

CONSULTATION QUESTIONS

CHAPTER 1 — INCOME TAX EXEMPTION AND REFUNDABLE

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

A. The current criterion is appropriate.

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?

A. As the current categories include entities that exist for purposes that are beneficial to the community they are appropriate to define an entity as income tax exempt.

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?

A. It should be the passing or failure of the test of public benefit that determines the classification as tax exempt and as a result it is difficult to see how different tests for different entities would be equitable. If differing conditions are adopted, they should apply prospectively for new entities.

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

A. No. Tax exemption allows the consideration of value added transactions without the burden of considering tax implications.

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

A. Yes. To be consistent with the rationale where tax paid is distributed to the entity receiving the dividend.

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

A. No. Investment strategies tend to favour franked dividend strategies which are annually converted to cash to support the provision of activities that are beneficial to the community (provided they satisfy the tests for tax exemption).

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

A. Yes but the processes should be simple, clear and timely

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?

A. The exemptions should be consolidated into a national framework to increase consistency and reduce uncertainty between all levels of government. All entities should be included but there needs to be an analysis of the consequences in order to reduce the impact of the national consolidation of the exemptions.

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?

A. Yes. There is an argument that the tax threshold applicable to resident individuals should apply to taxable NFP's. As a result, \$18,200 would be an appropriate threshold.

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.

A. Appropriate classification of NFP's in the first instance will provide the clarity and certainty for entities' entering the system. Any amendment to the existing 'rules' should grandfather existing organisations to ensure certainty in the sector.

CHAPTER 2 — DEDUCTIBLE GIFT RECIPIENTS

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?

A. No. Organisations that provide a private benefit such as religion, education and child care should be excluded from DGR status.

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?

A. No. Organisations that provide a private benefit such as religion, education and child care should be excluded from DGR status.

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?

A. Activity level restrictions would address market distortions in the cost of supply of like activities conducted under a DGR / non DGR entity but would be counter productive to the generation of income for the DGR and subsequent erosion of the ability to provide community benefit. Unintended consequences are potentially many and varied.

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?

A. It would be preferable to stage an implementation over a minimum of two years in order to learn from the implementation and the existence of any consequences that are required to be mitigated prior to the full rollout.

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?

A. A fixed tax offset contradicts the current (regressive) tax system and, by Treasury's own analysis, would result in less income being received by DGR's and hence lower service level provision. It would be more complex and less effective than the current system.

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

A. No as they currently receive an offset based on the (usually) higher marginal tax rates. The paper indicates that a multiple tax offset could be effective (e.g. Canada) but admits that the DGR would have to 'elicit a higher level of average donations' which is an untried change in strategy for DGR fundraising programs.

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

A. Maintain the current tax offset system where a donor receives a tax offset at their marginal rate of tax. Incentives may include an R&D type offset where a deduction can be claimed at an accelerated rate.

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

A. No. A system that allows the enjoyment of the gift after including it in the will and prior to death will provide considerable integrity issues as well as valuation concerns when the value increases / decreases prior to death.

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

A. Yes. A central, searchable register of charities would make the act of donating to a preferred charity simple and effective. However, larger charities already have systems in place and the imposition of charges to be included on the register would be unacceptable to those with existing systems.

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?

A. Workplace giving is not part of the Australian psyche. The current system is too fragmented with only the top charities getting support due to their size, reputation, awareness and advertising budget but a searchable national register may assist in creating awareness of what charities exist and their reason for existence. Companies and organisations should be encouraged to support a particular cause or charity (maybe with charities that 'strike a chord' with the company's own objectives) which would also provide focus for volunteering within the workplace.

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

A. Yes as the process is convoluted and costly. It is, however necessary as it is unclear how this could be simplified given that the nature of the gift is not cash, has varying levels of utility to different people and should have an amount ascribed to it that is fair and reasonable.

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

A. In any system that uses integrity as a control where personal gain can be obtained by manipulating the system, that system is fraught with self interest. As a result, the rules need to be clear and limit the use of judgement in determining values.

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?

