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**securing  
sustainable  
livelihoods  
through  
appropriate  
technology**

NFP Sector Tax Concession Working Group Secretariat  
The Treasury  
Langton Crescent  
Parkes  
ACT 2600

14<sup>th</sup> December 2012

Dear Sir/Madam,

**Discussion Paper: Fairer, simpler and more effective tax concessions for the not-for-profit sector**

Centre for Appropriate Technology Inc (CAT) would like to make the following submission in relation to the above discussion paper released by the NFP Sector Tax Concession Working Group.

CAT is a national Indigenous science and technology not-for-profit organisation, established in 1980, a registered PBI, and is incorporated under the Northern Territory Associations Act. Governed by an Indigenous Board, CAT works with remote communities across central and northern Australia and has offices in Alice Springs (NT), Darwin (NT), Broome (WA) and Cairns (QLD).

In making our submission we are mindful of the issues raised which are generic to the NFP and charitable sectors. Many of these however relate to NFP tax issues which are critical to NFP operating in and based in remote Australia and in particular where aspects of current tax arrangements are critical in recruiting and retaining skilled and specialist staff to live and work in remote areas.

We thank you for the opportunity to comment on this matter. The following pages 2 to 12 layout our responses to the survey questions.

If you have any queries on our submission please contact Chris Kendrick on 08 8959 6213.

Yours sincerely,

Peter Taylor  
**Chief Executive Officer**

## **Responses to Submission Questions**

### **Income Tax Concessions & Refund of Franking Credits**

#### **Who should be eligible for exemption from income tax?**

*Q 1 What criteria should be used to determine whether an entity is entitled to an income tax exemption?*

The criteria should be linked to the resulting amended definition of a charity, as discussed and researched by Treasury through their consultation paper “A definition of Charity” in October 2011.

*Q 2 Are the current categories of income tax exempt entity appropriate? If not, what entities should cease to be exempt or what additional entities should be exempt?*

No comment.

*Q 3 Should additional special conditions apply to income tax exemptions? For example, should the public benefit test be extended to entities other than charities, or should exemption for some types of NFP be subject to different conditions than at present?*

Every income tax exempt entity should have to satisfy the same conditions, either satisfying the criteria directly or indirectly. Again the conditions should be linked to requirements for registration of a charity under the ACNC. For example, an organisation working to relieve poverty has a direct public benefit, however, one might not see the direct benefit of an employer association, but if it is active in the community and has a majority of members that do work to relieve poverty one could argue that they satisfy the public benefit test. If, on the other hand, they don't do anything to focus on any public benefit then they shouldn't be eligible for a tax concession purely because they are an employer association.

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

The overall complexity of the tax system creates inefficiencies. We believe there are greater impediments for smaller/medium NFPs, in particular in remote areas and believe this should be considered further.

#### **Who should be eligible for refunds of franking credits?**

*Q 5 Should other types of NFPs also be able to claim a refund of franking credits?*

One could argue that all organisations should be eligible to receive franking credits and then include the income into their own taxable income in the same way as individuals can. This achieves the aim of simplicity and transparency and ensures that each and every entity pays tax at the rate relevant to them.

The eligibility of NFPs to receive a cash refund would then be restricted by the same principles under discussion at Q3 above, regarding the public benefit test, further, the guiding principles of the working group would be covered.

*Q 6 Should the ability of tax exempt charities and DGRs to receive refunds for franking credits be limited?*

For the same reasons commented on in Q5, no.

#### **Extending the ATO endorsement framework**

*Q 7 Should the ATO endorsement framework be extended to include NFP entities other than charities seeking tax exemption?*

Yes, as this provides for more certainty for the entity as well as greater fairness and transparency. This should be linked to the registration requirements of the ACNC, therefore, being extended in line with the requirement to register with ACNC, which we believe will be required once the initial activity generated by a focus on charities has reduced.

