



Australian Conservation Foundation

Submission on Fairer, simpler and more effective tax concessions for the not-for-profit sector Tax Concession Working Group Discussion Paper

Date: 21 December 2012

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Australian Conservation Foundation Submission

Fairer, simpler and more effective tax concessions for the not-for-profit sector Tax Concession Working Group ("TCWG") Discussion Paper

1. Background

The Australian Conservation Foundation ("ACF") welcomes the opportunity to make this submission on the "Fairer, simpler and more effective tax concessions for the not-for-profit sector" Discussion Paper ("Discussion Paper") dated November 2012.

ACF notes that the reform options proposed in the paper are 'merely to gather information to assist the Working Group to evaluate each option'.¹ ACF's response to this submission is general: timing has prevented a detailed study of the various reform options suggested.

About ACF

ACF is a national, community-based environmental organisation that has been a strong voice for the environment for over 40 years, promoting solutions through research, consultation, education and partnerships. ACF works with the community, business and government to protect, restore and sustain our environment.

The ACF is an incorporated association, incorporated under the laws of the Australian Capital Territory and is a specifically named and listed environment recipient for DGR.² It is endorsed by the ATO for income tax exemption³, GST concessions and FBT rebate⁴.

¹ *TCWG Discussion Paper*, November 2012, p ii.

² Section 30-55 (2) *Income Tax Assessment Act 1997 (Cth)* (ITAA)

³ Subdivision 50-B, Section 50-50 (b) *ITAA*

⁴ Cf environment charities holding DGR status under listing in the Register of Environment Organisations maintained by the Minister for Sustainability Environment Water Population and Communities (SEWPAC).

ACF has been granted an exemption from state tax payroll tax in Victoria, Western Australia, New South Wales, Queensland and the ACT and for land tax in Victoria.

ACF's Strategic Vision to 2020 includes a commitment to supporting communities and economies that are sustainable in practice and ACF therefore advocates for systems of taxation and other regulatory structures to support this vision.

In this submission ACF does not respond to every consultation question. Instead this paper focuses briefly on issues of direct daily importance and concern to ACF as a nationally focussed environment charity with DGR status and incorporates feedback from limited discussions with other environment NFPs.

2. ACFs response to the consultation questions

Chapter 1 – Income tax exemption and refundable franking credits

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

Criteria should be sufficiently broad to foster organisations that tackle the underlying root causes of environmental problems. Relief to these organisations recognises that disadvantage and problems will persist unless organisations and communities also address the underlying systemic policies and laws that contribute to, or perpetuate, the problem.

ACF responds more broadly to this question in its response at question 7.

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?

Paragraph 18 of the Discussion Paper states "...Income tax exempt entities must generally meet the 'in Australia' special conditions by operating and pursuing their purposes principally in Australia..."

ACF considers 'special conditions' such as the 'in Australia' test to be an unreasonable limitation on the activities of charities and not-for-profits: the sector has much to contribute, as well as a great deal to learn, from robust and vibrant international engagement. ACF has asked government to reconsider a proposal in 2012 to apply 'in Australia' special conditions to environment organisations.⁵

The potential for special conditions to increase costs and work against simplicity for donors and recipients was illustrated by the 'in Australia' Bill, where even a modest level of international activity could be constrained or else, significantly increase administrative costs and hamper the fundraising efforts for DGRs and charities. For example, Register of Environment Organisations would need to undertake an application for exemption and in order to qualify would need to establish systems and processes that satisfied certain integrity criteria. In this way the proposed special condition works against smaller, emerging charities and not for profits, as the systems and processes required under the proposal would require an investment in systems and administrative overheads.

This special condition proposal illustrates the potential for complication rather than simplicity and duplication to achieve policy aims (considering the availability of anti-money laundering regulation and the role of the new Australian Charities and Not-for-profits Commission).

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

There is a case for simplification, in particular a one-stop application process and mutual recognition for applications, lodgement and reporting especially in relation to State based concessions.

⁵ ACF Submission to Senate Standing Committee on Community Affairs on the *Tax Laws Amendment (Special Conditions for Not-for-profit Concessions) Bill 2012* dated 31 August 2012.

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

ACF would be financially disadvantaged by any change to remove franking credits on dividends received.

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

ACF supports the overall system of tax concessions and considers it an efficient way to foster development of the sector.⁶ These concessions represent important value to ACF.

