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

By email: NFPReform@treasury.gov.au

Dear Sir/ Madam

Subject: Not-for-profit sector tax concession working group

CPA Australia welcomes the opportunity to comment on the Discussion Paper - Not-for-profit sector tax concession working group. CPA Australia is one of the world's largest accounting bodies and represents the diverse interests of more than 139,000 members in finance, accounting and business in 114 countries throughout the world. Our vision is to make CPA Australia the global professional accountancy designation for strategic business leaders. We make this submission on behalf of our members and in the broader public interest.

CPA Australia's involvement and interest in the charities and not-for-profit sector stems from our public interest remit and the significant role our membership plays in this sector. Our members provide valuable services, both paid and pro-bono, to the charities and not-for-profits sector both as public practitioners and through direct involvement in the governance and management of charitable and not-for-profit entities.

Please find our submission enclosed, and if you have any queries please do not hesitate to contact me on 03 9606 9701 or paul.drum@cpaaustralia.com.au

Yours faithfully

A handwritten signature in black ink that reads 'Paul Drum'.

Paul Drum FCPA
Head of Business and Investment Policy

CPA Australia NFP submission

Chapter 1 Income Tax Concessions & Refund of Franking Credits

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

The criteria should be linked to the resulting amended definition of a charity, as discussed and researched by Treasury through their consultation paper "A Definition of Charity" in October 2011.

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?

We consider the current categories are appropriate. We do not have any suggestions of additional types of entities that 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?

Every income tax exempt entity should have to satisfy the same conditions, either satisfying the criteria directly or indirectly. Again the conditions should be linked to requirements for registration of a charity under the ACNC. For example, an organisation working to relieve poverty has a direct public benefit, however, one might not see the direct benefit of an employer association, but if it is active in the community and has a majority of members that do work to relieve poverty one could argue that they satisfy the public benefit test. If, on the other hand, they don't do anything to focus on any public benefit then they shouldn't be eligible for a tax concession purely because they are an employer association.

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

The overall complexity of the tax system creates inefficiencies. The impediments are weighted towards the smaller/medium NFPs, in particular in remote areas.

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

It is not clear to us what the benefit of not enabling NFPs to claim franking credits would be. For example, if NFPs are unable to claim imputation credits the outcome is likely to be as follows:

1. NFPs will seek to invest elsewhere
2. Other investors will replace them, and claim the franking credits anyway
3. Any revenue shortfall that results the alternative investments the NFP may make may result in the NFPs seeking additional government contributions to enable them to run their programs.

Accordingly we believe NFPs should be able to access franking credits.

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

For the same reasons commented on in Q5, no.

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

Yes, as this provides for more certainty for the entity as well as greater fairness and transparency. This should be linked to the registration requirements of the ACNC, therefore, being extended in line with the requirement to register with ACNC, which we believe will be required once the initial activity generated by a focus on charities has reduced.

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?

Yes they should be simplified and consolidated. The entities should be considered for inclusion along the same guidelines as for all other entities, i.e. if the public benefit test is extended as discussed in Q3 this should also apply to government bodies.

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?

We believe it should be increased to \$2,000, but as a tax free threshold with the tax rate on all income above the threshold set at 30%. Thus even if the NFP exceeds the threshold, they will be entitled to a tax free portion.

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.

Overall it needs further simplification, especially for small to medium sized entities.

Chapter 2 Deductible Gift Recipients

General Comment

We support the Productivity Commission's Report in 2010 that suggested that all endorsed charities should also be able to gain DGR status. This is because the charity's endorsement recognises that they are providing a public benefit, for which they raise their income. If each charity were also a DGR they would have a greater ability to attract funds and on the other side donors could make a wider choice of whom to support with those funds. By moving the decision of whom to donate to away from the regulator to the individual a fairer system would result.

Overlapping categories of entity type – paragraphs 54 to 59

This issue should be addressed for all organisations, be they Indigenous or otherwise. Paragraph 59, suggests a solution to have a new category for Indigenous organisations that carry out activities across multiple DGR categories – this should be allowed for all entities. One way of achieving this is to give all charities DGR status as discussed above.

