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Manager
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By email: NFPReform@treasury.gov.au

Dear Sir/Ms

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

Thank you for the opportunity of making a submission on the Discussion Paper ("the Paper") issued by the Not-for-profit sector tax concession working group ("the NFP Group") in November 2012.

Pitcher Partners comprises five independent firms operating in Adelaide, Brisbane, Melbourne, Perth and Sydney - collectively we are one of the largest accounting associations outside the Big Four.

General comments

At the outset we would like to: (i) express our disappointment with the constraints imposed by the terms of reference for the review; and (ii) highlight our concern that the same outcomes may arise from this review as from the earlier review by the Business Tax Working Group ("BTWG") of a cut to the company tax rate - i.e. that like the BTWG the NFP Group will make a number of findings but will be unable to recommend a revenue neutral package.

We would also like to express our concerns regarding the ability of the not-for-profit ("NFP") sector to adequately analyse and deal with the volume of developments / proposed reforms that are currently underway. That is, as shown in Appendix C to the Paper, the Australian Government is already pursuing a number of reforms related to the income tax concessions available to NFPs - by adding even more developments / proposed reforms the Paper is only further stretching the demands on the already scarce financial resources available to the NFP sector.

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Finally, we note that the timing of this review has constrained our ability to comment on the Paper - with everything else that is happening at the moment we simply have not had an opportunity to work through all of the issues raised in the Paper.

Fringe Benefits Tax ("FBT")

We note that a number of our NFP clients have voiced fears that any move to change the FBT treatment of the items they currently provide to employees will restrict their ability to attract and retain staff within the constraints of their limited financial resources.

Goods and Services Tax ("GST")

We agree with the recommended reform options 4.1 and 4.2 in the Paper regarding the current GST concessions for NFP entities. Greater flexibility around the application of the GST concessions for NFP entities must be provided in order to minimise the disproportionate compliance obligations the concessions currently place on NFP entities.

Principle of Mutuality

We act for a number of not-for-profit member organisations and prepare their tax returns having regard to the principle of mutuality. Whilst we acknowledge that this principle can be uncertain and complex to apply in some cases, we do not believe that the degree of uncertainty and complexity with the application of this principle is much (if any) different from that in other areas of the law.

We do not accordingly, believe that there is any need for the principle of mutuality to be legislated - i.e. the existing common law principle should continue to apply.

Additional comments / further information

We have attached as an appendix some additional comments that we have on the Paper.

Please contact the writer on 03 8610 5204 if you would like more information on, or clarification of, any of the issues raised in this submission.

Yours faithfully

PITCHER PARTNERS ADVISORS PROPRIETARY LIMITED



MARK NORTHEAST
Executive Director

Appendix - Additional Comments

Chapter 4 - Goods and Services Tax Concessions

We agree with the recommended reform options 4.1 and 4.2 in respect to the current GST concessions for NFP entities.

In accordance with our comments below, we encourage greater flexibility around the application of the GST concessions for NFP entities more broadly in order to minimise the disproportionate compliance obligations the concessions currently place on NFP entities.

All references are to the *A New Tax System (Goods and Services Tax) Act 1999* ("GST Act") unless otherwise noted.

Option 4.1

We agree with the proposed recommendation to adopt a principles-based definition of "fund-raising event" in section 40-165 of the GST Act for the purposes of determining the types of fundraising activities that may be treated as input taxed under section 40-160.

Definition of fund-raising event

Currently, an event satisfies the definition of a "fund-raising event" in section 40-165 if the event is conducted for the purpose of fund-raising and does not form part of a series or regular run of like or similar events. The definition extends to events that are a fete, ball, gala show, dinner, performance or similar event; or, an event comprising sales of goods for consideration that is for \$20 or less and selling such goods is outside the ordinary course of the NFP entity's business. Outside of these specified categories of events, a NFP entity can seek a Determination from the ATO to treat an event as an input taxed fund raising event.

