Submission to

NOT-FOR-PROFIT SECTOR TAX CONCESSION WORKING GROUP

'Fairer, simpler and more effective tax concessions for the not-for-profit sector'

DECEMBER 2012

Introduction

ECH Inc., Eldercare Inc. and Resthaven Inc. are three of South Australia's largest and most experienced providers of residential and community aged care and housing options for older people. Our combined operations offer a comprehensive range of services and support to frail, older South Australians, including independent retirement living, Home and Community Care (HACC) services, community packaged care, Transition Care, health and well-being services, respite and residential aged care. In all, we employ over 4,000 staff and provide assistance to many thousands of residents and clients each year.

The availability of tax concessions to our sector is absolutely essential to our ability to provide much needed services to older South Australians and to attract and retain employees in what is already an increasingly difficult employment environment. We understand the government's desire to ensure that the concessions are as efficient and effective as possible but would naturally be very concerned about any measures that might jeopardise our capacity as service providers to fulfil our charitable mission.

We are not able to comment on all of the issues and questions raised in the Discussion Paper (the Paper) as many of them require responses from particular groups within the broader Not-for-Profit (NFP) sector. We have therefore focussed in this submission on those matters that are most relevant to the charitable and mission-based aged care and housing sector.

RATIONALES FOR PROVIDING TAX CONCESSIONS

As noted in the Paper, the work of the NFP sector generates positive 'spill over effects' and without incentives such as tax concessions, the overall activity in the sector may be sub-optimal.

Two other rationales are noted: the 'fiscal rationale' whereby the NFP sector saves the government from making outlays for similar activities; and the income tax exemption, principally because charities operate for the public benefit, not the private benefit of individuals.

The Paper then notes three reasons for potentially placing limits on tax concessions:

1. A tax system with fewer concessions tends to enable lower taxes to be levied on the larger number of entities;
2. Entities that benefit from tax concessions do not always do so on a level playing field; and
3. Some have questioned the nature and scope of the public benefit provided by some entities.

At least in terms of the NFP aged care sector, we do not see these reasons being applicable, except that we do concede there may be an argument for limiting some specific FBT benefits (see below).

The tax concessions available to the charitable aged care sector should not be considered in isolation as they need to be viewed in the much broader context of the ageing of the population and government funding and regulation of the sector.

While it is true that funding has increased in absolute terms over the past 15 years, relative to growth in supply and to costs, it has failed to keep pace. Various industry surveys have shown that while more providers have achieved an operating surplus in the past year, those results have been very modest and around 30% experienced operating losses.

The situation is expected to worsen over the coming year following reductions in government funding and planned savings measures. This is no time therefore to be contemplating any diminution of tax concessions to the sector.

INCOME TAX EXEMPTION AND FRANKING CREDITS

We see no reason to change the income tax exemption for our sector, or to limit the ability of tax exempt charities and DGRs to receive franking credits.

As to the question of fairness in relation to income tax exemption, we support the option of requiring all NFPs to apply for endorsement by the ATO to be exempt from income tax, as opposed to the current requirement that only applies to charities and income tax exempt funds.

DEDUCTIBLE GIFT RECIPIENTS (DGRs)

The creation of a clearing house for gifts to DGRs that is linked to the Australian Charities and Not-for-profits Register (ACN Register) may be an attractive prospect for government but it reflects a view of charities, evident throughout the NFP reform agenda, as being an arm of government requiring the same level of regulation. As well as receiving government funding however, our organisations operate services, conduct research, innovate and run pilot projects independently of funding. Aged care is also highly regulated already and we are opposed to any further compliance measures such as a central ATO/ACNC controlled clearing house.

A clearing house would introduce another government intervention into charities, and the costs of its establishment and ongoing operations are unlikely to be offset through other efficiencies or benefits. The Paper raises the prospect of credit card charges being eliminated through support from financial institutions and the potential for increases in workplace giving. We doubt these would eventuate and it is also doubtful that they would justify the ongoing operating costs of the clearing house. We are also not convinced there is public demand or need for a centralised, government controlled DGR register given the amount of information widely available on the internet.

In relation to public fund requirements, there should be no need for the current ATO checks once an entity is registered with the ACNC as a charity.

FRINGE BENEFITS TAX (FBT) CONCESSIONS

FBT concessions are highly important to our ability to provide services and to attract and retain staff at all levels of our organisations. Across the three organisations, the combined FBT saving is around $22 million and close to 3,000 employees avail themselves of FBT benefits. These figures are clearly very significant in terms of service capacity and being employers of choice.

Two very recent surveys of the aged care sector prepared for Maxxia Pty. Ltd.[1] demonstrate just how important FBT concessions are to employees and employers alike.

As noted by Aged and Community Services Australia:

Overall the findings reinforce the underlying core value of FBT concessions in attracting and retaining employees to the sector, the relative simplicity of administering the concessions and the potential consequences should significant change to the current concessions regime occur.

Some very significant results included:

- 76.5% of respondents were women;
- approximately 60% were aged 50 and over;
- the remuneration of 80% of respondents included salary packaging;
- 83% rated salary packaging as very important in influencing whether they remain employed in the NFP sector; and
- 82% rated the current FBT concessions as being more important or much more important to their household budget in the future.

As canvassed in the Paper, there are those who argue for replacing the FBT exemption with direct government grants. We are opposed to this idea as it has potentially high administrative costs and, as stated in the Paper, it would raise concerns about our autonomy and independence from government in what is already regarded as the most highly regulated sector.

