

Master Builders Australia

Submission to NFP Sector Tax Concession Working Group
Secretariat

on

*Fairer, simpler and more effective tax concessions for the not-
for-profit sector.*

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1 Introduction

- 1.1 Master Builders Australia is the nation's peak building and construction industry association which was federated on a national basis in 1890. Master Builders Australia's members are the Master Builder state and territory Associations. Over 122 years the movement has grown to 33,000 businesses nationwide, including the top 100 construction companies. Master Builders is the only industry association that represents all three sectors, residential, commercial and engineering construction.
- 1.2 The building and construction industry is a major driver of the Australian economy and makes a major contribution to the generation of wealth and the welfare of the community, particularly through the provision of shelter. At the same time, the wellbeing of the building and construction industry is closely linked to the general state of the domestic economy.
- 1.3 Master Builders estimates that the cumulative construction task over the next decade will require work done to the value of \$2.4 trillion. The residential and non-residential building sectors combined will require \$1.25 trillion worth of work and the engineering construction sector \$1.15 trillion worth. The construction workforce currently represents over 9 per cent of the total Australian workforce with the number of jobs expected to increase by 300,000 to around 1.3 million employees by 2021.
- 1.4 According to the ABS, the value of work done by the building and construction industry was \$172.9 billion in the year to September 2011, excluding around \$30 billion of smaller renovations work. Residential building work done was \$46.7 billion, non-residential building \$32.5 billion and engineering construction \$93.7 billion. At November 2011 the construction industry employed 1,039,900 people.

2 Purpose of Submission

- 2.1 The Not-for-profit Sector Tax Concession Working Group (Working Group) has released a discussion paper on tax concessions for the not-for-profit (NFP) sector, 'Fairer, simpler and more effective tax concessions for the not-for-profit sector' (Discussion Paper).

- 2.2 The stated purpose of the Discussion Paper is to stimulate debate and feedback on federal tax concessions available to NFP entities. The Discussion Paper is not intended as a position paper and does not make any recommendations to Government.
- 2.3 The Discussion Paper seeks feedback on 57 specific questions about existing tax concessions, including:
- The categories of and eligibility criteria for income tax exemption (including for State owned entities) and entitlements to refundable franking credits;
 - The deductible gift recipient categories and criteria, and asks whether the current system should be replaced by alternative options such as a fixed tax offset system or clearing house linked to the Australian Charities and Not-for-profits Commission;
 - Eligibility for Fringe Benefits Tax concessions and the extent to which they should be available (for example, whether the concessions should be limited to non-remuneration benefits);
 - Goods and Services Tax concessions; and
 - The common law principle of mutuality and whether it should be replaced with legislative rules.
- 2.4 The questions are broad and sweeping and address long term policy issues. They require careful consideration, as any review raises the potential for a reduction of benefits, particularly where short term fiscal tightening is the primary Government objective. At this point in time Master Builders is not able to provide answers to the specific questions posed.
- 2.5 Instead, Master Builders' position is that the Discussion Paper does not, in respect of industrially registered organisations, mesh with other Government initiatives, especially the policy expressed in the Tax Laws Amendment (Special Conditions for Non-for-profit Concessions) Bill 2012 (Special Conditions Bill) currently before Parliament. Master Builders believes that a clear, separate provision in the law exempting trade unions and employer associations should be legislated.

