INFORMATION	SENATE COMMUNITY AFFAIRS COMMITTEE	7 NOVEMBER 2008	PUBLIC DOMAIN
FORMAT	AUDIENCE	DATE	CLASSIFICATION

Australian Government
Australian Taxation Office

National Rental Affordability Scheme (NRAS)

Information from the Australian Taxation Office

PUBLIC DOMAIN

BACKGROUND

During evidence at the public hearing in relation to the National Rental Affordability Scheme (NRAS), on 6 November, the Committee asked if the Tax Office could provide information about taxation endorsement for charities providing housing and the possible interactions with the proposed National Rental Affordability Scheme.

If you have further queries, you can contact Mr Michael Hardy on 02 6216 1798.

CHARITABLE STATUS

An entity that wishes to be endorsed by the Tax Office for charitable tax concessions must apply to the Commissioner of Taxation. The requirements in relation to endorsement, administrative arrangements and revocation of endorsement are set out in Subdivision 426-B (sections 426-15 through 426-60) of the *Taxation Administration Act 1953*.

The concept of charitable is not defined in the legislation and it takes its common law meaning. The Courts have provided that there are four heads of charity. The relevant head of charity for a housing provider is the relief of poverty. (See Appendix 1). The exemption from income tax available to charities is provided under Division 50 on the *Income Tax Assessment Act 1997* (*ITAA 1997*), specifically Item 1.1 in the table in section 50-5.

A charity must have a purpose which is *solely* charitable. If it has any other purpose which is not charitable, if cannot be endorsed as a charity. If it adopts a non-charitable purpose after it is endorsed, it may lose its endorsement. The Tax Office has provided guidance on what is considered charitable in the Courts and this is incorporated into taxation ruling TR 2005/21.

The NRAS objectives and criteria are wider than just the relief of poverty. A charity which participates in NRAS and provides housing which is outside of the relief of poverty, is pursuing another, non-charitable, purpose in addition to its charitable purpose.

INCIDENTAL AND ANCILLARY

The Courts have accepted that a charity can have some minor activities which, if viewed in isolation, would not be charitable. However, if these other minor activities are viewed in the whole context of a charity and they are merely incidental and ancillary to the charitable purpose, they are not regarded as a separate purpose.

For example, a housing charity with 10 properties might have all tenants which are obviously in poverty. Over time, if one of their tenants became financially secure, but continued to live in the property owned by the charity, this supply of property to a person not in poverty may be incidental or ancillary to the charitable supply of the other 9 properties, particularly if it was temporary while the person looked for other accommodation.

If the situation was reversed, that 9 of the properties were provided to persons who were not in poverty, in order to support one person who was, the supply of the 9 properties is not incidental and ancillary, but is a purpose in its own right. As this purpose is not charitable, that organisation could not have charitable endorsement.

The factual circumstances of an organisation can change over time which is why charitable endorsement is not a permanent status. Endorsed charities are required to notify the Commissioner if they believe that they are no longer entitled to endorsement. The Tax Office encourages endorsed entities to review their purposes periodically or if they have a major change, to ensure that they continue to have solely charitable purposes. The Tax Office also undertakes independent reviews of endorsed entities to ensure that they remain entitled to endorsement.

The sole purpose test is the requirement in the law.

TAX CONCESSIONS

Organisations which have been endorsed as a charity principally secure the following tax concessions:

- exemption from income tax (which includes capital gains tax) (Division 50, *ITAA 1997*)
- Fringe Benefits Tax concessions (which vary from a capped rebate through various capped levels of exemption) (Section 65J of section 57A of the *Fringe Benefits Tax Assessment Act*, as appropriate)
- concessional GST registration thresholds; (s.23-15(2) of the *A New Tax System (Goods and Services Tax) Act 1999*) and
- the ability to provide some supplies GST-free if they are below market rates. In the case of accommodation, if the accommodation is provided at less than 75% of market value it is GST-free (the charity can claim the input tax credits back, and does not need to charge GST to the tenant) (Subdivision 38-G of the *A New Tax System (Goods and Services Tax) Act 1999*)

In addition, many charities can secure deductible gift recipient (DGR) status, which means that donations to them are tax deductible. (Division 30 of the ITAA 1997)

See Appendix 2 for more detail.

