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SENATE ECONOMICS LEGISLATION COMMITTEE

CONSIDERATION OF LEGISLATION REFERRED TO THE COMMITTEE

Taxation Laws Amendment Bill (No. 8) 2000

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Commonwealth of Australia

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Patrick McCormack, Principal Research Officer
Angela Lancsar, Executive Assistant

SG.64, Parliament House
Canberra ACT 2600

Tel: 02 6277 3540
Fax: 02 6277 5719

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REPORT

Reference of the Bill to the Committee

1.1 The Taxation Laws Amendment Bill (No. 8) 2000 was introduced into the House of Representatives on 12 October 2000 and passed that chamber on 6 November 2000. It was introduced into the Senate on 9 November 2000. Following a report by the Selection of Bills Committee, the Senate referred the Bill to the Senate Economics Legislation Committee on 8 November 2000 for examination and report by 30 November 2000.[1]

1.2 The Committee was asked to consider the impact of the Bill's provisions 'on university colleges and halls of residence, particularly the effect of input-taxing the supply of accommodation and food'.[2]

The Committee's Inquiry

1.3 The Committee advertised the inquiry on Parliament's web site and received eight submissions. A list of submittors is at Appendix 1.

1.4 The Committee held a public hearing on the Bill in Canberra on 22 November 2000. The witnesses who appeared at the hearing are shown in Appendix 2.

1.5 A number of documents were tabled during the course of the public hearing and these are listed at Appendix 3.

1.6 The Committee has since received additional correspondence from a number of organisations. This correspondence is attached to this report as follows:

- National Council of Independent School's Associations – Appendix 4
- Australian Vice-Chancellors' Committee – Appendix 5
- Australian Taxation Office – Appendix 6
- Hunt and Hunt for the RMIT – Appendix 7
- Uniting Church of Australia – Appendix 8; and
- Association of Heads of Australian University Colleges & Halls, Inc – Appendix 9.

The Bill

1.7 This omnibus Bill introduces amendments to fourteen Acts, namely:

- *A New Tax System (Goods and Services Tax) Act 1999*
- *A New Tax System (Goods and Services Tax Transition) Act 1999*

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1 Selection of Bills Committee Report No. 19 of 2000, dated 8 November 2000, Senate Hansard, p.19166.

2 Selection of Bills Committee Report No. 19 of 2000, dated 8 November 2000.

- *A New Tax System (Indirect Tax and Consequential Amendments) Act 1999*
- *A New Tax System (Indirect Tax and Consequential Amendments) Act (No. 2) 1999*
- *A New Tax System (Luxury Car Tax) Act 1999*
- *A New Tax System (Tax Administration) Act (No. 2) 2000*
- *A New Tax System (Wine Equalisation Tax) Act 1999*
- *A New Tax System (Wine Equalisation Tax and Luxury Car Tax Transition) Act 1999*
- *Custom Act 1901*
- *Income Tax Assessment Act 1936*
- *Income Tax Assessment Act 1997*
- *Indirect Tax Legislation Amendment Act 2000*
- *Taxation Administration Act 1953*
- *Taxation (Interest on Overpayments and Early Payments) Act 1983*

Background

1.8 Since the enactment of the *A New Tax System (Goods and Service Tax) Act 1999*, the operation of the new tax system has needed to be refined. The current Bill is the latest Bill in that process.

Measures in the Bill

1.9 According to the Second Reading Speech,

> This Bill contains minor and technical changes to improve the operation of the *A New Tax System (Goods and Service Tax) Act 1999* ('the GST Act') and related legislation.[3]

1.10 The amendments in the Bill cover a wide range of activities. These are set out in the Bill's six Schedules. They address issues raised by tax practitioners, industry representatives the ATO and some States and Territories.[4]

Issues in Evidence

1.11 The Committee was tasked by the Senate with examining the Bill's impact on university colleges and halls of residence, particularly the effect of input-taxing the supply of accommodation and food. This was the major issue of contention in submissions received by, and evidence given to, the Committee.

1.12 Seven of the eight submissions received by the Committee dealt with input-taxing the supply of accommodation and food. They also referred to the related issue of the

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3 Second Reading Speech, House of Representatives *Hansard*, p. 21411.

4 Second Reading Speech, House of Representatives *Hansard*, p. 21411.

definition of accommodation, namely whether or not accommodation included food, and the definition of 'cost', specifically the determination of the value of inputs for GST purposes.

1.13 One submission, that from Ernst and Young, dealt with another matter entirely. Ernst and Young raised, on behalf of clients, concerns with Item 17 in Schedule 1 of the Bill. This item inserts new section 24C into the GST Transition Act which would allow certain low-value supplies through coin-operated devices to be treated as input taxed.[5] This issue is considered later in this report.

1.14 The major issue raised at the public hearing reflected the concerns of most submittors about the effects, on entities with associated non-profit sub-entities, of the proposed extension of the associates provisions to non-profit sub-entities that would be inserted into the GST Act by Item 18 in Schedule 6 of the Bill. This item would apply the GST to supplies for nil or inadequate consideration between non-profit sub-entities or between a non-profit sub-entity and the parent entity or associates of the parent entity.

1.15 The Association of Heads of Australian University Colleges and Halls, Inc. (AHAUCHI) told the Committee that the immediate problem with extending the associates test so that it will now apply to non-profit sub-entities is that it will require universities and colleges to bring to financially account for things that have never previously been accounted for. They argue that this will lead to a massive increase in administrative burden and an increase in tax compliance costs.[6]

Associates test

1.16 Item 18 in Schedule 6 inserts the following new section into Division 72 of the GST Act:

> 72-92 **Non-profit sub-entities**
>
> This Division applies to a non-profit sub-entity of an entity as if the non-profit sub-entity were an associate of:
>
> (a) that entity; and
>
> (b) every other non-profit sub-entity of that entity; and
>
> (c) any other associate of that entity.

1.17 Division 72 of the *A New Tax System (Goods and Services Tax) Act 1999* provides rules which ensure that supplies without consideration to an entity's associates attract the GST and that supplies to an entity's associates for inadequate consideration are properly valued for GST purposes. The supplies are valued at the going market rate in order to determine the GST that is payable on them.

1.18 The provisions of new 72-92 ensure that supplies between non-profit sub-entities or between a non-profit sub-entity and its parent entity or associates of the parent entity, for a nil

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5 Explanatory Memorandum, p. 3.

6 Evidence, p. E5.

consideration or a consideration substantially below market value, also will now attract the GST.[7] Therefore parent entities will be required to put a value on every supply provided at less than its full market value or for nil consideration to, and between, its non-profit sub-entities, and account for the GST.

1.19 The Australian Taxation Office (ATO) has assessed university colleges and halls of residence as 'charities'.[8] The Bill effectively extends the application of the GST to many transactions normally undertaken between universities and colleges and their various non-profit sub-entities, such as halls of residence.

1.20 The Bill is not specifically aimed at universities and colleges, indeed the Bill never specifically mentions them. The Bill's generality thus means that it would also apply to other entities regarded as 'charities' by the ATO.

1.21 AHAUCHI submitted that the provisions in Item 18 of Schedule 6 would lead to 'high compliance burdens' being placed on educational institutions.[9] The Australasian Campus Union Managers Association (ACUMA) supported this view in its submission. It claimed that:

> In practice, the compliance complexities associated with trying to keep track of every use of university/guild infrastructure by the sub-entitied student clubs for purposes of the associates provisions, would render the sub-entity provisions unworkable in the campus services sector.[10]

1.22 In addition to increased compliance costs, universities and other non-profit entities will be faced with paying GST on transactions which were previously free of tax. The ACUMA commented that:

> The associates provisions would cause tax to be paid on a massive number of day-to-day economic interactions between student clubs and their universities/guilds, which have never previously … been required to be recorded financially or brought to account.[11]

1.23 According to the National Council of Independent Schools' Associations (NCISA), the effect of the proposed amendment on schools would be a significant increase in their compliance burden.

1.24 Schools would be forced to establish a market value for each of the situations where a school allows its non-profit sub-entities to use facilities or where it makes donations of goods or services to the non-profit sub-entity, resulting in a GST liability on this value.

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7 Explanatory Memorandum, p. 62.

8 Submission No. 2, p. 1.

9 Submission No. 2, p. 2.

10 Submission No. 6, p. 2.

11 Submission No. 6, p. 2.

1.25 NCISA noted, however, that if the school charges a nominal amount for the use of facilities and administration that otherwise would be donated, section 38-250 may apply.[12]

1.26 Section 38.250 provides that a supply by a charity, trustee of a charitable fund, gift deductible entity or a government school is GST-free if the consideration given for it is less than 75% of the market value of the supply, if that supply is accommodation, or 50% of the market value of the supply, if that supply is not accommodation. Alternatively a cost method may be used whereby a supply is GST free if the supply, whether accommodation or not, is provided for less than 75% of its cost.

1.27 Therefore to determine whether the supply is GST liable or GST free will significantly increase compliance burdens for the non-profit entity but the exercise may produce little income to government, especially if the provisions of Section 38.250 apply.[13]

1.28 In response to the comments about the proposed new section 72-92, Ms Mellick of the Australian Taxation Office (ATO) advised the Committee that:

> The tax office originally thought that the associates provisions applied to [non-profit subentities] in the normal fashion and we discovered fairly recently that they did not. So the amendment is a fairly technical one to ensure that the associates provisions do apply to non-profit subentities.[14]

1.29 Ms Mellick noted that a number of witnesses have said that they were not aware that the associates provisions applied, and now there is a new rule that gifts et cetera have to be valued. She continued:

> That was always the case as far as we are concerned. It is not a change in policy; it is not a change in our interpretation. So the issues of things like valuing meeting rooms where they are being given to an entity that is unregistered et cetera have always been there and we have been working through those issues with the industry.[15]

1.30 In conclusion, Ms Mellick stated that she hoped 'people have been accounting for these transaction because that is the intention'.[16]

1.31 The Committee notes that on the tax reform web site the following question and answer is included in the Charities Consultative Committee Report 1 July 2000:

> 11. **What is the definition of an associate?**
>
> The GST legislation applies the definition of an associate contained in section 318 of the Income Tax Assessment Act 1936.
>
> An associate of a taxpayer is broadly defined to mean:

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12 Submission No. 7, p. 2.

13 Submission No. 5, p. 2.

14 Evidence, p. E24.

15 Evidence, p. E24.

16 Evidence, p. E24.

- A relative or partner of the taxpayer
- A trustee of a trust estate where the taxpayer or a relative is capable of benefiting under the trust, or
- A company that is effectively under the direction or control of the taxpayer or a relative or that is capable of being controlled by the taxpayer and/or associates.

The definition of an associate does not extend to a non-profit sub-entity as they are treated as entities for the purposes of the GST law only.[17] (Committee's emphasis)

1.32 In response to concerns raised in submissions about the associates provisions, the ATO has provided the following information:

> 2 The associates provisions currently apply to non-profit entities, government entities, and for profit entities as well as branches of these entities. The proposed amendment will rectify a potential problem where registered non-profit organisations are making supplies for nil or inadequate consideration to unregistered non-profit sub-entities - effectively making those supplies GST-free. This behaviour is contrary to the original policy intent that non-profit organisations should be taxed on their commercial activities to avoid unfair competition with commercial businesses. It is also contrary to the principle that final consumption should be subject to GST
>
> 3 The proposed amendment was presented to members of the Charities Consultative Committee (CCC) on 5 September 20000 for their consideration. The amendment received in-principle support from Committee members, with many members expressing the view that the tax evasion opportunity that exists under current law is undesirable.
>
> 4 Some members raised concerns about the amendment from an administrative perspective as they consider that it would cause apportionment and valuation issues for some organisations. However, it should be noted that the issues of apportionment and valuation already exist under the current associates provisions that apply to non-profit organisations as well as businesses conducted for profits and government agencies. It also exists when applying the provisions that allow entities the option of treating certain supplies as input taxed, for example Divisions 40-E – school tuckshops and canteens and 40-F – fundraising events conducted by charitable institutions.[18]

1.33 In relation to concerns about high compliance costs, the ATO has responded that:

> 5 A parent entity makes a **choice** to treat parts of its organisation as non-profit sub-entities. Generally, the parent entity has chosen to treat this unit/part of its organisation as a non-profit sub-entity to reduce its compliance burden. It is expected that the majority of non-profit sub-entities will not be registered for GST and will therefore not have to account for GST. Thus reducing the overall administrative and compliance costs for the organisation as a whole.

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17 Charities Consultative Committee Resolved Issues as at 1 July 2000, at www.taxreform.ato.gov.au/ind_partner/charities/qna/qna3.htm.

18 Correspondence from the Australian Taxation Office, 29 November 2000, p. 1

> 6 It is contended that there will be significant compliance costs in recognising and identifying transactions between the parent entity and non-profit sub-entity that should have GST attached. It should be noted that in order to apply the non-profit sub-entities provisions a parent entity must be able to separately identify units of it[s] organisation either by location or by the nature of its activities and the separate unity must maintain a separate system of accounting. The requirement for maintaining a separate system of accounting clearly implies the ability to separate the non-profit sub-entity transactions (supplies and acquisitions) from those of the parent. The choice to use non-profit sub-entities also demonstrates an acceptance of this requirement.
>
> 7 A number of the examples in the submissions use either student associations or similar associations as examples of non-profit sub-entities to which the amendment may apply. However, in these cases, the ATO would argue that these units are actually entities in their own right and not non-profit sub-entities. Similarly, it has been suggested that support groups for particular school courses, programs or activities may be affected by the amendment. The ATO doubts in these cases that the parent entity would be entitled to apply the non-profit sub-entity provisions because it could be argued that programs or activities are not separately identifiable according to the requirements of the non-profit sub-entities provisions. In these cases the programs or activities would be part of the parent entity, the school, and the associate provisions would not apply.[19]

1.34 Responding to concerns about the treatment of gifts, the ATO stated that:

> 9 It is argued that the amendments to the associates provisions will capture those transactions that are essentially gifts. However, the goods and services provided are not gifts as they are not provided out of disinterested benefaction and there is a material benefit to the giver (the parent entity). The material benefit provided may be the fact the parent entity does not need to undertake these activities on its own behalf. Similarly supplies that are for inadequate consideration need to be properly valued for GST purposes.[20]

1.35 In responding to the suggestion that the amendments be limited to 'direct resale of goods and services' to the public that have been 'gifted' by or transferred at ' under value' by the parent to the non-profit sub-entity, the ATO said that:

> 13 This suggestion does not recognise a range of other supplies or acquisitions that are costs of inputs to the supplies made by the non-profit sub-entity such as electricity, rent etc. Such action would provide the entity with a competitive advantage over other suppliers of the same or similar goods and services. It would effectively make supplies by the unregistered non-profit sub-entity (and because of the structure the parent entity) GST-free – providing a clear competitive advantage to organisations using non-profit sub-entities.
>
> 14 Such treatment provides an incentive to non-profit organisations that can utilise Division 63 to incorrectly treat an entity as a non-profit sub-entity. Also, this suggestion would allow a different treatment for an entity to that of a non-profit

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19 Correspondence from the Australian Taxation Office, 29 November 2000, pp. 1-2.

