



Anglican Retirement Villages Diocese of Sydney (ARV) welcomes the opportunity to respond to the Not-For-Profit Sector Tax Concession Working Group's (Working Group) November 2012 Discussion Paper (Discussion Paper).

Executive summary

ARV is a part of the not-for-profit (NFP) Aged Care sector which provides in excess of 50% of care places for the various aged care categories.

ARV is currently entitled to various existing tax concessions, which are effective in supporting and enhancing ARV's public benevolent objects and activities, as well as in recruiting and retaining staff, and which should, at a minimum, be maintained.

Notwithstanding the above, this submission does put forward a number of enhancements, such as extending the deductible gift rules for testamentary gifts, modifying the operation of FBT concessions and extending the availability of GST concessions in relation to fund raising activities which would promote a more simple, fair and effective framework, and also assist the NFP aged care sector to further their public benevolent activities.

ARV looks forward to discussing this submission further with the Working Group and Treasury at your earliest convenience. Representatives of ARV would welcome the opportunity to be included in the consultation process both prior to the finalisation of the Working Group's report to Government in March 2013 and any subsequent consultation framework.

Aged Care and the contribution of NFP providers

NFP providers are majority contributors to the majority provision of aged care in NSW, where ARV operates, and the whole of Australia, as illustrated below for various measures.

	% of care places provided by and funding % provided to NFP organisations	
	NSW	Australia
Community Care places	94%	94%
Residential Aged Care (High Care) places	49%	52%
Residential Aged Care (Low Care) places	88%	79%
Funding	68%	67%

{Data at 30 June 2011, taken from the Department of Health and Ageing website. NFP organisations are taken to be all organisations other than public and private companies/entities and include Charities, Community based and Religious organisations}

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In respect of Independent Living, the most recent data that ARV's possesses indicates that in the region that ARV operates (the Sydney Anglican Diocese), 59% of units were provided by NFP organisations and 41% by For Profit.

About ARV

Anglican Retirement Villages Diocese of Sydney (ARV) was established in 1959, as an agency of the Anglican Diocese of Sydney, constituted under the Anglican Church of Australia (Bodies Corporate) Act 1938. ARV's objectives under the Diocesan Ordinance are *"to provide, in a Christian environment, for the housing, accommodation, maintenance and welfare of older men and women, irrespective of creed, and in special circumstances for the maintenance and welfare of younger people with disabilities, with preference being given, so far as practical, to people in Australia who are in necessitous circumstances and to bring all such persons under the pastoral care of the Anglican Church in Australia"*.

Broadly, ARV operates in three key segments: Residential Aged Care (around 1,800 licensed beds), Independent Living (around 1,900 units) and Community Care (around 1,100 funded packages – Community Aged Care Packages (CACPs) and Extended Aged Care in the Home (EACHs)). Across these segments, ARV cares for over 5,000 older people through the provision of care, accommodation, day therapy centres, pastoral care, hydrotherapy and physiotherapy services and respite accommodation. These services are delivered through 2,350 staff (1,470 Full Time Equivalent (FTE)) and around 1,200 volunteers from the community. Services are provided across the greater Sydney region.

For more information on ARV please refer to our website: www.arv.org.au.

ARV, the Public and the Community

As a Charity, ARV does not seek to maximise its profits for the benefit of any individual(s) or entity because it exists solely for charitable purposes for the benefit of the public. Rather, it targets an appropriate annual surplus that ensures its sustainability to continue to provide care and accommodation in the long term. Whilst ARV operates as a highly efficient and capable organisation, any financial benefits are "re-invested" into its work of providing care and accommodation.

The work of ARV provides a direct benefit to the public and the community in general through the provision of care and accommodation to vulnerable older people. Specifically ARV ensures that many of its residents and clients that are financially disadvantaged are cared for. In its aged care segment a high level of "supported" residents are targeted. In its Independent Living segment, targets are set to allow financially disadvantaged residents to "rent" accommodation at below market rates.

