



THE TAX INSTITUTE

22 January 2013

NFP Sector Tax Concession Working Group Secretariat
The Treasury
Langton Crescent
PARKES ACT 2600
Attn: Ms Linda Lavarch

By email: NFPReform@treasury.gov.au

Dear Ms Lavarch

Fairer, simpler and more effective tax concessions for the not-for-profit sector

The Tax Institute is pleased to have the opportunity to make a submission to the Not-For-Profit Sector Tax Concession Working Group (the **Working Group**) in relation to the discussion paper: *Fairer, simpler and more effective tax concessions for the not-for-profit sector* (the **Discussion Paper**).

The Tax Institute makes the following submission on behalf of our members in the tax profession, as Australia's leading professional association in tax. Whilst The Tax Institute is also a registered charity¹ under Item 1.1 of section 50-5 of the *Income Tax Assessment Act 1997* (Cth), we do not make this submission in that capacity.

Summary

Our submission below addresses some of the issues raised by the Working Group in the Discussion Paper that impact the not-for-profit (**NFP**) sector.

The Tax Institute is of the view that the reform options in the Discussion Paper should only be considered after finalisation of the various other NFP sector reform initiatives currently underway. Once the current NFP landscape is settled, a proper holistic analysis of all tax concessions available - and whether they are in their fairest, simplest and most effective form - can then sensibly occur.

In the event the Government chooses to pursue further reform in this area ahead of finalising the current NFP landscape, then subject to our comments in this submission, The Tax Institute broadly supports amendments to the current set of tax concessions that will simplify and improve their fairness and effectiveness.

¹ Previously a "charitable institution" prior to section 50-5 being amended by the *Australian Charities and Not-for-profits Commission (Consequential and Transitional) Act 2012* Sch 2 Part 2 which introduced the term "registered charity".

We set out below our views on some of the options posited in the Discussion Paper for the Working Group's consideration.

General comments

NFP entities provide vital support and services to the wider community (including the sick, homeless and impoverished members of the community) and supplement or even relieve the government of the responsibility of having to provide services to these sectors of the community. NFP entities in turn rely on the support of the private and Government sectors to be able to fund their activities. Private sector support is generally in the form of monetary donations, whilst Government support is predominantly in the form of tax concessions.

The range of NFP tax concessions has developed over time and not necessarily in a cohesive way. Some concessions have become complex and difficult to both administer and apply. In addition, some are now achieving a result that is inconsistent with Parliament's intent in enacting the laws.

Terms of Reference

The objective of the Working Group is to consider whether there are better ways to deliver the current set of tax concessions providing support to the NFP by examining the current set of tax concessions and determining whether they are in their fairest, simplest and most effective form. Proposed changes are to be made only on a revenue-neutral basis.

Various reforms are currently underway in respect of the NFP sector including the introduction of the Australian Charities and Not-For-Profit Commission (**ACNC**), a potential change to the definition of "charity", the "in Australia" condition and the treatment of unrelated commercial activities of NFPs. Given the already changing landscape of tax concessions of NFPs, The Tax Institute is concerned about the timing of the review being undertaken by the Working Group and the terms of reference given to the Working Group requiring the Working Group to find offsetting savings to support proposals that have a cost.

Need for Broader Review

Given the important role NFPs play in the wider community as an alternate source of support and services to those in need, it is The Tax Institute's view that the task of evaluating the tax concessions available to NFPs demands a wider review than the Working Group is able to conduct.

Conclusions cannot be hastily drawn from the options raised in the Discussion Paper. Any changes to the tax concessions that apply to the NFP sector must be considered as part of holistic reform. The focus of the Discussion Paper is limited to an apparent "trade-off" among the various tax concessions rather than reviewing the need for the concessions in the first place and their preferred nature. Therefore, a review of the tax

concessions as set out in the Discussion Paper should be embarked on as part of a complete review of the tax system that applies to NFPs.

