

### **Necessitous Circumstances Fund:**

ATO have released a new information sheet on “Necessitous Circumstances Funds and Tax Deductible Gifts”. This can be located in the Non-Profit Section of the ATO website under that heading. This may be of interest to organisations administering such a Fund or who are contemplating establishing one.

In this context “Necessitous Circumstances” refers to financial needs. It involves poverty in relation to a person’s circumstances; e.g. a seriously handicapped person may need substantially more income to be properly cared for and may qualify even though they may have significant income in their own right.

### **Reporting Obligations – Companies Limited by**

#### **Guarantee:**

The Incorporations Amendment (Corporate Reporting Reform) Bill 2010 was introduced to Parliament in December 2009. The proposed reform followed extensive advocacy by the accounting profession. Perhaps the most significant item is the introduction of a three-tiered differential reporting framework for Companies Limited by Guarantee. Whereby: -

**Tier 1** companies with an annual revenue below \$250,000, and who are not Deductible Gift Recipient (DGR) entities for tax purposes, would be released from the onerous financial reporting obligations currently imposed by the Act (subject to some minor conditions).

**Tier 2** companies, with an annual revenue of less than \$250,000 but are DGR, or have an annual revenue of between \$250,000 and \$1,000,000 (irrespective of whether they are a DGR), would be eligible to nominate a review instead of an audit. This would reduce the reporting and auditing obligations.

**Tier 3** companies, entities with an annual revenue of \$1,000,000 or more would continue to prepare and lodge an audited financial report.

**There are** other streamlining arrangements for Tier 2 and Tier 3 Companies also proposed.

### **Australian Business Register Upgrade:**

Recent improvements to the Australian Business Register identify details of an entity’s DGR endorsement. The appropriate Table and Section of the Income Tax Assessment Act 1997 are now identified for each entity under the appropriate “Deductible Gift Recipient” heading.

The recent announcement includes a reminder that Ancillary Funds are debarred legally from donating to one another. This barrier includes Private Ancillary Funds (previously called Prescribed Private Funds).

### **GST Snippets:**

#### **GST and Vacant Land:**

In the recent case of Vidler v F C of T 2009 ATC – 20-149, the Court determined that vacant land may still be considered “residential premises” in certain circumstances for GST purposes. However this ruling by the Federal Court judge was simply saying it was possible, however it was also unlikely.

**Sale of Land not a supply of a going concern:** In Administrative Appeals Tribunal case 12/2009, 2009ATC 1-16, the Tribunal held that the sale of vacant residential land was not a GST-free supply of a going concern, as the parties had not agreed to this in writing.

#### **Recent Interpretation:**

Interpretative decisions by ATO which relate to Retirement Villages include: -

**ATO ID 2009/103** states that building and garden maintenance services, including the cleaning of residential premises and communal facilities supplied by a charity to a resident are related to the supply of accommodation in a retirement

village and accordingly, are GST-free under Section 38-260 (c) (i) of the GST Act.

**ATO ID 2009/104** states that laundry, personal care, hairdressing and bus services supplied by a charity to a resident are not related to the supply of accommodation in retirement villages and accordingly are not GST-free.

**Fringe Benefits Tax Reporting Year:** Entities who are subject to Fringe Benefits Tax (FBT) recording and/or reporting are reminded that the FBT year ends on 31/3/2010.

Charities, Churches and other tax-exempt organisations need to be aware that there are different provisions for tax-exempt bodies regarding the provision of entertainment to employees than the provisions applying to normal commercial entities. An example of this is where the cost for a staff social party (such as at Christmas) incorporating food and drink served to employees, are exempt from FB Tax and reporting obligations for a commercial entity, if they are provided on a working day on business premises and consumed by current employees. If the same benefits are provided to staff of a tax-exempt entity, these exemptions do not apply.

However, the “minor benefits” exemption for benefits below \$300 would be available to either the tax-exempt entity or the commercial entity, where the benefit is provided to an employee or to an associate of an employee.

### **ATO comment on Word Investments case:**

ATO have released a Decision Impact Statement regarding Word Investments Ltd.

In this statement ATO advise that they accept that an entity can be a charitable institution even if it does not directly carry out charitable activities, but instead, gives its trading surplus to institutions that do carry out charitable activities. However, ATO

maintains that each case must be decided on its merits. Word Investments case did not, in our view, make the path for TCC endorsement any simpler. The ATO current statement is consistent with our earlier comments.

### **Productivity Report on the NFP Sector:**

In January the Productivity Commission published their research report on the contribution of the Not-for-Profit Sector to the Australian community. This report provides some helpful and well-researched information on the contribution of the Not-for-Profit Sector, with particular relevance to the charitable sector.

Some snippets from the report are set out below: -

**Australian** Bureau of Statistics has identified 59,000 not-for-profit entities contributing \$43 billion to Australia's gross domestic product and employing 8% of the workforce.

**The Sector** has grown strongly with an average annual growth of 7.7% in the 8 years to 30/6/2007.

**4.6 million** volunteers work with NFPs. While more Australians are volunteering, the average volunteer hours are reducing.

**Current** reporting obligations imposed on the Sector are poorly designed and unduly burdensome. Reform is needed. WE ALL KNEW THAT ANYWAY!

**A national** Register for Not-for-Profit entities should be established to consolidate Commonwealth regulations, register and endorse not-for-profit entities for concessional tax status, register cross-jurisdictional fund-raising organisations and provide a single portal for corporate and financial reporting.

**It appears** likely that such a Register will be established under the initial auspices of ASIC but it is recommended that it ultimately becomes an independent statutory body.

**Certain** other recommendations from the Productivity Commission are consistent with recommendations from the recent Senate Enquiry into the Charitable Sector.

**Consideration** should be given to widening the availability of DGRs, extending it to all charitable institutions and charitable funds that will be endorsed on the proposed Register.

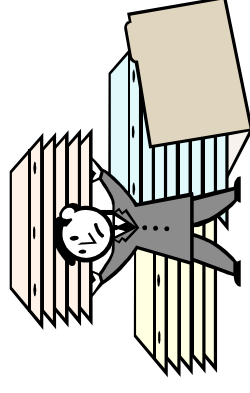
### **Standard Chart of Accounts: -**

COAG is proceeding with the development of a national Standard Chart of Accounts. This will be particularly useful for entities which receive Government grants and prepare acquittals, as the classifications will be standardised. Adoption of the Standard Chart of Accounts was also recommended by the Senate Enquiry into Charities and the Productivity Commission Report. The commencement date for implementation of the national Chart has been nominated as 1 July 2010. Victoria and WA have adopted a similar implementation date. Queensland and NSW have already implemented a Standard Chart of Accounts programme. There are minor adaptations of the Chart in each State to allow for the differences in State Law, but the "big picture" is the same in each case.

More information on this project is available from the Centre of Philanthropy and Non-Profit Studies at Queensland University of Technology. [www.bus.qut.edu.au/research/cpns/](http://www.bus.qut.edu.au/research/cpns/)



## **Newsletter March 2010**



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[www.addministry.org.au](http://www.addministry.org.au)

Previous copies of this newsletter are also available on the website.

### **Publications available:**

**Voluntary Treasurers' Handbook** —  
Hard copy — 59 pages .....\$30.00  
**Missionary Tax Guide—2008**  
Hard copy— 47 pages ..... \$30.00  
E-mail copy ..... \$20.00

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