Mechanism for encouraging charitable giving – paragraphs 63 to 64

Whilst the differences between the benefit received by higher and low income earners, as discussed in paragraph 63 is true, changing to a tax rebate system means that the charity is likely to attract less in donations, due to the fact that neither the charity or the individual would be receiving the full tax benefit currently achieved.

Further, the suggestions made in the paper to provide a tax offset and thus provide a greater incentive to lower income earners, would provide a lower incentive for higher income earners. This has the effect of attempting to encourage those that can't so easily afford to donate, whilst reducing the incentive for those that can. As noted in paragraph 91 this is likely to achieve an overall decline in donations, which would not be welcome.

Issues with expanding DGR status to all charities – paragraphs 77

We would like to have seen some calculation behind the suggestion of an estimated fiscal cost of \$1 billion per annum for extending DGR status to all charities, as we believe this is likely to be overstated and the suggestion could distort the view of the benefits to be gained from such a move. The ability for the donor to choose where their donation is directed is likely to redirect some of the donations made but a \$1 billion cost, would mean there is also an expectation that the overall level of donations will more than double. Even taking into account donations currently made to charities who are not DGRs we do not believe that changing the status of these charities would have such a large effect. (A cost of \$1 billion in lost tax, represents an increase of \$2.1 billion in donations, based on all donations attracting a full 46.5% tax benefit, more than double the current level, refer paragraph 36).

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?

All charities should be allowed DGR status and allowed to provide a tax deductible receipt for true donations towards their charitable purpose. If any charity, including the examples given here, charge specific fees for services provided then those fees should not be eligible to a deduction for tax purposes, as these types of payment are reciprocal payments for services received and not by definition gifts.

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?

Yes, as long as these services are provided in furtherance of the public benefit they provide and not on a fee for service basis. For example, a school educating poverty stricken children should be allowed to seek donations to help support the services they provide.

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?

Yes, it would help address some of the behavioural distortions. As mentioned in paragraph 75, the remaining issue, if endorsement was at entity level, would be that of private benefits, however, these could easily be covered by clear guidelines.

The main reason behind our argument here, is that if an entity is eligible under the guidelines to be a charity, due to the majority of its work being of a charitable nature, then there would seem to be no reason to restrict its ability to attract tax deductible gifts, except for those services that are of a private nature or are not in furtherance of the charitable purpose.

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?

We suggest that a staged approach would be extremely hard to implement and would disadvantage those left out of the initial round of the implementation phase.

If the process of becoming a DGR was extended to all charities, but that charities would still need to apply for the status then that would in affect filter the process whilst charities made their applications.

Q 15 Would a fixed tax offset deliver fairer outcomes?

For individuals on a lower income tax rate it is plausible that a fixed rate tax offset would deliver a fairer outcome, but not overall. Providing a fixed offset may increase the incentive for those less able to donate, but it will reduce the incentive for those with a higher level of disposable income. Therefore, this is likely to reduce the overall giving and reduce the ability for DGRs to generate much needed income from donations.

Thus, in looking at all parties concerned, we consider that a fixed tax offset would not provide a fairer outcome.

Would a fixed tax offset be more complex than the current system?

Yes.

Would a fixed tax offset be as effective as the current system in terms of recognising giving?

No, because those more likely to be able to afford to give receive less recognition in terms of the tax offset – see paragraph 91, the level of giving in general is likely to reduce, by a suggested 5%.

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

No, because it reduces the overall tax deduction that they would receive. Even if the tax offset rates were set at the highest and lowest income tax brackets, the overall amount of the tax benefit of the donation would decrease.

Further, the hybrid system with the development of Private Ancillary Funds brings in higher complexity, which will detract from the desire to donate and would redirect some of the donations into the cost of administering such a system, so again the DGRs would receive less.

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

Allowing all charities to register as DGRs would allow for greater choice of donation options by high income earners. This may have the effect of encouraging further donations from those currently not able to receive a tax deduction from a donation to their favourite charity.

