

22 July 2011

Dear CEOs / Members,

Re: ATO bill to change DGR status

Many of you would be aware that the ATO plans a change to be made to the tax act, applying an "in Australia" special condition for charitable entities with Deductible Gift Recipient (DGR) status. In the minds of the Treasury officials, the effect of this is nothing new and simply returns the DGR regimen back to its status quo, pre 2008. There will be no new arrangements for compliance or auditing.

ACFID met with the Treasury on July 14th to clarify some of the issues. Treasury is happy to field calls from agencies with questions and has provided some names and phone numbers to that end. Those names are at the bottom of this letter.

Background

An agency doing domestic charitable works will set up a "fund" that qualifies for and becomes registered for DGR status. Not the agency but the fund. The agency itself would seek tax exempt status. If the fund is to do work overseas and wishes to provide tax deductible receipts it will get a different kind of DGR through the Overseas Aid Gift Deductibility Scheme (OAGDS) - administered by AusAID.

A single fund may have several DGR listings depending on where it does its work. Members will be aware that they keep separate that money donated for domestic work from that money donated for overseas work.

The High Court's findings in the Word Investments case (2008) caused a very liberal understanding of the tax act to come into effect. It meant that an agency would still be able to qualify for a tax exempt status if it merely operated in Australia. Also, the domestically operating DGR fund would be able to take tax deductible donations and pass the money to another fund that had its activities overseas.

In the mind of the Commissioner, this was contrary to long held understanding and practice. The tax office wants to put things back to how they were, as the tax office understood them.

Proposal

The taxation regimen is always very complicated and ACFID does not hold itself out as an expert in this area. Agencies with specific questions or concerns should make inquiries of the government or their own specialist advisers to satisfy themselves as to how it may affect them.

The Assistant Treasurer has released a consultation draft with a closing date of 12 August 2011. Treasury hopes for the changes to become effective in early 2012.

At the highest level, we would describe the impact being that only overseas aid funds can pass money to other overseas aid funds. OAGDS funds will only be able to pass their money to similarly qualified funds. Domestically registered DGR funds will no longer be able to pass money to OAGDS funds, or others doing work overseas.

The proposal is to use "in Australia" special conditions. The tax office believes this will return the rules governing charitable agencies and DGR funds back to the pre-Word Investments findings - 2008. The tax office has provided some examples of both agencies and funds that would and would not be

compliant. These examples start on page 9 of the exposure draft – attached to the email that accompanies this letter.

The Treasury staff advise that there will be no new compliance or auditing undertaken different from before. They're just concerned to put things back to how they were. With a new national regulator coming into existence, ACFID feels that that may change over time. In the first instance, however, the tax office has no plans for more auditing.

What this means for ACFID

As long as none of our readers has relied upon the High Court's interpretation they will remain compliant as before. If an agency has collected money in one of its funds that has domestic DGR and channelled that money to a fund with OAGDS, that will no longer be permitted. At the agency level, while unlikely, if a member has changed its management structure or staffing in some key respects (see the examples) that may disallow its tax free status.

Any change always raises some considerations.

- With all best intentions, little-by-little mistakes creep in. Some agencies in the sector may well have received DGR for their fund many years / decades ago and over time moved some of their activities into the international arena without seeking OAGDS. This was not permitted before and will not be permitted again after the changes take effect.
- Another issue is that of issuing receipts. When an agency receives a donation the receipt should be issued in the name of the fund, not of the agency. If agencies with OAGDS funds wish to confirm the name of their fund, they can find them on the AusAID website. On that website, search "oagds", the first option is "NGO's tax deductibility" and then the second list is that of funds currently approved.

The tax office has provided the following names as contacts.

Chris Leggett

Fiona McLaren (02) 6263 3010

Felicity O'Brien (02) 6263 2096

Based on the advice of the Treasury staff, ACFID has no plans to lodge a submission. If any organisation has legal advice contrary to that advice received from Treasury, we would be very interested to hear from you.

Yours sincerely



Marc Purcell
Executive Director