

CHARITIES & the 2011-12 Budget

News Update

Establishment of the Australian Charities and Not-For-Profits Commission (ACNC)

The Federal Government has announced the establishment of the Australian Charities and Not-For-Profit Commission to regulate the not-for-profit sector from 1 July 2011.

Over four years \$53.6 million in funding will be provided with the intended start date being 1 July 2012.

To achieve this start date an Implementation Taskforce will be established on 1 July 2011 to ensure the commission is ready for the 2012 start date. The leader of the taskforce is expected to become the first Commissioner. The Commissioner once appointed will report directly to Parliament via the Assistant Treasurer.

The Taskforce will be responsible for consulting with the public, the NFP sector and government agencies on the new general reporting framework and new public information portal.

The Australian Taxation Office will also from 1 July 2011 structurally separate its current role of determining the endorsement status of charities from the administrative role of enforcing the tax concessions available to the non profit sector to start the process of delineating the roles.

The ACNC will be assisted by the ATO through corporate assistance (i.e. the Commission will use the IT, human services, financial services and other related functions of the already established ATO systems to reduce costs).

The Federal Government has also indicated it intends to undertake negotiations with the States and Territories to establish national regulation of the sector in an attempt to reduce red tape and to introduce the concept of 'report-once use-often'.

What will the ACNC do?

The ACNC will initially be responsible for

- Providing education and support to the sector;
- Implementing a 'report-once use-often general reporting framework for charities; and
- Implementing a public charities information portal by 1 July 2013.

The Commissioner of the ACNC will have the sole responsibility for the determining the legal status of all charitable, Public Benevolent Institution (PBI) and other not-for-profit registrations for all Commonwealth purposes.

What impact will the ACNC have?

Only time will tell if the ACNC reduces red tape or instead imposes a new layer of compulsory reporting for NFPs without achieving any Government reporting offset. At this stage it is still difficult to determine the direct impact the Commission will have on the sector.

What is certain though is that the Federal Government expects to increase tax revenue from the NFP sector by \$41million over a four year period. This indicates either ACNC or the ATO will be undertaking significant compliance activities across the sector to achieve this result.

Salary Packaging

There was no change made to either the \$30,000 or \$17,000 FBT caps.

Meal entertainment and entertainment facility leasing fringe benefits have also remained un-touched.

Services include:

- FBT / GST Compliance
- ATO Endorsements
- Accounting for NFPs
- Salary Packaging
- Fleet Management Services

Better Targeting of Not-For-Profit tax concessions

The Federal Government announced that reforms will be made to the tax concessions provided to not-for-profit organisations to ensure that tax concessions are only given on funds that are used to further 'altruistic purposes'.

The budget papers and associated Press Releases have outlined that it is the intention of the Government to tax any unrelated commercial activities that are not directed back into the NFP's altruistic work. This means income tax will be required to be paid on unrelated commercial activities where the earnings are retained in the commercial undertaking.

NFPs will also lose FBT concessions, GST concessions and DGR concessions in relation to those non related commercial activities.

It has been emphasized that non profit entities will not pay income tax on their unrelated commercial activities where the profits are directed back to their altruistic purposes. This is even the case where a charitable operation is conducted commercially such as a non profit hospital, op-shops that sell second hand household items and clothing at discounted prices to those in charitable need, NFP Childcare Centres, and businesses whose purpose is to provide meaningful employment to disabled persons.

The reforms will also not affect NFP entities carrying on small-scale and low risk activities such as lamington drive fundraisers, school fetes, and leasing out of church halls.

Existing commercial activities of non profit organisations will be initially able to continue to use the tax concessions. The changes will apply to all non related commercial ventures commencing after 7.30pm 10 May 2011 and apply from 1 July 2011.

The Government has indicated it intends to consult on the best way to phasing out the concessions on existing activities with the plan to phase the concessions out over time.

What does this really mean?

The winners in this situation are lawyers and accountants. Unrelated business (or commercial) activities income tax will be complex and costly as a result of definitional arguments and interpretations. From the information provided it is unclear who the real target is in this announcement as all NFPs will argue they only ever undertake commercial activities in the furtherance of their charitable purposes and so this announcement only results in an additional compliance burden with the onus of proof falling back on the NFP.