ACF is in favour of considering extending the DGR framework so that it fosters the development of other smaller environment charities and also, other non-charity NFPs. In its 2009 Report to the Productivity Commission supported regulatory settings that would act as a catalyst and that would foster growth in the development of local economies (and through this, socio-economic outcomes) in regions, or amongst Indigenous communities.⁷

In its submission, ACF envisaged a model form of community/blended value incorporated entity⁸; arguably many existing for profit structures would claim these attributes already. Certainly since 2009 a handful of Australian entities have adopted certification as “B Corporations” (a United States of American based certification which the certifying body describes as “...a new type of corporation which uses the power of business to solve social and environmental problems”).⁹

⁶ *ACF Submission to Productivity Commission*, October 2009, p 16. ‘Innovative financing and/or capacity building... approaches when linked to a tax concession framework are one of the most effective ways of supporting community development by individual or community owned for-profit enterprises’

⁷ *ACF Submission to Productivity Commission*, October 2009, p 18.

⁸ *ACF Submission to Productivity Commission*, October 2009, p 19.

⁹ <http://www.bcorporation.net/what-are-b-corps/the-non-profit-behind-b-corps> “Benefit corporations operate the same as traditional corporations but with higher standards of corporate purpose, accountability, and transparency. Benefit corporations ... pursue a higher purpose than profit, and they offer investors and the public greater transparency to protect against pretenders.” See for Australian examples: Small Giants and The Projection Room.

In the context of an ongoing debate about whether or not income tax concessions and gifts can be correctly described as “tax expenditures”¹⁰ the extension of income tax concessions beyond charities and NFPs to these kinds of ‘for profits’ or social enterprises is timely. Concessions that would catalyse and foster enterprises during their pre-incorporation, establishment and early operational phases - in particular those with a focus and mission around environmental sustainability – would be beneficial. ACF recognises that there would need to be criteria enabling a ‘for profit’ to demonstrate its case for tax concessional treatment as a ‘social enterprise’ but accreditation schemes such as those operated for B Corporations could provide the basis for discussion around appropriate criteria.

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.

ACF is supportive of a simplified single national application process with mutual recognition for the multiple State and Territory applications currently required. The current systems represents a significant administrative burden for organisations like ACF that work across several States and Territories.

ACF favours the retention of tax concessions as a preferential alternative to grant funding because tax concessions:

- “...Better facilitate NFPs pursuing activities that are independent of the agenda of government...; and
- Can offer lower compliance burdens than grant funding conditions (although...there is substantial scope for improvement in application and compliance processes associated with current tax concessions)...’¹¹

¹⁰ See McGregor-Lowndes, Myles, Turnour, Matthew D., & Turnour, Elizabeth (2011) *Not for profit income tax exemption: is there a hole in the bucket, dear Henry?* Australian Tax Forum, 26, pp. 601-631 at downloaded from: <http://eprints.qut.edu.au/47587/> at pp. 9-10.

¹¹ ACF Submission to Productivity Commission, October 2009, p 16.

Chapter 2 – Deductible gift recipients

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?

DGR is critical to charities like ACF whose primary support is derived from the community rather than from government grants¹². Once DGR status has been obtained it is relatively simple to administer in its current form. DGR is a major taxation incentive that contributes to the sustainability and viability of charities and NFPs working towards the public good.

ACF considers a blanket extension of DGR to all charities would be, on balance, a simplification and streamlined process that outweighs the costs of administering complicated and unfair application, management and compliance processes.

ACF's 2009 Productivity Commission submission also recommended broader examination of fiscal approaches to stimulating social investment. It gave the example of the United States Treasury Department's *New Market Tax Credit Scheme* permitting taxpayers to receive a credit against Federal income taxes for making qualified equity investments in designated Community Development Entities (including CDFIs). ACF considers this scheme to be worthy of examination in an Australian context.¹³

Q13. Would DGR endorsement at the entity level with restrictions based on activity address the behavioral distortions in Australia's DGR framework? Could unintended consequences follow from this approach?

Refer to the response to question 3 above.

The ACNC portal and existing methods of reporting on activities under the ITAA (for example to SEWPAC) and multiple reports to every State and Territory government are already adequate. Restrictions based on activities, including where those activities are carried out would unfairly increase the burden of compliance when there are already existing checks and balances in place.

