Tax Deductible Gift Recipient Reform Opportunities

Submission by Hon Dr. Gary Johns

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Reform opportunities in the charity sector, in particular, the award of DGR status and consolidation of the management of the lists of charities, should be focussed on better informing donors, not simply the ease of administration for charities, or for government.

The charity market is one where purchasers (donors) are less able than other markets to see the product they purchase. A charity's government-granted status and its DGR status are both precious commodities because they act as a signal to the donating public that a charity is worthy of their trust. The government granted status helps charities overcome the opaque nature of the market in charitable deeds. It is the reason not-for-profit organisations work hard to achieve charity and DGR status.

DGR status means that the taxpayer subsidises the donor's choice. The subsidy may bear fruit in public benefit, but it may be the case that, in some instances, the cost to revenue is greater than the public benefit of the charitable deeds.

It is the case that some taxpayers would object to subsidising the choices of other donors in supporting deeds undertaken by a DGR charity where these are controversial.

It is difficult to judge the degree of public benefit in charities, especially how much more public benefit is generated by tax deductions to donors and charities.

It is difficult, and expensive, to measure public benefit. Some large charities are beginning to publish measures of effectiveness (impact) as a means of winning more business, but these are not always accurate measures of benefit. Rather, these are marketing tools.

In the absence of accurate measures of public benefit, and the common market signals for any good or service, and the precious nature of the grant of charity and DGR status, confidence in the administration of charities is paramount.

For these reasons, every charity should report annually through the ACNC portal in a way that better informs donors of their activities and their income, especially that from government sources by way of grant or contract.

Issue 1: Transparency

I agree that all DGRs should be required to be charities registered and regulated by the ACNC and ATO.

I agree that the ACNC Register includes core information on all registered charities, including name, contact details, governing documents, names and positions of people on their governing bodies.

However, there is one important piece of information that the ACNC has not required of charities, that is, the amount of money received from government sources by way of grants or contracts, distinguished from other sources of income. This information should be explicitly included in charity accounts and on their websites.

I believe that this information is of great interest to taxpayers, including donors.

Issue 2: Advocacy activity

I agree that the ACNC's guidance for registered charities (and subsequently for DGRs) helps these organisations to understand their obligations, particularly for certain types of advocacy.

As for the recommendations of the Parliamentary committee on environmental charities, it should be the case that all charities, not only environmental organisations, have an obligation to report advocacy.

The High Court decision of Aid/Watch v ATO and subsequent legislation to make advocacy a charitable purpose has made it very important that advocacy is reported comparably to ensure that all charities and donors can be confident of the activities undertaken under this head.

However, requiring additional information from all registered charities about their advocacy activities and that these be published in their annual report is a complex exercise. It would require a national standard of accounting, so that like activities could be compared. There is no accepted way to measure such activity, for example, many will call it 'education'.

Further, there is no limit to the amount of advocacy that a charity may undertake.

The fact that the Parliamentary committee has recommended a requirement "that the value of each environmental DGR's annual expenditure on environmental remediation work be no less than 25 per cent of the organisation's annual expenditure from its public fund", may be an attempt to limit advocacy. If so, it has obvious implications for all charities.

The Committee wished to ensure that the concessions conferred on environmental DGRs were directed, at least in some part, to environmental work

that achieves clear on-ground environmental outcomes. Would this sentiment not apply to all categories of charity, that is, that their resources be devoted to "on-the-ground" work, as opposed to advocacy?

And yet, charities, and indeed some donors, know the value of advocacy. More government money flows to charities as a result of advocacy. It is a form of fundraising.

The government must consider a far wider discussion of how to report advocacy, if indeed there is a restriction to apply to one subset of charities, to report in such a way as to meet a "percentage" test of activity.

The critique, that compliance "could be difficult for charities to determine whether a particular activity would be considered charitable or political and that resources may be diverted from charitable work to reporting and compliance activities" applies equally to the amount of effort charities devote to advocacy as opposed to "on-the-ground" activity.

At the very least, and as an interim measure, all charities should report any amounts of money they receive from a government and, in addition, a charity should disclose any government committee membership.

Illegal or unlawful activity

Administrative sanctions 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" are sensible. However, proof of connection between individuals and the charity organisation may be difficult.

Illegal and unlawful activity is not charitable even if it may be argued to be in the public interest. The sanction should not offend free speech, or free association, so that it must be clear that only illegal or unlawful activity would attract the sanction. Presumably, proof of the illegal activity would be required.

As with the discussion on advocacy, any scrutiny or penalties for illegal or unlawful activity, should apply to all charities. It may be helpful to require charities to disclose to donors instances where a court of law, or the ACNC, has found a charity to have acted illegally or unlawfully.

Issue 3: Reducing complexity

I agree to the proposal to transfer the administration of the four DGR Registers to the ATO. This does not foreclose a Minister taking special interest in charities in their portfolio, including the grant of funds and contracts. Better reporting of such income, and in an accessible form on the ACNC website, would be a balance to a tendency for Ministers to "nurse" their constituency.

Issue 4: Public fund requirements

Removal of the public fund requirements for charities and allowing for the endorsement of DGR entities in multiple categories is sensible.

The ACNC definition of 'responsible person' should apply.

Issue 5: DGR systemic review

A rolling review on a risk-assessed basis is sensible, as is the statement in the annual report that the organisation meets eligibility requirements.

Issue 6: Specific listed DGRs

I agree to the proposal for the introduction of a sunset period of no more than five years as a general rule for all specifically listed DGRs.