ARV strategically targets areas of lower socio economic means. In Community Care, ARV ensures that it services a diverse range of clients including financially disadvantaged and minority groups based on differences of ethnicity, culture etc. In Residential Care, ARV provides places to supported residents well in excess of the minimum statutory requirements, (in recent years between 20% and 24% above based on minimum supported residents to actual supported residents). Supported residents are those whose assets, at the time of entry into aged care, are below the asset cut-off level (currently \$109,640) and as a result they pay either no or reduced accommodation bonds or accommodation charges.

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Currently ARV has embarked on a strategy to acquire a number of sites to convert into "affordable accommodation" for older people at risk of homelessness.

Detailed below are some specific examples where ARV has reinvested its surplus, provided services based on the means of individuals who cannot afford to pay a market charge or provided services to residents and clients above the standards required by legislation.

- a) In Independent Living, units are rented to residents without the means to afford an entry contribution (the usual market practice). The rents are set at rates below market value. In the past, discounts to the entry contribution were offered to residents who could not afford the full market price.
- b) Retired clergy are provided with accommodation at a discounted rates
- c) Day therapy and hydrotherapy services are provided at subsidised rates
- d) Pastoral and chaplaincy services are provided to residents, their family and carers at no cost
- e) Transport services are provided to residents at subsidised rates
- f) Certain residents who transfer from Independent Living to Residential Aged Care are permitted to transfer at no additional cost rather than pay market value
- g) Community care programs are run where a need exists but government funding is not available
- h) In relation to Residential Aged Care, ARV provides places to supported residents well in excess of the minimum statutory requirements (detailed above)
- i) In the collection of fees and overdue amounts, ARV operates in a manner that is sensitive to a resident or clients individuals circumstances and only in extreme circumstances would take legally enforceable action
- j) ARV provides all administrative and compliance support to the volunteer program which exists to enhance resident experiences during care

Taxation Concessions provided to ARV

ARV, as a NFP, charitable institution, mainly benefits from taxation concessions in the areas of Income Tax, FBT and GST, each of which is addressed specifically in this paper.

NFP organisations in the aged care sector, such as ARV, are uniquely placed to support vulnerable sections of the community, such as the aged population of Australia and address the care needs of individuals rather than being constrained by financial returns and providing a return to shareholder. This allows ARV to provide a number of additional services to that population including mental and physical support which is provided at a subsidised rate or no cost or ARV forgoes revenue that would otherwise be due. ARV estimates that where this can be measured, the value of such services is estimated at \$5m annually (an average of \$1,000 per resident/client)

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However, NFP organisations are limited in what they can do and how they can raise funds, which means that without the tax concessions currently provided, organisations such as ARV could not continue to provide the support and benefits detailed above. Such limitations include:

- (a) The inability to raise equity to provide cost effective, long term funding required for capital intensive services such as aged care
- (b) NFP organisations are limited to borrowing from banks and cannot use other mechanisms or sources to provide competition to lower the cost of borrowing
- (c) The inability to include equity based incentives in remuneration to attract, retain and reward quality staff. To compete for such staff, NFP organisations have to use alternative mechanisms
- (d) NFP organisations are generally established for specific charitable purposes and social or community needs. Their constitutions require them to undertake these activities based on need rather than financial return and generally prevent them diversifying into other activities. For Profit organisations are established to maximise the return for shareholders which can encourage "cherry picking" of certain areas, driving assets for cash optimisation above care needs and diversification into other profitable activities to fund their aged care activities.

Income Tax

ARV operates in the Aged Care sector as a Charity and a Public Benevolent Institution (PBI), primarily to care and provide accommodation for older vulnerable people and is endorsed as both an Income Tax Exempt Charity (ITEC) and a PBI. Whilst ARV's current Investment Policy only allows it to invest in cash and cash equivalent investments, it nonetheless supports the ability of similar operators to claim a refund of franking credits on dividends from Australian companies.