POSSIBLE INTERACTIONS BETWEEN ENDORSED CHARITIES AND NRAS

1. An endorsed charitable housing provider participates in NRAS and continues to provide housing to people in poverty. This charitable housing provider will not put its charitable endorsement at risk.

2. An endorsed charitable housing provider participates in NRAS and provides housing to people who are not considered to be in poverty. The charity will now be pursuing a second purpose and it may put its charitable endorsement at risk.

3. An endorsed charitable housing participates in NRAS and provides housing to people who are in poverty. Over the life of the scheme, some of these people improve their financial circumstances and are no longer in poverty. Depending upon the factual mix of tenants, the charitable housing provider may now be pursuing a second, non-charitable, purpose and may put their charitable endorsement at risk.

4. An endorsed charitable housing provider participates in NRAS and provides housing to people who are in poverty. Outside of the NRAS arrangements, the charity begins to

provide housing to people who are not considered to be in poverty. The charity will now be pursuing a second purpose in its activities outside of its participation in NRAS and it may put its charitable endorsement at risk.

5. An endorsed charitable housing provider participates in NRAS and provides housing to people in poverty at below 75% of market rates. The charity is entitled to treat the supply of housing as GST-free and claim back input tax credits. The charitable endorsement is not at risk.

6. An endorsed charitable housing provider participates in NRAS and provides housing to people in poverty at 80% of market rates. The charity must treat the supply of housing as input taxed and cannot claim back input tax credits on that supply. The charitable status of the housing provider is not at risk. The entitlement to input tax credits is a separate element of the legislation.

7. A charity enters into an arrangement with a for-profit provider under a structured arrangement to purchase and provide housing under NRAS. If the structuring of the scheme is such that it is designed predominantly to secure taxation benefits, such as transferring the concessions available to the charity to the for-profit business, the anti-avoidance provisions of the tax law may need to be considered.

8. A charity sets up a separate not-for-profit entity to participate in NRAS. The new entity provides housing to people who are not in poverty. The charitable endorsement of the charity is not at risk.

9. A deductible gift recipient charity sets up a separate for-profit entity to participate in NRAS. The new entity provides housing to people who are not in poverty and also makes a profit. The charitable endorsement of the charity is not at risk. If the for-profit entity donates its profits to the charity, it will get a tax deduction that should mean it has no tax to pay.

APPENDIX 1 - TYPES OF CHARITABLE ORGANISATIONS

PUBLIC BENEVOLENT INSTITUTIONS

The Tax Office does not set the criteria to decide whether or not an organisation is a public benevolent institution. The criteria have been established by case law.

A public benevolent institution (PBI) is a non-profit institution organised for the *direct relief* of poverty, sickness, suffering, distress, misfortune, disability or helplessness.

The characteristics of a PBI are:
- it is set up for needs that require benevolent relief
- it relieves those needs by directly providing services to people suffering them
- it is carried on for the public benefit
- it is non-profit
- it is an institution, and
- its dominant purpose is providing benevolent relief.

Examples of PBIs are non-profit organisations that:
- provide hostel accommodation for the homeless
- treat sufferers of disease
- provide home help for the aged and the infirm, or
- rescue people who are lost or stranded.

CHARITIES

The Tax Office does not set the criteria to decide whether or not an organisation is a charity. The criteria have been established by case law and, from 1 July 2004, the Australian Government introduced a statutory extension to the common law meaning of charity.

The characteristics of a charity are:
- it is an entity that is also a trust fund or an institution
- it exists for the public benefit or the relief of poverty
- its purposes are charitable within the legal sense of that term
- it is non-profit, and
- its sole purpose is charitable.

A charitable institution is an institution that is established and run to advance or promote a charitable purpose. An organisation’s purposes can be found from its governing document/s and from its activities, history and control.

An institution may be an organisation established by will or instrument of trust. It may also have the legal structure of an unincorporated association or a corporation. However, incorporation is not enough on its own for an organisation to be an institution – what the organisation does is also relevant. An organisation established, controlled and operated by family members and friends would not normally be an institution.

A charitable fund is a fund established under an instrument of trust or a will for a charitable purpose. It must:

- manage trust property, and/or
- hold trust property to make distributions to other entities or people.

