



AUSTRALIAN
COUNCIL
FOR
INTERNATIONAL
DEVELOPMENT

**Submission to the Not-For-Profit Sector Tax Concession Working
Group**

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

14 December 2012

1. Who ACFID represents

- 1.1 The Australian Council for International Development (**ACFID**) unites Australia's non-government aid and international development organisations to strengthen their collective impact against poverty. Our vision is of a world where gross inequality within societies and between nations is reversed and extreme poverty is eradicated.
- 1.2 ACFID's purpose is to provide leadership to the not-for-profit aid and development sector in Australia in achieving this vision and to fairly represent and promote the collective views and interests of our membership.
- 1.3 Founded in 1965, ACFID currently has 96 members operating in more than 100 developing countries. ACFID's membership expends \$1.3 billion on humanitarian and development activities and raised \$890 million from over 2 million Australian households (2010/11). 80% of funding is from non-government sources. ACFID's members range between large Australian multi-sectoral organisations that are linked to international federations of NGOs, to agencies with specialised thematic expertise, and smaller community based groups, with a mix of secular and faith based organisations.
- 1.4 The ACFID Code of Conduct is a voluntary, self-regulatory sector code of good practice that aims to improve international development outcomes and increase stakeholder trust by enhancing the transparency and accountability of signatory organisations. Covering over 50 principles and 150 obligations, the Code sets good standards for program effectiveness, fundraising, governance and financial reporting. Compliance includes annual reporting and checks. The Code has an independent complaints handling process. Over 127 organisations belong to the ACFID Code and can be viewed at <http://www.acfid.asn.au>.
- 1.5 Broadly speaking, ACFID's members are:
 - (a) Income tax exempt;
 - (b) Endorsed as a deductible gift recipient;
 - (c) Entered on the Overseas Aid Gift Deductibility Scheme (**OAGDS**) Register; and
 - (d) Mostly, either FBT exempt (as they are a PBI) or eligible for a FBT rebate.

2. Overview of ACFID's position

- 2.1 ACFID supports the general reform intent of reducing red tape for the charitable sector, and, therefore, simplifying the eligibility and administration of tax concessions for the sector. ACFID has attempted to limit its comments on the Discussion Paper to matters considered important or relevant to its members.
- 2.2 ACFID's answers to the Discussion Paper are summarised as follows:

Question 1: *ACFID submits that those entities which are registered as a charity with the ACNC should automatically be endorsed as income tax exempt, without the need for a separate, additional assessment by the ATO.*

Question 3: ACFID submits that the same set of conditions cannot be imposed on every income tax exempt entity – entities declared developing country relief funds, and entered on the OAGDS Register, must remain exempt from the requirement to operate principally “in-Australia”.

Questions 11 & 12: ACFID supports the exclusion of some charities and/or activities conducted by charities, as suggested in options 2.2 and 2.3.

Question 13: (1) Endorsement at the entity level may create unintended complexity depending on the extent to which, and the method by which, the ATO will require proof that DGR funds are not used for excluded activities;

(2) Any simplification of the DGR rules for endorsement at the entity level should not unintentionally require entities declared developing country relief funds to operate principally in Australia.

Questions 15 & 16: ACFID submits that a fixed tax offset system should only be introduced if it has two tiers, and the top tier is the same as the top marginal tax rate, in order to not reduce the incentive of giving by high income earners.

Question 26: ACFID submits that the threshold for deductible gifts should only be increased to \$5 or \$10

Questions 28 & 29: ACFID submits:

- The eligibility for FBT concessions should be restricted, not expanded;
- a strict not-for-profit and community benefit test should be applied;
- professional and semi-professional sporting clubs (including AFL and NRL) should not continue to be eligible for FBT concessions.

Questions 31, 32 & 33: ACFID submits:

- the entertainment facility leasing concession be removed;
- the meal entertainment concession be brought within the existing FBT concession cap;
- the FBT concession cap be increased, by recognising CPI over the last decade, by calculating it at the 2012 equivalent of the 2001 value;
- the FBT concession cap be adjusted each year by CPI.

Question 37: As stated above, ACFID suggests that eligibility for the FBT concession should be restricted and not expanded – see ACFID’s answer to questions 28 and 29.

Questions 38, 39 & 40: ACFID:

- does not presently support the phasing out of FBT concessions;
- categorically does not support the replacement of FBT concessions with “direct support”;
- would only support the replacement of FBT concessions with taxed based benefits if there was a clear, long-term bi-partisan commitment by Government that employees within charities would not be worse off.

3. Income Tax Exemption

3.1 Under this Chapter, ACFID only wishes to make two brief submissions:

- (a) Firstly, the Working Group should augment the overall intent of the broader NFP reforms which are being undertaken by the Commonwealth, namely the reduction of red tape for the NFP sector; and
- (b) Any simplifying of the criteria or legislative provisions relating to income tax exemption should not unintentionally cause overseas aid and development organisations, entered on the OAGDS Register, to be worse-off.

