

EXPOSURE DRAFT

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Inserts for
**Treasury Laws Amendment (Measures
for Consultation) Bill 2023: New class of
deductible gift recipients**

Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details

- | | | |
|---------------|---|--|
| 1. | | |
| 2. Schedule # | The day after this Act receives the Royal Assent. | |
| 3. | | |
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Schedule #—New class of deductible gift recipients

Part 1—Amendment of the Income Tax Assessment Act 1997

Income Tax Assessment Act 1997

1 Section 30-105

Omit all the words before the table, substitute:

(1) This table sets out general categories of other recipients.

Other recipients—General

Item	Fund, authority or institution	Special conditions—fund, authority or institution	Special conditions—gift
13.1.1	a *community charity trust fund to which section 30-110 applies	the community charity trust fund must be, or be operated by, a *registered charity	none
13.1.2	a *corporate community charity fund to which section 30-110 applies	the corporate community charity fund must be, or be operated by, a *registered charity	none

(2) This table sets out specific other recipients.

2 At the end of Subdivision 30-B

Add:

30-110 Community charity funds

(1) For the purposes of item 13.1.1 of the table in subsection 30-105(1), a *community charity trust fund is one to which this section applies if the community charity trust fund is established and maintained under a will or instrument of trust:

(a) for the purposes covered by:

(i) subsections (3) and (4) of this section; or

(ii) subsections (3), (4) and (5) of this section; and

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- 1 (b) for no other purposes.
- 2 (2) For the purposes of item 13.1.2 of the table in
3 subsection 30-105(1), a *corporate community charity fund is one
4 to which this section applies if the corporate community charity
5 fund is operated:
- 6 (a) for the purposes covered by:
7 (i) subsections (3) and (4) of this section; or
8 (ii) subsections (3), (4) and (5) of this section; and
9 (b) for no other purposes.

10 *Mandatory purposes*

- 11 (3) This subsection covers the purpose of providing money, property
12 or benefits to a fund, authority or institution if:
13 (a) gifts to the fund, authority or institution are deductible under
14 item 1 of the table in section 30-15; and
15 (b) the fund, authority or institution is described (whether or not
16 by name) in an item of a table in this Subdivision (other than
17 item 13.1.1 or 13.1.2 of the table in subsection 30-105(1));
18 and
19 (c) the money, property or benefits are so provided to the fund,
20 authority or institution for any purposes set out in the item of
21 that table in which the fund, authority or institution is
22 described.
- 23 (4) This subsection covers the purpose of engaging in an activity if:
24 (a) the activity is the principal activity of a fund, authority or
25 institution described (but not by name) in an item of a table
26 in this Subdivision (other than item 13.1.1 or 13.1.2 of the
27 table in subsection 30-105(1)); or
28 (b) the activity involves pursuing the principal purpose of a fund,
29 authority or institution described (but not by name) in an item
30 of a table in this Subdivision (other than item 13.1.1 or 13.1.2
31 of the table in subsection 30-105(1)).

32 *Permitted purpose*

- 33 (5) This subsection covers the purpose of establishing a fund, authority
34 or institution described (whether or not by name) in an item of a
35 table in this Subdivision (other than item 13.1.1 or 13.1.2 of the
36 table in subsection 30-105(1)).

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3 Paragraph 30-125(1)(d)

Repeal the paragraph, substitute:

(d) in the case of an *ancillary or community charity trust fund:

(i) the fund complies with the rules in the *applicable trust fund guidelines; and

(ii) all of the trustees of the fund comply with those rules; and

(e) in the case of a *corporate community charity fund:

(i) the fund complies with the rules in the *corporate community charity fund guidelines; and

(ii) all of the directors of the fund comply with those rules.

4 At the end of subsection 30-125(2)

Add:

; and (f) if the fund is a *corporate community charity fund—both of the following are satisfied:

(i) the fund complies with the rules in the *corporate community charity fund guidelines;

(ii) all of the directors of the fund comply with those rules.

