

NOT FOR PROFIT NEWSLETTER

DEVELOPMENTS IN THE NOT FOR PROFIT SECTOR

For the last decade, the Federal government has conducted several investigations into various elements of the Not-for-Profit sector.

At the start of 2012, many of the reforms are closer to being implemented. All items are at various stages of public consultation. The law establishing a new regulator is due to commence 1 July 2012 and a proposed new definition of charity from 1 July 2013. Reforms include:

1. the establishment of a Charities and Not-for-Profits Commission;
2. the creation of a statutory definition of 'charity';
3. the tightening of the 'in Australia' test for local charities;
4. the targeting of certain income earned by charities in unrelated business activities ('UBIT');
5. a new definition of not-for-profit;
6. a new regime for public ancillary funds;
7. principles based governance rules for all not for profits.



Josephine Heesh - Associate

THE DEFINITION OF 'CHARITY'

Consultation on the statutory definition closed on 9 December 2011. The new definition is expected to list the traditional common law purposes of relief of poverty, advancement of education and advancement of religion and other purposes beneficial to the community. However, the list will also probably extend to various other purposes including advancement of culture, advancement of the natural environment, prevention of suffering to animals, promotion and protection of civil and human rights.

All 'charities' on the list must satisfy the "public benefit test": presently, there is a presumption of public benefit, in favour of the heads of relief of poverty, the advancement of religion and the advancement of education, but there is some chance that this presumption will be removed.

WHAT IS THE PROPOSED NEW 'IN AUSTRALIA' TEST

Discussion papers were circulated in October and made suggestions set out below. Further discussion papers are expected before a final test is finalised.

So far, the papers suggest the new test would oblige all charities to pursue their objectives and incur their expenditures 'principally in Australia'.

The risk for charities that are tax exempt will be that unless they can satisfy the 'in Australia test', they may become taxable.

The discussion so far identifies that :

- » A charity must be established in Australia;
- » A charity must operate principally in Australia (a branch office generally would be inadequate);
- » A charity must pursue its purposes principally in Australia;
- » A charity must donate money only to other income tax exempt entities (who have therefore themselves met the in-Australia test, where applicable);
- » A charity must strictly comply with its governing rules;
- » The aim of the Tax office in introducing the new in-Australia test is to ensure that if funds are to be sent overseas that the donor is a properly recognised overseas aid fund. The new test was intended to apply to deductible gift recipients even though they have traditionally been managed under a separate regime from income tax exempt entities.
- » Overseas aid deductible gift recipients (those which have been specifically endorsed by AusAID, Department of Foreign Affairs and the ATO) do not need to meet the new test as they have already satisfied the overseas aid regime.

UNRELATED BUSINESS INCOME

The ATO intends to tax unrelated business income of charities with a new tax (UBIT). Therefore, if a charity operates a business enterprise unrelated to its charitable purpose which is generating profits and the profit is not being accounted completely back to the charity, the

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charity will pay income tax.

Charities like St Vincent de Paul shops which operate commercial businesses are not the type of activity which unrelated business income tax would attack because any profit they generate is paid back to the works of St Vincent de Paul Society and the nature of the business is integral to the work of the Society.

NEXT STEPS

The Charities and Not for Profits Commission is due to commence operating from 1 July 2012: we will keep you informed of developments



Howard Harrison, Managing Partner

ATO RULING REGARDING SCHOOLS

As many of our clients would already be aware, school building funds enjoy tax deductibility status. The ATO has issued a new draft ruling which would require more discipline being exercised with these funds.

Effective December 5 2011 the ATO has withdrawn the existing School Building Fund Tax Ruling (TR 96/8). In the past this ruling adopted the "more than 50% rule" as an administrative rule of thumb. (ie the building be used more than 50% of the time for school purposes): this has been removed from the new draft ruling as it was considered incorrect at law.

Now, for a school or college building fund to qualify as a deductible gift recipient it must prove that the use of the building is solely as a school or college, and if used for any other purpose, that that purpose must be integral to the use as a school, or a use that is only minor or incidental

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