

Submission to the Senate Economics Committee Tax Laws Amendment (Public Benefit Test) Bill 2010

I wish to state my support for the inclusion of a public benefits test in Australia's tax legislation.

My support is based on the following propositions:

- taxes are paid, directly or indirectly, by virtually every Australian;
- to the extent tax exemptions are provided to any institution the tax rates applied to individuals and businesses must be higher to ensure the same level of overall tax revenue to the government and therefore the same level of overall service delivery (in the absence of an impact on the net budget deficit/surplus); and
- the role of government is to allocate tax revenue, and its counter proposition, tax exemptions, for the benefit of Australia as a whole.

The current absence of the test results in the possibility that tax exempt status is maintained by an entity that cannot demonstrate that:

- the benefit of its activities outweighs any detriment or harm caused; and
- its activities benefit a significant section of the public.

This is inconsistent with the indirect financial support of that entity by virtually all Australians.

Nature of the regulations

The practical impact of the public benefits test will be determined by the regulation. Accordingly, the regulations should provide a credible and genuine test of public benefit, but need to be able to be practically managed by a broad range of institutions. The following are some suggestions to enhance the credibility of the public benefits test and the reliability of its outcome:

- the threshold test should be to establish whether or not, on the balance of probabilities, the entity provides a public benefit;
- the onus of proof should be on an entity that claims its activities provide a public benefit. However, for the purpose of initial certification, if an entity is a not-for-profit entity, its primary purpose is to undertake charitable works, it has been operating in its present form for at least 12 months and there have not been any material complaints about the entity's activities to a government authority then the onus of proof could be reversed;
- members of the public should be able to make submissions regarding the benefits, detriment or harm resulting from any entity's activities for the purposes of the public benefits test. To this end:
 - an appropriate government authority should maintain a list of entities that have satisfied the public benefits test, and any member of the public should be able to enquire about an entity's status on that list;
 - any member of the public should be entitled to an honest response from the entity if asked about whether or not it has public benefit status; and
- entities should be required to re-certify their public benefit credentials periodically, with the frequency possibly determined by reference to the entity's size to ensure that this is not an onerous obligation on small organisations.

Premise of the public benefits test

Finally, while it may be tangential to the terms of reference for this bill, I wish to make a point about the premise of the public benefits test.

If the test is enacted it will apply to religious and charitable institutions, however, there is no common basis on which both charitable and religious institutions should be eligible for tax exempt status to the exclusion of other community-based institutions.

Broadly speaking, the primary purpose of any charitable institution is to provide assistance to a section of society that is in some way disadvantaged and/or experiencing hardship. This is clearly an altruistic purpose and worthy of government support through tax exemption. In contrast, the primary purpose of a religious institution is to follow a particular religion. While this may, and frequently does, result in the religious institution supporting charitable works the tax exempt status of those works is covered by their charitable nature already, so the specific inclusion of “religious institutions” in tax legislation means that religious non-charitable works benefit equally from tax exempt status. While the origins of this special treatment are in English law when religion was presumed to be, in and of itself, beneficial to the public, the treatment is not logically justifiable in modern Australia.

While it is no doubt an important part of some Australians’ lives, religion is only one view a person has. A person also has views on sport, politics, social issues and many other topics. There are groups and societies where a person may gather with people of similar views on sport, politics, social issues and many other topics, and those groups and societies may provide a sense of belonging and community and a forum for people to learn and discuss their views – all of which are positive aspects of a cohesive society – but none of them are tax exempt if they are not based on a religion.

Considering that, by necessity, any religion is based on faith rather than definitive evidence, we have the perverse result that the only types of non-charitable institutions that are accorded special treatment by our tax system are those that cannot prove they have any basis in fact.

The public benefits test is a valid inclusion to the tax legislation, but it actually misses the most important point – people’s religion (or lack thereof) is simply one perspective on life out of many possible perspectives, and religious institutions are no more worthy of tax exemption than any other community-based institution – for example sports clubs, book discussion groups or language-based societies – that supports people of a particular mindset.

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