A. Generally the interaction between a charity and corporations and corporate foundations is quite good. A knowledgeable charity knows how to interact with a foundation and will target foundations that have a giving philosophy that aligns with the charity. In terms of corporations any volunteer program could offer a deduction to the company for the value of the wages paid on volunteer days as an incentive to increase participation.

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

A. The requirements in place are appropriate in the absence of an alternative and are not particularly onerous as they exist to ensure that funds are used for the purpose that they were given.

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

A. Yes, there is a risk that entities gradually move away from the purpose for which they were created. There needs to remain an affirmation that funds are expended according to the purpose for which DGR status has been granted. The ACNC should have the power to confirm / reconfirm that some form of public fund requirement remains.

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

A. Yes - \$2 is an incredibly low value that requires administrative effort to administer. Most people will give up to \$10 without requiring a receipt for the purposes of claiming a tax deduction but an increase to \$25 would have an adverse impact on, particularly smaller charities, to raise funds from public giving.

27. Outline any other suggestions you have to improve the fairness, simplicity and effectiveness of the DGR regime, having regard to the terms of reference.

A. Nil.

CHAPTER 3 — FRINGE BENEFITS TAX CONCESSIONS

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?

A. The existing criteria are appropriate in determining the eligibility for the provision of exempt benefits.

29. Also assuming that the current two-tiered concessions 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?

A. No response.

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?

A. A two tiered approach is appropriate as per the current sections s57A (exempt benefits) and s65J (rebateable benefits).

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

A. Given the caps have not been indexed for 12 years the value of these benefits is gradually eroding. These benefits form part of effective remuneration and should not be brought within the existing caps.

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?

A. Should the consultation indicate that meal and facility be brought within the caps an appropriate response would be to increase the caps by a minimum of the CPI from the time of introduction (1 April 2001). The creation of separate caps is not appropriate and leads to further administration costs.

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

A. In the case where meal and facility is brought within the caps (not recommended without an associated increase in the caps), in the interests of simplicity, fairness and equity all benefits should be subject to the relevant (increased) caps.

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?

A. In the case where an employee has multiple employers that can access FBT concessions it is appropriate that the concession can be claimed from both employers. This comment is based on the fact that the FBT concessions are a structural part of salary and both roles will be under priced to the market accordingly with the concession compensating that price.

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

A. The rates should be aligned.

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?

A. The limitation should be removed.

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

A. Yes, the provision of FBT concessions is appropriate and the availability of the concessions to the existing NFP structure is also appropriate and an extension to more NFP's is not recommended.

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

A. No as these have become entrenched parts of employment in the NFP sector as an offset to salaries that are typically less than market.

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

A. Direct support may be a potential offset if the FBT concessions were removed as the cost of employment would increase accordingly. Any support would need to be a permanent fixture of government funding and not just as a transition to absorbing employment costs at full market rates.

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?

A. Whilst these are creative options and would be seen as a more permanent solution to direct funding (that could be transitional despite assurances otherwise) and each are noted below.

- Refundable tax offset. No as it would not take into account an individual's effective use of packaging,
- Direct tax offset via a reduction in PAYG deductions. Possibly as it could be an effective mechanism and provide a tax treatment that is consistent with the PAYG system, and
- Tax free allowance. Better as it would be an effective way to measure the cost of FBT concessions without adding another layer of complexity on employment administration.

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

A. No – compliance is not an issue as salary packaging firms provide effective services for the administration of the current system.

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?

A. Not applicable – retain current breadth of concessions.

CHAPTER 4 — GOODS AND SERVICES TAX CONCESSIONS

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?

A. Yes. There is uncertainty of how the concessions operate, what they apply to and how to calculate the concessions (e.g. non-commercial supplies at < 75% of the cost).

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?

A. Yes, provided the guidelines are clear.

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

A. Yes.

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

A. Yes. Some are unclear as to application and calculation.

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?

A. Yes.

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

A. Input taxed. Simplified accounting and potential increase in funding as costs are typically less than the revenue.

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

A. None identified.

CHAPTER 5 — MUTUALITY, CLUBS AND SOCIETIES

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?

No observations.

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

No observations.

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

No observations.

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

No observations.

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

No observations.

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?

No observations.

CHAPTER 6 — NEXT STEPS

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

A. **No observations.**

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?

A. **No observations.**