Australian Government
The Treasury

TSY/AU

Deductible Gift Recipient (DGR) Reform — Requiring DGRs to be registered as charities FAQs

Context

The Australian Government is proposing to require non-Government Item 1 DGRs[1] to be registered charities with the Australian Charities and Not-for-profits Commission (ACNC).

This is one element of a broader DGR Reform package, designed to enhance the administration and oversight of entities with DGR status, by strengthening governance arrangements, reducing administrative complexity and ensuring continued trust and confidence in the sector.

When will the new requirements be in force?

Given disruptions to the parliamentary calendar due to COVID-19, it is unclear when legislative amendments facilitating these new requirements will be put to parliament. As such, it is intended that, after passing through parliament, the amendments will commence three months following Royal Assent.

What if a DGR is already an ACNC registered charity?

If a DGR is already a registered charity with the ACNC, then no additional action will be required other than continuing to meet all the obligations associated with maintaining ACNC charity registration and DGR endorsement.

What if a DGR is not an ACNC registered charity?

The proposed amendments will require all non-Government Item 1 DGRs, except for specifically listed DGRs, to maintain ACNC charity registration in order to maintain their eligibility for DGR endorsement. Item 2 DGRs (ancillary funds) and specifically listed Item 1 DGRs are strongly encouraged to seek and maintain ACNC charity registration with the ACNC. Benefits of charity registration include eligibility for tax concessions (including exemption from income tax).

Some DGRs are operated by Commonwealth or State government agencies. These entities are unable to be registered as charities with the ACNC.

[1] A DGR is a not-for-profit entity that is entitled to receive gifts that are tax deductible. To receive DGR status the entity must be endorsed by the Australian Taxation Office (ATO). Strict rules govern the use of tax deductible funds raised by a DGR: An entity must not be directed by a donor to act as a conduit by passing a donation of money or property to other entities, bodies or persons; and a DGR endorsed entity must not act as a collection agency for tax deductible donations intended by a donor to be passed on to another entity or person.

Item 1 DGRs are those endorsed (or specifically listed) under the general DGR categories in the tax law. The majority of DGRs are Item 1 DGRs. Item 1 DGRs are sometimes referred to as the 'doing' DGRs, as opposed to Item 2 DGRs or 'funding' DGRs, which are ancillary funds who collect donations from the public which can then only be distributed to Item 1 DGRs. The 'ABN Lookup' website (https://abr.business.gov.au/) provides information on whether an entity is a DGR, and if it is, whether it is an Item 1 or an Item 2 DGR.

What are the requirements to become an ACNC registered charity?

To be eligible to be registered as a charity with the ACNC, the entity must:

- have an Australian Business Number (ABN);
- be able to demonstrate its charitable purpose, and not-for-profit character through governing documents or other means;
- provide the details of people responsible for governing the entity;
- have only charitable purposes or purposes ancillary to charitable purposes; and
- provide other relevant information periodically such as its financial information.

What will a DGR need to do to maintain both ACNC charity registration and DGR endorsement?

An endorsed DGR must act in accordance with ACNC obligations such as operating consistently with the ACNC governance standards and reporting annually to the ACNC through the Annual Information Statement. It should also collect, record and disburse funds in accordance with the purpose for which the DGR endorsement was provided. An endorsed DGR also needs to regularly review its entity's affairs to ensure it is still entitled to DGR status, as it is a requirement to inform the ATO if it is no longer entitled. Things that can affect an entitlement to DGR endorsement include:

- changes to purpose and operations;
- maintaining a gift fund;
- the 'in Australia' requirement that requires DGRs to be established and operated in Australia; and
- the receipts for gifts or deductible contributions the entity issues.

What are the transition arrangements?

The Government is aware that becoming an ACNC registered charity can be a time consuming process. For this reason, the Government will provide a transition period to allow current DGRs to maintain their DGR endorsement while they undertake the ACNC charity registration process.

The process may be more involved for some entities compared to others. Where changes need to be made to governing documents, it may be necessary to set up an Extraordinary General Meeting to agree to amendments. For a small number of entities it may be even more complex, requiring a new entity to be established, such as a charitable trust.

