MYER
FAMILY COMPANY

12 December 2012

NFP Sector Tax Concession Working Group Secretariat
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Sir/Madam,

Tax Concessions for the Not-for-profit Sector

We refer to the Not-for-profit Sector Tax Concession Working Group's November 2012 Discussion Paper on a "Fairer, simpler and more effective tax concessions for the not-for-profit sector". Please find attached The Myer Family Company's ("MFCo") submission relating to this Discussion Paper. MFCo is a multi-family office providing a range of services to families, philanthropic foundations and not-for-profits ("NFPs").

Since 2004 MFCo has established 70 Private Ancillary Funds ("PAFs") which grant considerable funds to NFPs across Australia. Our role working with these PAFs also includes grant research and administrative functions and working closely with NFPs to inform and implement strategic giving programs. We also provide investment advice to many NFPs throughout the country.

The Discussion Paper raised a considerable number of issues. Given the very limited time provided to respond, the key focus of our submission is:

- Refundable franking credits; and
- Mechanisms to encourage charitable giving.

If you would like to discuss this submission please contact me on (03) 9207 3065.

Yours faithfully,

Peter Winneke
Head of Philanthropic Services

NOT-FOR-PROFIT SECTOR TAX CONCESSION WORKING GROUP – *"FAIRER, SIMPLER & MORE EFFECTIVE TAX CONCESSIONS FOR THE NOT-FOR-PROFIT SECTOR"* - NOVEMBER 2012

SUBMISSION BY THE MYER FAMILY COMPANY – December 2012

Introduction
It is well documented that the not-for-profit sector makes a significant contribution to Australia's GDP and employment. (In particular refer to The Productivity Commission's 2010 Report, *Contribution of the Not-for-profit Sector.*) The NFP and philanthropic sectors are inextricably linked with one relying on the other as another source of revenue and in some cases further assistance in programmatic design and implementation.

1. Refundable Franking Credits
We are concerned with the suggestion in paragraph 25 of the Discussion Paper that the ability of income tax exempt entities to receive refunds for franking credits may possibly be limited. The tax principles of fairness, by reducing double taxation of Australian dividend income, in existence since the introduction of dividend imputation in 1987 are still relevant today. The introduction of franking credits ensured that the effective tax rate on dividends, after taking into account the tax paid by the company, is equal to the marginal tax rate of the individual, or for taxpayers with no income tax liability, a cash refund is received.

Until 2000 this principle was not applied equitably i.e. there was no refund of surplus franking credits. Thus a tax payer received a benefit whilst a non tax payer, or low tax payer did not. In 2000 this inequity was corrected.

We cannot see the justification for income tax exempt entities, in particular, to lose access to franking credit refunds. The logical conclusion to this idea is that superannuation funds and those individuals on low incomes would also lose the benefit of the refund of surplus franking credits. We are sure that this is not in fact the intention of the government so why then should it apply to the NFP and philanthropic sectors?

Whilst the need for services from NFP's continually rises in the community, their funding streams are being reduced. The latest available Australian Taxation Office ('ATO') Giving Statistics for the last two years (2009/10 and 2008/09) both showed significant drops in tax deductible giving by individual tax payers of 6.1% and 10.8% respectively. Corporate funding to the community traditionally reduces in difficult economic times, and fiscally constrained governments are reducing funding to many community services.

Discontinuing, or limiting the imputation regime could significantly reduce the attractiveness of investors, including income tax exempt investors, to invest in Australian companies. Without dividend imputation investment in overseas companies becomes relatively more attractive.

The loss of franking credit income would not only be inequitable (why should NFP entities be singled out for loss of franking credits?), it would be a bitter blow to community organisations at a particularly difficult time. The purpose of charitable trusts is to assist community organisations build capacity and fund programs. The loss of franking credit income to charitable trusts would have a further significant adverse impact on the income streams of community organisations.

The significant adverse impact on an income tax exempt NFP due to the loss of franking credit refunds is indicated below (assumes all shares 100% franked):

% of Corpus in Australian Equities	% Decrease in Income
100%	42.8%
50%	21.4%

In relation to Table B at paragraph 24, it is apparent that in the absence of the very large growth in refunds in FY2008, the growth over the five years has approximated the growth in government income. The large jump in refunds in FY2008 is almost certainly due to share buy backs which include a large component of fully franked dividend. The use of these buy backs by large listed corporations has almost entirely ceased when compared with five years ago.

2. Mechanisms to Encourage Charitable Giving

2.1 Recent Reforms

The last decade has seen significant reforms introduced to encourage charitable giving in Australia. These include:

- The introduction of Prescribed Private Funds (now Private Ancillary Funds) in 2001;
- Five year averaging of tax deductible donations;
- Reforms to simplify workplace giving;
- The introduction of the Cultural Gifts Program;
- Tax deductibility for property valued at more than $5,000;
- Conservation covenants;
- Deductions for fundraising dinners and similar events;
- Tax deductibility for certain educational scholarships; and
- Tax deductibility for gifts of certain gifted shares of publicly listed companies.

