifts of those who pay more tax to reduce tax by a correspondingly larger amount. The greater relief obtained is a necessary consequence of paying more tax in the first place, and the Canadian solution, of providing offsets which are less than the actual reduction, is complex and would be widely perceived as unfair. It would also be likely to reduce giving.

Q 19 Would a clearing house linked to the ACN Register be beneficial for the sector and public?

Q 20 Are there any barriers which could prohibit the wider adoption of workplace giving programs in Australia? Is there anything the Working Group could recommend to help increase workplace giving in Australia?

61. Centralising charitable donations through the ACNC and ATO, while procedurally efficient, is not a sensible suggestion, particularly when set-up costs of $25m (to be recovered from a levy on donors) are envisaged. People generally donate to charities because of their feelings towards that particular charity and its objects, and breaking that direct link would largely destroy the charitable impulse. And while a centralised charity list and donation website perhaps would be convenient, it is not in fact difficult to donate to charity in today's Australia if one is so minded.

62. HIA considers that there could be some value in a voluntary scheme involving using the ACNC Website charity search function to include an option to make direct donations online to a searched charity, using bank details provided to ACNC by that charity as part of its registration. It is difficult to see why that would have large setup costs and this may have significant cost advantages for small charities.

63. Presumably the rationale for channelling donations through the ATO is to enhance its ability to verify charitable deductions claimed through data matching. HIA considers that while it is sensible to rationalise laws and administrative procedures, any attempt to rationalise what is essentially an irrational activity on the part of donors themselves, by channelling funds through the ATO rather than directly to the charity concerned, is misconceived. The emotional component of giving must be preserved.

64. Many organisations, like HIA, already have their own charitable foundations to encourage workplace giving. This is an activity best left to the workplaces concerned, and to associate the ATO with voluntary (as opposed to compulsory) workplace giving is counter-intuitive.

Q 21 Do valuation requirements and costs restrict the donation of property? What could be done to improve the requirements?

Q 22 Is there a need to review and simplify the integrity rules?

Q 23 Are there additional barriers relevant to increasing charitable giving by corporations

and corporate foundations? Is there anything the Working Group could recommend to help increase charitable giving by corporations and corporate foundations?

65. HIA has no view on the valuation requirements or integrity rules, and as a NFP is restricted in making gifts to those which advance its objects. While HIA has in the past made substantial donations for projects that advance those objects, its capacity to do so is strictly limited. HIA is unaware of any barriers to increased charitable giving by corporations.

Q 24 Are the public fund requirements, currently administered by the ATO, either inadequate or unnecessarily onerous?

Q 25 Are there any possible unintended consequences from eliminating the public fund requirements for entities that have been registered by the ACNC?

66. HIA supports the removal of the current public fund requirements for charities registered with ACNC, and is not aware of possible unintended consequences. HIA considers that the public fund requirements will no longer be necessary given ACNC regulation.

Q 25 Should the threshold for deductible gifts be increased from $2 to $25 (or to some other amount)?

67. No. Many people cannot afford to make gifts of $25 but are willing to give smaller amounts. Removing the tax deductibility of these, even if often ultimately not claimed, would reduce the impetus to make the gift in the first place. Charities are not so well funded that they can afford to lose any donation, however small.

5. Fringe Benefits Tax Concessions

68. HIA appreciates the ability that access to limited FBT concessions give it to attract staff in competition with other employers. However, from HIA's perspective, salary sacrifices are not beneficial for most staff and thus only a small number of staff take it up. If all NFPs had greater access to FBT concessions could be a significant factor, particularly when seeking younger professional staff such as economists and lawyers who are in high demand but are attracted to the NFP sector for idealistic reasons. Greater access to FBT concessions could make all the difference in bridging the gap between commercial sector salaries and what a NFP can afford to pay.

Q 28 Assuming that the current two tiered concessions structure remains (see Part B), what criteria should determine an entity's eligibility to provide exempt benefits to its employees?

Q 29 Also assuming that the current two tiered concession structure remains (see Part B) , what criteria should determine an entity's eligibility to provide rebateable benefits to its employees? Should this be restricted to charities? Should it be extended to all NFP entities? Are there any entities currently entitled to the concessions that should not be eligible?

Q 30 Should there be a two tiered approach in relation to eligibility? For example, should all tax exempt entities be eligible for the rebate, but a more limited group be eligible for the exemption?

69. HIA considers that it is inequitable to distinguish between different types of charities and NFPs in relation to FBT, and supports FBT exemption for all NFPs.

Q 31 Should salary sacrificed meal entertainment and entertainment facility leasing benefits be brought within the existing caps on FBT concessions?

Q 32 Should the caps for FBT concessions be increased if meal entertainment and entertainment facility leasing benefits are brought within the caps? Should there be a separate cap for meal entertainment and entertainment facility leasing benefits? If so, what would be an appropriate

amount for such a cap?

Q 33 Are there any types of meal entertainment or entertainment facility leasing benefits that should remain exempt/rebate able if these items are otherwise subject to the relevant caps?

70. HIA does not offer salary sacrifice for the meal entertainment and entertainment facility. HIA supports including those items within the existing caps on FBT concessions, with an appropriate increase in the overall caps of (say) 20 per cent.

Q 34 Should there be a requirement on eligible employers to deny FBT concessions to employees that have claimed a concession from another employer? Would this impose an unacceptable compliance burden on those employers? Are there other ways of restricting access to multiple caps?