ARV'S RESPONSE TO THE CONSULTATION QUESTIONS REGARDING INCOME TAX

Q1 to 3 What criteria should be used to determine whether an entity is entitled to an income tax exemption? Should additional special conditions apply to income tax exemptions?

ARV is an ITEC and a PBI. Under existing law, the basis of our income tax exemption is founded on common law principles which generally continue to be worked out in accordance with our judicial system, but these will be subject to a number of other outstanding NFP tax reform developments (in addition to the areas under review by the Working Group).

As the Working Group would be aware, the Federal Government announced it will introduce a statutory definition of charity for operation on 1 July 2013 and of great concern is that currently an exposure draft of the proposed definition has not yet been released. There are also proposed NFP tax reforms including: restated 'in Australia' special conditions; and unrelated commercial activities of NFP entities eligible for tax concessions, with similar potential commencement dates. Whilst we acknowledge the NFP sector is larger than just charities, we recommend priority is given to sequencing already announced reform items in order that the reform process does not progress in a piecemeal fashion, and there is no duplication or inconsistency between the various reform processes. Accordingly we recommend those NFP tax reform processes are completed before any further changes are considered to relevant tax concessions.

We also wish to draw the Working Group's attention to the fact that charities operating under the common law definition of charity, with the exception of charities operating for purposes beneficial to the community, have a presumption of public benefit and this presumption must not to be forsaken as it appears to have been in the Discussion Paper.

There is a long standing tax policy for tax exemptions being provided to support and foster charitable institutions and the rationales for providing tax concessions particularly to charitable institutions, are sufficiently set out in the Discussion Paper¹. Public benevolent institutions, in particular, should continue to be eligible for income tax exemption, and no additional special conditions are warranted.

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

ARV does not have any material concerns in relation to any impediments for large or complex NFPs.

¹ NFP Sector Tax Concession Working Group - Discussion Paper - pages 9 to 13

Q5 & 6 Who should be eligible for refunds of franking credits?

ARV and the Foundation for Aged Care, under existing rules, should be eligible to claim a refund of franking credits on franked distributions from Australian companies. As noted above, whilst ARV's current Investment Policy only allows it to invest in cash and cash equivalent investments, which do not give rise to franked distributions, it nonetheless supports the ability of similar operators to claim a refund of franking credits on dividends from Australian companies.

Income tax exempt public benevolent institutions should continue to be eligible for refunds of franking credits. Whilst the existing system of dividend imputation remains, which allows individual resident taxpayers to benefit from refunds of excess franking credits, without any system of means testing, it would be inequitable to remove the concession from public benevolent institutions.

Q7 to 10 These questions are largely not relevant to ARV.

Deductible Gifts

The Foundation for Aged Care² (FAC) is ARV's public charity arm and has deductible gift recipient (DGR) status. Funds raised by the FAC are used to enhance ARV's capacity to fulfill its objects by supporting programs that contribute to improvements to the well being, quality of life and amenity of ARV's residents and clients. In recent years, the FAC has raised over \$1m per annum. The support provided by the FAC enables ARV to provide levels of care and service beyond that which would otherwise be possible via regular operational revenues, thus facilitating a higher level of care for the people ARV serves.

ARV'S RESPONSE TO THE CONSULTATION QUESTIONS REGARDING DEDUCTIBLE GIFTS

Q11 to 14 Should DGR eligibility be extended to other income tax exempt NFPs?

ARV is not in a position to comment on the respective need or merit of extending DGR status to a broader range of income tax exempt NFP entities.

However, ARV is supportive of measures which encourage a broader range of philanthropy in the community to the general benefit of the NFP sector.

Q15 to 17 Tax deductions or offsets for gifts to DGRs?

ARV does not support the use of a fixed tax offset (or a two tier system) to replace the existing tax deduction that is provided at the marginal tax rate of the taxpayer.

The proposed tax offset models being considered by the Working Group are likely to disadvantage and potentially discourage taxpayers on higher marginal tax rates from making gifts.

