



Tax White Paper Task Force  
The Treasury  
Langton Crescent  
PARKES ACT 2600

**Re:Think Tax Discussion Paper  
Submission from Australian Red Cross Society**

I welcome the opportunity to provide our submission in response to the “Re:Think Tax Discussion Paper” and look forward to participating in the continuing analysis and discussion of the future shape of Australia’s taxation system.

Yours sincerely,

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Chief Executive Officer  
Australian Red Cross Society

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## **AUSTRALIAN RED CROSS SOCIETY**

### **SUBMISSION**

### **IN RELATION TO THE RE:THINK TAX DISCUSSION PAPER**



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|----------------------|------------------------------------------------------------------------------------------|
| <b>Submission by</b> | <b>Australian Red Cross Society</b>                                                      |
| <b>Date</b>          | June 2015                                                                                |
| <b>Submission to</b> | Tax White Paper Task Force<br>The Treasury<br>Langton Crescent<br><b>PARKES ACT 2600</b> |

## SUBMISSION

### *Introduction*

Australian Red Cross Society (**Red Cross**) welcomes the opportunity to provide a submission in relation to the “Re:Think Tax Discussion Paper” (**Discussion Paper**) and to participating in the continuing analysis and discussion of the future shape of Australia’s taxation system.

Given the complexity, size and diversity of operations of Red Cross, the Discussion Paper raises matters of great significance to Red Cross and to the achievement of its vision and mission, in particular with respect to the issues specific to the charity sector addressed in Chapter 7 of the Discussion Paper. Accordingly, this submission will focus on those aspects.

### *Executive summary*

Red Cross supports the current tax arrangements applicable to the charity sector.

However, there is room for significant improvement in simplifying how the concessions are applied, in particular in:

- (a) simplifying the categories of DGR endorsement; and
- (b) clarifying the GST treatment of grants.

### *About Red Cross*

#### Establishment

The body which became Red Cross was formed as a branch of the British Red Cross Society at Government House, Melbourne on 13 August 1914 by Lady Helen Munro-Ferguson, wife of the Governor-General. In 1938 Red Cross was formally recognised as an autonomous National Society, and was incorporated by Royal Charter in 1941. Its official name then became the Australian Red Cross Society.

Red Cross is a part of the world’s largest humanitarian organisation, through its membership of the International Red Cross Red Crescent Movement, including National Red Cross and Red Crescent Societies, the International Committee of the Red Cross (**ICRC**) and the International Federation of Red Cross and Red Crescent Societies (**Federation**).

#### Mission and activities

In accordance with its Fundamental Principles, Red Cross is independent of government and has no political, religious or cultural affiliation. Its vision is to improve the lives of vulnerable people in Australia and internationally by mobilizing the power of humanity. Its mission is to be a leading humanitarian organisation in Australia, improving the lives of vulnerable people through programs delivered and promotion of humanitarian laws and values.

The Red Cross operates primarily in Australia, with some activities undertaken overseas in conjunction with other National Societies in the Federation, with the Federation itself or in other ways, such as through personnel on secondment to the ICRC.



In addition, the Australian Red Cross Blood Service (as an operational division of Red Cross) plays a central role in the health system of Australia, funded entirely by the governments of Australia.

*Tax status under Commonwealth taxation laws*

Red Cross is a charity and public benevolent institution (**PBI**) registered with the Australian Charities and Not-for-profits Commission.

On account of our status as a charity and a PBI, Red Cross receives the following tax concessions:

- income tax exemption;
- FBT exemption as a PBI;
- GST concessions (for certain limited activities); and
- endorsement as a deductible gift recipient (**DGR**) and to operate certain DGR funds, including, a Developing Countries Overseas Aid Fund for relief and development activities (such as, for example, responding to the Nepal Earthquake, Cyclone Pam in Vanuatu, and Ebola in West Africa).

