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Senior Advisor
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Email: DGR@treasury.gov.au

Dear Sir/Madam

**RE DISCUSSION PAPER – DEDUCTIBEL GIFT RECIPEINT (DGR) TAX ARRANGEMENTS**

We refer to the Discussion Paper – Deductible Gift Recipient (Tax) Arrangements and now provide our submission on the adequacy and appropriateness of proposals foreshadowed in the Discussion Paper.

## Background of our firm

Saward Dawson Chartered Accountants is based in Melbourne and servicing clients throughout Australia. We have approximately 60 staff comprising divisions in audit and assurance, superannuation, financial planning, business advisor services and taxation. Our audit, advisory and taxation services have a very strong presence in the charitable and broader not-for-profit sectors. Many of our clients are not-for-profit entities of all forms, including schools, health and aged care entities, churches and major religious denominations, cultural organisation, aid organisations, sporting organisations, ancillary funds, public benevolent institutions and health promotion charities.

## General Comments

We welcome the consideration of the compliance obligations on organisations to assess and monitor their ongoing DGR eligibility. It is currently difficult for organisations to assess their eligibility for DGR status due to the complexity of the DGR categories available. The application for some DGR categories is relatively straight forward. However other categories require a significantly more detailed application and it can take many months or even years to obtain an outcome on the application.

The discussion paper describes the tax concessions to not-for-profit (NFP) entities as "a substantial financial contribution" and a "cost to the Commonwealth". We disagree that deductions for donations to DGR organisations are a real cost to the Commonwealth. In our view it is a redirection of funds by taxpayers to direct causes chosen by themselves. If not for the existence of tax deductibility of donations, government may well need to either undertake charitable activities themselves or provide a greater level of grants to the NFP sector.

The NFP sector is generally better able to efficiently serve the charitable needs and concerns of the community than is government and therefore in our opinion, there is a significant net benefit rather than a cost. It is important to consider this perspective as it impacts on the perception of reforms required for DGRs. The focus for DGR reform should be on seeking a balance between reducing the administrative burden for charities while still ensuring adequate compliance and protection for donors rather than a focus on reducing "costs" to government.

The discussion paper generally assumes the Australian Taxation Office (ATO) will continue to be responsible for overseeing the majority of the DGR process. However, we are of the view that the entire DGR function should be transferred to the Australian Charities and Not-for-profits Commission (ACNC). Having determined whether an organisation is a charity, the ACNC will normally have sufficient information to determine whether the organisation is also eligible for DGR status. Currently, the ATO is adding little value to this process but is increasing the complexity and cost of seeking DGR endorsement. The ACNC is also best placed to inform the public of an entity's tax concessions via the Charity register.

## Specific Responses

***Question 4: Should the ACNC require additional information from all charities about their advocacy activities?***

In our view requiring registered charities to provide additional information about their advocacy activities is unnecessary. The Charities Act 2013 states that a charity must not have a disqualifying purpose and it must not be a political party. A disqualifying purpose means:

a) The purpose of engaging in, or promoting, activities that are unlawful or contrary to public policy
b) The purpose of promoting or opposing a political party or a candidate for political office.

The notes to the section make it clear that activities are not contrary to public policy merely because they are contrary to government policy. In addition the purpose of promoting or opposing a change to any government law, policy or practice may be a charitable purpose.

The ACNC has provided detailed guidance on advocacy by charities. It provides guidance and support to organisations who are unsure of what is permissible. The ACNC has the power to investigate any possible concern about a charity having a disqualifying purpose.

Defining "advocacy activities" and designing a form that provides a non-biased, non-political way of obtaining information about those activities would be difficult. Whether a charity is undertaking advocacy that is inappropriate is ultimately a question of fact. It should be reiterated that advocacy is generally an acceptable part of an organisation fulfilling its charitable purpose and only activities that are unlawful or promote or oppose particular political candidates or parties are disqualifying.

***Question 7: What are stakeholders' views on the proposal to transfer the administration of the four DGR registers to the ATO? Are there any specific issues that need consideration?***

We agree that the current system of maintaining four DGR registers by different government departments is inefficient and makes the application process for the relevant DGR categories unnecessarily complex and time consuming. The annual reporting obligations are also overly onerous.

If the registers are to continue, we agree that they should be transferred to one government body. In our view, this should be the ACNC rather than the ATO. The ACNC already has a public portal for displaying information on charities and the maintenance and display of the registers could be incorporated within this framework.