Tax deductible donations are a significant source of funds for FAC and ARV, and this proposal could therefore have detrimental impacts.

Q18 Tax incentives to encourage testamentary giving

Generally, no tax deduction is available for testamentary gifts.

The Discussion Paper notes that there is some relief for testamentary gifts under the capital gains tax (CGT) rules (s.118-60 of the Income Tax Assessment Act 1997), but the exemption only covers direct in-specie property distributions to DGRs. Limitations of this concession include lack of flexibility for estates with significant value assets and administrative burdens on DGR recipients having to deal with any non-cash assets.

There is currently no income tax relief where assets are sold in the process of administering a deceased estate (resulting in a capital gain) and all or part of the sales proceeds are then distributed to a DGR.

² The Trustee for Anglican Retirement Villages Diocese of Sydney Foundation for Aged Care (ABN 24 086 334 058)

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Historically, bequests have been significant sources of contributions to FAC and additional incentives to encourage testamentary giving are likely to assist the FAC in securing further additional donations.

ARV would therefore support additional income tax incentives that would encourage a broader range of testamentary giving to DGRs.

Q19 Would a clearing house linked to the ACN Register be beneficial for the sector and public?

ARV does not see the benefits of such a clearing house and it could reduce efficiency, particularly where NFP organisations may have to create interfaces to the clearing house to receive donor information.

Q20 to 23 Are there additional barriers relevant to increasing giving by corporations and corporate foundations?

Whilst ARV does not have any specific issues in regards to corporate giving generally, ARV would support measures which would further encourage a broader range of corporate giving to DGRs.

Q26 Should the threshold for deductible gifts be increased from \$2 to \$25 (or some other amount)?

Contributions to FAC have arisen from community fundraising, bequests, special events, charitable trusts and foundation and corporate support.

Whilst contributions to FAC have historically generally been amounts in excess of the thresholds under consideration by the Working Group, ARV and FAC are continuing to review and enhance philanthropy initiatives, which may include a focus on collections of relatively lower dollar value amounts.

Consequently, ARV does not support a proposal that would increase the threshold for deductible gifts, as there is a risk that this may tend to discourage philanthropy generally, and could adversely impact community fundraising efforts, which typically experience donations with relatively lower dollar amounts.

The impact of increasing the threshold would potentially be to indirectly impact the care provided, thus disadvantaging older Australians.

Fringe Benefits Tax

The FBT concession and aged care

By 2050 Australia will need an estimated 827,100 aged care workers. With the growing need for care of older people, attracting and retaining capable staff is crucial for the sector.

The Government recognises the low paid character of the aged care industry and the implications of this for recruiting, developing and retaining staff, with typical turnover rates at around 25 percent. As part of the 'Living Longer, Living Better' reforms the Government has proposed a Workforce Compact to help meet these challenges.

The FBT concession goes part way to doing this. As an aged care NFP, being able to offer tax-free fringe benefits means that ARV can maximise the pay of workers while containing wage costs so that more funds are available for care.

Removing the FBT concession for NFPs in the aged care sector without replacing it with workable measures designed to provide equivalent compensation to individuals employed by this sector will have an adverse effect on the pay of aged care workers and will increase the operational costs of employers. It will also affect the ability of aged care employers to attract and retain workers in a low paid industry that is required to meet a growing area of need.

In addition to the low paid character of aged care, the sector comprises a predominantly female workforce. ARV is typical, with 80 percent of its 2,350 staff being women.

The Workplace Gender Equality Agency's most recently published remuneration data indicated a pay gap of 17.5 percent between men and women. This highlights the concern of the Government with equal pay for women.

Removing the FBT-free concession for aged care NFPs will have a dual negative effect, by adversely affecting low paid workers in the sector generally, and women who make up the larger part of the industry in particular. These effects run counter to the Government's aims.

By way of example, the average hourly rate of pay for an ARV employee is \$26. The single largest group of ARV staff are Care Services workers who provide direct care of older people at \$20.85 per hour. While these are not high wages they are above the Aged Care Modern Award and they reflect ARV's commitment to paying above-Award wages to recognise the valuable work our staff do.

