



THE TAX INSTITUTE

THE MARK OF EXPERTISE

25 May 2015

Ms Kathy Goth
Director, Economic and Financial Analysis Branch
Chief Minister, Treasury and Economic Development Directorate
GPO Box 158
CANBERRA ACT 2601

By email: kathy.goth@act.gov.au

Dear Ms Goth,

Charitable Taxation Concessions – Proposed Legislative Amendments

The Tax Institute welcomes the opportunity to make a submission to the Chief Minister, Treasury and Economic Development Directorate (**CMD**) in relation to the proposal to amend the availability of tax concessions available for charitable and other organisations that operate in the ACT (**Proposal**).

The Tax Institute makes this submission on behalf of our members in the tax profession, as Australia's leading professional association in tax. In the interests of full disclosure, while The Tax Institute is also registered as a charity with the Australian Charities and Not-for-Profits Commission (**ACNC**), we do not make this submission in that capacity.

We understand that the ACT will use the changes recently made in Western Australia as a result of the *Taxation Legislation Amendment Act (No 2) 2015* (WA) (**WA Act**). Broadly, we understand it is not intended that entities that promote the relief of poverty, advancement of education¹ or the advancement of religion will be affected. Entities that fall under the fourth category, 'other purposes beneficial to the community', will be impacted.

We note the Northern Territory has recently introduced legislation similar to the WA Act, the *Revenue and Other Legislation Amendment Bill 2015* (NT) (**NT Bill**). The NT Bill goes further than the WA Act in some ways and explicitly focuses on *activities* both at the entity level (non-profit entity must carry on charitable activities) and at the worker level (wages cannot be paid to a person who is engaged in performance of services in connection with any commercial or competitive activity).² The WA Act explicitly focuses on

¹ This is limited to schools and colleges under current ACT legislation.

² Clause 17.

purposes, albeit that the definition of ‘promote trade, industry or commerce’ implicitly looks to activities, by referring to the purpose of an ‘undertaking’.

The not-for-profit (**NFP**) sector has become increasingly aware of their eligibility for charitable exemptions in respect of various Territory taxes. Broadly, the State and Territory Revenue Offices have been collecting taxes under the self-assessment environment, in some cases denying charitable endorsement for these taxes. Recent litigation has illustrated to the Revenue offices that they have not been correctly treating many NFP entities for the purpose of applying the charitable exemption.

The statutory definition of ‘charity’ in the Commonwealth legislation that has taken effect from 1 January 2014 has not sought to expand the meaning of charity from its common law meaning but clarify its meaning, including by enumeration of different types of charitable organisation, where the courts have accepted those types of entity as having charitable purposes³.

Notably, this legislation has also accompanied the introduction of the ACNC to register, regulate and provide education in the charitable sector.

The establishment of the ACNC has very likely contributed to a greater number of organisations considering their charitable status, including for the purpose of State and Territory laws, which has prompted a legislative response (eg Western Australia and the Northern Territory).

The Revenue Offices, having budgeted for these revenues, are now seeking to protect their revenue base, by imposing tax on certain charitable organisations.

In an ideal tax system, in Australia, there would be uniformity in State and Territory legislation governing taxes that are common to all jurisdictions. This desirability for harmonisation of State and Territory laws will inevitably lead to some States/Territories to follow others’ legislative amendments.

However, there should also be streamlining of administrative requirements for NFPs that operate in multiple jurisdictions. That is, the relevant State and Territory bodies should rely on determinations made by the ACNC as to an entity’s charitable status for Federal tax purposes and there should be co-ordination of reporting requirements at both the Federal and State/Territory level. Such a desire at the Commonwealth level is apparent from a review of explanatory materials accompanying the legislation introducing the new Commonwealth framework for charities.⁴

So too, The Tax Institute is of the view that the ACT should not seek to be at odds with the common law and Commonwealth statutory definition of ‘charity’ for the purpose of its laws (including payroll tax, stamp duty and land tax) as to do so would:

³ Para 1.16 to Explanatory Memorandum accompanying *Charities Bill 2013 Charities (Consequential Amendments and Transitional Provisions) Bill 2013*

⁴ Ibid, para 1.10

- create further complexity and compliance costs for charities that are accepted as being such by the ACNC;
- lead to greater uncertainty, as well as increase the incidence of costly litigation;
- undermine the role of the ACNC which has been widely seen as a beneficial regulator of charities by the sector, as well as government;
- take away from the ACT's well-earned reputation as the most progressive of states and territories in terms of tax reform and red tape reduction, especially given Chief Minister and Treasurer Andrew Barr's commitment to same⁵; and
- disrupt harmonisation with the majority of the other States which have not sought to narrow the exemption.

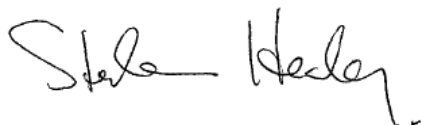
However, if the ACT determines that the availability of the charitable concessions should be limited, care needs to be taken in how this is achieved. There is a difference between limiting the definition of 'charity' and limiting access to the concessions. Accordingly, to the extent that any restrictions are imposed, we recommend implementing them in a manner that would best prevent the issues raised in the 5 bullet points above from occurring.

Further, if amendments are to be made, we suggest that great care is taken not to confuse ends (purposes) and means (activities) in making the amendments. The NT Bill, for instance, not only excludes certain types of non-profit entity purposes, but also certain types of activities. Unnecessarily limiting the ways that charities go about achieving their objects has the potential to stymie innovation and to reduce flexibility. It also has the potential to increase the unforeseen impact of any changes on the sector.

The Tax Institute is interested to attend if a consultation roundtable is held and would like to be involved in any future consultation on this matter.

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

Yours sincerely



Stephen Healey
President

⁵ Refer Andrew Barr MLA Press Release dated 17 April 2015: "ACT continues to lead the nation on tax reform" at http://www.cmd.act.gov.au/open_government/inform/act_government_media_releases/barr/2015/act-continues-to-lead-the-nation-on-tax-reform