Eligibility for concessions

Consideration should be given to the development of a uniform set of eligibility criteria to determine whether a NFP entity is eligible for all tax concessions available in the Federal tax system. Eligibility criteria, such as dependence on the “legal form” of the entity (eg the distinction between a “charitable fund” and a “charitable institution”) should be removed. This would markedly simplify the eligibility process.

We note that the ACNC legislation largely ignores the legal form of the entity (for example, the distinction between “charitable institution” and “charitable fund”) and refers only to “charity” and “entity”. We suggest this merging of concepts be carried through in forming the eligibility criteria for tax concessions for NFP entities². Endorsement by the ACNC as a charity could be used as a criterion for eligibility for tax concessions for charities. Also, carve-outs for certain entities³ should also apply uniformly for all available tax concessions.

Subsequent to this, the suite of tax concessions available could then be evaluated⁴, including the nature and form of tax concessions offered and through which parts of the Federal tax system the concessions should be made available to NFPs (eg income tax, GST, FBT).

Options posited in the Discussion Paper

Subject to the above comments, The Tax Institute has chosen to comment on only some of the options for reform raised in the Discussion Paper in relation to income tax, fringe benefits tax and deductible gift recipients. Our detailed comments are set out below.

1. Income Tax Exemption and Refundable Franking Credits

Option 1.1 Who should be eligible for exemption from income tax?

Eligibility criteria

As noted in our comments above, a uniform set of eligibility criteria should be developed for entities accessing the NFP tax concessions. However, the Working Group is only able to consider the separate criteria for eligibility for income tax concessions.

² We note that the term “registered charity” has been introduced into Item 1.1 of section 50-5 of the *Income Tax Assessment Act 1997* (Cth) in place of referencing a “charitable institution” or “charitable fund”, indicating that there is a move towards removing the distinction between “charitable institution” and “charitable fund” in the income tax law.

³ For example, subsections 65J(1)(b) and (baa) of the *Fringe Benefits Tax Assessment Act 1986* (Cth) which refer to government-related charities.

⁴ For example, consideration could be given to whether certain concessions, such as the employment incentive currently provided through the FBT system is most effectively provided through the FBT system or could perhaps be provided more effectively through the income tax system.

The current set of eligibility criteria for exemption from income tax have been developed over time and to meet certain policy outcomes. For the purpose of the Working Group's review, we note that presently, these criteria appear to effectively serve their purpose.

The "public benefit" test

The "public benefit" test is a specific element of what currently defines a "charity". Requiring all NFPs to meet this test could effectively result in many more NFPs meeting the current definition of "charity" than may be desirable. Not all NFPs should have to be a charity to be able to access income tax concessions.

Therefore, it is not necessary to extend the "public benefit" test beyond its current application to charities as a criterion for determining an entity's eligibility for exemption from income tax.

We note that this particular criterion is currently being examined by Treasury in respect of the definition of a "charity" in the context of the *A Definition of Charity Consultation Paper* consultation. The Tax Institute's response to this consultation noted that the "public benefit" test should be preserved in respect of defining a "charity" and it would be open to the regulator (the ACNC) to rebut this presumption when considering if an NFP is a charity.

Option 1.2 Who should be eligible for refunds of franking credits?

Currently, entities exempt from income tax (income tax exempt charities and deductible gift recipients (**DGR**)) are able to claim refunds of franking credits. This treatment matches the tax treatment given to individuals in receipt of franked dividends, effectively meaning no tax is payable on the receipt of franked dividends by tax-exempt entities, consistent with the tax treatment of other "income" amounts derived by tax-exempt entities.

We note that the provisions that relate to how unrelated commercial activities of NFP organisations should be treated for income tax purposes are currently under examination by the Government in light of the *Word Investments*⁵ case and the *Better targeting of not-for-profit tax concessions* consultation (**Targeting Tax Concessions Consultation**). The ability of tax exempt charities and DGRs to receive refunds of franking credits will be influenced by the result of the Targeting Tax Concessions Consultation and what (if any) changes are made to the current rules.

