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Inquiry into the disclosure regimes for charities and not-for-profit organisations

Submission by the Australian Taxation Office



PUBLIC DOMAIN

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INTRODUCTION

This submission outlines the tax concessions we administer for the non-profit sector, the information we receive from the sector and the information we disclose about the sector to provide context for our brief responses to the specific areas of interest to the inquiry.

If the Committee wishes, we would be pleased to clarify any matters raised in our submission and to expand on the issues outlined in light of our experience and knowledge of the sector. Our contact in this matter is Mr Michael Hardy. He may be reached on telephone (02) 6216 1798.

OVERVIEW

The non-profit sector is large and diverse. It is estimated there are around 700,000 non-profit organisations in Australia.

Non-profit organisations include charitable, religious and community service bodies; sporting and recreational clubs; business and professional associations, and trade unions; private schools; some hospitals; and some large financial and insurance companies.

Our role is to ensure compliance with tax obligations imposed under the laws we administer and to manage access to concessions available under those laws.

A range of tax concessions are available to non-profit organisations. Few of the concessions apply to all organisations in the non-profit sector – they generally apply to particular types of non-profit organisations.

The current non-profit population that interacts with the Tax Office is approximately 197,000. Under the self-assessment regime, most non-profits can self-determine their entitlements to concessions such as exemption from paying income tax and the concessions available to taxable non-profits. Unless these non-profits have tax obligations, there is no need for these organisations to interact with, or furnish the Tax Office with information.

Most non-profit organisations are not registered in the revenue system because they have self-assessed that they are income tax exempt and/or do not have any GST, fringe benefits tax (FBT) or employer obligations.

Some tax concessions require the organisation to be endorsed by the Tax Office.

We hold a range of information relating to non-profit organisations. Information currently provided by non-profit organisations required to interact with the Tax Office can be either initial or periodic.

We disclose aggregated data about non-profit organisations in our annual publications, Taxation Statistics and the Compliance Program. Secrecy provisions generally preclude us from publishing data we hold on particular organisations, and exception is where we endorse and organisation.

We emphasise the need for all non-profit organisations to review their operations at least annually, or when there is a major change in their structure or operations. There is no obligation to furnish an annual self-review form, however charities are required to notify us in writing if they are no longer entitled to be endorsed.

The Tax Office undertakes independent reviews of non-profit organisations to ensure that they meet and continue to meet the requirements for any concessions they have been granted or that they have correctly self-assessed their status.

KEY AREAS OF THE COMMITTEE'S EXAMINATION

DISCLOSURE REGIMES FOR CHARITIES AND NON-PROFIT ORGANISATIONS

In the appendices to this response we provide information about the myriad of different sub-classes that the taxation law recognises within the broad area of non-profit organisations.

As noted in the overview, less than a third of the estimated population of non-profit organisations have a requirement to disclose information to the Tax Office. Of the approximately 197,000 organisation that do disclose something to the Tax Office, in some cases this is merely an application to be endorsed for some concession and the organisation may not have any ongoing, or only infrequent, dealings with the Tax Office.

In a recent exercise undertaken with one of the charitable categories, we contacted a sample of endorsed charities to make sure that they were aware of their ongoing obligation to undertake a self review of their entitlement to endorsed charitable status and to advise us of the steps they had taken to meet this obligation. Approximately 10% of organisations contacted had ceased to operate or were otherwise uncontactable and are presumed to have ceased operation. The Tax Office will take steps to remove the endorsed status for these dormant entities, however this illustrates that even a sub-set of the non-profit community that secures public support through the taxation system may not make regular disclosures of information to the Tax Office and can be overlooked for a period of time.

The approximately 197,000 organisations that do make some type of disclosure of information to the Tax Office, do not all make the same disclosures. This population falls into one of 7 sub-divisions; either non-profits with taxable income in excess of \$415 per annum, one of the income tax exempt categories within the legislation or one of the charitable or deductible gift recipient categories within the legislation. The sub-divisions and the information disclosure obligations under each sub-division are illustrated in the summary on p25.

We are aware that other jurisdictions, the United States for example, do require all organisations in the non-profit sector to provide an annual information return. There are several versions of the annual return, but each provides a base level of data and additional information requirements are imposed according to the particular concessions granted to the organisation or in relation to its size.

