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**BY EMAIL**

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Dear Mr Issar

## Request for comments – Deductible Gift Recipient Registers Reform

Thank you for the opportunity to provide comments in relation to the deductible gift recipient (DGR) registers reform (**Registers Reform**) proposed by the Australian Government Department of Treasury (**Treasury**).

Following are our submissions on the proposed Registers Reform.

### 1 Submissions

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#### 1.1 Background to submissions

- (a) The Registers Reform is contained in the *Treasury Laws Amendment (Measures for Consultation) Bill 2023: Deductible Gift Recipient Registers Reform (Exposure Draft)*, dated 19 January 2023, which proposes amendments to the *Income Tax Assessment Act 1997 (Cth) (Act)*.
- (b) The Registers Reform is explained in greater detail in the Exposure Draft Explanatory Material (**Explanatory Memorandum**) that accompanied the Exposure Draft.
- (c) The Registers Reform proposes to transfer administration of:
  - (i) the Register of Cultural Organisations (**ROCO**), from the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (**Department of Arts**);
  - (ii) the Register of Environmental Organisations (**REO**), from the Department of Climate Change, Energy, the Environment and Water (**Department of Environment**);
  - (iii) the Register of Harm Prevention Charities (**RHPC**), from the Department of Social Services (**DSS**); and
  - (iv) the Overseas Aid Gift Deductibility Scheme (**OAGDS**), from the Department of Foreign Affairs and Trade (**DFAT**),

to the Commissioner (**Commissioner**) of the Australian Taxation Office (**ATO**).

## 1.2 Summary of submissions

- (a) Our recommendations are summarised as follows:
- (i) **Submission 1 – Requisite expert subject matter knowledge**  
We submit that the Department of Arts, Department of Environment, DSS and DFAT (together the **Departments**) have the requisite expert subject matter knowledge to effectively assess the criteria for endorsement, in relation to each of the four (4) categories of DGR, being ROCO, REO, RHPC and OAGDS (together the **DGR Categories**) currently assessed by the Departments. It is unclear from the Registers Reform if or how the Commissioner intends to apply similar expert subject matter knowledge to such assessments.
  - (ii) **Submission 2 – Consistency of assessment**  
We submit that while it is correct that the ATO administers all DGR categories (and subsequently the application process for such categories) other than the DGR Categories, in practice this is not quite right. For example, the Australian Charities and Not-for-profits Commission (**ACNC**) assesses the suitability of organisations to be registered as:
    - (A) health promotion charities (**HPC**); and
    - (B) public benevolent institutions (**PBI**),
 and the ATO's assessment of DGR suitability is based upon the ACNC's registration of such organisations.
  - (iii) **Submission 3 – Timeliness of assessments**  
We submit that we are supportive of any proposed reforms that will lead to quicker turnarounds, in relation to assessment of the DGR Categories by the Departments. They currently take a significant amount of time from lodgement of an assessment to receiving a response from the Departments.
- (b) These submissions are discussed in further detail below.

## 2 Submission 1 – Requisite expert subject matter knowledge

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- (a) Assessment of the DGR Categories requires expert subject matter knowledge, which the Departments possess.
- (b) For example, in relation to the assessment for:
- (i) ROCO, subsection 30-300(2) of the Act requires of an organisation, that:
 

*“Its principal purpose must be the promotion of literature, music, a performing art, a visual art, a craft, design, film, video, television, radio, community arts, arts or languages of Indigenous persons or movable cultural heritage”.*