3 Targeting

- 3.1 The Discussion Paper does not sufficiently distinguish between types of NFP entities. There appears to be a clear indication in the Discussion Paper that employer associations and trade unions are part of the NFP sector and that any measures taken as a result of a study of this area of the law will affect those industrial organisations in the same manner as other NFP entities. However, the Special Conditions Bill clearly distinguishes between trade unions and employer associations and other NFP entities. This is a distinction that the tax law should reflect, inclusive of the continuation of income tax exempt status for industrially registered organisations.
- 3.2 Currently, in Division 50 of the *Income Tax Assessment Act 1997* (ITAA), section 50-1 provides that the total ordinary and statutory income of the entities that are covered by the tables which follow is exempt from income tax. Under section 50-15, Item 3.1 of the table indicates that an exempt entity is an employer association subject to the association meeting two special conditions. Those special conditions are that the association is registered under the Australian law relating to the settlement of industrial disputes and is located in Australia and incurs its expenditure and pursues its objectives principally in Australia. Hence as Master Builders' member associations are covered by these provisions, they currently enjoy tax exempt status.
- 3.3 The Special Conditions Bill establishes a number of basic propositions regarding how the Government believes income tax exemption should be provided to NFP entities. The Bill is currently before the House of Representatives. In essence, the Special Conditions Bill restates special conditions about income tax exempt entities, ensuring that they generally must be operating principally in Australia and for the broad benefit of the Australian community.
- 3.4 The Bill also standardises the other special conditions entities must meet to become income tax exempt and to retain that status, such as complying with the substantive requirements in the governing rules relating to being a NFP entity. Importantly, the requirement to be a NFP entity does not apply to industrially registered organisations. In other words, trade union and employer associations are exempt for being NFP entities albeit that they must still meet the other requirements established for income tax exemption; see

50-51(1)(a) of the Special Conditions Bill. Accordingly, the only change of import to organisations such as Master Builders' member associations is a specific requirement to comply with substantive elements of the governing rules and to thereby ensure funds are expended in accordance with the purposes for which the entity was established. In the context of the Discussion Paper there seems to be a Government policy that already exists and which underpins the Special Conditions Bill, that industrially registered organisations already fulfil a socially useful purpose even though they might not be operating as NFP entities. The underpinning policy rationale appears to be that industrially registered entities should continue to enjoy tax concessions, so long as they remain true to the purposes for which they originally received those tax concessions i.e to assist in the conduct of the industrial relations system.

3.5 Master Builders supports the latter proposition in paragraph 3.4. This links with the fundamental social good that is performed by industrially registered organisations, especially the efficient running of the Australian industrial relations system. It also links with the mutuality principle discussed at page 53 and following of the Discussion Paper. Master Builders does not believe that the mutuality principle should be legislated but that the common law principle as expressed in paragraph 200 of the Discussion Paper should continue to apply. This principle is governed by High Court authority and appears to be operating without distortion of the current income tax system. Evidence contrary to that proposition, albeit touched on in relation to the review of business taxation undertaken in 1999, is not discernible from any current evidence provided in the Discussion Paper. Its continuation is a reinforcement of the proposition that membership organisations are representative and in that capacity dealings with their own members should not be taxable transactions.

3.6 In the context of following substantive requirements, the Government has indicated its policy principles in relation to industrially registered organisations. In particular, Master Builders notes that the Parliament recently passed amendments to the legislation which governs industrially registered organisations: see *Fair Work (Registered Organisations) Amendment Act 2012*. The amending legislation inserted a new object at section 5 of the principal Act, the *Fair Work (Registered Organisations) Act 2009*, whereby

Parliament “recognises and respects the role of employer and employee organisations in facilitating the operation of the workplace relations system.” This reinforces Master Builders’ proposition that a clear and separate exemption from income tax for these entities, as is currently the case, should be continued in any new environment.

4 Major Omission

- 4.1 Master Builders notes that one of the most vital issues which is currently not clear to those who may be affected by any recommendations resulting from considerations arising from the Discussion Paper, is the exact manner in which unrelated commercial activities of NFP entities (and in this context we assume industrially registered organisations, although that is not clear) will be taxed.
- 4.2 How the Government will tax unrelated commercial activities of NFPs and the manner in which they will be defined in law should tie in with any recommendations that are made as a result of consideration of recommendations arising from the Discussion Paper by Government. The extent to which the operations of industrially registered organisations will be affected by this statement should have been part of the Working Group’s considerations. We do not understand why this was not the case. Trade unions and employer groups are not required to be NFP entities to gain or retain tax exempt status and the clarity of the proposals relating to the taxation of so-called unrelated commercial activities should be resolved as soon as possible especially for industrially registered organisations.

5 Conclusion

Master Builders urges the Working Group to recommend to Government that industrially registered organisations will continue to be income tax exempt and that nothing in the current considerations relating to the NFP sector will disturb this position.