The Tax Office is able to request any and all relevant information from an organisation where we may have some concerns about its access to concessions or correct self-assessment of status. However, there is no doubt that an increased periodic disclosure of relevant information to the Tax Office would allow us to:

- provide greater assurance to the community that only organisations entitled to non-profit taxation concessions were securing them, and
- ensure that any reviews we need to make of entities in the sector are well targeted and minimally disruptive as possible.

Ongoing disclosure of information to a regulator for all non-profit organisations would provide a means of ensuring that organisations in this sector are active and able to be readily contacted in relation to being provided with information or support, or to engage in consultation.

However the Tax Office recognises that these are deliberate public policy choices about the information disclosure compliance burden that is appropriate to be imposed upon the non-profit sector, including charities. The existing variety of sub-divisions, for taxation purposes, in the non-profit sector is complex and of itself may be seen as a cost of compliance or of administration.

MODELS OF REGULATION AND LEGAL FORMS TO IMPROVE GOVERNANCE AND MANAGEMENT AND CATER FOR EMERGING SOCIAL ENTERPRISES

As a model of regulation, the taxation system largely relies upon a self-assessment approach, supported by information disclosure to support independent verification. This is true for the regulation of the taxation concessions of the non-profit sector.

As noted above, the information disclosure aspect of the existing model is incomplete, with over two-thirds of the estimated population not being required to make any disclosure whilst being able to self-assess their non-profit status. Where disclosures are made, they vary according to the type of taxation concession or endorsement sought, but other than name and address type details, there is no uniformity in the nature of the information disclosed.

The regulatory model for taxation purposes is somewhat independent of the legal form of entities within the system, although various concessions do apply only to entities that have certain forms. For example only an entity that legally qualifies as a “fund” could be endorsed as an income tax exempt fund, but other legal structures might qualify for comparable concessions, as a tax concession charity.

This need to recognise the various legal forms permissible in the corporate world, including unincorporated organisations, adds volume to the taxation legislation in this area and sometimes requires specific legal elements in recognition of the legal differences between some structures. However, it generally provides that organisations have freedom of choice for their organisations’ structure, which is not driven by taxation considerations.

In those sub-divisions of the non-profit sector which give an organisation some type of enhanced taxation benefit, such as FBT rebates or exemptions, as opposed to merely exempting them from income tax, the large variety of taxation benefits, combined with the variety of acceptable legal forms and the differentiated sub-divisions of non-profit organisations can make the regulatory model appear very complex.

The variety of taxation concessions are illustrated at Table 1 on p14.

In relation to emerging social enterprises, at present the Tax Office would attempt to identify if some type of new legal form fell within one of the various categories already contemplated in the law. If we were unable to do this, the tax law may need to be amended to accommodate some new type of legal form, with close attention to the expectations of the Parliament about what concessions this new type of entity should be entitled to access, so that any conforming legislative changes could also be made.

At a very broad level, we do observe that organisations endorsed for charitable concessions are either “funds”, in that they secure monies or assets and distribute them to other charitable organisations that actually deliver outcomes for some endorsed purpose, or they are “institutions” which are the organisations that actually deliver some outcome such as providing housing, education or disaster relief, for example. However, the terminology in the taxation law is not limited to these terms.

An observation that we would make is that if there is a policy decision to have a limited range of legal entities that can be recognised as non-profit, this would require legislative change of the tax law to recognise these new legal forms and would impose administrative costs on existing organisations to migrate to any new legal form. These issues would need to be considered in any policy deliberations.

OTHER MEASURES TO IMPROVE GOVERNANCE, STANDARDS, ACCOUNTABILITY AND TRANSPARENCY IN THE USE OF PUBLIC AND GOVERNMENT FUNDS

The question about other measures that might be used to assist the improved operation of the non-profit sector tends to revolve around policy choices or the explicit clarification of policy. It is not the role of the Tax Office to provide policy advice, however we are able to provide authoritative advice about how policy, translated into legislation, can be administered effectively. We take into account the intended outcomes of the legislation, rules of statutory interpretation and the costs of compliance and administration involved in achieving those outcomes. In addition we are able to advise, if invited, on the administrable practicalities of proposed policy or legislation through our knowledge of the commercial practices of the community, among other things.

