Children's Services
educating and caring for our children

Response to NFP Tax Concession Discussion Paper (December 2012)

Q1 What criteria should be used to determine whether an entity is entitled to an income tax exemption?

An entity should have income tax exemption if it operates strictly as a Not for Profit and its activities are the benefit of the broader community. Preferably with Charity status and endorsed by the tax office.

Q2 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?

Current categories are satisfactory. However, standard clear definitions are required.

Q3 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?

A public benefit test should be applied to all NFPs if asking for tax exemption. However, by this we do not mean to imply we are recommending that the 'Public Benevolent' test be applied. 'Public Benefit' can be more widely interpreted than public 'benevolence' which is to those in need. Also, organisations which have tax concessions must be applying all back in the business – be truly not for profit. This would provide consistency and clarity to organisations.

Q4 Does the tax system create particular impediments for large or complex NFPs?

The tax system is complex for NFPs who are classified as a charity, as one organisation can have different levels of taxation based on the charity level of varying parts of the organisation. SDN has had to split the organisation into two companies, both charities, however, one is deemed PBI and holds DGR status and the other does not.

Q5 Should other types of NFPs also be able to claim a refund of franking credits?

The claiming of franking credits should be consistent across all NFPs. It could be argued that if granted exemption from income tax, and then all sources of income should be tax free. However, there would be revenue implications for the government that would be needed for consideration. SDN does not utilise franking credits.

Q6 Should the ability of tax exempt charities and DGRs to receive refunds for franking credits be limited?

As per above Q5

Q7 Should the ATO endorsement framework be extended to include NFP entities other than charities seeking tax exemption?

The ATO endorsement framework should be extended to include all NFP entitles, especially if the NFP is expecting to receive tax exemption. This would aid consistency, certainty and clarity for all entities.

Q8 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?

All Income tax exemptions for State, Territory and local government should be simplified and consolidated for all entities.

Q9 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?

For practical purposes, the threshold for income tax exemptions for taxable NFP clubs, associations& societies could be increased to $1,000.

Q10 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.

In applying the tax concession, consideration needs to be given not just on the service provided but the manner it is provided. At SDN, child care services are specifically provided in disadvantaged areas and sometimes even at a financial loss to us. We can only do this because of our charity, NFP status, our income tax exemptions and the fact that the PBI part of our organisation has been able to secure FBT exemption as well. Removal of these benefits would restrict our capacity to offer quality, affordable early childhood education and care in low socio-economic areas. Our integrated approach ensures quality is offered in geographical areas and means additional supports can be offered as well from our PBI activities (SDN Child & Family Services) to enable early intervention. Other child care services do not necessarily approach the delivery of child care in this way (i.e. for the overall public benefit).

Q11 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?

Yes. If DGR status is extended to all entities that are charities including child care services, religious and education organisation, donations to these would increase and would assist funding, and thus allow more extension 'public benefit' work to be done.

Q12 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?

Yes. If this is the primary objective of the charity, then those donating would expect funds to be used for these purposes.

Q13 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?

DGR status at the entity level would be more practical. Especially if the DGR status is to be broadened, separate entities would not need to be created causing more complexities.

Q14 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?

Yes. Implemented in conjunction with the Productivity Commission recommendations.

Q15 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?

Although a fairer outcome to the lower income donor, the system would be more complicated. Further the incentive for higher income earners, the larger donors, to donate, lessening potential funding.

Q16 Would having a two tiered tax offset encourage giving by higher income earners?

A two tiered system would aid higher amounts of donation than a fixed solution, however, but less incentive for smaller amounts of donations than under the current system. Giving by high income earners would be encouraged as long as the donation allowed full deduction at the top marginal rate of tax . It may only encourage higher donations to smaller number of charities. I.e the total dollar is fixed just less dispersed amongst organistions.

Q17 What other strategies would encourage giving to DGRs, especially by high income earners?

Higher tax deductions.

