

Audit Requirements

Australian accounting and auditing standards have been subject to major changes in recent months. Australian Accounting Standards have been changed to ensure compatibility with International Standards. This in itself imposes substantial changes in reporting obligations—particularly for larger not-for-profit entities.

In addition to this auditors have been placed under much greater obligations in respect to the conduct of an audit. Even with quite small organisations the audit obligations are much more onerous and require a detailed approach to reviewing internal controls and procedures in organisations. This inevitably will increase the cost of audit and increase the professional risk imposed upon auditors. The tension this places on those preparing financial reports and those auditing them in the not-for-profit sector is significant.

ATO Publications

ATO have just issued a new version of 'Income Tax Guide for Non-Profit Organisations'. This publication is identified by ATO as Publication NAT 7967-09.2006. The paper copy can be ordered by phoning ATO on 1300 720 092. Alternatively, you can order a paper copy online from ATO.

They have also issued an updated version of the Gift Pack. The updated version includes a section on the new Deductible Gift Recipient categories. This publication is identified as NAT 3132.

News Flash

3rd November case—Commissioner of Taxation v Word Investments Ltd [2006] FCA 1414. Justice Sundberg puts the cat back amongst the pigeons on commercial operations of Charities.

Last year ATO issued TR 2005/21 to clarify eligibility for Tax Concessions Charity status. At paragraph 128, it states that "If the purpose of a non-profit organisation is carrying on a commercial enterprise to generate surpluses, it is not charitable."

This seemed to give a clear message to charities not to pursue commercial purposes to raise funds. Such activities should be conducted in a separate organisation or Trust. Nevertheless, Justice Sundberg of the Federal Court declared last week that Charities (including churches, schools and welfare organisations) can raise funds through business activities and remain tax exempt.

The case involved a funeral business conducted by a non-profit company to raise funds for Bible translation. Our view is that this decision seems inconsistent with settled case law that underpins TR 2005/21 such as Stratton v Simpson 1970; Oxford Group v Inland Revenue Commissioners (1949); Royal Australasian College of Surgeons v Commissioner of Taxation (1943); Gumbangerrrii v Nambucca Council (1996) etc

The W^ord 'Decision' places a cloud over the strength of the ATO position but it may be overturned in the High Court if challenged.

In our view, it still may not be safe for a Charity to pursue commercial enterprises simply to raise money.



Locked Bag 5
BAYSWATER WA 6933

Phone: 08 9271 1844
Fax: 08 9271 1944
addministry@hardings.org.au



Newsletter



Work Choice – The New Rules

The Australian Government's new industrial law rules came into effect in March this year. They introduce a significant change in industrial relations requirements. In some areas they overrule current state laws.

Enclosed with this current newsletter is a detailed summary of the new rules. Charities and church organisations should carefully read this information as there are areas here where a different approach to record keeping may be required.

Of particular significance are the new rules relating to what was previously called sick leave.

November 2006

Vehicle Trade-Ins

Where a charitable entity trades in a motor vehicle on a replacement vehicle there are two transactions for GST purposes. There is the purchasing of a new vehicle and the sale of the old vehicle by way of trade in. This means that the trade-in price of the vehicle being sold is not an offset for GST purposes but a separate GST sale and GST law has an application. In many instances this means that GST needs to be taken into account in negotiating the trade-in arrangements and shown on the tax invoice the charitable institution needs to issue. There will be other instances where, because of the GST concessions for charities, that GST will not need to be charged.

ATO have issued a fact sheet providing an explanation of the range of issues in this area for charities. This is available on the ATO website under the heading "NAT 12353".

Particular attention should be paid to the section on Page 1 of the Fact Sheet headed "How do the non-commercial rules affect my motor vehicle trade in?"

Tax Deductible Scholarship Fund

As mentioned in our July Newsletter the Income Tax Assessment Act (ITAA) was amended in June 2006 to introduce several new tax deductible funds. One significant benefit relates to a tax deductible fund to provide scholarships or bursaries that promote education. Such scholarships or bursaries are available for all areas of education from pre-school to tertiary level. However there are a number of significant conditions.

The Fund is available only to Australian citizens or permanent residents. It is also required that it is open to persons in a substantial population area (a region of at least 200,000 people). It must be awarded for reasons of merit or equity and it must promote the recipient's education. It will normally only be available for an approved Australian education course.

Under the guidelines it is possible, but difficult for a **present student** at an educational institution to be eligible. Eligibility would be dependent upon them competing with all other applicants on an open basis. There is significant potential here for educational institutions within the charitable or religious sector to expand benefits to **prospective students** and provide supporters of the educational institutions with a further opportunity for obtaining a tax deductible benefit.

Land Tax Exemption

An important WA case for charities is the recent Brightwater Care case heard before the State Administrative Tribunal. Brightwater Care Group Inc. (formerly Home of Peace) held land on which they had originally operated an Aged Care Facility. The buildings had been demolished and the land was unused for a period of time. The intention was (and is) to build new aged care facilities on the same property.

The Land Tax Office denied exemption of the land as it was not being used for a charitable purpose at 30th June in the relevant tax year. The taxpayer argued that the land was exempt as it was used exclusively for public charitable or benevolent purposes on the grounds that this was the past use and the intended future use. The State Administrative Tribunal agreed and disallowed the impost of land tax. They ordered that the land tax that had been paid was to be refunded to Brightwater.

This decision has given greater clarity to the meaning of charitable purpose as it identified the intent. This

was important in the particular circumstances of the case but no doubt will have an application elsewhere also.

The case report can be located as Brightwater Care Group Inc. v Commissioner of State Revenue (2006) WASAT276.

Fringe Benefits Tax Changes

Tax Law Amendment (2006 Measure No 5) Bill has now been approved by Parliament and has legal effect. Effective from 1/4/2007 (The beginning of the next Fringe Benefits Tax year) the following changes apply-

- The minor benefits exemption threshold has been increased from \$100 to \$300.
- Increasing the reportable fringe benefits threshold amount from \$1,000 to \$2,000. This means that next year fringe benefits below \$2,000 do not need to be declared on PAYG summaries.
- Increasing from \$500 to \$1,000 the reduction of taxable value that applies to eligible fringe benefits (in-house fringe benefits and airline transport fringe benefits).
- Change the definition of "remote" for purposes of calculating the shortest practical route between a significant population centre and the remote location. The change provides that where the shortest practical route involves travel by water that the distance by water is to be measured as double the distance by land.

Tax Law Amendment (2006 Measure No 3) Bill includes a provision for excluding from reportable fringe benefits, costs incurred in providing security to ensure the personal safety of an employee or associate arising from the employee's employment. The amending legislation is backdated to commence from 1 April 2004.

As there are conditions in respect to this new matter it is important that an affected employer refers to the amending Act at chapter 8.