Red Cross is also endorsed to operate the following disaster relief DGR funds:

- Christchurch Earthquake Appeal 2011;
- Developed Country Disaster Relief Fund – 2009-2011;
- Developed Country Disaster Relief Fund - Taiwan Typhoon Morakat;
- Japan Disaster Appeal 2011;
- New Zealand Earthquake;
- Red Cross Queensland Floods Appeal 2013;
- Tasmanian Bushfire Appeal 2013;
- Victorian Bushfire Appeal 2009; and
- Victorian Floods Appeal 2011.

Red Cross is also entitled to various charity based concessions with respect to State and Territory taxes and duties.

***What is the rationale for tax concessions?***

The Discussion Paper describes not-for-profit (**NFP**) tax concessions as a form of Federal Government “support” given in “recognition of the NFP sector’s contribution to the Australian community” (Discussion Paper, Part 7.2, p123).

Tax concessions also recognise the principle that philanthropic and charitable activities carried on for public benefit ought not be subject to taxation. This view was recognised by the recent Treasury Not-for-profit Sector Tax Concession Working Group as one of the key rationales for the current income tax concessions:

*“In relation to income tax, income tax is only borne by individuals and is imposed on entities as proxies for individuals. As charities and other NFPs are formed for the purposes of public benefit, not the private benefit of individuals, it is argued that they should not be within the income tax regime.” (Working Group (2013), p2)*

Similarly, regarding charity tax concessions as Government revenue “forgone” (Discussion Paper, pp124-126) may be of some use in comparing different policy outcomes (Productivity Commission (2010), E.6), provided that the public benefit delivered by charities in return for the concessions is also taken into account. In our view the public benefit derived from such tax concessions is substantial.

The current tax concessions can be justified on a number of rationales.

Firstly, the nature of the ‘contribution’ or ‘public benefit’ of the sector is multifaceted, as recognised by the Working Group (2013):

*“1. Concessions are a form of government assistance to worthy causes. Without incentives such as tax concessions, the overall level of activity in the NFP sector may be below what is optimal for society.*

*2. Tax concessions to the NFP sector are a form of payment or subsidy for the delivery of goods or services that are of public benefit. Activities undertaken by the NFP sector save governments from making outlays for similar activities.” (p2)*

Secondly, tax concessions can also be justified on efficiency and sustainability grounds as tax concessions may:

*“provide greater funding certainty for organisations as they may be less volatile than direct funding mechanisms as these may be affected by deteriorations in the government’s fiscal position or changes in government preferences.... [and]*

*be administratively more efficient than direct funding mechanisms. The costs to both government and organisations in taxing NFPs and then reallocating these taxes back to the same organisations through direct funding mechanisms could be substantial.” (Productivity Commission (2010), p157)*

Finally, despite the many and various tax concessions available to the charity sector, the policy objectives for current tax concessions are not clearly set out in legislation (Productivity Commission (2010), p156).

Accordingly, in our view, any thorough policy analysis of the tax concessions available to the charity sector, needs to take into account the many and varied rationales for such concessions and the public benefits achieved through such concessions.

**Question 47. Are the current tax arrangements for the NFP sector appropriate? Why or why not?**

Red Cross carries on its activities towards achieving its charitable objects, as set out in its Royal Charter and in its Rules (refer Annexure), and not for the private benefit of the individuals who are its members. Red Cross provides many vital services – including emergency services, disaster response, community services, addressing disadvantage for Aboriginal and Torres Strait Islander peoples, migrant support, championing international humanitarian law, and international aid and development – which save Government from making financial outlays for such services, some of which could not be readily provided by Government.

Accordingly, it is appropriate, based on the rationales noted above, that Red Cross receive appropriate tax concessions and that the current tax arrangements applicable to Red Cross are, broadly, appropriate.

However, there is room for significant improvement in simplifying how the concessions are applied, as outlined in our responses to Questions 49 and 50, below.

