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Tax Deductible Gift Recipient Reform Opportunities Discussion Paper

We wish to make a submission regarding the consultation paper which proposes potential reforms to Deductible Gift Recipient (DGR) tax arrangements.

It is clear to our organisation that there is a political motive in this review process. While ostensibly it relates to management arrangements for all not for profits, it singles out environmental organisations (ENGOs) for particular attention.

ENGOs have already been subject to considerable scrutiny in recent years. The House of Representatives Standing Committee on the Environment's Inquiry into the Register of Environmental Organisations (REO inquiry) was widely criticised as being political in nature. Shadow Attorney-General Mark Dreyfus - Labor's frontbench representative on the committee - declared that the review was an "ideological attack by the government on political advocacy". It appears that this new paper is simply more of the same.

No need for review of activities

We do not see a need to consider the tax arrangements for ENGOs as it relates to activity.

During the REO inquiry process, the issues raised in the Treasury paper that relate to ENGOs were considered in great detail. During the hearings, both the federal environment department and the Australian Charities and Not for Profits Commission (ACNC) appeared before the committee. These are the entities responsible for managing environmental organisations on the REO and the ACNC more broadly manages the not for profit sector.

Both the department and the ACNC said there were no significant problems with the current management systems for charities and DGR listed entities. The ACNC said that it has the appropriate enforcement powers to regulate charities.

In spite of this, a number of conservative politicians and some within the mining and fossil fuel sectors have continued to demand that environmental groups have their DGR status revoked. Given that the Treasury paper is re-visiting some of the issues raised in the majority report from the REO inquiry, it is very difficult to see this as anything other than a continuation of a long running political witch hunt.

We find it extremely disappointing that Treasury has therefore decided to re-open this issue by revisiting issues from a politically motivated inquiry.

The value of advocacy (Advocacy is environmental protection)

Many of the institutions and rights that we value as Australian people occurred as a result of organisations and individuals engaging in advocacy and protest. Having an environment movement that can advocate for the protection of the environment has delivered many benefits to Australian society, from halting whaling in Australian waters to protecting Fraser Island, the Great Barrier Reef and the Franklin River, and creating many hundreds of thousands of hectares of protected areas. While ENGOs do receive generous public support through their DGR status, so do many other sectors. The attempt to limit the ability of ENGOs to engage in advocacy or peaceful protest or limit the benefits they receive is being driven by powerful vested interests. It is therefore hard to see how it would lead to beneficial outcomes for either the environment or broader society.

The value, and the need, for independent not-for-profit organisations who can engage in advocacy is recognised in all advanced democracies. As was noted by the Canada Revenue Agency after a similar review of the role of charities:

"Charities have long played a critical role in our society. Along with providing much-needed programs and services, they serve all Canadians by pressing for positive social and environmental change. Charities bring commitment and expertise to the formulation of public policy, develop innovative solutions to issues and engage a diverse group of stakeholders, many directly affected by the matters under discussion. This is particularly valuable in an era of complex social and environmental challenges and constrained government budgets, where all informed perspectives and ideas are vital.

To enable and maximize the contributions of charities, we need a regulatory environment that respects and encourages their participation in public policy dialogue and development".

(Canada Revenue Agency; Report of the Consultation Panel on the Political Activities of Charities, 31/3/17, cited from: http://www.cra-arc.gc.ca/chrts-gvng/chrts/cmmnctn/pltcl-ctvts/pnlrprt-eng.html)

The situation is the same here. Why would Treasury recommend limitations on a civil society institution like the environment movement?

Additionally, we have the precedent of the influential High Court case *Aid/Watch Incorporated v Commissioner of Taxation* (2010). This decision not only clarified the role of charities within Australia's democratic process, it also recognised advocacy and engagement in political process by charities as legitimate, indeed vital, activities to be undertaken by registered charities.

This was spelt out in the findings:

'Political speech by charities enriches the political process by encouraging political debate, facilitating citizen participation and engagement and promoting political pluralism.'