However, in our view, the four DGR registers should be abolished. Information on DGR status including environmental, cultural, harm prevention and overseas aid, can be displayed on the ACNC's public portal. Should these types of charities still be required to provide information additional to their annual ACNC reporting obligations, this can be achieved by lodging a separate form with the ACNC. The maintenance of a public register adds little to DGR accountability and available public information.

We also recommend that all DGR information that is currently provided on the ABN register either be transferred or replicated on the ACNC register.

***Question 9: What are stakeholders' views on the introduction of a formal rolling review program and the proposals to require DGRs to make annual certifications? Are there any other approaches that could be considered?***

In our experience, there have been minimal ATO reviews of DGRs in recent years. Accordingly we would concur that the main governance of DGRs has been in relation to ACNC reporting and governance requirements for charities.

However, we question the need for all DGRs to be reviewed in a specified period. The discussion paper suggests that all DGRs, other than government entities, should be charities and subject to the ACNC requirements. This alone should go a long way to providing confidence to donors and the NFP sector generally.

Our experience with the NFP sector is that the vast majority of charities and DGRs are keen to fulfil their obligations and to meet the requirements of the law. Errors are generally a result of a lack of knowledge and understanding rather than a deliberate attempt to circumvent the DGR rules. We are concerned that the approach outlined in the discussion paper focuses on the "penalty" approach (removal of DGR status and concessions) rather than firstly on an educative process. The ACNC's current approach for charities of "guidance, education and support" should be the model used for DGRs with formal penalties only being considered as a last resort. The use of specific annual declarations could increase the awareness of the compliance obligations.

We note that the income tax legislation does not currently contain any specific provision for the Commissioner of Taxation to exercise a discretion to overlook inadvertent non-compliance with the DGR requirements. From our experience, the ATO has adopted a view that it has little scope to ignore any non-compliance with DGR obligations, no matter how minor or unintentional, and as a result DGR status can be revoked. Accordingly, we recommend that appropriate discretions be included in the tax legislation to allow for an educative approach.

***Question 11: What are stakeholders' views on the idea of having a general sunset rule of five years for specifically listed DGRs? What about existing listing, should they be reviewed at least once every five years to ensure they continue to meet the "exceptional circumstances" policy requirement for listing?***

We do not support a sunset period of no more than five years for all specifically listed DGRs. It is an extremely onerous and often costly process to obtain a specific listing for a DGR. To have to reapply every few years would make this category largely unworkable for many organisations and would represent significant red tape. The work of most of these listed DGRs does not appear to change substantially over the years and we see no particular reason for a sunset clause. If the application for DGR status relates to a particular project or time period, the Parliament already can, and does, restrict the time during which tax deductible donations can be made.

If all non-government entities are to be charities, information on these listed DGRs will be available from the ACNC. Given there are only "around 190 specifically listed organisations", if required a review by the ACNC or ATO of these organisation should be possible. Apart from around 12 DGRS, even listed DGRS are legislated under specific categories (eg health or international affairs, etc). Accordingly, these DGRs should still be applying funds for the relevant category and they will still need to comply with their charitable purpose. Any concerns by the ACNC or the ATO can be investigated in the same way as with any other DGR.

***Question 13: Stakeholders' views are sought on the need for sanctions. Would the proposal to require DGRs to be ACNC registered charities and therefore subject to ACNC's governance standards and supervision ensure that environmental DGRs are operating lawfully?***

Should it be legislated that, apart from non-government entities, all DGRs must be registered charities, we are of the view that the ACNC has the appropriate powers to monitor environmental organisations.

With sufficient funding, the ACNC would have the ability to educate environmental charities, including environmental DGRS, on when advocacy is an acceptable part of an organisation's charitable purpose. Should an organisation persist in unacceptable purposes, the ACNC has the power to remove them from the charities register which would also result in the loss of DGR status.

In our view, the role of the ACNC in monitoring environmental organisations should be sufficient to overcome concerns about inappropriate purposes and activities. Other sanctions, such as additional reporting and restrictions on the use of funds (question 12), are unnecessary and single out environmental organisations inappropriately.

***Positive aspects of the exposure draft legislation.***

We stress that we have only addressed issues in this draft legislation which we believe have a negative or unintended impact. We acknowledge that there are some very positive aspects of the draft legislation which have our support. These include:

- In principle support for the requirement of non-government DGRs to be registered charities
- Reducing compliance costs and red tape for DGR entities by simplifying the application process and reducing the time for applications to be considered
- Removal of the public fund requirements and the use of the ACNC's definition of "responsible person".

We trust that you will give the matters raised due consideration. If you have any questions in relation to the above, please do not hesitate to contact us.

Yours sincerely

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