***Do tax concessions raise issues of competitive neutrality?***

The Discussion Paper raises the concern of competitive neutrality of charity tax concessions:

*“Given the size and reach of the NFP sector, some tax concessions may result in distortions that affect the broader allocation of resources in the economy, particularly where they operate in competition with for-profit providers. These distortions arise when the prices that NFPs pay for their inputs (such as labour) are altered by the presence of concessions in the tax legislation.”*

This issue has been the subject of extensive reviews previously.

Regarding the income tax exemption, the Productivity Commission concluded that:

*“Overall, income tax exemptions for NFPs are unlikely to significantly distort resource allocation”*  
 (Productivity Commission (2010), p205)

This view is consistent with the Industry Commission’s findings that:

*“Income tax exemption does not compromise competitive neutrality. All organisations which, regardless of their taxation status, aim to maximise their surplus (profit), are unaffected in their business decisions by their tax or tax-exempt status.”* (Industry Commission (1995), K 5)

Similarly, the Henry Review (2009) concluded that:

*“The income tax and GST concessions generally do not appear to violate the principle of competitive neutrality where NFP organisations operate in commercial markets. However, the fringe benefit tax concessions provide recipient organisations with a competitive advantage in labour markets.”* (B.3)

Regarding the FBT exemption, Red Cross considers that competitive neutrality is a theoretical concern which does not manifest itself in practice in relation to our work as a PBI.

Red Cross’ position is based upon the following reasons:

- (a) Red Cross relies heavily on volunteers in many activities including provisions of a range of emergency and other day-to-day services and other activities including fundraising activities (eg retail shops with a product range including recycled/donated clothing, and first aid and other emergency training), such that any competitive benefit provided by the FBT exemption is not a material consideration. Red Cross provides these services for public benefits (e.g. the supply of affordable clothing assists vulnerable persons and encourages sustainable recycling).
- (b) Where Red Cross provides community services, it is very challenging for Red Cross to attract and retain staff in relation to offering competitive salaries and benefits, in particular in remote and regional areas where both disadvantage and labour shortages are often acute.

- (c) In the absence of the FBT exemption, without appropriate compensating measures, Red Cross considers it would be likely to be unable to retain the staff levels required to maintain its current services and programs and, as a result, would need to cut back on its services and programs.

These aspects are discussed in detail below.

#### Fundraising volunteers

Volunteering is a core activity within the charitable sector and a Fundamental Principle of Red Cross.

Across Australia, in its humanitarian operations (putting to one side the Australian Red Cross Blood Service), Red Cross relies heavily on up to 30,000 unpaid volunteers for the delivery of its services with volunteers vastly outnumbering paid staff by a factor of approximately 10 to 1. A significant proportion of volunteers are participating in our fundraising activities and in other areas such as services provision, being those areas most likely to compete with for-profit providers. For example, it is not uncommon for the day to day management of Red Cross retail stores to be undertaken solely by volunteers or for retail stores to have one paid employee who manages up to 20 or more volunteers.

In this context, the impact of the FBT exemption on such activities – having regard to the relatively small number of paid employees – is not material.

#### Staffing challenges in community service delivery

In our community service delivery areas, Red Cross competes for suitably qualified staff with other NFPs in the sector (who broadly speaking have similar award-based terms and conditions of employment for most operational areas). The relative disadvantage in remuneration for employees in the NFP community services sector has been recognised in the 2012 decision of Fair Work Australia (**FWA**) on the Equal Remuneration Order, which determined that a key cause of this disadvantage was gender based, as the sector has a predominantly female workforce.

However, Red Cross also competes for suitably qualified staff – and significantly – with the corporate and public sectors (at all levels). In the experience of Red Cross it is particularly difficult, for example, to compete against public sector terms and conditions in respect of community services roles in regional, rural and remote Australia (where Red Cross employs significant numbers of staff in connection with services working with vulnerable people and communities). Our experience is that staff in tighter labour markets are more likely to participate in salary packaging using FBT benefits.