If the Targeting Tax Concessions Consultation results in requiring (or making it prudent for) NFPs to set up separate entities for the purpose of undertaking commercial activities (for which they may be subject to tax), the changes may result in more NFP entities being able to claim franking credit refunds. The refund amounts may be capped or the NFP entity may not be able to claim the full amount. Until the new rules are determined, it is difficult to comment further regarding the ability of tax exempt charities, DGRs or other types of NFPs to claim franking credit refunds.

⁵ *FCI v Word Investments Limited* [2008] HCA 55

Option 1.3 Extending the ATO endorsement framework

There is merit in extending the ATO endorsement framework to include all entities wishing to access tax concessions as this would promote fairness and consistency among all entities that currently have to self-assess their entitlement to tax concessions.

Requiring the determination of eligibility for all entities wishing to access these concessions by an independent body (such as the ACNC), including all entities which currently self-assess their entitlement, would ensure a level playing field and provide both certainty and fairness around which entities are able to access these concessions. We understand that the purview of the ACNC is intended to eventually extend beyond regulating charities and will eventually encompass all non-profit entities.

There will also be increased transparency both for the regulator and the public if there is a public register on which to confirm both whether a particular entity is exempt from income tax and on what basis. It would also enable the Government to properly quantify just how many NFP entities are claiming tax exemptions as there would be a record of them and would remove the uncertainty around the number of NFPs who self-assess their entitlement to tax exemption (and cost to the revenue). The Government would then be able to quantify on a much more realistic basis the actual cost of providing tax concessions to the NFP sector and therefore would be able to more accurately quantify the cost of any proposed reforms to the tax concessions provided.

New entrants to the NFP sector could also examine the public register and identify bodies similar to them which may be exempt from income tax, therefore giving them some indication of their potential eligibility to access the available tax concessions.

We acknowledge that requiring the ACNC to approve every entity for the purpose of determining their eligibility for tax concessions may increase the administrative burden on the ACNC and would likely increase the time taken for an application for access to the concessions to be assessed given the likely increase in volume of applications. However, the resulting increase in fairness and certainty provided to the not-for-profit sector would be beneficial.

Extension of the framework may come at a cost to revenue. Should the Working Group conclude that the framework should be extended, the cost of extending the framework will need to be measured against the cost to revenue of entities self-assessing their entitlement to tax concessions.

2. Deductible Gift Recipients

Option 2.1 Extending DGR status to all charities AND Option 2.2 Extending DGR status to most charities

The Tax Institute is of the view that before comments are able to be made regarding whether DGR status should remain as it is or be extended to some or all types of

charities, the policy intent behind bestowing DGR status on a particular entity should first be clarified. As detailed in paragraph 45 of the Discussion Paper, Australia's DGR framework has evolved over time in an ad hoc manner (when adding categories and types of entities eligible to obtain DGR status) and originally stems from a 1907 Victorian Income Tax Act which was later adopted into the Federal income tax legislation. The current version of the framework was devised in 1993⁶.

It seems the purpose of bestowing DGR status on certain entities was to encourage taxpayers to give to certain types of entities. Support was provided through the income tax system by allowing a deduction (ie relief from taxation) to taxpayers who had given qualifying gifts to entities with DGR status. What is no longer clear is the policy behind the types of entities that were intended to receive this support through the tax system. The policy behind the rules has been muddled due to the ad hoc manner in which the rules have been amended over time.

Once the policy behind which types of entities should be bestowed with DGR status is confirmed, proper consideration can then be given to the questions posed about whether all charities should be DGRs, or indeed, what other entities should also be DGRs. Clarification of the policy intent will set out the scope for the intended application of the DGR regime. Any proposed changes to the current DGR framework can then be considered and these proposed changes can be assessed against the policy intent to determine whether the proposed changes will be consistent or inconsistent with the policy.