However, we are able to make some observations on the current legislation which may assist the committee in any further deliberations it makes.

As noted in Appendix 1, p8, in order to be considered a non-profit organisation for taxation purposes, there are two key clauses that need to be part of the constituent documents of the organisation; the non-profit clause and the winding up clause.

The clauses imply a policy intention that monies or assets which enter the non-profit domain, including charities, should not leave that domain. The clauses imply that the organisations are custodians of assets for the community. However, the Tax Office is not aware that this is an explicit policy position.

The Tax Office is also aware that the legal form of many non-profit organisations is established by State or Territory legislation, for example a charitable trust may be established with a particular State of Australia under the provisions of the charitable trust legislation in that State.

Where the Tax Office identifies that a charitable trust has acted in a way such that it is no longer entitled to be endorsed for charitable taxation concessions, the Tax Office can revoke any endorsement granted. In effect, this may mean that the monies and assets of the organisation may become taxable. The organisation may still have non-profit status, but it may have taxable income levels that make it taxable in the absence of any special taxation status endorsements. In this situation, the organisation may decide to remove its non-profit clause and amend its winding up clause to become a fully for-profit organisation.

Further, in the situation where the Tax Office has sufficient grounds to revoke the endorsement of an organisation to charitable taxation concessions, it may be that we have information which would be relevant to the regulator responsible for the charitable trusts legislation in a State or Territory. At present, we are precluded from providing this information to the appropriate regulator and so it is possible to have an organisation which is considered a charitable trust under State law, but which is a taxable non-profit organisation under taxation law. This can be confusing for the organisation and for the public.

SUMMARY

In summary, the range of taxation concessions, recognition of a wide variety of legal forms, interplay between State, Territory and Commonwealth legislation, limited disclosure of information and different expectations of what information is disclosed dependant upon a particular taxation concession granted; make the non-profit sector challenging to administer and challenging for the public to understand.

APPENDIX 1 - WHAT IS A NON-PROFIT ORGANISATION?

The basic premise of a non-profit organisation is that it is not operating for the profit or gain of its individual members, whether these gains would have been direct or indirect. This applies both while the organisation is operating and when it winds up.

Any profit made by the organisation goes back into the operation of the organisation to carry out its purposes and is not distributed to any of its members.

The Tax Office accepts an organisation as non-profit where its constituent or governing documents prevent it from distributing profits or assets for the benefit of particular people – both while it is operating and when it winds up. These documents should contain acceptable clauses showing the organisation's non-profit character. The organisation's actions must be consistent with this requirement.

Acceptable clauses to indicate non-profit character are:

Non-profit clause

'The assets and income of the organisation shall be applied solely in furtherance of its (non-profit) objects and no portion shall be distributed directly or indirectly to the members of the organisation except as bona fide compensation for services rendered or expenses incurred on behalf of the organisation.'

Dissolution clause

'In the event of the organisation being dissolved, the amount that remains after such dissolution and the satisfaction of all debts and liabilities shall be transferred to another organisation with similar purposes which is not carried on for the profit or gain of its individual members.'

A non-profit organisation can still make a profit, but this profit must be used to carry out its purposes and must not be distributed to owners, members or other private people.

APPENDIX 2 - TYPES OF NON-PROFIT ORGANISATIONS

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 including:

- 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.

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.

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.

Income tax exempt funds

An income tax exempt fund (ITEF) is a non-charitable fund that is endorsed by the Tax Office to access income tax exemption.

Endorsement as an ITEF is an approval process to access income tax exemption. It applies to non-charitable funds established under a will or instrument of trust solely for:

- the purpose of providing money, property or benefits to income tax exempt deductible gift recipients (DGRs), or
- the establishment of DGRs.

The beneficiaries of ITEFs can include DGRs that are charities and DGRs that are not charities.

If a fund can be applied for purposes that are not charitable, it is not a charitable fund.

OTHER NON-PROFIT ORGANISATIONS

Other non-profit organisations are non-profit organisations that are not:

- charities, or
- income tax exempt funds.