Given the significant reforms above, our view is that little further structural reform is required to grow giving in this country. We now need to build a culture of giving, which does not exist in Australia (refer to section 2.5).

2.2 Tax Offset Mechanism/Hybrid System for PAFs

Given the existing low levels of giving in Australia (see section 2.5) we must be careful with any reform which may disincentivise giving. In relation to “option 2.4” and “option 2.5” in the Discussion Paper and implementing a tax offset mechanism for gifts and hybrid system for PAFs, we find it curious that charitable gifts are being singled out. It would be inequitable to treat charitable gifts less favourably than other tax deductible payments. If such an offset mechanism were to be introduced, on an equitable basis shouldn't it apply to all other forms of deductions? Would this be desirable?

Whilst we are strong supporters of PAFs, and believe the introduction of PAFs has had the greatest positive impact on the growth of the philanthropic sector in this country, in relation to the hybrid system for PAFs, we don't understand the logic of why contributions to PAFs would be treated differently to other deductions.

2.3 Tax Deductibility of Bequests

Consideration should be given to allowing bequests to be tax deductible. This amendment would remove anomalies between the tax deductibility on *inter vivos* gifts and the treatment of testamentary bequests under the current law. There is little rationale for the denial of tax deductibility for bequests. It is desirable to simplify the law by removing the artificial distinction made between *inter vivos* gifts and testamentary gifts for the purpose of income tax deductibility. Paragraph 103 of the Discussion Paper suggests repeals would be required relating to capital gains tax exemptions, however, this is not a strong reason to dismiss tax deductibility of bequests.

2.4 Clearing House for Donations to DGRs

We agree with the Working Group's idea for a clearing house for donations to DGRs linked to the ACNC's charities' register. As discussed below, giving levels in Australia are low. Such a clearing house would provide a mechanism to simplify informed giving options for potential donors, leading to increased giving levels. Ideally it would include an option to "add to basket", once a donor decision had been made. Further giving options could then be explored. Once all giving decisions had been concluded, the donor could click on "go to check out" and pay for all donations via one transaction.

2.5 National Giving Campaign

As discussed above, over the last decade many positive reforms have been introduced to assist giving levels. We now need to build a culture of giving, which does not exist in Australia. Many believe Australians to be generous. Yet we know that analysis from the ATO relating to the 2009/10 tax returns (the latest available) indicates that:

- on average, Australians give only 0.32% of their income to charities;
- of the 12.4 million individual tax returns lodged, 8 million (65%) did not claim a deduction for a gift to charity; and
- of the 7,045 Australians who earned over $1 million, 38% did not claim a deduction for a gift to charity.

There are many doing a great deal for the community, including the significant number of Australians who volunteer (Volunteering Australia tell us that 36% of Australians volunteer on a regular basis, which is high in OECD terms). However, from the above analysis it is clear that generally it is a myth that Australians are financially generous.

Any changes to the existing tax rules relating to giving need to be carefully considered to ensure that they don't have an adverse impact on giving levels, which are already low.

Our view is that the implementation of a National Giving Campaign, to celebrate our giving and inspire others into action, is required to encourage charitable giving. At the Philanthropy Australia Conference in September 2012 Peter Winneke outlined detail on a National Giving Campaign, and it is summarised at Appendix 1.

APPENDIX 1

“National Giving Campaign”
(Peter Winneke paper delivered at Philanthropy Australia Conference, September 2012)

- Setting a benchmark for giving. Most things don’t get done unless they are measured (suggest 1% of income would be a good start);
- Encouraging more families to consider the adverse impact of leaving significant capital or income streams to children;
- Advising families that a family foundation is a brilliant educational tool for children in relation to responsibility of wealth, community engagement and investment management;
- Encouraging more existing high net wealth donors to talk openly about their work to inspire others (e.g. 30 families in each state);
- Introducing national giving Awards, to celebrate our giving;
- Introducing the Giving Pledge (“GP”) in Australia. In the USA the GP, established by Bill Gates & Warren Buffett, encourages billionaires to pledge to give the majority of their wealth to charitable causes or philanthropy, in their lifetime or upon death. We are working to introduce the GP here, targeting families with wealth of $50m and above;
- Publishing a list of the “Top 50” philanthropic gifts in Australia’s history. This will highlight the amazing institutions and projects that have been seed funded by the philanthropic dollar and inspire others to take action (the Myer Family Company Philanthropic Services team is researching such a list);
- Introducing an education campaign for financial advisers on different giving options, including giving circles, community foundation sub-funds, PAFs, Public Ancillary Funds and Private Charitable Trusts;
- Boosting the resources of Philanthropy Australia to grow the profile of the philanthropic sector (this could occur if it was endorsed by the ATO as a deductible gift recipient); and
- Community organisations better selling of their stories. They need to implement strong programs, measure the outcomes and then publicise the successful case studies.