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Re: **Tax Deductible Gift Recipient Reform Opportunities Discussion Paper June 2017**

Thank you for the opportunity to comment on this discussion paper.

It is obvious that the genesis for the discussion paper is the recent report of the House of Representatives Standing Committee on the Environment Inquiry on the Register of Environmental Organisations. However the discussion paper is not limited to Environmental Organisations. It would be unfortunate if recommendations in that report largely urged by mining companies in their own interests were to result in a much more rigid compliance regime for all DGRs. To put matters in perspective, the report noted

(a) in paragraph 6.41, there were only two complaints about registered organization in 2013-4 and one in 20014-15;
(b) in paragraph 6.37, that no organisation had ever been deregistered on the basis of non-compliance with its stated objects, despite the ability of the Minister to do so.

There are two elements discussed in the paper:

(a) bringing all DGRs under one regulatory regime (consisting of two agencies, the ACNC and the ATO);
(b) a tighter limitation on activities, with a more stringent reporting and scrutiny regime.

As to (a), I will only note that the proposal is that the discretion which the Minister at present exercises (and which has never resulted in a deregistration for non-compliance with stated purposes) will be replaced with much more regulation, with simpler hurdles before imposing sanctions, for all DGRs, to be overseen by another agency.

As to (b), for environmental organisations, the proposed tighter limitation involves:

(i) no less than 25 per cent of the organisation's annual expenditure from its public fund be required to be spent on environmental remediation work;
(ii) administrative sanctions for organisations "that encourage, support, promote, or endorse illegal or unlawful activity undertaken by employees, members, or volunteers or the organisation or others without formal connection with the organisation";

(iii) an annual self-assessment be submitted to the ATO;
(iv) "conduit behavior" be prohibited;
(v) publicly available annual reporting by organisations.

The first of these requirements is justified in paragraph 4.79 as follows:
Having regard to the terms of reference of the inquiry, the Committee is of the view that the purpose of granting DGR status to environmental organisations should be to support practical environmental wotk in the community.

It is unfortunate that this recommendation is so unsupported by any serious discussion. The administrative burden imposed on an organisation such as the Australian Network of Environmental Defenders Offices Inc. would be out of all proportion to any purported benefit.

The second would appear to give an open invitation to impose a sanction on an organisation which might sympathise with a political demonstration merely because it happened. It is too easy for a government in the current international climate to impose a regulation making any sort of activity unlawful. One has only to look back on the situation in Queensland forty years ago where any sort of protest could be made illegal.

The third, I feel strongly about.
The government at present provides conduits in several areas:
The Australian Sports Foundation;
The Australian Cultural Fund;
The Foundation for Rural and Regional Renewal.

I am personally aware of one very small award winning and innovative arts organisation which spent the best part of two years trying to structure itself to obtain DGR status until it hit upon the Australian Cultural Fund.

I am aware of two other organisations with willing and anxious donors which were unable to proceed with significant regional projects because of the difficulty in facilitating the tax deductibility of the project (although they both clearly fell within the parameters).

Tax deductibility should not depend on who you know or how much you have to pay advisers. If you have a donor and your principal purpose would enable you to qualify as a DGR, there should be a quick and easy way to enable the donor to get the deduction and the organisation to receive the money. Such a procedure would reduce the need for organisations with little likelihood of obtaining further donations from registering "just in case", and would also ensure much more effective and expert supervision of the project. I therefore believe that all the talk about conduit organisations should be redirected to facilitate conduits especially for once-off giving or a short fundraising campaign.

This raises a subject which is not really dealt with in the discussion paper. There is some reference to revenue forgone by allowing deductibility. There is I believe no reference to the encouragement of giving. It is much easier for large organisations to obtain the necessary advice and set in place structures to take advantage of schemes such as the DGR regime. There is

absolutely no doubt that over my more than forty years in practice as a lawyer, the administrative burden on organisations with no, or a very small number of employees, in complying with government regulation has increased enormously, which must be at the expense of their creative activity. Regulation around giving your time to be involved in an organisation has increased enormously, as has regulation of structures. It is imperative that there be simple ways to enable those who wish to give to the cause of their liking to do so, if that cause would fit into a category to which the parliament has seen fit to grant DGR status.

Finally I wish to raise the subject of appropriate regulation and public access to information, It seems to be presumed that transfer to the ACNC will result in strict compliance with the governance standards. In nearly all cases except trusts, the content of the governance standards is contained in the legislation under which the organisation is at present incorporated. I do not think that the ACNC is any better at ensuring compliance than other regulators. I know that the present state of the register is quite unsatisfactory. This particularly arises when advice is given, but the client can point to another body on the register which has just submitted quite different information. The uncertainty in relation to registration of trusts or trustees is particularly unsatisfactory.

As for public information, I make the following comments:

(a) There is no information on the ACNC register to indicate whether an organisation has DGR status, or any reference to the ABR (which is where that information can be found).
(b) Reference on the ABR to items in the table in Section 30-15 of the 1997 Act might as well be written in Japanese, as far as the ordinary donor is concerned. Why there cannot be a layman's description of the item I do not know.
(c) Whilst there is a requirement for a DGR to keep donated money in a separate fund, that does not follow through into the accounts, where, if there is any reference at all, usually bequests and donations are put together. In general, apart from the easy access to governing documents, I do not find the AIS information particularly helpful.
(d) Would not the proposal to remove the requirement for separate public funds in different categories still require separate accounting, so that the intention of the donor can be realized? The most obvious example would be a school, which can have separate building, library and scholarship funds. A donor for a scholarship might definitely not want it spent on a glossy new building.

In conclusion, while there are problems with the present registers, I do not believe that these will necessarily be addressed with transfer of regulation and a significant increase in red tape. It would also be a mistake to regard the deficiencies of the present registers as the areas in most need of attention in achieving the fundamental object behind such schemes, namely the encouragement of donations to worthwhile initiatives in the community.

Yours faithfully,

R.P.D. Wright