Other non-profit organisations include sports clubs, community service groups and recreational clubs.

APPENDIX 3 - TAX CONCESSIONS – AN OVERVIEW

There are a range of concessions in the tax law available to non-profit organisations. 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.

The characteristics of these entity types are explained in Appendix 1 and the concessions are explained in more detail in Appendix 4.

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.

On p. 25 we provide a diagrammatic representation of the various non-profit groupings, the requirements to be classified within any particular grouping for taxation purposes, a summary of the information disclosed to us and of the information that we can publicly disclose.

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 4 - 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.

Note - taxable non-profit organisations

If a non-profit organisation is not exempt from income tax as outlined above, it is taxable. Taxable non-profit organisations are generally treated as companies for income tax purposes, whether or not they are incorporated.

Examples include non-profit organisations such as licensed community clubs, clubs for particular activities such as motorcycle clubs, craft clubs and ethnic clubs, professional associations, medical defence organisations and certain friendly societies.

Where the mutuality principle applies to a non-profit organisation, membership subscriptions and receipts from other mutual dealings with members are not usually included in the taxable income.

If an organisation is prohibited by the terms of its constitution from making any distributions – whether in money, property or otherwise – to its members, it is treated as a non-profit company. It will have the benefit of special rules for lodging income tax returns and special rates of income tax.

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.	<ul style="list-style-type: none"> ▪ 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.	<ul style="list-style-type: none"> ▪ 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.	<ul style="list-style-type: none"> ▪ 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.	<ul style="list-style-type: none"> ▪ 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.	<ul style="list-style-type: none"> ▪ 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.	<ul style="list-style-type: none"> ▪ 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.	<ul style="list-style-type: none"> ▪ 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.	<ul style="list-style-type: none"> ▪ 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.	<ul style="list-style-type: none"> ▪ 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	<ul style="list-style-type: none"> ▪ 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.

DEDUCTIBLE GIFT RECIPIENT

Certain organisations are entitled to receive income tax deductible gifts and tax deductible contributions. They are called deductible gift recipients (DGRs).

What is a deductible gift recipient?

The income tax law determines which organisations and types of organisations can qualify as DGRs. DGRs are:

- endorsed by the Tax Office, or
- listed by name.

All DGRs (except those listed by name) must be endorsed by the Tax Office. If they are not endorsed, donors cannot claim income tax deductions for their gifts.

DGRs listed by name

DGRs listed by name include prescribed private funds and organisations such as the Australian Sports Foundation and Amnesty International Australia. There are two ways organisations can become DGRs listed by name. For prescribed private funds, the government gazettes them into the income tax regulations. For others, Parliament amends the income tax law to list the organisation by name in the income tax law.

Endorsed DGRs

For other organisations to be DGRs, an organisation, or a fund, authority or institution that it operates, must fall within a general DGR category as specified in the tax law.

There are currently more than 40 general DGR categories. Examples are:

- public hospitals
- health promotion charities
- public universities
- school building funds
- scholarship funds
- public benevolent institutions
- necessitous circumstances funds
- overseas aid funds
- public libraries, museums and art galleries, and
- ancillary funds.

There are two types of DGR endorsement:

- where an organisation is endorsed as a whole, for example, public hospitals and public universities, and
- where an organisation is endorsed for the operation of a fund, authority or institution that it owns or includes, for example, school building funds and council libraries.

If an organisation is endorsed as a whole, gifts to the entire organisation may be tax deductible. If an organisation is endorsed for the operation of a fund, authority or institution, only gifts to this part of the organisation may be tax deductible.

REFUNDS OF FRANKING CREDITS

Franking credits attached to franked dividends received by endorsed income tax exempt entities, deductible gift recipients and developing country relief funds may be refundable, provided the eligibility criteria are met.

Franking credits arise for shareholders when certain resident Australian companies pay income tax on their taxable income and distribute their after-tax profits by way of franked dividends. These franked dividends have franking credits attached. Franked dividends are received either directly as a shareholder or indirectly as a beneficiary of a trust.

Organisations that receive a dividend from a New Zealand company with Australian franking credits attached to it may also be able to obtain a refund of those credits.