Briefly, purposes will be charitable if they are to benefit the community, or a section of it, through the following activities.

THE RELIEF OF POVERTY OR SICKNESS OR THE NEEDS OF THE AGED

Including through public benevolent institutions, hospitals and nursing homes, relief agencies, youth and women's refuges, drug rehabilitation services, disability services, refugee welfare centres, soup kitchens, and organisations that support disadvantaged Indigenous people or supply furniture, clothing and *low-cost housing to the poor*.

THE ADVANCEMENT OF EDUCATION

Including through: schools, colleges, universities, research and scientific institutes, scouts and similar organisations, scholarship trusts, school building funds and parents and citizens associations.

THE ADVANCEMENT OF RELIGION

Including: religious congregations such as churches and synagogues, seminaries, religious orders, organisations for building or repairing religious buildings, and organisations for supporting clergy and for spreading religious doctrine and practice.

OTHER PURPOSES BENEFICIAL TO THE COMMUNITY

The High Court has ruled that the purposes under this fourth head of charity need to be within the spirit and intendment of the preamble to the Statute of Elizabeth. However, some of the purposes that have been accepted by the Courts include:

- promoting health – for example, through educating the public about a particular disease
- providing community facilities – for example, museums, libraries, halls, botanical gardens, migrant resource centres, neighbourhood centres and community radio stations
- promoting art and culture through means such as music and drama
- helping to maintain defence and public order and providing emergency services
- relieving distress due to natural disasters such as floods or bushfires
- providing social welfare through activities such as counselling, child care, and family or marriage support services
- helping people cope with the problems of unemployment
- promoting scientific research
- advancing commerce, agriculture and industry through activities such as research and resource development

- protecting animals, and
- preserving historic buildings.

This list is not exhaustive. Other purposes may be charitable where they are intended to provide benefits of social value to the community or a section of the community.

Institutions and funds whose purposes are **not** charitable include:
- sporting, recreational and social clubs
- organisations run for the profit of their members
- organisations run for their members' common interests (this includes professional or trade groups)
- community service organisations that have a significant membership purpose, such as traditional service clubs
- political parties and lobbying groups, and
- commercial or business enterprises operated for fundraising.

HEALTH PROMOTION CHARITIES

A health promotion charity is a charitable institution whose principal activity is promoting the prevention or control of diseases in human beings.

Examples of activities that can promote the prevention or control of disease include:
- providing relevant information to sufferers of a disease, health professionals, carers and the public
- researching how to detect, prevent or treat diseases, and
- developing or providing relevant aids and equipment to sufferers of a disease.

APPENDIX 2 - TAX CONCESSIONS – AN OVERVIEW

There are a range of concessions in the tax law available to non-profit organisations, including charities. Few of the concessions apply to all organisations in the non-profit sector – they generally apply to particular types of non-profit organisations.

Table 1 on the next page provides a summary of tax concessions and the types of non-profit organisations that can access them.

The table groups non-profit organisations as follows:

- charities – public benevolent institutions, health promotion charities, charitable institutions and charitable funds
- income tax exempt funds, and
- other non-profit organisations.

There are also concessions for:

- Public and non-profit hospitals and public ambulance services
- Religious institutions, and
- Non-profit companies and live-in residential care workers.

Table 1: Summary of tax concessions and types of non-profit organisations

Tax concessions	Types of non-profit organisations				
	Charities			Income tax exempt funds	Other non-profit organisations
	PBIs and **HPCs**	**Charitable institutions**	**Charitable funds**		
Income tax exemption - exemption from paying income tax, removing the need to lodge income tax returns	✓ (1)	✓ (1)	✓ (1)	✓ (1)	✓ Certain types only (2)
FBT exemption - exemption from paying FBT, subject to a capping threshold.	✓ (1)				✓ Certain types only (3)
FBT rebate - a rebate equal to 48% of the gross FBT payable, subject to a capping threshold of $30,000		✓ (1)			✓ Certain types only (4)
GST concessions for non-profit organisations	✓	✓	✓		✓
GST concessions for charities and gift deductible entities	✓ (1)	✓ (1)	✓ (1)	✓ (5)	✓ Certain types only (5)
Deductible gift recipient - entitlement to receive income tax deductible gifts and contributions	✓ (6)	✓ Certain types only (6)	✓ Certain types only (6)	✓ (6)	✓ Certain types only (6)
Refunds of franking credits – a refund of franking credits attached to franked dividends received	✓ (7)	✓ (7)	✓ (7)	✓ (7)	✓ Certain types only (7)