It seems timely that a restatement of the policy intention be made, be it to confirm the original policy intent or modify it to be consistent with the modern day purposes of the NFP sector, in line with the Working Group's consideration of the effectiveness of the DGR regime.

Option 2.3 Establishing endorsement conditions relating to the scope of charitable activities

Subject to the comments made in respect of Options 2.1 and 2.2 above, consideration should be given to endorsement of an entity for DGR status based on activities undertaken by the entity rather than the type of entity. In this regard, The Tax Institute would broadly support modification of the rules to better accommodate endorsement of entities that engage in a variety of activities in pursuit of their purpose that is consistent with the policy for endorsement as a DGR.

The Henry Review recommended that the application process for gift deductibility status should be streamlined⁷. Streamlining of the application process should occur along the lines suggested above, but only after the policy behind the DGR rules is clarified for modern day purposes.

⁶ The 1993 amendments, contained in the *Taxation Law Amendment Act (No 2) 1993*, improved the "readability" of the rules. The Explanatory Memorandum to the *Tax Law Improvement Act 1997* amended the DGR provisions to make them more consistent with the self-assessment regime. No explicit policy statement was made at either time.

⁷ Refer to Recommendation 41 of the *Australia's Future Tax System – Report to the Treasurer (Dec 2009)* (Henry Review)

Option 2.4 Implementing a tax offset mechanism for gifts

We understand that this proposal is directed at targeting the current regressive nature of the concession available to taxpayers who donate to DGRs. However, it is not necessarily likely that employing a fixed tax offset as suggested would encourage increased donations from taxpayers, particularly at the higher levels.

Shifting to a tiered tax offset mechanism may add a level of complexity to the tax system. We note that this option scores highly against the fairness and effectiveness guiding principles of the Working Group⁸. However, we query whether this option achieves the objective of “simplicity” sought out by this review.

Option 2.9 Eliminate public fund requirements for charities registered by the ACNC

The Tax Institute broadly supports removal of the “public fund” requirement on the basis that charities will be subject to the governance of the ACNC, which should ensure charities properly apply the funds they receive to their (public) charitable purposes. This suggests less need for the “public fund” requirement to otherwise be imposed.

Option 2.10 Increase the threshold for a deductible gift from \$2 to \$25

NFPs play an important role in providing support and services to the community the government would otherwise have to provide. They most often rely on the generosity of the community to fund the support and services they provide.

In the Henry Review, it was noted that there would be an administrative benefit to both DGRs and donors if the deductible gift threshold was increased. This would result in a decreased number of receipts having to be issued and retained to support claims for a deduction for donations⁹. We suggest the ATO and some of the major well-known charities may be able to provide some indication of the average minimum donation given to DGRs. Based on this information, an informed assessment could then be made whether the \$2 de minimus threshold could and should be raised without resulting in many charities losing too much funding, as suggested in the Henry Review.

Consistent with the Henry Review, there is merit in increasing the de minimus threshold. However, The Tax Institute is not in a position to comment on how this will impact on funding to charities as it is unclear whether by raising the threshold, donors would actually be encouraged to give more or donors who could not afford to give donations at least equal to the de minimus threshold would be discouraged from giving.

⁸ Refer to the table on p32 of the Discussion Paper

⁹ See the Henry Review report, Part 2 Vol 1 p60

3. Fringe Benefits Tax Concessions

Option 3.1 Should the list of entities eligible for the exemption or rebate be revised?

The Henry Review recommended¹⁰ that fringe benefits tax (**FBT**) concessions provided to NFPs be “reconfigured” as they provide NFPs with a competitive advantage in the labour market (such as hospitals). Accordingly, one of the principles Henry espoused to underpin tax concessions for NFPs is that “they should not undermine competitive neutrality where NFPs operate in commercial markets¹¹”.

