

FUND RAISING EVENTS

Contributions where there are associated minor benefits

DGR's have experienced difficulty with some fundraising events because of the denial of a tax deduction where the cost of participating includes a minor benefit to the donor. The law has now been amended to provide appropriate recognition for the administrative and promotional difficulties the past situation has presented. A tax deduction can now be claimed by the donor where –

- the value of the contribution is at least \$250, and
- the minor benefit received does not exceed \$100, or 10% of the value of the total contribution, whichever is less.

These tax deductions are limited to individuals and cannot be claimed by companies. Such concessions are available only when the contribution is made to a DGR. The gift may be either money or property (where property is covered by special rules regarding valuation).

The value of the minor benefit must be consistent with market value.

TAX DEDUCTIBLE GIFTS CAN NOW BE SPREAD

The Taxation Laws have been amended to enable tax deductible donations to DGRs to be spread over more than one tax year. The law now allows cash and non-cash gifts to be spread over several tax years, up to five years, provided the taxpayer elects at the time of lodging the initial tax return the manner in which the deduction is intended to be claimed. There are also provisions for modifying that election in a subsequent tax year.

FBT – REMOTE AREA HOUSING

There is now greater relief for remote area accommodation. A charity delivering services outside of Perth may provide remote area housing as a significant exempt **benefit** to employees if it passes the three tests specified under Section 58ZC. It is essential that the employer owns or leases the property. Remote Area Housing **assistance** remains available where the employee owns or leases accommodation Under Section 60 FBTA 1986 there is a 50% reduction in taxable value of rent or mortgage interest. This is a significant benefit in an effective salary package. Contact our office for assistance in this area.

MUTUALITY PRINCIPLE UNDER THREAT

There are many entities which are not charities but are nevertheless Not-for-Profit community organisations. This includes service clubs, many sporting clubs and other community groups. In a recent Federal Court case known as the Coleambally case the issue of exempting mutual income from taxation was subject to serious challenge.

The Court held in the Coleambally case that as the entity precluded members from benefiting from a distribution of any surplus assets in the event of winding up, then the organisation cannot be for their mutual benefit. As such the principle of mutuality cannot apply.

The longstanding position regarding mutual income is now under serious threat as a result of this decision.

The Tax Office subsequently announced that it has been their long term practice of allowing Not-for-Profit organisations which cannot distribute surplus assets to members upon winding up to rely upon the mutuality principle to exclude certain receipts from their taxable income. The ATO have stated that they will continue to apply their original position pending the decision of the Coleambally case when it goes to the full Federal Court on appeal in the near future.

PRESCRIBED PRIVATE FUNDS

The Federal Government introduced a provision for the establishment of “prescribed private funds” some three years ago. This structure allows the wealthy philanthropist to set up his own privately controlled DGR fund. It provides the philanthropist with a tax deduction for the initial donations to his private fund plus any additions to the fund. There is an obligation for the income from the prescribed private fund to be donated to endorsed DGR funds only. Subject to that provision it provides a significant opportunity for wealthy individuals to pursue their philanthropic objectives.

We can assist in the setting up of such a fund if required.



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NEW ITEC ENDORSEMENT RULES

Hot off the Press

New rules for Income Tax Exempt Charity (ITEC) endorsement apply from 1 July 2005. There are significant issues emerging from these changes. They will affect all entities who have current ITEC endorsement as well as entities that have not, as yet, sought endorsement.

In summary, the new issues are:

- ITEC endorsement essential to obtain any other Commonwealth tax concessions.
 - Income Tax Exemption
 - GST Charity Concessions
 - GST Religious Concessions
 - Deductible Gift Recipient (DGR) benefits
- The term “Charity” has been broadened by legislative change. It is extended to include –
 - Non-Profit Child Care Service Providers
 - Contemplative Religious Orders
- ITEC endorsement has previously been open to self-assessment procedures. The process will be changing to impose a closer scrutiny on “Charitable” eligibility. Charities’ public documents, particularly their Constitutions, will be examined to determine eligibility as a Charity.
- A Charity’s “public institution” status appears to be an area of close interest.

The ATO have just released, through its “Non-Profit News Service Edition 0071” – a whole raft of documents relating to Income Tax Exempt Charity (ITEC) endorsement.

The ATO position is that religious institutions will **all** require ITEC endorsement. While there may be isolated exceptions to that principle, we affirm the ATO emphasis. ITEC endorsement does not impose any undue obligations on an entity but it ensures access to the tax concessions that are available. The tax concessions include exemption from an obligation to lodge an Income Tax Return.

