FAIRER, SIMPLER, AND MORE EFFECTIVE TAX CONCESSIONS FOR THE NOT-FOR-PROFIT SECTOR: DISCUSSION PAPER 2012

CANCER COUNCIL AUSTRALIA RESPONSE

Contact for further information: Paul Grogan c/o paul.grogan@cancer.org.au (02) 8063 4155

OVERVIEW

Cancer Council Australia is a federated organisation established to support the national interests of its eight State and Territory members. Our mission is to lead a cohesive approach to reduce the impact of cancer, working with our members to:

- undertake and fund cancer research;
- prevent and control cancer;
- provide information and support for people affected by cancer.

Collectively, Cancer Council is the nation's largest health charity and largest non-government funder of cancer research, education and patient support.

We welcome the Government's review of tax concessions and support the broad aims of: improving the integrity, transparency and targeting of tax concessions for the not-for-profit sector; and reducing tax-related administrative burden on charitable entities to enable them to allocate a greater level of resourcing towards their community work.

On this basis, we have responded to the individual consultation questions, particularly in relation to the core business and shared objectives of our members.

While we understand that the objective of this reform agenda is to strengthen the tax system's integrity, it is critical that there are no unintended consequences to the detriment of bona fide charities such as Cancer Councils that provide a highly valued, important contribution to the community.

Any changes that could result in the loss of concessions that are critical to viability, or the addition of administrative burden in an already highly regulated sector, would have an adverse impact on the thousands of Australians who benefit from non-profit Cancer Council programs and services.

As Australia's largest health charity, Cancer Council would welcome opportunities to become more involved in contributing to the NFP reform process.

CONSULTATION QUESTIONS – CANCER COUNCIL AUSTRALIA RESPONSE

CHAPTER 1 — INCOME TAX EXEMPTION AND REFUNDABLE FRANKING CREDITS

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

As a general point, Cancer Council specifically supports the principles of tax exemption for "charitable and related entities" set out in the report from the 2001 Inquiry into the Definition of Charities and Related Organisations.[1]

As members of a federated entity, Cancer Councils have common goals and purpose but autonomous state/territory governance arrangements. We therefore support the application of the principles in the report of the 2001 inquiry to entities defined either as a charity, community services organisations, deductible gift recipient, non-profit organisation or public benevolent institution.

We would support a streamlining of these definitions, provided the tax exemption criteria are simplified in respect of ongoing administrative burden while tightened in relation to the numbers and types of entities eligible for exemption. Tax exemption is critical to the viability of entities defined in the 2001 inquiry report.[2]

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?**

Cancer Council Australia supports two of the main objectives of the NFP reform agenda: a) to tighten disclosure and thereby help to ensure entities that claim tax exempt status are making a measurable contribution to the community in respect of their core purpose; and b) reducing administrative burden, to enable eligible entities to allocate more donor funds to their core purpose and reduce expenditure on dealing with red tape.

It is our view that both a) and b) can be achieved by working closely with the sector in the development of any new categories or related criteria aimed at enhancing current arrangements.

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?**

Under current arrangement, some categories of NFP can self-assess and thereby automatically qualify for income tax concessions; under the ACNC, charitable entities will first need to be accepted as a registered charity in order to qualify for income tax exemptions. Conditions for eligibility for income tax concessions should be the same, regardless of the type of entity that is applying.

Given that another objective of the reform agenda is to streamline or reduce administrative burden on bona fide entities, it is critical that any changes to exemption arrangements do not lead to additional red tape.

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

The diverse business activities of large/complex NFPs can be problematic in relation to both the current tax system and a reformed system if/when the "better targeting of NFP tax concessions" agenda is taken forward. While Cancer Council Australia supports the principle of targeting concessions to business activities directly related to an entity's purpose, larger and more complex entities are likely to engage in a wider range of corporate activities as a matter of course. This could include the operation of business units that are not directly connected to the entity's core purpose but nonetheless contribute to the entity's broader objectives and are transparently not-for-profit.

The key is to ensure that all business activities are broadly consistent with the entity's purpose, are ethical and exclusively not-for-profit, with all revenues transparently appropriated to an entity's charitable or benevolent activities. Cancer Council Australia takes some assurance from the government's acceptance that "NFPs [legitimately] undertake unrelated commercial activities either as an integral part of their activities or as a means to raise the funds necessary to carry out their charitable work".[3] (The word "commercial" should only be used to indicate that commercial transactions occur – e.g. the sale of sun-protection products. These are fundamentally non-profit activities.)

