



Australian Government
Australian Taxation Office

The ATO and the not-for-profit sector

An overview of:

- recent Australian Taxation Office (ATO) views on charities
- the role of the ATO following key budget announcements for the sector.

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Australian Taxation Office

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Overview

- ATO views on charities
 - Draft taxation ruling on charities
 - Decision Impact Statement: Aid/Watch
 - What is coming up next?
- Budget – not-for-profit reforms
 - Background
 - Key changes
 - What it means
- Keeping up-to-date on developments
- Questions?

ATO views on charities

- *Draft Taxation Ruling TR 2011/D2 Income tax and fringe benefits tax: charities*
- Decision Impact Statement: *Aid/Watch Incorporated v. Federal Commissioner of Taxation (Aid/Watch)*
- What is coming up next?



Draft Taxation Ruling TR 2011/D2

Income tax and fringe benefits tax: charities



Draft Taxation Ruling TR 2011/D2

- Released on 11 May 2011
- Replaces TR 2005/21
- Why the rewrite?
- Recent High Court cases
 - *Federal Commissioner of Taxation v. Word Investments Limited*
 - *Aid/Watch Incorporated v. Federal Commissioner of Taxation (Aid/Watch)*.



Charitable purposes – the four heads of charity

- The relief of poverty
- The advancement of education
- The advancement of religion
- Other purposes beneficial to the community



What has changed?

- Commercial activities
- Political and lobbying purposes
- Distribution of surplus



Commercial activities

- Main factors
 - objects
 - activities
- Institution can carry on a business or commercial enterprise
- Business or commercial enterprise must be carried on to give effect to its charitable purpose

Example – S. Enterprises Limited

- Purpose of encouraging Christian faith by
 - promoting or conducting evangelistic services
 - bible study for children
 - production and distribution of evangelistic literature
- Does not undertake these activities
- Objects state it is to carry on a commercial activity to generate funds for S. Campaigners
 - an endorsed charity
 - established for the advancement of religion
 - conducts religious services and events

Political purposes

- No general doctrine which excludes political objects from charitable purposes
- Encouraging public debate to influence government legislation or policy can be charitable where the subject matter falls within the four heads of charity
- Direct lobbying of parliamentarians is unlikely to be considered charitable

Example – Sports for All Incorporated (SFA Inc)

- Established to promote the aim of obtaining more funding for professional sport so as to ensure that Australia is a leading force in international sporting competition
- Researches the effect of government funding programs on sporting achievements
- Publicises its reports
- Lobbies government



Distribution of surplus to owners or members

- Activities for the private profit or benefit of members or owners cannot be charitable
- Can distribute surpluses to owners or members and still be charitable if
 - sole purpose is charitable
 - distributions are made to effect that charitable purpose
 - owners or members who receive distributions are charitable and have same charitable purpose as the entity making the distribution

Example – Q Limited

- Purpose is advancement of welfare of vision impaired young adults
- Objects include operating transport service for general public to raise funds for Q Vision Impaired Association
- Q Vision – endorsed charitable institution
- Q Vision – sole member of Q Limited

Comments – TR 2011/D2

To view the draft taxation ruling, visit <http://law.ato.gov.au>
Enter 'TR 2011/D2' in the 'Search for' field and select 'All of the Legal Database'.

Comments:

By: 24 June 2011
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Decision impact statement

*Aid/Watch Incorporated v. Federal Commissioner of Taxation
(Aid/Watch)*



What is a decision impact statement?

- Statement of the ATO's response to a significant case
- Provides
 - details of the case
 - a statement of our position on the decision
 - how the law will be administered as a result of the decision

ATO view – *Aid/Watch*

- Subject matters not falling within four charitable heads does not fall within the *Aid/Watch* decision
- The entity may present a particular point of view
- Generation of debate about government activity or policy beyond existing heads of charity considered on case-by-case basis

Comments – decision impact statement

To view the decision impact statement, visit <http://law.ato.gov.au>

Enter 'S82 of 2010' in the 'Search for' field and select 'All of the Legal Database'.

Comments:

By: 6 July 2011

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What is coming up next?

- *Taxation Ruling TR 2005/22 Income tax: companies controlled by exempt entities*
- Addendum



Budget – NFP reforms

An overview of the role of the ATO following key budget announcements for the not-for-profit sector and charity regulation.