5 Section 30-315 (after table item 34AA)

Insert:

34AAA Community charity trust funds item 13.1.1

6 Section 30-315 (after table item 38)

Insert:

38A Corporate community charity funds item 13.1.2

7 Subsection 995-1(1)

Insert:

ancillary or community charity trust fund means:

(a) a *public ancillary fund; or

(b) a *private ancillary fund; or

(c) a *community charity trust fund.

applicable trust fund guidelines means:

(a) in relation to a *public ancillary fund—the *public ancillary fund guidelines; or

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- 1 (b) in relation to a *private ancillary fund—the *private ancillary
2 fund guidelines; or
3 (c) in relation to a *community charity trust fund—the
4 *community charity trust fund guidelines.

5 ***community charity trust fund*** has the meaning given by
6 section 426-117 in Schedule 1 to the *Taxation Administration Act*
7 *1953*.

8 ***community charity trust fund guidelines*** has the meaning given by
9 section 426-118 in Schedule 1 to the *Taxation Administration Act*
10 *1953*.

11 ***corporate community charity fund*** has the meaning given by
12 section 426-180 in Schedule 1 to the *Taxation Administration Act*
13 *1953*.

14 ***corporate community charity fund guidelines*** has the meaning
15 given by section 426-185 in Schedule 1 to the *Taxation*
16 *Administration Act 1953*.

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1 **Part 2—Amendment of the Taxation Administration**
2 **Act 1953**

3 *Taxation Administration Act 1953*

4 **8 Paragraph 298-5(c) in Schedule 1**

5 Omit “or 426-120”, substitute “, 426-120 or 426-195”.

6 **9 Subsection 355-65(8) in Schedule 1 (cell at table item 6,**
7 **column headed “and the record or disclosure ...”)**

8 Repeal the cell, substitute:

- (a) is of information that relates to non-compliance of:
 - (i) an ^{*}ancillary or community charity trust fund; or
 - (ii) a ^{*}corporate community charity fund; or
 - (iii) a charity;
- with an ^{*}Australian law; and
- (b) is for the purpose of the administration of an Australian law governing trusts and charities.

9 **10 Section 426-1 in Schedule 1**

10 Omit:

11

Subdivision 426-D deals with types of philanthropic trust funds
12 known as *public ancillary funds* and *private ancillary funds*.

13 substitute:

14

Subdivision 426-D deals with types of philanthropic trust funds
15 known as *public ancillary funds*, *private ancillary funds* and
16 *community charity trust funds*.

17

Subdivision 426-E deals with certain philanthropic companies
18 known as *corporate community charity funds*.

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11 Subdivision 426-D in Schedule 1 (heading)

Repeal the heading, substitute:

Subdivision 426-D—Ancillary and community charity trust funds

12 Section 426-100 in Schedule 1

Repeal the section, substitute:

426-100 What this Subdivision is about

This Subdivision deals with types of philanthropic trust funds known as *public ancillary funds*, *private ancillary funds* and *community charity trust funds*.

The Minister may make guidelines determining when such funds are entitled to be endorsed as deductible gift recipients.

This Subdivision also provides for:

- (a) penalties for trustees who fail to comply with the applicable trust fund guidelines, and the liability of directors of trustees to pay those penalties in certain circumstances; and
- (b) powers for the Commissioner to suspend or remove trustees who breach their obligations.

13 After section 426-115 in Schedule 1

Insert:

Community charity trust funds

426-117 Community charity trust funds

(1) A trust is a *community charity trust fund* if:

- (a) the trust is specified in a declaration in force under subsection (3); and
- (b) each trustee of the trust is a *constitutional corporation; and
- (c) each trustee has agreed, in the *approved form given to the Commissioner, to comply with the rules in the *community charity trust fund guidelines, as in force from time to time; and

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1 (d) none of the trustees has revoked that agreement in
2 accordance with subsection (2).

3 (2) A trustee may revoke an agreement mentioned in paragraph (1)(c)
4 only by giving the revocation to the Commissioner in the
5 *approved form.

6 (3) The Minister may, by legislative instrument, declare one or more
7 trusts for the purposes of paragraph (1)(a).