Further consultation is required before mandating any systematic changes as a result of the better targeting of NFP tax concessions agenda, to ensure it achieves the aim of improving disclosure and rigour without resulting in any unintended negative consequences for large, multi-faceted NFPs.

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

The consultation paper indicates that this is in large part a revenue issue for the Commonwealth. On that basis, the key for Cancer Council Australia and its members is to emphasise that our organisations, which provide a clear, reportable benefit to the community, should continue to be able to claim refunds for franking benefits.

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

No. Limitations on the use of franking credits should not be imposed on charities that pass the public benefit test and/or any other tax exemption criteria that might be applicable. Franking credits are an important tax concession for eligible entities (note response to question 1).[4] The scheme was introduced to provide an incentive to resident taxpayers to increase the level of investment in Australian listed companies.

We disagree with the suggestion in paragraph 25 of the Discussion Paper that NFPs entitled to franking credit refunds are likely to be large and well-resourced, and therefore the tax expenditure could be used is a way that benefits a broader range of entities. This suggestion does not adequately recognise the significant benefits that large NFPs provide to the community. The size of an organisation should not be the main determining factor as to whether it is entitled to receive tax concessions. The key should be an entity's capacity to provide important, beneficial services to the community.

As well as disadvantaging charities, limiting franking credits would be likely to decrease investment in Australian listed companies. Charities are motivated to invest their surplus funds in Australian listed companies in order to obtain franking credits to fund their operations.

Moreover, limiting access to franking credits for eligible entities would restrict the capacity of bona fide charities to fund their charitable work.

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

This requires careful consideration. Notwithstanding our response to Q3, extending the ATO endorsement framework would significantly reduce taxation revenue; a significant loss of revenue could result in a subsequent review of tax arrangements in the NFP sector, ultimately at the risk of placing more pressure on bona fide charities.

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?**

While this is essentially a matter for government, Cancer Council Australia would support a simplification of tax arrangements for all relevant state, territory and local government bodies, and their consolidation into the ITAA 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?**

Yes. The income tax threshold should be raised to $10,000 (or some other reasonable amount) where the 30% income tax rate should be levied for any profit or surplus above that amount, and eliminating the first $416 tax-exempt level. In our view this should reduce compliance burden.

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.**

ABN (Australian Business Number) and TFN (tax file number) should have the same base numbering system, similar to the ABN and ACN (Australian Company Number) numbering system. This would eliminate two different numbering systems and reduce administrative burden.

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?**

No. Extending DGR status to entities such as those whose core work is the advancement of religion, charitable child care services, and primary/secondary education is problematic. The cost to government in lost revenue, estimated at around $1 billion per annum, would be significant.

There would also be concerns of integrity, which could affect public confidence in the charity sector more broadly. For example, a significant number of religious, child care and education services, though technically non-for-profit, operate primarily as fee-charging agencies. Seeking to distinguish fees from voluntary donations would pose significant administrative problems in relation to DGR status.

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?**

No. A significant number of charities established for religious purposes also provide incidental and related services. It would be difficult to identify which activities are included in the entity's core objectives; in addition, donations could be used for purposes not directly linked to those objectives. The same lack of clarity could apply to child care and education services.

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?**

Restrictions based on activity would unnecessarily complicate the endorsement of larger entities, where they operate across a range of DGR categories. Setting up a range of separate funds to accommodate the various categories would be costly and inefficient.

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?**

If a decision is taken to extend DGR status, Cancer Council Australia would support the PC's recommendation to implement the reform in stages. This would help ensure entities had sufficient time to meet compliance requirements.

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?**

A fixed offset system could be overly complex and onerous to administer.

Statistics show that Australians with higher disposable incomes in general donate larger amounts to charities. This would also apply to testamentary giving.

While this would reflect a greater capacity for wealthier people to donate, some higher earning donors would also be attracted to donate by the incentive of deductibility at the top margin income tax rates. The ultimate beneficiary of this incentive is the community, as such donations account for a substantial proportion of a charity's budget.

It could also be argued that the public benefit would be most useful for those at lower marginal tax rates, where a significant proportion of workers are placed. A multi-tiered rate offset would overly complicate the donation transaction of entities receiving the donation. Additional IT development work would also be required to underpin compliance.