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

Yes, but as is currently the law, per paragraph 103, by the removal of the CGT from testamentary gifts of property to DGRs and not by following the Mitchell Review as described in paragraph 99.

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

The questions this raises would include:

- who is going to pay the \$25 million capital cost, noted in paragraphs 109?
- what about ongoing administration costs, whilst financial institutions maybe encouraged to help with the credit card costs, this is only one part of the administration cost of such a system?

Assuming these costs will be passed onto the DGRs, then membership of the clearing house would have to be voluntary to protect those DGRs who can't afford such costs.

An alternative or maybe alongside this suggestion, we'd suggest a register containing website links to charities, to direct people to the individual website of registered bodies, rather than the clearing house.

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?

Yes, one barrier identified is that payroll administration costs can be high. The clearing house idea would help here, assuming it could cope with a single payer being the employer to numerous charities. The Working Group could look at easing the per-transaction administration cost from the point of view of the employee. For example, making the employee payslip process a valid proof for a tax deduction or in a similar way to union fees (through to E-Tax), employee giving - where to a relevant registered ACNC organisation - could be flowed through as requirements to the payment summaries and summarised at that point.

Simplify property donation rules and anti-avoidance rules

Q 21 Do valuation requirements and costs restrict the donation of property?

No comment.

What could be done to improve the requirements?

Valuation should be able to be done by a wider register of approved valuers, to provide a greater ability to gain competition in the cost of the valuation.

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

No comment.

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?

No comment.

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

No.

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

No.

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

Additionally, increased flexibility could be achieved through exemption from individual receipt requirements for accumulative givings within a financial year. In other words, as long as the accumulated giving was over the \$5 in the year and can be proved through a payslip deduction record (or credit card statement), then an actual receipt is not necessary. Similarly, larger amounts could be subject to an end of financial year confirmation from the charity when requested.

General

Q 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.

No comment.

Chapter 3 Fringe Benefits Tax Concessions

General Comment

There are various references within the paper that seem to suggest an underlying belief that a tax concession provided to an individual due to their work for an income tax exempt organisation or PBI, is unlikely to support the sector in a meaningful way. This is supported in the discussion on page 10 on Reasons for Limiting Tax Concessions by a note that tax concessions 'may affect competitive neutrality' when considering competition for staff. We would suggest that this view ignores the direct benefit gained by the NFP from the gains the individual makes, which in turn allows the sector to compete. That is that a tax concession assists to fill the gap between the salary levels NFPs have the ability to afford compared to those offered by for-profit entities, when comparing similar jobs. Though this point is referred to in paragraph 128, overall the options cited in the paper do not seem to consider this further.

We believe that in fact the current tax concessions, considering they usually only go part way to fill the gaps between salary levels, do not significantly affect competitive neutrality - but do assist NFPs to compete on a nearer to level playing field.

Administrative burdens

We disagree with the assumptions commented on in paragraphs 141 & 142, in remote PBIs offering tax concessions we would suggest the offering and take up of FBT concessions are across all staff regardless of income level and there is no significant difference in the take up rates between staff on different pay scales.

Again, we note although mentioned briefly in the discussion paper - there is little depth relating to the extent to which the PBI / packaging benefits can help attract and retain staff in a competitive environment. The comparative salaries and benefits which the tax concessions allow are embedded in the ability for the NFP sector to attract and retain quality staff.

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?

Similar to the options explored above, the criteria here should also be linked to the public benefit test – as per the workings of the ACNC and other reforms. If the criteria is reached - tax concessions should apply. This should also apply to government entities that achieve the criteria, per Q8 above.

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?

All those eligible for income tax exemption, but not a FBT concession, should be eligible for a FBT rebate.

Should this be restricted to charities?

Charities should be allowed a full concession, see comments under Q28.

Should it be extended to all NFP entities? Are there any entities currently entitled to the concessions that should not be eligible?

No comment.

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?

Yes, those that achieve income tax exemption due to the indirect nature of their business, as discussed in Q3, should only be eligible for a rebate and not an exemption. All charities should be eligible for the full concession.