Many challenges also face Red Cross in attracting and retaining staff in essential business support functions such as information services, Finance, and Human Resources. While many staff are attracted to work with Red Cross because of its mission, vision, values and Fundamental Principles, Red Cross also recognises that support function staff can easily transfer employment to other sectors and industries.

#### What would occur in the absence of FBT concessions?

In this tight funding and labour market environment, if FBT concessions were to be removed (without compensating factors), Red Cross considers it would be likely to be unable to retain the staff levels required to maintain its current services and programs and, as a result, would need to cut back on its services and programs.

Red Cross expects that, in this scenario, it would also find it significantly more difficult to attract staff in the appropriate areas for services; it would not be competing for staff only with other employers who would be similarly affected by the removal of the FBT concessions.

Moreover, unless Red Cross were to be willing to reduce its operational activities and support areas (thereby affecting the availability of services for working with vulnerable people), it would not have the financial flexibility to increase salaries to compensate for the removal of the FBT benefit.

The practical consequence of these circumstances is that, to maintain its current level of services for vulnerable people Red Cross would need a concomitant increase in Federal, State and Territory funding to enable it to increase salaries to compensate for the removal of the FBT benefits. However, even if this increase in government funding occurred for all roles in government funded programs, we could not afford a similar increase in positions funded through revenue independently generated by Red Cross.

**Question 48. To what extent do the tax arrangements for the NFP sector raise particular concerns about competitive advantage compared to the tax arrangements for for-profit organisations?**

Red Cross considers that the current tax concessions do not raise material issues of competitive neutrality.

With respect to the FBT exemption, Red Cross considers that competitive neutrality concerns are theoretical, but not grounded in practical reality. Accordingly, Red Cross considers that the current FBT arrangements should continue for PBIs such as Red Cross.

**Question 49. What, if any, administrative arrangements could be simplified that would result in similar outcomes, but with reduced compliance costs?**

**Question 50. What, if any, changes could be made to the current tax arrangements for the NFP sector that would enable the sector to deliver benefits to the Australian community more efficiently or effectively?**

Red Cross makes no submissions with respect to the income tax exemption, FBT exemption or the GST concession, other than to recommend that any change to the current treatment be the subject of a thorough review and public consultation process, consistent with that outlined in the Discussion Paper.

The current tax arrangements with respect to DGR endorsement and GST could be improved as follows:

#### **DGR endorsement**

The Discussion Paper correctly notes that:

*While DGR status is highly valued, the process for applying for it can be time consuming. In addition, organisations that operate across a range of DGR categories may not be eligible to be endorsed under a single category. This may require them to restructure, seek specific listing by name in the Income Tax Assessment Act 1997, or forgo DGR status altogether. There are also different requirements for DGR status across the different general categories, which creates further complexity. (p127)*

Experience of Red Cross suggests that gift deductibility is undoubtedly an essential contributor to decision-making processes of donors and strongly influences the amount of a donation, as the amount is influenced by the 'after-tax' cost to the taxpayer.



From a brief review of the Red Cross' DGR endorsements, it is clear that the current system is overly cumbersome and imposes an unjustified compliance burden. Such complexity hinders our work and does not achieve any relevant policy objective.

It is also confusing to taxpayers who, ultimately, bear a substantial compliance risk if deductions are claimed invalidly.

For example, separate endorsements must be applied for each new disaster in developed countries or in Australia.

Ideally, Red Cross would have a single endorsement applying to all areas capable of endorsement. Alternatively, Red Cross should have standing endorsement as a deductible gift recipient (either generally across all DGR areas or for general disaster relief purposes specifically) for use in responding to disasters in Australia and developed countries declared by the Treasurer (with such declarations applying retrospectively from the inception of the relevant disaster).