Evidence also shows a large increase in funds donated just prior to the end of the financial year, showing tax incentives are a key factor in charitable giving.[5] Any decrease in tax incentives to high income earners would therefore be detrimental to DGR charities. In the case of Cancer Council Queensland, for the period from 1/1/12 to 20/11/12 around 1% of the total number of donations had a value of $1000 or more. Around 0.3% had a value of $10,000 or more, representing 20% of the organisation's total income; 0.1% had a value of $50,000 or more, representing 15% of total income for the period. Any decrease in tax incentives for high income earners would therefore be expected to result in a substantial reduction in donor support for a range of projects.

In addition, a number of research projects are entirely supported by individuals or corporations. Decreasing tax incentives to high income earners would equate to a reduction in the capacity to fund these vital projects and ultimately impose greater pressure on public resources.

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

There is no evidence to suggest a two-tiered tax offset would encourage giving by higher income earners. However, options for encouraging more high-income donors should be explored, e.g. question 17.

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

Granting a higher tax deduction for those high-value donors over a certain limit, say $250,000. This would create an added incentive for donors to make exceptional donations.

The ATO should also consider providing a tax incentive to individuals who donate time rather than money to DGRs. The contribution of volunteers to NFPs is substantial; incentives for volunteers should be encouraged

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

Testamentary giving should be encouraged through tax concessions. The benefit to the public could be consolidated by means of a percentage distribution (e.g. 7% pa). This would help to ensure that the distribution is made to a registered charity for the public to receive a benefit through the charity's programs.

Evidence suggests that PAF's have been awarded tax deductions, however, the testamentary fund entities have taken a longer period to accumulate a sufficient quantum before the public has enjoyed any monetary distribution from that fund.

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

No. A clearing house would duplicate the current operations of many charities which already have their own similar systems in place. Such a clearing house would also make redundant the significant amount of investment made by charities in their own systems.

In addition, under a clearing house model charities would no longer have direct access to inform their support base, nor an ability to analyse supporter history to motivate donors to give at a higher level. The removal of the direct donor/cause relationship would discourage donor participation and therefore result in a significant loss of income. This would impact on service delivery and place a greater strain on public health in order to provide a range of financial, residential and other support to patients.

Paragraph 105 of the consultation paper suggests that donors would search through the register for the types of DGRs that they wished to support. Anecdotal evidence suggests that donors would rarely have a general intention to donate, without a specific NFP in mind.

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. Workers not being made aware that workplace giving exists in their workplace. Reluctance of employer to match work place giving by workers.

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

    Yes. Valuation requirements and costs can restrict donations of property. There should be a small limit, say, $10k, where a valuation is not required. Above that limit, a registered valuer with a reputable entity should be allowed to make an independent valuation for tax purposes.

22. **Is there a need to review and simplify the integrity rules? The current minor benefit rule is confusing for the donor.**

    The DGR must value the benefit of the item being sold or provided, and any money paid over an above-the-benefit value should be income tax deductible. This process would put the onus on the DGR to implement, with the ACNC able to audit as required, as with the ATO for taxpayers

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?**

    Elements of corporate giving are usually in the form of a sponsorship agreement. As this transaction is not a true donation as there is a benefit derived by the corporation, a GST component is added to the sponsorship amount and paid to the DGR. For small corporate entities, this may mean a wait of three months for a GST credit to be received from the ATO, if they are on a quarterly reporting cycle. If the distribution rules for corporate foundations are tightened, e.g. requiring foundations to distribute a proportion of their total value within a specific timeline, there would be greater distributions made available to DGRs.

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

    Public fund requirements by the ATO are onerous, as the various income streams may be collected for various specific purposes, e.g. for cancer research, however, there may be a more urgent need to fund another cancer program that is not research related, but still within the charitable objectives of the charity. There is the possibility that a donation is given to a charity for a very specific purpose, and the amount of donation is inadequate to effectively carry out the program. If the public fund requirements are strictly adhered, then the donation received could be placed in a bank account rather than being utilised for the specific purpose, thus undermining the donor’s intention.

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

    Donations received for specific purposes may be used for entirely different programs.

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

    No. There is no evidence that increasing the threshold would result in larger donations; a substantial amount of current Cancer Council income derives from donations of $20 or less.

It is common for individuals to make a number of small donations over a year. For example, 55% of all donations received by Cancer Council Queensland in 2012 were valued at $25 or less. The organisation has around 2,500 regular givers – people who give a regular monthly donation. Donations of between $2 and $25, received from regular givers, represented 55% of CCQ's regular giving income in 2012. Donors should receive the full tax deductibility benefit of this type of giving.