Notes to the table

1 The entity must be endorsed by the Tax Office to access this concession.

2 Only certain types of non-profit organisations are exempt from income tax.

3 Public and non-profit hospitals and public ambulance services are eligible for this concession.

4 Certain non-government non-profit organisations are eligible for this concession.

5 The entity must be a deductible gift recipient to access this concession.

6 The entity must be endorsed by the Tax Office as a deductible gift recipient to access this concession. The only organisations that do not need to be endorsed are those listed by name in the tax law as deductible gift recipients, including prescribed private funds.

7 The entity must be an income tax exempt charity, income tax exempt fund, or deductible gift recipient to access this concession.

APPENDIX 3 - EXPLANATION OF TAX CONCESSIONS

INCOME TAX EXEMPTION

Whether a non-profit organisation has to pay income tax will depend on whether or not the organisation is exempt from income tax.

Charities and income tax exempt funds
There is a system of endorsement under which the following organisations must apply to the Tax Office to be exempt from income tax:
- charities (including public benevolent institutions and health promotion charities), and
- income tax exempt funds (ITEFs).

Other non-profit organisations
If they are not also charities, the following types of organisations can self-assess their entitlement to income tax exemption. They do not need to be endorsed by the Tax Office to be exempt from income tax. Most have additional tests and rules that must be met before they can be exempt. They include:
- Non-profit community service organisations
- Cultural organisations – non-profit organisations established for the encouragement of art, literature or music; or established for musical purposes
- Public educational institutions
- Employee and employer associations - registered under an Australian law relating to the settlement of industrial disputes.
- Trade unions
- Public hospitals and non-profit hospitals
- Private health insurers within the meaning of the Private Health Insurance Act
- Religious institutions
- Resource development organisations – non-profit societies and associations established for the purpose of promoting the development of Australian agricultural resources, aquacultural resources, fishing resources, horticultural resources, industrial resources, manufacturing resources, pastoral resources, viticultural resources, or information and communications technology resources.
- Non-profit societies and associations established for the purpose of promoting the development of aviation or tourism
- Scientific institutions
- Science associations – non-profit organisations established for the encouragement of science.
- Scientific research funds – a fund established to enable scientific research to be conducted by or in conjunction with a public university or public hospital.
- Sporting organisations - non-profit organisations established for the encouragement of animal racing or a game or sport.

FBT EXEMPTION

Table 2 - FBT exemption - capping thresholds

Type of organisation (see note 1)	What capping threshold applies? (see note 2)	Does the organisation need to be endorsed by the Tax Office to access FBT exemption?
Public benevolent institutions (other than hospitals).	$30,000 per employee	Yes
Health promotion charities	$30,000 per employee	Yes
Public and non-profit hospitals	$17,000 per employee	No
Public ambulance services	$17,000 per employee	No

Notes to the table

1 A range of benefits are exempt from FBT. They include certain benefits provided by religious institutions and non-profit companies.

2 If an organisation is a public benevolent institution (PBI) and a hospital, the $17,000 capping threshold applies. The organisation **cannot** choose the PBI exemption cap.

FBT REBATE

Rebatable employers are certain non-government, non-profit organisations. Those that qualify for an FBT rebate include:

- certain religious, educational, charitable, scientific or public educational institutions
- trade unions and employer associations
- non-profit organisations established to encourage music, art, literature or science
- non-profit organisations established to encourage or promote a game, sport or animal races
- non-profit organisations established for community service purposes
- non-profit organisations established to promote the development of aviation or tourism
- non-profit organisations established to promote the development of Australian information and communications technology resources, and
- non-profit organisations established to promote the development of the agricultural, pastoral, horticultural, viticultural, aquacultural, fishing, manufacturing or industrial resources of Australia.

Charitable institutions must be endorsed by the Tax Office to access this concession.