Overview

- Background
- Budget announcements
- What does this mean for not-for-profits and their representatives?
- Keeping up-to-date on developments
- Questions?

Background

What path brought us to this point?



Inquiries, reviews and consultation papers

- 2001 Inquiry into the definition of charities and related organisations
- 2008 Senate inquiry into the disclosure regimes for charities and NFP organisations
- 2010 Review of Australia's Future Tax System
- 2010 Productivity Commission inquiry into the contribution of the not for profit sector
- 2010 Senate inquiry into the Tax Laws Amendment (Public Benefit Test) Bill 2010
- 2011 Consultation paper - scoping study for a national not-for-profit regulator

Overseas experiences

International examples of charity regulators and regulation:

- Canada – Canada Revenue Agency
- United States – Internal Revenue Service
- United Kingdom – Charity Commission for England and Wales
- Northern Island – Charity Commission
- Scotland – Office of the Scottish Charity Regulator
- New Zealand – Charities Commission New Zealand
- Ireland – Charities Regulatory Authority

Australian context

- Role of the ATO
- Recent court decisions



Budget announcements



Key areas of reform

- Establishment of the Australian Charities and Not-for-profits Commission (ACNC)
- Introduction of a statutory definition of charity from 1 July 2013
- Better targeting of not-for-profit tax concessions for unrelated commercial entities
- Promotion of a consistent regulatory framework across all levels of government to reduce red tape for not-for-profits and charities

Establishment of the Australian Charities and Not-for-profits Commission

- Determining charitable status
- Education and support
- One-stop shop reporting framework
- Public information portal
- Seamless application process



Statutory definition of charity

- Take effect from 1 July 2013
- Easier to understand and simpler to implement
- Clarify key principles of common law
- Take into account recent understandings and determinations, such as *Aid/Watch*

Better targeting of not-for-profit tax concessions for unrelated commercial entities

- Underpinned by a clear social policy intent
- Protect the integrity of the sector
- Appointment of John Emerson AM to advise the review
- Comments to Treasury close on 8 July 2011



What does this mean for not-for-profits and their representatives?



2011–12: Key changes

- Internal separation of ATO functions
- Establishment of a new interim ATO business area
- Additional resources
- Establishment and ATO interaction with the ACNC Taskforce



2011–12: What remains the same?

- Communication channels
- Interpretation of the law
- Advice, endorsement, appeal processes and charter standards
- Consultative mechanisms

2012–13: Commencement of the ACNC

- Commencement of the Australian Charities and Not-for-profits Commission operations
- Commencement of the ACNC Advisory Board, chaired by Robert Fitzgerald AM
- Complete separation from the ATO
- Launch of new website, publications and communication channels

2013–14 onwards

- Introduction of a statutory definition of charity
- New information products
- Commencement of the information portal
- Commencement of reporting obligations

Keeping up-to-date on developments

www.ato.gov.au/nonprofit

www.treasury.gov.au

www.notforprofit.gov.au



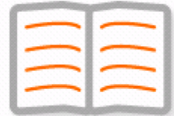
- What do you want to do?
 - Find out about tax concessions & endorsement
 - Apply for an ABN or other registration
 - Lodge a business activity statement (BAS)
 - Lodge another statement or return
 - Claim a refund or credit
 - Pay staff
 - Make a tax payment
 - Find a rate or calculator
 - Find a form or publication
 - Fix a problem
 - Get help
- Your situation
- Tax topics A-Z
- Law, rulings & policy
- Compliance issues
- Community consultation
- News and seminars

Non-Profit Organisations



Disaster donations

Collecting and making donations to help recent disaster victims – [find out more](#)



New guide for sporting clubs

[Help](#) to work out if your club is exempt from income tax



Non-Profit News Service

Subscribe to free updates on key tax issues affecting the non-profit sector. [Find out more](#)



Non-profit administrators

Information and services to assist you in your role - [read more](#)



Online services

- [e-tax](#)
- [AUSkey](#)
- [SuperSeeker](#)
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- [Other online services](#)

Call Centre Hot Topics

- Setting up an organisation and what to do for tax
- Deductible gift recipient status
- Income tax concessions
- Supplier discounts
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Questions?

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This presentation was current in June 2011



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This information in this presentation was current at **6 June 2011**.

