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CHARITIES ALERT AUGUST 2015

VARIOUS RECENT UPDATES FOR TAXATION EXEMPTIONS CONCESSIONS RELEVANT TO CHARITIES

Exposure draft on limiting FBT concessions on salary packaged entertainment benefits

On 29 June 2015, the Government issued exposure draft legislation for public consultation on the announcement in the 2015-16 Federal Budget which limits the fringe benefits tax (**FBT**) concessions on salary packaged entertainment benefits.

[Click here](#) to view the exposure draft legislation and explanatory materials.

The exposure draft legislation introduces the following:

- A separate single grossed-up cap of \$5,000 for salary packaged meal entertainment and entertainment facility leasing expenses (entertainment benefits) for employees of public benevolent institutions, health promotion charities, public and not-for-profit hospitals, and public ambulance services. This is a proposed change to the existing FBT law, as under the current law, these employees can salary package entertainment benefits with no FBT payable by the employer, without the benefits being reported and not subject to the current caps.
- Salary packaged meal entertainment benefits will become reportable fringe benefits. That is, salary packaged meal entertainment benefits will be taken into account in assessing an employee's eligibility for certain tax concessions and an employee's liability to certain levies and surcharges.
- It will remove access to elective valuation rules when valuing salary packaged entertainment benefits to prevent unintended and excessively concessional values being applied to those benefits.

It is intended that the proposed new law will apply to assessments for the FBT year starting on 1 April 2016, and later FBT years.

The proposed new law means that certain charities' FBT concessions on salary packaged entertainment benefits could be adversely affected.

The closing date for submissions to the Treasury on the draft legislation and explanatory material is 21 August 2015.

Announcement on the portability rule for private ancillary funds and update on the status of the proposed amendment on the 'in Australia' requirement for charities and DGRs

On 14 April 2015, in the Commissioner of the Australian Charities and Not-for-profit Commission (**ACNC**) Column (ie material published on the ACNC's website), it was stated that the government announced to the Community Council of Australia Forum of Social Sector leaders:

- For private ancillary funds, there will be increased portability to distribute assets to other ancillary funds on winding up.

- There will be streamlined valuation arrangements for tax deductible donations of shares to charities.
- The proposed amendments to the 'in Australia' provisions of the tax legislation will not be proceeded with at this stage and the government will be taking a 'watching brief' on this issue.

[Click here](#) to view the ACNC Commissioner's Column:

Statutes Amendment and Repeal (Budget 2015) Bill 2015 – proposed new duty exemption for charities

The South Australian Government proposed to amend s71(5)(j) of the *Stamp Duties Act 1923* (SA) as part of the changes announced in the SA 2015-16 Budget Measures Statement.

The proposed amendment to s71(5)(j) has already been introduced in *Statutes Amendment and Repeal (Budget 2015) Bill 2015 (Bill)* and is proposed to take effect on assent of the Bill.

Below is the text of the proposed new s71(5)(j):

A transfer of property to a body established wholly for charitable or religious purposes where the Commissioner is satisfied that the property will not be used (wholly or predominantly) for commercial or business purposes (including on the basis that this paragraph will not apply even if any revenue, income or other benefit arising from the use of the property for commercial or business purposes will be applied towards the charitable or religious purposes of the body);

If and when the Bill is passed and receives assent, it means that transfers of property in SA to bodies that are established wholly for charitable or religious purposes may be exempt. It will assist with charities obtaining exemption as the transfer need not be a gift without consideration (as is currently required for the transfer to be exempt from duty). However, there will be restrictions on the use of the property, ie the transferee cannot use the property for commercial or business purposes. Issues such as whether the use of the property is for commercial or business purposes will need to be considered. This is not currently a requirement for a transfer to be exempt from duty.

Taxation Legislation Amendment Act (No.2) 2015 (WA) and OSR(WA)'s Revenue Ruling – new duty exemption rule for charities

The *Duties Act 2008* (WA) (**Duties Act**) was amended by the *Taxation Legislation Amendment Act (No.2) 2015* (WA) to make changes to the charitable exemptions available under the Duties Act.

The Office of State Revenue (WA) subsequently issued Circular 13 to explain the amendments. [Click here](#) to refer to the link for Circular 13:

The amendments came into effect on 10 March 2015. The new law on charity exemption, means that charities seeking a WA duty exemption would have more requirements to comply with than previously. For example, issues such as whether the charity is a 'relevant body' (body excluded from the charity exemption), and whether the charity can apply for a 'beneficial body' determination (if necessary) would need to be considered.

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NSW FAIR TRADING ASSUMES RESPONSIBILITY FOR THE CHARITABLE FUNDRAISING ACT 1991

As of 1 July 2015, responsibility for administering the *Charitable Fundraising Act 1991 (Act)* moved from the Office of Liquor, Gaming and Racing to NSW Fair Trading. The Act outlines how a charity may legally undertake fundraising activities in NSW.

Information relating to charitable fundraising is still in the process of being migrated from the website of the Office of Liquor Gaming and Racing. However, from 1 July 2015, NSW Fair Trading should be a charitable organisation's first point of contact for charitable fundraising queries.

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RECENT DEVELOPMENTS WITH THE ACNC

We are aware of the following initiatives and action in relation to the ACNC:

- Recent comments from the Federal Government have given the ACNC some more certainty in relation to its future (which is still unclear at this stage) and this has prompted the ACNC to renew its attempts to harmonise its requirements with those of the states and territories. In this respect:
 - The Consumer Affairs Ministers of all states and territories have carried a motion aiming for greater harmonisation with the ACNC, and the ACNC is hoping to conclude additional bilateral relationships with individual states and territories;
 - Charities would welcome a situation where ACNC registration automatically created entitlement to state and territory revenue exemptions, but this remains some way off and in any event some state exemptions also have usage tests that would still need to be complied with; and
 - A renewed appetite for increased harmonisation also opens the way to achieving national regulation of charitable fundraising, that remains a constant red tape irritant for many charities.
- The ACNC is also conscious of the difficulties charities registered as companies limited by guarantee under the Corporations Act have experienced in relation to interaction of information between ACNC and ASIC particularly arising from ASIC records not being up to date. For charities that are companies, the ACNC is hoping to achieve a situation where the ACNC register will be the 'ultimate source of truth' and any out of date director information held by ASIC will be clearly signposted as such.
- The ACNC and the ATO are aware of the need for improved data sharing to ensure that both the Australian Business Register and the ACNC register are kept up to date.
- New guidelines on public benevolent institution status will in future become the subject of an ACNC Commission Information Statement. When that is issued, likely later this year, the ATO will withdraw its current ruling on public benevolent institutions.
- In relation to annual information statements, we are aware that the ACNC has analysed frequent error areas in statements already lodged and the ACNC will be issuing a paper discussing errors that commonly arise. Also, the ACNC is preparing a consultation paper on the form of the 2016 AIS that is likely to come out by the end of August followed by a three month discussion period.

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