If a NFP entity intends to undertake a fund-raising event that is not a "fete, ball, gala show, dinner or performance", the event needs to be a "similar event" in order to be a fund-raising event as defined under section 40-165. However, there is no definitive guidance provided by the ATO in respect to the types of events which may be a "similar event" [to a fete, ball, gala show, dinner or performance.] As such, based on the current legislation, an NFP entity has the option of:

- (a) applying to the ATO under section 40-165(1)(c) for a Determination that the event in question satisfies the requirements to be a fund-raising event;
- (b) potentially self-assess that an event is a "similar event" [to a fete, ball, gala show, dinner or performance] and therefore treat the event as an input taxed fund-raising event (potentially incorrectly); or
- (c) treat all supplies associated with an event as taxable supplies for GST purposes.

In order to minimise the uncertainty currently being experienced by NFP entities around the types of events the ATO may consider to be within the scope of the fundraising concession, we consider that providing a principle based set of criteria against which a NFP entity may self-assess a particular event to determine whether the event may satisfy the definition of a fund-raising event would provide greater flexibility to NFP entities to treat a broader range of events as input taxed under section 40-160.

We consider that the legislative principles could be supplemented with suitable ATO guidance in the form of a public ruling setting out the elements which the ATO considers an event must satisfy consistent with the legislated principles.

Determination by the ATO

As noted above, where there is uncertainty regarding the status of a particular event, a NFP entity can apply to the ATO pursuant to section 40-165(1)(c) for a Determination regarding the status of the event as a fund raising event. This requires more administrative effort both for the NFP entity and the ATO.

In relation to such applications for the ATO to make a Determination, we note that the ATO currently takes the view that where a NFP entity runs the same event on an annual basis, the NFP entity needs to apply for a written determination on an annual basis that the particular event is determined to be a fund-raising event that can therefore be treated as input taxed under section 40-160.

We believe that making an annual written request to the ATO is unnecessarily restrictive. In order to minimise this compliance burden, we consider that a Determination can be made by the ATO which can be effective for an open ended period of time, or alternatively for a fixed number of financial years, subject to the substantive terms of the event being undertaken by the NFP not changing.

Should any terms of the event change, the NFP entity would be required to apply for a new written determination from the ATO.

Option 4.2

We agree with the proposal to provide NFP entities with an opt-in arrangement to treat non-commercial supplies of goods or services (other than a supply of accommodation) as taxable or input taxed supplies.

Currently, under the non-commercial supply concession in section 38-250, a NFP entity is required to treat a supply of goods or services (other than accommodation) as GST-free where:

- (i) the consideration for the supply is less than 50% of the GST inclusive market value of the supply; or

- (ii) the consideration for the supply is less than 75% of the consideration provided by the NFP entity to acquire the thing supplied.

Whilst we acknowledge that this concession is beneficial to NFP entities, it may result in an increased compliance burden for NFP entities that provide a number of supplies in respect to one event at varied pricing with some supplies (e.g. tickets) being sold for more than the nominal consideration. Where this is the case, NFP entities spend considerable time apportioning costs across all the supplies made in respect to the event in order to determine those supplies sold for more than nominal consideration and therefore on which GST should be accounted.

We consider that an opt-in arrangement to treat all supplies in respect to a particular event as taxable would be most beneficial to NFP entities from a compliance perspective on the basis that GST would be required to be remitted on the entire value of the non-commercial supplies however, NFP entities would retain an entitlement to an input tax credit in respect costs incurred in making the supplies, subject to satisfying the conditions for a creditable acquisition.

Furthermore, we consider that the opt-in arrangement should apply on an individual event basis with NFP entities being able to elect to treat all supplies made in relation to an event as taxable.

An option to opt in to treat supplies as input taxed supplies, we believe, has the greater potential to result in higher administrative compliance costs for a NFP entity and as such is not the preferred option.