



# **Australia Council Submission to Not-For-Profit Sector Tax Concession Working Group Discussion Paper**

**December 2012**

## About the Australia Council for the Arts

The Australia Council for the Arts is the Australian Government's arts funding and advisory body. Its mission is to enrich the lives of Australians and their communities by supporting the creation and enjoyment of the arts. This mission is underpinned by a commitment to:

- Excellent and distinctive Australian art - assisting Australian artists to create and present a body of distinctive cultural works characterised by the pursuit of excellence;
- Access for all Australians - assisting Australian citizens and civic institutions to appreciate, understand, participate in, enjoy and celebrate the arts;
- A strong and vibrant arts sector - providing infrastructure development for Australia's creative arts.

## Australia Council Funding to NFPs

In 2011/12 the Australia Council provided 1019 grants to arts and cultural organisations across the country in the fields of music, visual arts, literature and publishing, dance and theatre. All of the funded organisations are income tax exempt charities and eligible for the following tax concessions:

- FBT rebate;
- GST concessions for charities including for non-commercial activity;
- Deductible Gift Recipient;
- Refund of franking credits.

A small minority of these organisations also receive further concessions for public benevolent institutions.

## The Arts Sector and Not-for-Profit Tax Concessions

Sustained efforts across successive governments and by individual and family advocates of philanthropy have seen a significant strengthening of the culture of private giving and philanthropy in the arts sector within Australia. By way of illustration, we note the Australia Business Arts Foundation (AbaF) annual surveys reveal an increase of 98%, from \$111.6 million to \$221 million, in private sector support for the arts between 2001/02 and 2010/11.

In April 2011 the Minister for the Arts Simon Crean commissioned a review led by Mr Harold Mitchell AC to identify opportunities to broaden and strengthen the base of giving to the arts in Australia. In his report Mitchell noted that while giving to the arts represents only a small percentage of overall private giving in Australia, 2.3 per cent of all donations, this sum is a significant contribution for the arts, with estimates that private sector support as a whole (including private giving, corporate sponsorship and fundraising) provided approximately 10.4 per cent of total income for the arts.

It is important to note, however, that ongoing increases to the levels of giving to the NFP sector is far from assured. The sector is inherently vulnerable to economic volatility and the ensuing impacts experienced by the broader giving community. This is illustrated, for instance, by the marked reductions in tax deductible giving by individual tax payers tracked during the onset of the Global Financial Crisis<sup>1</sup>.

## **Executive Summary**

The Australia Council supports tax concession arrangements across the not-for-profit sector that are consistent with the strategic efforts of consecutive governments to foster and encourage a culture of giving to the arts in our country. Indeed, the Government is currently in the process of implementing the recommendation from the Mitchell Review for the amalgamation of the Australian Business Arts Foundation (AbaF) and Artsupport Australia into a new organisation with responsibility for stimulating and facilitating all private sector support for the arts in Australia.

The Australia Council supports the existing suite of tax concessions available to the not-for-profit sector and believes they are reasonably effective in supporting the government's policy objective of maximising private donations to the arts sector. For this reason, we urge caution in regards to any changes to these tax concessions that could prove detrimental to levels of giving to the arts sector and to the growth of a culture of giving in Australia, and which might undermine the government's commitment to leveraging public investment in the arts by encouraging and facilitating private sector support.

The Australia Council is also mindful that, as is the case for much of the not-for-profit sector, resources available to arts organisations are very limited. It is important, therefore, that compliance requirements for establishing an organisation's NFP bona fides are not onerous.

In what follows, we have provided responses to some of the questions posed in the discussion paper, particularly as they relate to:

- The criteria for tax exemption status
- Franking credit imputations
- The ACN Register clearing house; and
- GST concessions and ticket prices.

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<sup>1</sup> According to the Australian Tax Office Giving Statistics, there were falls of 10.8% and 6.1% in deductible giving by individual tax payers in 08/09 & 09/10 respectively.

## Discussion Paper Questions

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

**Q 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?**

The Australia Council believes that the existing criteria for income tax exemptions for charitable institutions should continue. This, of course, includes arts organisations, which have a long history of providing powerful and transformative benefits to individuals, local communities and the broader Australian society. We share the views of the Australian Major Performing Arts (AMPAG) submission in regards to the shortcomings of terminology in the legislation which refers to ‘art’, ‘music’ and ‘literature’ as distinct categories of organisation. We suggest that this category should refer to the ‘the arts’, as this would better reflect the activities of the sector and eliminate the overlap that exists between the term ‘art’ with the terms ‘music’ and ‘literature’.

On a separate matter, the Australia Council is aware that the government is currently considering options in relation to the commercial income generated by charities. We are of the view that commercial activity undertaken by arts organisations which is then used to support the core not-for-profit objectives of those organisations should not be taxed. As the Australia Council has previously stated<sup>2</sup>, the typical arts business model is constituted by a variety of business activities that supplement government funding, such as ticket sales, venue hire, retail, cafe and bars, and fundraising. Income from all of these activities is directed towards public benefits and the altruistic purpose of these arts organisations. The Australia Council, in line with government policy, encourages arts organisations to engage in social enterprise and innovation, and seek diverse and complementary income producing investments where appropriate.

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

Franking credits are an important source of income for many NFPs, including arts organisations. We can see no compelling reason to limit refunds for franking credits for tax exempt charities and DGRs. As stated in the submission by AMPAG, the entitlement of charitable institutions to a refund of franking credits should not be regarded as a tax concession. Rather, the entitlement to a refund arises under the fundamental policy contained in the imputation system.

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

We would like to highlight the inconsistency under current legislation where GST is charged on charity auction transactions and other fundraising events, but where these same contributions are treated as gifts for income tax purposes and are eligible for DGR. We refer you to the AMPAG response to this question for more detail.

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<sup>2</sup> In its submission to the Treasury Consultation Paper *Better Targeting of Not-For-Profit Tax Concessions*

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

The Australia Council supports linking a clearing house to the ACN Register on the condition that participation in this clearing house is not mandatory. Donors to the arts are motivated to give to specific arts organisations on the basis of their personal relationship with that organisation and its artistic products (its performances, exhibitions, performers, repertoire etc.) Donating to an intermediary such as the ACN Register poses the highly significant risk of weakening that personal connection and therefore the impetus for giving to it.

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

The Australia Council does not support increasing the threshold for deductible gifts as this would be damaging to the overall environment of giving in Australia. Large-scale gifts tell only half the story. Indeed, significant existing support for the arts is made up of small-scale giving. When combined as part of a broad base of support, these contributions accumulate to form a strong, community-based foundation for our sector.

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

The Australia Council is of the view that the GST applied to ticket sales is overly complex for arts organisations due to a number of factors including differentiated ticket pricing, the inherent challenges of projecting revenues for shows and the accompanying challenge of calculating the price points for tickets that will determine whether the GST is applicable.

For further detail on this matter, we refer you to the AMPAG submission.