To be eligible for a refund of franking credits, an entity must have an ABN, be a resident and satisfy at least one of the following:

- be endorsed by the Tax Office as an income tax exempt charity
- be endorsed by the Tax Office as an income tax exempt fund
- be endorsed by the Tax Office as a DGR in its own right, or
- be specifically named as a DGR in the *Income Tax Assessment Act 1997*

Public funds declared by the Treasurer to be a developing country relief fund are also eligible for a refund of franking credits.

APPENDIX 5 - INFORMATION WE HOLD

Information currently provided by non-profit organisations required to interact with the Tax Office can be either initial or periodic.

INITIAL INFORMATION

Initial information is provided by non-profit organisations when applying for various concessions. The information provides a picture of the organisation at that particular point in time, but can become unreliable where the organisation's circumstances change over time.

For non-profit organisations, the initial information we receive is from those organisations applying for:

- an Australian business number (ABN)
- tax concession charity (TCC) or income tax exempt fund (ITEF) endorsement
- deductible gift recipient (DGR) endorsement, and
- prescribed private fund (PPF) status.

Australian business number applications

Organisations that want to apply for various concessions and comply with their tax obligations may need to apply for an ABN. For example, organisations wanting to apply for DGR endorsement must have an ABN. The information we receive from this application includes:

- the entity type
- the industry the organisation operates within
- whether the entity is exempt for income tax purposes
- whether the entity is a non-profit organisation, and
- information about the other obligations the organisation is applying for.

Tax concession charity or income tax exempt fund applications

Organisations applying for endorsement as a TCC or ITEF are required to provide a range of information to assist us to assess their eligibility for this status. The information we receive from this application includes:

- the organisation's purposes and activities, and
- financial information.

Deductible gift recipient applications

Organisations applying for endorsement as a DGR are required to provide information such as the category that the organisation is seeking endorsement under.

Prescribed private fund applications

Organisations seeking to be listed by name in the *Income Tax Assessment Regulations 1997* as a PPF apply to Government, but must in the first instance lodge an application through the Tax Office which checks whether the fund satisfies legislative requirements. These organisations are required to provide information including:

- trust deeds
- details on associated parties
- details of the organisation's policies
- details of the organisation's day to day activities, and
- copies of financial statements.

PERIODIC INFORMATION

The periodic information we subsequently receive from organisations is more current, although it tends to only reflect fiscal transactions relating to their tax obligations (an exception is the annual information return for prescribed private funds).

Periodic information is provided by those organisations that have tax obligations. The frequency of these obligations varies from organisation to organisation. For those non-profit organisations that have tax obligations, the periodic information we receive is from those required to lodge:

- income tax returns
- FBT returns
- activity statements
- refund of franking credits applications, and
- PPF information returns.

Income tax returns

Non-profit organisations that are not exempt from income tax are taxable and are generally treated as companies for income tax purposes, whether they are incorporated or not. Non-profit companies are required to lodge a tax return if their taxable income for the year is above the taxable threshold, currently \$416. Information that we receive from the income tax return includes:

- income derived, e.g. sales, distributions from trusts or partnerships, interest, rent and dividends
- expenses incurred, e.g. superannuation, commission, rent, interest and motor vehicle expenses, and
- financial and other information, e.g. debtors, creditors, salary and wage expenses, payments to associated persons and foreign income.

Fringe benefits tax returns

Non-profit organisations are required to lodge an annual fringe benefits tax (FBT) return if they are registered for FBT and have calculated that they have an FBT liability. The annual FBT return provides us with details including:

- the details of fringe benefits provided, and
- the amount of fringe benefits tax liability for that particular year.

Activity statements

Non-profit organisations are required to lodge an activity statement if the organisation has any pay as you go (PAYG), FBT or goods and services tax (GST) obligations. Activity statements must be lodged at the end of the reporting period for that particular organisation. The reporting period varies from organisation to organisation, and can be monthly, quarterly or annually. The information that we receive from activity statements can include:

- GST on sales and purchases
- total salaries and wages and the PAYG tax withheld, and
- PAYG instalments.

