

Charity Law Bulletin

13 May 2009

The 2009 Federal Budget included some small print which has not hit the headlines. Below are highlights you may be interested in:

Amendments to Fringe Benefits Tax

The Government will amend the fringe benefits tax (FBT) law to ensure that donations to deductible gift recipients (DGRs) made under salary sacrifice arrangements do not result in an employer incurring an FBT liability, with effect from the 2008-09 FBT year. This measure has an ongoing unquantifiable revenue impact.

The changes will align the tax outcome of donations to DGRs made under salary sacrifice arrangements with donations made personally by employees or under Workplace Giving arrangements.

Triennial review of the deductible gift recipient registers

The Government will provide a mechanism to conduct a triennial review of the guidelines for, and organisations on, the four deductible gift recipient (DGR) registers, with effect from the 2009-10 income year. The reviews will provide a mechanism for the Government to ensure the continued relevance and benefits of the Government's policy objectives for the registers. The review is designed to bring the governance of the registers in line with those DGRs that are endorsed and accountable to the Australian Taxation Office. This measure has an ongoing unquantifiable revenue impact.

The registers list those eligible cultural organisations, environmental organisations, harm prevention charities and overseas aid organisations which can receive tax deductible donations, and are jointly administered by the Minister of the relevant department and a Treasury Minister.

The Government will also make a minor change to the taxation secrecy disclosure rules to ensure that participating agencies can share any necessary information in support of the reviews.

Updating the list of deductible gift recipients

Since the Mid-Year Economic and Fiscal Outlook 2008-09, the following organisations have been approved as deductible gift recipients (DGRs):

- ACT Region Crime Stoppers Limited;
- Australasian College of Emergency Medicine;
- Diplomacy Training Program Limited;
- Leeuwin Ocean Adventure Foundation Limited;
- Royal Institution of Australia;
- Yachad Accelerated Learning Project Limited, until 30 June 2009;
- PWR Melbourne 2009 Limited (Parliament of the World's Religions), until 1 January 2010;
- Bunbury Diocese Cathedral Rebuilding Fund, until 19 December 2010;
- St George's Cathedral Restoration Fund, until 31 December 2010;
- Grattan Institute, until 5 March 2011; and
- 2009 Victorian Bushfire Appeal Trust Account, until 6 February 2014.

In addition, there were also:

- 25 admissions to the Register of Environmental Organisations;
- 71 admissions to, and 10 removals from, the Register of Cultural Organisations;
- 4 admissions to the Register of Harm Prevention Charities; and
- 5 admissions to the Overseas Aid Gift Deduction Scheme.

Taxpayers may claim an income tax deduction for certain gifts of money or property to DGRs. This measure has an estimated ongoing cost to revenue of \$91.8 million over the forward estimates period. This represents an increase of \$81.7 million over the forward estimates since the Updated Economic and Fiscal Outlook 2008-09.

Reforming the 'in Australia' requirements that apply to tax exempt entities

The Government will amend the 'in Australia' requirements in Division 50 of the Income Tax Assessment Act 1997 to ensure that Parliament retains the ability to fully scrutinise those organisations seeking to pass money to overseas charities and other entities. This measure has an ongoing unquantifiable revenue impact and will have effect from the date of Royal Assent of the amending legislation.

A recent High Court of Australia decision [*Commissioner of Taxation of the Commonwealth of Australia v Word Investments Limited*] held that charities may be pursuing their objectives principally 'in Australia' even where they merely pass funds within Australia to another charitable institution that conducts its activities overseas.

The measure will reverse the decision that charities and other income tax exempt entities can direct funds to overseas projects outside the current restrictions. The measure will reinstate the principles underlying the current integrity rules.

Additional prescribed private funds

Since the Mid Year Economic and Fiscal Outlook 2008-09 (MYEFO), the Government has approved 17 funds for prescription as prescribed private funds (PPFs), and one fund has been declared no longer to be a PPF. Funds approved as PPFs since MYEFO have an ongoing estimated cost to revenue of \$33.3 million over the forward estimates period. This represents an increase of \$12.8 million over the forward estimates since the Updated Economic and Fiscal Outlook 2008-09.

PPFs allow businesses, families, and individuals to establish and donate to a charitable trust of their own, for the purposes of disbursing funds to a range of other deductible gift recipients.

Special Disability Trusts - changes to the taxation of unexpended income and the capital gains tax main residence exemption

The Government will ensure that the unexpended income of a Special Disability Trust is taxed at the relevant beneficiary's personal income tax rates rather than automatically at the top personal tax rate plus Medicare Levy, with effect from the 2008-09 income year.

The Government will also extend the capital gains tax main residence exemption to include a residence that is owned by a Special Disability Trust and used by the relevant beneficiary as their main residence, with effect from the 2009-10 income year.

This measure has an ongoing cost to revenue which is estimated to be \$4.0 million over

the forward estimates period.

The measure delivers on the Government's commitment to help support people with severe disability, their families and carers. It will further assist immediate family members and carers to make private financial provision for the care and accommodation needs of people with severe disability.

Australian disaster relief funds

The Government has extended the general deductible gift recipient (DGR) category for Australian disaster relief funds to allow a Treasury minister to declare an event to be a disaster for tax purposes. In addition, public benevolent institutions, which must normally operate for direct relief efforts, will also be able to establish Australian disaster relief funds for longer-term recovery and community reconstruction efforts. This measure has no revenue impact.

Taxpayers may claim an income tax deduction for certain gifts of money or property to DGRs.

Foreign employment income

The Government will better target the income tax exemption for foreign employment income, with effect from 1 July 2009. The exemption will apply to income earned as an aid worker, a charitable worker, under certain types of government employment or on projects that are in the national interest. This measure will have an estimated gain to revenue of \$675.0 million over the forward estimate period.

The measure forms part of a package of measures to improve fairness and integrity in the tax system.

Currently, certain foreign employment income earned by Australians working overseas for a continuous period of 91 days or more is exempt from income tax. The original intent of this measure was to relieve double taxation, however, in practice little foreign tax may actually be paid on the foreign income concerned.

Instead, foreign employment income will generally become taxable and taxpayers will be entitled to a foreign income tax offset for foreign tax paid on the foreign employment income. This will relieve double taxation for those individuals.

The above are edited extracts from the Budget papers. To discuss the implications of these announcements, please contact:

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