



– *adding to your ministry*

Newsletter March 2013

Not-for-Profit Reform:

The ACNC have prepared a significant report entitled “Not-for-profit reform and the Australian Government”. If you are interested in obtaining access to details of the overall reform programmes, you can locate this report at [acnc.gov.au/publications/reports/not-for-profit reform and the Australian Government](http://acnc.gov.au/publications/reports/not-for-profit-reform-and-the-australian-government).

The report provides an overview of the journey of the reform and the establishment of ACNC, and identifies different Government agencies involved in the process, statistics and other relevant information.

Unclaimed money changes:

The Australian Government has made changes to the law relating to unclaimed money. These changes will have an impact on dormant bank accounts. The changes require banks and other institutions to advise ASIC of all unclaimed monies under their control and provides the banking institution the opportunity of paying the money over to the government. This action will relieve the banking institution of the obligation to maintain the accounts, issue statements etc. The law change means that instead of lodgement of funds after seven years, it will be a lodgement after three years. A dormant account, the subject of these new rules, includes an account where there has been no deposit or withdrawal by the owner of the account in that three-year period. Interest earned on the account does not count as a deposit by the owner.

This may have an impact on trusts and other special purpose accounts where the holder or owner of the account is unable to activate the account except in accordance with the purposes for which the funds are held.

The funds can always be reclaimed by the owner but there would clearly be a benefit in initiating action to activate the account wherever possible.

ACNC initial enquiry:

Recently the ACNC sent to endorsed charities a letter and form, the purpose of which was to request that endorsed charities provide ACNC with updated information. This letter would have been mailed to the address known to ATO from their most recent contact. (This could have been when the charity was first endorsed in 2000). ACNC did not make response obligatory. However we suggest it would be beneficial to charities to do so and complete the form at an early date. This will assist you in

obtaining the benefit of the transitional rules and would be of particular benefit to religious institutions. The form is available on the ACNC website under the title “Confirm your charity details”. Key matters for some charities are: -

- Question 4 – Advancement of Religion. Churches and other religious institutions should respond “Yes’ at this point to ensure they are identified as eligible for the religious institution concession. This is particularly important for access to the fringe benefit exemptions for ministers of religion. ACNC need to be advised by 2 December 2013 to ensure transitional arrangements are obtained.
- The questions at Section B on this form give charities with a financial year which ends other than June 30 the opportunity to apply for a substituted accounting period. ACNC need to know from charities by no later than 2 June 2013 of your alternative financial year, to ensure you benefit under the transitional rules. Requests for an alternative balance date after 2 June 2013 will be faced with more rigorous tests before approval can be assured.
- Section C requires a charity to identify details of the Board/Committee of the charity. This question does not include the CEO, Director/Paid leader of the entity *unless that person is also an appointed Board Member*.

Basic Religious Charity:

The ACNC Act provides substantial concessions for religious institutions that meet the tests for a “Basic Religious Charity” (BRC). The benefits of the concession include: -

- Exemption from the financial reporting obligations;
- Exemption from the Governance obligations;
- The Commissioner is unable to suspend a leader of the religious institution.

The eligibility requirements are:

1. It cannot be incorporated under the Corporations Act or the Associations Incorporations Act of a State or Territory. Where the religious institution derives its incorporated status from a denominational entity, which has the legal power to provide that umbrella protection, they will pass this test. The Catholic, Anglican and Uniting Churches State Act of Parliament provide examples – and there may be other instances as well.
2. The BRC is registered for a purpose that is for the advancement of religion and is not and cannot be, registered for any other sub-type of charity. This means that if the religious institution is also carrying out substantial community work, it may not be eligible for BRC.
3. It is not endorsed as a Deductible Gift Recipient (DGR) itself. However it can operate DGR funds such as a Building Fund provided the total revenue is less than \$250,000 per annum.
4. It is not reporting as a group under the Grouping Provisions of the ACNC Act.
5. It has not received more than \$100,000 in Government Grants in the current financial year or the prior two years.

Dealing with Government:

The Commonwealth Government have now implemented guidelines for charities and other NFPs when dealing with Commonwealth Government departments. As a consequence of the establishment of the ACNC, Commonwealth Government departments must not request information when an entity is applying for a grant where the information is already available from the ACNC. This is the first step in achieving one of the key aims of reducing red tape. The benefits will be more clearly felt in 2014 and later years as the ACNC accumulates more specific detailed information.