Q18 Should testamentary giving be encouraged through tax concessions and what mechanisms could be considered to address simplicity, integrity and effectiveness issues?

Tax concessions for testamentary giving should be consistent with other donations. However, the concession should only at the time of giving, on receipt of the donation by the charity. Thus the estate benefits by the tax concession if it occurs.
Legal challenges by disinherited relatives could mean the donation doesn't actually occur or other debts mean that the asset doesn't exist to be donated at the time of death.

Q19 Would a clearing house linked to the ACN Register be beneficial for the sector and public?

DGR endorsement by the ATO with clearly stated objectives of the organisation should be sufficient. As long as donors are fully aware of the purpose of the organisation and the activity that is funded by their donations. Audited accounts would also ensure compliance in this area.

A clearing house linked to the ACN Register would assist to advise the public of the organisation and their activities, especially beneficial to the public and smaller sector charities. "Advertising" would need to be restricted on the site and good governance exercised to ensure no "misstatements" on the site to entice donations.

Q20 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?

No further suggestions

Q21 Do valuation requirements and costs restrict the donation of property? What could be done to improve the requirements?

No further suggestions. Valuation rules need to be simple and easy to apply and consistent with accounting standards.

Q22 Is there a need to review and simplify the integrity rules?

As per Q21

Q23 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?

No further barriers other than extending the DGR status. However the system should be simple and easy to apply whilst being fair and not able to be "misused" or abused.

Q24 Are the public fund requirements, currently administered by the ATO, either inadequate or unnecessarily onerous?

The public fund requirements are time consuming and often difficult to be administered. There is however, a real need to assure the public that their funds are being delivered in the area they wish and that funds are spent wisely i.e. no fraud. Donors generally want to see their money being spent on the direct needs i.e. service delivery and not administration costs. However administration costs are necessary for the service delivery. All donations have an inherent portion that will be going to fund administration costs to the running of the organisation.

It is recommended that the requirement to be reviewed and relaxed. Rather the organisation should have the structure in place to ensure funds are spent in the general area the donation has specified. Auditing systems and requirements should ensure this occurs and that fraud has not taken place.

For smaller cash generated "direct fundraising activities" ie raffles etc evidence should exist that funds raised are being spent on items advertised to ensure against fraud.

Q25 Are there any possible unintended consequences from eliminating the public fund requirements for entities that have been registered by the ACNC?

Lack of donations could occur, due to the perceived loss of transparency, arising from less information being offered by the charity. However, it is doubtful that the majority of donors would peruse this information. Instead the majority would rely on the audit requirement and governance of bodies such as the ACNC.

Q26 Should the threshold for deductible gifts be increased from $2 to $25 (or to some other amount)?

The threshold of tax deductible gifts should be raised for practical purposes to at least $10. Higher than $10, would discourage smaller donations.

Q27 Outline any other suggestions you have to improve the fairness, simplicity and effectiveness of the DGR regime, having regard to the terms of reference.

No further suggestions at this time.

Q28 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?

If two tiered system remain, it should be based on the type of entity, its relevant tax status and ability to attract staff.

Q29 Also assuming that the current two tiered concession 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?

Same as Q28. It should be extended to all NFP entities with charities status – not necessarily PBIs & DGR status entities. Having to have an organisation with two different methods of concessions is inefficient. Again, in applying the tax concession, consideration needs to be given to not just on the type of service provided but the manner it is provided.

At SDN, child care services are specifically provided in disadvantaged areas even when at a financial loss to us. Our integrated approach ensures equal quality is provided to all and includes support from our PBI activities to enable early intervention to occur. Other child care services do not necessarily approach the delivery of child care in this way, i.e. not always for the overall public benefit, which we do.

Q30 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 existing system is complicated and difficult to convey to employees which is a sensitive issue as relates to employees' pay. The rebate do not necessarily provide the same benefit to everyone as personal circumstances are different, however it does help us to provide salaries that are more attractive to employees who are traditionally lowly paid. The exemption should be extended.