#### **Rewrite and consolidate rules for State, Territory and local government bodies**

*Q 8 Should the income tax exemptions for State, Territory and local government bodies be simplified and consolidated into the ITAA 1997? Which entities should be included?*

Yes they should be simplified and consolidated. The entities should be considered for inclusion along the same guidelines as for all other entities, ie if the public benefit test is extended as discussed in Q3 this should also apply to government bodies.

#### **Increasing the tax free threshold for taxable NFPs**

*Q 9 Should the threshold for income tax exemptions for taxable NFP clubs, associations and societies be increased? What would a suitable level be for an updated threshold?*

We believe it should be increased to \$2,000, as the current level is too low and hasn't been reviewed a long time, but that this should be as a tax free threshold with the tax rate on all income above the threshold set at 30%. Thus even if the NFP exceeds the threshold, they will be entitled to a tax free portion.

#### **General**

*Q 10 Please outline any other suggestions you have to improve the fairness, simplicity and effectiveness of the income tax exemption regime, having regard to the terms of reference.*

Overall it needs further simplification, especially for small to medium sized entities, especially small indigenous NFPs that provide valuable public services to remote communities.

## **Deductible Gift Recipients**

### **General Comment**

We support the Productivity Commission's Report in 2010 that suggested that all endorsed charities should also be able to gain DGR status. This is because the charity's endorsement recognises that they are providing a public benefit, for which they raise their income. If each charity were also a DGR they would have a greater ability to attract funds and on the other side donors could make a wider choice of who to support with those funds. By moving the decision of who to donate to away from the regulator to the individual a fairer system would result.

### **Overlapping categories of entity type – paragraphs 54 to 59**

This issue should be addressed for all organisations, be they Indigenous or otherwise. Paragraph 59, suggests a solution to have a new category for Indigenous organisations that carry out activities across multiple DGR categories – this should be allowed for all entities. One way of achieving this is to give all charities DGR status as discussed above.

### **Mechanism for encouraging charitable giving – paragraphs 63 to 64**

Whilst the differences between the benefit received by higher and low income earners, as discussed in paragraph 63 is true, changing to a tax rebate system means that the charity is likely to attract less in donations, due to the fact that neither the charity or the individual would be receiving the full tax benefit currently achieved.

Further, the suggestions made in the paper to provide a tax offset and thus provide a greater incentive to lower income earners, would provide a lower incentive for higher income earners. This has the effect of attempting to encourage those that can't so easily afford to donate, whilst reducing the incentive for those that can. As noted in paragraph 91 this is likely to achieve an overall decline in donations, which would not be welcome.

### **Issues with expanding DGR status to all charities – paragraphs 77**

We would like to have seen some calculation behind the estimation of a fiscal cost, or 'lost' tax of \$1 billion per annum for extending DGR status to all charities. We believe this is likely to be overstated, and this suggestion could distort the view of the benefits to be gained from such a move. The estimate appears to assume that donations will more than double if DGR status is expanded, an assumption for which no evidence is given and does not take into account the likelihood that current donors may simply shift their donations to charities newly endowed with DGR status, thus not actually increasing the overall total of donations.

## **Establishing endorsement conditions relating to the scope of charitable activities**

*Q 11 Should all charities be DGRs? Should some entities that are charities (for example, those for the advancement of religion, charitable child care services, and primary and secondary education) be excluded?*

All charities should be allowed DGR status and allowed to provide a tax deductible receipt for true donations towards their charitable purpose. If any charity, including the examples given here, charge specific fees for services provided then those fees should not be eligible to a deduction for tax purposes, as these types of payment are reciprocal payments for services received and not by definition gifts.

*Q 12 Based on your response to Q11, should charities endorsed as DGRs be allowed to use DGRs funds to provide religious services, charitable child care services, and primary and secondary education?*

Yes, if those services are provided in furtherance of the public benefit they provide and not on a fee for service basis. For example, a school educating poverty-stricken Children should be allowed to seek donations to help support the services they provide.