¹² In 2012-13 DGR donations are expected to represent approximately 60-70% of ACF's overall income.

¹³ *ACF Submission to Productivity Commission*, October 2009, p 20.

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?

Applying the simpler and effective terms of reference here, ACF staff who worked with the Gift Aid rebate scheme in the United Kingdom, anecdotally report that the Australian system of DGR is simpler and enjoys reduced unnecessary use of paper based record-keeping by charities. Under the current system in Australia, it is the donor who manages the retention of records (receipts) and the deductions particular to their own affairs: under the rebate system that burden is transferred to the charity. This administrative burden includes declarations, filing, paper retention, audit and system management costs.

Staff also reported issues with higher taxpayers (the rebate assumed everyone was taxed at the same nominal rate) who needed to manage more paper work, and practical issues for non-residents.

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

A system allowing Australian taxpayers to nominate charitable recipients and to direct their refunds to them at the time of submitting their annual Income Tax Returns would be a simple method of giving to DGRs.

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

For some smaller not for profits this may be simpler. For charities like ACF, however, the relationship with the donor is paramount and goes beyond the provision of cash or funds. The donor may often be an existing member or supporter who engages with ACF through its environmental programs or who has connected with ACF through social media.

The donation may be a step in the ladder of engagement that ACF shares with the donor and contact made through the donor relationship may lead to the donor becoming involved in other ways, including as volunteers, pro bono or other supporters. The strength of that relationship would diminish through a clearing house system.

Whilst there may be a reduction in some administrative costs to the DGR if such a clearing house system were to be developed, the costs of establishing the system and ensuring it 'spoke' to or was compatible with each of the 56,000 charities and NFPs donor management systems may be considerable. Further, some practical issues arise in relation to obtaining the consents of donors that would be required for direct contact by the recipients.

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?

ACF is fortunate to benefit from workplace giving programs; the primary relationship is, however, with the workplaces, rather than the individual donor. The workplace's obligations under privacy laws limit a charity's capacity to directly engage donors and to individually develop and foster the relationship and their understanding of how they contribute to the charity's mission.

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?

Stronger promotion of the opportunities for giving and the contribution that can be made through philanthropy would be of value.

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

This would negatively impact on ACF's youth giving and would also very likely damage regular giving (where donors often give a nominated amount per month e.g. \$20 per month). Simplification could be achieved if donors giving less than \$25 need not be issued with a receipt; however ACF also considers the provision of a receipt to be a cost it is prepared to invest in developing and maintaining the donor relationship.

Chapter 6 – Next steps

Q56. Are there any areas in which greater streamlining of concessions could be achieved?

Anecdotally many charities are feeling the weight of regulatory reform in the sector or ‘discussion paper fatigue’ and have simply given up responding to discussion papers on major policy changes.

Smaller charities and not for profits simply do not have the staff, the funds for access to expert advisers, nor the simple time capacity to respond at the same time as operating their organisation. Many charities where there is no ‘peak’ body will be unaware of the important changes being discussed. In addition to a failure to engage consistently, the discussion around tax reform has been fragmented with a series of papers being issued over the past two years.

Income from DGR donations for example, can represent up to 60% -75% of a DGR entity’s income, so changes to DGR could seriously affect revenues and present a major liquidity risk. It is vital that these issues be communicated and shared widely and more effectively. This is especially important in remote Indigenous communities and rural and regional Australia where the not for profit sector is an important service provider, a major source of employment and a dominant player in local economies.

The sector would benefit from a report or forum convened by government with support for the costs of attendance (virtually or in person) for smaller charities and organisations. The themes and discussion points from each of the Consultation and Discussion papers that discuss tax concessions and DGR must be consolidated and presented¹⁴. Local government collaboration would offer real opportunities for contact with local community and not for profit organisations.

[END]¹⁵

¹⁴ “Better targeting of NFP tax concessions” Consultation Paper (July 2011) and the Senate Standing Committee on Community Affairs on the *Tax Laws Amendment (Special Conditions for Not-for-profit Concessions) Bill 2012*.

¹⁵ This paper draws on ACF’s submission to the Productivity Commission on the *Contribution of the Not-for-profit Sector* (2009) (written by Julian Chenoweth) and was prepared with assistance from Tarni Perkal, ACF Legal Volunteer.