How ARV uses the FBT concession

As a PBI, ARV may provide employees with fringe benefits with a grossed-up taxable value of up to \$30,000 per employee per year. ARV uses the concession responsibly, in the spirit of the concession, by differentiating how it treats benefits for hourly paid staff and salaried staff.

For hourly paid staff, ARV passes on the full benefit to the employee. This includes ARV's lowest paid staff, with the most common classifications attracting hourly rates of pay between \$18.30 and \$23.50.

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The FBT concession allows ARV to maximise the remuneration of these staff by increasing their take home pay.

For salaried staff, the \$30,000 FBT cap helps ARV match commercial net pay without incurring the higher gross costs that would otherwise be incurred if the concession is removed. For ARV this means a saving of \$3m in salaries per annum.

If the concession is removed, either ARV will have greater difficulty in attracting and retaining capable staff from the general labour market, or, if it chooses to compensate the lower net pay by paying commensurate higher market wages, \$3m per annum will be unavailable to care for residents and clients.

The net result is that, if the concession is removed without replacing it with workable measures designed to provide equivalent compensation to individuals employed by this sector, the ability of the industry to attract and retain capable workers will be adversely affected, and/or the care of older people may be compromised. In ARV's case the net pay of its low paid and predominantly female workforce may be adversely affected and either it will have \$3m less per annum to attract and retain capable staff, or \$3m less to provide care, meaning that the care of older people may be adversely affected.

It's not all one way

Almost all of ARV employees are on less than the highest marginal rate of tax. However, fringe benefits are grossed up at the highest marginal rate. This affects the entitlement of recipients to certain Government benefits such as Family Tax Benefit and Child Care Allowance. Thus, removing the concession would create a higher level of entitlement of ARV staff to these benefits. This means that there would not be a direct dollar for dollar saving to the Government. As every employee's earning and personal family circumstances differs, it is not possible for ARV to estimate the effect that removing the concession would have on the increased eligibility of staff to Government benefits or payment obligations.

Ease of use

ARV is aware that some organisations including NSW Public Hospitals have implemented complex and unwieldy systems to administer FBT. ARV has implemented a very simple system to administer the benefits. The following are offered, which cover close to 100 percent of all possible fringe benefits:

- a) an expense card for general expenses,
- b) loan payments including mortgage,
- c) rent and personal loan payments,
- d) a meal entertainment card for meal entertainment benefits, limited to \$6,000 spend.

The administration, monitoring and reporting of these are simple and not at all burdensome, with the system requiring minimal record keeping to satisfy statutory minima. The savings in administration by removing the FBT concession and not replacing it with anything else would result in savings to ARV of less than 0.5 FTE.

ARV'S RESPONSE TO THE CONSULTATION QUESTIONS REGARDING FRINGE BENEFITS TAX

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?

ARV sees no justification or need to change the current criteria as it applies to PBIs. However, if some industries are to be further differentiated it should be based on need, how the organisation meets the need, the value of the service to the Australian community and its NFP/charitable status, including operating in the spirit of these. ARV sees aged care as serving a critical and growing area of need for Australia with the characteristics described 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? 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?

As a PBI, ARV is not a rebateable employer. As such, this issue is not directly relevant. Nonetheless, it is our view that the same principles that are applicable in determining whether an entity is an exempt employer (as set-out in our response to Q 28 above) should apply.

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?

As a PBI, ARV is of the view that the FBT exemption should remain (albeit with some modifications to the quantum and operation of the \$30,000 FBT cap as discussed elsewhere in this submission). As such, if there is a move to a single concession, this should take the form of extending the existing exemption to entities that are currently only entitled to the rebate

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

No, for the reasons stated in ARV's general FBT submission. ARV are not opposed to the removal of the meal entertainment and entertainment facility leasing benefits. The value of such a removal may be redirected into a higher FBT cap.

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?