General feedback

There are considerable reporting requirements placed on the not-for-profit sector. While it is essential that charities are well regulated, there is clearly un-necessary double ups in the current system. It is also widely acknowledged that the application process for obtaining DGR status is too complex. There are four DGR registers administered by different government departments, with variations in management and reporting requirements. It makes sense to streamline governance and reporting requirements for the not for profit sector.

There is no doubt that there could be improvements in the management and reporting of Deductible Gift Recipient (DGR) listed organisations.

Accordingly, we recommend that DGR listed organisations should be managed by a single entity rather than multiple government departments. We believe that the ACNC is the most appropriate body to fulfil this task, given it was created for this purpose. Management should not occur through Ministerial discretion, government departments or the Australian Tax Office (ATO).

Response to specific consultation paper questions

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

As was shown during the HoR inquiry, advocacy is an allowable activity for REO listed organisations provided that activity occurs 'within the principal purposes of the act'.

As shown in ACNC compliance reports, there is a process already in place that allows members of the community (as well as a range of vested and politically motivated interests) to lodge complaints about the activity of individual charities. Additionally, the ACNC has identified 'political activity' as one of the five key areas it will work on in the next two years to further develop guidelines regarding behaviour which may put an organisations charity status at risk.

Given that there are already processes to address concerns about activity, why would the government require many thousands of organisations to provide additional information on their advocacy activity? It would increase the time and resources that charities need to put into reporting and compliance. The key loser in this regard would be smaller organisations, who could be expected to struggle with having the resources to provide exhaustive details on advocacy activity, and the taxpayer, who donates to a charity in the expectation that the bulk of the funds they donate will go towards the activities of that charity.

It seems strange that the federal government - which is interested in streamlining delivery of services and minimising the costs of regulation - would propose increasing Red Tape in terms of how charities are managed.

11/ What are stakeholders' views on the idea of having a general sunset rule of five years for specifically listed DGRs?

Friends of the Earth does not support a sunset rule on specifically listed DGRs. There are a significant number of organisations specifically listed and as noted in the Treasury paper, there are around 28,000 organisations overall which are endorsed as DGRs. The time and effort that would be required both within charities and the government to re-apply for DGR status, and then for this paperwork to be processed by government would be enormous. This would be at a direct cost to taxpayers through the need for charities to allocate staff time to re-applying. It would also require substantial additional funding to the government body or entity responsible for processing applications.

Surely a much better option would be to stick with the current system, where there is regular reporting and a complaints process that can identify charities which may be behaving in inappropriate ways and which may need to have their DGR status reviewed or revoked. The ACNC regularly reviews or de-lists charities that are reported or suspected to be non-compliant.

12/ Stakeholders' views are sought on requiring environmental organisations to commit no less than 25 per cent of their annual expenditure from their public fund to environmental remediation, and whether a higher limit, such as 50 per cent, should be considered? In particular, what are the potential benefits and the potential regulatory burden? How could the proposal be implemented to minimise the regulatory burden?

This issue was canvassed at great length during the REO inquiry. There are many thousands of organisations already working on ecological remediation activity and some DGR listed ENGOs also carry out significant 'hands on' ecological work as part of their activity. Why would the government force ENGOs to limit or unduly constrain their activity? Once again this could only be seen as being politically motivated.

ENGOs carry out a range of activities, including research, community outreach and education, and advocacy. The original majority HoR report proposed that ENGOs be limited in what percentage of their funds could be used on advocacy. We believe that this

rewording of the recommendation from the majority report of the REO inquiry is just an attempt to make limiting ENGO activity seem less politically motivated.

Friends of the Earth greatly respects the many organisations that carry out ecological remediation work, and understands the necessity of this work (we also engage in many restoration and monitoring projects). However, it must be understood that in an era of climate change and mass species loss, there are many critical ecological threats that require advocacy and community campaigning if Australia is to address major ecological issues in a meaningful way at a continental scale. There are many problems that cannot be solved simply by tree planting. For example, there are ecological threats that are atmospheric (climate change, ozone depletion, acid rain, air borne pollutants from mining and industrial processes, etc). Some are aquatic (ocean acidification, farm runoff pollution, overfishing, management of coastal zones, etc). Some are genetic (threats from persistent organic pollutants, potentially harmful genetic pollution from GMOs, etc). Some, such as species extinction relate to wide scale and systemic problems, such as cumulative habitat loss. Many of these threats cannot be addressed in any conceivable way solely through "on-ground" activity, because they require changes to regulations and laws governing or restricting developments and current industrial, agricultural and other activities.

