Australian Taxation Office

Not-for-Profit Sector Re:think tax discussion paper

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Community Feedback – Submission 1

The $416 Threshold – unchanged since 1936?

1 The threshold at which personal taxation commences is subject to regular review. At present for most personal taxpayers it is $18,200 and the rate then becomes 19%.

2 In contrast, the threshold at which taxable non-profit associations pay income tax is $416 – 2.3% of the $18,200 threshold allowed to individuals.

3 In non-profit associations, shading in provisions effected by a penalty rate of 55% on taxable income above $416 progressively wipe out even this token threshold, until tax is 30% flat.

4 The threshold of $416 is equal to $8 per week. It has been unchanged for many years and may even be based on average personal earnings of £4 per week applicable at the time when federal income tax was introduced. Average personal earnings since that time have increased to exceed $8 per week by an extent that is far beyond justification of the $8 a week retention.

5 The ever-widening gap between a threshold established c1936 and today’s threshold in the scale of personal taxation must be one of the greatest anomalies in taxation law.

6 For this threshold to remain unchanged for such an exceptionally long period reflects a high level of neglect and indifference by a succession of governments, spanning perhaps eight decades.

7 It is perhaps the definitive example of “taxation by stealth”.

8 It is more than timely to bring the antiquated threshold of $416 per annum into alignment with current levels of income and current costs of living.

Community Feedback – Submission 2

Non-Profit Associations

Sports – Recreation – Hobbies

Lack of Clarity for Tax Exemption

Hobby Clubs such as model railways, model yachts and model aircraft

**Introduction**

1 The Not-for-Profit Sector income tax legislation lacks precision in regard to tax liability for non-profit clubs promoting recreational hobbies and non-competitive activities.

2 The legislation provides tax exemption for the encouragement of “a game or sport” but includes no reference to the term “recreation”. For the words “game” and “sport” to be both listed suggests the two words may have a difference in meaning. In practice, the collective term in common usage is “sport and recreation”. In turn, recreation is frequently non-competitive.

3 Within the community there are numerous non-profit clubs supporting recreational hobbies such as model railways, model yachts and model aircraft.

4 Such clubs not falling within tax exemption frequently have nominal amounts of non-member income, notably bank interest, and often it is less than $1,000.

5 When the threshold of $416 pa is exceeded, these clubs become liable to lodge returns.

6 Given they are taxed as companies, and given the complexities that arise in preparation and lodgement of company tax returns, I submit that the cost of collecting revenue is, in many cases, greater than the revenue collected. Questionable burdens are imposed on both the Commissioner and even more so on the taxpayer.

**Model Railways**

7 ATBR Case 10/93 became a test case for model railway clubs. The taxpayer had voluntarily lodged income tax returns to report non-member income. The Commissioner vacillated, alternately imposing tax then allowing notices of objection and issuing refunds. When assessment recommenced, the matter was brought to a head with the taxpayer referring the matter to a Taxation Board of Review.

8 Legislation grants exemption for bodies which pursue “encouragement of *a game* or sport”. Standard English reference works define “game” to include “any recreational activity”, “fun or play”. The taxpayer submitted that the hobby of model railways fell under the definition of a game, or as “recreational activity.”

9 The Board of Review ruled that the said taxpayer was not exempt, on the basis that the taxpayer’s activities “must be competitive.” The Board saw competition as essential and dictionaries of the English language as irrelevant.

**Competition** is *non sequitur*, it should not be *de rigueur*

10 I submit that recreation need not be competitive, and that to drive a wedge between sport and recreation based on a perceived need for competition is neither relevant nor equitable.

11 It may be thought that activities of a physical nature – sports such as ball games, swimming and athletics – are in need of governmental encouragement in that they may promote fitness and may help to address obesity.

12 But within the legislation the criteria as interpreted is not physical exertion. It is something quite different – “competition”.

13 This is demonstrated clearly in the CCH AMTG, where ¶ 10-605 states: “Thus bridge and chess clubs may be exempt but model railway clubs (Case 10/93) and social dancing clubs (TR 97/22) are not.”

14 The games of chess and bridge are decidedly sedentary pursuits (but exempt) while the level of physical exertion in social dancing clubs can be remarkable (but taxable).

15 It should not be the province of income tax legislation to champion competition as the criteria relevant to favouring or penalising various forms of recreation.

**Other Hobbies**

16 Model yacht clubs, model aircraft clubs and many similar clubs may have an element of competition in their activities with the extent of competition varying from club to club. Grey areas emerge that create artificial distinctions in income tax liability. These distinctions create inequity. In practice, income tax exemption is often assumed where it may not stand up.

**Other Activities**

17 There are many non-profit clubs which involve recreation but which are left uncertain of their tax status. A garden club may hold an annual competition amongst its members with a panel of judges deciding on which members’ gardens win a prize. There may be, or may not be, monthly awards to encourage excellence. Is the club exempt on its annual bank interest income? This is highly relevant with an antiquated tax threshold of $416 pa, but it remains relevant whatever the threshold. Does its activity level incorporate enough competition to nudge it across the line? When the garden club must self-assess its liability, will its decision be objective? How many levels of competition exist? Where is the tipping point?

18 It is likely there exist an unknown number of non-profit associations of a recreational nature that are substantially non-competitive or where the level of competition is within a grey area. Many may have non-member income (often bank interest, or admission fees collected from the public). They do not lodge returns nor pay tax. Non-member income over an extended period will have accumulated to a point where:

(a) Clubs might face financial ruin if and when the issue of taxation arises and they are found to be liable retrospectively.

(b) The current level of accumulated savings is insufficient to meet an unrecognised debt accruing annually with compound interest, and with the prospect of penalties.

19 As a result of inflation, the number of such entities steadily increases and may now be measured in thousands. Many of these clubs and associations may have never sought advice on taxation matters and assume they are entitled to full exemption in line with sporting clubs. The terms “sport” and “recreation” are commonly interpreted as synonymous.

20 Many of these associations are at present obliged to register as taxpayers, and due to their categorisation as companies, to prepare and lodge a company tax return each year.

21 For those entities which do comply, the costs of compliance are onerous when related to the amount of tax payable, which is often nominal.

22 The costs incurred by the Commissioner in regards to issuing and processing activity statements and payments by quarterly instalments are likely, in many cases, to exceed the modest revenue gains.

23 Those entities which do not comply may face eventual annihilation through insolvency arising from the issue of multiple tax assessments, a state of affairs which benefits no one.

**Conclusion**

24 On a broader scale, over the centuries, competition between tribes, ethnicities, sects, cults and religions has caused millions of deaths with ongoing misery and woe. And never more so than today. In contrast, cooperation has much to commend it. Competition has its place, but it should not be the role of Taxation law to laud competition and mount it on a pedestal.

25 In the interests of fairness, equity and uniformity, the discriminatory and arbitrary nature of the legislation is overdue for reform.

26 The word “game” should be seen as redundant. “Recreation” is a term that includes a “game” and extends equity and uniformity. Extending the definition of sport to “sport and recreation, whether or not competitive” would seem to be a simple step to implement equity, rationality and common sense.

Submitted by Robert W Gorrell FCA 15 May 2015