8 **426-118 Community charity trust fund guidelines**

9 The Minister must, by legislative instrument, formulate guidelines
10 (the *community charity trust fund guidelines*) setting out:

- 11 (a) rules that *community charity trust funds and their trustees
12 must comply with if the funds are to be, or are to remain,
13 endorsed as *deductible gift recipients; and
14 (b) the amount of the administrative penalty, or how to work out
15 the amount of the administrative penalty, under
16 subsection 426-120(1) in relation to community charity trust
17 funds.

18 **426-119 Australian Business Register must show community charity** 19 **trust fund status**

20 (1) If a *community charity trust fund has an *ABN, the *Australian
21 Business Registrar must enter in the *Australian Business Register
22 in relation to the fund a statement that it is a community charity
23 trust fund.

24 Note 1: An entry (or lack of entry) of a statement required by this section does
25 not affect whether a trust is a community charity trust fund.

26 Note 2: The Australian Business Register will also show if a community
27 charity trust fund is endorsed as a deductible gift recipient: see
28 section 30-229 of the *Income Tax Assessment Act 1997*.

29 (2) The *Australian Business Registrar must take reasonable steps to
30 ensure that a statement appearing in the *Australian Business
31 Register under this section is true. For this purpose, the Registrar
32 may:

- 33 (a) change the statement; or
34 (b) remove the statement from the Register if the statement is not
35 true.

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1 **14 Section 426-120 in Schedule 1 (heading)**

2 Omit “ancillary funds”, substitute “ancillary or community charity
3 trust funds”.

4 **15 Paragraph 426-120(1)(a) in Schedule 1**

5 Omit “*ancillary fund”, substitute “*ancillary or community charity trust
6 fund”.

7 **16 At the end of subsection 426-120(1) in Schedule 1**

8 Add:

9 Note: The Commissioner is required to give written notice of the penalty
10 (see section 298-10).

11 **17 Subsection 426-120(3) in Schedule 1**

12 Repeal the subsection, substitute:

13 (3) The amount of the penalty is:

14 (a) the amount specified in the *applicable trust fund guidelines
15 for the purposes of subsection (1); or

16 (b) the amount worked out in accordance with the method
17 specified in the applicable trust fund guidelines for the
18 purposes of subsection (1).

19 The guidelines may specify different penalties or methods for
20 different circumstances.

21 **18 Subsection 426-125(1) in Schedule 1**

22 Omit “*ancillary fund”, substitute “*ancillary or community charity trust
23 fund”.

24 **19 Paragraph 426-125(1)(a) in Schedule 1**

25 Repeal the paragraph, substitute:

26 (a) the *applicable trust fund guidelines; or

27 **20 Subsection 426-125(6) in Schedule 1**

28 Omit “*ancillary fund”, substitute “*ancillary or community charity trust
29 fund”.

30 **21 Paragraph 426-125(6)(a) in Schedule 1**

31 Repeal the paragraph, substitute:

32 (a) the *applicable trust fund guidelines; or

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22 Subsection 426-130(1) in Schedule 1

Omit “*ancillary fund”, substitute “*ancillary or community charity trust fund”.

23 Subsection 426-130(2) in Schedule 1

Omit “*ancillary fund”, substitute “*ancillary or community charity trust fund”.

24 Subsection 426-130(3) in Schedule 1

Omit “Paragraph 426-105(1)(a) does not”, substitute “Subparagraph 426-102(1)(a)(i) and paragraphs 426-105(1)(a) and 426-117(1)(b) do not”.

25 Subsection 426-130(5) in Schedule 1

Repeal the subsection, substitute:

Acting trustee must have agreed to comply with guidelines

(5) An entity may only be appointed as acting trustee if the entity has agreed, in accordance with paragraph 426-102(1)(b), 426-105(1)(b) or 426-117(1)(c), to comply with the rules in the *applicable trust fund guidelines as in force from time to time.

