



AUSTRALIAN CATHOLIC BISHOPS CONFERENCE

General Secretariat

14 July 2017

Senior Adviser
Individuals and Indirect Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

DGR@treasury.gov.au

Dear Sir/Madam

Tax Deductible Gift Recipient Reform Opportunities

This submission is from the Australian Catholic Bishops Conference (ACBC). The ACBC is a permanent institution of the Catholic Church in Australia and the instrumentality used by the Australian Catholic Bishops to act nationally and address issues of national significance.

The Catholic community is the largest religious group in Australia with more than one in five Australians identifying as Catholic. The Church provides Australia's largest non-government grouping of hospitals, aged and community care services, providing approximately 10 per cent of healthcare services in Australia. It provides social services and support to more than 450,000 people across Australia. It has over 1700 schools enrolling more than 750,000 Australian students.

The ACBC seeks to participate in public debate by making reasoned arguments that can be considered by all people of goodwill.

The ACBC appreciates the opportunity to make a submission in response to the discussion paper issued by the Treasury, *Tax Deductible Gift Recipient Reform Opportunities* (Discussion Paper). The ACBC supports initiatives to simplify the rules and administrative arrangements for Deductible Gift Recipients (DGRs). Given the extent of reform to the sector in recent years, the ACBC believes that reform should be pursued only if it creates efficiencies for the sector or is necessary to address a distinct and material problem.

Accordingly, the ACBC:

- Supports the registration of all eligible non-government DGRs with the Australian Charities and Not-for-profits Commission (ACNC), though wishes to clarify the proposed treatment for school building funds (as set out further below)

- Sees merit in the centralisation of the four DGR registers, together with registration of all DGRs. However we encourage the Government to consider the merits of housing the registers within the ACNC rather than the Australian Taxation Office (ATO), to avoid duplication of processes
- Supports the proposal to remove the public fund requirements for charities and allow organisations to be endorsed in multiple DGR categories, which would allow some small administrative savings for charities, and
- Suggests strongly that there is further consideration of the measures regarding "advocacy" activity and reporting, until there is greater clarity about the perceived issue, the precise "advocacy" which is of concern and the entities/funds to which the perceived issue relates.

The ACBC will detail below some particular aspects of the proposals in the Discussion Paper.

Charitable purpose

The ACBC supports the structure of Australian charity law, which focuses on charitable purpose and the effectuation of that purpose through activities which the entity considers appropriate. The ACBC warns against the danger of focusing on activities only without proper regard to the overarching purpose. Charitable purpose allows charities the flexibility to pursue their stated purpose without having to check whether particular activities are permitted or proscribed under law (with the exception of the current prohibition in respect of political candidates/parties and activities unlawful or contrary to public policy).

Advocacy

Australian charities are free to undertake advocacy or campaigns as long as they are in support of their charitable purpose. As noted above, they are not allowed to endorse or support political candidates/parties or engage in or promote illegal activities or activities contrary to public policy.

Questions 4-6 and 12-13 of the Discussion Paper suggest that the Government is considering changing its regulatory approach to give a greater focus to activities. Any change in regulatory approach from a purpose-based to activity test will have a chilling effect on charities which could lead DGRs to abandon and/or limit areas of activity where it is unclear whether those activities are lawful or not. This uncertainty would also lead to further costs for those charities which seek professional advice to clarify the situation.

The ACNC has provided various detailed guidance to charities about the boundaries for engaging in advocacy without contravening the above mentioned prohibitions in charity law. Bearing in mind the context in which the advocacy subject matter in the Discussion Paper arises (i.e. essentially in relation to the earlier inquiry concerning environmental organisations), it seems to the ACBC that if the suggestion is implemented for environmental organisations to be a registered charity with the ACNC, then the perceived issue would be addressed appropriately. To put it another way, the ACBC believes that the first step to address the perceived issue would be to bring the relevant DGRs under the oversight of the ACNC and, secondly, to monitor the activities under that new regulatory

regime, before taking any further steps to impose additional, burdensome and potentially confusing requirements on all DGRs, in respect of their advocacy activity.

Audits and reviews

The ACBC supports the proposal in the Discussion Paper to require all DGRs except government organisations to register with the ACNC as charities, noting the comments below with respect to "school building funds" (SBFs). The regulatory transparency and accountability requirements that charities have to meet will be sufficient to ensure proper regulation of DGRs. A risk-based approach to monitoring would allow the ATO and the ACNC to use their existing powers to undertake reviews and audits where necessary. This would avoid a new system of audits and reviews that would add significant costs to DGRs, particularly smaller charities, without any proportionate demonstrated benefit.

Registration of School Building Funds with the ACNC

From the perspective of DGRs which are operated by Church entities, one category of particular importance which would be potentially impacted by the proposed reform is the category of SBFs. Within the Church, SBFs are operated consistently with the requirements in the tax legislation and the ATO's views in TR 2013/2. Where a SBF is operated by an entity that is registered with the ACNC already, such as a school or parish within a diocese, the ACBC would strongly argue that it would be an unnecessary and inefficient requirement to mandate that the SBF separately be registered with the ACNC, and thereby duplicate registration and reporting obligations. Further, it may be the case that not all SBFs are eligible to register as a charity with the ACNC, a point which the ATO has acknowledged in ATO Interpretative Decision 2013/62.

Having regard to the above matters, the ACBC recommends that SBFs be excepted from any reform which requires all DGRs to register with the ACNC.

Section 50-50 of the Income Tax Assessment Act 1997

Although it is not the subject of the identified "Reform Opportunities" in the Discussion Paper, uncertainty around the interpretation of section 50-50 of the *Income Tax Assessment Act 1997* means charities face unnecessary compliance risks, despite *Tax Ruling 2015/1*.

Any changes to the regulatory framework for DGRs must include the following changes to section 50-50: the repeal of the governing rules condition and amendment of the 'solely' condition to explicitly state that purposes that are incidental or ancillary to a purpose for which the entity was established are allowable purposes.

I would be happy to answer any questions you may have. I can be contacted via Mr Jeremy Stuparich, Public Policy Director at the ACBC on 02 6201 9863 or at policy@catholic.org.au

Yours faithfully

A handwritten signature in black ink, appearing to read "Stephen Hackett" with a stylized flourish at the end.

Rev Dr Stephen Hackett
General Secretary