Our members have two competing and equally strong and valid views regarding the availability of the FBT exemption and rebate (whichever applies) to NFP entities eligible for these concessions.

One view is the current set of FBT concessions, while they may have been introduced as a deliberate policy measure, are no longer appropriate and as such should be removed or at least converged into a single tier. The NFP industry has become very dependent on having this competitive advantage and being able to provide these kinds of benefits to employees. Organisations will have arrangements in place that will need to be wound back if the concessions are no longer available to them. This kind of adjustment will result in large administration costs (such as the need for redesigning salary packages that are on foot for current employees in the industry). Employment contracts and enterprise agreements which have been negotiated factoring in these benefits will also need to be renegotiated.

As these concessions have become ingrained into the operations of NFPs, (for example, NFPs rely on the availability of the salary sacrifice cap for FBT which has allowed them to compete with the private sector and attract employees away from the private sector), NFPs may need to be provided with generous transitional rules if these benefits are removed. Or, in accordance with the principles behind this Discussion Paper, an alternate and workable concession may need to be provided which has the same effect of assisting NFPs to attract employees or provides NFPs with a similar form of funding support to attract and retain employees.

The other view is that the benefits and the existing criteria for the determination and limitation of the availability of the benefits continue to be appropriate. It is noted in this context that the concessions have become a critical tool available to NFPs to remain competitive with the private sector in being able to attract, retain and reward staff. Indeed, they note that organisations receiving the exemption have become reliant upon it and therefore it should be retained.

What emerges from both opposing arguments is the NFP sector’s entrenched dependence on being able to offer some form of benefit or incentive to attract

¹⁰ Recommendation 9(e) of the Henry Review

¹¹ Henry Review Part 2 Vol 1 p206

employees to the sector, given the obvious cost constraints and limited funding available to the sector (particularly where a NFP's funding is highly dependent on donations and the success of fundraising activities).

Regardless of which side of the argument is ultimately favoured, what must be borne in mind is the inherent dependence NFPs have developed on having tax incentives available to them to offer to potential employees to attract and retain them. Indeed, there is a limitation imposed by the principle in Henry which implies the concessions should not operate to undermine competitive neutrality where NFPs operate in the same market as for-profit entities. This does not itself suggest holistic removal of the FBT concessions is required, but only for NFP entities in commercial markets.

Refocusing the discussion – the primary issue

There are many elements which come into play in considering the fairness and effectiveness of the provision of this incentive through the FBT system, including the sector's inherent reliance on the incentive and the issue of competitive neutrality.

In this regard, due consideration must be given to the important role this incentive plays to assist the NFP sector to attract and retain employees. Entities in the sector would not be able to properly function if they were unable to attract and retain staff. The consequent impact of removing the FBT concessions without providing alternate support to the NFP sector to attract and retain employees, if such support is deemed necessary for the NFP sector, would potentially be significantly detrimental to the sector overall.

Consequently, the primary question which arises concerns the ongoing need for such an incentive to be provided by NFPs. Subsequent to this, consideration should then be given to whether it is appropriate that this kind of incentive be provided through the FBT system (or another aspect of the Federal tax system). The need for the employment incentive should also be weighed against the competitive advantage concerns held for some NFP entities (such as hospitals) that directly compete with the private sector. We note that, though this higher level of discussion is not within the Working Group's ambit, it is the discussion that stakeholders in the NFP sector should be having.

Once effective consideration has been given to the broader issue, due consideration can then be given to the questions posed regarding whether, if the FBT concessions are to be retained, there should be a two-tiered system and if so, what eligibility criteria should apply.

Option 3.2 Include meal entertainment and entertainment facility leasing benefits within the relevant caps

Some of our members are of the view that the specific concessions provided in respect of salary sacrificed meal entertainment and entertainment facility leasing benefits have been open to abuse and should be removed in their entirety. Given the ingrained dependency the NFP sector has developed on being able to provide these benefits to employees, generous transitional rules for phasing out the concessions would need to

be made available to the sector. This view is consistent with the recommendation in the Henry Review¹² that the caps be phased out over a ten year transition period.