The ATO and the ACNC will work constructively with entities to provide guidance and suggest model clauses to make the process as smooth as possible. It is expected that many non-charity DGRs should be able to secure ACNC charity registration within the first 12 months after the legislative amendments commence.

The transition period allows non-charity DGR entities to retain their DGR status for the initial 12 month period following the legislative amendments commencing. Non-charity DGRs must apply to the ACNC to seek charity registration before the end of this period if they wish to maintain their DGR status beyond that time. Once a DGR fulfils the requirements of charity registration, they will appear on the ACNC charity register.

However, there may be some circumstances where, despite best efforts, entities are unable to achieve ACNC charity registration in the first 12 months. For example, if changes need to be made to Trust deeds that require a court process that could take some time. The Government has designed a time-limited exemption which allows the ATO to grant an additional three-year extension beyond the transition period, to accommodate such circumstances.

If a DGR has not achieved ACNC charity registration within the 12 month transition period, it must apply for an ATO Commissioner’s time-limited exemption to maintain their DGR endorsement.

What are the exemption provisions?

Applications for an exemption must be received within the 12 month transition period, and will be time-limited to an additional three years after the end of the initial 12 month transition period.

To be eligible for a time-limited exemption, entities will need to have made an application to the ACNC for charity registration during the initial 12 month transition period. A streamlined process will enable entities to indicate in their in their application for charity registration that they wish to apply to the ATO for the exemption.

The following factors will be relevant when considering applications for a time-limited exemption:

- during the transitional period, the non-charity DGR entity has taken steps to fulfil the requirements for ACNC charity registration but, as at the end of the 12 month transition period, has not been granted registration by the ACNC; and
- there has been no change in circumstances of the non-charity DGR entity that would otherwise affect their DGR endorsement.

Entities that have applied for an exemption within the 12 months transition period will maintain their DGR endorsement until four years after the start date, unless they are notified that they are not eligible for the ATO Commissioner’s time-limited exemption.

Can all DGRs apply for the time-limited exemption?

No. Non-charity DGR entities that have previously had ACNC charity registration refused or involuntarily revoked by the ACNC will not be eligible for the time-limited ATO Commissioner’s exemption. These entities will lose their DGR endorsement at the end of the 12 month transition period if they do not obtain full ACNC charity registration within the 12 month transition period.

What access do DGR applicants have to the transition period and time-limited exemption?

Entities that are not DGRs but are in the process of applying for DGR endorsement immediately before the new arrangements come into force will be treated the same as current non-charity DGRs. DGR applicants as at the start date will have the same access to the transition period and time-limited exemption as current non-charity DGRs.

Any entities applying for DGR endorsement after the new arrangements come into force will need to achieve ACNC charity registration before they can be endorsed as a DGR.

Do non-charity DGRs need to wait for the amendments before applying for ACNC Charity Registration?

No. Entities can apply for ACNC charity registration at any time, and are encouraged to do so ahead of the legislative amendments receiving Royal Assent.

Entities with queries can seek guidance from the ACNC at: https://www.acnc.gov.au/contact-us

More information is available at: https://www.acnc.gov.au/for-charities/start-charity/apply-now

What is Treasury's role compared to the ACNC and the ATO?

Treasury works with the ACNC and the ATO to provide advice to government on policy issues affecting the regulation and administration of Australia's not-for-profit sector, including taxation concessions.

The ACNC is the Government's independent national regulator for charities. Its role includes assessing entities seeking charity registration, which in turn can provide access to Commonwealth taxation exemptions and concessions.

The ATO is the Government's national regulator for taxation. Its role includes assessing entities seeking access to Commonwealth taxation exemptions and concessions, such as charities seeking DGR endorsement.

Treasury works closely with the ACNC and ATO to ensure that new laws are administrable.

What are the next steps?

Treasury will review the submissions and feedback from stakeholders on the Exposure Draft Bill, which will inform any potential amendments to the Bill to ensure it achieves its intended purpose.