Include meal entertainment and entertainment facility leasing benefits within the relevant caps

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

No, this would result in a net reduction of available packaging benefits to many PBI entities and increase the difficulty they have in attracting qualified staff. The rules around the application and administration of these benefits could be tightened in other ways (e.g. – an audit would need to be able to draw a link to the expense related to the person or their immediate family). This would restrict some of the current misuse by people “gathering meal receipts from friends”.

Q 32 Should the caps for FBT concessions be increased if meal entertainment and entertainment facility leasing benefits are brought within the caps?

Yes, otherwise the effective reduction in net salary for staff within many PBI entities would make it extremely difficult for them to compete to retain staff.

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?

No there should not be a separate cap, the overall cap could be increased to a grossed up level of \$40,000, though we believe that this level should be tested against the average overall benefits currently being provided.

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?

Yes, those that are not easily attributable to a single individual, as discussed in paragraph 148.

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?

The concession could be provided on a pro-rata basis for the time within the FBT year in which the employee is substantively working with the entity. For example - a person starting in January would access 1/4 of the \$30,000 cap in the year.

However, there should be no restriction on access to multiple caps if working for more than one employer at a time. A restriction here would result in additional difficulty in attraction and retention of staff, should that staff member be employed by two employers. For example, if a member of staff works full time for one employer and chooses to work on a weekend for another, the employer who is unable to provide a concession would be disadvantaged in their ability to attract that member of staff, because they are more likely to be seeking the second employment from a non-concessional employer who could afford to pay more in salary.

Further, it would be unacceptable to place the burden of proof on the employer, to ensure multiple caps are not claimed. Administratively, this would be extremely difficult to manage.

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?

Yes, they should be aligned.

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?

Yes this should be removed, there is no reason for it to be there it is inequitable.

Phase out capped FBT concessions and replace with alternative government support.

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

Yes the provision of FBT concessions to current eligible entities is appropriate.

Per our answer to Q28 above, the concession should be extended based on the criteria used to register with the ACNC as a charity.

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

No, this would seriously affect the ability for entities eligible for the FBT concession to compete for and retain staff, especially in remote areas.

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

No. Direct support for entities is unlikely to filter out to all entities affected on the basis of staff employed at a given point in time, it would be less flexible than is currently the case and therefore likely to reduce the overall benefit for each of those organisations.

The concept of “direct support for entities” would suggest some type of direct funding provision, which is likely to place an added unacceptable compliance burden on these entities. Many entities are not supported directly by Government – and this may form a core part of their effectiveness. Replacement in this way could have serious negative unintended consequences.

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?

Broadly speaking - some form of concession around PAYG for the employees and/or employers could be a simpler and more effective way of supporting the NFP sector than the (long time evolved) FBT legislation.

In particular the rules around remote areas and exemptions thereof would need to be carefully worked through to ensure parity - or something very near it - was maintained. Worked through carefully, this could reduce administration (FBT returns and large, fee based out-sourced FBT management) for employers and employees. Any such arrangements would need to combine the benefits for employees - currently through reduced reportable incomes.

However, we would not support the option of a refundable tax offset to the employer, as this would add an unnecessary level of complexity and administration burden on the employer.

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

No, this would make it impossible for employers in the sector to compete for staff and likely result in contraction of staff and thus ability to provide the service levels currently achieved.

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?

All entities eligible to provide the FBT concessions to their staff.

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?

No comment.

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?

No comment.

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

We support the GST free concession for eligible NFPs in Subdivision 38-G.

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

See 47 below.

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 preferable alternative option for consideration would be to treat supplies made for nominal consideration as GST free.

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

See 47 above.

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

See 47 above.

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, this proposal is not supported.

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

The proposal is not supported.

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

This question is not clear as we understood mutuality to apply to all member based clubs.

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

No.

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

This is unclear and requires further discussion before a comment could be made one way or the other.

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?

We consider the current general anti-avoidance rule is sufficient and a specific rule is not required.

Chapter 6 – Next Steps

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

Not at this stage.

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?

No, not at this stage.