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Personal and Indirect Tax, Charities and Housing Division
Treasury
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Deductible Gift Recipient (DGR) Registers Reform- Submission by The Bouddi Society Inc. and The Bouddi Foundation for the Arts

A. BACKGROUND

The Bouddi Society Inc. (**Society**) is an incorporated association based on the NSW Central Coast which organises public events and publications aimed at displaying and fostering the artistic, historical and cultural life of the local community. The Society administers the public fund known as the "Bouddi Foundation for the Arts" (**BFA/Foundation**).

The Foundation is registered as a public fund on the Register of Cultural Organisations (**ROCO**) kept under Subdivision 30-F of the Income Tax Assessment Act 1997 (**ITAA**).

The Society is a registered charity with ACNC.

The Society is endorsed for DGR for the operation of the Foundation being the public fund. Donations are received from the general public to the Foundation.

The Society's constitution (the Rules of The Bouddi Society Inc.) reflects this and adapts the template clauses provided by ROCO to provide that:

- The monies in the Foundation fund are to be kept separate from other funds of the Society and are only to be used to further the principal purpose of the Society. Investment of monies in this fund are to be made in accordance with guidelines for public funds as specified by the Australian Tax Office
- the Foundation is administered by a separate subcommittee of individuals *the majority of whom, because of their tenure of some public office or their professional standing, have an underlying community responsibility, as distinct from obligations solely in regard to the cultural objectives of the Bouddi Society Incorporated*

The monies in the public fund are presently used for two of the objects of the Society:

(b) provide scholarships for young students to artistic institutions such as the Central Coast Conservatorium of Music;

(c) provide financial assistance to young students and artists to assist them in the development of their art, such as the purchase of instruments and materials, travel costs to artistic events, tuition fees, living costs associated with artistic education, etc.; (Rule 2.2 of the Rules of the Bouddi Society)

Other funds received by the Society for other purposes of the Society are not received into the Foundation fund but accounted for separately. This may include donations but we understand these are not tax deductible for these donors as this money is not received into the public fund.

The Bouddi Society Inc. ABN 32 280 095 846 PO Box 4081 Wagstaffe NSW 2257

The Bouddi Foundation for the Arts is a tax-deductible fund listed on The Australian Government's Register of Cultural Organizations maintained under Subdivision 30-B of the Income Tax Assessment Act 1997

We seek some clarification on the proposed changes to the DGR regime currently operating or at least wish to point out where some ambiguity in the materials requires further clarification for organisations such as the Society.

B. Proposed Changes to the administration of DGR status

Our understanding is once the proposed reforms come into effect that:

1. ROCO is eliminated and in its place there will be a replacement DGR category being:

“an institution or Australian government agency whose principal purpose is 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” (new Subsection 30 100(1) (table item 12.1.1) ITAA)

2. There will be new special conditions that will apply to this category such that:

- a. *the institution or Australian government agency must:*

- (a) if it is not an Australian government agency—be a registered charity; and*
- (b) meet the requirements of section 30 130 and*

- b. the gift must be received by the gift fund (mentioned in section 30 130) of the institution or Australian government agency*

3. The relevant transition provision (section 16) states that:

On and after the commencement of this Part:

- (a) treat the entity as being endorsed as a deductible gift recipient under paragraph 30 120(a) of the Income Tax Assessment Act 1997 based on item 12.1.1 of the table in subsection 30 100(1) of that Act; and*

- (b) treat the public fund as being the entity’s gift fund mentioned in section 30 130 of that Act, unless or until the entity establishes a replacement gift fund.*

We interpret the intention of the legislative changes is that if an entity already administers a public fund with DGR status at the date of the changes then the entity (i.e. the Society) will be deemed to fall under the new DGR category (with DGR endorsement attaching to it directly) and the public fund (i.e. BFA fund) becomes the entity’s gift fund for receiving donations.

Please advise if our understanding above is incorrect in anyway.

C. QUERIES

We wish to clarify and comment on a few points which were not readily apparent from the material available on the ATO or Treasury websites or in which there is an apparent contradiction.

1. Endorsement of Society as a whole for DGR

- 1.1. It is stated that the entity will be endorsed as deductible gift recipient (as an institution whose principal purpose falls under Item 12.1.1 of the table) under paragraph 30 120(a). If an entity itself has the DGR endorsement then our understanding is that a gift fund is not normally required. The below statement on the current ATO website contradicts the provisions being proposed.