20 Correspondence from the Australian Taxation Office, 29 November 2000, p. 2.

sub-entity – even though non-profit sub-entities are considered to be entities for GST purposes.[21]

1.36 Despite the foregoing, the current Bill clearly will make non-profit sub-entities associates of their parent entity. The answer on the Tax Reform website, quoted in paragraph 1.31 above, shows that the ATO was only recently aware that the associates provisions did not extend to non-profit sub-entities, hence the amendment proposed in the Bill. The Committee notes that there appears to be confusion amongst some entities in the education sector about the appropriate use of the non-profit sub-entity provisions. Treating a unit as a non-profit sub-entity is an option that certain entities may wish to exercise, so as to remove the unit from the GST system.

Other Issues

1.37 Another issue raised by submittors concerned confusion over terminology. For example, AHAUCHI pointed out that educational institutional institutions often provided food with accommodation, but there was 'uncertainty', about whether the term accommodation, as used in the *A New Tax System (Goods and Services Tax) Act 1999*, was capable of encompassing food.[22] Food therefore might need to be accounted for separately from accommodation, something which would involve considerable compliance costs.

1.38 The issue of the definition of accommodation was raised in evidence by representatives for university colleges and secondary boarding schools which frequently provide, either directly or through sub-entities, accommodation to students. This accommodation often, but not always, includes the provision of food.

1.39 Mr Peter McDonald, Consultant, (AHAUCHI) stated that in July 2000 the Australian Taxation Commissioner had withdrawn the original charities guidelines. These guidelines had stated, among other things, that '[f]ood and accommodation are one supply'.[23] When these guidelines were withdrawn food and accommodation could no longer be aggregated together for tax accounting purposes, but rather had to be separately accounted for.

1.40 Mr McDonald pointed out that having to account for food separately from accommodation would be quite difficult, especially since there was no widely accepted manner of costing food. Mr McDonald stated that in a recent discussion he had with 20 bursars of colleges, no two bursars used the same method for determining the cost of the food provided by their college.[24]

1.41 Mr McDonald pointed out that in Administrative Appeals Tribunal case 10,476 of 1995, the Tribunal had used a definition of accommodation that was inclusive of food. Mr McDonald also brought to the Committee's attention the definition of accommodation in the *Macquarie Dictionary* which included food.[25]

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21 Correspondence from the Australian Taxation Office, 29 November 2000, p. 3.

22 Submission No. 2, p. 3.

23 Evidence, p. E3.

24 Evidence, p. E3.

25 Evidence, p. E4.

1.42 Confusion over whether or not the concept of accommodation included food was apparently so prevalent that the ATO 'took food out [of the definition of accommodation] legislatively'.[26]

1.43 Despite the difficulties faced by colleges in disaggregating food from accommodation, the problems of disaggregation are not insurmountable. Mr McDonald admitted in evidence that some colleges already offer students the option of catered or self-catered accommodation. The latter option involves the relevant college costing its food so as to remove it from the cost of accommodation. Food therefore can be, and is, regularly, separately costed from accommodation.[27]

1.44 Mr Fergus Thomson, Executive Director, National Council of Independent Schools' Associations, objected to the very concept of colleges' food being taxed. He informed the Committee that he found it incongruous that food supplied by parents to their children at home was generally GST free, 'yet where the school—the boarding school or the boarding hostel—acting in loco parentis provides food to their children, generally the GST is payable.'[28]

1.45 The NCISA believes that there is an anomaly in the legislation which requires that a supply of food in boarding schools is not GST free. Rather, the NCISA believes that the supply of food for students in boarding schools should be treated in a similar way to such situations as patients in hospitals, persons in residential care, persons under community care and children in child care, ie GST-free.[29]

1.46 When asked by the Committee to explain the treatment of food in boarding schools, Mr Pyne of the Treasury explained that this situation was one of the difficult issues that had to be dealt with when deciding which food would be GST free and which food would be taxable. He continued:

> When the government was looking at the boarding school situation, the decision was what was, in the government's view, the most appropriate treatment of the boarding schools, bearing in mind that there is a service component to the food that they receive, that in their fees they are paying for the preparation of food, and so the decision that was taken was that a taxable treatment of boarding school food was the most appropriate one, and that is the current government policy.[30]

1.47 Further, Mr Pyne added that an alternative treatment for boarding schools in which food was GST-free, would provide a more generous treatment than anybody receives at home. Boarding schools would be entitled to input tax entitlements on, for example, stoves, and all food would be GST free including soft drinks or other taxable components that make up that food.[31]

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26 Evidence, p. E27.

27 Evidence, p. E9.

28 Evidence, p. E11.

29 Submission No. 5, p. 3.

30 Evidence, p. E26.

31 Evidence, p. E26.

1.48 Mr McDonald also brought the Committee's attention to the fact that the term 'cost' presented some difficulties. In *Phillip Morris v Commissioner of Taxation 1979*,[32] Judge Jenkinson ruled that an organisation's costs were only 'real costs', that is, costs actually borne by the organisation.

1.49 Universities, colleges and boarding schools received many donations, including donations of the land they occupy. If the cost of these donations were factored into the running costs of the organisations they would have no difficulty in proving themselves to be charitable organisations. Current legislation does not allow for this.[33] It is debateable, however, whether donations made, in some cases in the nineteenth century, should be taken into account in determining present day running costs.

1.50 In addressing the issue of food supplied by boarding schools, the ATO stated that:

> 18 The Government does not consider that food provided in boarding schools forms part of a supply of education. The law provides the types of student accommodation and supplies associated with that accommodation that are GST-free. Food is specifically excluded from a supply that is GST-free in subsection 38-105(4). This is consistent with the policy in relation to the general provisions on food. Under Subdivision 30A food prepared on the premises is not considered to be GST-free. While food in boarding schools is specifically excluded from being GST-free by the operation of the law this treatment can be distinguished from food provided in a hospital or an aged care facility. Food provided in these facilities is GST-free because it is considered to be part of the dietary requirement and thus forms part of the health care.
>
> 19 Boarding schools and hostels that are entitled to use section 30-250 of the GST Act may supply the food component GST-free if the amount charged for the food satisfies the non-commercial test contained in the GST Act.[34]

1.51 In relation to the current GST treatment of the supply of accommodation and food by university colleges and halls of residence, the ATO said that:

> 20 The GST Act treats the supply of accommodation and food to students by university colleges and halls in the same manner as it treats the supply of accommodation and food to students by other residential accommodation providers. This is achieved by excluding from the meaning of commercial residential premises, accommodation in connection with an educational institution that is not a school.
>
> …
>
> 22 It is argued in some submissions that the supply of food is part of the supply of accommodation. For GST purposes there is a clear distinction between the supply of food and the supply of accommodation as there is a different GST treatment for food and accommodation. Food should therefore be treated as a separate supply. Where one fee is charged, for both the accommodation and the food, these items must be separated and the supply of food should be treated as a taxable supply.

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32 Phillip Morris Ltd v Federal Commissioner of Taxation 38 FLR 383

33 Evidence, p. E4.

34 Correspondence from the Australian Taxation Office, 29 November 2000, p. 5.

> 23 It is clearly envisaged within the GST legislation that where a supply of tertiary college accommodation includes components that are treated differently for GST purposes those elements should be separated and taxed accordingly. Section 9-80 provides a mechanism for unbundling supplies that are partially taxable and partially GST-free.[35]

1.52 The ATO provided the following comments about including imputed costs when calculating costs for the purposes of Section 38-250 of the GST Act:

> 24 Paragraph 38-250(2)(b) provides that a supply of accommodation will be GST free if the consideration received is less than 75% of the cost to the supplier to provide the accommodation. The words 'cost to the supplier' clearly do not allow imputed costs.
>
> 25 Costs for supplies of accommodation include all direct and an appropriate allocation of indirect costs and depreciation amounts for depreciable assets. Cost does not include imputed costs for things like donated goods and services, volunteer labour and rental where the rent is not actually paid. The reason for this treatment is that the organisation has not actually incurred any real cost for these things.
>
> 26 The ATO has issued guidelines for organisations to use as a basis for establishing their costs for the purposes of section 38-250 of the GST Act. These guidelines were issued on 22 November 2000 and a copy is provided at Attachment A.[36]

1.53 Evidence presented to the Committee suggested that the initial compliance cost of the associates measure in the Bill is high. However, the ATO submits:

> … that in order to apply the non-profit sub-entities provisions a parent must be able to separately identify units of its organisation either by location or by the nature of its activities and the separate unit must maintain a separate system of accounting. The requirement for maintaining a separate system of accounting clearly implies the ability to separate the non-profit sub-entity transactions (supplies and acquisitions) from those of the parent. The choice to use non-profit sub-entities also demonstrates an acceptance of this requirement.[37]

1.54 The Committee considers, however, that once the measures in the Bill are put in place the continuing compliance cost will not be high.

Coin operated devices –Item 17, Schedule 1

1.55 As noted above, Submission No 3 from Ernst & Young raised an issue unmentioned by any other submittor. Specifically, the submission raises industry concerns about Item 17 in Schedule 1 of the Bill which provides for supplies from certain coin-operated devices to be input taxed.

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35 Correspondence from the Australian Taxation Office, 29 November 2000, p. 5.

36 Correspondence from the Australian Taxation Office, 29 November 2000, p. 6.

37 Correspondence from the Australian Taxation Office, 29 November 2000, p. 2.

1.56 Presently some coin-operated devices take only certain denominations of coins. These machines cannot be easily or quickly converted to allow them to take other denominations of coins, thus the machines cannot immediately be adapted to take account of the GST. The Bill recognises this and allows supplies from some, and only some, coin-operated machines to be input taxed, thus effectively allowing more time for businesses to adapt their machines. Ernst & Young, however, claim that the Bill will produce uncertainty as to the tax status of coin-operated machines.[38]

1.57 The Committee did not hear further evidence on this issue at the public hearing. However, the ATO undertook to respond to the concerns raised by Ernst and Young in their submission on coin operated devices and has provided the following information:

> **Confirmation of interpretation of terms**
>
> There are 2 issues that have been raised about the meaning of provisions in new section 254C of the *A New Tax System (Goods and Services Transition) Act 1999,* relating to coin operated machines.
>
> We can confirm that the term 'mechanical coin operated device' will apply to both 'mechanical' and 'electronic' coin acceptors. The main requirement for the concession to operate is that the payment for the supply is by the insertion of a coin that operates a device and that the coin acceptor will only accept one denomination of coin.
>
> The proposed legislation requires the device to have been operating on 1 July 2000. We confirm that the device could have been operated by an entity other than the current owner on 1 July 2000 to be eligible to use this concession.
>
> **Maximum consideration for the supply is $1**
>
> The $1 limit was set to assist operators of low value machines. As with any concession there will always be arguments over the setting of the threshold. The $1 threshold was set to assist small operators.
>
> The question was raised as to whether there is one supply or two supplies where 2 x $1 coins are inserted to give 2 games. In these cases, we consider that there are 2 supplies each with a price of $1. Therefore, if 2 x $1 coins were inserted to give 2 games, each supply would fall within the scope of the provisions.
>
> **Only one denomination of coin accepted**
>
> This rule is included because it is considered that once more than one denomination of coin can be inserted, the proportional impact of the GST will not be as great (eg the machine that accepts both 20 cent coins and 10 cent coins could increase the supply price from 20 cents to 30 cents but there will still be ACCC pricing issues to consider). The removal of the denomination test could potentially allow a much broader range of machines such as food and drink vending machines access to the concession. This is clearly not necessary where they can cope with the pricing issues. This would especially be the case if the limit for the supply price was increased to $2.

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38 Submission No. 3.

Pricing issues

> One of the major issues raised is that even if the machines had the flexibility to accept different coins they may contravene the ACCC price exploitation guidelines. There also seems to be the issue of pricing points which leaves the question of how their prices could ever change due to other cost increases (i.e. how does the industry cope with other movements in costs).[39]

1.58 The ATO's response to the issues raised in submissions to the Committee and in evidence is attached at Appendix 7.

Recommendation

1.59 The Committee recommends that the Senate pass the Bill.

Senator the Hon Brian Gibson
Chairman

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39 Correspondence from the Australian Taxation Office, 29 November 2000, pp. 6-7.

SENATOR MURPHY'S MINORITY REPORT

Senator Murphy draws the attention of the Senate to the evidence provided to the Committee by the Association of Heads of Australian University Colleges & Halls, Inc. (AHAUCHI) and the National Council of Independent Schools' Associations (NCISA).

Mr Fergus Thomson of NCISA pointed out, in evidence to the Committee, that food provided by parents to their children at home was largely GST free. Mr Thomson noted though, that 'where the school—the boarding school or the boarding hostel—acting in loco parentis provides food to their children, generally the GST is payable.'[1] Mr Thomson found this situation anomalous. Senator Murphy agrees.

The Bill implicitly supports the policy, already given effect by other legislation, that food provided by educational institutions, such as boarding schools, should be subject to the GST. The GST is not levied on most basic food items for the very good reason that such items are basic necessities of life. In my view, the concept of taxing the basic necessities of life is repugnant.

Children who live at home and attend local day schools consume food. Children who are students at boarding schools, often children from rural and remote areas, also consume food. I see no policy imperative dictating why the food consumed by one group of students should be largely GST free, while the food of another group should be taxed.

While maintaining our opposition to the concept of the GST, I believe that there is a clear distinction between food provided to children 'in loco parentis' in boarding schools and prepared meals purchased by restaurant patrons.

Senator Murphy also notes the comment in the submission from AHAUCHI that the provisions of the Bill regarding accommodation will result in 'high compliance burdens'.[2] I agree with this assessment. The Bill's requirement that educational institutions account, for tax purposes, for supplying accommodation to their students will require considerable alteration to existing accounting procedures. This is a waste of the scarce resources of educational institutions and the revenue to be gained from this requirement would appear to be minimal.

SENATOR MURPHY

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1 Evidence, p. E11.

2 Submission No. 2, (AHAUCHI), p. 2.

AUSTRALIAN DEMOCRATS

MINORITY REPORT ON THE TAXATION LAWS AMENDMENT BILL (NO.8) 2000

SENATOR ANDREW MURRAY

Associates Test

As outlined in the majority report, proposed new section 72-92 of the A New Tax System (Goods and Services Tax) Act 1999 will mean that supplies between non-profit subentities or between a non-profit subentity and its parent entity or associates of the parent entity, for a nil consideration or a consideration substantially below market value, will now attract the GST. The consequence is that parent entities will be required to put a value on every supply provided at less than its full market value to and between, its non-profit sub-entities and account for GST.

The mischief that the amendment seeks to remedy is the situation where a parent entity claims an input tax credit on goods and services and then gives those goods and services to its unregistered non-profit subentity which re-sells the goods without accounting for GST. The subentity is judged to therefore be at an advantage over competitors and the tax base to be reduced.

The primary concern of the interested sectors and of the Australian Democrats is not the amount of the GST that will need to be remitted (which seems to be minor), but it is the burden of compliance that the amendment will impose.

As is also pointed out in the majority report, if a nominal amount is charged by an entity and the provisions of section 38-250 apply, the supply may be GST free. The result is a substantial increase in the compliance burden with the prospect that little additional revenue will ultimately be collected.

The response by the ATO that it was originally thought that the associates provisions applied to non-profit subentities and that that was always the intention is no answer to the substantive concern about the compliance burden.

The National Council of Independent Schools' Associations comment in their submission that:

> The very nature of charities is they financially cross-subsidise activities. The proposed amendments are at odds and a disincentive with this practice. Under the proposed amendments charities may now be penalised for doing what they are designed to do and that is provide goods and services to others for little or no consideration.

