

Taxation exemptions for religious bodies

The issues

- 11.1 Several submissions to this inquiry commented on the taxation provisions in Australia for religious organisations.
- 11.2 The Humanist Society of Queensland Inc noted that, while Christianity is the religion of the majority of the population, it has been strongly supported and ‘heavily subsidised’ from the public purse. It continues to enjoy what the Society calls ‘special treatment’ at all levels of society and government. This submission listed some elements of the support received.¹
- 11.3 The Humanist Society of Victoria Inc saw the tax exemptions and benefits enjoyed by mainstream religions, but not available to secular associations, as ‘institutionalised discrimination’ against non-believers.²
- 11.4 The Rationalist Society of Australia drew attention to the imbalance in current taxation arrangements against those working for social harmony and participation. It noted the growth of organised ‘religions’ in the USA, some of which it said are now established in Australia, as a means of avoiding taxation.³
- 11.5 Dr Max Wallace, having argued that belief and non-belief in Australia are legally equivalent, pointed out that Australia’s tax laws in favour of religions are discriminatory in terms of both the UN Religion Declaration and the ICESCR. He suggested that liberal, democratic countries give

1 Submissions, p. 127.

2 Submissions, p. 177.

3 Submissions, p. 319.

‘extremely generous’ tax exemptions to religions, and that it was likely that the tax foregone was greater than the value of their charitable activities. He believed that some bodies do not undertake charitable activities, but still receive the exemption.⁴

- 11.6 As a result of this exemption, he stated, mainstream religions in Australia have grown wealthy. If evidence of this capital accumulation is valid, the Churches have been as concerned about building their wealth in this country as they have been in spreading their message of salvation. While tax avoidance and evasion in other areas was illegal, the tax exemption of what Dr Wallace called the ‘purple economy’ was legal.⁵
- 11.7 The cost to many citizens of various countries of tax exemptions amounted to economic discrimination because those who did not have religious beliefs subsidised the exemptions of those who did. He quoted figures which asserted that, between 1996 and 2000, the Sanitarium Company would contribute \$55 million to its owner, the Seventh Day Adventist Church. This sum was about 65 per cent of the Church’s earnings and, because it is treated as a religious institution, it was alleged it did not have to pay corporate tax.⁶
- 11.8 Dr Wallace argued that companies are non-theistic organisations and that for them to pay taxation while their commercially religious competitors do not is ‘clearly discriminatory’. Further, he suggested, an argument could be made that exemptions for religious bodies from taxation was unconstitutional. The Commonwealth could not allow an exemption to advance religion, at the same time as the Constitution, via s. 116, is interpreted as separating Church and State.⁷
- 11.9 He also referred to what is known as the 1981 Defence of Government Schools (DOGS) case before the High Court. It found that grants to religious schools to aid education were one thing, while exemptions specifically for the purpose of ‘advancing religion’ were another. Grants for education were not found to be unconstitutional in that case, because they were not aiding religion directly.⁸
- 11.10 The-then Australian Human Rights Commissioner observed that the favourable treatment of religions in Australia was comparable with that for other not-for-profit organisations. He noted that it was difficult to

4 Submissions, pp. 368-369.

5 Dr Max Wallace: Submissions, pp. 369-370, Transcript, 6 March 2000, pp. 263, 268.

6 Submissions, pp. 372-373.

7 Submissions, p. 373.

8 See paragraphs 4.19-4.21 for a brief consideration of this case.

know what surplus from ‘commercial operations’ was put towards social welfare work or religious promotion. He also suggested that in some cases there seemed to be more cross-subsidisation of social welfare and educational endeavours, rather than those subsidising religious practice.⁹

- 11.11 In his Report on his 1997 visit, the UN’s Special Rapporteur on Religious Intolerance commented on the great degree of religious tolerance in Australia. He noted that this was linked to a tradition of tolerance or even indifference towards religion. This predominantly indifferent attitude coexisted alongside the development of minorities and many religious movements. The latter, he commented, are said to cost public finances ‘dearly’, through tax relief, public subsidies, etc.¹⁰

Definitions for tax purposes

- 11.12 In Chapter 2, several general definitions were given of ‘religion’. When considering the tax-exempt status of religions, for legal and taxation purposes, other definitions need to be considered.¹¹
- 11.13 According to a noted legal authority, since the mid-Nineteenth Century, the law in Australia has generally assessed the claims of religions to be genuine religions ‘with a light and trusting hand’. The High Court’s concept of the status of religious groups and religions emphasised the equal legal status of all religions and religious groups.¹²
- 11.14 As evidence that a body claiming tax immunity is not in fact a religion, a court may consider it relevant that a body adopts philosophies and ethical disciplines that deny a belief in a supernatural being, thing or principle. As evidence that a religious body, claiming tax immunity, lacks that entitlement, a court may take into account canons of conduct which give effect to that body’s belief in the supernatural, but which offend against general laws for the preservation and protection of society.
- 11.15 In the context of the law of charitable trusts, a bequest to a religious group to establish a trust for the advancement of its religious purposes will fail if the group is found to inculcate doctrines adverse to the very foundation of religion and subversive of all morality.

