FINLAYSONS LAWYERS

Legal Alert

Not-for-Profit

March 2018

Deductible Gift Recipients to be registered as charities from 2019

In a Nutshell

In December 2017, the Federal Government announced that it would reform the administration and oversight of organisations with Deductible Gift Recipient (DGR) status to strengthen governance arrangements and compliance by DGRs, reduce administrative and reporting complexity and ensure an appropriate level of transparency of a DGR's activities to the public.

The reforms will likely affect the registration and reporting requirements of all existing and newly-established non-government DGRs.

In particular, under the current proposal, existing DGRs will be automatically registered as charities on the Australian Charities and Not-for-Profits Commission (***ACNC***) Register from 1 July 2019 and will have until 1 July 2020 to comply with ACNC legislation, regulations and governance standards.

Introduction

In June 2017, the Government released a Discussion Paper on "*Tax Deductible Gift Recipient Reform Opportunities*".

In December 2017, the Government announced it would progress with reforming the administration and oversight of DGR entities, on the basis of the reforms proposed in the Discussion Paper. [1]

The changes are designed to strengthen governance arrangements and compliance by DGRs, reduce administrative and reporting complexity and ensure an appropriate level of transparency of a DGR's activities to the public.

Major Aspects of the Reform

The key issues to be addressed by the reforms, and the proposals, are explained briefly below:

<u>Registration and Endorsement</u>

An entity may be eligible for registration as a DGR under any one of (approximately) 50 DGR categories.

Some DGRs are categorised under, and registered on, one of four DGR registers that are each administered by a different Government department, with different eligibility and reporting requirements:

- The Register of Environmental Organisations;
- Register of Harm Prevention Charities;
- Register of Cultural Organisations; and
- Overseas Aid Gift Deduction Scheme.

In addition, only some DGRs are registered as charities with the ACNC.

To streamline registration processes and promote transparency and good governance of DGRs, it is expected that the reforms will:

- require all non-government DGRs to be charities registered with, and regulated by, the ACNC from 1 July 2019;
- automatically register an existing DGR as a charity on the ACNC Register from 1 July 2019;
- require an (new) entity to apply for DGR endorsement from the ATO as part of its charity registration with the ACNC; and
- transfer the administration of the four DGR Registers to the ATO.

Annual Reporting Obligations

DGRs registered on different Registers, as well as those registered with the ACNC, have varying reporting obligations to the relevant Government departments.

When all non-government DGRs become registered with the ACNC, it is expected that reporting obligations will become streamlined, less complex and more transparent.

For the DGRs that are automatically registered as charities on the ACNC register from 1 July 2019, there will likely be a 12-month transition period to allow the DGR time to comply with ACNC legislation, regulations and governance standards.

All DGRs will be required to lodge an Annual Information Statement with the ACNC and, for medium or large charities, lodge financial statements, which are generally publicly available.

By requiring DGRs to adhere to the ACNC's governance standards and reporting obligations, it is anticipated that the requirement for a DGR to maintain a public fund to receive tax deductible donations will be unnecessary. Accordingly, the public fund requirement will likely be removed.

Oversight and Review

Currently, an entity does not have to be registered with the ACNC to be endorsed by the ATO as a DGR eligible for generous tax concessions.

Accordingly, once endorsement is granted, there is little ongoing review of the entity's eligibility to maintain its DGR status unless the ATO reviews or audits a specific DGR.

Under the proposed reforms, it is expected that each DGR could be reviewed at least once within, say, a 5-year period by the ACNC and/or ATO. The ACNC and/or ATO would then likely seek further information only from "high-risk" entities.

Additional funding is proposed to be given to the ACNC and ATO for this purpose.

Conclusion

Draft legislation for the proposed reforms has not yet been released. We expect that the industry will be consulted in the near future in relation to that legislation.

If you would like Finlaysons to keep you updated of the progress of the reforms, or you would like assistance to review, understand and comply with the legislation (when released), please contact us.

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1 The Honourable Kelly O'Dwyer MP, Media Release: *Reforming administration of tax deductible gift recipients*, 5 December 2017.