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

Monday 17 December 2012

Please find attached the submission to the Not for Profit Sector Tax Concession Working Group from Community Southwest.

We have responded to all questions except for Chapter 5 – Mutuality, Clubs and Societies.

Community Southwest Ltd is an alliance of fifteen incorporated, non-government, not-for-profit, organisations that are based in south west Victoria. Members of Community Southwest seek to collaborate at strategic, operational and administrative levels to improve delivery of services to the community. Community Southwest and its member organisations are active participants in the provision of health and wellbeing education and social inclusion initiatives that contribute to a healthy and sustainable community. The mission of Community Southwest is to strengthen the capacity and viability of Community Southwest members to build sustainable and resilient local communities.

Members of Community Southwest are:

- 3 WAY FM
- Aspire A Pathway to Mental Health Inc.
- Brophy
- Cooinda Terang Inc.
- Lifeline South West Victoria
- Lyndoch Living
- Mpower Inc.
- South West Credit Union
- Southern Way Direct Care Services Inc.
- Stay residential Services
- Western District Employment Access
- Western Region Alcohol and Drug Centre Inc.
- Westvic Staffing Solutions
- Women's Health & Wellbeing Barwon South West
- Worn Gundidj

Yours sincerely

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Not-for-profit Sector Tax Concession Working Group December 2012

CONSULTATION QUESTIONS

Responses from Community Southwest Ltd

CHAPTER 1 — INCOME TAX EXEMPTION AND REFUNDABLE FRANKING CREDITS

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

The following not for profit entities, which provide public benefits to the community:

- Providers of services
    - Child care
    - Disabilities
    - Disadvantaged
    - Hospitals
    - Aged Care
    - Employment
- Credit Unions
- Broadcasters
- Charities
- Religious
- Scientific
- Education institutions
- Sporting organisations
- Cultural organisations

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?

Yes, the current categories of entities should be retained.

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?

No

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

No impediments that I am aware of.

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

No, the tax system should not be used to encourage NFPs to invest in securities. Investments need to be secure. NFPs should strive to retain funds previously accumulated.

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

Yes there should be limits, charities and DGRs should not be encouraged to invest in securities. Investments should be in secure low risk accounts.

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

The role of the Australian Charities and Not for Profits Commission (ACNC) should be broadened to include other NFP organisations

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, all not for profit state, territory and local government bodies should be included in the *Income Tax Assessment Act 1997*

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 lifted to $2,000 from $416. The 30 per cent tax should only apply to all income over and above $2000. Update the tax free threshold to $2,000.

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.

None

CHAPTER 2 — DEDUCTIBLE GIFT RECIPIENTS

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?

There needs to be a tight prescribed process to obtain DGR status. Tax deductibility needs to be limited to organisations satisfying public benefit and promoting charitable benefit. Increasing the number of appropriate organisation with DGR status would encourage donations. The DGR status would allow greater opportunities for NFP entities to have greater involvement with foundations and other philanthropic funding sources.

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?

There is already confusion in this area as currently donations for education buildings are tax deductible but payment of fees is not deductible. DGR status for educational institutions could encourage creative options with respect to deductibility for school fees.

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?

DGR endorsement at the entity level appears to be the most practicable. However, as many NFP entities conduct a number of different activities this would be difficult to enforce and there could be potential exploitation.

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?

Implementation should occur in as short a time frame as possible. If changes are implemented then all eligible entities should be able to benefit. This would also avoid the confusion of communicating which entities have DGR status and when it takes affect.

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?

Currently all deductions related to generating income are taxed at the marginal rate. The tax offset would remove donations from this scenario. It would add complexity and would recognise giving at a value different to current marginal tax rates.

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

Potentially a two tiered tax offset would provide a disincentive for higher income individuals from donating.

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

The current arrangements are an inducement for high income earners to donate to DGRs. Extra incentives have previously been found to be costly to government revenue without providing true benefits for society.

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

Removal of capital gains tax on testamentary gifts to DGRs is good policy. There is no need to provide other tax concessions for testamentary giving. The decision to provide testamentary giving has been made by the donor and other beneficiaries of the will should not benefit from tax concessions post the donation.

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

The clearing house concept is a good idea consistent with online commercial preferences for most individuals. The system would also create efficiencies for the vast majority of DGR organisations. One concern is that an individual is willing to donate to a specific DGR entity, but upon visiting a clearing house may well choose a different organisation to donate. The specific DGR may have gone to considerable efforts to encourage a donation but ultimately is not the recipient of the donation.