3.2 As to the first of ACFID's above submissions, this could be achieved by the Working Group recommending that income tax exempt endorsement be automatic for those charities which have been registered as a charity with the ACNC, without the need for a separate, additional assessment by the ATO. Part of the complexity and administrative burden faced by charities is the duplication of applications to, and then assessments undertaken by, various departments, or sections of departments. In order to be registered as a charity with the ACNC, an independent assessment will be made by the ACNC about whether an entity falls within the definition of charity. There is no need for the ATO to then conduct that same assessment in order to determine whether an entity is a charitable institution pursuant to s.50-5, item 1.1, of the *Income Tax Assessment Act 1997 (ITAA)*. Income tax exemption endorsement should be automatic for those entities registered as a charity with the ACNC.

3.3 As to the second point, ACFID's members, by their very nature, deliver aid and development relief to persons outside Australia, as well as some inside Australia. In order to do so, ACFID's members must comply with the very rigorous and complicated requirements set by the Minister for Foreign Affairs to be entered on to, and remain on, the OAGDS Register. Under the law at present, it is being entered on to the OAGDS Register which allows the charity to be income tax exempt (and DGR endorsed). Those provisions, logically, do not require the charity to incur its expenditure or pursue its objectives "in-Australia".¹

3.4 The *Tax Laws Amendment (Special Conditions for Not-for-profit Concessions) Bill 2012 (New Bill)*, while seeming to apply a blanket "in-Australia" test for income tax exemption,² provides for an exemption to the "in-Australia" requirements to those entities endorsed as DGR (see proposed s.30-18(5) which will permit entities declared developing country relief funds by the Minister for Foreign Affairs, that is, on the OAGDS Register, to not comply with the "in-Australia" test) and/or for those operating principally outside Australia if they are prescribed in regulations. ACFID requests the Working Group to ensure that its members are no worse off, by any unintentional imposition of a condition to operate principally inside Australia in order to obtain income tax exemption, when the schedules attached in Subdivision 30A of the ITAA are removed or simplified.

3.5 Any simplification of the criteria should not impose the same set of conditions on every single income tax exempt entity. A distinction should remain for those entities declared to be developing country relief funds (on the OAGDS Register) – they should not be required to operate principally "in-Australia" in order to obtain income tax exemption.

¹ See section 50-50(b); s.30-15, item 1; Subdivision 30-B, s.30-80, item 9.1.1; section 30-85, ITAA.

² See proposed s.50-50 of the New Bill.

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4. Deductible Gift Recipients

Identifying entities that qualify for DGR status

- 4.1 ACFID supports the simplification of the requirements for eligibility for DGR status. ACFID’s members do report that it is currently complicated to navigate and administer.
- 4.2 ACFID does not support the extension of DGR status to all endorsed charities if the corollary must be that savings are made from reducing other concessions to charities.
- 4.3 ACFID’s members are not concerned about “increased competition” for the charity dollar – in fact, new, grassroots charities often bring about new and/or innovative approaches which only benefit the sector more broadly. However, if the Working Group’s mandate is for their recommendations to be cost-neutral, such a wide increase in DGR eligibility would necessitate a large reduction in concessions currently being received in the sector. This is not supported as it will have monumental adverse consequences on our members (as explained more fully below in relation to FBT).
- 4.4 ACFID, therefore, supports the exclusion of some charities and/or activities as suggested in options 2.2 and 2.3 of the Discussion Paper. ACFID also queries whether other savings could be made from reductions of concessions to NFP entities that are not charities and not truly delivering public benefit, such as professional or semi-professional sporting clubs.
- 4.5 As discussed in relation to income tax exemption, ACFID also requests that care be taken in any simplification of the DGR rules such that there are no unintentional consequences for ACFID members, namely a requirement to operate principally within Australia. The proposed s.30-18(5) of the New Bill recognises that overseas aid and development organisations, which are declared developing country relief funds under s.30-85 ITAA, are different and should not be required to operate principally within Australia. Any reform which simplifies or removes the schedules in Subdivision 30A ITAA (and removes ss.30-80 and 30-85 ITAA) may unintentionally and adversely affect ACFID’s members. For the reasons set out above in paragraphs 3.3 to 3.5, the distinction must remain.
- 4.6 As to the question about whether there may be any unintended consequences of restricting activities but allowing entity based DGR endorsement, ACFID queries the extent to which, and the method by which, the ATO would require disclosure of evidence that DGR funds are not applied to excluded activities. If separate bank accounts for DGR and non-DGR funds are not sufficient transparency, detail of what the ATO may require will be important in assessing whether option 2.3 would actually reduce the current complexity in the DGR regime.

Questions 11 & 12: ACFID supports the exclusion of some charities and/or activities conducted by charities, as suggested in options 2.2 and 2.3.

Question 13: (1) Endorsement at the entity level may create unintended complexity depending on the extent to which, and the method by which, the ATO will require proof that DGR funds are not used for excluded activities;

(2) Any simplification of the DGR rules for endorsement at the entity level should not unintentionally require entities declared developing country relief funds to operate principally in Australia.

