

Changes announced to not-for-profit tax concessions

Associate Will Fennell reviews changes to the treatment of not-for-profit tax concessions announced in the 2011-12 budget.

The Federal Government's 2011-12 Federal Budget contained three significant measures relevant to the not-for-profit sector:

- the establishment of an independent statutory agency, the Australian Charities and Not-for-profits Commission (ACNC)
- reforms to tax concessions provided to not-for-profit entities, and
- the introduction of a statutory definition of "charity".

The establishment of a charities commission to monitor, regulate and provide advice to all not-for-profit organisations, and the modernisation and codification of the definition of 'charity', were both recommendations of the 2009 Tax System Review chaired by Ken Henry.

Establishment of the ACNC

The ACNC will be established by 1 July 2012 and its principal responsibility will be to determine, on behalf of all Commonwealth agencies, the eligibility of groups seeking charitable, public benevolent institution and other not-for-profit benefits. The ACNC will also be tasked with providing education and support to the not-for-profit sector, establishing a 'report-once use-often' reporting framework for charities and establishing an information portal by 1 July 2013.

In preparation for the introduction of the ACNC, the ATO will structurally separate its role of determining charitable status from administering tax concessions. It is hoped that once the ACNC takes over the role of determining charitable status from the ATO, that any concerns regarding perceived conflict of interest will be addressed.

An implementation task force will be established to ensure the ACNC is able to commence operations by 1 July 2012.

Reforms to tax concessions provided to not-for-profit entities

The Government will reform tax concessions provided to not-for-profit entities to ensure that only those profits generated through un-related commercial activities, and which are directed back to the entity to carry out its altruistic work, will be subject to tax concessions. Accordingly, not-for-profit entities will pay income tax on profits arising from unrelated commercial activities which are not directed back to the entity's altruistic purposes and access to FBT exemptions or rebate, GST concessions and DGR status in relation to those activities will also be affected.

The new arrangements will commence 1 July 2011 and will only affect new unrelated commercial activities commencing after 10 May 2011. Not-for-profit entities with existing unrelated commercial activities will be able to continue to use their tax concessions, however the Government will consult in respect of transitional arrangements with a view to phasing out over time the concessions for non-eligible activities.

The reforms will not affect the use of concessions to further an entity's altruistic purpose, even in circumstances where the activity is conducted in a commercial manner. Examples given include not-for-profit hospitals, op-shops, not-for-profit child care centres and businesses providing employment to the disabled. The reforms will also not apply to small-scale activities such as school fetes, lamington fundraisers and leasing of church halls, and will not affect the principle of mutuality, which relates to the tax treatment of members' subscriptions and other payments for certain services in clubs and associations. The Government has indicated that not-for-profit entities with government service delivery contracts entered into as at 10 May 2011 will be able to use their tax concessions in support of those contracts. Further, the 50,000 National Rental Affordability Scheme allocations will be unaffected.

A consultation paper 'Better targeting of not-for-profit tax concessions' has been released in relation to the proposed reforms. Submissions must be received by 8 July 2011.

Introduction of a statutory definition of charity

The Government has announced that it will introduce a statutory definition of 'charity'. It is anticipated that the definition will apply from 1 July 2013 and will apply for the purposes of all Commonwealth laws. The Government also intends to consult with the states and territories with a view to harmonising the definition across all jurisdictions.

The definition is expected to be based on recommendations contained in the 2001 Report of the Inquiry into the *Definition of Charities and Related Organisations*, but will also take into account judicial decisions since that time. A further task of the ACNC will be developing guidance for the not-for-profit sector in relation to the new statutory definition, and also re-assessing the eligibility of entities in light of the new statutory definition once enacted.

Those operating in the not-for-profit sector should also be aware that the ATO has released Draft Taxation Ruling TR 2011/D2, which replaces TR 2005/21. TR 2005/21 had contained the Commissioner's views on the meaning of 'charity' and other rules relating to the determination of an entity's charitable status. TR 2005/21 has now been withdrawn and accordingly, until the reforms are enacted, TR 2011/D2 is relevant to the law as it currently stands.

References

The Hon Bill Shorten MP & The Hon Tanya Plibersek MP, 'Making it easier for charities to help those who need it' (Media Release No. 077, 10 May 2011).

The Hon Bill Shorten MP, 'Next Stage for Not-for-profit reforms announced' (Media Release No. 083, 27 May 2011).

Australian Tax Office, 'Just released: draft ruling on charities and decision impact statement on Aid/Watch' (Non-Profit News Service No. 0324)

Australian Tax Office, '2011-12 Budget: Measures relevant to non-profit organisations' (Non-Profit News Service No. 0325)

Australian Government Treasury, 'Better targeting of not-for-profit tax concessions' (Consultation Paper, 27 May 2011)

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