Other members are of the opposing view that, because these benefits have become so ingrained in the NFP sector, and only accessed by a limited number of employees, they should be retained for the reasons given below:

- The inclusion of salary sacrificed meal entertainment and entertainment leasing facility benefits within the existing concessional caps (without an increase in the caps) effectively results in the removal of the concession currently available for these benefits. Employees at organisations that access the relevant FBT concessions are typically already using the full amount of the concession caps available to them. As such, moving these additional benefits under the ambit of the existing caps (without an increase in the level of the caps) would simply and effectively remove the concessions available for these benefits.

A charity or NFP does have the option to allow an employee to salary sacrifice for these non-capped benefits if they so choose, and the NFP will then incur the associated administrative cost of providing this benefit through salary sacrifice arrangements. Giving an NFP this choice is an appropriate and acceptable outcome in these circumstances.

Though these benefits could be considered for capping, all other non-salary sacrificed benefits of these types should be excluded from capping. This will ensure that record keeping is kept to a minimum and the intention of the legislation at the time these measures were implemented is upheld;

- Should these benefits fall under the concessional “caps”, the “caps” should be increased to account for the lack of increase in the caps that has occurred since their introduction in 2001 and in future they should also increase in line with the consumer price index. The historical absence of an increase in the caps effectively represents a decrease in the value of the benefit being provided to the NFP sector by the government since its introduction. By way of example, indexation of the \$30,000 cap that applies to the FBT rebate in line with CPI from 2001 is estimated to result in a revised cap to date in the order of \$45,000;
- These benefits have, over time, formed part of an employee’s remuneration entitlements at an NFP, in some cases being inserted into enterprise agreements and contractual entitlements of employees. The removal of such concessions represents an effective decrease in pay for employees.

We reiterate our comments from above, that the broader issue concerning the ongoing need for NFPs to be able to attract employees by being able to offer an incentive through the tax system (FBT or otherwise) needs to first be addressed. The Government needs to decide whether they will continue to pursue a policy of supporting the NFP sector through offering a competitive advantage in the labour

¹² Recommendation 43(a)

market through the tax system (eg through FBT), to which the NFP sector is highly accustomed, or whether it no longer wishes to pursue this policy.

Until the broader policy question has been answered, the FBT concessions should remain unchanged.

Option 3.3 Require employment declarations to include information about FBT concessions to avoid employees from benefiting from multiple caps

Should the FBT concession caps remain in place, in principle, we agree with this suggested reform option as it effectively prevents employees with multiple NFP employers benefiting from concessions to a greater extent than 'single employer employees' of NFPs.

However, preventing this is administratively problematic. FBT is a tax on employers not employees. We do not consider that one employer should be penalised in its ability to provide for its staff or suffer in terms of the administrative burden placed on it simply because it employs a person who is or was employed by another organisation with access to the caps in the same FBT year. Further, we consider that there are limited numbers of NFP employees accessing multiple caps in any given FBT year. As such, the administrative burden of preventing this occurrence would likely outweigh any of the benefits it may provide.

Option 3.4 Align the rate for fringe benefits tax rebates with the fringe benefits tax rate of 46.5%

Where the decision is made to retain the FBT rebate, there is no compelling reason not to align the FBT rebate rate with the FBT tax rate.

Option 3.5 Align the minor benefit exemption with the commercial sector

The limitation on tax exempt bodies in the minor benefits exemption should be removed for the purpose of achieving simplification in this area.