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.**

Cancer Council Australia would welcome the opportunity to contribute in direct consultation

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?**

For tier 1, the entity should be a charity, which has obtained an income tax and DGR status with the ATO. The charity should have clear objectives that benefit the community. Any worker employed by the charitable entity or any of its subsidiaries should be eligible to access exempt benefits. For tier 2, the entity should show that its objectives are for public benefit, similar to the current criteria.

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?**

Eligible charities should enjoy the full $30k gross-up taxable value, as this opportunity is highly beneficial in the recruitment of staff who would not normally be attracted to the lower base salary being offered. In short, without being able to offer appropriate tax concessions Cancer Councils would be unable to employ and retain the highly professional staff who are pivotal to our work.

Note that when the $30k grossed-up limit was introduced in 2001, it was argued that the limit should have been $30k of the remuneration package, as inflation over the 11 years since the introduction of the limits has watered down the value to employees. One option to prevent further watering down of the value to staff would be to index the cap.

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?**

The current two-tiered approach should be continued.

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

No.

It is understood that taxation professionals view these concessions as open to exploitation and excessive use. However, as noted by the Productivity Commission,[6] charities in Australia do not on-the-whole abuse meal and entertainment concessions. In Cancer Council Australia's view, it would be unfair for organisations such as ours who apply these FBT concessions appropriately to be disadvantaged by capping as proposed.

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?**

It is understood that consideration will be given to increasing the caps for FBT concessions.

If meal and entertainment leasing benefits were to be included within nominated caps, there should be separate, CPI-indexed caps.

The potentially onerous costs of compliance to the sector should be closely considered.

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?**

See responses to 31 and 32.

Cancer Council Australia notes the documented abuses of meal and entertainment benefits and understands the Government's intention to reduce excessive/inappropriate use. Consideration should be given to help ensure entities that do not misuse these concessions are not disadvantaged.

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?**

No. There should not be any compliance burden for employers to deny FBT concessions. If employers are required to police, then compliance costs would increase. A way of restricting the access to multiple caps would be to have those caps reported on the yearly earning summaries which would be reported in the individual's income tax return and any excess would be recouped by additional income tax.

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 FBT rebate should continue to be re-aligned with the top marginal tax rate. Any variation to this would further complicate transaction calculations, and be out of sync with the general FBT legislation.

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?**

In our view the current limitation should be removed. The NFP sector should be entitled to the same administrative concessions as are general employers and also be able to apply the minor benefits and in-house entertainment rules.

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

The current $30k grossed-up limit should be CPI indexed. There would be a significant fiscal cost of extending the concessions to more NFPs.

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

No. It would be very difficult for charities to recruit and retain quality staff while offering a remuneration package significantly lower than commercial market rates. FBT concessions improve the take-home benefits, thus minimising the total cost to the charity.

Accessing salary packaging enables Cancer Councils to be more competitive in the employment market. Staff in the NFP sector do not have access to many of the benefits available to private sector employees, including bonus structures; salary packaging is critical to the NFP sector's viability.

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

No. The replacement system of applying for government grants would be quite onerous, costly and ineffective. Compliance and reporting costs, as with current grants, would be prohibitively high.

The cost to NFPs for applying for and producing acquittals and reports for grants would be significant. For example, for government-funded research grants a number of Cancer Councils allocate a minimum of three months full-time per grant per researcher, for the grant application and reporting process. This is a substantial cost to those organisations.

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?**

A direct tax offset or allowance would be difficult to administer.

If there was a $2,800 direct payment for each employee, for example, this amount may not be the same value as enjoyed by the employee in reduced income tax. This method does not allow for the difference between full-time and part-time employees.

A direct tax offset payment to the employee may also be complicated in calculation by the introduction of specific individual instances, e.g. superannuation sacrifice, private medical insurance membership, maternity leave, etc. Individual calculations will be complicated and costly to administer. A tax-free allowance would in essence be the same as the current FBT concessions, e.g. $16,050 being tax-free to charities.

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

Benefits that are incidental to employment should not be limited. The tracking of these benefits would be costly in relation to compliance. Moreover, FBT concessions should not be limited to non-remuneration benefits, as such concessions are important for attracting qualified people to the sector.

