13th December 2012

Manager
Charities Unit
Indirect, Philanthropy and Resource Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

**Re: Submission on tax concessions for the not-for-profit sector**

Surf Life Saving New South Wales is supportive of NFP tax reform that will result in operational efficiency and improved sustainability of the NFP sector, however it is not supportive of measures that have the dominant purpose of boosting government revenue to the detriment of NFPs operating sustainably, professionally and attracting and retaining skilled staff. If the NFP sector is to be sustainable into the future then overall government contributions (both direct and indirect) towards the sector need to be maintained or increased in real terms, as opposed to being diminished.

The value to the Australian Community of Surf Life Saving is well documented in earlier consultation papers that have been provided to Treasury *(Surf Life Saving NSW is worth $1.7 billion to the community and nationally it is worth $3.6 billion according to the PwC report 'What is the economic contribution of Surf Life Saving in Australia' 2011)*. The benefits of our organisation to the community far outweigh the costs.

The Government wants NFPs to be more professional in the way they conduct their operations all of which requires funds and skilled people, so any tax reforms introduced needs to ensure the NFP sector's ability to attract and maintain high quality staff and to ensure that the organisation is still able to provide a public benefit to the level that the community need.

Surf Life Saving is a beneficiary of many of the tax concessions mentioned in this discussion paper, thus should they be removed or their value diminished, it will drive up our cost structure which will mean a reduction in the vital services we can provide to the community. As such, our responses to the consultation questions have been framed with this mind.

Consultation Questions

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

The overriding criteria should be whether a NFP provides a net public benefit to community, according to the definition of charity.

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Australian for life.

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, entities that purely benefit members in real terms, and provide very little if any benefit to the community at large should be exempted.

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?

Yes, as many organisations provide an overall public benefit but do not fit within the historic definition of a charity.

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

The proposed legislation to crackdown on unrelated commercial activity will create difficulties for large or complex NFPs that have structured their organisations to be more self supporting, thus relying less on the public purse in terms of revenue.

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

The existing types of NFP's appear sufficient (per table A)

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

No, as this would adversely impact their ability to fund the operations, which ultimately will result in reduced services assuming the shortfall cannot be made up elsewhere.

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?

No Comment

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?

The threshold should be increased by CPI starting from the last time it was reviewed and indexed annual there on based on CPI.

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?

Given the ACNC is now in operational and will in future receive all NFP reporting it should be the independent arbiter on the qualification for income tax exemption. Their decision should be based on a review of information provided and satisfying a community benefit test. This will also ensure approval is independent of the ATO who may be more inclined to knock back exemptions given their interests of maximising tax revenue.

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?

Provided they pass an overall public benefit test not just advancement of religion or education.

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?

Provided it is considered to benefit the public at large not just a narrow constituency.

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?

If the activity which allowed DGR was the "the public benefit" it should not introduce distortions it may actually get rid of some existing distortions.

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?

Any dramatic change should be phased in to allow organisations time to adapt to any changes.

Q 15 Would a fixed tax offset deliver fairer outcomes? Would a fixed tax offset be more complex than the current system? Would a fixed tax offset be as effective as the current system in terms of recognising giving?

Yes a fixed tax offset system would be fairer. Setting it at the top tax rate would encourage all income levels to give, as opposed to having it set at a lower income level which would be a disincentive for higher income levels.

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

It may minimise any drop off rather than encourage higher income earners to give.

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

A tax deductible loading for donations above a particular threshold level would be beneficial as it would effectively allow a tax deduction that is greater than their marginal tax rate.

The Government could also take a more active role in promoting payroll giving in the Australian community. According to a PWC report '*The Giving Business*' (2009), since the tax changes in 2002, employer participation in payroll giving has more than doubled, however it's potential hasn't been fully tapped. If Australians were to participate in payroll giving at the level Canadians do (5.6% of the population at $228 per year), $200 million or more per year could be available to support Australian Charities.

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

Yes provided it could be done in a way which is simple and not open to manipulation and tax evasion.

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

It would be beneficial provided it did not become mandatory. If NFP's could link their website it would be a major plus and would make it easier for the general public to search NFP information.

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?

It doesn't currently reduce the regular PAYG amounts payable by salaried tax payers. If PAYG could be reduced in the month of giving, it may increase workplace giving. The other barrier is the limited time, the complexity of setting it up and the limited resources of NFPs to set up payroll giving programs. There is also a lack of awareness by the general public of its existence.

Q 21 Do valuation requirements and costs restrict the donation of property? What could be done to improve the requirements?

No Comment

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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?

The provision of a greater tax deduction, for example over 100%, may encourage corporate charitable giving, or perhaps a register of top companies who donate the most to charities.

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

No comment

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

No comment

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

An increase to $10 would appear fair to all concerned

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.

As previously mentioned a net public benefit test should be the major determinant on whether DGR is offered.