Option 3.6 Phase out capped FBT concessions and replace with alternative government support

We refer to our comments above that relate to whether there is a need to provide an incentive through the tax system to attract and retain employees in the NFP sector and whether it is appropriate that this incentive be provided through the FBT system (or other aspects of the Federal tax system as appropriate). Therefore whether the FBT concessions are appropriate and should be retained, phased out or replaced with direct government support to NFP entities should only be considered once a policy decision is made whether to retain the incentive provided by the current FBT concessions through the FBT system.

The provision of direct grants to NFPs in lieu of indirect support through the FBT system would potentially give rise to significant additional costs to government. The effectiveness of switching to direct grants needs to be considered in light of the

continuation of other “support” directly or indirectly provided to NFPs through the Federal tax system. This is a critical consideration given the government’s intention that any changes made to the support system provided to NFPs through the overall tax system be revenue neutral.

Option 3.7 Phase out fringe benefits tax concession and replace with alternative tax-based support mechanisms for eligible not-for-profit entities

Our comments below are subject to a final determination being made about whether the current FBT concessions should be retained or not and if not retained, what, if any, tax concessions should replace them. Therefore, our comments are restricted to the circumstance where a comparison is drawn with the current FBT concessions and the proposals contained in the Discussion Paper:

- *A refundable tax offset for employers* - it is unclear what payments of tax this kind of offset would be directed towards. The vast majority of organisations accessing the concessions are exempt from income tax and most State or Territory taxes.
- *A direct tax offset to employees* - this approach would represent a simple alternative. However, it would represent a significant cost to government and create timing delays for the employees concerned, or an administrative burden to rectify this (which presumably may have to occur by way of a tax instalment variation process).
- *A tax-free allowance to employees* - as not all employees of organisations accessing the concessions actually claim the full benefit of those concessions, the provision of an allowance to employees would result in a multi-billion dollar additional liability for government, unless the value of that allowance was reduced in comparison to the concessional amounts currently provided for under FBT legislation.

Option 3.8 Limit concessions to benefits that are incidental to employment

Should the FBT concessions be retained, it is logical that concessions are provided for remuneration-related arrangements as FBT concessions largely relate to remuneration arrangements. If the concessions afforded to NFPs were restricted to non-remuneration benefits, this would present significant problems for the NFP sector, as:

- it would effectively mean a significant reduction in the level of government support; and
- it would mean a significant administrative change, including staff attraction and retention implications.

If the concessions were to be phased out or a limitation was to be imposed on concessions, all NFPs currently in receipt of FBT concessions should be eligible to receive support to replace these concessions.

4. Next Steps

Reform to the tax concessions available to the NFP sector should occur as part of a holistic streamlined process that considers all the tax concessions available to the NFP sector provided throughout the Federal tax system. Whatever the form and nature of the concessions that are decided to be provided throughout the different aspects of the Federal tax system, the criteria for eligibility for a tax concession (for whichever tax is concerned) should be streamlined so that once a particular entity meets the eligibility criteria for accessing concessions available to NFPs, all concessions should be made available to the entity. The eligibility criteria should not vary according to whether the concession is provided in respect of income tax, GST, FBT or some other Federal tax or the legal form of the entity.

Once this streamlining has occurred, consideration can then be given to the exact nature of the concession to be provided in respect of each Federal tax (if it is determined that a concession be made available) and how the provision of each of those concessions may interact. Should any significant changes occur, it will be important to ensure appropriate transitional arrangements are put in place.

There is a raft of reform on foot with respect to the NFP sector including the introduction of the ACNC, a potential change to the definition of “charity” and more specific changes such as with respect to the “in Australia” condition and the treatment of unrelated commercial activities of NFPs. Once these reforms have been settled, the platform upon which holistic reform of how the Federal tax system applies to NFPs and an assessment of what concessions can and should be made available to this sector can then logically take place.

If you would like to discuss any of the above, please contact either me or Tax Counsel, Stephanie Caredes, on 02 8223 0011.

Yours sincerely

A handwritten signature in black ink, appearing to read 'S. Westaway', with a long horizontal stroke above the name.

Steve Westaway
President