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?

Encouraging workplace giving into their own geographical region could encourage donations. This would encourage the workforce to be more actively involved with a local DGR entity. This could occur in terms of awareness the difference that the DGR entity is making to the local communities and potentially lead to volunteering or fund raising initiatives with that organisation.

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

No knowledge of current property donation rules.

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

Simplify the integrity rules. If donors receive any benefit then there is no claim for a deduction.

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?

Corporations make the decision to donate; the advantage is being linked to a reputable charity. There is no expectation that a percentage of the donation is returned to the donor in benefits. Donations are not sponsorships where the expectation is that benefits are provided to the sponsor.

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

Public fund requirements, currently administered by the ATO, are not unnecessarily onerous.

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

ACNC providing governance for charities would be beneficial to the sector and give confidence to the public that the regulations, procedures and reports are at appropriate standards.

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

Donations should never be discouraged. The vast majority of the public does not require a receipt for gold coin donations. Increasing the threshold to $10 could potentially increase the size of the donation and avoid the costs and efforts associated with processing small value transactions.

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.

Improvements should provide confidence to donors that the DGR entity is well regulated and providing benefits to the community. The system should be similar for all organisations and not advantage one sector over another. Compliance needs to be appropriate without becoming overly bureaucratic.

CHAPTER 3 — FRINGE BENEFITS TAX CONCESSIONS

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?

The following NFP entities should be eligible to provide exempt benefits to their employees: public benevolent institutions, public and NFP hospitals and religious institutions.

29. Also assuming that the current two-tiered concessions 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?

Yes, this should be restricted to charities. No, it should not be extended to all NFP entities. Entities that should qualify for the rebate include religious, certain educational, charitable, or scientific institutions and certain community organisations that have charitable status.

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?

Not all NFP entities should be eligible for the rebate and exemption.

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

No, the existing cap should not include all entertainment benefits.

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?

The entertainment benefit should have a cap of its own. An appropriate amount for such a cap is $10,000 per annum.

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

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?

Yes, employees should be able to claim from only one employer. The onus is on employees to indicate whether they are receiving concessional FBT benefits from another employer on their employment declarations. This can be achieved similar to calculating employee's pay-as-you-earn tax withholding taking into account the tax-free threshold.

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, the rate for FBT rebates should be re-aligned with the FBT tax rate. There is no obvious reason for not aligning the rates.

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, align the minor benefit exemption with the commercial sector. There is no obvious reason for not removing the limitation.

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

The provision of FBT concessions to current eligible entities is appropriate. The concessions should only be available to NFP entities that have charitable status, public benevolent institutions, public and NFP hospitals and education and religious institutions.

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

No, the existing arrangement provide some autonomy for NFP entities that would be lost if exemption and rebate is phased out.

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

No, funding is not guaranteed. NFP entities could be used for political purposes rather than good policy.

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?

The current system works well for both NFP entities and employees. NFP organisations are able to attract appropriate staff within limited budgets.

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

The FBT concessions should remain on remuneration benefits as currently. Regional and rural organisations obtain no value from non-remuneration benefits such as providing CBD car parking to staff.

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?

Entities that qualify for the rebate include religious, certain educational, charitable, or scientific institutions, trade unions and employer associations and certain community organisations that have charitable status.

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?

Current GST arrangements work well for NFP entities.

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?

NFP entities are able to work within the current guidelines.

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

Yes, the current GST concessions should continue to apply for eligible NFP entities.

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

The GST is no more onerous for NFP entities than the commercial sector.

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?

Current arrangements allow for both exempt and input taxed supplies.

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

Not sure.

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

The compliance is not an onerous burden.

CHAPTER 5 — MUTUALITY, CLUBS AND SOCIETIES

This section is not relevant to the alliance members of Community Southwest.

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?

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

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

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

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

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?

CHAPTER 6 — NEXT STEPS

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

Differential treatment of organisations and individuals in terms of tax laws always requires a level of compliance and appropriate governance. Streamlining of concessions is not an area of concern.

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?

Many government initiatives are income tested. FBT could be treated at similar levels to the private health insurance rebate, which has a sliding scale for different income levels. This would provide more equitable targeting of the benefits to individuals requiring greater assistance.

The compliance with fringe benefits tax is not onerous for NFP entities, especially when compared to the bureaucratic audit and accreditation processes that NFP entities must undertake to maintain services.