Short-term reform options

We do support some changes to the way FBT concessions are structured and applied. Firstly, when the cap of $30,000 was introduced in April 2000 on the level of grossed-up benefit available to employees of FBT exempt, PBI charitable organisations, Average Weekly Earnings (AWE) were $633.90[2]. In May 2012, AWEs were $1058.70[3]; a 67% increase over 12 years. While Marginal Tax Rates have been adjusted over the years, there is still a case for increasing and indexing the FBT cap for the first time to reflect current wage levels and the ongoing wage disparity between NFPs and the private sector.

[1] http://www.agedcare.org.au/publications/general-pdfs-images/maxxia-employee-survey-results-aged-care.pdf and http://www.agedcare.org.au/publications/general-pdfs-images/maxxia-employer-survey-results-aged-care.pdf

[2] ABS series 6302.0
[3] ibid

The Paper asks three questions at page 40 in relation to meal entertainment and entertainment facility hire:

- Q 31 - whether salary sacrificed meal entertainment and entertainment facility benefits should be brought within the scope of the existing caps on FBT concessions;
- Q 32 - if so, should the FBT cap be increased and/or should there be separate caps; and what would be an appropriate cap for each entertainment benefit;
- Q 33 – are there types of entertainment benefits that should remain exempt/rebatable?

In response and as stated above, we believe the FBT cap should be increased in its own right, given the passage of time since its introduction. If the two entertainment benefits were to be brought within scope, the FBT cap should definitely be increased again so as not to diminish the level of benefit to the employee.

However, the two entertainment benefits are not currently capped. We understand the concern this might create about the availability and perhaps, relative advantage of such benefits to higher income earners in the sector, compared to lower income earners who may make less use of these benefits. Nevertheless, as NFP aged care providers, we face equally difficult challenges in attracting and retaining experienced and better qualified management and accounting professionals for example, as we do nurses and care workers. Therefore, we could support the two entertainment benefits being brought within the caps for FBT concessions but only if the caps were increased.

Our recommendation is that the FBT cap for our sector be increased to $35,000 immediately upon the rolling in of the entertainment benefits; and increased again to $45,000 over the subsequent two years, substantially to reflect the increase in AWE since the year 2000 (noting that this level represents only a 50% increase in the cap in total as opposed to the 67% increase in AWE as reported above).

We understand that such an increase would have to be cost neutral so there would have to be offsets in other parts of the tax system. Potential savings could be made over the Forward Estimates by not proceeding with the idea of a clearing house for gifts; and not replacing FBT concessions with government grants (see below); together with other savings measures canvassed in the Paper.

As to the question of particular types of entertainment benefit remaining exempt if they were otherwise subject to a cap, we do not support disaggregation of the benefits as it would only add a further layer of administration with very little gain.

We support the other short term reform proposals, namely:

- denying FBT concessions to employees who have claimed a concession from another employer;
- re-aligning the rate for FBT rebates with the FBT tax rate; and
- removing the limitation on tax exempt bodies in the minor benefits exemption.

Long-term reform options

Option 3.6: Phase out capped FBT concessions and replace with alternative government support

As already stated, we do not support the replacement of FBT concessions with a system of grants. Besides the added administrative costs and regulation that flow inevitably from new government funding programs, it would change the nature of employment contracts and conditions.

Grant programs are subject to the whims of government policy and budgetary considerations such as the quantum of funds, eligibility and compliance requirements, indexation rates etc. Tax and industrial laws on the other hand are rather harder to change without electoral support and therefore offer much greater certainty for charitable employers and their employees, particularly with respect to wage certainty when trying to manage their household budgets. This is especially important for lower income employees who make up the larger proportion of our staff.

The Paper discusses three alternative forms of support:

1. refundable tax offsets for employers;
2. direct tax offset for employees; and
3. tax free allowances.

While each option has its merits, we would offer cautious support for refundable tax offsets if FBT concessions were to be replaced in the long term. The Paper asserts that tax offsets would 'eliminate a significant compliance burden, be more transparent, equitable and simple'. We would want to see evidence of this at some stage before offering our unconditional support.

GOODS AND SERVICES TAX CONCESSIONS

We have no major concerns with the current system of GST concessions.

SUMMARY

While the Paper canvasses a broad range of tax concessions issues, we see little need for change in the charitable aged care sector. Our views can be summarised as follows:

1. The three reasons advanced in the Paper for limiting tax concessions do not apply to our sector, except that we would support the inclusion of the two entertainment benefits in the FBT exemption cap (see below);
2. There is no reason to change the current income tax exemption and franking credit arrangements in our sector;
3. We do not support the creation of a clearing house for gifts to DGRs;
4. The FBT cap should be increased to $45,000 to incorporate the two entertainment benefits and to reflect increases in AWE since the introduction of the cap;

5. We support the short term reform proposals relating to:
    a. denying FBT concessions to employees who have claimed a concession from another employer;
    b. re-aligning the rate for FBT rebates with the FBT tax rate; and
    c. removing the limitation on tax exempt bodies in the minor benefits exemption;
6. We do not support the replacement of FBT concessions with government grants but offer cautious support for a system of refundable tax offsets in the long term.

Thank you for the opportunity to comment on the Discussion Paper.

ROB HANKINS
Chief Executive
ECH Inc.
174 Greenhill Road
Parkside SA 5063
Tel. 08 8407 5198

RICHARD HEARN
Chief Executive
Resthaven Inc.
43 Marlborough Street
Malvern SA 5061
Tel. 08 8373 0211

KLAUS ZIMMERMAN
Chief Executive
Eldercare Inc.
251 Young Street
Wayville SA 5034
Tel. 08 8291 1000

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