The government has not proven that there would be a substantial loss to the revenue in the absence of section 72-92. The mere fact that there may be difficulty in calculating such a loss could mean that the loss is minor rather than major.

It was suggested to the Committee by Dr Myles McGregor-Lowndes that an alternative to the amendment could involve altering the amendment to only catch the direct re-sale of goods

and services to the public after they have been 'gifted' or transferred at 'under value' by the parent to the non-profit subentity. The ATO responded to Dr McGregor-Lowndes' suggestion in the manner set out in paragraph 1.35 of the majority's report.

The Democrats are very keen to alleviate at least some of the burden that proposed new section 72-92 will impose. Our reasons for that are threefold: firstly the entities which will be the subject of the burden are, by definition, non-profit entities. The work of those organisations is almost invariably beneficial to the community or to a section of the community and their benevolence is to be encouraged and rewarded, not penalised. Secondly, I understand that the loss to the revenue is comparatively small and if any major leakage can be plugged the balance should be accepted as a cost to government of not stifling the non-profit sector. Thirdly, it may be better to allow the whole sector to settle down in this first year of GST, rather than impose significant additional systems requirements.

At this stage we are of the view that there are two option available to us. The first is to oppose proposed new section 72-92 with a view to revisiting this issue if it appears that after the first year of operation of the new tax system that non-profit subentities can be proven to be causing substantial revenue leakage. The second is to move an amendment which would result in the capture of the most important portion of the alleged revenue leakage but leaving the bulk unaffected so keeping compliance costs to a minimum.

Other Issues

The second major issue before the Committee was the treatment of the supply of food to students in boarding schools. The supply of food in those circumstances is currently a taxable supply.

Two issues arise in relation to this manner of treating that supply.

The first is the compliance cost of disaggregating food from accommodation in circumstances where charities and schools have not previously done so.

The second is the consistency of treatment of the supply of food in the boarding school scenario and the supply of food to patients in hospitals, persons in residential care, persons under community care and children in child care. The supply in the latter circumstances is GST free. Support for making the supply of food in boarding schools GST free can also be found in the argument that food supplied by parents to students at home will generally be GST free.

The supply of food in a boarding school is analogous to the supply of food to people in care rather than the supply of food in restaurants or cafeterias where people can choose to purchase food or not. In other words, it is inseparable from the educational provision overall.

Evidence was received that the Australian Taxation Commissioner has withdrawn the original charities guidelines that had provided that "food and accommodation are one supply". We are concerned that accounting for food and accommodation separately in the charities sector has created an increased compliance without a corresponding protection of revenue.

The government established at the release of the ANTS package that education and charities would be GST free. They have accepted the policy that 'basic food' should be GST free. There is an argument that it is anomalous that the provision of food in circumstances where it

is inextricably linked to the provision of education should attract GST. It has been estimated by the National Council of Independent Schools' Associations that the removal of GST from food supplied in boarding schools would only cost the government $1.5 million per annum.

The argument which opposes those already outlined is that food provided in boarding schools is prepared food and there is a service component. So far that element has largely been the distinguishing factor for determining whether food is GST free or not.

This issue is still under consideration by the Australian Democrats.

Senator Andrew Murray

APPENDIX 1

LIST OF SUBMISSIONS

1	Associate Professor Dr Myles McGregor-Lowndes, Queensland University of Technology
2	Association of Heads of Australian University Colleges and Halls Inc
3	Ernst and Young
4	Marist Brother Province Centre
5	National Council of Independent Schools' Associations
6	Australasian Campus Union Managers Association
7	Isolated Children's Parents' Association of Australian (Inc.)
8	Hunt and Hunt Lawyers (for RMIT University)

APPENDIX 2

LIST OF WITNESSES APPEARING BEFORE THE COMMITTEE

Wednesday, 22 November 2000, Canberra

Association of Heads of Australian University Colleges and Halls
Mr Peter Fyfe
Dr Lewis Rushbrook
Mr Peter McDonald

National Council of Independent Schools' Associations
Mr Fergus Thomson
Ms Kathryn Edwards
Mr Peter Devine

RMIT University
Mr Peter Cork
Mr Phillip Nolan (Hunt & Hunt Lawyers)

Australian Taxation Office
Ms Tracey Mellick
Ms Jennifer Hart
Ms Kelly Canavan

Treasury
Mr David Crockart
Mr Tim Pyne

APPENDIX 3

LIST OF TABLED DOCUMENTS

Association of Heads of Australian University Colleges & Halls, Inc.

1. The Macquarie Concise Dictionary definition of *accommodation*
2. Administrative Appeals Tribunal, Case 10,476
3. Taxation Reform – economic impact on Australian university colleges and halls of residence
4. Supreme Court of Victoria, Philip Morris Ltd v Federal Commissioner of Taxation
5. Thokmac Research, *The Government's Tax Reform Package – Impact on Cost of Education Outputs & on Education Exports*
6. Federal Court, Plessey Australia Pty. Limited v. Federal Commission of Taxation

RMIT/Hunt & Hunt

1. Chart indicating GST treatment of premises

Australian Taxation Office

1. Copy of minutes of the sixth meeting of the Education Industry Partnership, 27 July 2000

APPENDIX 4

CORRESPONDENCE FROM THE NATIONAL COUNCIL OF INDEPENDENT SCHOOLS' ASSOCIATIONS

23 November 2000

Mr Peter Hallahan
Secretary
Senate Economics Legislation Committee
Parliament House
CANBERRA ACT 2600

Fax: 6277 5719

Dear Mr Hallahan

SENATE ECONOMICS LEGISLATION COMMITTEE HEARING ON TAXATION LAWS AMENDMENT BILL (NO. 8) 2000 22 NOVEMBER 2000

Thank you for the opportunity for representatives of NCISA to appear before the Committee in relation to the proposed amendments. We would like to follow up on some if the issues raised during the Committee hearing.

Boarding Schools

It is important for the Committee members to recognise that the GST on boarding school food is not simply a revenue issue. NCISA suggests that the Committee must weigh against any revenue loss (now estimated at $1.5 million per annum not $3 million as suggested at the hearing) other factors, in particular the:

- impact on parents in rural and regional Australia of a tax impost on boarding school food for their children that they would not have if their children were at home;
- additional cost to overseas parents considering an Australian boarding school as a destination for their school-age children;
- revenue gain to Australia from the expenditure made in Australia by overseas school students.

Although the discussion about food has centred on schools, the burden of increased fees is actually covered by the parents and paid out of after tax income. As stated in our submission, many of these students are from rural and remote areas of Australia who are not able to remain at home to access a school education and the increase in fees is an additional impost to parents. The treatment of food in boarding schools as a taxable supply when it is clearly integral to the boarding situation, clearly part of the supply of accommodation to students and analogous to the supply of care (including food and accommodation) in hospitals and similar

settings is a situation that needs to be addressed as a matter of importance, fairness and urgency.

In 1999 the DETYA non-government schools census data showed that there were a total of 22,082 boarding students comprising 14,898 independent and 7,904 Catholic students across a total of 196 schools in Australia. This figure does not include students from government boarding schools who are also affected by the provisions relating to boarding school food.

The Committee heard some discussion about the process of finalising the draft market value guidelines by the Australian Taxation Office. As we stated at the hearing, NCISA was not aware that there were any significant changes to the draft guidelines (released in November 1999) and we were satisfied that the application of the draft guidelines would result in GST-free food for boarding schools. At the Australian Taxation Office's Education Industry Partnership Meeting of 27 July 2000, the revised (final) market value guidelines were outlined but not distributed. The recollection of NCISA representatives who attended that meeting was that the guidelines would be finalised by the Charities Consultative Committee, not the Education team, in the next day or two and that there was no opportunity to vary the guidelines. At no stage before this meeting was NCISA consulted as to the potential impact of this revision on the operation of boarding schools.

When the final guidelines were released, university halls and colleges and boarding schools asked for, and were granted, a period of grace until 1 January 2001. This period of grace extended to those entities that had relied on the approach in the draft guidelines for market values for dealing with the tax status of food.

There continues to be uncertainty about the practical application of the market value guidelines. There are a range of interpretations of how to go through the process of determining costs for schools and comparing it to "the market". All of this is required to see if the schools may be able to apply the provisions of s.38-250 and not charge GST on boarding school food.

NCISA re-emphasises that food is an essential component of the provision of boarding school accommodation. We accept that if the supply of food in boarding schools is GST-free, then the GST-free supply is only for students in the school's boarding house (or in a hostel for rural and isolated students) and undertaking an educational course. This would be similar to individuals in other care situations for whom GST-free food is supplied. The supply of food to other individuals or entities should be treated as for any other supply of food.

We would like to see s.38-105 amended to ensure that food supplied to students in boarding schools is GST-free rather than revisit the market guidelines issue.

Non-Profit Sub-Entities

NCISA would like to reiterate our view that the proposed s.72-92 has significant (and possibly unintended) compliance issues for schools that have utilised the non-profit sub-entities provision. A particular difficulty arises where schools that have already elected to utilise the non-profit sub-entities provisions do so for a 12 month period. Under the amendment, schools will be required to undertake more complex compliance issues than they would have been facing at the time of the original decision. If they had known that these

compliance issues would be associated with their decision, this may have influenced the way in which thy structured their arrangements.

Another approach to these issues might be an amendment that ensures that supplies made by a parent entity to a sub-entity for the sub-entity's internal use, for example the use of a meeting room, is not subject to GST. However, the subsequent taxable supply of goods or services by the unregistered non-profit sub-entity to another party should attract GST liability to the parent entity.

Under s.63-5 non-profit sub-entities can only be established by, among others, charitable institutions. We suggest that until the inquiry into the definition of charities and related organisations presents its report (due in March 2001), that the issue be set aside to be revisited at a later date.

NCISA can provide any further information, or clarify any issues raised at the Committee hearing or in relation to canteens and other input taxed supplies made by schools, as presented in our submission, if the Committee feels that would be required.

Yours sincerely

Fergus Thomson
Executive Director

24 November 2000

Mr Peter Hallahan
Secretary
Senate Economics Legislation Committee
Parliament House
CANBERRA ACT 2600

Fax: 6277 5719

Dear Mr Hallahan

SENATE ECONOMICS LEGISLATION COMMITTEE HEARING ON TAXATION LAWS AMENDMENT BILL (NO. 8) 2000 22 NOVEMBER 2000

Thank you for forwarding an excerpt from Hansard from the Committee hearing relating to the question that Senator George Campbell asked NCISA.

In 1998, which is the most recent year that financial information is available for boarding fees, there were a total of 15,416 boarding students and 7,062 full fee-paying overseas students. We have assumed that 80% of the full fee-paying overseas students attend boarding schools. Out of the $1.5m that we estimate will not be collected if boarding school food does not attract GST, 37% of this figure relates to full fee-paying overseas students.

We trust that this information clarifies the situation for the Committee.

Yours sincerely

Fergus Thomson
Executive Director

APPENDIX 5

CORRESPONDENCE FROM THE AUSTRALIAN VICE-CHANCELLORS' COMMITTEE

Mr Peter Hallahan
Secretary
Senate Economics Legislation Committee
SG.64
Parliament House,
CANBERRA ACT 2600

23 November 2000

Dear Mr Hallahan

The Australian Vice-Chancellors' Committee (AVCC) attended the hearings of the Senate Economics Legislation Committee on 22 November 2000 into the impact of *Taxation Laws Amendment Bill (No. 8) 2000* on university colleges and halls of residence, particularly the effect of input-taxing the supply of accommodation and food.

The hearings focussed on two related issues:

- the specific impact of the amendments in the bill relating to sub-entities;
- the broader questions of how the GST affects the provision of accommodation to tertiary students.

It may be useful for the Committee for the AVCC to provide some wider perspective on the problems university accommodation services have faced with the introduction of the GST to build on the submissions made by the Association of Heads of Australian University Colleges and Halls (AHAUCHI) and by RMIT.

It is the Government's policy that tertiary accommodation services be input taxed. Since university halls and colleges offer more than just accommodation the Government's policy means that these relatively small organisations are subject to all three types of GST supplies: accommodation is subject to input taxation; tutor services are GST free as education supplies; and food and possibly some other boarding services are GST liable.

This poses a considerable burden for the halls and colleges. There are few, if any, other organisations subject to all three types of GST supplies.

In response the halls and colleges have looked to ways to simplify their GST responsibilities to minimise the impact on students and to ensure the efficient provision of tertiary accommodation. They have looked at three main options.

First, is to simplify the definition of accommodation to include the full range of accommodation, food and other services they provide so that input taxation covers all their

operations but for their education services. This is the point of the AHAUCHI's issue 1 as raised with the Committee.

This is the minimum change that would simplify the requirements on the halls and colleges.

Second, is to reconsider the decision of the Government, as reflected in the GST legislation, that tertiary accommodation cannot be long term commercial accommodation. Long term commercial accommodation is subject to a special GST arrangement whereby a 5% GST is levied, reflecting the mix of accommodation (input taxed) and other (GST liable) services they provide.

The Government amended the GST legislation to allow long term commercial accommodation providers to choose whether they wished to use the 5% arrangements or to be input taxed, following argument that the latter would be simpler for some providers. At the same time it rejected allowing tertiary accommodation providers the same choice, despite the clear parallel between tertiary accommodation services and long term commercial accommodation. Indeed the parallel is often stronger with commercial provision than with the input taxed private house and flat rental market.

I note that the Australian Taxation Office in its evidence to the Committee concerning guidelines on assessing the market value of accommodation was concerned that the halls and colleges not gain an advantage over commercial equivalents. As it stands the Act actually puts them at a disadvantage.

This second option would give tertiary accommodation services a choice of a simple 5% GST charge or the combined input taxed and 10% GST regime intended by the Government. Calculations by the halls and colleges suggest that for many the 5% arrangement would involve no higher net charge to students and be administratively much simpler.

Such a choice would resolve many of the problems identified by RMIT in its efforts to develop commercially provided accommodation for its students in the centre of Melbourne. Such developments are being considered by a number of other universities.

Third, is for tertiary accommodation to make use of the non-commercial supplies provisions of the GST legislation. This is consistent with the Government view that such accommodation cannot be considered commercial supplies.

Under this approach tertiary accommodation becomes GST free.

Most, if not all, halls and colleges met the tests for non-commercial supplies under the draft market valuation guidelines issued by the ATO in 1999. However, as the Committee heard in evidence, the ATO's final guidelines are much tighter and leave many halls and colleges unsure of their position.

The second change proposed by AHAUCHI goes to this issue. By allowing for imputed costs where halls and colleges are relying on free or low cost provision from their charitable origins a more realistic assessment of whether they are providing non commercial services can be made.

Taking these three options together, tertiary accommodation services such as halls and colleges have explored the full range of options to allow them to operate in the future in a way that is administratively simple while meeting the Government's broad taxation

objectives. The key is to allow tertiary accommodation to be provided under one of the three GST regimes – input taxed, GST liable, or GST free – not all three.

The AVCC welcomes the Committee's interest in this issue and requests that as well as addressing the particular amendments in the Amendment Bill it make recommendations to the Government that will provide a sensible way forward for halls and colleges within the GST system.

Turning to the specific amendments in the Bill the Committee will understand why this further change is seen as yet another impediment to the effective provision of tertiary accommodation. The sub-entity arrangements allow for various related groups to operate without the hall or college being fully responsible for all aspects of their finances. I understand that the amendment is intended to prevent sub-entities onselling goods or services they had received from their parent body for free where the parent body claims a GST input credit for the GST on the initial purchase of those goods or services.