If the majority of services provided by these charities are not considered a charitable purpose then one would have to question why they are able to achieve charity status in the first place.

*Q 13 Would DGR endorsement at the entity level with restrictions based on activity address the behavioural distortions in Australia's DGR framework? Could unintended consequences follow from this approach?*

Yes, it would help address some of the behavioural distortions. As mentioned in paragraph 75, the remaining issue, if endorsement was at entity level, would be that of private benefits, however, these could easily be covered by clear guidelines.

The main reason behind our argument here, is that if an entity is eligible under the guidelines to be a charity, due to the majority of its work being of a charitable nature, then there would seem to be no reason to restrict its ability to attract tax deductible gifts, except for those services that are of a private nature or are not in furtherance of the charitable purpose.

*Q 14 If DGR status is extended to all endorsed charities, should this reform be implemented in stages (for example, over a period of years) in line with the PC's recommendations, or should it be implemented in some other way?*

We would suggest that a staged approach would be extremely hard to implement and would disadvantage those left out of the initial round of the implementation phase.

If the process of becoming a DGR was extended to all charities, but that charities would still need to apply for the status then that would in effect stagger the process whilst charities made their applications.

*Q 15 Would a fixed tax offset deliver fairer outcomes?*

For individuals on a lower income tax rate possibly. However, one should take into account that providing a fixed offset may increase the incentive for those less able to donate, but will reduce the incentive for those with a higher level of disposable income. Therefore, this is likely to reduce the overall giving and reduce the ability for DGRs to generate much needed income from donations.

Thus, in looking at all parties concerned, we'd argue that a fixed tax offset would not provide a fairer outcome.

*Would a fixed tax offset be more complex than the current system?*

Yes.

*Would a fixed tax offset be as effective as the current system in terms of recognising giving?*

No, because those more likely to be able to afford to give receive less recognition in terms of the tax offset – see paragraph 91, the level of giving in general is likely to reduce, by a suggested 5%.

*Q 16 Would having a two tiered tax offset encourage giving by higher income earners?*

No, because it reduces the overall tax deduction that they would receive. Even if the tax offset rates were set at the highest and lowest income tax brackets, the overall amount of the tax benefit of the donation would decrease.

Further, the hybrid system with the development of Private Ancillary Funds brings in higher complexity, which will detract from the desire to donate and would redirect some of the donations into the cost of administering such a system, so again the DGRs would receive less.

*Q 17 What other strategies would encourage giving to DGRs, especially by high income earners?*

Allowing all charities to register as DGRs would allow for greater choice of donation options by high income earners. This may have the effect of encouraging further donations from those currently not able to receive a tax deduction from a donation to their favourite charity.

*Q 18 Should testamentary giving be encouraged through tax concessions and what mechanisms could be considered to address simplicity, integrity and effectiveness issues?*

Yes, but as is currently the law, per paragraph 103, by the removal of the CGT from testamentary gifts of property to DGRs and not by following the Mitchell Review as described in paragraph 99.

## **Creating a clearing house for donations to DGRs**

*Q 19 Would a clearing house linked to the ACN Register be beneficial for the sector and public?*

We can see benefits.

The questions this raises would include:

- who is going to pay the \$25 million capital cost, noted in paragraphs 109?;
- what about ongoing administration costs, whilst financial institutions may be encouraged to help with the credit card costs, this is only one part of the administration cost of such a system?

Assuming these costs will be passed onto the DGRs, then membership of the clearing house would have to be voluntary to protect those DGRs who can't afford such costs.

An alternative or maybe alongside this suggestion, we'd suggest a register containing website links to charities, to direct people to the individual website of registered bodies, rather than the clearing house.

*Q 20 Are there any barriers which could prohibit the wider adoption of workplace giving programs in Australia? Is there anything the Working Group could recommend to help increase workplace giving in Australia?*

Yes, payroll administration costs can be high.