26 Paragraph 426-135(1)(b) in Schedule 1

Omit “*ancillary fund’s”, substitute “*ancillary or community charity trust fund’s”.

27 Subsection 426-135(2) in Schedule 1

Omit “*ancillary fund”, substitute “*ancillary or community charity trust fund”.

28 Subsection 426-150(1) in Schedule 1

Omit “*ancillary fund”, substitute “*ancillary or community charity trust fund”.

29 Subsection 426-150(3) in Schedule 1

Omit “*ancillary fund”, substitute “*ancillary or community charity trust fund”.

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1 **30 Paragraph 426-155(b) in Schedule 1**

2 Omit “*ancillary fund’s”, substitute “*ancillary or community charity
3 trust fund’s”.

4 **31 Subsection 426-160(1) in Schedule 1**

5 Omit “*ancillary fund”, substitute “*ancillary or community charity trust
6 fund”.

7 **32 Paragraph 426-165(1)(a) in Schedule 1**

8 Omit “*ancillary fund”, substitute “*ancillary or community charity trust
9 fund”.

10 **33 Paragraph 426-165(2)(a) in Schedule 1**

11 Omit “*ancillary fund”, substitute “*ancillary or community charity trust
12 fund”.

13 **34 Group heading before section 426-170 in Schedule 1**

14 Repeal the heading, substitute:

15 **Transfers between certain funds prohibited**

16 **35 Section 426-170 in Schedule 1**

17 Repeal the section, substitute:

18 **426-170 Transfers from ancillary or community charity trust funds** 19 **to certain funds prohibited**

- 20 (1) An *ancillary fund must not provide money, property or benefits to
21 another ancillary fund unless permitted to do so by the *public
22 ancillary fund guidelines or the *private ancillary fund guidelines
23 (whichever are applicable) for the first-mentioned fund.
- 24 (2) A *community charity trust fund must not provide money, property
25 or benefits to:
- 26 (a) another community charity trust fund; or
 - 27 (b) an *ancillary fund; or
 - 28 (c) a *corporate community charity fund;
- 29 unless permitted to do so by the *community charity trust fund
30 guidelines.

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36 At the end of Part 5-35 in Schedule 1

Add:

Subdivision 426-E—Corporate community charity funds

Guide to Subdivision 426-E

426-175 What this Subdivision is about

This Subdivision deals with philanthropic companies known as *corporate community charity funds*.

The Minister may make guidelines determining when such funds are entitled to be endorsed as deductible gift recipients.

This Subdivision also provides for penalties for failures to comply with the guidelines.

Table of sections

Corporate community charity funds

426-180 Corporate community charity funds

426-185 Corporate community charity fund guidelines

426-190 Australian Business Register must show corporate community charity fund status

Administrative penalties

426-195 Administrative penalties for corporate community charity funds

Transfers between certain funds prohibited

426-200 Transfers from corporate community charity funds to certain funds prohibited

Corporate community charity funds

426-180 Corporate community charity funds

(1) A company is a *corporate community charity fund* if:

(a) the company is:

(i) a *constitutional corporation; or

(ii) a body corporate that is not a constitutional corporation;
and

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- 1 (b) the company is specified in a declaration in force under
2 subsection (3); and
- 3 (c) each director of the company has agreed, in the *approved
4 form given to the Commissioner, to comply with the rules in
5 the *corporate community charity fund guidelines, as in force
6 from time to time; and
- 7 (d) none of the directors of the company has revoked that
8 agreement in accordance with subsection (2).
- 9 (2) A director may revoke an agreement mentioned in paragraph (1)(c)
10 only by giving the revocation to the Commissioner in the
11 *approved form.
- 12 (3) The Minister may, by legislative instrument, declare one or more
13 companies for the purposes of paragraph (1)(b).

14 **426-185 Corporate community charity fund guidelines**

- 15 The Minister must, by legislative instrument, formulate guidelines
16 (the *corporate community charity fund guidelines*) setting out:
- 17 (a) rules that *corporate community charity funds and their
18 directors must comply with if the funds are to be, or are to
19 remain, endorsed as *deductible gift recipients; and
- 20 (b) the amount of the administrative penalty, or how to work out
21 the amount of the administrative penalty, under
22 subsection 426-195(1) in relation to corporate community
23 charity funds.