Tax Ruling on Charities:

ATO have now issued a new Taxation Ruling TR 2011/4 entitled “Income Tax and Fringe Benefits Tax: Charities”. This Ruling replaces TR 2005/21 and represents an update of the case law, as a result of a number of significant Court decisions, including Word Investments, Aid/Watch and the Victorian Women’s Lawyers cases. We have reported on those cases in earlier issues of this newsletter – all of which are cases that the ATO lost. Clearly the update was needed. A point worth noting regarding the new Ruling is the separate identification of “Objects” and “Purpose”. “Objects” refers to the Objects Clause in the constituent documents of the entity, even though the name in that document may sometimes be Objects, Purposes, Trusts or Aims. “Purpose”, on the other hand is used in respect of the substance or reality of the activities of the entity. Therefore, while the Ruling upholds the meaning of charities enshrined in the Statute of Elizabeth and subsequent case law, it is now focussing more on what the entity is actually doing; – which brings into question whether the Objects Clause in the constituent document and the actual activities are consistent.

We suggest this is also a focus from the ACNC which will become apparent over time. Charities that were established many years ago need to review their constituent documents Objects Clause to ensure they remain consistent with today’s understanding of the law. Some entities may find their Objects Clause is quite wide and may include some subsidiary Objects, which are not in themselves charitable. If this is the case, then the constituent document should be revised.

The Ruling is one of a number of examples which express the view of the ATO in more detail.

Commercial Activities of Charities:

Also known as Unrelated Business Income Tax or ‘UBIT’. This relates to the Government’s intention to tax profits of a charity arising from commercial activities, unless those profits are applied for the purposes of the charity. While it may be difficult for many working within the Charity Sector to think of instances where such a situation may arise, the reality is that it does occur in some instances; - another instance of using a sledgehammer to crack a nut. If and when implemented, it will place additional compliance burdens upon many charities, when there are almost certainly simpler ways of addressing the matter. The Sector will be happy to know that the Government have recently announced that the start date for UBIT has now been deferred to 1 July 2014.



The “In Australia” Tests:



This legislation is still in the House of Representatives. Our most recent information suggests it is not likely to be passed during the term of the present Government due to significant opposition politically. Regretfully, because of Australia’s obligations internationally to combat terrorism and money laundering it will not stay on hold - although it is hoped that what we ultimately receive will be in a softer format than the current proposal.

Tax-Deductible Giving:

No doubt due to the GFC, giving by the public to Australian charities has been dropping. Based on the most recently available figures (2010) there was a drop of 6.14% in giving in 2010 as against 2009. The percentage of taxable income has dropped from 0.38% to 0.34% and the number of donors has dropped from 4.65M to 4.4M. It is also interesting to note that the most generous age group is the over-75 year-olds with those in their 45-59 age group being the next most generous.

ACNC Seminars:

Many of you will have taken the opportunity to attend one of the recent Information Seminars conducted by ACNC in Geraldton, Perth and Bunbury. The significant involvement of Add-Ministry, representing the Christian Community of Western Australia in the implementation and arrangement of these Seminars is worth noting. Also, the wholehearted support of WA Council of Social Service (WACOSS) in this activity has ensured a very large coverage regarding charities being aware of access to the Information Seminars.

Add-Ministry arranged for one of the Perth sessions to be videoed, so that it can be available as a training tool. We would welcome an invitation from small rural communities to obtain access to the video in conjunction with a video conference, where we would be available to provide additional support through a question time.



Seminars are to be held in Broome, Port Hedland and Kalgoorlie in May:

Registrations can be made on-line through the WACOSS website: www.wacoss.org.au

Broome – Monday 20 May from 4-8 pm

Port Hedland – Wednesday 22 May 4-8 pm

Kalgoorlie – Thursday 23 May 4-8 pm.

Please advise any people you know who may be interested to register.

Previous copies of this newsletter are also available on the Add-Ministry website.

addministry@hardings.org.au

Publications available:

Voluntary Treasurers' Handbook (from Add-Ministry)

Hard copy — 59 pages\$50.00

Missionary Tax Guide 2012-2013 — available through Missions Interlink

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