### ***Goods and services tax***

Red Cross is concerned that the GST treatment of grants to Red Cross as a DGR is unclear, and this uncertainty may act as a disincentive to the making of the grant or may diminish its value to Red Cross. For example, there can be doubt as to the application of GST when a foundation is funding a program that provides no actual benefit to that foundation but may be seen as doing so for tax purposes.

The Goods and Services Tax Ruling GSTR 2012/2 (issued by the Australian Tax Office on 30 May 2012) provides some helpful guidance as to the application of GST to gifts to a NFP body, but does not clarify whether for grants made by philanthropic trusts:

- a transfer (from the grantor to the grantee) qualifies as one arising by way of 'benefaction'; and
- whether the grantor receives a material benefit from the grantee – the charitable body to which the monies are granted.

The issue of benefaction may arise where the grantor requires the grant to be used for a particular purpose – e.g. to support a particular programme providing for working with vulnerable people. This may also give rise to concerns as to whether the grantor is receiving a material benefit so that there is a 'supply'.

Other concerns may arise in relation to any provision in the terms of the grant for repayment to the grantor, where the granted monies may not fully expended for the stated purpose (which may happen on occasion, for a variety of bona fide reasons).

Red Cross suggests that this aspect of the operation of the GST law and ruling calls for closer consideration.

## TABLE OF REFERENCES

|                                                                                                                                                                      |                                |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------|
| Tax White Paper Task Force, <i>Re:Think Tax Discussion Paper (2015)</i>                                                                                              | Discussion Paper               |
| Not-for-profit Sector Tax Concession Working Group, <i>Fairer, simpler and more effective tax concessions for the not-for-profit sector, Final Report (May 2013)</i> | Working Group (2013)           |
| Productivity Commission, <i>Research Report of the Contribution of the Not-for-Profit Sector (February, 2010)</i>                                                    | Productivity Commission (2010) |
| Review Panel, <i>Review of Australia's Future Tax System – Final Report (2009)</i>                                                                                   | Henry Review (2009)            |
| Industry Commission, <i>Charitable Organisations in Australia (Report No 45, June, 1995)</i>                                                                         | Industry Commission (1995)     |

## ANNEXURE

Extract from the Rules of the Society as approved by the Governor-General, 12 October 2010:

### 2 Objects and purposes of Society

#### 2.1 Objects

The objects of the Society are:

- (a) to act in case of armed conflict, and in peace to be prepared to act in all fields covered by the Geneva Conventions and the Additional Protocols and on behalf of all war victims, both civilian and military;
- (b) to prevent and alleviate human suffering with complete impartiality, making no discrimination as to nationality, race, gender, religious beliefs, class or political opinions or as to any other ground of discrimination which is irrelevant to the need;
- (c) to provide emergency relief and services in time of disaster or conflict in Australia and internationally for the alleviation of human suffering;
- (d) to contribute to the improvement of health, the prevention of disease and the mitigation of suffering by programmes of training and services for the benefit of the community, adapted to national and local needs and circumstances;
- (e) to provide direct relief of poverty, sickness, suffering, distress, misfortune, disability, destitution or helplessness as arouses compassion in the community;
- (f) to promote the participation of all people in the work of the International Red Cross and Red Crescent Movement;
- (g) to pursue any other objects or activities, including assistance to vulnerable people, as are in keeping with the Fundamental Principles of the International Movement and of International Humanitarian Law; and
- (h) to do all other things as may be incidental or ancillary to the attainment of these objects.

#### 2.2 Charitable purpose

The Society may only pursue charitable purposes, associated with its objects.

#### 2.3 Based in Australia

The Society is established, maintained and operated in Australia. The activities of the Society are to be carried out predominantly in Australia.

#### 2.4 Duties as a component of the International Red Cross and Red Crescent Movement

The Society shall comply with its duties as a component of the International Movement, as a member of the International Federation of Red Cross and Red Crescent Societies and as an auxiliary to the public authorities in the humanitarian field.