The \$30,000 cap on fringe benefits provided by PBIs has not increased since the introduction of GST such that its real value has eroded in the past 12 years. As noted in our response to Q 31 above, we are of the view that consideration should be given to either:

- Increasing the existing caps on FBT. This could be achieved by indexing these caps for increases in the CPI and backdating these increases to the last date at which the caps were last reviewed (i.e. in 2000). Based on our calculations, this would result in an increase in the PBI cap to around \$45,000; or

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- As stated above, ARV are not opposed to the removal of the meal entertainment and entertainment facility leasing benefits. The value of such a removal may be redirected into a higher FBT 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?

If a separate cap applies it will avert any abuse of these benefits and avoid the need to further regulate the types of benefits that apply.

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?

There is merit in limiting concessions to a total annual amount, rather than a total annual amount per employer, so that the benefit is not abused. However, it should not be a requirement for employers to monitor this as it would impose a complex and burdensome impost and raise distracting problems such as managing non-disclosure by employees.

Instead, employees should be required to self regulate their use of the benefits in the same way that they do with their PAYG Withholding Declaration. This requires an employee to declare whether or not they are seeking the tax free threshold from a given employer. The same requirement could apply to employees for fringe benefits and exempt benefits, with the addition of a check box or a declaration on their PAYG Withholding Declaration.

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?

AS a PBI, ARV does not have a comment on this proposal.

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?

As a general principle, for reasons of equity, efficiency and fairness, the FBT Act should operate in the same manner regardless of whether an employer is a tax exempt body or otherwise (apart from specifically targeted concessions such as the exemption that applies to PBIs). As such, the minor benefit exemption per Section 58P of the FBT Act should be amended so that the additional criteria that need to be satisfied by exempt employers is removed.

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

As a PBI, ARV is of the view that the FBT exemption should remain (albeit with some modifications to the quantum and operation of the \$30,000 FBT cap as discussed elsewhere in this submission). If there is a move to broaden the availability of exemptions / concessions, it is our view that the same principles that are applicable in determining whether an entity is an exempt employer (as set-out in our response to Q 28 above) should apply.

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

No, for the reasons stated in ARV's general FBT submission.

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

No, because the concessions meet a specific need that the Government has identified for aged care: to improve compensation within the industry.

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?

No, this would increase the complexity of administration for no additional benefit, although tax accountants may appreciate the resulting additional business!

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

The impact of limiting the concession to these types of benefits would be so limited as to be of little or no value and therefore inconsistent with the overall policy intent of improving compensation within the industry.

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?

The concession should not be phased out for the reasons stated in ARV's general FBT submission. The adverse effects of doing so would be significant and of long duration and would probably result in many unintended adverse consequences for charitable work in Australia – work that supports older people in need of care.

Goods & Services Tax

The concessions included in the GST law that are the focus of the discussion paper are limited to the activities of endorsed charitable institutions, endorsed trustees of charitable funds and certain endorsed gift deductible entities. As such, the concessions do not extend to NFP entities generally.

As an endorsed charitable institution, ARV benefits from the concession in section 38-260 of the GST law in connection with its supplies of independent living units whereby its supplies of accommodation and related services in retirement villages qualify for GST-free treatment. In the absence of this concession, ARV would not be entitled to claim input tax credits for GST included on costs associated with the operation of its retirement villages. The funds ARV saves as a direct result of this concession assist ARV in its meeting its overall charitable objectives including offering competitive wages to care staff and ensuring that ARV can cater to financially disadvantaged residents as discussed earlier in this submission.

Although this particular concession was not raised in the discussion paper, ARV wishes to emphasise the value of this concession to its charitable operations. There is a strong demand for independent living units in a retirement village facilities which can be expected to increase given the aging population. The scope for endorsed charitable institutions to access this concession helps to ensure that facilities can continue to be provided at a high standard and to encourage other charitable institutions to enter the market to meet demand. The concession is not complex in its operation and should be supported. In fact, should the concession be removed administration of GST for charitable institutions operating retirement villages can be expected to increase substantially as apportionment would be required of all indirect costs incurred to ensure that input tax credits would not be overclaimed. This additional administration would place further strain on the resources available to charitable institutions.