71. HIA considers that this would involve unjustifiable complication for an estimated revenue saving of $10m per annum. As it applies only to a limited class of employees of PBI's, public & NFP hospitals, ambulance services and charities that assist with controlling diseases in human beings, and who move between employers, it is inherently self-limiting.

Q 35 Should the rate for FBT rebates be re-aligned with the FBT tax rate? Is there any reason for not aligning the rates?

72. The 48% rebate was used to offset the FBT Payable rate of 48%. When this was reduced to 46.5% in 05/06 budget, there was no corresponding decline to the rebate, which was unfair. HIA supports realigning the rebate and tax rates.

Q 36 Should the limitation on tax exempt bodies in the minor benefits exemption be removed? Is there any reason why the limitation should not be removed?

73. HIA considers that it should be extended to all tax exempt bodies, whether rebateable or not. In most cases, minor benefits are provided to employees to thank staff for something they did/achieved without the organisation incurring additional FBT costs for paying for the benefit. This is often minor and infrequent anyway. There is no dollar amount mentioned in the DP but HIA considers that it is unlikely to be significant.

Q 37 Is the provision of FBT concessions to current eligible entities appropriate? Should the concessions be available to more NFP entities?

Q 38 Should FBT concessions (that is, the exemption and rebate) be phased out?

Q 39 Should FBT concessions be replaced with direct support for entities that benefit from the application of these concessions?

74. HIA supports the extension of FBT concessions to all NFP entities, but opposes its replacement by a system of direct grants for the reasons set out in Para 161 of the DP, that is, it would undermine the independence of NFP entities and leave them open to manipulation via Commonwealth budget decisions.

Q 40 Should FBT concessions be replaced with tax based support for entities that are eligible for example, by refundable tax offsets to employers, a direct tax offset to the employees or a tax free allowance for employees?

75. No. HIA considers that as a general democratic principle, governments should provide citizens with as little interference as possible, and should operate by exemption rather than on the basis of tax and subsidy.

76. Direct tax offsets or tax free allowances for employees are not appropriate as they will differ in value according to the personal circumstances of the employee, although this has nothing to do with the status of the employer which is what attracts the concession.

Q 41 Should FBT concessions be limited to non-remuneration benefits?

Q 42 If FBT concessions are to be phased out or if concessions were to be limited to non-remuneration benefits, which entity types should be eligible to receive support to replace these concessions?

77. No. HIA sees no justification for differentiating between non-remuneration and cash benefits. A benefit is a benefit, and distinguishing between types is an invitation to engage in artificial schemes of tax avoidance.

6. Goods And Services Tax Concessions

Q 43 Does the existing fundraising concession create uncertainty, or additional compliance burdens, for NFP entities that wish to engage in fundraising activities that fall outside of the scope of the concession?

Q 44 Would a principles-based definition of the types of fundraising activities that are input taxed reduce the compliance burden for entities that engage in fundraising?

78. Yes. HIA supports a principles-based definition of the type of fundraising activities that are input taxed.

Q 45 Should current GST concessions continue to apply for eligible NFP entities?

Q 46 Are there any other issues or concerns with the operation of the GST concessions in their current form?

Q 47 Would an opt-in arrangement result in a reduced compliance burden for charities that would otherwise need to apply apportionment rules to supplies made for nominal consideration?

Q 48 If an opt-in arrangement is favoured, would the preference be to treat the supplies as taxable or input taxed? Why?

Q 49 Is there an alternative way of reducing the compliance burden associated with apportionment for supplies made for nominal consideration?

79. HIA supports the current GST concessions.

7. Mutuality, Clubs And Societies

Q 50 Should the gaming, catering, entertainment and hospitality activities of NFP clubs and societies be subject to a concessional rate of tax, for income greater than a relatively high threshold, instead of being exempt?

Q 51 What would be a suitable threshold and rate of tax if such activities were to be subject to tax?

80. HIA has no opinion on these questions, other than to point out that gaming is already taxed by State Governments and additional tax can only reduce the contribution clubs and societies make to the community.

Q 52 Should the mutuality principle be extended to all NFP member-based organisations?

Q 53 Should the mutuality principle be legislated to provide that all income from dealings between entities and their members is assessable?

Q 54 Should a balancing adjustment be allowed for mutual clubs and societies to allow for mutual gains or mutual losses?

81. No. The common law should not be extended by legislation. This is simply an attempt to increase taxes on clubs, without any justification beyond the fact that many clubs gain significant untaxed income from their members. If clubs were taxed on all their income, including income from their members, many would go out of existence, to the detriment of the wider community.

    Q 55 Is existing law adequate to address concerns about exploitation of the mutuality principle for tax evasion? Should a specific anti-avoidance rule be introduced to allow more effective action to be taken to address such concerns?

82. Very few Australians would consider temporary (or reciprocal) membership of a licenced club to be a form of tax evasion, and such a change would be likely to be greatly resented by many people. No information is provided in the DP as to the amount of tax evaded annually by this means, and prohibiting such activity would significantly disrupt the everyday activities of a large section of the population that uses licenced clubs through temporary or reciprocal member arrangements. It presumably would also add to the administrative costs of clubs. No information is provided on the costs or revenue raising potential of this proposal, and HIA considers that more details would be needed to properly assess the merits of it.

    Q 56 Are there any areas in which greater streamlining of concessions could be achieved?

    Q 57 Do you have any ideas for reform of NFP sector tax concessions within the terms of reference that have not been considered in this discussion paper?

83. No.

Housing Industry Association Limited

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