The clearing house idea would help here, assuming it could cope with a single payer being the employer to numerous charities. The Working Group could look at easing the per-transaction administration cost from the point of view of the employee. For example, making the employee payslip process a valid proof for a tax deduction or in a similar way to union fees (through to E-Tax), employee giving - where to a relevant registered ACNC organisation - could be flowed through to payment summaries and summarised at that point.

## **Simplify property donation rules and anti-avoidance rules**

*Q 21 Do valuation requirements and costs restrict the donation of property?*

No comment.

*What could be done to improve the requirements?*

Valuation should be able to be done by a wider register of approved valuers, to provide a greater ability to gain competition in the cost of the valuation.

*Q 22 Is there a need to review and simplify the integrity rules?*

No comment.

*Q 23 Are there additional barriers relevant to increasing charitable giving by corporations and corporate foundations? Is there anything the Working Group could recommend to help increase charitable giving by corporations and corporate foundations?*

No comment.

**Eliminate public fund requirements for charities registered by the ACNC**

*Q 24 Are the public fund requirements, currently administered by the ATO, either inadequate or unnecessarily onerous?*

No.

*Q 25 Are there any possible unintended consequences from eliminating the public fund requirements for entities that have been registered by the ACNC?*

No.

**Increase the threshold for a deductible gift from \$2 to \$25**

*Q 26 Should the threshold for deductible gifts be increased from \$2 to \$25 (or to some other amount)?*

We believe the threshold should remain at \$2, as this still allows for lower income earners to contribute.

Additionally, increased flexibility could be achieved through exemption from individual receipt requirements for accumulative gifts within a financial year. I.e. - as long as the accumulated giving was over the \$2 in the year and can be proved through a payslip deduction record (or credit card statement), then an actual receipt is not necessary. Similarly, larger amounts could be subject to an end of financial year confirmation from the charity when requested.

**General**

*Q 27 Outline any other suggestions you have to improve the fairness, simplicity and effectiveness of the DGR regime, having regard to the terms of reference.*

No comment.



## **Fringe Benefits Tax Concessions**

### **General Comment**

There are various references within the paper that seem to suggest an underlying belief that a tax concession provided to an individual due to their work for an income tax exempt organisation or PBI, is unlikely to support the sector in a meaningful way. This is supported on page 10's discussion on *Reasons for Limiting Tax Concessions* by a note that tax concessions may affect competitive neutrality when considering competition for staff.

We would suggest that this view ignores the benefit gained by the NFP from the gains the individual makes. That is, a tax concession helps to fill the gap between the salary levels NFPs can afford compared to those offered by for-profit entities, when comparing similar jobs. Though this point is referred to in paragraph 128, overall the options cited in the paper do not seem to consider this further.

We believe that in fact the current tax concessions, considering they usually only go part way to fill the gaps between salary levels, do not affect competitive neutrality, but assist NFPs to compete on a more level playing field.

### **Administrative burdens**

We would, with respect, disagree with the assumptions commented on in paragraphs 141 & 142, regarding income level affecting take up of FBT benefits. In remote PBIs offering tax concessions we would suggest the offering and take up of FBT concessions are across all staff regardless of income level and there is no significant different in the take up rates between staff on different pay scales.

Again, we note that although mentioned briefly in the discussion paper, there is relatively little consideration relating to the extent to which the PBI / packaging benefits can help attract and retain staff in a competitive environment, particularly in rural, regional and remote areas. The comparative salaries and benefits which the tax concessions allow are embedded in the ability for the NFP sector to attract and retain quality staff.

### **Should the list of entities eligible for the exemption or rebate be revised?**

*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?*

Similar to the options explored above, the criteria here should also be linked to the public benefit test – as per the workings of the ACNC and other reforms. If the criteria is reached - tax concessions should apply. This should also apply to government entities that achieve the criteria, per Q8 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?*

All those eligible for income tax exemption, but not a FBT concession, should be eligible for a FBT rebate.

*Should this be restricted to charities?*

Charities should be allowed a full concession, see comments under Q28.

