

Email: DGR@treasury.gov.au

Individuals and Indirect Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

21 September 2018

DEDUCTIBLE GIFT RECIPIENT REFORMS

Dear Sir or Madam,

BDO welcomes the opportunity to provide feedback in response to Treasury's consultation paper 'Deductible Gift Recipient Reforms' (DGR) released on 22 August 2018.

This BDO submission contains recommendations on the components of the Government's package of deductible gift recipient (DGR) reforms announced on 5 December 2017 including that:

- DGR entities should be able to commence the application process as soon as any reform is finalised, rather than delaying any action until 1 July 2019
- the ATO should delay any action to remove DGR registrations until the ATO is satisfied that the entity has no intention of seeking charity registration or exemption.
- there should not be any distinction between charities registered on the ACNC register under a streamlined application versus a full application
- where the ATO allows an entity to be exempted from being registered as a charity, an entity should fulfil all of the regular reporting requirements of the ACNC, including information contained in the annual information statement
- responsibility associated with the community requirement should be dispensed with and replaced with the rule that the persons in charge of ancillary funds are required to satisfy the ACNC governance requirements and to meet the test as Responsible Entities

These and other issues are expanded upon in the attached appendix.

Should you wish to discuss these comments, please feel free to contact me on +61 2 9240 9736 or Lance.Cunningham@bdo.com.au.

Kind regards,



Lance Cunningham
BDO National Tax Director

Appendix

1. Are the eligibility criteria for transition arrangements clear?

DGR entities should be able to commence the application process as soon as the rules and processes are finalised, rather than delaying any action until 1 July 2019. This encourages early engagement with the processes, and may assist with lead times where the entity has to review and modify its constitution.

2. Is 12 months a sufficient transition period for affected DGRs to provide the required basic information to the ACNC to register as a charity or apply to the Commissioner of Taxation for an exemption? If not, why not?

The application period should commence once the transition arrangements are finalised so those entities impacted can choose to decide on a course of action early.

The question of the adequacy of a 12-month period is a question of the ability of the ACNC to process the applications. The Example 3 in the consultation paper notes the DGR entity lodges the information with the ACNC on 1 June 2020. The example notes that once processed that the entity will be registered as a charity from 1 June 2020.

Our experience with the full applications to the ACNC for charity registration is that this process can take more than four weeks and the time period varies with workload being experienced within the ACNC.

It is likely that as at 30 June 2020 there could be many entities that have lodged their documentation with the ACNC but the registration process has not completed at that date.

The ACNC may advise the entity after 30 June 2020 of impediments to their registration process and the entity may need to apply to the ATO for exemption.

An entity that supplies information to the ACNC prior to the cut off, indicated as 30 June 2020, should still be able to apply to the ATO for exemption after that date in the event that there is an impediment to their charity registration.

The ATO should delay any action to remove DGR registrations until the ATO is satisfied that the entity has no intention of seeking charity registration or exemption.

Some entities may undertake activities that are inconsistent with a charity registration and may need to divest themselves of those particular activities.

The new requirements should be released before the end of calendar 2018 and entities encouraged to commence their review process as early as possible.

3. Given the streamlined transition arrangements will undergo reduced upfront scrutiny compared to a full application process, would it be desirable for the ACNC to indicate, for a set amount of time, entities' on the register that have accessed these provisions? If so, would two years be an appropriate time period before the indicator is removed?

BDO submits that there should not be any distinction between charities registered on the ACNC register under a streamlined application versus a full application. The transition arrangements specify those entities that cannot access the streamlined approach.

The ACNC needs to be suitably resourced that it can analyse and validate the information in each streamlined application and if additional information is required to request that information.

Any distinction on the ACNC register will confuse users of the register and has the potential to raise questions to those users on whether a particular identified charity is fully compliant with the ACNC's requirements.

When the ACNC commenced operations, the charities as identified by the ATO were registered as charities on the ACNC register and a regimented program of contacting the charities and testing the data was initiated. A similar timetable can apply to the DGR entities.

4. Are the eligibility criteria for the exemption from charity registration clear?

The circumstances listed appear reasonable.

5. In what circumstances would a DGR be unable to register as a charity? Are there circumstances that would not be captured under the proposed circumstances?

This is hard to be certain until the full detail of all applications are received. The ATO needs to have sufficient discretion to accommodate all circumstances.

6. Are the arrangements for the Commissioner of Taxation's discretion appropriate and sufficient?

Where the ATO allows an entity to be exempted from being registered as a charity, BDO supports the requirement that the entity fulfil all of the regular reporting requirements of the ACNC including:

- information contained in the annual information statement
- financial statements to be lodged
- an audit report or review consistent with the ACNC thresholds
- constituent documents including any changes
- details of the persons who are the directors or equivalent roles, at least updated on an annual basis.

Where this information is supplied to a state or similar consideration should be given to how the concept of single reporting can be achieved.

7. Are there any circumstances where an exemption should be time limited?

Where a DGR has an existing time limited registration, the exemption would apply for a similar time. Where there is no expiry date on the DGR registration, there should be no expiry date on the exemption. However, BDO suggests that the exemption should be subject to the same annual reporting requirements as would apply if the DGR entity were registered as a charity. This reporting requirement and the analysis of the content submitted ensures that the exemption is subject to ongoing maintenance review.

Alternatively, entities with DGR status on a self-assessment basis could be required to provide the ACNC/ATO with a statement that they continue to comply with the DGR and Charity requirement and this should be certified by a registered tax agent.

8. Are there any unintended consequences in abolishing the requirement for public funds to be managed by a committee that has a degree of responsibility to the general community?

BDO considers that there should be consistent rules across charities. Consequently, BDO supports the proposed approach to dispense with the degree of responsibility to the community requirement and replace with the rule that the persons in charge of ancillary funds are required to satisfy the ACNC governance requirements and to meet the test as Responsible Entities (persons).