The AHAUCHI propose a sensible amendment to the Bill to limit its effect to such cases on onselling. This would then leave undisturbed the cross subsidized provision of services to sub-entities such as access to rooms, photocopying and so on. The AVCC encourages you to support this proposal.

Yours sincerely

[signed]

Stuart Hamilton
Executive Director

APPENDIX 6

CORRESPONDENCE FROM THE AUSTRALIAN TAXATION OFFICE

2 Constitution Ave Civic ACT 2601
PO Box 900 Civic Square ACT 2608

Telephone: 02 6216 1111
Facsimile: 02 6216 1959

Our Reference: TLAB 8 2000
Contact Officer: Amelia Faccin **Ph**: 02 6216 2480
Your Reference:

29 November 2000

Mr Peter Hallahan
Secretary
Senate Economics Legislation Committee
Parliament House
CANBERRA ACT 2600

Dear Mr Hallahan

TAXATION LAWS AMENDMENT BILL (NO. 8) 2000

Attached please find the Australian Taxation Office's response to written submissions provided to the Senate Economics Legislation Committee and to issues discussed at the public hearing held on Wednesday 22 November 2000 regarding the Taxation Laws Amendment Bill (No. 8) 2000.

Thank you for the opportunity to respond to the issues raised in submissions and by witnesses appearing before the Committee.

If you require more information or have any further questions, please do not hesitate to phone Amelia Faccin on 6216 2480.

Yours sincerely

[original signed]

Tracey Mellick
Assistant Commissioner
Goods and Services Tax

Senate Economics Legislation Committee – ATO Response

Written submission issues

ASSOCIATES PROVISIONS

1 A non-profit sub-entity is an entity for GST purposes and has the same rights and obligations as other entities. Item 18 of Schedule 6 of the Bill inserts new section 72-92 into the *A New Tax System (Goods and Services Tax) Act 1999* (the GST Act) to alter the operation of Division 72 to ensure that the Division will apply to non-profit sub-entities.

2 The associates provisions currently apply to non-profit entities, government entities, and for profit entities as well as branches of these entities. The proposed amendment will rectify a potential problem where registered non-profit organisations are making supplies for nil or inadequate consideration to unregistered non-profit sub-entities – effectively making those supplies GST-free. This behaviour is contrary to the original policy intent that non-profit organisations should be taxed on their commercial activities to avoid unfair competition with commercial businesses. It is also contrary to the principle that final consumption should be subject to GST.

3 The proposed amendment was presented to members of the Charities Consultative Committee (CCC) on 5 September 2000 for their consideration. The amendment received in-principle support from Committee members, with many members expressing the view that the tax evasion opportunity that exists under current law is undesirable.

4 Some members raised concerns about the amendment from an administrative perspective as they considered that it would cause apportionment and valuation issues for some organisations. However, it should be noted that the issues of apportionment and valuation already exist under the current associates provisions that apply to non-profit organisations as well as businesses conducted for profits and government agencies. It also exists when applying the provisions that allow entities the option of treating certain supplies as input taxed, for example Divisions 40-E – school tuckshops and canteens and 40-F – fundraising events conducted by charitable institutions.

Issues

Issue 1 - High compliance costs

5 A parent entity makes a **choice** to treat parts of its organisation as non-profit sub-entities. Generally, the parent entity has chosen to treat this unit/part of its organisation as a non-profit sub-entity to reduce its compliance burden. It is expected that the majority of non-profit sub-entities will not be registered for GST and will therefore not have to account for GST. Thus reducing the overall administrative and compliance costs for the organisation as a whole.

6 It is contended that there will be significant compliance costs in recognising and identifying transactions between the parent entity and non-profit sub-entity that should have GST attached. It should be noted that in order to apply the non-profit sub-entities provisions a parent entity must be able to separately identify units of it organisation either by location or by the nature of its activities and the separate unit must maintain a separate system of accounting. The requirement for maintaining a separate system of accounting clearly implies

the ability to separate the non-profit sub-entity transactions (supplies and acquisitions) from those of the parent. The choice to use non-profit sub-entities also demonstrates an acceptance of this requirement.

7 A number of the examples in the submissions use either student associations or similar associations as examples of non-profit sub-entities to which the amendment may apply. However, in these cases, the ATO would argue that these units are actually entities in their own right and not non-profit sub-entities. Similarly, it has been suggested that support groups for particular school courses, programs or activities may be affected by the amendment. The ATO doubts in these cases that the parent entity would be entitled to apply the non-profit sub-entity provisions because it could be argued that programs or activities are not separately identifiable according to the requirements of the non-profit sub-entities provisions. In these cases the programs or activities would be part of the parent entity, the school, and the associate provisions would not apply.

8 The ATO agrees that in some circumstances it may be difficult for a parent entity to value those transactions that have no commercial markets or substitutes. However, in these cases the Commissioner will accept a reasonable basis provided the parent entity has made an attempt to value the transactions.

Issue 2 – gifts

9 It is argued that the amendments to the associates provisions will capture those transactions that are essentially gifts. However, the goods and services provided are not gifts as they are not provided out of disinterested benefaction and there is a material benefit to the giver (the parent entity). The material benefit provided may be the fact the parent entity does not need to undertake these activities on its own behalf. Similarly supplies that are for inadequate consideration need to be properly valued for GST purposes.

10 Further evidence that these supplies are not gifts is that, in most case the non-profit sub-entity provides consideration for these goods and services at a later point in the form of a cash payment back to the parent –that payment is treated as a cash donation to the parent.

Issue 3 -The amendment is designed to minimise ATO administrative costs by shifting burdens to non-profit taxpayers

11 See issue 1. The non-profit organisation has elected to treat parts of its organisation as non-profit sub-entities to reduce its administrative costs by taking its separately identifiable parts out of the GST system. The effect of using non-profit sub-entities is to input tax the supplies these unregistered non-profit sub-entities make. Without the associates provisions supplies made by non-profit sub-entities would effectively be GST-free as the parent entity acquires the goods, claims the input tax credits and passes the goods to the non-profit sub-entity.

12 It has been stated in many of the submissions that the ATO should use Division 165 to address this practice. The ability to create non-profit sub-entities is a legal alternative made possible by Divisions 63 of the GST Act. Therefore the anti avoidance provisions do not apply because there is no illegality. This is one of the main reasons why the associate provisions are necessary to prevent the potential loss of revenue.

Issue 4 - Limit the amendments to 'direct resale of goods and services' to the public that have been 'gifted' by or transferred at 'under value' by the parent to the non-profit sub-entity

13 This suggestion does not recognise a range of other supplies or acquisitions that are costs of inputs to the supplies made by the non-profit sub-entity such as electricity, rent etc. Such action would provide the entity with a competitive advantage over other suppliers of the same or similar goods and services. It would effectively make supplies by the unregistered non-profit sub-entity (and because of the structure the parent entity) GST-free - providing a clear competitive advantage to organisations using non-profit sub-entities.

14 Such treatment provides an incentive to non-profit organisations that can utilise Division 63 to incorrectly treat an entity as a non-profit sub-entity. Also, this suggestion would allow a different treatment for an entity to that of a non-profit sub-entity – even though non-profit sub-entities are considered to be entities for GST purposes.

Issue 5 – Division 49 GST Religious groups

15 The issue has been raised that supplies between members of religious groups are not considered to be taxable supplies but the associates provisions operate to make supplies between a parent entity and non-profit sub-entities taxable and that this is an inconsistent tax treatment.

16 Division 49 of the GST Act enables a religious organisation to utilise the benefits of grouping, while alleviating some of the administrative difficulties that these organisations may experience with the GST grouping provisions. The major benefit of grouping is that intra group transactions are ignored for GST purposes. Division 49 allows certain charitable bodies belonging to the same religious organisation to be approved as a GST religious group, enabling transactions between **registered** members of that group to be excluded from the GST.

17 All the members of a GST religious group are registered for GST. This situation cannot be compared with a parent entity and an unregistered non-profit sub-entity. There is a fundamental difference. However, if a non-profit sub-entity elects to **register** for GST they can also choose to be part of a GST group. Some university colleges, if they are not entities, may be non-profit sub-entities and where they are part of a religious institution if registered separately for GST they can be part of a GST religious group.

FOOD SUPPLIED BY BOARDING SCHOOLS

18 The Government does not consider that food provided in boarding schools forms part of a supply of education. The law provides the types of student accommodation and supplies associated with that accommodation that are GST-free. Food is specifically excluded from a supply that is GST-free in subsection 38-105(4). This is consistent with the policy in relation to the general provisions on food. Under Subdivision 30A food prepared on the premises is not considered to be GST-free. While food in boarding schools is specifically excluded from being GST-free by the operation of the law this treatment can be distinguished from food provided in a hospital or an aged care facility. Food provided in these facilities in GST-free because it is considered to be part of the dietary requirement and thus forms part of the health care.

19 Boarding schools and hostels that are entitled to use section 38-250 of the GST Act may supply the food component GST-free if the amount charged for the food satisfies the non-commercial test contained in the GST Act.

THE CURRENT GST TREATMENT OF THE SUPPLY OF ACCOMMODATION AND FOOD BY UNIVERSITY COLLEGES AND HALLS OF RESIDENCE

20 The GST Act treats the supply of accommodation and food to students by university colleges and halls in the same manner as it treats the supply of accommodation and food to students by other residential accommodation providers. This is achieved by excluding from the meaning of commercial residential premises, accommodation in connection with an educational institution that is not a school.

21 The GST Act provides that the supply of residential accommodation by a GST registered entity is an input taxed supply and the supply of food that is consumed on the premises from which it is supplied is a taxable supply. The supply of food to a student by a GST registered university college or hall of residence is generally a taxable supply.

22 It is argued in some submissions that the supply of food is part of the supply of accommodation. For GST purposes there is a clear distinction between the supply of food and the supply of accommodation as there is a different GST treatment for food and accommodation. Food should therefore be treated as a separate supply. Where one fee is charged, for both the accommodation and the food, these items must be separated and the supply of food should be treated as a taxable supply.

23 It is clearly envisaged within the GST legislation that where a supply of tertiary college accommodation includes components that are treated differently for GST purposes those elements should be separated and taxed accordingly. Section 9-80 provides a mechanism for unbundling supplies that are partially taxable and partially GST-free.

INCLUDING IMPUTED COSTS WHEN CALCULATING COSTS FOR THE PURPOSES OF SECTION 38-250 OF THE GST ACT

24 Paragraph 38-250(2)(b) provides that a supply of accommodation will be GST free if the consideration received is less than 75% of the cost to the supplier to provide the accommodation. The words ‘cost to the supplier’ clearly do not allow imputed costs.

25 Costs for supplies of accommodation include all direct and an appropriate allocation of indirect costs and depreciation amounts for depreciable assets. Cost does not include imputed costs for things like donated goods and services, volunteer labour and rental where the rent is not actually paid. The reason for this treatment is that the organisation has not actually incurred any real cost for these things.

26 The ATO has issued guidelines for organisations to use as a basis for establishing their costs for the purposes of section 38-250 of the GST Act. These guidelines were issued on 22 November 2000 and a copy is provided at Attachment A.

CANTEENS

27 A change has been requested to the application of the canteen provisions so that the input taxed treatment is limited to purchases of food items only. Basically non-profit entities want to claim full input tax credits for electricity, phone and capital items for the canteen.

28 Under subdivision 40-E of the GST Act a non-profit body may choose to treat all of its supplies of food through a tuckshop or canteen it operates as input taxed, provided that the shop is operated on the grounds of the school. This means that the non-profit entity would not be entitled to claim input tax credits on any acquisitions made in relation to the provision of food. However, the non-profit entity is entitled to claim input tax credits on acquisitions in relation to the non-food items provided at the canteen.

29 If the Government were to allow the non-profit entity to claim full input tax credits regardless of the status of the supply, taxable or input taxed, the non-profit entity would not be treating the provision of food as fully input taxed. A proportion of the supply would be GST-free. This was clearly not the intention of the Government.

COIN OPERATED MACHINES

ISSUES

Confirmation of interpretation of terms

30 There are 2 issues that have been raised about the meaning of provisions in new section 24C of the *A New Tax System (Goods and Services Transition) Act 1999*, relating to coin operated machines.

31 We can confirm that the term ‘mechanical coin operated device’ will apply to both ‘mechanical’ and ‘electronic’ coin acceptors. The main requirement for the concession to operate is that the payment for the supply is by the insertion of a coin that operates a device and that the coin acceptor will only accept one denomination of coin.

32 The proposed legislation requires the device to have been operating on 1 July 2000. We confirm that the device could have been operated by an entity other than the current owner on 1 July 2000 to be eligible to use this concession.

Maximum consideration for the supply is $1

33 The $1 limit was set to assist operators of low value machines. As with any concession there will always be arguments over the setting of the threshold. The $1 threshold was set to assist small operators.

34 The question was raised as to whether there is one supply or two supplies where 2 x $1 coins are inserted to give 2 games. In these cases, we consider that there are 2 supplies each with a price of $1. Therefore, if 2 x $1 coins were inserted to give 2 games, each supply would fall within the scope of the provisions.

Only one denomination of coin accepted

35 This rule is included because it is considered that once more than one denomination of coin can be inserted, the proportional impact of the GST will not be as great (eg the machine

that accepts both 20 cent coins and 10 cent coins could increase the supply price from 20 cents to 30 cents but there will still be ACCC pricing issues to consider). The removal of the denomination test could potentially allow a much broader range of machines such as food and drink vending machines access to the concession. This is clearly not necessary where they can cope with the pricing issues. This would especially be the case if the limit for the supply price was increased to $2.

Pricing issues

36 One of the major issues raised is that even if the machines had the flexibility to accept different coins they may contravene the ACCC price exploitation guidelines. There also seems to be the issue of pricing points which leaves the question of how their prices could ever change due to other cost increases (i.e. how does the industry cope with other movements in costs).

RESPONSE TO ISSUES DISCUSSED AT THE HEARING

MARKET VALUE GUIDELINES

37 One of the outcomes of the Charities Consultative Committee (CCC) in addressing the concerns of the sector was to address the following issue (as advised in *Charities Consultative Committee Report November 1999* - summary of process and outcomes of the CCC):

> ***'Application of the market value (non-commercial test) rules -*** *The sector identified the priority areas for clarification of how these rules would apply in practice. Concern was raised that the 50% rule would work to make supplies of subsidised and community housing taxable. However this concern was largely removed when the Government introduced an amendment to raise the test to 75% for these supplies.*
>
> *Other priority areas including meals and employment services were discussed and it was concluded that the rules could work effectively in the sector in areas discussed except in relation to journals and newsletters sold by the sector on a cost-recovery basis.*
>
> *The ATO provided draft guidelines on market value benchmarks for the key areas of accommodation, meals and employment services as a means of making it easier and cheaper for the sector to apply the tests. The sector would have the option to undertake independent or case-specific market value tests where necessary. Members of the Committee accepted the guidelines as a sound approach to making the market-value rules administratively easier. The ATO undertook to examine ways of expanding the guidelines to other areas. The draft guidelines are at Attachment E.'*

38 The ATO was in the process of establishing a model which would resolve issues in applying the market value test to establish the market value of supplies, in many of the areas identified by the sector. The draft guidelines were designed to support that model and were published to provide a level of certainty primarily to the supported accommodation and community-housing sector.