*Should it be extended to all NFP entities? Are there any entities currently entitled to the concessions that should not be eligible?*

No comment.

*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?*

Yes, those that achieve income tax exemption due to the indirect nature of their business, as discussed in Q3, should only be eligible for a rebate and not an exemption. All charities should be eligible for the full concession.

#### **Include meal entertainment and entertainment facility leasing benefits within the relevant caps**

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

No, this would result in a net reduction of available packaging benefits to many PBI entities and increase the difficulty they have in attracting qualified staff.

*Q 32 Should the caps for FBT concessions be increased if meal entertainment and entertainment facility leasing benefits are brought within the caps?*

Yes, otherwise the effective reduction in net salary for staff within many PBI entities would make it extremely difficult for them to compete to retain staff.

*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?*

No there should not be a separate cap, the overall cap should be increased. In order for a recommendation to be made as to what level this should be a review of average benefits currently provided should be sought.

*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?*

Yes, those that are not easily attributable to a single individual, as discussed in paragraph 148.

**Require employment declarations to include information about FBT concessions to avoid employees from benefiting from multiple caps**

*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?*

The concession could be provided on a pro-rata basis for the time within the FBT year in which the employee is substantively working with the entity. For example - a person starting in January would access 1/4 of the \$30,000 cap in the year.

However, there should be no restriction on access to multiple caps if working for more than one employer at a time. A restriction here would result in additional difficulty in attraction and retention of staff, should that staff member be employed by two employers. For example, if a member of staff works full time for one employer and chooses to work on a weekend for another, the employer who is unable to provide a concession would be disadvantaged in their ability to attract that member of staff, because they are more likely to be seeking the second employment from a non-concessional employer who could afford to pay more in salary.

Further, it would be unacceptable to place the burden of proof on the employer, to ensure multiple caps are not claimed.

**Align the rate for fringe benefits tax rebates with the fringe benefits tax rate of 46.5 per cent**

*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?*

Yes, they should be aligned.

**Align the minor benefit exemption with the commercial sector**

*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?*

Yes this should be removed, there is no reason for it to be there it is inequitable.

**Phase out capped FBT concessions and replace with alternative government support**

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

Yes the provision of FBT concessions to current eligible entities is appropriate.

Per our answer to Q28 above, the concession should be extended based on the criteria used to register with the ACNC as a charity.

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

No, this would seriously affect the ability for entities eligible for the FBT concession to compete for and retain staff, especially in remote areas.

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

No. Direct support for entities is unlikely to filter out to all entities affected on the basis of staff employed at a given point in time, it would be less flexible than is currently the case and therefore likely to reduce the overall benefit for each of those organisations.

The concept of “direct support for entities” would suggest some type of direct funding provision, which is likely to place an added unacceptable compliance burden on these entities.

**Phase out fringe benefits tax concession and replace with alternative tax-based support mechanisms for eligible not-for-profit entities**

- Refundable tax offsets payable to eligible entities
- A direct tax offset for employees of eligible entities
- Tax free allowances for employees of eligible entities

*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?*

Broadly speaking - some form of concession around PAYG for the employees could be a simpler and more effective way of supporting the NFP sector than the (long time evolved) FBT legislation.

In particular the rules around remote areas and exemptions thereof would need to be carefully worked through to ensure parity - or something very near it - was maintained. Worked through carefully, this could reduce administration (FBT returns and large, fee based out-sourced FBT management) for employers and employees. Any such arrangements would need to combine the benefits for employees - currently through reduced reportable incomes.

However, we would not support the option of a refundable tax offset to the employer, as this would add an unnecessary level of complexity and administrative burden on the employer.

**Limit concessions to benefits that are incidental to employment**

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

No, this would make it impossible for employers in the sector to compete for staff and likely result in contraction of staff and thus the ability to provide the service levels currently achieved.

*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?*

All entities currently eligible to provide the FBT concessions to their staff.

**Q43 to Q57, we note that we have no comments of the remaining questions in the paper.**