Better Targeting of Not-For-Profit tax concessions (cont)

The Government announcement also stated NFPs with a government service delivery contract as at 7.30pm on 10 May 2011 can continue to use their relevant tax concessions in 'support of that contract'.

This statement is alarming!

It means all NFPs will need to carefully consider the impact of entering into any new government service delivery contract as they may find in the future that the tax consequences (income tax, FBT and GST) of the contract will have detrimental effects on the organisation.

Statutory Definition of 'Charity'

The Federal Government has announced that it intends to consult on and introduce a statutory definition of 'charity' for all Commonwealth laws and agencies to take effect from 1 July 2013.

It is anticipated this definition would eventually be adopted by all Australian jurisdictions to move to a National common approach on defining what is a charity.

The budget has allocated \$2.9 million over four years to the ACNC to develop new guidance to the sector, implement system changes and '*reassess the charitable status of entities based on the new statutory definition*'.

By implication, this means all NFPs may need to reapply to the ACNC in the next few years to keep their charitable endorsements as they would be subject to the new statutory definition.

It has been indicated that the statutory definition of charity will be based on the 2001 *Report of the Inquiry into the Definition of Charities and Related Organisations*. The Government also indicated that recent case law such as *Aid/Watch Incorporated v Commissioner of Taxation* will be taken into account when determining the definition.

In light of recent Senate enquiries, it is anticipated that a 'public benefit test' will also be addressed in this development of a statutory definition.

Call us on 1300 737 062 if you have any questions or go to www.ctas.net.au

FBT

The Government has now released details of the previously leaked FBT changes to motor vehicle fringe benefits. The changes are significant and there are winners and losers.

The first issue to be aware of is that the changes do not apply to vehicles you owned or leased prior to 7.30pm on 10 May 2011. This means you will continue to calculate FBT values on those vehicles using the 'old' statutory rates until those vehicles are disposed of.

The winners in this announcement (apart from the environment) are drivers of vehicles that travel less than 15,000 kms per annum. These vehicles will have a decreased taxable value as they will use a statutory rate of 20% instead of 26%,

The losers are drivers of vehicles that travel more than 25,000 kms per annum. The below table shows the staggered changes to the statutory rate for vehicles travelling 25,000 kms or more per annum.

Distance travelled during the FBT year (1 April – 31 March)	Statutory rate (multiplied by the cost of the car to determine a person's car fringe benefit)				
	Existing contracts	New contracts entered into after 7:30pm (AEST) on 10 May 2011			
		From 10 May 2011	From 1 April 2012	From 1 April 2013	From 1 April 2014
0 – 15,000 km	0.26	0.20	0.20	0.20	0.20
15,000 – 25,000 km	0.20	0.20	0.20	0.20	0.20
25,000 – 40,000 km	0.11	0.14	0.17	0.20	0.20
More than 40,000 km	0.07	0.10	0.13	0.17	0.20

What does this mean?

There are a number of implications as a result of this change. The first is for organisations that provide vehicles where these vehicles from an FBT perspective are provided 'on top' or in excess of the \$30,000 cap per employee. For these employers, this change will most likely result in an increase in your FBT liability.

For employers that keep vehicles within an employee's \$30,000 FBT cap, you will be required to change your calculation methods to ensure that the new statutory rates are reflected. Some employees will be grateful for the change, and others may be of the view they are 'worse off' as a result of not being able to salary package as many benefits as before.

There is still the option for employers to use the Operating Cost method to calculate the FBT value of a vehicle. To utilise this method you are required to have a valid 12 week log book that identifies the business and private use of the vehicle.

Under this method you are also required to track individual vehicle costs so that it is possible to value the benefit of the vehicle.

We have an online solution that assists organisations with log book compliance, driver allocations and FBT calculations. If you would like further information about this please do not hesitate to contact us.

FBT Calculator

We have created an online calculator that can assist your organisation with understanding the impact of the changes to the FBT rules.

Go to www.ctas.net.au and follow the links to the Federal Budget 2012 page for further information.