Expecting ENGOs to focus a large percentage of their funds on rehabilitation in effect would mean that taxpayers would be footing the bill for impacts that have occurred through the activities of the for-profit sector, pushing responsibilities of the for-profit sector onto the charity sector. This outsourcing of responsibility would not be acceptable to the majority of Australians, who expect corporations to clean up their own mess.

Therefore Friends of the Earth does not support forcing ENGOs to spend a percentage of their funds on environmental remediation. If the Treasury wishes to propose reforms to the management of DGR listed organisations, it should as part of this process reaffirm advocacy as being an entirely valid and necessary activity of charity.

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?

Charities are already subject to substantial annual reporting requirements where they report on their activities. If a member of the public believes that a charity is engaging in inappropriate activity, they can make a complaint to the ACNC. In the case of ENGOs, complaints can also be made to the federal department that manages the REO. As noted above, both these entities state that they have adequate powers to respond to any situations where a charity might be deemed to be acting illegally.

We do not support the introduction of specific sanctions for environmental DGRs. Certainly organisations with a vested interest, such as the Minerals Council of Australia have been calling for sanctions, but this is clearly politically motivated.

Peaceful protest is a cornerstone of sustaining a healthy democracy. Being engaged in peaceful protests does not imply that an NGO is involved in 'illegal' activity. Donors who contribute to charities do so mindfully, and are generally aware of the activities of that charity, so if they donate to a charity that engages in advocacy or protest, they support this activity. This question (and the motivation behind it) clearly intends to try and limit the activity, and it could be argued the effectiveness, of ENGOs.

Recommendation 75 in the Treasury paper is especially relevant to this question:

1. **The Committee recommended that administrative sanctions be introduced for environmental DGRs that encourage, support, promote, or endorse illegal or unlawful activity undertaken by employees, members, or volunteers of the organisation or by others without formal connections to the organisation.**

This is a ridiculous proposal which would be impossible to manage. According to ACNC data, environmental charities employ around 10,000 staff and have close to 200,000 volunteers (which is a measure of the good standing of these groups in the eyes of the community). How could any organisation keep track of what all its volunteers do in their own time, let alone track the activities of people 'without formal connections to the organisation'? Does this imply that staff would need to 'dob in' anyone they suspected of 'illegal' activity? This is the sort of behaviour that might be expected in Soviet-era East Germany, not in Australia in the 21st Century. This recommendation is so patently a case of ideological overreach that it has to be seen as being part of the long and concerted campaign to limit the activities of ENGOs. If ENGOs were to be 'sanctioned' (e.g. have their DGR listing cancelled) because of the activity of volunteers or people 'without formal connections to the organisation' it would rightly be seen as being all about politics and nothing to do with good public policy.

As noted earlier in this submission, both the federal environment department and the ACNC said during the REO inquiry that there were no significant problems with the current management systems. The ACNC said that it has the appropriate enforcement powers to regulate charities. So why is Treasury even asking this question?

Conclusion

In conclusion, Friends of the Earth urges you to put aside the recommendations in the paper which are clearly politically motivated, particularly Qs 4, 11, 12 and 13.

A legitimate and non-politicised review of the governance arrangements for not for profits will be broadly welcomed, both by the community and the NFP sector, if they remove unnecessary duplication, inconsistencies in how different charities are managed, and reduce reporting burdens while ensuring transparency and rigor in the reporting process.

Any attempt to unduly limit the activities of environmental organisations or punish them for working to protect the natural environment will be seen as a clear political attack not only on the environment movement but also on the right of Australians to support legitimate environmental causes.