The ATO have arranged to provide information seminars in each State, commencing from 19 July 2004. In WA the seminars will be:

Perth South	23 Aug.	Technology Park, Bentley
Perth CBD	24 Aug.	Alexander Library
Perth North	25 Aug.	Herb Graham Recreation Centre, Mirrabooka
Bunbury	26 Aug.	Lord Forrest Hotel

Each seminar will run from 9.30 am to 12 noon. ATO will be providing more information by circular to currently endorsed ITECs. To register for a seminar phone ATO on 1300 130 248.

The ATO are also providing additional information on their website at www.ato.gov.au/nonprofit

SUPPORT AVAILABLE

Add-Ministry has consistently provided assistance to charitable and religious institutions in the whole range of tax compliance matters. This includes assistance with ITEC endorsement and other ATO registrations. We provide training seminars and also individual entity assistance relating to reviewing constitutions and other public documents.

We were aware of the pending changes. As a consequence we have been in discussion with WA Council of Social Services (WACOSS) and ATO relating to the coming seminars. We anticipate working in close conjunction with WACOSS relating to the provision of sector-specific seminars relating to the coming changes for ITEC. These seminars will also include assistance relating to the coming PBI endorsement changes (see below).

The enclosed leaflet sets out details of the range of services Add-Ministry can provide.

PUBLIC BENEVOLENT INSTITUTION (PBI) CHANGES

The same taxation legislation that brought in the changes to ITEC endorsement also introduces tighter rules regarding PBI endorsement. Again the basic principle is that self-assessment will no longer apply.

ATO have already applied a significant tightening of endorsement procedures for ITEC and PBIs as they prepare for the growing emphasis on increased regulatory control. In the forthcoming review of PBIs we understand ATO will be paying particular attention to –

- Your Primary Purpose evidenced by your constitution – with particular interest in your “Objects” clause and your activities.
- Your “public institution” status (see below).
- Your public documents. This includes publicity leaflets, information on your website and any other published material all of which should reflect your Primary Purpose.

To qualify as a PBI an entity needs to demonstrate –

- That it is providing direct benevolent relief.
- That it is an “Institution”.
- That it is “Public”.

To qualify under the “Benevolent Relief” heading an entity needs to demonstrate it is actively and predominantly involved in the relief of poverty, sickness, suffering, distress, misfortune, disability, destitution or helplessness in areas which arouse compassion within the Community.

In recent instances we have observed ATO appear to be setting themselves up as the determiner of what constitutes “compassion within the Community”. It appears likely that this area of interpretation will be subject to closer scrutiny and as a consequence some testing in the Courts. We urge all PBIs to review their public documents as a part of this review process during the coming months.

Tax Ruling TR2003/5 “Income Tax and Fringe Benefits Tax: Public Benevolent Institutions” sets out the ATO position in respect to endorsement as PBIs for DGR and FBT concessions.

IS YOUR ENTITY A “PUBLIC INSTITUTION”?

In Taxation Law the term “public” has been interpreted by the Courts as referring to either the public in general or a significant section of the public. Therefore “public” could include “all of the people in Western Australia”. It could also include “all registered Pharmacists in Western Australia” or “all members of the Anglican Church in Western Australia”. In this context the registered Pharmacist or Anglican Church members would be seen to be a significant section of the public. We do not anticipate there will be any change in this interpretation as it is well established law.

When however you add the further dimension of whether your entity is an Institution, the position becomes more complex. As stated above a PBI needs to satisfy the three tests of being “public”, providing “benevolent” services, and also being a “institution”. The meaning of “institution” has not been subject to significant examination by the Courts. In the cases under examination (Christian Enterprises Ltd -v- Commissioner of Land Tax (1968) and Pamas -v- DCT 23ATR189) the decision of the Courts does not set absolute criteria. However it does emphasise the following issues –

- Ultimate control through a reasonable membership base. While numbers themselves do not appear to be the only issue, control by a very small group appears to emerge as an important test. Therefore an institution which is controlled by a small family group or group of close friends may well fail the “institution” test as it may be seen to be not “public” enough in terms of control.
- Public accountability is becoming a significant issue. Both large and small charities need to be conscious of their public responsibilities, especially those entities incorporated under private Acts of Parliament.
- An institution is expected to be a significant body in terms of its support base. It appears that it is not necessarily the end result of the charitable or benevolent activities that is the issue, but the method of control. It appears that it will no longer be sufficient to demonstrate that the activities of the ITEC or PBI are for some public benefit, but that there is reasonable public accountability and/or public control.

We are aware of a number of very effective compassionate charitable and benevolent entities which have a small membership base and we are concerned about the impact of the coming interpretations on their future status. We are conscious that the members of some of these organisations believe that their very compactness is what provides the significant energy and commitment to meet their benevolent or charitable objective. Over many years we have seen a very responsible approach to public administration demonstrated by ATO and have no reason to believe this will change. However the new rules will take some settling down for the whole Not-for-Profit sector and for the ATO. We are concerned about the cost that may be imposed during this adjustment process.