

20 December 2012

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**Submission to “Not For Profit Sector Tax Concession Working Group discussion paper for a fairer, simpler and more effective tax concessions for the not-for-profit-sector”**

The Institute of Public Accountants (IPA) is one of the three professional accounting bodies in Australia, representing over 24,000 accountants, business advisers, academics and students throughout Australia and internationally.

The IPA welcomes the opportunity to provide a submission on the abovementioned discussion paper prepared by The Tax Concession Working Group on the Governments behalf. The terms of reference for the review are broad and provide a significant opportunity for the Not-For-Profit (NFP) Sector Tax Concession Working Group (the Working Group) to consider the entire range of tax concessions provided to the sector by the Government with a view to identifying reform options that could improve their effectiveness in supporting the work of the sector. Recent reviews such as 2010 Productivity Commission report (PC) on the Contribution of the Not-for-profit Sector, the Australia’s Future Tax System Review (Henry Review) and the Tax Forum have already provided some input on better ways of delivering the current envelope of support provided through tax concessions.

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- Our submission will be limited to providing commentary on the Fringe Benefits Tax concessions provided to the NFP sector of the discussion paper. The review of the FBT tax concessions for the NFP sector provides an opportunity to reform the FBT tax regime more broadly across all employers. FBT has the highest compliance cost of any tax and there is considerable scope to reduce the compliance burden especially for small businesses including small NFP organizations. The fringe benefit valuation and apportionment methodologies impose unnecessary compliance costs especially for small employers. The perceived need to offer fringe benefits imposes considerable compliance burdens on eligible entities. This includes the requirement to organise and offer salary packaging and the recording and reporting requirements for fringe benefits. These costs might be met internally or through engaging an external provider. Take-up rates tend to be higher for more highly paid employees than for lower paid employees, due to the higher tax savings. FBT concessions allow some entities in the NFP sector to offer attractive remuneration benefits to employees. However, the FBT concessions are complex, impose significant compliance burdens and raise concerns about fairness. Inequality arises because there are inconsistencies related to who is eligible for the concessions and also because fringe benefits tend to be provided to employees with higher disposable incomes.

Some of the alternative funding mechanisms to replace the existing FBT concessions have the potential to eliminate a significant compliance burden, be more transparent, equitable and simpler to administer.

Our main comments in relation to FBT concessions are as follows:

- The complexity of the FBT system is exacerbated by the fact that the incidence of the taxation of fringe benefits falls on employers. In many overseas jurisdictions fringe benefits are taxed in the hands of employees. Taxing fringe benefits in the hands of employers requires a large number of supplementary rules to ensure fringe benefits are factored into various

means tests in the tax and transfer system. Whilst the review looks at NFP sector specifically, there is considerable scope to reform the legal incidence of FBT more broadly across all employers. Taxing fringe benefits at the employee level has the potential to deliver greater neutrality in the treatment of cash and non cash remuneration and at the same time reduce compliance costs for employers and employees.

- The Henry Review supports the transferring of the incidence of FBT to individual employees. Fringe benefits that can be readily be valued and assigned to a particular employee should be taxable in the employee's hands and reportable for transfer purposes. Other benefits that are incidental to an individual's employment or difficult to assign, should be taxable to the employer and be non-reportable for the employee for transfer payment purposes. This approach would provide a more neutral taxation outcome removing the need for the current grossing –up process and facilitate the consistent and equitable treatment of fringe benefits for means tested taxes and transfer payments.
- Salary packaging arrangements are often complicated by interactions with various other transfer payments provided by the Australian Government, such as family tax benefits and parenting payments. The PC noted that FBT concessions are sometimes used in ways that are not consistent with the initial policy intent.
- Taxing fringe benefits in the hands of employees would also alleviate the inequitable application of the top marginal tax rate to fringe benefits, regardless of the income of the recipient employee.

- Businesses that pay tax and/or NFPs that are not eligible for FBT concessions are at a competitive disadvantage. NFP tax concessions create an unlevel playing field which impacts competitive neutrality.
- Some of the existing FBT concessions are not providing support for activities of the sector in the way intended. In particular, the use of FBT exemptions for restaurant meals and the hire of entertainment facilities for private purposes by relatively high income professionals. The unlimited uses of these concessions are considered unlikely to be supporting the sector in a meaningful way. A range of NFP entities are exempt from paying tax on fringe benefits provided to employees, generally up to a monetary limit per employee or qualify for a FBT rebate up to a monetary limit per employee. The rules for calculating the caps exclude various benefits, including meal entertainment and entertainment facility leasing benefits. The concessions allow employees of eligible entities to have an unlimited amount of restaurant meals and hiring of entertainment facilities paid for from pre-tax income, thereby avoiding income tax on that portion of their incomes. Accordingly, employees of the relevant categories of eligible entities can receive unlimited amounts of these benefits from pre-tax income. The PC indicated, in their 2010 Report, that the only practical limitation on these benefits is the taxable income of the relevant employee. There is considerable anecdotal evidence to indicate that some relatively high income individuals receive significant benefits from the use of uncapped meal entertainment and entertainment facility leasing concessions. The PC, in its 2010 report, noted examples of high income professionals paying for restaurant meals and hire of wedding venues from pre-tax income under these concessions. The way that these concessions are being used would appear to offend principles of fairness and the value of these concessions could be better directed to achieve the community and altruistic purposes of the NFP sector generally. We therefore support the inclusion of meal entertainment and entertainment facility leasing benefits within the relevant caps. These benefits would continue to be

exempt from FBT or rebateable, but the value of benefits would need to fit within the relevant FBT caps.

- FBT is levied upon individual employers and the relevant concessional benefit caps apply per employee for each employer. This creates the possibility that employees with several employers could receive fringe benefits from several employers up to the relevant cap for each employer. For example, a doctor employed by 3 different NFP hospitals could receive a total grossed up benefit of \$51,000 without any FBT liability accruing for any of the hospitals. We therefore support the proposal to limit the availability of such concessions to avoid employees from benefiting from multiple caps. The approach that allows an employee to benefit from a proportion of the capped amount from each employer appeals most. For example, one-half of the cap could apply to each employer if a person obtains fringe benefits from two employers. This approach replicates the similar system that is already in place for taking account of tax-free thresholds under pay-as-you-go withholding schedules.
- On the basis that the incidence of FBT is transferred to employees, then alternative mechanism for funding NFP sector in lieu of FBT tax concessions will need to be considered. The refundable tax offset and direct offset alternatives proposed in the discussion paper are worthy of further consideration as they offer more transparent incentives for employment in the NFP sector. Both approaches have the potential to eliminate a significant compliance burden, be more transparent, equitable and simpler to administer.

The IPA welcomes the opportunity to discuss further any of the matters we have put forward in our submission. Please address all further enquires to myself ([tony.greco@publicaccountants.org.au](mailto:tony.greco@publicaccountants.org.au) or 0419 369 038).

Yours sincerely



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