

JOINT SUBMISSION BY

Institute of Public Accountants, The Institute of Chartered Accountants in Australia, The Tax Institute, CPA Australia and Taxpayers Australia

Draft Taxation Ruling TR 2011/D2

Income tax and fringe benefits tax: Charities

Date due: 1 July 2011 (extended)

GENERAL COMMENTS

The Professional Bodies welcome the opportunity to comment on TR 2011/D2 (the Draft Ruling) issued by the ATO which updates its previous ruling TR 2005/21 on the meaning of "charitable" as used in the *Income Tax Assessment Act 1936/1997* and the *Fringe Benefits Tax Assessment Act 1986*.

The Professional Bodies also welcome the additional time granted by the ATO to also consider the related Draft Addendum to TR 2005/22 *Income tax: companies controlled by exempt entities*.

Draft ruling appropriately applies recent Court decisions on meaning of charitable

The Draft Ruling takes into account a number of court cases over the last few years that have affected the meaning of 'charity' and the concept of charitable purpose. The cases include:

- *Central Bayside General Practice Association Ltd v Commissioner of State Revenue*;
- *Federal Commissioner of Taxation v Word Investments Limited*;
- *Aid/Watch Incorporated v FC of T*;
- *Navy Health Limited v Federal Commissioner of Taxation*;
- *Victorian Women Lawyer's Association Inc v Federal Commissioner of Taxation*.

The Professional Bodies welcome the consolidation of the issues identified in these cases into the Draft Ruling.

Federal Budget proposal for not-for profit (NFP) tax concession reforms should not delay the finalisation of the Draft Ruling

The proposal announced on 10 May 2011 to introduce a statutory definition of 'charity' from 1 July 2013, may impact the ongoing relevance of the ruling after that date. However, the Professional Bodies are of the strong view that this proposal should not impact or delay the ATO's finalisation of the Draft Ruling as it is important for the ATO to clarify the interpretation of the meaning of "charitable" under existing law, as this will be relevant for income years prior to the application of any statutory definition.

In addition the proposed amendments to the taxation treatment of NFP entities carrying on unrelated commercial activities announced on 10 May 2011 will have significant consequences for entities that would otherwise benefit from the *Word Investments* decision. Prior to this decision the ATO view was that if a NFP entity was carrying on a commercial enterprise to generate surpluses, the purpose was not charitable. The Draft Ruling now

appropriately provides the following view on the commercial activities of charitable institutions (at paragraph 59):

- “An institution undertaking commercial or business-like activities can be charitable if:
- its sole purpose is charitable and it carries on a business or commercial enterprise to give effect to that charitable purpose. In these circumstances it does not matter that the activities themselves are not intrinsically charitable”

Notwithstanding the proposed reforms to the treatment of unrelated commercial activities, it is important for the ATO to clarify the interpretation of the meaning of “charitable” under existing law, as this will be relevant for income years prior to the application of any proposed reforms and it will also set the foundation for the application of proposed reforms (pending the statutory definition of charitable noted above). Again, the Professional Bodies are of the strong view that this aspect of the proposed reforms should not impact or delay the ATO’s finalisation of the Draft Ruling.

Examples are appropriate and useful

The 11 examples provided in paragraphs 71 to 91 of the Draft Ruling (as part of the ruling itself) are a welcome enhancement to the previous ruling.

Consistency with Draft Addendum to TR 2005/22

We support the ATO’s decision to also update TR 2005/22 in view of the replacement of TR 2005/21. The Draft Addendum contains an extensive list of changes to TR 2005/22 (22 changes in all) and we query whether a replacement of TR 2005/22 should also be adopted.

The Professional Bodies reserve the ability to also provide a separate response to the Draft Addendum. However, at this stage, we do not have any concerns in relation to the proposed changes in the Draft Addendum as they may be relevant to the Draft Ruling.

Ideally, it would be most useful if the Draft Ruling and the Draft Addendum were finalised together.

Federal Budget proposal for NFP tax concession reforms - ATO should plan for timely delivery of interpretative guidance products

The proposed NFP tax reforms are expected to place a considerable compliance burden on a broad range of NFP entities, many of which would have limited tax experience due to their previous exempt status. The reforms are likely to require similar levels of ATO support to the NFP sector as was provided in relation to the current trust reforms and changes to Division 7A for private companies.

The Professional Bodies would like to encourage the ATO, as part of the tax law design process and the ATO’s planning in relation to the administration of the proposed changes, to ensure that appropriate interpretive and administrative guidance (e.g. factsheets, administrative shortcuts, ruling(s)) is developed in tandem with the development of the law, so that the support material is available on a timely basis for affected entities. This work could be undertaken, for instance, once expert resources become available when the Draft Ruling and the Draft Addendum to TR 2005/22 are finalised.