

withdrawn from the town. As a consequence, local people entered into an arrangement with Bendigo Bank to provide banking services and established a not-for-profit entity for this purpose.

The ATO sought to assess the net income of the entity. The Federal Court has held in favour of Wentworth.

The ATO advise that they are considering the implications of the decision and may appeal.

Rates Exemption – Retirement Village:

A recent decision by the WA State Administrative Tribunal (SAT) considered an objection by Retirees WA (Inc) against rates imposed by the City of Belmont on a retirement village in Rivervale.

In a complex case which involves a number of different legal issues to the Uniting Church Homes case of 2005, SAT determined that the land in question was rateable land.

In this case the significant facts were:

1. There was a joint venture between Retirees WA and the WA Housing Authority.
2. To be eligible for accommodation in the retirement village a potential resident was required to be a member of Retirees WA.

The Tribunal held that the Housing Authority was the owner of the land but in the particular circumstances was not exempt on the grounds of “public purpose”. SAT also held that the land was used for a scheme for the relief of the needs of the aged BUT was not held for public benefit because of the prerequisite of membership in Retirees WA. These were salient points in the hearing and the rate notice was confirmed.

Companies Limited by Guarantee:

In earlier issues of the newsletter we advised that the Corporations Act had been amended, primarily to provide relief to smaller not-for-profit companies from

the audit provisions. It now appears that there are difficulties with the amendments made to Corporations Act. As a consequence there is still an obligation for a company to appoint an auditor. As such it is our understanding that the auditor would need to conduct an audit because of the auditor’s obligations under the Act. Amendments to the legislation are proposed but this is the current position. Given the recent federal Election, it is not likely the matter will be remedied in 2010.

Publications available:

Voluntary Treasurers’ Handbook —

Hard copy — 59 pages\$50.00

Missionary Tax Guide—2010

Hard copy— 47 pages \$50.00

E-mail copy \$30.00

(GST Free supplies under Section 38-250 of GST Act)

Voluntary Treasurer’s Handbook:

The Handbook is designed to be a practical Handbook for new Treasurers and has only minor reference to tax matters. However it has been upgraded in 2010 to allow for recent changes related to GST registration levels and a change in formula for Fringe Benefits Tax.

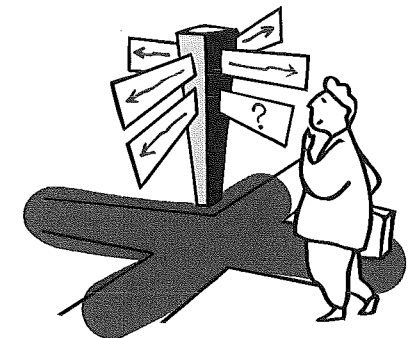
Missionary Tax Guide:

The 2010 edition of this valuable guide is now available. The Guide is a valuable resource for missionaries and other ex-patriot Australians and their professional advisers.



NEWSLETTER

SEPTEMBER 2010



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What is a Charity?

The legal definition of the term “Charity” dates back to the Statute of Elizabeth of 1601 and the Privy Council decision by Lord MacNaghten in Pemsel’s case of 1891.

In Australia there has been much discussion in recent years as a result of several Government enquiries and a number of Federal Court and High Court cases, not to mention complex ATO Rulings TR2005/21 and TR 2005/22.

Some of the more significant Court decisions are the High Court decision in Word Investments and Federal Court decision in Victorian Women Lawyers Assn where the ATO lost and Aid/Watch and SIMAID where the ATO won on appeal.

In the past two years there have been several Government enquiries (Productivity Commission, Senate Enquiry into Charities, COAG Enquiry and now the Senate Economic Legislation Committee) all focussing on the charitable sector and its regulation.

The ATO on the one hand are seeking to establish legislative certainty on the meaning of “charity” in an environment where community attitudes are subject to change, so such certainty will never be there. On the other hand, Government are focussing on the substantial nature of the Not-for-Profit Sector generally and the Charity Sector in particular and the very large Government financial support that is being provided. Taxation legislation provide significant concessions to charities in particular and also to the Not-for-Profit Sector generally. Income Tax deductibility reduces the collection of Government revenue from individual taxpayers and corporations alike. Government is entitled to satisfy itself as to whether these concessions are providing responsible benefit to the wider community. The various enquiries confirm: -

- Substantial benefit to the community justifying the substance of the concessions;
- Inadequate accountability by the sector to Government;

- Lack of adequate governance (management) by many charities, particularly the smaller ones.
- Over regulation by nine legislative bodies within Australia.

It is apparent reform is inevitable and will probably come from a federal regulatory body established to oversee the Not-for-Profit sector generally (wider than the charitable sector). It is also probable that the force of the recent enquiries will expedite these moves in the foreseeable future. The development of these changes will impose additional obligations and also place a learning curve on the charitable sector. It is important for all concerned in governance of charitable entities to remain informed.

GST on Government Subsidies?

The full Federal Court decided, in FC of T v Secretary to the Dept. of Transport (Vic) 2010 ATC, that GST was applicable on Government subsidies on taxi fares. The question that arose was whether or not the Dept. of Transport made creditable acquisitions in carrying out the multi-purpose taxi subsidy programme. This programme is available for Victorian residents with disabilities. The Commissioner held there was not a taxable supply to the Dept. of Transport and therefore they were not entitled to an input tax credit for GST. The full bench of the Federal Court found by a two: one majority decision in favour of the Dept.

As a consequence the Commissioner has sought leave to appeal to the High Court.

GST Audit:

The ATO advise that they will continue to closely monitor GST refunds to small and medium entities – an area where often substantial refunds are being sought in error because of an inadequate understanding of GST legal obligations. They also state that some charitable institutions and gift-deductible entities are incorrectly

treating GST supplies as GST-free when they should be taxable or input-taxed.

The ATO are hardening their response – even with the NFP Sector – in respect to the imposition of penalties. In the event of an ATO audit, it is advisable to provide them with full and open co-operation.

The ATO are particularly focussing on the incorrect reporting of property transactions due to the application of the margin scheme or unreported sales. They are also examining transactions involving retirement villages regarding non-complying margin scheme valuations and apportionment of GST credits.

CBH is a non-profit entity:

CBH is not a charity but the Federal Court has held that it is a not-for-profit entity. This is on the grounds that it is exempt under Section 50-40 as an entity established for promoting the development of agricultural resources.

CBH has been accepted by the ATO as a non-profit entity for nearly 40 years. The case arose because of ATO formed the view that there had been a change in purpose due to the growth and diversification of the entity.

In a complex ruling, the Federal Court has found in favour of CBH – and confirm it is a non-profit entity.

Community service is non-profit:

In Wentworth District Capital v Commissioner of Tax- ation (2010) FCA 862, the Federal Court found in favour of the entity and against the ATO, on the grounds that it was established for community service purpose and accordingly was exempt from income tax under Item 2.1 of Section 50-10 of the Income Tax Assessment Act.

Wentworth is a small town in rural NSW with an ageing population. In 1996 banking services were withdrawn from the town. As a consequence, local