39 At the time the draft was prepared it was clearly aimed to address supported accommodation, community housing and crisis accommodation and not the supply of accommodation generally. The flavour of the draft document generally and in the examples given was for supported accommodation and community housing.

40 In preparation of the final market value guidelines and benchmarks for the sector it was clear that section 38-250 and the supply of accommodation had wider application and implications than originally intended. There was also evidence that the draft guidelines were being used inappropriately in some parts of the sector.

41 The ATO took these issues back to the CCC on 11 July 2000 for their input and suggestions. As a result of this feedback the final Market Value Guidelines (Attachment B) and Market Value Benchmarks issued – the Draft market value guidelines were withdrawn at this time.

42 The use of the benchmark market value guidelines was limited to parts of the sector that could not readily establish a market value for the supplies they make. A market value for supplies of accommodation and meals in most parts of the sector can be readily established using the market value guidelines and thus the use of the benchmarks has been limited.

Use of the Market Value Guidelines in the Education Sector

43 It was contended in submissions that the Education sector was not advised of the changes to the 'Draft market value guidelines'. These changes were first discussed at an out of session Education Industry Partnership (EIP) meeting, held on 16 June 2000, directed at issues in the tertiary sector.

44 These changes were then discussed in more detail, at the EIP meeting held on 27 July 2000. A draft copy of the 'Finalised market value guidelines' was not made available to the EIP members, but Segment Leader, Ms Kelly Canavan, went through the changes to the draft in detail.

45 EIP members were informed of the rationale behind the shift from the 'Draft market value guidelines' to the finalised version that requires charitable organisations to determine the actual market value.

46 Ms Kelly Canavan gave examples of where the draft market value guidelines were being used inappropriately and giving charitable organisations a competitive advantage over other providers of the same supply. Attachment C outlines the examples given during the EIP meeting. These examples were contained in the document discussed during the EIP meeting on 27 July 2000.

47 The changes resulted in some lengthy discussions particularly on the appropriate market value that should be used in subsidised markets such as University College and Halls. This issue was raised by Mr Peter McDonald, Consultant, Association of Heads of Australian University Colleges and Halls Inc. As a consequence of that discussion, an example in the guidelines was altered to clarify the application of the finalised guidelines to University Colleges and Halls[1]. (Refer to Attachment D)

[1] Extract Finalised Market Value Guidelines

48 Mr Peter Devine, School Operation Officer, National Council of Independent Schools' Associations raised the issue of the FBT market value rate being used as the market value rate of food supplied at boarding schools. Mr Devine also raised the issue of the meaning of 'cost' for the purposes of the non-commercial test and an example was inserted into the finalised guidelines to clarify this issue. [2]

49 The ATO did not request submissions from the education sector in relation to the market value guidelines, nor did the ATO receive any written feedback as a result of the discussions at the EIP meeting held on 27 July 2000 prior to the release of the final version on 8 August 2000. [This issue was considered at the CCC and their feedback was utilised in the final version of the guidelines – the general view of the CCC was that where a market could be established using the guidelines it was not appropriate to use the benchmarks.]

50 **It is important to note**, the final market value guidelines do not preclude charitable organisations from applying the non-commercial test contained in the GST Act. The guidelines provide a methodology for determining a market value of supplies so that organisations can apply section 38-250.

51 The final guidelines require charitable organisations to determine the actual market value of a supply where one exists. This approach ensures that in determining whether a supply is for nominal consideration and GST-free, the consideration that is being paid for a supply is compared to the real market value of that supply.

ESTIMATED REVENUE CONSEQUENCES

52 Senator Murray suggested that the amendment to the associates provisions would raise $6 million worth of additional revenue. The $6 million revenue figure is derived from estimates of the revenue cost of expanding the GST-free treatment of food in boarding schools and halls of residence. The Association of Heads of Australian University Colleges and Halls estimated, in their submission, that the revenue cost of bundling food and accommodation for the purposes of section 38-250 would be approximately $3 million per annum. The National Council of Independent Schools' Associations estimated that the cost of including food as part of boarding school fees would be approximately $3 million. The revenue estimate for the amendment to the associates provisions is minimal.

(ii) for accommodation provided by University halls and colleges the market value is the price other providers charge in the locality for the same standard of accommodation. The market would include other residential colleges, boarding schools or boarding houses providing the same type of accommodation in the locality.

[2] Extract Finalised Market Value Guidelines
The use of this method may be appropriate in determining the market value of meals prepared on the premises of the school or church campsites above. In that case the costs would include food, electricity, wages equipment etc. The markup applied would be that appropriate to the take-away food industry.

However where the organisation purchases food and then provides it to someone else, for example on a school excursion the school purchases hamburgers for the participants, then the market value is the cost of the food.

DE MINIMUS TEST

53 Senator Murray suggested that the application of the associates provisions to non-profit sub-entities should be subject to a de minimis test. The ATO considers that a de minimus test may not reduce the compliance costs that the submissions refer to. Using a de minimis test, a parent entity will still be required to measure the value of supplies to its non-profit sub-entities in order to determine whether the associate provisions apply. Furthermore, the setting of a threshold that the de minimis test applies to is an arbitrary exercise that creates problems in itself. Even where the threshold is set at a reasonable level, it would probably not capture supplies referred to in the submissions such as the use of church halls and university playing fields where the market value of these supplies is reasonable high.

Attachment A

Application of paragraph 38-250(2) of A New Tax System (Goods and Services Tax) Act 1999

The paragraph provides that supplies by charitable institutions, trustees of charitable funds and gift deductible entities will be GST free if the supply is for consideration that

- If the supply is a supply of accommodation – is less than 75% of the cost to the supplier of providing the accommodation; or

- If the supply is not a supply of accommodation – is less than 75% of the consideration the supplier provided or was liable to provide for acquiring the thing supplied.

When interpreting this provision the ATO has read the both limbs of the paragraph as allowing supplier to use the *cost of providing* the thing supplied.

In the past the phrase "full absorption costing" has been used to describe the method suppliers can use in establishing what it has cost them to provide something. This has lead to some concerns and confusion and as a result the following is the basis organisations making supplies should follow in establishing their costs for the purposes of 38-250(2)(b)(ii).

General Position

When calculating the cost of providing something an organisation should include

- All direct costs incurred – for example materials and direct labour.

- A reasonable apportionment of indirect costs incurred– eg marketing, administration, office expenses, electricity, telephone, insurance.

Supplies other than accommodation

For supplies of things other than accommodation only those amounts paid or payable may be included in the calculation. This is due to the wording in the second limb of the subsection which states that it is the "consideration the supplier provided or was liable to provide for acquiring the thing supplied".

The following things can **not** be included because they do not involve an actual outlay by the charity:

- Depreciation of assets

- Imputed costs for things like labour, donations, rent etc where the organisation has not actually provided any consideration or incurred any real costs.

Supplies of accommodation

For supplies of accommodation only costs incurred in providing the accommodation can be included. This would not include imputed costs for things like labour, donations and rent where the organisation has not actually provided any consideration of incurred any real costs.

Where depreciable assets form part of the cost of supplying accommodation, the organisation should use the depreciation amount for the asset rather than the whole cost of the asset.

This is to ensure that the cost of the entire item is not attributed to the first supply of the accommodation with no ability to attribute the cost of the asset to subsequent supplies. NOTE: The organisation should not include **both** the full cost of the item and the depreciation amount for the asset.

Depreciation amounts can be included when considering supplies of accommodation but not when considering supplies other than accommodation. This is due to the wording of the legislation. The subparagraph that refers to accommodation states that the supply will be GST free if the consideration received for the supply is less than 75% of the **cost** to the supplier of providing the accommodation. For supplies other than accommodation the supply will be GST free if the consideration received is less than 75% of the **consideration the supplier provided or was liable to provide** to acquire the thing supplied. Whereas "cost" is seen as including depreciation amounts, "consideration provided" does not.

Attachment B

Part 5 - Non-Commercial Activities of Charities,

Cost of Supply and Market Value Tests

Issue

How does an entity make a distinction between "commercial" and "non-commercial" activities using the "cost of supply and "market value tests? An entity may have difficulty in benchmarking the market value of its supplies where it holds an "exclusive" market share, for example, crisis accommodation.

Principle

The commercial activities of charities will be taxable but the non-commercial supplies by charities will be GST-free. Anything supplied by a charity is GST-free if the consideration is less than 50% of the GST inclusive market value except for accommodation which is less than 75% of the GST inclusive market value or less than 75% of the "cost of supply". It is important to note that it is the supply that is GST-free not the "supplier".

The guidelines for the determination of "Market Value" and the "Benchmark Market Values" are now included below. A question about a 'period of grace' for those organisations that have relied on the draft benchmark market value guidelines that were released as part of the Charities Consultative Committee Report in November 1999 is included in the "What's New" section at page 17.

The treatment of newsletters, magazines and journals has been finalised, has been retained as a separate item.

A. Market Value Guidelines

Purpose

The purpose of this document is to provide guidance to charities in the establishment of market value when used with respect to s38-250 (1) of A New Tax System (Goods and Services Tax) Act 1999. The paper arises as a result of discussions with the Charities Consultative Committee [2] seeking clear definition on the processes the ATO will require when determining the market value of supplies.

Charities are seeking guidance on how to establish the market value of the supplies they make, thereby enabling charities to determine whether those supplies are taxable, input taxed or GST-free by the application of s38-250(1). In some cases the supplies made by charities may not have a readily identifiable equivalent in the commercial arena and thus it is inherently difficult for charities to determine a market value for such supplies. This paper will set out a clear process that charities may follow to both identify and apply the market value test to supplies they make.

[2]See the minutes of the August 1999 Charities Consultative Committee meeting.

About these guidelines

The guidelines address the following;

1. The application of s38-250(1).
2. The definition of market value
3. The principles
4. Determining market value
    - Actual market value for a supply
    - Market value of a similar supply
    - Other methods approved by the Commissioner
    - Market value benchmarks
5. Record keeping

1 The application of s38-250(1)

The GST law provides that the commercial activities of charities will be taxable (or input taxed) but the non-commercial supplies provided by charities will be GST-free. Where a charity registered for GST makes a supply in return for consideration, this will be a taxable supply, unless it is provided for nominal consideration.

"A supply is GST-free if the supply is for consideration that:

- if the supply is a supply of accommodation less than 75% of the GST inclusive market value of the supply; or
- if the supply is not a supply of accommodation is less than 50% of the GST inclusive market value of the supply.[3] "

The entities to which s38-250 (1) applies are:

- charitable institutions;
- trustees of charitable funds;
- gift-deductible entities[4]; or
- Government schools.

[3] A New Tax System (Goods and Services Tax) Act 1999
[4] A New Tax System (Goods and Services Tax) Act 1999

2. The Definition of Market Value

Market value is not a defined term in the legislation but it is an important concept because of the concession provided to charities under s38-250 (1). Market value is generally taken to be the price a buyer in the open market is prepared to pay for a good or service. Market value using this broad definition is not a static thing but one that is determined by economic forces that are dynamic in nature.

In applying such a definition in the context of s38-250 (1) means that charities would have to monitor the consideration they receive for their supplies with respect to the market constantly. It is proposed, therefore, that the definition of market value be defined in such a way as to allow greater certainty to charities in using s38-250 (1).

Market value with respect to the application of s38-250 (1) will be taken to be:

- the consideration in money a buyer in an open market is prepared to pay for a good or service when the transaction is at arms length; and

- once established a market value of a supply can be used for a period that aligns with the practice of the market in which the charity operates. [Most charities currently review their prices as market forces dictate and at a minimum they should also review the appropriate market values at the same time.]

Charities have argued that many of the supplies they make do not have commercial equivalents, hence there is no market for the charity to compare against and the consideration paid for the supply is the market value. New Zealand [5] offers a hierarchy of three tests in the determination of market value that states:

- 'the consideration in money that the supply would fetch at that date in New Zealand if freely supplied in similar circumstances between people who are not associated persons'

- 'the consideration in money that a similar supply would fetch if freely supplied at that date in New Zealand in similar circumstances between people who are not associated persons'

- 'Other methods approved by the Commissioner which provides a means for establishing an objective approximation of the consideration in money for a supply of the goods and services in question'

These tests are successive methods for determining market value of the supply, they are not alternative methods. The first two tests would generally establish a market value and the last test would be rarely used. The ATO has used this hierarchy as the model for the detail that appears below.

[5] The Goods and Services Tax Act 1985

3. The principles

Charities will need to establish whether they are making a taxable supply by using the first four tests in s9-5 [6].

A charity needs to look to the **actual market** it operates in, in the first instance to establish a market value. It is the supply that is compared in the market not the recipient of the supply or the provider of the supply. That is an organisation would compare their supplies based on, quality, quantity and conditions of supply.

If there is **no market** for the supplies the charity makes then it should look at similar supplies in the market place. Again using comparable features of the supply.

As a last resort where no commercial equivalent exists for a particular supply the charity could calculate its own market value for that supply.

The benchmarks provided by the ATO for certain supplies may only be used by the types of organisations specified below.

[6] A New Tax System (Goods and Services Tax) Act 1999

4. Determining Market Value - The Process

The actual market value for a supply in the open market

A charity will need to establish whether the **same supply** exists in the open market. Where it does the price of the supply as defined by the market is the market value that should be used in the application of s38-250. The supplier needs to determine what it is actually supplying to determine the relevant market. [In court cases dealing with the valuation of trading stock it has been held that the 'market selling value' contemplates a sale in the ordinary course of an organisation's business. Further, the 'market selling value' is the current selling value of the goods (or services) in the particular organisation's **own selling market**.]

For example

(i) the local school may supply its school hall for functions - the market value in this case is the price charged by other halls in the locality with similar facilities, for example (but not limited to) the scout hall, RSL hall, community centre or golf club may provide the same type of supply.

(ii) for accommodation provided by University halls and colleges the market value is the price other providers charge in the locality for the same standard of accommodation. The market would include other residential colleges, boarding schools or boarding houses providing the same type of accommodation in the locality.

The same types of "items" may exist as different things when defined by the market. An end of season item of clothing is a different thing from a new season item of clothing and therefore has a different market value.

For example

A retail outlet donates a large number of out of season shirts to the local opportunity shop. The market value of the shirts is not the GST inclusive price of the new shirts. A different market value exists for these shirts that are new but out of season.

While the above distinguishes between the same types of items and the difference in their market value this does not mean a charity would be required to value individually everything they supply. A charity can choose to group a range of things together within the one comparison where they are confident the market value of those supplies can indeed be compared. This would allow a charity to make a judgement as to which things in a group of supplies is representative of the group and therefore use this as the overall basis from which to establish the market value.

For Example

The opportunity shop above may apply a single market value to a range of men's shirts, including long sleeve and short sleeve rather than seek a market value for each shirt.

A charity will need to ensure the market they are comparing with is a market within which they operate. Therefore, the locality becomes a necessary component in deciding the reasonableness of the market value that has been derived by the charity for most types of supply.

For Example

A charity makes supplies of meals to homeless people in the western suburbs of Sydney. In order to establish a market value for those supplies the charity should examine those establishments that are within a reasonable distance of where the charity makes its supplies.

It should be noted that some supplies may have a different GST treatment (taxable, input taxed or taxable) even where the consideration for the supply is the same, for example accommodation in different locations may be provided for the same consideration but the actual market will determine the GST treatment.