9 Transcript, HREOC, 6 March 2000, pp. FADT 275-276.

10 Exhibit No 55, p. 16.

11 See paragraphs 2.2-2.9.

12 **Halsbury’s Laws of Australia**, Butterworths, 1994, 365-10. See paragraph 2.3 for the High Court’s 1983 definition.

- 11.16 For the purposes of tax law, such things as ‘places of public worship’ have also been defined. The High Court has held that they are places where the individual worships in a congregation, as distinct from privately or in a domestic or family setting. According to this view, it is not the ‘place’ but the ‘worship’ that is ‘public’. An open air meeting in a park addressed by and evangelist, while public, is not seen therefore as a meeting of religious worship.¹³

Provisions

- 11.17 For taxation purposes, provisions for religions and religious bodies in Australia was clear for many years. Following the introduction of a Goods and Services Tax (GST) in Australia on 1 July 2000, some of the taxation arrangements for religions and religious bodies changed.¹⁴

To 30 June 2000

- 11.18 Until 30 June 2000, under the *Income Tax Assessment Act 1936*, as part of a range of such measures, there were income tax exemptions for a religious, scientific, charitable or public educational institution which:
- had a physical presence in Australia and incurred its expenditure and pursued its objectives principally in Australia; or
 - was an institution to which a gift by a taxpayer was an allowable deduction because the institution was listed in sub-section 78(4) of the Act; or
 - was a prescribed institution which was located outside Australia and was exempt from income tax in the other country in which it was resident, or
 - was a prescribed charitable or religious institution with a physical presence in Australia, but which incurred its expenditure and pursued its objects principally outside Australia.¹⁵

13 **Halsbury’s Laws of Australia**, Butterworths, 1994, 365-10.

14 See also **Halsbury’s Laws of Australia**, Butterworths, 1994, 365-425, for further detailed information on the taxation status of religion in Australia for Commonwealth, State/Territory and Local Government taxes and charges.

15 *Income Tax Assessment Act 1936*, sub-section 23(e).

- 11.19 Benefits provided under the fringe benefits tax to certain employees of religious institutions were also exempt under this provision.¹⁶
- 11.20 In 1992, the Australian Taxation Office (ATO) issued a Ruling that discussed the meaning of the term ‘religious institution’, as it appeared in the income tax and fringe benefits legislation. It also considered the conditions that had to be met before a benefit provided by a religious institution was exempt from fringe benefits tax.
- 11.21 A body was an ‘institution’ for the purposes of these Acts if it was an establishment, organisation or association instituted for the promotion of some object, especially one of public or general utility, religious, charitable, educational, etc.
- 11.22 A body was a ‘religious institution’ if it was instituted for religious purposes, so that:
- its objects and activities reflected its character as a body instituted for the promotion of some religious object, and
 - the beliefs and practices of the members constituted a religion.
- 11.23 The two most important factors for determining whether a particular set of beliefs and practices that constituted a religion were:
- belief in a supernatural being, thing or principle, and
 - acceptance of canons of conduct that gave effect to that belief, but that did not offend against the ordinary laws.
- 11.24 The ATO Ruling noted that these factors were established by the High Court’s definition in the so-called Scientology case in 1983. Although other criteria were considered in that case, if these two main criteria were satisfied it was likely that a body would have been characterised as a religion. The expression ‘religious institution’ was not confined to major religions, but was also extended to religions less well known in Australia, such as Taoism.
- 11.25 Private schools, private universities and residential university colleges conducted by religious institutions were generally not religious institutions for the purposes of these Acts. Whether they were had to be determined by the primary or dominant object of the body, as ascertained by reference to the objects stated in their memorandums of association or other constituent documents, and by consideration of their activities.

16 *Fringe Benefits Tax Assessment Act 1986*, section 57.