24 **426-190 Australian Business Register must show corporate 25 community charity fund status**

- 26 (1) If a *corporate community charity fund has an *ABN, the
27 *Australian Business Registrar must enter in the *Australian
28 Business Register in relation to the fund a statement that it is a
29 corporate community charity fund.
- 30 Note 1: An entry (or lack of entry) of a statement required by this section does
31 not affect whether a company is a corporate community charity fund.
- 32 Note 2: The Australian Business Register will also show if a corporate
33 community charity fund is endorsed as a deductible gift recipient: see
34 section 30-229 of the *Income Tax Assessment Act 1997*.
- 35 (2) The *Australian Business Registrar must take reasonable steps to
36 ensure that a statement appearing in the *Australian Business

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1 Register under this section is true. For this purpose, the Registrar
2 may:

- 3 (a) change the statement; or
4 (b) remove the statement from the Register if the statement is not
5 true.

6 **Administrative penalties**

7 **426-195 Administrative penalties for corporate community charity** 8 **funds**

9 *Administrative penalty*

- 10 (1) The persons mentioned in subsection (2) are jointly and severally
11 liable to an administrative penalty if:
12 (a) a *corporate community charity fund, or a director of such a
13 fund, holds the fund out as:
14 (i) being endorsed; or
15 (ii) entitled to remain endorsed;
16 as a *deductible gift recipient; and
17 (b) the fund is not so endorsed or entitled.

18 Note: The Commissioner is required to give written notice of the penalty
19 (see section 298-10).

- 20 (2) The persons are:
21 (a) the fund; and
22 (b) if any of the penalty cannot reasonably be recovered from the
23 fund—each director of the fund.
- 24 (3) The amount of the penalty is:
25 (a) the amount specified in the *corporate community charity
26 fund guidelines for the purposes of subsection (1); or
27 (b) the amount worked out in accordance with the method
28 specified in the corporate community charity fund guidelines
29 for the purposes of subsection (1).

30 The guidelines may specify different penalties or methods for
31 different circumstances.

- 32 (4) If a director is liable to the penalty, the director must not be
33 reimbursed the penalty from the fund.

34 Note: Division 298 in this Schedule contains machinery provisions for
35 administrative penalties.

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Defences for directors

- 1
- 2 (5) Paragraph (2)(b) does not apply to a director if:
- 3 (a) the director was not aware of the holding out mentioned in
- 4 paragraph (1)(a) and it would not have been reasonable to
- 5 expect the director to have been aware of that holding out; or
- 6 (b) the director took all reasonable steps to ensure that the
- 7 holding out mentioned in that paragraph did not occur; or
- 8 (c) there were no such steps that the director could have taken.
- 9 (6) In determining what is reasonable for the purposes of
- 10 paragraph (5)(a), (b) or (c), have regard to all relevant
- 11 circumstances.
- 12 (7) A person who wishes to rely on subsection (5) bears an evidential
- 13 burden in relation to the matters in that subsection.

Power of courts to grant relief

- 14
- 15 (8) Section 1318 of the *Corporations Act 2001* (power of Court to
- 16 grant relief in case of breach of director's duty) does not apply to a
- 17 liability of a director under this section.

Transfers between certain funds prohibited

426-200 Transfers from corporate community charity funds to certain funds prohibited

18

19 A *corporate community charity fund must not provide money,

20 property or benefits to:

- 21 (a) another corporate community charity fund; or
- 22 (b) an *ancillary fund; or
- 23 (c) a *community charity trust fund;

24 unless permitted to do so by the *corporate community charity fund

25 guidelines.

26

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1 **Part 3—Other amendments**

2 *A New Tax System (Australian Business Number) Act 1999*

3 **37 Paragraph 26(3)(ga)**

4 Omit “or 426-115”, substitute “, 426-115, 426-119 or 426-190”.

5