GST CONCESSIONS FOR NON-PROFIT ORGANISATIONS

Table 3 – GST concessions for non-profit organisations

Concession
Gifts – a gift to a non-profit organisation is not consideration for a supply.
School tuck shops – a non-profit organisation may sell food through a tuck shop or canteen at a primary or secondary school and treat the sales as input taxed.
GST registration threshold – the registration turnover threshold is higher for non-profit organisations than for other organisations.
GST groups – the requirement to satisfy the 90% ownership test is waived where the entity is a non-profit organisation and all the other members of the GST group or proposed GST group are non-profit organisations and members of the same non-profit association.

GST CONCESSIONS FOR CHARITIES AND GIFT DEDUCTIBLE ENTITIES

Table 4 – GST concessions for charities and gift deductible entities

Concession	Eligible entity
Raffles and bingo – tickets to raffles and bingo sold by an eligible entity are GST-free provided the holding of the raffle or bingo event does not contravene a state or territory law.	▪ Charitable institution (1) ▪ Charitable fund (1) ▪ Gift deductible entity (2) ▪ Government school
Fundraising events – an eligible entity may choose to treat all sales it makes in connection with certain fundraising events as input taxed.	▪ Charitable institution (1) ▪ Charitable fund (1) ▪ Gift deductible entity (2) ▪ Government school
Non-commercial activities – where an eligible entity makes sales and the payment it receives in return for the things it sold is less than a certain amount, the sales are GST-free.	▪ Charitable institution (1) ▪ Charitable fund (1) ▪ Gift deductible entity (2) ▪ Government school
Accounting on a cash basis – an eligible entity may choose to account on a cash basis regardless of its GST turnover.	▪ Charitable institution (1) ▪ Charitable fund (1) ▪ Gift deductible entity (3) ▪ Government school
Reimbursement of volunteer expenses – an eligible entity can claim GST credits for reimbursements made to volunteers for expenses the volunteer incurs that are directly related to their activities as a volunteer of the entity.	▪ Charitable institution (1) ▪ Charitable fund (1) ▪ Gift deductible entity (2) ▪ Government school
Gifts and GST credit adjustments – adjustments of GST credits are not required when an item acquired by a business is subsequently gifted to an eligible entity.	▪ Charitable institution (1) ▪ Charitable fund (1) ▪ Gift deductible entity (4)
Donated second-hand goods – sales of donated second hand goods by an eligible entity are GST-free.	▪ Charitable institution (1) ▪ Charitable fund (1) ▪ Gift deductible entity (2) ▪ Government school
Non-profit sub-entities – an eligible entity may conduct some of its activities through a non-profit sub-entity.	▪ Income tax exempt non-profit organisation ▪ Charitable institution (1) ▪ Charitable fund (1) ▪ Gift deductible entity (5) ▪ Government school
GST religious groups – some charities can be approved as a GST religious group. Transactions between members of the group are excluded from GST.	▪ Income tax exempt charity
Charitable retirement villages – an eligible entity may provide GST-free accommodation, accommodation related services and meals to residents of such retirement villages	▪ Charitable institution (1) ▪ Charitable fund (1)

Notes to the table

1 If a charity wants to access this concession, it must be endorsed by the Tax Office to access GST charity concessions. Where an organisation qualifies for a GST concession as both a charity and another type of entity, for example a gift deductible entity, it may access the concession only if the organisation is endorsed to access the GST charity concessions.

2 A gift deductible entity that operates a fund, authority or institution which can receive tax deductible gifts or contributions can only apply this concession to the activities of the endorsed fund, authority or institution, and not to any other activities of the gift deductible entity.

3 A gift deductible entity that operates a fund, authority or institution which can receive tax deductible gifts or contributions is only entitled to account for GST on a cash basis if it meets one of the general eligibility criteria. Those criteria are:

- The entity's GST turnover does not exceed the cash accounting turnover threshold, or
- For income tax purposes the entity correctly accounts for income using the receipts method.

4 If a donor makes a gift to a gift deductible entity that operates a fund, authority or institution which can receive tax deductible gifts or contributions, the donor will not have to make an adjustment to their GST credit if the gift is made for the principal purpose of the endorsed fund, authority or institution.

5 Only a gift deductible entity that is a non-profit body is able to choose to treat separately identifiable branches as non-profit sub-entity.