

## **TCWG CONSULTATION PAPER – OPTIONS AND QUESTIONS**

### **Income Tax Exemption and Franking Credits**

#### ***Who should be eligible for exemption from income tax? (p.14)***

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

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?

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

#### **Response**

The criteria for the determination as to who should be eligible for the exemption from income tax should be based on clear and concise set of criteria that aligns with the provision of services that are not provided by the government in assisting socially disadvantaged people both in both Australia and those abroad.

#### ***Who should be eligible for refunds of franking credits? (p.15)***

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?

#### **Response**

The scope of entities that should be eligible for refunds of franking credits should be extended to organisations if they are already able to do to include companies limited by guarantee. This provision however should be limited to companies that have been set up to align with the services delivered by the parent organisation. We do not see any logic behind limiting franking credits. A charity may receive shares as part of a will that it elects to hold and not sell so why should they be limited in claiming back any franking credits that it may for example receive on such shares.

#### ***Extending the ATO endorsement framework (p.16)***

Q 7 Should the ATO endorsement framework be extended to include NFP entities other than charities seeking tax exemption? For example, NFP companies or trusts that have income from businesses, income from investments (for example, rent, interest and dividends) and capital gains.

## **Deductible Gift Recipients**

### ***Extending DGR status (p.23- 25)***

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 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?

### **Response**

Do not see the need to modify the existing framework that is in place for the provision of DGR status however should it be deemed by other that change needs to be introduced then new framework needs to be simple and applied in a consistent manner.

### ***Mechanisms to provide donors with a tax incentive (p.25-28)***

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? 4

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?

### **Response**

The presumption made around this point is that if we introduce a level playing field lower income earners will donate more. We have a concern about this logic as it is our opinion that lower income earners normally only have limited funds available to donate and the possibility of them being able to receive increased tax deductibility for their donations will result in them making higher donations is questionable. The current tiered tax system in place results in higher income being pushed into higher income tax brackets so in effect paying a higher level of overall percentage of tax on their income so why would we want to further disadvantage them by reducing the tax deductibility for donations. The consequence of such a change may result in higher income earners reducing their level of donations. The government needs to put into place policies around encouraging all Australians to donate and in particular those that have higher disposable incomes that make it easier for them to make donations.

An option that may be worth considering is enabling donors to make pre tax dollars so in effect being able to attain immediate financial benefit via the tax system from making donations.

### ***Creating a clearing house for donations to DGRs (p.29-30)***

Q 19 Would a clearing house linked to the ACNC 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?

### **Response**

We see no benefits in creating a centralised clearing house, DGR spend time an effort in acquiring and nurturing donors, without the need for then been required to make donations via a clearing house that caters for all DGR which could bring an element of complexity into the donation process for the donor.

Donations made to our organisations are simple and straight forward, they are not required to search a data base and make selections e.g. what charity they wish to donate to. The donation process integrates into our back office systems. The bottom line is that we need to continue to build relationships with our donors and not introduce a framework that introduces complexity and or effects those strong relationships we have developed with our donors.

### ***Simplify property donation rules and anti-avoidance rules (p.30)***

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?

## **Response**

The current framework that is in place work well for our organisation and have not caused any issues for donors that have donated property to the organisation.

### ***Eliminate public fund requirements for charities registered by the ACNC (p.31)***

Q 24 Are the public fund requirements, currently administered by the ATO, either inadequate or unnecessarily onerous? (a public fund is in part intended to ensure that moneys and property donated to the fund, which attract a tax concession, are used for the purpose for which the fund has been granted DGR status).

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

## **Response**

The focus of any proposed changes should be to reduce any red tape and simplify the compliance requirements.

### ***Increase the threshold for a deductible gift from \$2 to \$25 (p.31-32)***

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

## **Response**

We need to create a culture of giving and anything that could impact that culture such as increasing the threshold for a deductible gift should be outlawed.

### **Fringe Benefits Tax Concessions**

#### ***Should the list of entities eligible for the fringe benefits tax exemption or rebate be revised? (p.38)***

Q 28 Assuming that the current two tiered concessions structure remain , what criteria should determine an entity's eligibility to provide exempt benefits to its employees? 5

Q 29 Also assuming that the current two tiered concession structure remains, 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?

### **Response**

The premise that we start from is if the existing framework associated with Fringe Benefits is working well and meets the need of organisation that utilise salary packaging as a part of attracting staff why change it.

The use of FBT benefits that PBI such as our organisation utilize is to attempt to bridge the gap between what organisations is able to pay verses what is being paid in the commercial sector.

The current grossed amount of \$30,000 provided to PBI has not kept up with wage increases and we should be lobbying to have this amount increased.

If the government was to remove this benefit those organisations that receive government funding would need to lobby the government to provide them with additional funding to offset the effect of the removal of this benefit. Organisation that receive limited government funding would need to look at finding ways such as reducing services to offset additional cost.

### ***Include meal entertainment and entertainment facility leasing benefits within the relevant caps (p.39-40)***

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/rebateable if these items are otherwise subject to the relevant caps?

### **Response**

The use of meal entertainment and entertainment facilities are another means that organisations use to attract staff and to once again attempt to bridge the gap between what the organisations is able to pay verses what is being paid in the commercial sector.

We would support putting a limit of say \$15,000 PA on the payment of such benefits.

Any framework that is to be put into place regarding what is and what is not an exempt benefit should be simple. Bring in a structure that exempt some benefits and not others that fall under this category will only introduce complexity and interpretation which is not the road that we want to go down.

***Require employment declarations to include information about FBT concessions to avoid employees from benefiting from multiple caps (p.40-41)***

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?

**Response**

If such a requirement was to be introduced once again it needs to be simple and it would be up to the employee to declare if they have claimed FBT concessions in the current FBT year from another employer. We agree with the proposal to limit the total concessional amount that an employee can receive per FBT year irrespective of the number of employers they have worked for.

***Align the rate for fringe benefits tax rebates with the fringe benefits tax rate of 46.5 per cent (p.41)***

Q 35 Should the rate for fringe benefits tax rebates align with the fringe benefits tax rate of 46.5 per cent (currently set at the previous top marginal rate of 48%).

**Response**

We need to look at the intent of the rebates and if necessary make the required changes to ensure that the intent of the rebate is in line with its original intent.

***Phase out capped FBT concessions and replace with alternative government support (p.42)***

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? 6

**Response**

We are unable to understand the logic for making any changes to the framework that is currently in place other than increasing the \$30,000 limit to take into consideration movements in wages. The current framework is simple and easy to work with so why make any changes.

***Phase out fringe benefits tax concession and replace with alternative tax-based support mechanisms for eligible not-for-profit entities (p.43-44)***

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?

**Response**

Once again we are of the opinion that the existing framework meets our requirements and is simple to administer so why change.

***Limit concessions to benefits that are incidental to employment (p.44)***

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?

**Response**

Once again we are of the opinion that the existing framework meets our requirements and is simple to administer so why change. The potential of having different limits for employees would mean that we move away from a level playing field which is not the way we want to go we want all staff to be treated in the same way.

**Goods and services tax concessions**

***Goods and services tax concession – adopting a principles-based approach to the fundraising concession (p.50)***

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?

**Response**

Current concession framework for GST associated with fundraising meets our needs.

***Provide an opt-in arrangement for GST treatment of non-commercial supplies (p.51)***

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, and why?

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

**Response**

The only shortcoming with existing GST framework is in identifying if a accommodation supply is GST based on the criteria that the supply is less than 75% of the GST inclusive market value of the service. It can be difficult determining the market value of a supply when there is no other organisation providing identical service.