



Grant Thornton

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NFP Sector Tax Concession Working Group Secretariat
The Treasury
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Dear Sir/Madam

SUBMISSION – NOT-FOR-PROFIT SECTOR TAX CONCESSION WORKING GROUP

Grant Thornton Australia Limited welcomes the opportunity to provide comments to the Not-For-Profit Sector Tax Concession Working Group (the Working Group) on its discussion paper “Fairer, simpler and more effective tax concessions for the not-for-profit sector” released on 2 November 2012.

Grant Thornton’s response is attached as Appendix A and reflects our position as leading advisers to Not-For-Profit entities as well as to smaller firms assisting that sector.

This submission contains our response to specific questions posed by the Working Group. Our responses reflect our overarching view that any changes to the Not-For-Profit Sector must be based upon and accurately reflect the principles of simplicity, fairness, effectiveness and transparency.

Our concern is that the introduction of additional tests and narrower criteria risks creating additional tax costs, complexity and compliance burdens for a sector which already has limited resources at its disposal. The sector faces increasing demand for many of the services and an increased compliance burden will require resources to be diverted from the sector’s main focus.

We would welcome the opportunity for further consultation on any aspect of this submission and the overall reform process.

If you have any queries, please contact me on 02 8297 2509.

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Yours faithfully
GRANT THORNTON AUSTRALIA LIMITED

A handwritten signature in black ink, appearing to read "Peter Berg". The signature is fluid and cursive, with a large initial "P" and "B".

Peter Berg
Partner – Tax

Inc.

Appendix A

Income tax exemption and refundable tax credits

The following responses are in respect of questions 1, 4, and 7 to 10.

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

We have no specific comments on the criteria that should be used. We do note that the Not-For-Profit ("NFP") sector is becoming more sophisticated and diverse in response to a range of challenges. Reform to the criteria for tax exemption or a greater focus on the activities of the entity in the criteria for exemption should not limit the ability of entities within the sector to change and innovate to meet these challenges.

We also consider that in determining the criteria the cost of administration and compliance should be a relevant factor in assessing the criteria. Narrower criteria for exemption lead to increased compliance costs for NFP entities administering the exemption and for those who fall outside the exemption. Entities in the sector generally have limited resources and strive to allocate these resources to meeting their altruistic purpose. The changes to the criteria for the exemption should be designed so that they do not result in the diversion of resources away from activities that meet an altruistic purpose to activities that are principally compliance tasks.

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

The NFP sector is becoming more sophisticated and diverse in response to a range of challenges. Reform to the criteria for tax exemption or a greater focus on the activities of the entity in the criteria for exemption should not limit the ability of entities within the sector to change and innovate to meet these challenges.

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

Other NFP sector entities should have the ability to use the endorsement process on the basis that this could provide certainty at a lower cost. The cost savings arise because the endorsement process is more streamlined than the process of asking the ATO to rule.

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 the income tax exemptions should be simplified and consolidated 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?

We support the increase in the tax free threshold for these entities. Such a threshold should be designed to reduce compliance costs through the requirement for NFP entities to lodge income tax returns.

We do not support an increase in the threshold where it is related to a change in the tax treatment of mutual income.

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.

The tax exemption regime should be harmonised across taxes, including stamp duty, imposed by all levels of Government. Currently entities within the sector are incurring costs dealing with multiple regimes across taxes imposed at each level of Government.

Designated Gift recipients

We have not commented in respect of questions 11 to 27.

Fringe Benefits Tax ('FBT') Concessions

The following responses are in respect of questions 31, 34 to 36, 38, 40 and 41.

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

Salary sacrifice meal entertainment and entertainment facility leasing benefits are a valuable concession for NFP entities employing staff and providing benefits. The complexity surrounding the administration of the meal entertainment benefits and entertainment facility leasing benefits limits the ability of some NFP entities to access the concessions.

We do not support the inclusion of salary sacrifice meal entertainment and entertainment facility leasing benefits within the caps. We would support a simplification of the rules to enable more employers and employees to access the concessions at a lower administration cost.

If these benefits are to be included under the caps we recommend that employers and employees are compensated for the loss of the concessions as they represent an important subsidy for employment in the NFP sector.



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, an employee should not be able to enjoy the benefit of multiple caps in the one income year (ie. through having multiple employers at the same time or changing employer during the year).

