From: Peter Thomas [mailto:thomaspeter@ozemail.com.au]
Sent: Thursday, 22 April 2004 11:21 AM
To: Economics, Committee (SEN)
Subject: Tax Laws Amendment (2004 Measures No 1) Bill
Anthony,

Thankyou for agreeing to receive a late submission on the above bill. My particular concern relates to Schedule 7 which deals with tax deductibility of fund-raising events.

My interest

I am a chartered accountant, now in private practice, after having been a tax partner with one of the big 4 firms for about 25 years. I have been involved with the not-for-profit sector for a number of years and variously sit on the board of, and/or act as an adviser to, many such entities.

Background

By way of background, charities and other organisations with deductible gift recipient (DGR) status have long grappled with requests from attendees at functions for guidance on how much of the cost of attending can be claimed as a tax deduction. The correct advice has been that where the cost of attending is split, such that the "donation" element is voluntary, that element is deductible; where the payment for attending is a composite amount, no part is deductible where the benefit provided is anything more than negligible.

The need to effectively split the invoice introduced complexity for charities etc and there are few examples where split invoices have been issued.

The proposed rules

The new rules, while welcome in the sense that the government has addressed the issue, do not bring relief for charities other than those operating at the top end of town, and even they are likely to have difficulty fitting into the legislation. Indeed the Explanatory Memorandum accompanying the Bill states that the financial impact of the proposal is "nil".

To be able to take advantage of the new rules, the donation element in the cost of attending a fund-raiser must be at least 90% of the cost incurred, the minimum amount outlaid must be cash or property of more than $250 and the GST-inclusive market value of the benefit provided cannot exceed $100.

Examples

If, say, a local surf club holds a fund-raising dinner for which it charges $200, no amount of the cost of attending will be deductible under the new rules. Similarly, an art gallery charges $500 for supporters to attend a fund-raising dinner where they are treated to a meal and drinks with a GST-inclusive market-value of $100 – no part of

the cost of attending the dinner will be deductible as the cost of the meal and drinks exceeds 10% of the cost of attending – i.e. the donation element is less than 90%. Had the cost of attending been $1000, rather than $500, $900 would have been deductible.

The proposed legislation at the same time seeks to look after large, well-funded organisations, which can expect support for expensive fund-raisers. However, even they may have difficulty in fitting into the new rules because where the GST-inclusive market value of the benefit provided at the function exceeds $100, no deduction is allowed even if the donation element is 90% of the cost of attending.

Comment and suggestions

It is hard to understand why the government has effectively excluded from the new rules so many worthwhile organisations which struggle to raise funds, and which will as a result of the proposed legislation be left in the "no-mans-land" which exists at the moment.

The "90% donation" rule is arbitrary and it would be more appropriate for, say a 50% rule to apply – i.e. the cost of attending must be at least double the GST-inclusive market value of the benefit provided at the function for a deduction to be available for the donation element.

The $250 threshold is also inappropriate as many struggling community organisation simply cannot hold a fund-raiser where the cost of entry is $250; even at $250, the GST-inclusive market value of the benefit provided can be no more than $25 for any part of the contribution to be deductible. A lesser threshold may be required for administrative reasons.

Of less concern to me, but nonetheless a matter which seems inappropriate, is the $100 threshold (i.e. the GST-inclusive market value of the benefit provided at the function cannot exceed $100). Why should there be any threshold?

The Treasury estimate of the cost of the new measure possibly conveys government thinking – that is, it is not meant to have widespread application.

I urge that the legislation be amended, to enable it to have wider application. This could be achieved by adjusting the various thresholds which have been written into the legislation.

Attached paper

I attach a paper which explains the way the new rules will apply.

Further contact

I would welcome the opportunity to provide further information or to speak with any of the committee.

Yours sincerely

Peter Thomas

Peter Thomas
Chartered Accountant and Tax Adviser

02 9261 2366 [t]
02 9261 0277 [f]
0413 210 091 [m]
thomaspeter@ozemail.com.au [e]

Level 6, 222 Clarence Street, Sydney NSW 2000