



THE TAX INSTITUTE

18 July 2017

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

By email: DGR@treasury.gov.au

Dear Ms Bultitude,

Tax Deductible Gift Recipient Reform Opportunities

The Tax Institute welcomes the opportunity to make a submission to the Treasury in relation to the *Tax Deductible Gift Recipient Reform Opportunities* Discussion Paper (**Discussion Paper**).

Summary

In summary, subject to our detailed comments below, we consider that the Australian Charities and Not-for-profits Commission (**ACNC**) should be given a much greater role with respect to the regulation of entities endorsed as deductible gift recipients (**DGR**). Consequently, it is important to ensure that the ACNC is provided with sufficient resources to carry out an expanded role.

We have considered each of the consultation questions in the Discussion Paper and provided our responses below.

Discussion

1. Overview

The Tax Institute considers that the policy intent behind bestowing DGR status should be reviewed and clarified to ensure it is consistent with the modern day purposes of the not-for-profit (**NFP**) sector.

We note the scope of the current review being undertaken by Treasury is limited to considerations of proposed reforms to strengthen governance arrangements, reduce administrative complexity and to help ensure an organisation's DGR status is up-to-date¹.

The Tax Institute considers that the current review of DGRs represents an opportunity to consider the recommendations from the Not-For-Profit Tax Concession Working Group Report *Fairer, simpler and more effective tax concessions for the not-for-profit sector* (May 2013) (**TCWG Report**), and in particular, Recommendations 6 and 9, as follows:

Recommendation 6: Extend DGR status²

1. *DGR status should be extended to all charities that are registered with the ACNC, but use of tax deductible donations should be restricted to purposes and activities that are not solely for the advancement of religion, or the advancement of education through childcare and primary and secondary education, except where the activity is sufficiently related to advancing another charitable purpose.*
2. *The restrictions noted above should also apply to any income derived from investment of DGR funds.*
3. *This extension should occur in stages, and preferably not until the proposed statutory definition of a charity has been legislated.*
4. *There should be a separate DGR category for entities that would be charities but for their connection with government (such as public museums and art galleries), subject to the same activity restrictions as charities.*
5. *Entities that are currently specifically listed, or endorsed under existing DGR categories, should generally be required to seek registration as a charity to retain their DGR status. It is expected that the majority of current specifically listed or endorsed entities would fit within the proposed framework.*
6. *There should be a review of entities that are DGRs, but fall outside the accepted charitable purposes framework, to determine whether they still merit DGR status. This review would include:*
 - a. *entities that are currently specifically listed as DGRs in Division 30 of the ITAA 1997 that will not qualify to be registered as charities; and*
 - b. *DGR general categories that fall outside of existing charitable purposes.*

Recommendation 9: Remove the minimum gift deduction threshold³

The \$2 threshold for deductible gifts should be removed.

¹ Refer to the Discussion Paper at paragraph 17 on page 4.

² P6 of the TCWG Report

³ P6 and p31 of the TCWG Report

The Working Group noted in its report, that the \$2 minimum donation threshold dates back to 1927, is clearly out-dated, and an equivalent amount in 2013 would have been approximately \$72.

2. Specific Consultation Questions

Consultation Questions	The Tax Institute's response
Issue 1: Transparency in DGR dealings and adherence to governance standards	
<p>1. <i>What are stakeholders' views on a requirement for a DGR (other than government entity DGR) to be a registered charity in order for it to be eligible for DGR status. What issues could arise?</i></p>	<p>The Tax Institute is of the view that it is better if DGRs fall under the regulation of the ACNC. In this regard, the remit of the ACNC should be expanded to accommodate regulation of other not-for-profit bodies (at least to the extent they are DGRs) as we understand was initially intended for the remit of the ACNC.</p> <p>Should the remit of the ACNC be expanded to include regulation of DGRs, in principle, DGRs should not be required to become a charity (if they are not already one) nor be at risk of losing their DGR status because they do not fall within the definition of a charity.</p> <p>However, in line with Recommendation 6 of the TCWG Report, DGR status could be extended to all charities registered with the ACNC which may contribute to greater alignment between the various concessions. Further consideration should be given to Recommendation 6.</p>
<p>2. <i>Are there likely to be DGRs (other than government entity DGRs) that could not meet this requirement and, if so, why?</i></p>	<p>See above. The Discussion Paper itself notes that there are a significant number of DGRs that are not currently registered charities.</p>
<p>3. <i>Are there particular privacy concerns associated with this proposal for private ancillary funds and DGRs more broadly?</i></p>	<p>Should The Tax Institute's view of the ACNC regulating DGRs be adopted, we consider that the same adjustments be made to address privacy concerns of DGRs that were made for charitable Private Ancillary Funds when they began to be regulated by the ACNC.</p>

Issue 2: Ensuring that DGRs understand their obligations, for example in respect of advocacy

4. *Should the ACNC require additional information from all registered charities about their advocacy activities?*
5. *Is the Annual Information Statement the appropriate vehicle for collecting this information?*
6. *What is the best way to collect the information without imposing significant additional reporting burden?*

The Tax Institute is of the view that the ACNC should not require additional information from charities regarding their advocacy activities as this will impose an additional compliance burden. The perceived issue would be better addressed through an education campaign to educate registered charities about their obligations.