Refund of franking credits applications

Certain non-profit organisations are eligible to apply for a refund of franking credits on an annual basis. The eligible organisations are endorsed income tax exempt entities and DGRs, DGRs listed by name in the tax law and exempt institutions eligible for a refund under a Commonwealth law other than the income tax law. The information that we receive from applications for a refund of franking credits is:

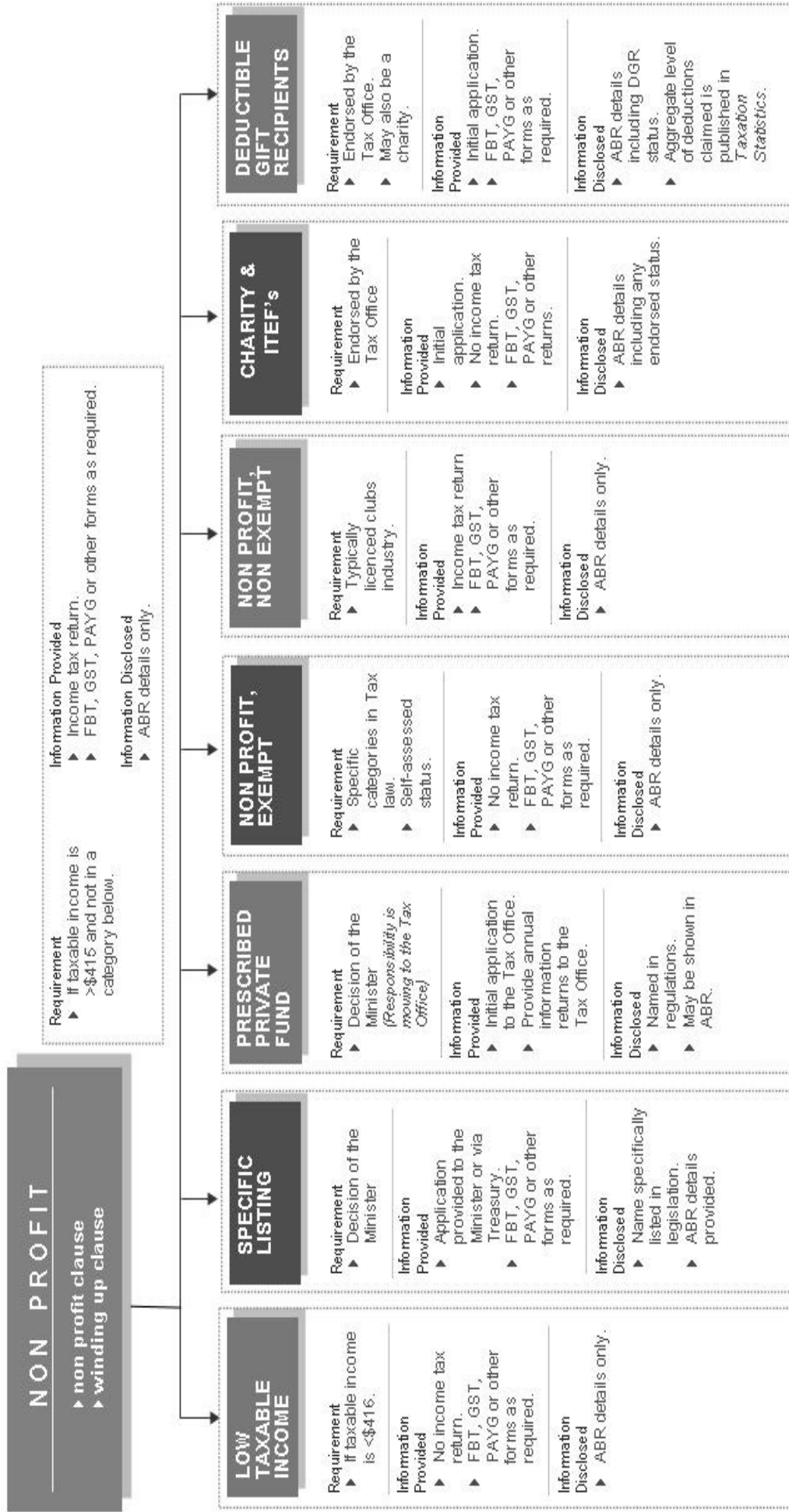
- the total amount of franking dividends plus trust distributions, and
- the total franking credits attached to those dividends and trust distributions.

