

Not for profit series – State taxes

*Sandra Wojcik, UnitingCare
Mark West, West Garbutt
Lyndon Garbutt, West Garbutt*

Overview

- Importance of State taxes for NFPs
- Main taxes and why do they differ between States
- Registering as a charitable institution in Queensland
- Payroll tax exemptions
 - Wages
 - Payments to workers outside the organisation
- Land tax exemptions
- Local government rates exemptions
- Duty exemptions/concessions
- Strategies to manage exposure to tax shortfalls

Introduction

- **CA's involvement with NFPs**
 - advisor – e.g. accountant, lawyer, consultant
 - paid role - e.g. Director, CFO, finance
 - volunteer roles – e.g. treasurer, administrative
- **Why taxes and associated risks important for NFP's?**
 - duty to conserve funds, purpose of which to be applied for charitable objects
 - sustainability – management of funds, cash flows
 - Compliance – Operational – Fraud - Reputational risks
- **Manage risk:**
 - knowledge of tax exemptions/concessions
 - over paid tax/seeking refunds for past years
 - under paid tax/disclosing shortfalls maintain reputation

Qld legislation compared to other jurisdictions

- Qld – charitable exemptions and concessions turn on whether a charity is registered under the Tax Admin Act
- Qld law – ‘charitable institution’
- Payroll tax – other jurisdictions:
 - ‘non-profit organisations’ – NSW, Victoria, Tasmania, SA,
 - ‘charitable organisations’ – ACT
 - ‘charitable body or organisations’ – WA
 - ‘non-profit entities’ – NT – but limitation of exemption re commercial or competitive activities
- Specific terms = specific meanings
 - example: “Institution” must undertake actual activities/projects itself, cannot merely distribute money to others
- Today’s focus: **Queensland only**

Qld legislation to be considered

- Registration
 - *Taxation Administration Act 2001*
- Employers
 - *Payroll Tax Act 1971*
- Landholders
 - *Land Tax Act 2010*
 - *Local Government Act 2009*
 - *Local Government Regulations 2012*
- Acquiring/disposing of interests/rights
 - *Duties Act 2001*

Qld: Registering as a charitable institution

- Part 11A *Taxation Administration Act 2001*
 - eligible entities:
 - religious bodies, PBIs, universities etc
 - an institution with principal object of fulfilling charitable object/promoting public good; not a leisure, recreational, social or sporting object/pursuit
 - 149C(5) – entity **must not be registered unless** its constitution **expressly provides**:
 - income and property used solely for promoting its objects
 - no part of income or property to be distributed, transferred or applied to its members
 - an appropriate dissolution clause (ie net assets transferred/applied for a charitable purpose)
 - Public ruling TAA 149C.1.1 – meaning of ‘expressly provides’:
 - need not contain ‘exact words’ of section 149C(5)
 - must contain ‘*similar words that have the same effect*’

Qld: Payroll tax

- Payments to employees (section 14(2)(c) *Payroll Tax Act 1971*)
 - exempt if paid by a charitable institution to a person engaged exclusively in the work of a charitable institution for a qualifying exempt purpose
 - qualifying exempt purpose – religious, public benevolent, educational purposes, relief of poverty etc
 - ‘another charitable purpose or promotion of the public good’
- Payments to non-employees
 - standard contractor exemptions/concessions
 - employment agent exemption (section 13J(2) PTA):
 - if amount paid would have been exempt if client had paid worker direct
 - client has provided employment agent with a declaration in the approved form confirming exempt nature
- PTA026.1 – Declaration required for each employment agency contract by end of relevant financial year & kept for 5 years
- OSR P9 form – employment agency contracts – declaration by exempt client

Qld: Land tax

- Land owned by charitable institutions (section 47 *Land Tax Act 2010*)
 - exempt if used predominantly by charitable institution for one or more exempt purposes
 - vacant land – only exempt if intended to be used within 3 years, unless otherwise confirmed by the Commissioner
- Exempt purpose (section 46 LTA):
 - activities of religious nature, public benevolent purpose, relief of poverty etc
 - ‘another charitable purpose or promotion of public good’
- Commercial properties owned by charitable institutions used to generate profits – likely to be exempt:
 - *Commissioner of Taxation v Word Investments Ltd [2008] HCA 55:*
 - profits from commercial activities applied solely to charitable objects will intrinsically be charitable

Qld: Local government rates

- *Local Government Act 2009* – Land exempt from rating if:
 - Local Council has made a resolution confirming it is for charitable purposes (section 93(3)(i) LGA)
 - exempt under another Act (section 93(3)(j)(i))
 - a regulation – for religious, charitable, educational or other public purposes (**section 93(3)(j)(ii) LGA**)
- *Local Government Regulations 2012* (for purposes of section 93(3)(j)(ii) LGA):
 - land owned by religious entity (less than 20ha) used for various purposes (including incidental housing)
 - land used for public purpose – including charitable, recreational or sporting purpose
 - land used for public hospital
 - land used by a community organisation (less than 20 ha) used for variety of purposes

Qld: Duties

- Duty not imposed (under section 414 *Duties Act 2001*) on:
 - dutiable transaction under which a charitable institution acquires dutiable property
 - Dutiable transaction that is:
 - the creation or termination of a trust of dutiable property for the benefit of a charitable institution
 - a trust acquisition or trust surrender by a charitable institution
 - a premium for general insurance for property or undertaking of a charitable institution
 - an application to register or transfer a vehicle in the name of a charitable institution
 - Above exemptions only apply subject to use requirement (section 415 DA):
 - Used solely or almost solely by the institution for one or more purposes
 - religious, public benevolent, relief of poverty etc
 - another charitable purpose or promotion of public good
 - Other miscellaneous exemptions – example: transfer of dutiable property to charitable institution to conduct an art union
-

Key points/action items

- Main risk: underpaying or overpaying taxes and rates
 - Check registrations are current and in correct names, constitutions are compliant
- Main problem areas:
 - Wages (payroll tax)
 - Land assets (duty transfers, land tax, local government rates)
- Annual reviews:
 - Registration status – applying funds for charitable objects
 - Workers
 - regular checklists for contractor arrangements
 - regular checklists for payments to employees (eligible employer entity, payments to eligible worker)
 - Landholdings – working papers to monitor taxable value & availability of concessions (both land tax and rates)
- Proactive advice: before acquiring new assets, engaging new workers and/or new/changed arrangements

Presenters



Sandra Wojcik, Senior Taxation & NFP Specialist - UnitingCare

D: +61 7 3253 4110

E: sandra.wojcik@ucareqld.com.au



Mark West, Principal - West Garbutt

D: +61 7 3905 9480

E: mwest@westgarbutt.com.au



Lyndon Garbutt, Principal - West Garbutt

D: +61 7 3905 9481

E: lgarbutt@westgarbutt.com.au

Disclaimer

Copyright © 2019 Chartered Accountants Australia and New Zealand ABN 50 084 642 571 (CA ANZ). All rights reserved. The content of this document is protected by copyright and under international copyright conventions. Except as permitted by law, if you wish to reproduce, copy, publish, communicate, exploit or make an adaptation of any of our content, you must first request our permission by sending an email to info@charteredaccountantsanz.com.au.

This document is intended for general information only and is not accounting or other professional advice. Any opinions expressed in this material do not necessarily represent those of CA ANZ or its members.

While care and consideration has been taken in the creation of this document, CA ANZ does not warrant, represent or guarantee that the material published in this document is in all respects accurate, complete or current. To the extent permitted by law, CA ANZ excludes any liability including but not limited to liability for negligence, loss or damage arising from reliance on this document.