- (ii) REO, subsection 30-265 of the Act requires of an organisation that:
    - “(1) Its principal purpose must be:*
      - (a) the protection and enhancement of the natural environment or a significant aspect of the natural environment; or*
      - (b) the provision of information or education, or the carrying on of research, about the natural environment or a significant aspect of the natural environment”.*
  - (iii) RHPC, subsections 30-289 and 995-1(1) of the Act requires of an organisation that its principal activity ‘must be the promotion of the prevention or the control of behaviour that is harmful or abusive to human beings’, which includes one or more of the following behaviour types:
    - (A) emotional abuse;
    - (B) sexual abuse;
    - (C) physical abuse;
    - (D) suicide;
    - (E) self-harm;
    - (F) substance abuse; and
    - (G) harmful gambling.
  - (iv) OAGDS, subsection 30-85 of the Act requires of a fund that it be ‘solely for the relief of people in a country’ that is listed by the Organisation for Economic Co-operation and Development’s Development Assistance Committee or declared by the Foreign Affairs Minister.
- (c) The complexity of understanding and assessing whether activities properly align with the above requirements, in our view, requires expert subject matter knowledge. There are multiple layers to assessment that include:
- (i) understanding of the criteria;
  - (ii) prior experience in making such assessments; and
  - (iii) intimate knowledge of the subject matter, that usually only comes from experience in the relevant field or sector.
- (d) In our view, for the Commissioner to assess eligibility of organisations, in relation to the DGR Categories, a similar level of expert subject matter knowledge as the Departments would be necessary. Otherwise, the risk is that assessments will not properly consider the required criteria for endorsement and incorrect assessments will occur, both in relation to organisations:
- (i) being incorrectly endorsed as DGRs; and
  - (ii) incorrectly missing out on being endorsed as DGRs.
- (e) The Registers Reform does not make clear how the Commissioner will apply the requisite expert subject matter knowledge in relation to the DGR Categories.
- (f) In our view, this must be urgently addressed prior to the Registers Reform proceeding.

### 3 Submission 2 – Alignment of administration of DGR categories

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- (a) Paragraph 1.5 of the Explanatory Memorandum provides:  
*“Four DGR categories are currently administered by government entities other than the ATO, all other DGR categories are administered by the ATO”.*
- (b) While this may be correct from a purely administrative perspective, in practice this is not quite right. For example, while the ATO administers assessment of DGR status in relation to:
  - (i) HPC; and
  - (ii) PBI,
 in practice, assessment of suitability of such organisations is undertaken by the ACNC and the ATO will largely take into account whether the ACNC has granted registration to that organisation as a HPC or PBI when assessing and endorsing an organisation.
- (c) As provided in **section 2** above, in our view, just as the ACNC is best placed to assess the suitability of organisations for registration as HPCs and PBIs (and subsequently for endorsement as DGRs), the Departments are best suited to assess the suitability of organisations for the DGR Categories. If the ATO wishes to ‘administer’ the DGR Categories but rely on the Departments for assessment of suitability for the DGR Categories (in the same way it ‘administers’ the categories of HPC and PBI but relies on the ACNC for assessment of suitability), we are of the view that such an arrangement would be suitable.

### 4 Submission 3 – Timeliness of assessment

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- (a) We welcome any proposed reforms that will lead to quicker turnarounds, in relation to the assessment of the DGR Categories. In our experience, these assessments generally take a significant amount of time from lodgement to receiving a response from the relevant Department.
- (b) We concur with the Explanatory Memorandum, at paragraph 1.6, which provides that:  
*“Applications for an organisation to be endorsed as a DGR in the above categories are typically significantly slower than applications in other DGR categories. It currently takes up to two years to approve DGR status for an entity seeking addition to one of the registers.”*
- (c) This is also explicitly addressed on the ROCO webpage on the Arts Department website, which states:  
*“The time taken to assess ROCO applications can take up to six months. This timeframe may be longer depending on the completeness and the complexity of the application.”*
- (d) We note that the Explanatory Memorandum:
  - (i) at paragraph 1.1 provides that the Registers Reform will:
    - (A) ‘reduce red tape’; and
    - (B) ‘simplify the application process’; and

- (ii) at paragraph 1.6 provides that the Registers Reform 'will streamline the application and reporting requirements and reduce DGR approval from up to two years to around one month'.
- (e) In our view, if this is possible, it is a very positive reform.
- (f) The organisations applying for assessment, in relation to the DGR Categories, are hampered from obtaining much needed DGR status (and the benefits that come with it i.e. tax deductible giving) while they wait for assessment. This, in turn, often has an impact upon their ability to achieve their intended charitable objects, in relation to the activities that are the subject of the assessment, during this waiting period.
- (g) In our view, quicker assessments will lead to better outcomes for organisations and for the broader community.
- (h) However, as provided in **section 2** this should not come at the expense of the assessment being undertaken with the requisite expert subject matter knowledge necessary to make a correct assessment.

## 5 Conclusion

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We have presented three (3) submissions regarding the proposed Registers Reform. We respectfully ask you to consider the issues and recommendations raised in these submissions when contemplating the Registers Reform.

If you have any questions or require further information, please do not hesitate to contact Jonathan Green on +61 3 9605 0912 or [jegreen@millsoakley.com.au](mailto:jegreen@millsoakley.com.au).

Yours sincerely



**VERA VISEVIC**  
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