Prescribed private fund information returns

Prescribed private funds (PPFs) must provide an annual information return to the Tax Office at the end of each financial year. The purpose of the information return is to provide us with a summary of a fund's activities for the year including:

- donations received and distributed
- income derived (excluding donations), e.g. interest, dividends, distributions from trust, rents, fundraising and realised capital gains
- expenses of operation, e.g. salaries and wages, rent, motor vehicles, fundraising, overheads
- net worth of the fund, e.g. cash in hand, investments, shares, loans, other property
- a copy of the fund's audited report for the year, and
- a copy of the financial statement in support of the audit report.

INFORMATION HELD AND DISCLOSED IN SUMMARY



APPENDIX 6 - INFORMATION WE DISCLOSE

Secrecy provisions preclude the Tax Office from publishing data we hold on particular organisations. Exceptions are where we endorse an organisation or provide written binding advice.

We also disclose aggregated data about non-profit organisations in our annual publications, Taxation Statistics and the Compliance Program.

ENDORSEMENT

If an organisation is endorsed by the Tax Office, the Australian Business Register (ABR) website at www.abn.business.gov.au will display the organisation's endorsement details.

- For tax concession status - the ABR will state the type of charity the organisation is (i.e. charitable fund, charitable institution, public benevolent institution or health promotion charity) or that the organisation is an income tax exempt fund. It also lists the tax concession/s that the organisation is endorsed to access and the dates the concession/s commenced. The tax concessions are income tax exemption, GST concessions and/or FBT rebate or exemption.
- For deductible gift recipient (DGR) status - the ABR will state that an organisation is endorsed as a DGR and/or the organisation operates funds, authorities and institutions and that the gifts to those listed are tax deductible. In both instances, the ABR shows the date endorsement commenced for the organisation and/or the listed funds, authorities and institutions.

As a separate feature, the ABR also provides the public with the facility to download complete lists of endorsed DGRs and DGR funds, authorities and institutions. A similar feature is not currently available for endorsed charities and income tax exempt funds.

Other information about an endorsed organisation is also made available on the ABR. This information comes from the organisation's Australian business number (ABN) application form and is generic for all organisations on the register. It includes the ABN, its date of effect (and cancellation), the entity type and GST registration (status and date of effect) if applicable.

Information that is not made available on the ABR includes:

- the name and contact details of authorised contact persons
- tax file numbers
- telephone numbers
- all business activity details (such as staffing and ownership details)
- all taxation information (such as financial institution account details for Tax Office refunds, GST details, including GST turnover), and
- details of individuals and organisations associated with the entity.

WRITTEN BINDING ADVICE

On the Tax Office website at www.ato.gov.au we publish edited versions of all written binding advice that we provide to taxpayers. The edited versions may include information which is in the public domain where that information will not lead to the identification of the taxpayer and will not breach the confidential information of a third party. We are required to remove or replace information that:

- specifically identifies a taxpayer
- enables the identity of the taxpayer to be ascertained
- relates to third parties, or
- is confidential to the taxpayer or third parties.

AGGREGATED DATA

We disclose aggregated information to the public in our external publication Taxation Statistics. The publication is released annually and is our most comprehensive statistical publication. The latest edition, *Taxation Statistics 2005-06*, was improved to include a new chapter on charities and not-for-profit organisations. The new chapter discloses information about:

- tax concession charity status
- deductible gift recipient status
- individual gifts and donations made to DGRs and claimed on income tax returns, and
- refundable franking credit information.

Our Taxation Statistics publication also discloses information on taxable non-profit companies which is aggregated with information from other taxable companies. These aggregated figures are reported in the company tax chapter.

Our Compliance Program is published annually and it provides us with the opportunity to inform the community about how we manage risks and the steps we are taking to respond to them. We also provide a snapshot of the activities that we undertook in the previous year, which includes aggregated results for the:

- number and type of compliance audits and reviews undertaken
- amounts of tax and penalties raised from our compliance activities, and
- number of endorsement applications checked and disallowed.