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?**

Only registered DGRs should be eligible to receive support if the concessions were replaced.

Chapter 4 — Goods and Services 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?**

Yes, the existing concession creates uncertainty. The fact that there are certain goods being sold for more than $20 at our Daffodil Day, Pink Ribbon Day, Relay For Life events, requires Cancer Councils to apply to the Australian Tax Commissioner prior to every event.

This concession is also required by each of the Cancer Councils in each of the six States and two Territories, which complicates administration and adds compliance costs.

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?**

Yes. Self-assessment on a principles-based definition would have benefits and would be expected to reduce compliance costs.

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

Yes. The current GST concessions should also be reviewed for simplification.

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

Paragraph 182 of the discussion paper[7] refers to the grouping of religious organisations for GST purposes. This concession should be extended to all NFPs to allow for grouping of related entities that work towards a common purpose (i.e. a mutually advantageous group). For example, each State and Territory Cancer Council should be able to group with Cancer Council Australia for GST purposes. Currently, Cancer Councils have to charge GST for transactions that occur between them. As noted in paragraph 182, this concession would not have revenue implications but would simplify compliance and streamline cash-flow management.

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?**

For some Cancer Council fundraising events, opt-in would reduce compliance.

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

Input taxed would be preferred as it would maximise net revenue for Cancer Councils. There would be a greater tax payment if supplies were taxable and credits obtained for purchases.

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

If nominal consideration is transacted, then the calculation should be omitted from the GST compliance system used by the charity.

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?**

This is not relevant to Cancer Council Australia's core business.

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

This is not relevant to Cancer Council Australia's core business.

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

This is not relevant to Cancer Council Australia's core business.

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

This is not relevant to Cancer Council Australia's core business.

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

This is not relevant to Cancer Council Australia's core business.

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?**

While not specific to Cancer Council Australia's activities, our general view is that the current (and proposed new) general anti-avoidance rules will be sufficient to deal with tax avoidance and that a specific code would not be necessary.

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

One option would be to change the FBT year-end from 31 March to 30 June. This would simplify compliance with the same closing date. Yearly employee payment summaries would include FBT benefits received for the same 30 June year, not the 31 March year. FBT returns could thus be linked with an entity's other tax returns.

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?**

A number of executors of deceased estates and legal representatives of executors appear to be unaware of the availability of CGT concessions. If a post-CGT asset is sold by an executor of an estate, the estate is subject to CGT even if the ultimate beneficiary of the funds is a DGR. While charities can inform executors that they would prefer to take post CGT assets *in specie* in order to avoid negative tax consequences, in some cases they are not given this opportunity, as the assets have already been sold by the time that the charity receives information about the estate. In addition, smaller charities may not be willing to accept assets *in specie* due to the difficulty in then selling these assets. Consequently the estate will be liable for CGT, and this loss will be felt by all residuary beneficiaries (including those that have elected to receive their share of the assets in specie). A better approach would be to tax an estate, where there are DGR status beneficiaries, in the same way as if the assets were already in the hands of the beneficiaries.

---

[1] Australian Government, Inquiry into the Definition of Charities and Related Entities, 2001: http://www.cdi.gov.au/report/cdi_appb.htm

[2] Australian Government, Inquiry into the Definition of Charities and Related Entities, 2001: http://www.cdi.gov.au/report/cdi_appb.htm

[3] Australian Government, Consultation paper, Better targeting of not-for-profit tax concessions, 2011: http://archive.treasury.gov.au/documents/2056/PDF/Consultation_Paper_Better_Targeting_of_Tax_Concessions.pdf

[4] Australian Taxation Office, 2012: http://www.ato.gov.au/nonprofit/content.aspx?doc=/content/00320766.htm

[5] National Australia Bank, NAB Charitable Giving Index - July 2012: http://business.nab.com.au/wp-content/uploads/2012/10/nab-giving-index-july-2012.pdf

[6] Productivity Commission, Contribution of the Not-for-Profit Sector, Research Report, 2010: http://www.pc.gov.au/__data/assets/pdf_file/0003/94548/not-for-profit-report.pdf

[7] Australian Treasury, Not-for-profit tax concessions working group, discussion paper, 2012: http://www.treasury.gov.au/~/media/Treasury/Consultations%20and%20Reviews/2012/Tax%20concessions%20for%20the%20not-for-profit%20sector/Key%20Documents/PDF/TCWG_Discussion_Paper.ashx