This outcome may only affect a small number of the larger charities that operate over a very wide and diverse range of market locations. The smaller charities would tend to operate in a well-defined market that would have no or minimal variance of market values so all similar supplies would receive the same GST treatment.

Larger charities that do make the same supplies in a number of different locations will be permitted to use a representative sample in order to establish market value for all the locations concerned. This approach is different to the accommodation benchmarks that have been provided by the ATO where location is the primary consideration in establishing market value.

A charity will need to consider the degree to which the prices they are comparing its supplies against are representative of the market value. Whilst it is unrealistic to place a definitive figure upon how many GST inclusive prices should be obtained the ATO would expect that it would generally be more than one. The information collected would need to provide sufficient intelligence for the charity to be confident in stating the supplies are a representative sample of the market.

Market value of a similar supply

Where a charity is unable to use the first test to determine a market value of their supplies, for example there is no commercial equivalent, it may seek to identify similar supplies that exist in the open market and use that consideration/s to establish the GST inclusive market value for its supplies.

For example

(i) A charity provides Auslan training that is not offered elsewhere - in this case it could use as the market value the price charged by a commercial provider for a course of similar duration.

(ii) A church or school campsite that does not have similar operators in their area could use the NRMA campsite charges for a similar standard of accommodation in other tourist parks in the same locality.

In order to make decisions on which supplies are thought to be similar charities should consider the following aspects:

- The local market place should have priority in identifying these similar supplies.
- Broad categorisations of things can be used as a way of substantiating the rationale to use certain supplies, such broad categorisations may include clothing, furniture, food, education and the like (such a broad categorisation is not appropriate for accommodation).
- A charity should be able to distinguish between a service and a good they provide unless it is normal practice in the market to provide a 'bundle' of goods and services for an inclusive price, for example the provision of 'bed and breakfast'.
- Where a service is offered a charity should seek comparisons that are similar in nature, quality, of similar size or time length and conditions of supply.
- A charity should be able to distinguish between a second hand and new good and not make comparisons where second hand and new goods are interchangeable.
- For the supply of accommodation, 'similar' includes consideration of the following;
    - type of premises or accommodation supplied, for example, camp site, motel, boarding house retirement village etc
    - the standard of facilities offered, for example one bedroom with shared facilities, bedsitter, dormitory style accommodation, fully contained, serviced apartment etc.
    - the conditions of use or occupancy, for example long term contract, per night, per week, per term

For Example

A charity offers a half-day class in relaxation techniques to unemployed adults for which it charges a small fee. The charity would be able to use any half-day adult education course that is offered by other organisations that is akin to their half-day course in terms of nature, duration, standard of tuition and activities during the course.

Other Methods Approved by the Commissioner

The ATO would expect that this test would rarely be used as the market value of most supplies made by charities could be determined using one of the first two tests. In using this last test the onus for developing a methodology lies with the charity under a broad framework that is outlined below.

1. The charity must retain documentation that adequately shows that successive examination of the first two tests are unable to determine market value for supplies that are the same and supplies that are similar.

2. The charity will need to isolate the specific supplies for which a market value cannot be determined. It is not appropriate to group nor aggregate supplies that have market values with those that do not.

3. Then a charity may use an appropriate determination of 'cost+' to determine the market value of a supply.

The determination of market value using 'Cost+'

This method allows a charity to use full absorption costing and then apply a mark-up appropriate to the general market of the particular supply. Full absorption cost includes the cost of labour and materials, plus an appropriate proportion of variable and fixed overheads, for example power, rent, rates, insurance and administration costs. In using this method (as distinct from determining the cost of supply for the purposes of the 'cost of supply test' in s38-250) an organisation can also include an imputed cost for donated goods and voluntary labour.

For example

The use of this method may be appropriate in determining the market value of meals prepared on the premises of the school or church campsites above. In that case the costs would include food, electricity, wages equipment etc. The markup applied would be that appropriate to the take-away food industry.

However where the organisation purchases food and then provides it to someone else, for example on a school excursion the school purchases hamburgers for the participants, then the market value is the cost of the food.

Market value benchmarks

The ATO has provided benchmark market values for a range of supplies including accommodation and meals. The use of the benchmarks is **limited to the following** types of organisations (and supplies) by those organisations;

- supported accommodation and community housing (long term accommodation rates)
- crisis care (short term and long term accommodation as appropriate)
- retirement villages (long term accommodation)
- residential housing provided for the clergy (long term accommodation)
- 'Meals on Wheels', charity 'soup kitchens' and organisations that prepare and supply meals to the frail, homeless or needy (food guidelines)

The accommodation benchmarks are not for use by organisations where there is a market value that can be established using the first two test above, that is actual market value for a supply or a market value of a similar supply. That is the **benchmarks do not apply** to the following types of organisations or supplies;

- campsite accommodation
- university halls and colleges
- boarding schools

5. Record Keeping

Charities should maintain and retain records that adequately document the process and information collected in establishing the relevant market values to which consideration of their own supplies are to be compared. For example, the market values established and the methods used may be diarised or minuted in the organisation's books of account. This information should be captured in such a way that will enable cross-referencing to accounting statements and therefore what will be recorded on Business Activity Statements.

B.Benchmark Market Values for Charities

Purpose

The purpose of this document is to provide a basis or benchmark of the market value of a range of supplies for the types of **Charities listed** to use as a reference point. It will also provide certainty as to the ATO's view of suitable market values for these supplies.

These guidelines will enable organisations to make a comparison of the benchmark market value and the consideration they receive for the supply provided to determine whether the supplies they make are taxable, GST-free or input taxed. Specifically, Charities will be able to easily determine whether a supply is for consideration less than 50% or 75% (whichever is applicable) of the GST inclusive market value.

These guidelines will be updated from time to time and where necessary further market value benchmarks will be included.

What organisations may use these guidelines

The use of the benchmarks (accommodation and meals) as an alternative to the general rules provided in the 'Market Value Guidelines' document is **limited to the following** types of organisations (and supplies) by those organisations;

- supported accommodation and community housing (long term accommodation rates)
- crisis care (short term and long term accommodation as appropriate)
- retirement villages (long term accommodation)
- residential housing provided for the clergy (long term accommodation)
- 'Meals on Wheels', charity 'soup kitchens' and organisations that prepare and supply meals to the frail, homeless or needy (food guidelines)

The accommodation benchmarks are not for use by organisations where there is a market value that can be established using the first two test above, that is actual market value for a supply or a market value of a similar supply. That is the **benchmarks do not apply** to the following types of organisations or supplies;

- campsite accommodation
- university halls and colleges
- boarding schools
- non-residential buildings like halls and offices

ATO Position

The GST law provides that the commercial activities of charities will be taxable but the non-commercial supplies provided by charities will be GST-free. Thus, supplies for nominal consideration made by a charity are GST-free. Nominal consideration means less than 50% of the GST inclusive market value for supplies other than accommodation and less than 75% for supply of supported accommodation and community housing.

Where a Charity uses the benchmark market values provided in these guidelines as the basis to determine whether the supplies they are making are taxable, input taxed or GST-free because of the application of s38-250(1) that market value will be accepted by the ATO.

Where these benchmark market values do not satisfy or are not suitable to the needs of an organisation of the type listed above, that organisation may undertake their own market valuation to meet their individual situation. In these circumstances organisation should retain appropriate documentation to support alternative market values.

Application of the Benchmark Market Values

This document provides benchmark market values for the following types of supplies;

- short term accommodation
- meals
- board and quarters
- long term accommodation
- employment services

Also, there are examples provided to demonstrate the application of the benchmark values.

1. Short term accommodation.

   For short term accommodation the Australian Public Service travel allowance rates are accepted as the benchmark market value against which to apply the market value test to determine whether a supply by a Charity is commercial or non-commercial.

   The rates provided in column 2 of Attachment B of DEWRSB ADVICE NO 1999/7 for Non Senior Executive Service are the appropriate market value for short term accommodation per night for the locations listed. Where a location is not specifically listed the 'Other Country Centre' rate or an appropriate individual valuation should be used. [see attachment 1]

   Short term crisis and emergency accommodation is for periods up to twenty-eight days.

2. Meals

   Similarly benchmark market values for meals are provided in Attachment B of DEWRSB ADVICE NO 1999/7 in columns 3, 4 and 5. The meal rates also vary by location. [see attachment 1]

   Please note, where an organisation purchases food and then provides it to someone else then the market value is the cost of the food.

3. Short term board and quarters

   Where short term full board is supplied the benchmark market value would be the appropriate short term accommodation expense (column 2) plus the meal and incidental rates (columns 3 - 6) per day from DEWRSB ADVICE NO 1999/7 Attachment B. [see attachment 1]

   For example, these rates may be used as the value for emergency or crisis accommodation where the supply is a combination of accommodation and meals.

Please note, where an organisation purchases food and then provides it to someone else then the market value is the cost of the food.

4. Long term accommodation

   The temporary accommodation rent ceilings in DEWRSB ADVICE NO 1998/42 are an acceptable basis for determining the market value for the supply of long term residential accommodation. [see attachment 2]

   For supplies of supported accommodation and community housing nominal consideration is less than 75% of the GST inclusive market value.

   The rent ceilings provided do not allow for;

   - Differing standards of accommodation
   - Other locations and regional areas
   - Seasonality of market rates
   - The ability of APS departments to use other rates when it is not reasonable to apply the ceiling rates.

   To recognise these issues and to allow administrative simplicity in the use of these guidelines **the rent ceilings provided at attachment 2A may be increased by 25% to determine the benchmark market rate**.

   The capital city rate provided may be used as the appropriate rate across all regions for the relevant state.

   This additional flexibility is only available with respect to long term accommodation.

5. Long term board and quarters

   When full board is provided in long term accommodation the market value would be the composite rate of the one bedroom rate applicable to the location (column 5 of attachment 2A) plus the applicable meal rate (attachment 1C).

6. Employment services

   The service fees applicable to Australian Public Service (APS) and public sector recruitment can be used as a benchmark market value for the provision of employment services. [see attachment 3]

   Note: DEWSRB are currently developing wide ranging benchmark rates for employment services. When these rates become available they will become the benchmark market rates for the purpose of these guidelines.

Examples of the application of the values provided

The following examples are provided to demonstrate the application of the benchmark market values. The client contribution or consideration for the supplies made may not be realistic in some of the cases but they are provided for demonstration purposes only.

Short term accommodation - supported accommodation

Parramatta Community Care provides emergency housing in their Parramatta Hostel. In addition to the accommodation they provide breakfast and dinner. Their clients make a contribution of $78 per day. Using these guidelines the market value for this supply is as follows;

Sydney accommodation rate	$119.00
Breakfast & dinner ($14.55 + $27.90)	42.45
Market value/day	$161.45

In this example the supplies (food and accommodation) by Parramatta Community Care would be GST-free because the consideration for the supply of the accommodation component ($57.49) is less than 75% of the market value and for the supply of the meals component ($20.51) is less than 50% of the market value.

Similar supplies (food and accommodation) by the same organisation for the same contribution of $78 in their Hostel located in Dubbo, NSW (an "other" country centre rate).

Dubbo accommodation rate	$ 54.00
Breakfast & dinner ($12.95 + $25.60)	38.55
Market value/day	$ 92.55

In this case the supplies (food and accommodation) by Parramatta Community Care would be taxable supplies because the consideration for the supply of the accommodation component ($45.51) is greater than 75% of the market value and for the supply of the meals component ($32.49) is greater than 50% of the market value.

Long term community housing accommodation

The WA Community Housing Group provides a two bedroom flat in Cannington to a single parent and 2 children. The client makes a contribution of 25% of their income, which is $73.54 per week. Using these guidelines the market value for this supply is;

Market value	$150.00/week

In this example the supply by WA Community Housing Group would be GST-free because the consideration for the supply is less than 75% of the market value.

The Queensland Community Housing group provide a one bedroom apartment to a single pensioner on Centrelink payments plus a small other income. The client makes a contribution of 25% of their income of $96.32. Using these guidelines for the market value the market value for this supply is as follows;

Market value	$120.00/week

This supply would be input taxed because the consideration is 80% of the market value.

Using the same example and increasing the ceiling rent by 25% the market value for this supply is as follows;

Brisbane rental ceiling (one bedroom)	$120.00
Market value	$120 + .25 of $120 = $150/week.

Using the flexibility of **increasing the ceiling rent by 25%** now makes the supply by the Queensland Community Housing Group GST free because the consideration for the supply is less than 75% of the benchmark market value. Where:

Market value	$150/week

And the payment of $96.32 represents 64% of the market value.

Meals

A charity in Katherine NT, provides home cooked midday meals to aged persons at the Community Centre. The clients make a contribution of $7.50 per meal. Using these guidelines the market value for this supply is as follows;

Country centre meal rate (lunch)	$ 14.85
Market value	$ 14.85
GST inclusive market value	$ 16.34

In this example the supply of the midday meal would be GST-free because the consideration for the supply is less than 50% of the GST inclusive market value

Specific issues

- These guidelines provide a benchmark market value for the supplies and locations specified.
- These guidelines will be updated from time to time and where necessary further market value benchmarks will be included. Until such time as these guidelines are updated the travelling allowance and meal rates included in Attachment 1 can be increased by 10% to allow for the GST.
- These guidelines can be relied upon as appropriate market values for use in considering the market value test in s38-250(1)

- Where an organisation provides services across a range of locations covered specifically by these guidelines it is not acceptable to average the market value. For example it is not acceptable to average short term accommodation market values for Sydney ($119) and NSW other country centres ($54).

Attachment C

The first example illustrates a situation in which the guidelines were being inappropriately used. The legislation specifically states that food provided on excursions is not GST-free under the education provisions and must be taxed in accordance with the food provisions.

1. A school organises an excursion for students and lunch is provided at McDonalds. The lunch costs $3.25 per student (including GST). The school receives a tax invoice from McDonalds and claims an input tax credit for the GST included in the price.

The school documents that $3.25 is less than 50% of the market value of lunch ($16.20 according to the draft Market Value Guidelines from the ATO). Therefore the school does not charge the students GST for lunch.

The provider of the hamburger and fries is McDonalds and not the school. A student should not be entitled to eat McDonald's GST-free merely because the school acts as the purchasing agent.

The **second** example illustrates the situation where a charitable organisation had a commercial advantage over other providers of the same supply as a result of the 'Draft market value guidelines'. The fact that a commercial provider for the supply existed in the market demonstrated that the CCC guidelines were artificial and an actual market value could be established.

Consequently, to ensure that commercial providers of the same supply were not being disadvantaged, the 'Finalised guidelines' ensures that the benchmark used for the purposes of the non-commercial test, is the actual market value of the supply and not an artificially high value. Hence where a charitable organisation provides that supply for less than 50% of the actual market value (or 75% of market value in the case of a supply of accommodation), the supply is for a charitable purpose and should be GST-free.

2. Campsites are owned and operated by commercial operators, churches, schools both government and independent schools and non-profit organisations. Schools, tertiary institutions, charities, church groups and the general public use campsites. A campsite means a place that offers group accommodation indoors, in bunkhouse and cabin accommodation.

   Where the camp is owned and operated by a government school, or a non-government school or church, the camp operator is entitled to apply the non-commercial test, whereas a commercially owned campsite is not.

   Consequently, where two camps are similarly located, one operated by a commercial provider and the other church owned, the church owned campsites were applying the draft guidelines on market value and were therefore not required to charge GST. The commercial provider was also charging a similar price to the church owned campsite in order to be competitive, but was required to charge GST.