The other concessions that ARV wishes to address in this submission are the fundraising concession and the concession that allow supplies of accommodation for less than 75 per cent of the GST-inclusive market value of the supply, or less than 75 per cent of the cost to the supplier of providing the accommodation. These issues are addressed under the consultation questions below.

ARV'S RESPONSE TO THE CONSULTATION QUESTIONS REGARDING GOODS & SERVICES TAX

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?

As recognised in the Discussion Paper the current concession creates considerable uncertainty for relevant NFP's concerning the scope of events which the Tax Commissioner would consider to be within the scope of the fundraising concession. Although NFPs have the option to apply to the Tax Commissioner to approve events not specifically mentioned in the concession provisions this is a costly and time inefficient process from the perspective of a NFP. Uncertainty around the scope of the concession often results in NFP's not opting to utilise the concession which undermines the purpose of the concession and puts additional cost pressures on the NFP in undertaking its fundraising activity. From this perspective ARV supports the introduction of a principles based test which would allow NFPs to more readily self-assess entitlement to the concession. This should encourage widespread adoption of the concession as an effective means of maximising the funds raised.

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?

Yes. See above. ARV would also support broadening the concession to allow for relevant fund raising activities to qualify for GST-free treatment. Allowing for GST-free treatment would maximise the benefit of funds raised in the supporting the charitable objectives of the relevant NFP and reduce the administrative costs associated with the current need to specifically track of costs directly related to the fundraising activity and to apportion indirect costs to ensure that input tax credits are not overclaimed.

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

Current GST concessions should continue to apply for eligible NFP entities. These concessions assist to minimise the cost impact of GST to the NFP's operations and to allow eligible NFP entities to instead direct revenues toward meeting the NFP entities charitable objectives. Any reduction in the level of concession available would have an adverse impact on the community benefits provided via charitable institutions.

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

The current concession associated with supplies made for nominal consideration, while of benefit to NFP's, result in significant complexity for NFPs from an administrative and accounting perspective, create uncertainty, and ultimately result in increased costs for the NFP in establishing entitlement to utilise the concession. In addition, the percentages nominated in the legislation appear to be largely arbitrary and are not necessarily an appropriate indicator of when supplies have been made on a non-commercial basis.

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?

An opt-in arrangement would allow NFP's the option of not monitoring whether their supplies should be treated as GST-free or not, thereby reducing the considerable administrative cost currently associated with assessing the impact of the relevant provisions. The compliance burden is only likely to be reduced, however, if the option is to elect to treat relevant supplies as taxable. If the option is to treat supplies as input taxed, however, this would itself create administrative costs associated with tracking relevant expenses and would also necessitate apportionment. From this perspective an opt-in arrangement that allow for input taxing is unlikely to reduce the compliance burden for charities.

Although an option to treat relevant supplies as taxable would reduce the compliance burden for charities making supplies for nominal consideration, it would defeat the purpose of the concession in supporting the charitable objectives of the charity and increase operating costs. From this perspective, our preference would be for a concession allowing eligible charities to treat all supplies as GST-free. This is discussed further at Q49 below.

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

See response to Q47

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

Given that the concession is only available to government schools and endorsed charitable or gift deductible entities, ARV would support broadening the concession to allow relevant NFPs to treat all supplies as GST-free. Although this would no doubt result in a certain level of supplies made on a commercial basis to be treated as GST-free it is unlikely that this would result in NFP's obtaining any advantage over commercial operators given that any financial benefits accruing to the NFP are re-invested in promoting the NFP's charitable or community based objectives. This may result in decreased pressure on Government to support the work undertaken by NFPs and/or to subsidise the financially disadvantaged particularly in connection with the provision of accommodation.

The remaining questions are either not relevant to ARV or ARV does not have a comment.

21 December 2012