Further, consistent with the reasoning in *Aid/Watch Inc v Commissioner of Taxation* (2010) 241 CLR 539 (**Aid/Watch**), advocacy activities which involve the generation by lawful means of public debate directed to achievement of a charitable purpose would typically:

- contribute to the public welfare;⁴ and
- support the constitutional system of government in Australia (and public policy) regardless of the merits of any law reform or policy changes proposed by the advocacy.⁵

Accordingly, it is not entirely clear what the basis is for seeking increased reporting of advocacy activities as opposed to any other activities engaged in by charities.

Should The Tax Institute's view of the ACNC regulating DGR's be adopted, we recommend the institution of a formal process for registered charities to consult with the ACNC in relation to their particular circumstances, or changes to their activities. This will allow registered charities to monitor governance more effectively and achieve certainty in relation to their activities.

⁴ *Aid/Watch* at [46]-[48] (French CJ, Gummow, Hayne, Heydon, Crennon, Kiefel and Bell JJ).

⁵ *Aid/Watch* at [45] (French CJ, Gummow, Hayne, Heydon, Crennon, Kiefel and Bell JJ).

Issue 3: Complexity for approvals under the four DGR registers

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?*

The current process to get approval for a DGR to be approved for inclusion on one of the four DGR registers is a lengthy process, particularly as it involves a number of government departments as well as seeking Ministerial approval.

It would be useful if the approval process was simplified. Removing the need for Ministerial approval alone would assist to improve the current process.

If Ministerial approval was no longer required, we would also recommend moving the approval process across to the ACNC (or, alternatively but less preferably, to the Australian Taxation Office (**ATO**)) while retaining the involvement of the relevant government department for consultation if required.

Issue 4: Complexity and red tape created by the public fund requirements

8. *What are stakeholders' views on the proposal to remove the public fund requirements for charities and allow organisations to be endorsed in multiple DGR categories? Are regulatory compliance savings likely to arise for charities who are also DGRs?*

It is unclear what is intended to be achieved by this proposal. Is it intended to do away with the need for a charity/DGR to have a public fund or is it about simplifying the requirements for obtaining and maintaining a public fund?

It is noted that some DGRs are endorsed only for the operation of funds and may not otherwise fall within the existing DGR categories in the legislation because their activities and purposes are broader or different to the fund's purpose. A common example may be a school that is endorsed as a DGR for its building fund but is not entitled to be endorsed for other purposes.

Provided current DGRs are not disqualified from being DGRs as a result of any change to the public fund requirements, removing or simplifying the public fund requirements would be beneficial because it would reduce the administrative burden on DGRs.

	<p>The Tax Institute also considers that it would be useful to allow organisations to be endorsed in multiple DGR categories.</p>
<p>Issue 5: DGRs endorsed in perpetuity, without regular and systemic review</p>	
<p>9. <i>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 other approaches that could be considered?</i></p> <p>10. <i>What are stakeholders' views on who should be reviewed in the first instance? What should be considered when determining this?</i></p>	<p>If it is determined that the regulation of DGRs is to be transferred to the ACNC (or ATO), then DGRs should be subject to regular review in the same way that charities are.</p> <p>However, we query what it is that would be reviewed. Would it be whether the entity still meets the requirements to be endorsed as a DGR under specific conditions in the tax legislation? If so, it may be more appropriate for the ATO to be conducting these reviews since they were the body to make the determination in the first place. However, if the ACNC is empowered to make determinations about whether an organisation falls within relevant categories or should be endorsed as a DGR, it may then be appropriate for the ACNC to conduct these reviews.</p> <p>We recommend that the time frame for periodic review under normal circumstances (i.e. where there is no identified risk triggering a review) should be set to be sufficiently infrequent so as not to introduce a significant compliance burden on charities and to allow for a reasonable forward-planning period with a level of certainty as to the future.</p>
<p>Issue 6: Specific listing of DGRs by Government</p>	
<p>11. <i>What are stakeholders' views on the idea of having a general sunset rule of five years for specifically listed DGRs? What about existing listings, should they be reviewed at least once every five years to ensure they continue to meet the 'exceptional circumstances' policy requirement for listing?</i></p>	<p>The current process for how organisations become listed DGRs is unclear.</p> <p>While The Tax Institute supports greater transparency regarding the reasons for listing DGRs, having a general sunset rule is a significant departure from the current regime where listing of an organisation gives the organisation DGR status indefinitely.</p>

	<p>Rather, we suggest that the Government consider a periodic review of specifically listed entities to consider whether they want to maintain the entity on the list. Organisations could be required to provide certain information as evidence of why they should continue to be endorsed as a DGR.</p> <p>Consideration could also be given to whether it may be appropriate to expand the general DGR categories to take account of the activities and purposes of specifically listed organisations which currently prevent them from being endorsed. This would remove the need for specifically listing them. Alternatively, the Government could consider delegating to the regulator (eg ACNC or ATO) the power/discretion to designate an organisation as a DGR where the organisation does not otherwise meet the requirements to be endorsed as a DGR within certain parameters.</p>
<p>Parliamentary Inquiry into the Register of Environmental Organisations</p>	
<p>12. <i>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?</i></p>	<p>No comments provided.</p>
<p>13. <i>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?</i></p>	<p>Organisations that are required to be registered with the ACNC should all be treated in the same way.</p>

If you would like to discuss any of the above, please contact either myself or Tax Counsel, Stephanie Caredes, on 02 8223 0059.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Matthew Pawson', with a stylized flourish at the end.

Matthew Pawson
President