

Not for Profit Accounting Specialists (NFPAS)

Submission on the paper “Tax Concessions for the NFP sector”

January 2013

Reform of the Tax system for the NFP sector

NFPAS would like to commend the working group on its efforts in putting together this discussion paper. The current system of taxation for the NFP sector is complex and in certain areas, inequitable and it is important to take the time to address these concerns.

Timing of the submission

Whilst we applaud the concept of reforming the tax system for the sector, we believe that the time frame to adequately respond has been very tight given the complexity and number of areas being addressed in this paper.

Statutory Definitions

We support the work being done to develop a statutory definition of charity. This will help to eliminate the uncertainty around whether entities have charitable status or not.

We would like to see another statutory definition adopted, that being one for “Not for Profit” entities. This would then further eliminate any uncertainty around whether an organisation was a not for profit entity and therefore able to access the various concessions available to not for profit entities.

The definition would need to clearly define what the not for profit purposes are and the appropriate use of surplus funds.

Income Tax exemption (questions 1-3)

The overriding criteria that should be used to determine whether an entity is income tax exempt should be the altruistic purpose of the organization and whether any surplus funds are used to deliver the purpose of the organisation (this would need to fit under the clear definition of Not for Profit as explained above).

Franking Tax Credits (questions 5-6)

Currently, only income tax exempt charities and PBI’s can claim refunds on franking credits. This is inequitable for other not for profit entities that are income tax exempt, as they end up paying tax on distributions from investments as they are not able to access the franking tax credit refunds.

These entities therefore have their income reduced by paying tax on those distributions.

This is not consistent or equitable across the sector and investment decisions could be altered by the fact that franking tax credits cannot be claimed. This may not be in the best interests of the organisation. Boards and management are required to ensure the more appropriate investment decisions are made for the organisation, and removal of franking credit rebates could skew their decisions away from investments where franking credits are paid.

It is not equitable that other investment returns are not subject to income tax, and yet for some entities, distributions where company tax has been paid, the NFP effectively pays tax on those distributions.

A simpler, fairer system would be to enable all not for profit entities access to franking tax credits.

ATO endorsement framework (question 7)

We would support the extension of the endorsement system of the ATO to all NFP entities seeking exemption from income tax, FBT rebateable status or GST concessions. This would ensure that all NFP entities have the appropriate status and exemptions / concessions and would remove any uncertainties that are currently in place due to the ability of NFPs to self assess. Further, this would provide certainty to the Directors on Boards of NFPs that appropriate tax concessions were being claimed.

It would be appropriate to combine this process with the extension of the ACNC to cover NFP entities other than charities in the future.

If this was not considered feasible then we would support the continuation of appropriate audit and education processes by the ATO to minimize the risk of NFPs making inappropriate assessments of their status.

Deductible Gift Recipients (DGRs) (question 11)

The current system of tax concessions for DGRs is quite complex and has been developed over a long period of time.

We would support the option of extending DGR status to all charities (as defined under the new definition) with specific exclusions depending on the entity's purpose and services.

This would assist with simplification of the DGR system and it will still recognize donations to these organisations as significant.

We understand that this could significantly increase the number of deductible gift recipients in Australia and may create additional competition for donor dollars for those charities currently with DGR status. At the same time it would open up additional fundraising opportunities for those organisations that had not previously had this status.

Property Donation Rules and Integrity Rules (paragraph 116)

We would support the working group performing further research in this area to determine whether the rules are working appropriately.

Threshold for deductible gifts (Question 26)

As the tax deductible amount of \$2 for donations has been in place for many years, we would support an increase in the threshold to at least \$10, but preferably \$20-\$25. This would greatly simplify the administration of donations for DGRs.

With donors given larger amounts (perhaps less often), it will increase the accountability of the sector as donors will be more discerning about their giving and may ask more questions about the activities of the organisations they are donating to.

Clearing house for donations to DGRs (Question 19)

We would not recommend this option for collecting donations from the public for the following reasons:

- This could be seen as ‘giving money to the government’ rather than the charity concerned and this may be detrimental to the level of donations to the sector.
- There is likely to be an administration fee attached to this service which the individual organisations would have no control over.
- There would likely be some time delay between the funds being donated and the charity receiving the donation which would represent an interest cost to the charity.
- Donor details would not be accessible to the charity therefore denying them the opportunity to create a long-term relationship with the donor.
- There are already clearing houses for donations available to charities should they wish to use them. A government-run clearing house would take business from these organisations.

Fringe Benefits Tax (Questions 28-29)

The current system of fringe benefits tax (fbt) concessions is quite inconsistent across the sector. The concessions were originally put in place to enable those who could access them to compete with the for-profit sector for quality staff by increasing the total remuneration available to those staff so the difference was not as significant as it would otherwise be.

However, there are many NFPs who are not able to access these concessions that could be at a significant disadvantage as they not only have to compete with the ‘for-profit’ sector they also have to compete with not-for-profit organisations for quality staff and may not be able to afford the same level of remuneration.

We would not support replacing these exemptions with direct support as there is a risk that this support could be withdrawn or reduced at any time as it would not be legislated.

There have been a number of changes with regard to salaries in the sector recently (e.g. the pay equity case) which over the course of the next few years should improve the remuneration of workers in the sector.

We would recommend a detailed review of the salaries of workers in the sector to determine whether they are being paid less than their ‘for-profit’ counterparts and whether fbt concessions are still necessary. Only after a review of the outcomes of such a review would it be possible to say whether the exemptions should remain and if so at what levels and to whom they should apply.

Salary sacrificed meal entertainment concessions (Question 31)

If the FBT exemptions were to remain, we would recommend including the salary sacrificed meal entertainment and entertainment facility leasing benefits in the cap. Whether the amount of that cap should then be increased would depend on the outcome of the review recommended above.

Single caps on FBT concessions (Question 34)

Again, if the FBT exemptions were to remain, we would recommend that employees only be allowed to access those benefits from one employer. This would be similar to the tax free threshold which is only available from one employer.

Alignment of FBT rebate rate with FBT rate (Question 35)

The rate for FBT rebates should be re-aligned with the FBT tax rebate.

GST tax concessions (paragraphs 186-187)

In our experience, the treatment of input-taxed events is complex especially around the area of allocation of non-claimable input tax credits for indirect expenses. Often these calculations are ignored or calculated incorrectly.

We recommend the development of a formula to be applied in these circumstances rather than the onerous, detailed calculations that currently need to be performed to reduce the amount of GST claimed on indirect expenses.

*Prepared by Not for Profit Accounting Specialists in consultation with;
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