

# News

**August 2005**

## Charities & Community Groups

### **Australian Taxation Office – Endorsements for Charities**

Since 1 July 2000, charities have not been automatically exempt from income tax. It has become a requirement that the Commissioner of Taxation endorse charities before they are exempt from income tax.

From 1 July 2005 additional endorsement requirements commenced for charities. Effectively from that date, a charity was required to be endorsed to access charity tax concessions available under fringe benefits tax and GST laws. These new exemptions are in addition to the pre-existing endorsements required for income tax exemption.

Endorsements generally available for charities are:

1. Income tax exemption under subdivision 50 B of the *Income Tax Assessment Act 1997*;
2. GST concessions (available from 1 July 2005) under Division 176 of *A New Tax System (Goods and Services Tax) Act*; and
3. FBT rebate (from 1 July 2005) under Section 123E of the *Fringe Benefits Tax Assessment Act*.

If you conduct a charity, you should have received notice of endorsement of your charity for one or more of the above concessions. A charity can self assess its entitlement to fringe benefits tax and GST charity tax concessions up to 1 July 2005. It is important however that your charity is properly endorsed from 1 July 2005 onwards.

You should carefully check the endorsements that you have received to ensure that you have received all the concessions to which your charity is entitled.

In particular, if you have been endorsed as a charitable fund rather than a charitable institution, your charity may not have access to the fringe benefits tax and GST concessions. It is therefore important to ensure that your charity is properly endorsed as an "institution" if it qualifies as such, rather than as a "fund".

**MAKINSON & d'APICE**  
— L A W Y E R S —

Level 12 135 King Street Sydney NSW 2000 • GPO Box 495 Sydney 2001 • DX 296 Sydney  
**Telephone 02 9233 7788 • Facsimile 02 9233 1550 • Email [mail@makdap.com.au](mailto:mail@makdap.com.au) • [www.makdap.com.au](http://www.makdap.com.au)**

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It is important that you regularly review your entitlement to endorsement particularly if there is a major change in your structure or operations. The Tax Office should be advised of any significant change status. As part of its general administration of tax laws, the Tax Office will also carry out reviews of endorsed income tax exempt charities from time to time.

These endorsements are separate from and in addition to any endorsement a charity may be entitled to as a deductible gift recipient.

Should you require any further information about your charity's entitlement to endorsement for any tax concessions or deductible gift recipient status, please do not hesitate to contact Ms Vera Visevic, Mr Richard d'Apice or Mr Bill d'Apice.

## **New Deductible Gift Recipient Categories**

In a press release issued by the Commonwealth Treasurer on 10 May 2005, the Government announced that there would be five new deductible gift recipient (DGR) categories with effect from 1 July 2006.

These five categories are:

- Funds that are established for the reconstruction and critical repair of eligible war memorials. Approved funds may be endorsed as DGRs for a maximum period of two years.
- Public funds whose principal purposes are to relieve or prevent distress caused by declared natural or man-made disasters or assist in disaster reconstruction within Australia and in developed countries.
- Charitable funds and organisations whose principal purposes are the provision of services which provide direct care to maltreated animals.
- Charitable funds that undertake a combination of activities that fall under several existing DGR categories (such as health promotion, harm prevention, public benevolent institutions).
- Charitable funds that are established and maintained solely for the purpose of providing scholarships, bursaries or prizes to promote education where entry is open to persons at a national, regional or state level. This category covers scholarships for all levels of education.

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The last of the new DGR categories will present an opportunity for a number of our firm's clients who have been looking to establish scholarship or bursary funds and trying to fit within the tight DGR framework which currently exists. This issue should be relieved from 1 July 2006.

If you are considering the establishment of a new DGR which fits into one of these five categories or wish to review current structures so that they may qualify under one of these categories, please do not hesitate to contact Mr Bill d'Apice, Ms Vera Visevic or Mr Richard d'Apice of our office.

## **Raffles**

A "Raffle" is a lottery as defined by the *Lotteries and Art Unions Act*, where prizes are distributed by the draw of tickets or marbles. The total prize pool of a raffle cannot exceed \$25,000.00. Where a larger prize pool is envisaged, then an "Art Union" must be conducted instead.

Raffles can only be run to raise funds for the benefit of "not-for-profit organizations" which includes "charities."

Raffles may be conducted by not-for-profit organizations without the need for a permit from the Department of Gaming and Racing. However, charities that conduct raffles may still need to hold an appropriate Authority to Fundraise issued by the Department, unless the charity is exempt from the provisions of the *Charitable Fundraising Act*.

In any event, raffles must be conducted in accordance with the *Lotteries and Art Unions Act*.

That Act provides that some limits apply as to the size and type of prize that can be won in a raffle. For example:

- the total retail value of all prizes cannot exceed \$25,000.00;
- the total value of money prizes cannot exceed \$5,000.00; and
- the money component of a prize that is offered in conjunction with tickets for tours or journeys must not exceed 20% of the total value of the prize.

It is also important to note that certain prizes such as tobacco are prohibited, and that other prizes such as food products or alcohol are subject to further limitations and requirements.

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The expenses of conducting the raffle (including prizes) must not exceed 60% of the gross proceeds of the raffle; and a minimum of 40% of the gross proceeds must pass to the not-for-profit organisation.

The *Lotteries and Art Unions Act* imposes requirements to keep records in relation to the conduct of certain raffles which can differ depending on the total value or nature of the prizes offered.

It must also be remembered that the *Charitable Collections Act* may also impose separate record keeping requirements in connection with the conduct of a fundraising appeal (including a raffle) by a charity holding an Authority to Fundraise.

If you wish to discuss any aspect of this article please do not hesitate to contact Mr Richard d'Apice or Mr Bill d'Apice of this office.

## **Seminar in November 2005**

We are organising a seminar for the late afternoon of Wednesday 2 November 2005 where we will discuss general tax issues affecting charities and community groups and also general issues pertaining to directors or committee members of boards/committees of charities and community groups. If you are interested in attending and believe that there are other topics that would be of interest to yourself and others, please let Vera Visevic know as soon as possible. We will soon be sending out a flyer providing all of the details to this upcoming seminar. Please diarise this seminar as we believe that it will be of great benefit and interest to all who attend.

## **Disclaimer**

This newsletter is a non-comprehensive general outline of the law as at 1 August 2005. You should not act upon or rely on any information contained in this newsletter without obtaining specific legal advice.

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