While DGRs endorsed as a whole are not required to maintain a gift fund, all gifts and deductible contributions made for the principal purpose must be used for that purpose. All DGRs must maintain records that explain all transactions and other acts relevant to status as a DGR.
<https://www.ato.gov.au/Non-profit/Getting-started/Getting-endorsed-for-tax-concessions-or-as-a-DGR/Is-my-organisation-eligible-for-DGR-endorsement-/Rules-and-tests-for-DGR-endorsement/>

- 1.2. The proposed provisions state that the former public fund will become the gift fund but it appears that despite the Society being endorsed as a whole the donations received by it must still be credited to the mandated gift fund (Foundation) in order for tax deductibility to be given to the donors. (as per special conditions)

Please confirm that in fact despite the above statement on the ATO website that the current requirement for all donations to be received into the Foundation (as the gift fund) effectively remains unchanged.

It seems that while other entities with DGR endorsement as a whole under paragraph 30 120(a) do not need to maintain a gift fund those that were formerly registered on ROCCO will be required to do so. We note that section 30 130 with respect to the maintenance of a gift fund applies to an entity with DGR endorsement attaching to a fund, authority or institution (that is those endorsed under paragraph 30 120(b)). Please clarify if this is not the case.

In fact this appears to continue the current structure with those cultural organisation entities being subject to special rules not applicable to other charities with DGR endorsement as a whole. Rather than streamline requirements this appears to continue the existing rules and creates confusion when interpreting the information on the ATO website.

We note the example given on the ATO Website:

Example: Gift fund not required

A public university is endorsed as a DGR as a whole. The university is seeking endorsement for the operation of a public library. The university does not need to maintain a gift fund for its library, as the university itself is endorsed as a DGR as a whole.

<https://www.ato.gov.au/Non-profit/Getting-started/Getting-endorsed-for-tax-concessions-or-as-a-DGR/Is-my-organisation-eligible-for-DGR-endorsement-/Rules-and-tests-for-DGR-endorsement/>

- 1.3. It is stated that an entity may establish additional gift funds. If an additional gift fund was established for purposes within the Constitution of the Society then it is presumed that these may be tax deductible as the DGR endorsement is now attached to the Society as a whole and not just the current public fund.

Please confirm that separate endorsement is not required for any additional gift fund as the Society as a whole will fall into the relevant DGR category under paragraph 30 120(a) of the ITAA.

2. Administration of the Gift Fund

2.1. Section 30.130 ITAA is titled *Maintaining a gift fund*. It states

*(1) The entity must maintain for the principal purpose of the fund, authority or institution a fund (the **gift fund**):*

(a) to which gifts of money or property for that purpose are to be made; and

(b) to which contributions described in item 7 or 8 of the table in section 30-15 in relation to a fund-raising event held for that purpose are to be made; and*

(c) to which any money received by the entity because of such gifts or contributions is to be credited; and

(d) that does not receive any other money or property.

Assuming that despite the proposed provisions stating that the entity as a whole is endorsed under paragraph 30 120(a) that this provision will apply to the Society, then it is not clear to us whether subparagraph (d) means that interest or other investment income earned on the monies held in the gift fund can be received into the gift fund. The same ATO website states:

Amounts that go to the gift fund

The following amounts must be credited to a gift fund:

- *all gifts of money or property made for the principal purpose of the fund, authority or institution, including ...*

- *money received because of these gifts and deductible contributions, including*
 - *proceeds from the sale of gifted property*
 - *investment returns from money or property that continues to be part of the gift fund.*

[emphasis added]

Please provide clarification on this.

- 2.2. Is a separate bank account now not required for the fund with its transition to a gift fund? The above ATO website states:

Your organisation does not need a separate bank account for the gift fund, however banking money in a separate account will provide clear evidence of the existence of a gift fund. Money or property of a gift fund should not be mixed with other money or property of your organisation.

...
*A public fund must have **a separate bank account** and **clear accounting procedures**.*

<https://www.ato.gov.au/Non-profit/Getting-started/Getting-endorsed-for-tax-concessions-or-as-a-DGR/Is-my-organisation-eligible-for-DGR-endorsement-/Rules-and-tests-for-DGR-endorsement/>

- 2.3. The rules for registration with ROCO include that:

Public fund committee and ‘responsible people’

A public fund needs to be administered by people who, because they hold some public office or because of their position in the community, have a degree of responsibility to the community as a whole. These people are referred to as ‘responsible people’. For further information and examples of ‘responsible people’ see: www.ato.gov.au/non-profit/getting-started/in-detail/types-of-dgrs/public-funds/?page=3#committee_members.

Your organisation will need to show that its public fund is controlled by a committee made up of a majority of ‘responsible people’. Your organisation’s public fund committee should have a minimum of three people (at least two of whom are responsible people) so that public control of the public fund does not lapse if one or more committee members are suddenly unable to serve

With the proposed changes it is understood that these and other requirements of ROCO for the administration of the public fund and the relevant provisions in our constitution which reflects these will no longer be applicable. Accordingly it is open to the Society to change the Constitution to remove or modify the provisions previously required for ROCO registration and administration of the fund. Please confirm.

Yours sincerely



Peter G Park
Co-President