We consider that a requirement for employees to indicate on their employment declarations that they have been (or are) in receipt of concessional FBT benefits from another employer in the same FBT year, is a workable solution which would not impose an unacceptable compliance burden on affected employers. Regard will need to be had to pro-rating thresholds between employers so that employees are not disadvantaged in years where they have more than one employer.

35 Should the rate for FBT rebates be re-aligned with the FBT tax rate? Is there any reason for not aligning the rates?

In the event that an FBT concession framework for NFP entities is retained, we support the alignment of the FBT rebate rate with the FBT tax rate.

36 Should the limitation on tax exempt bodies in the minor benefit exemption be removed? Are there any reasons why the limitation should not be removed?

In the event that an FBT concession framework for NFP entities is retained, we support the removal of the current limitation of the (<\$300) 'minor benefit' exemption for tax exempt body entertainment fringe benefits provided by NFP entities eligible for the wider FBT concessions.

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

We do not support the removal of the FBT concessions. They currently provide an important subsidy for employment in the NFP sector.

The complexity and cost of the administration of benefit arrangements limits the ability of some NFP entities to access the full benefit of the FBT concessions at a reasonable compliance cost. As such we would support measures that simplify the administration of the FBT concessions without limiting their scope.

If the FBT exemption and rebate are to be removed we recommend that employers and employees are compensated for the loss of these concessions as they represent an important subsidy for employment in the NFP sector.



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 offset to the employees or a tax free allowance for employees?

The phasing out of the existing FBT concessions and replacement by tax based support for eligible entities (such as refundable tax offsets to employers, or direct tax offsets, or tax free allowances for employees) would only be appropriate where the replacement support provides the same value of concessions to employees and employers as the current FBT concession regime.

Phasing out the FBT concessions in favour of a regime which provides a similar value of concessions could deliver effectiveness and efficiency improvements, as it:

- i. provides direct and easily quantifiable support to the intended recipient;
- ii. is consistent with similar tax relief being provided to others and can be easily accommodated in the existing tax laws; and
- iii. is likely to provide greater certainty (of support) to, and entail reduced reporting and administration by, NFPs than a system of government grants, or other direct financial assistance payments.

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

We do not support the limitation of FBT concessions to “non-remuneration benefits”. The current approach to the FBT concessions provides an important subsidy for employment in the NFP sector.

The complexity and cost of the administration of benefit arrangements limits the ability of some NFP entities to access the full benefit of the FBT concessions at a reasonable compliance cost. As such we would support measures that simplify the administration of the FBT concessions without limiting their scope.

If the FBT exemption and rebate are to be limited we recommend that employers and employees are compensated for the loss of these concessions as they represent an important subsidy for employment in the NFP sector.

Goods and Services Tax Concessions

We have not commented in respect of questions 43 to 49.



Mutuality, Clubs and Societies

The following responses are in respect of questions 50, and 52 to 55.

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?

We consider that the current regime for taxing NFP clubs and societies should continue. Any change to the tax treatment of activities carried out by NFP clubs and societies will create an additional compliance burden because of the need to account for activities in different ways for tax purposes.

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

The mutuality principle currently applies to NFP member-based organisations. We would support legislation to provide full tax exemption for such organisations as this would reduce the administration and compliance burden for these entities.

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

We consider that the current regime for taxing NFP clubs and societies should continue such that mutual income of such organisations, income arising from dealings between entities and their members, is not subject to tax.

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

We consider that the current regime for taxing NFP clubs and societies should continue as the principles underlying the taxation of mutual income are well established. Changes to treatments of mutual income will create an additional compliance burden for these organisations.

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?

The general anti-avoidance provisions contained in Part IVA of the ITAA 1936 provide a sound basis for addressing concerns about tax evasion resulting from the exploitation of the mutuality principle.

If a specific anti-avoidance rule were to be introduced this may provide greater certainty and with it reduced compliance and administration costs. Such cost savings would only arise if the rules were drafted to address specific concerns rather than being a catch all provision.



To this end if specific anti-avoidance rules are to be introduced they should be accompanied by amendments to carve out issues related to mutual income from the scope of Part IVA.

Next Steps

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?

The tax exemption regime should be harmonised across taxes, including stamp duty, imposed by all levels of Government. Currently entities within the sector are incurring costs dealing with multiple regimes across taxes imposed at each level of Government.