- 11.26 Seminaries, theological colleges and Bible colleges might have come within the scope of the term 'religious institution'. Where the primary or dominant object of such a body was religious in character, it would have been treated as a religious institution for the purposes of these Acts.
- 11.27 This Ruling also considered and defined the following terms:
- religious practitioner;
 - religious order;
 - pastoral duties, and
 - 'directly related' religious activities.¹⁷

General provisions after July 2000

- 11.28 Information provided by the ATO about the new taxation arrangements that include the GST applying after 1 July 2000 to religious bodies, began by defining a 'charity' for tax purposes. The legal meaning is derived from common law and is wider than is commonly understood. The term 'charitable' has the same meaning for GST purposes as it has for income tax purposes.¹⁸
- 11.29 Organisations will be treated as charitable if they are conducted on a not-for-profit basis and are established to benefit the community, or some section of it, through:
- the relief of poverty or sickness, or the needs of the young or the aged;
 - the advancement of education;
 - the advancement of religion, or
 - other purposes beneficial to the community.
- 11.30 Institutions and funds established for the advancement of religion include:
- churches
 - synagogues and other religious congregations (*sic*);
 - seminaries;
 - religious orders, and

17 Taxation Ruling TR 92/17 of 10 December 1992 (*passim*).

18 Material in this section was drawn from an ATO booklet: **Charitable, Religious and Non-profit Organisations: The New Tax System**, revised 3 March 2000, (*passim*).

- organisations for building or repairing religious buildings, maintaining clergy and spreading religious doctrine and practice.
- 11.31 Thus, while most supplies of goods and services by businesses will be subject to it, some supplies made by charitable institutions, trustees of charitable funds and gift-deductible entities will be free of the GST. Non-commercial activities of charities will be free of the GST if the consideration is less than 50 per cent of the all-inclusive market value, or less than 75 per cent of the cost of supply.
- 11.32 The ATO booklet also provided information on the status of various activities that could be relevant to religious bodies after the introduction of the GST, including:
- provision of accommodation;
 - donated second-hand goods;
 - receipts of donations, grants and sponsorships;
 - raising of funds, and
 - flexibility for units ('branches') within non-profit organisations for GST purposes.

Specific provisions

- 11.33 Section 50-5 of the *Income Assessment Act 1997* as amended replaced subsection 23(e) of the 1936 Act referred to above, without changing the overall approach to income tax exemptions for religious institutions.¹⁹
- 11.34 Religious institutions have to register for the new tax system, and obtain an Australian Business Number before they can receive deductible gifts or be exempt from income tax. If they were not endorsed from 1 July 2000, they will lose income tax exemption status.
- 11.35 In its tax reform package, the Government announced it would impose a cap on the value of concessionally-treated benefits provided to employees of public benevolent institution and 'certain other not-for-profit organisations'. In *A New Tax System (Fringe Benefits) Act 2000*, the cap applying to charities and those other organisations was increased to \$30,000 'of grossed up taxable value per employee' with effect from 1 April 2001. This amount had been \$17,000.

19 The *Taxation Laws Amendment Act (No 3) 1998*, included 'special conditions' for religious bodies and charitable institutions on the same basis as the 1936 Act.

- 11.36 The Government agreed to review the level of this cap from time to time, 'in the light of general salary movements.' It also agreed to the establishment of an independent inquiry into definitional issues relating to 'charities, churches and not-for-profit organisations.'²⁰
- 11.37 In September 2000, in fulfilment of that promise, the Prime Minister announced the terms of reference for the independent inquiry into this issue. The primary focus for this inquiry is on definitions of charitable, religious and community not-for-profit organisations, and on their 'attributes, purpose and behaviour'. He hoped that the inquiry would report its findings to the Government by 31 March 2001.²¹

Summary

- 11.38 The basis of existing taxation exemption provisions is a requirement that an organisation must be engaged in charitable work. The income foregone because of the existence of these provisions is a significant charge against tax payers, one which most have been prepared to accept. Existing provisions may also discriminate against non-religious groups and individuals that may seek to undertake comparable work.
- 11.39 Four submissions asserted that such arrangements breach Australia's responsibilities under two UN instruments, and that they discriminated against companies that have no religious affiliations.
- 11.40 Even if some of the consequential arrangements seem to be inconsistent with the basic definitions, this is a sensitive matter. The provisions apply to a range of religious, scientific, charitable or public educational institutions. It is doubtful whether any government would alter these provisions in such a way that would worsen the position of genuinely religious bodies undertaking charitable works. The existence of discrimination and possible breaches of UN instruments are, however, matters that could be investigated. If these problems exist, it may not be necessary to amend legislation, as changes to rulings or practice may resolve difficulties.

20 Treasurer's Press Release, No 022: **Fringe Benefits Tax: Charities and Non Profit Organisations** (undated).

21 Prime Minister's Press Release: **Inquiry into Charitable and Related Organisations**, 18 September 2000. See also *The Australian Financial Review*, 19 September 2000, p. 4.

- 11.41 Taxation arrangements are a very important matter for the range of charitable and community not-for-profit organisations and the individuals that work for them. The Committee welcomes the announcement of the independent inquiry, appointed by the Prime Minister, noting its emphasis on the basic issues of the definitions and characteristics of these organisations.
- 11.42 When that inquiry has reported, the future for these not-for-profit organisations and the conditions under which they will continue to operate will be more clear.

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