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?

As previously mentioned a net public benefit test should be the major determinant on whether exempt benefits can be provide to employees.

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?

Forget all the NFP categorisation and concentrate on satisfaction of the public benefit test to determine which NFPs qualify.

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, if it is easy to tier the level of public benefit provided and determine that specific NFP services are of greater value to the community than other. This would require a prioritisation of services to the community.

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

No, not unless the existing FBT concessions caps are lifted as they have been the same for a number of years. This would assist in mitigating the adverse impact to a PBIs cost structure as they would have to compete in other ways for key staff in the marketplace.

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?

Yes, FBT concessions should be increased if meal entertainment and entertainment facility leasing benefits are brought within the caps. Existing employees will have their effective compensation packages reduced. If the reduction is not made up in some other form, it may result in staff leaving the NFP sector. Given NFPs can't pay staff as much income as what they can get in the corporate sector, FBT concessions are a way of attracting and retaining high quality staff.

Yes, there should be a separate cap for meal entertainment and entertainment facility leasing benefits if the overall exemption is to be removed. The increase should not be based upon average calculations done by Treasury but done after consultation with professional salary packagers and the NFP sector.

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?

No comment

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?

If the legislation was drafted so individuals were entitled to only claim FBT concessions once it would be reasonable for employers to follow employment declarations made by employees, in much the same way as it is now done with claiming the tax free threshold.

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.

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.

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

Yes, these benefits should be available to available to NFP's satisfying the public benefit test as they fill that void in the community that the government and commercial sector cannot fulfil and this needs to be recognised. Further NFPs need some assistance to be able to attract people with the appropriate skills, especially as they are being expected to be more professional in the way they conduct their business. Unless the Government is willing to pay more in the way of direct grants to eligible NFPs, then NFPs should continue to receive FBT tax concessions of the same magnitude.

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

No, not without being replaced by appropriate assistance to help attract and retain staff, which is vital given the fact that staff in the NFP sector are often dealing with the most vulnerable people in the community which requires a unique skill set. Any assistance should be long-term, rather than considered on a year-to-year basis as NFPs require long term certainty.

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

No, as Government's tend to cut grant funding, particularly in the community sector whenever they require savings in the budget. Furthermore, even if it is not cut directly, it is generally reduced over time as the grants are not indexed to inflation. It is much harder to remove a tax benefit and thus this provides greater protection to NFPs.

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

Possibly if the tax free threshold for appropriate NFP employees was lifted above normal tax free threshold to make up for the removal in more than a token fashion.

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

No, as it will significantly drive up NFPs labour costs to make up for the loss in take home remuneration of their employees. As a result this will make NFPs less able to supply the services the Government and Community see as being valuable, which are the same services the Government and private sector do not provide.

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?

NFPs who satisfy the public benefit test should be eligible to receive support.

CHAPTER 4 — GOODS AND SERVICES TAX CONCESSIONS

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?

No comment

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?

No comment

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

Yes, so that existing cost structures are maintained for eligible NFPs.

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

No

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?

No Comment

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

No Comment

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

No Comment

50. Should the gaming, catering, entertainment and hospitality activities of NFP clubs and societies be subject to a concessional rate of tax, for income greater than a relatively high threshold, instead of being exempt?

Yes, unless it can be demonstrated that all income above the threshold is being donated for the public benefit to community organisations (excluding the underlying membership organisation).

51. What would be a suitable threshold and rate of tax if such activities were to be subject to tax?

$1,000,000 (index to CPI) and taxed at 25%

52. Should the mutuality principle be extended to all NFP member-based organisations?

No

53. Should the mutuality principle be legislated to provide that all income from dealings between entities and their members is assessable?

No

54. Should a balancing adjustment be allowed for mutual clubs and societies to allow for mutual gains or mutual losses?

No comment

55. Is existing law adequate to address concerns about exploitation of the mutuality principle for tax evasion? Should a specific anti-avoidance rule be introduced to allow more effective action to be taken to address such concerns?

More specific anti-avoidance rules should be introduced so the intent of the law is applied.

56. Are there any areas in which greater streamlining of concessions could be achieved?

No Comment

57. Do you have any ideas for reform of NFP sector tax concessions within the terms of reference that have not been considered in this discussion paper?

HECS/HELP debt reductions (say 5-10% per year) for people prepared to put their skills to work for the public benefit with eligible NFPs. This should make working in NFP sector more appealing for young tertiary qualified individuals.

In closing, Surf Life Saving NSW has concerns about tax concessions being removed as this is an important way that the Government is able to provide our organisation and other NFP organisations with assistance in being able to provide valuable services to the community. Without these concessions, it would heavily compromise our ability to meet community demands and expectations, particularly during current fiscally difficult times which have made it harder for NFPS to attract revenue through fundraising, donations and sponsorship.