This situation created a competitive advantage in favour of the charitable organisation despite the fact that their customer base was similar.

It is important to note, the final market value guidelines do not preclude charitable organisations from applying the non-commercial test contained in the GST Act. The guidelines provide a methodology for determining a market value of supplies so that organisations can apply section 38-250.

The final guidelines require charitable organisations to determine the actual market value of the supply, where one exists. This approach ensures that in determining whether a supply is for nominal consideration and GST-free, the consideration that is being paid for a supply is compared to the actual market value of that supply.

Examples were inserted into the finalised market value guidelines to clarify the application of the non-commercial test. [3]

[3] Extract Finalised Market Value Guidelines
(ii) A church or school campsite that do not have similar operators in their area could use the NRMA campsite charges for a similar standard of accommodation in the same locality.

Attachment D

UNIVERSITY COLLEGE AND HALLS

The government intended that University Colleges and Halls should be treated as residential accommodation and therefore input taxed under subdivision 40B of the GST Act. Thereby treating accommodation provided by the tertiary sector, the same as accommodation obtained by students living off campus.

In applying the non-commercial test, the ATO had allowed the University Colleges and Halls to use the draft benchmark values for accommodation that were contained in the Charities Consultative Committee's Report dated November 2000. These rates were based on the public service rates.

On 8th August 2000, the ATO issued finalised guidelines (Attachment C) on how to apply the market value test contained in the charitable provisions of the GST Act. As a consequence, colleges and halls could no longer apply the draft benchmark values that were previously given. They are required to determine the actual market value of the accommodation provided.

The ATO has given colleges and halls and boarding schools, a period of grace until 1 January 2001, to determine the market value of their accommodation. In the meantime we are allowing that sector to use the draft benchmark values on the basis that most students have either paid or been invoiced for their accommodation up until December 2000.

To summarise, the only change for colleges and halls, is that they are required from 1 January 2000, to establish and use market values that apply to accommodation in the market place that is the same or similar to accommodation provided at halls and colleges, as opposed to using the benchmark values based on the public service rates.

APPENDIX 7

CORRESPONDENCE FROM HUNT AND HUNT FOR THE RMIT

29 November 2000

Our Ref: PAN

Matter No: 8170436

Mr Peter Hallahan
Secretary
Senate Economics Legislative Committee
SG.64
PARLIAMENT HOUSE CANBERRA 2600

By e-mail: economics.sen@aph.gov.au

Dear Mr Hallahan

RMIT UNIVERSITY
SUBMISSION TO THE SENATE ECONOMICS LEGISLATION COMMITTEE

We refer to the attendance by Peter Cork and Phillip Nolan at the Senate Economics Legislation Committee public hearing to consider the *Taxation Laws Amendment Bill (No.* 8) 2000 on Wednesday, 22 November 2000.

At the hearing Senator Murray queried whether we had read the submission by the Association of Heads of Australian University and Colleges and Halls Inc. ("submission"). As we had not read the submission, Senator Murray requested that we consider the submission and provide a response as to whether we were broadly of the same views.

RMIT University generally agrees with the views contained in the submission.

In particular RMIT University supports the view that input taxing creates high compliance costs[1] caused by having to apportion the entitlement to input tax credits between taxable supplies and input taxed supplies. [2]

RMIT University recognises that this apportionment will be especially difficult in regards to the supply of food for the reasons stated in the submission.[3]

We hope our response adequately addresses the request by Senator Murray.

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1 Refer to paragraph 2 in the submission under the heading "Background".

2 Note our comments at page 5 in our submission regarding apportionment.

3 Refer to page 3 of the submission under the heading "Problems".

Please telephone the writer on 03 8602 9203 with any queries.

Yours sincerely,
Hunt & Hunt

Phillip Nolan
Associate

APPENDIX 8

CORRESPONDENCE FROM THE UNITING CHURCH OF AUSTRALIA

29 November 2000

Mr Peter Hallahan
Secretary
Senate Economics Legislation Committee
SG.64
Parliament House, Canberra, 2600.

Re Examination of Taxation Laws Amendment Bill (No. 8) 2000

Dear Mr Peter Hallahan,

The Uniting Church in Australia (UCA) is concerned that proposed amendments to Section 72-92, adding non-profit sub entities to the definition of associate, will significantly reduce the ability of our volunteer treasurers to comply with tax reform requirements.

Our ability to create a large number of Division 63 sub-entities has enabled us to remove from the GST net activities that would have been too complex for our volunteers to administer. This was one of the critical criteria that enabled the church to convince most of our volunteer treasurers to register their congregations for the new tax system. Most congregations have recorded a number of sub-entities including sub-entities for fund raising and fellowship (often older citizens who engage in communal and fund raising activities). These sub-entities have a variety of complex relations with their congregation and the church as a whole. For administration purposes sub-entities commonly utilise existing church facilities eg meet in church hall, hold fete in church grounds etc. For community groups the church provides this type of support for minimal cost and GST-free as envisaged by S38-250. However under this proposed amendment where a sub-entity uses the church facilities etc. potentially the congregation would need to pay GST on the full market value. Our volunteer treasurers will struggle to cope with this complexity.

Our Div. 63 GST sub-entities are not registered for GST and in our tax reform presentations etc, we have emphasised that they cannot change GST and GST input credits cannot be claimed on their acquisitions.

We understand that you have received a number of submissions outlining the issues raised by this proposed amendment and proposing alternatives. In this instance, The Uniting Church in Australia strongly supports the concept of legislative amendment to resolve specific compliance issues rather than this proposed amendment which potentially creates serious compliance problems for our volunteer treasurers.

Yours sincerely
Ian Jeffries
UCA GST National Co-ordinator
Phone (03) 9252 5287

APPENDIX 9

CORRESPONDENCE FROM THE ASSOCIATION OF HEADS OF AUSTRALIAN UNIVERSITY COLLEGES & HALLS, INC.

28 November 2000

Mr Peter Hallahan, The Secretary
Senate Economics Legislation Committee
SG.64
Parliament House, Canberra, 2600

Dear Mr Hallahan

Thank you for the opportunity for the Association of Heads of Australian University Colleges and Halls (AHAUCHI) to appear and present evidence to the Economics Legislation Committee Bill Inquiry hearing into the *Taxation Laws Amendment Bill (No. 8) 2000*, that was held on 22 November 2000.
On reviewing the evidence provided by the Australian Taxation Office (ATO) to the hearing on the 22nd, there are a few issues our Association would like to clarify.

1. Consultation with education sector by ATO concerning associates provisions

In its evidence to the Committee the ATO asserted that they had consulted with the sector concerning application of the associates provisions to sub-entities, and that they previously advised the sector that the associates provisions were to apply to sub-entities. The reverse is the case.
In evidence before the hearing of 22 November 2000, Ms Mellick for the ATO stated:

> ***Ms Mellick**—As an opening comment, the amendment that is actually at issue today is a very technical one. The way the non-profit subentities were originally envisaged was to actually allow charities and non-profits to carve out sections of their business that they did not want to have affected by GST and to have to account for them. So the effect of the non-profit subentity provisions is that these particular parts of their businesses are input taxed; they are just treated like any other consumer. It is actually an optional choice for businesses, charities or non-profits to have a non-profit subentity. It is not compulsory by any means.*
> *The tax office originally thought that the associates provisions applied to them in the normal fashion and we discovered fairly recently that they did not. So the amendment is a fairly technical one to ensure that the associates provisions do apply to non-profit subentities. A number of the witnesses have said that they were not aware that the associates provisions applied, and now there is a new rule that gifts et cetera have to be valued. That was always the case as far as we are concerned. It is not a change in policy; it is not a change in our interpretation. So the issues of things like valuing meeting rooms where they are being given to an entity that is unregistered et cetera have always been there and we have been working through those issues with the industry.*

Proof Committee Hansard[1], at page E24.

In the lead up to the launch of the New Tax System on July 1, 2000, AHAUCHI was concerned that the associates provisions might apply to sub-entities. These concerns were discussed at a series of meetings held between AHAUCHI and the Uniting Church of Australia (UCA), in relation to UCA owned and operated university colleges, over the period February through April, 2000[2]. The UCA also held concerns about the potential impact of the associates provisions on sub-entities operated by the church in charitable areas other than education.

The peak church bodies[3] wrote to the Prime Minister on 14 March 2000, expressing, amongst other things, their collective concern that the (Division 72) associates provisions not apply to charities.

In or about in April 2000 the churches also raised their concerns about potential application of the associates provisions to sub-entities, directly with the ATO. In response the ATO issued a public ruling[4] on the ATO tax reform web site, dated 1 July 2000, dealing with issues resolved via the Charities Consultative Committee (CCC), and stating:

> *The definition of an associate does not extend to a non-profit sub-entity as they are treated as entities for purposes of GST law only.*

Colleges and halls (and many others in the charitable sector) relied upon Commissioner's public ruling via CCC dated 1 July 2000, as the basis for their understanding the associates provisions would not apply to non-profit sub-entities.

The first time the colleges and halls became aware of any proposal to apply the associates provisions to non-profit sub-entities, was after TLAB 8 was tabled in Parliament. There was no prior consultation on this matter with the education sector via the ATO's Education Industry Partnership forum.

2. Meaning of the word "accommodation" – can it include food?

In its evidence to the Committee the ATO asserted that food had been taken out of the meaning of the word "accommodation" as used in the main GST Act, via legislative means. At the hearing of 22 November 2000, the following exchange took place between Senator Murphy and Ms Mellick of the ATO:

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[1] Proof Committee Hansard, Senate Economics Legislation Committee Reference: Taxation Laws Amendment Bill (No. 8) 2000, Wednesday, 22 November 2000.

[2] Meetings were held with the Uniting Church Victorian Synod GST team members concerning the potential problems posed to sub-entities by the associates provisions, in Melbourne on 21 February 2000, 21 March 2000, and again on 20 April 2000. In addition, a meeting was held with the Uniting Church national GST team in Sydney on 20 March 2000, where associates provisions issues were raised.

[3] The peak religious groups concerned in this instance are understood to have included the Presbyterian, Uniting, and Catholic Churches, amongst others.

[4] Charities Consultative Committee Resolved Issues as at July 1 2000, at question 11 on page 25. This ruling is still current. See, ATO tax reform web site at:

http://www.taxreform.ato.gov.au/ind_partner/charities/qna/qna3.htm

> ***Senator MURPHY****—How are we supposed to deal with the definition of 'accommodation', then? It was put to us that the Macquarie Dictionary, I think it was, had a definition of 'accommodation' as including food. The AAT, I think, also made the same point in reference to a matter that related to offshore oil rigs, that the definition of 'accommodation' went to the inclusion of food.*
> ***Ms Mellick****—To put it beyond any doubt, we actually took food out legislatively. We were aware that there was a possibility that food could be included in accommodation, so it specifically excluded—*
> ***Senator MURPHY****—So the Macquarie will have to get a new definition!*
> ***Ms Mellick****—It is taken out by the law, so food then falls for treatment under the normal food provisions, which is why food provided on the premises is taxable.*

Proof Committee Hansard[5], at page E27.

Whilst it is true that food has been legislatively taken out of the meaning of the word "accommodation" for purposes of section 38-105 of the main GST Act[6], that is not the only part of Division 38 that can be used by boarding schools and the university halls and colleges[7] to make GST-free supplies of accommodation. Boarding schools and university halls and colleges that qualify as charities are also entitled to make GST-free supplies of accommodation under the provisions at section 38-250 of the main GST Act. Food has not been legislatively taken out of the meaning of the word "accommodation" for purposes of section 38-250 of the Act because subsection 38-105(4), which takes food out of the meaning of accommodation, is restricted in its operation to section 38-105 of the Act.

Notwithstanding the above comments by Ms Mellick on behalf of the ATO, Senator Murphy's question concerning how [charities] are supposed to deal with the definition of "accommodation" remains appropriate within the context of section 38-250 of the main GST Act.

Given the AAT[8] has already quoted the *Macquarie Dictionary* definition of "accommodation" without objection, there would appear to be some authority for the assertion that the main GST Act as it presently stands will permit both boarding schools and university colleges and halls to make GST-free supplies of food and accommodation if the provisions at section 38-250 are otherwise satisfied.

This area of continuing uncertainty ought be put beyond doubt, by way of amendment to the Act.

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[5] Proof Committee Hansard, Senate Economics Legislation Committee Reference: Taxation Laws Amendment Bill (No. 8) 2000, Wednesday, 22 November 2000.

[6] For purposes of section 38-105 of the main GST Act only, food is legislatively taken out of the meaning of accommodation by operation of subsection 38-105(4).

[7] Note that a number of university colleges and halls of residence also make some supplies of catered accommodation to students that are undertaking "secondary courses" taught by universities (e.g. foundation courses etc).

[8] AAT case number 10,476.

3. Conclusion

Please call me if you have any questions concerning this supplementary submission.

Yours sincerely

Dr Lewis Rushbrook, Executive Member
Association of Heads of Australian University Colleges & Halls, Inc.

To: PETER HALLAHAN
SENATE ECONOMICS LEGISLAT'N CTTEE
PARLIAMENT HOUSE, CANBERRA

DATE: 29 NOV 2000

Fax: (02) 6277-5719

From: PETER MCDONALD, ANAVCI [(08) 93818652]

PAGES: 3 (INCL THIS PAGE)

Pete,

See, attached, PM's letter of 24 JUNE 2000 replying to letter from peak church groups dated 14 MARCH 2000. PM+C effectively facilitated discussions between the churches + the ATO that led to the ruling (1 July 2000) by ATO that associates provisions not apply to non-profit sub-entities.

Regds,

Pete M D M

30 JUN 2000

PRIME MINISTER
CANBERRA

24 JUN 2000

Rev John Mavor
President
Uniting Church in Australia
PO Box A2266
SYDNEY SOUTH NSW 1235

Dear Reverend Mavor

Thank you for your letters of 14 March and 18 May 2000 about the application of tax reform to church and charitable organisations. I understand representatives from a number of church organisations met with an advisor from my Office, officials from the Australian Taxation Office (ATO), the Department of the Prime Minister and Cabinet and Treasury on 5 May to discuss this matter.

The government appreciates the important role played in the community by churches and charitable organisations and has made a genuine effort to accommodate concerns raised by the sector. The government has sought to address, through the Charities Consultative Committee, as many of these concerns as possible within the overall policy approach to the GST and charities.

I am pleased that you are now no longer seeking an exemption from the GST on all inputs purchased by churches and charitable organisations. In relation to your main concern, the government introduced a legislative amendment on 8 June 2000 to allow religious organisations to form a GST religious group that would, for GST purposes, be treated as a single entity and therefore exclude all internal transactions within the group. This measure will effectively allow churches to access the benefits of the grouping provisions in the GST Act without meeting the requirements of the grouping provisions in terms of consolidating accounts as required under the legislation.

To be approved as a GST religious group a number of requirements must be met. These requirements are set out in the relevant supplementary explanatory memorandum, an excerpt of which is attached to this letter.

On the issue of joint ventures there is now a regulation which allows charities to form joint ventures if they choose to do so. Further information about this regulation is available from the ATO.