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

Anything that provides greater benefits to the charity is good, however, the effectiveness needs to be reviewed and simplified. Entertainment benefits only benefit those who use this type of expenditure, generally the higher paid rather than the lower paid worker.

Q 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?

As per Q31

Q 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?

As per Q31

Q 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?

The restriction of FBT concessions claimed by employees could only be controlled in the hands of the employee ie through personal tax. Employers may be unaware if additional benefits are being received.

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

Rebates and concessions should be adjusted to ensure no tax is effectively being paid if the organisation is endorsed as exempt. Reportable benefits should however, align to the top marginal rate of the individual employee as this is in effect the benefit actually being received. The FBT tax rate disadvantages lower paid employees as the FBT tax was introduced generally to discourage packaging for higher paid staff.

Q 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?

Yes , the application of minor benefit exemption, should be extended for tax exempt bodies on the same basis as it applies for other entities.

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

Again, in applying the FBT concession, consideration needs to be given not just on the service provided but the manner it is provided. At SDN, child care services are specifically provided in disadvantaged areas even at a loss. Our integrated approach, ensures equal quality in all areas and includes extra support from our PBI activities (SDN Child & Family Services) to enable early intervention. Other child care services do not necessarily approach the delivery of child care in the same way as we do, i.e. for the overall public benefit. Therefore, in the case of SDN, the concession for FBT should be extended to the whole organisation.

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

Only if replaced by system more simple and provides additional concessions to assist with staffing costs.

Some type of government compensation to employers ie additional funding would be required . This would cause its own issues and difficult to quantify, to ensure all entities are fully and consistently recompensed.

Alternatively a higher tax exemption direct to employees would be more simple than the varying FBT concessions with allowances for meal & entertainment & leasing benefits all with varying caps.

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

As per Q38

Q 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?

Refundable tax offsets would in effect be government funding per employee to the employer. This would have to be audited to ensure no “phantom employees“ and note taken of how long the employee needs to be working, (does it include casuals for example?) A direct tax offset to employees could be simpler to administer.

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

As per Q38. Additionally limiting to non-remuneration benefits may be unfair to all staff as individual circumstances differ.

Q 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?

As per Q38. Additionally limiting to non-remuneration benefits may be unfair to all staff as individual circumstances differ.

FUNDRAISING

Q 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?

Fundraising is not a huge part of SDN's activities nor relied on for the majority of its funding. Fully audited accounts should be sufficient to ensure funds are used for purpose collected. Reporting in Annual Financial Accounts, is unnecessarily burdensome for the entity, especially when not a significant part of the operation.

Q 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?

As per Q43

GST

Q 45 Should current GST concessions continue to apply for eligible NFP entities?
Current GST concession need to continue to apply for eligible NFP entities..

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

No concerns

Q 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?
This does not generally apply to SDN. However, a simple averaging process could apply.

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

This would depend on the event and monies involved. This does not generally apply to SDN.

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

No further comment.

MUTUALITY , CLUBS, & SOCIETIES

Q 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?

Agree. NFP tax concessions should not apply if the majority of monies is not for public benefit . The threshold should ensure it excludes local community & sporting organisations.

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

This does not apply to SDN so therefore no further comment.

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

Yes the mutuality principle and benefits should be extended to ensure consistency of benefits to all NFP charities.

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

If a benefit is actually being received, it should be consistent with the FBT rules applying to other NFPs. However, this does not apply to SDN. No further comment.

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

As per Q53

Q 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?

This does not apply to SDN, however, concession and benefits received need to be consist across all NFP organisations and greater for those endorsed as charities by the ATO. The law needs to ensure that the mutuality principle is not being invoked for tax evasion and/or anti-avoidance.

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

As per Q55

Q 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?

SDN is not a Mutuality, Club nor society where the concept of mutuality applies.
Consequently no major comment, with the exception that tax concessions and actual benefits received , by such clubs & societies, should not be greater nor equal to NFP organisations with charity status, unless they are in fact such an organisation endorsed by the ATO.