Mechanisms to provide donors with a tax incentive

4.7 ACFID's members express concern that any proposed changes to deductibility should not discourage high income earners from giving. If the highest tax offset tier is less than the highest marginal tax rate, there is extreme concern that this will significantly reduce the incentive for high income earners to give.

4.8 As indicated by Table C in the Discussion Paper, a higher percentage of high income earners give a significantly larger donation annually. The Treasury's preliminary analysis, set out at paragraph 91 of the Discussion Paper, indicates the top tier offset would be less than the top marginal tax rate. A two tier offset system, at those rates, would not be supported for great fear that it would adversely impact on the donations made by high income earners.

4.9 However, ACFID, in general terms, has no difficulty with a change to a two tiered offset system, so long as the top tier is the same as the top marginal tax rate.

Questions 15 & 16: ACFID submits that a fixed tax offset system should only be introduced if it has two tiers, and the top tier is the same as the top marginal tax rate, in order to not reduce the incentive of giving by high income earners.

Deductible gift threshold

4.10 ACFID members report that, on the whole, their systems are sophisticated enough that the compliance burden associated with providing receipts for donations would not lessen with an increase of the threshold from \$2 to \$25. Our members also support some increase in the threshold with the hope that it will encourage bigger donations.

4.11 However, ACFID's members are quite concerned that an increase of the threshold to \$25 is too high and it would have an adverse impact on the large number of "mum and dad" donations that often fall within the \$10-\$20 range. As already indicated in the Discussion Paper, it would also impact on Workplace giving programs where it is often small, regular amounts, which are given. Many members also have monthly giving arrangements with donors, outside of formal workplace giving programs, where smaller amounts are donated each month. This type of long-term, regular giving has assisted the sector in securing a more stable and reliable source of income. The creation of exceptions may become too complicated and convoluted and ACFID submits that a lower threshold is appropriate.

4.12 ACFID supports an increase of the threshold to \$5 or \$10.

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5. Fringe Benefit Tax Concessions

- 5.1 The NFP sector is disparate. NFP entities entitled to FBT concessions are incredibly diverse and many of the concerns noted at section 3.3 of the Discussion Paper apply only to a small minority of the sector. For example, the Productivity Commission Report's expression of concern about competitive neutrality only applied to the hospital and aged care sectors where an eligible organisation is in competition with a for-profit provider.
- 5.2 ACFID's members are not in competition or, generally, provide services to Government. They deliver overseas aid and development assistance with the intention to eradicate extreme poverty. By their very nature, members seek to minimise their expenditure so that as much of their funds as possible can go to achieving this aim.
- 5.3 As such, staff are usually paid low salaries.³ Eligibility for FBT concession plays an incredibly important role in attracting and retaining staff who would be paid significantly more in any comparable job in the government or private sectors. More often than not, employees perceive the value of the FBT concession in more than monetary terms and it is often perceived to be of greater value than the dollar equivalent of the cost of the concession to the Government.
- 5.4 Persons employed by ACFID's members should not be worse off because of the issues raised about the hospital or aged care sector, or about use of certain concessions by highly paid persons in those types of entities.
- 5.5 Having said that, ACFID's members have advised that they either do not access the meals and entertainment concessions or, if they do, they limit it to within the existing cap. While there was not unanimous consent amongst members for the removal of the meals and entertainment concession, there was agreement that the concession should be brought within the existing FBT cap. There was also agreement that the entertainment facility leasing concession should be removed altogether.
- 5.6 ACFID's members also expressed concern that the FBT cap should be lifted to take account of CPI, and the declining value of the \$30,000 annual cap. The real value of the concession has dropped over the last decade, at a time when wages in the government and private sectors have greatly increased. It is submitted that the cap should be lifted to the 2012 equivalent of the 2001 value and then be adjusted annually according to CPI.
- 5.7 Savings, for the increase in the FBT cap, could be made by removing concessions to those entities that are not truly providing a community benefit or are not truly not-for-profit, such as professional or semi-professional sporting clubs (including the AFL and NRL) where high amounts are earned from poker machines and high salaries are paid to employees and players. The use of the FBT concession by highly paid doctors also seems inimical to the original purpose of the concession. .

³ ABS estimates that approximately 90% of eligible employees who take up FBT salary packaging earn less than \$80,000 per year, with 55% of eligible employees earning less than \$35,000 per year. The majority of employees in the NFP sector are female and many are part-time employees.

5.8 While ACFID members agree that the cost of compliance for FBT is significant, ACFID members do not presently support the long term goal of removing FBT concessions for the NFP sector for these reasons:

- (a) The FBT concession is vital for attracting and retaining staff in the charitable sector (and a distinction should be made with the health care and aged care sectors);
- (b) As stated above, the perceived value of the FBT concession by employees is often broader than monetary and greater than the actual dollar cost to the Government;
- (c) A “grant”, or even a direct payment to an employee or employer, which replaces the dollar value of the concession, is unacceptable as it is susceptible to the whim of government and may be removed;
- (d) In the absence of a real and clear commitment from Government that employees from within the NFP sector will not be worse off, there will be no agreement to phase out FBT concessions at this stage.

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