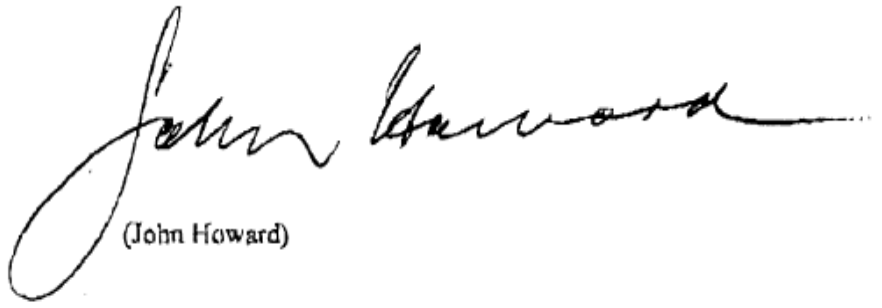
These developments should remove for churches any remaining barriers to proceeding with applications for an Australian Business Number.

I would encourage the churches to continue to work closely with the ATO to ensure, as far as possible, that any outstanding matters are resolved.

Once again, thank you for bringing your concerns to the government's attention and I trust that your major concerns have now been dealt with to your satisfaction.

I have copied this letter to Mr Keith Mar, General Secretary of the Presbyterian Church of Australia in NSW, the Most Rev Dr Peter Carnley, Primate of the Anglican Church of Australia, Mr Richard Menteith, Conference President of the Churches of Christ in NSW, Rev Bruce Thornton, General Secretary of the Baptist Union of NSW and Mr Gaidis Zids, Administrator of the Lutheran Church of Australia (NSW District).

Yours sincerely



(John Howard)

To: PETER HALLAHAN
SENATE ECONOMICS LEGISLATION CTTEE
PARLIAMENT HOUSE, CANBERRA

DATE: 29 NOV 2000

FAX: (02) 6277-5719

FROM: PETER MCDONALD, MINAUCHI [(08) 9381 8652]

PAGES: 9 (INCL. THIS PAGE)

Peter,

See attached, letter of 14 March 2000 to Prime Minister from peak church bodies. Refer to para's 4(a) & 4(b) in particular. (page 5).

Also attached, reply to church's letter, from PM&C as dated 1 May 2000.

Regards,

[PETER MCDONALD]

14 March 2000

COPY

Honourable John Howard MP
Prime Minister
Parliament House
Canberra ACT 2600

Dear Prime Minister

The undersigned churches in Australia, are committed to the processes of taxation reform instigated by your government. We affirm the role of the Australian Government in formulating and implementing federal taxation policy able to provide adequate revenue in an equitable, efficient and reasonably simple manner.

We are however concerned that there has been too little regard for the impact of the reform on the churches and associated charities. The legislation to date fails to take into account the complexities of these churches. We remain concerned that as we approach the implementation of the GST, there are unresolved issues about the treatment of the churches which if left unresolved, will severely inhibit their capacity to continue to deliver faith, pastoral and community services to the Australian community.

Our concerns outlined in past correspondence, are more extensively developed in the attached submission which we present for your consideration. This submission has been written by the Uniting Church in Australia and whilst it specifically makes reference to the Uniting Church, the information and concerns are also applicable to the other churches.

We submit that changes to definitions and/or regulations are necessary to take into account church structures. Until these issues are resolved, the churches are unable to obtain registration for GST purposes. We request your urgent action to ensure that all internal transactions between separate entities of the same church are excluded from application of the GST. We believe the government sought to address this issue by creating sub-entities, but the definitions are too restrictive and do not address the problems of the churches. Changes to the legislation will not mean a loss of revenue for the government. However it will result in maintenance of the capacity of the church and associated charities to continue to provide critical services otherwise threatened by the cost impost of the GST on internal transactions between entities/sub-entities.

Lutheran Church
of Australia

Uniting Church in Australia

Submission to Government on the implications of the GST for the Church

March 2000

1. Overview

Statements that "charities (church and charitable sector) would be no worse off under GST" have been proven to be incorrect and unsubstantiated. This submission details two critical issues for the church: GST and Inputs and ABN and GST registration, which if not addressed will result in the loss of monetary and human resources critical to the church's delivery of it's services to the community.

We also note that there has been no research or investigation of the probable impact of the GST, on the church and charitable sector by Government or sources independent of government.

Under the existing legislation the church will be worse off because of:-

- An excessive number of registrations and business activity statements;
- Increased accounting costs (for the churches and government);
- Increased tax payable
- The incurring of funding costs (as church organisations will either lose income and/or incur overdraft interest between the payment of taxable supplies and the receipt of input credits because of the additional cost of GST);
- The increased risks to the Churches under the self-assessment regime for penalties for non-compliance because:
  - volunteers do not fully understand the complexities of the legislation; and
  - Synod administrators having to monitor hundreds to thousands of entities, branches and sub-entities within their synod jurisdictions; and
- The loss of voluntary treasurers who are a key part of congregations, presbyteries, and smaller agencies of the Uniting Church of Australia.

2. Complexity of Church Structures

It is clearly apparent from any discussion with Officers of the Australia Taxation Office, the Goods and Services Tax Start-up Assistance Fund Officers and other government areas, that there is no understanding of the complex structure of the Uniting Church (and indeed other churches).

The structure of the Uniting Church in Australia includes:

- One National Body called the National Assembly with a number of distinct units;
- Seven Synods which follow closely State boundaries;
- 2,798 Congregations (many of which have subsidiary and/or joint venture activities in areas such as community interest groups, fundraising and member activities);
- 332 Community Service Units (including aged care, welfare & child care);
- 57 Education Units (46 schools, 6 university colleges and 5 theological colleges); and
- Other units (number not known).

There are complex relationships and a significant volume of transactions between various units of the Uniting Church which are not recognised under the current legislation. For the church to attempt to comply with GST legislation at the large legal entity level, would require the preparation of one large Business Activity Statement(BAS), an impossible task given the structure of the church as outlined above.

The increased administrative cost of the GST system will reduce the funding available for charitable activities. Similarly separating parts of the organisation into sub-entities will increase the costs in terms of administration, extra tax payable and the possible inability of smaller congregations using volunteer treasurers to correctly claim their input tax credits. The possible incurring of penalties, the increase in costs in administration and the loss of volunteers, will result from the inability of particularly smaller organisations to understand their tax liabilities and to properly finance compliance. Congregations will not have the cash flow required to finance inputs prior to receiving input tax credits and additional taxes will also be payable because of branching.

Reducing of the administrative load, optimizing the net income available for the pursuit of their charitable non-profit endeavours and maintaining the voluntary workforce so critical to our sector will be possible if an exemption is granted from paying GST on internal transactions between separate sub-entities.

The excessive likely administrative cost and reduction of funds, is not in the best interests of the church and charitable sector, or the administration function of government.

3. Problems with existing Legislation and Registration

3.1. Existing Legislation

The provisions contained in the existing legislation, prevents the church from complying with the GST in a cost and time effective manner.

3.1.1. GST on Inputs

All internal transactions of a supply nature between separate sub-entities are exposed to GST. This significantly increases the GST tax burden and results in a substantial administration costs for Churches as well as the Australian Taxation Office. The alternative of limiting registration to a limited number of large legal entities to eliminate the internal transactions from GST charges, is not practical for our complicated and locally-based organisation. Both options waste scarce resources and significantly increase our costs for no gain to anyone.

3.1.2. Registration for the ABN

Section 51-5 of the Legislation prevents the Churches from registering joint ventures as they are neither mining exploration activities nor covered by the regulations referred to in sub-clause (1)(a) or the categories in 1(b) to 1(e). This is because our joint ventures usually operate in conjunction with the activities of other churches. Examples include an Anglican and a Uniting Church in a country town sharing ministry, churches providing a joint community service, and the Church and tertiary institution operating a Theological College.

As a result of these two issues, the Churches are unable to commence the ABN and GST registration processes. Even if these issues were to be resolved for registration of each: National ("Assembly"), State ("Synod"), Presbytery (Regional), Congregation, Agency, joint venture and other bodies; there will be an additional administrative

burden for the Australian Taxation Office and the congregations/agencies of the church. There will be at least 4,100 ABN applications for the Uniting Church for no purpose.

One ABN/GST organisation registration

If the Church was to register one group ABN/GST organisation – that is basically one registration per state, its structure and the extreme diversity of it's activities would make it impossible to comply with the BAS requirements.

The decentralised structure, nature and number of activities, create a situation where it would be virtually impossible within the 21 days allowed to collect data at various diverse locations, centrally collate all the required information and lodge the BAS. Optimistically, this task would take several months and require considerable additional resources.

The collection and distribution of payments and refunds between the state Synods and the individual church congregations and agencies, would also be a significant additional administrative burden.

Centralising BAS preparation would reduce the 'perceived' responsibility of volunteer treasurers and increase the quality control risks. BAS preparation is a big ask for volunteer treasurers and if they are not fully responsible for the BAS returns, it is unlikely that the information required for centralised preparation would be supplied in a timely manner.

Use Sub-entities or branches to break the church into a number of separate GST Entities

The Church could avail itself of one of the other legislative mechanisms to break itself up into smaller ABN/GST entities, which would be more manageable for compliance purposes.

However, to do so would have a very significant adverse impact on:

Central administration costs because of:

- Requirement to incorporate internal processes into state Synod account payable/receivable systems.
- Significant increase in volume of taxable transactions.
- Requirement to distinguish which sections of organisations are separate entities and which are internal departments.
- Difficulty in identifying the exact nature of transactions especially pertaining to decisions on Gifts versus Grants.
- Cash flow impact of paying the 10% GST on the donation/grant paid by congregations to Synods.
- Psychological impact on the fundraising capacity because of the 10% GST impost.

Congregation and small agencies because of:

- Extra workload leading to increased resignation of volunteer treasurers.
- Need for increased cash flows. Smaller entities will usually be due for GST refunds, and as a result, transactions with other sections of the church will exacerbate their already tight cash flows.

The organisation as a whole because of:

- The taxing of transactions between separate sub-entities and branches which can artificially generate GST on internal acquisitions for which credits cannot be claimed because they are acquisitions for an input taxed supply. Compared

with the registration of single state entities, this option would increase costs by several hundred thousand dollars per annum. The funding lost under this option would materially reduce non-profit charitable activities.

Centralised property trust structures because of:

- Under a sub-entity structure, the property ownership structure of churches (created by state legislation) together with the *Division 72 – Associates*, has the potential to artificially impose a notional GST value of several million dollars per annum.

3.2. Volunteer Treasurers

Volunteer treasurers are a key part of congregations, presbyteries and smaller agencies of the Uniting Church of Australia. It is difficult to find and keep these volunteers and GST has the potential to decimate the number of volunteers, which would adversely effect not just GST compliance, but the operation of the total organisation. Volunteer workers in churches are very often also volunteers in other organisations and therefore people with limited available time to take up the extra challenge of accounting for the GST, (particularly knowing there is no gain to either government or the church).

Relevant factors include:

- Learning required to administer GST.
- Difficulty in identification of GST e.g. Grants versus Gifts, Non-commercial value of supplies etc. This clarification can be complex to resolve.
- Increased strain of cash flow constraint – most agencies and congregations are usually short of funds and timing issues associated with GST refunds will not help.
- Additional time requirement to identify the very limited value & number of items on which GST should be charged.
- Additional time required identifying, confirming and recording GST on acquisitions
- Treasurers will be required within severe time constraints to prepare monthly statements. Currently treasurers monitor cash flow and action the impact of unusual cash flow items. Whilst treasurers often provide monthly summaries, they are only required to formalise accounts once a year and even then without unreasonable time constraints.
- A significant proportion of our treasurers are older citizens who provide excellent assistance, but will not wish to confront the significant new challenge of GST.
- Treasurers have personal commitments and priorities and currently can delegate limited treasury functionality without seriously impacting on the organisation. Additional GST requirements will make this delegation extremely difficult. The GST requirements (transactions, BAS etc.) are not compatible with volunteer treasurers who have personal commitments and will at times not be available for a number of weeks.
- Volunteer treasurers are often actively involved in other charitable activities e.g. Church elders etc.
- At least four to five million dollars p.a. would be required across the Uniting Church to employ accounting/bookkeeping services to replace volunteers.
- Additional insurance costs will arise due to increased liability exposure.

4. The Solution

None of the existing options under GST is acceptable and this prevents the church from commencing the processes required for compliance with the GST and ROGATE legislation.

The legislation as it stands does not take into account the complex structures of the church.

Urgent technical amendments to the legislation are required to achieve the following outcomes:

a) Eliminate GST from transactions between separate entities of the same church/charity organisation (including sub-entities, wholly owned legal entities and associated joint ventures). These internal transactions should not be GST taxable acquisitions and supplies. The identification of input taxed supplies should be based on the total church organisation.

b) Amend *Division 72 – Associates* to exclude charities and thus avoid inappropriately generating GST transactions, which would not have occurred under a single registration scenario.

c) Expand the GST registerable entities in *Section 51-5* to include joint ventures such as –
   - Ecumenical (with other denominations) relationships
   - Business (income producing and service providing) relationships
   - International relationships

   thereby amending the current legislation to allow registration.

The only way forward within the current legislative framework is to amend the legislation to enable us to comply with the legislation AT NO COST TO THE GOVERNMENT REVENUE i.e. the revenue would be the same as if the Church was registered as one large single enterprise. However even with this amendment there will be a large administrative cost to the sector that is not redeemable through any other measures and will ultimately result in a loss of critical revenue currently funding service delivery.

5. Conclusion

The Uniting Church cannot progress under the current legislation until these issues are resolved.

We reassert our claim that the most appropriate way forward is provision of an institutional exemption on inputs. Such an exemption will not equate with loss of revenue to Government but will mean continuation of the provision of the critical services to the current level provided by the church and charitable sector.

There has been no resolution to these issues despite their discussion in a number of ATO and Treasury forums. We respectfully request a meeting with you as soon as possible in order to resolve this critical issue.

Yours sincerely

Rev John Mavor
President
Uniting Church in Australia

Most Rev. Dr Peter Carnley
Primate
Anglican Church of Australia

Rev Bruce Thornton
General Secretary
Baptist Union of NSW

Mr Keith Mar
General Secretary
Presbyterian Church of Australia in the State of NSW

Mr Richard Menteith
Conference President
Churches of Christ in NSW

Mr Gaidis Zids
Administrator
Lutheran Church of of Australia
(NSW District)

THE DEPARTMENT OF
THE PRIME MINISTER AND CABINET

TELEPHONE: (02) 6271 5111
FACSIMILE: (02) 6271 5414

3-5 NATIONAL CIRCUIT
CANBERRA, A.C.T. 2600

1 May 2000

Rev John Mavor
President
Uniting Church in Australia

Dear Reverend Mavor

I am writing to invite you to nominate a suitable representative to attend a meeting in Canberra at 2 pm on Friday 5 May regarding the issues raised in your joint letter to the Prime Minister of 14 March 2000 on tax reform. The meeting will be chaired by Mr Rick Matthews, Deputy Commissioner, Australian Tax Office (ATO). Representatives from the Prime Minister's Office and from this department will also be present. I have also asked a representative of the Catholic church to attend, as it has recently raised similar issues.

The ATO intends to circulate a draft paper responding to the issues raised in your letter in advance of the meeting as a basis for discussion. Andrew Shearer (telephone 02 6271-5049/ fax 02 6271-5583) would be happy to discuss details of the meeting. I would be grateful if you would let him know as soon as possible who will represent your organisation.

The meeting will be held in conference room 3 of this department. Your nominated representative will be met at the reception desk.

Yours sincerely

Patricia Scott
First Assistant Secretary
Economic Division