



20 July 2011

Mr Chris Leggett
Manager, Philanthropy and Exemptions Unit
Personal and Retirement Income Division
The Treasury
Langton Crescent
PARKES ACT 2600

Email: NFPReform@treasury.gov.au

Better targeting the not-for-profit tax concessions: May 2011 Consultation Paper

Dear Chris

The Institute of Chartered Accountants in Australia (the Institute) welcomes the opportunity to put forward our views on the "Better targeting the not-for-profit tax concessions" Consultation Paper (the Consultation Paper) released in May 2011.

From the outset, the Institute would like to put on-record our concerns with the overarching proposals put forward in the Consultation Paper. As set out in this submission, we believe that the Government should delay the commencement of any reforms in this area because:

- The measures ought to be considered in the context of, and in conjunction with, the other reforms to the not-for-profit (NFP) sector (such as the establishment of a national regulator and a statutory definition for charities); at the moment it appears as though the proposed changes are being considered in isolation.
- The proposed change in policy needs to be more fully explained before being taken further, as it is difficult to reconcile the current position with the findings of the *Future Tax System Review* and the Government's May 2010 commitments in relation to NFPs.
- The Consultation Paper does not adequately identify the policy and/or revenue risks at which the proposals are being directed. The Institute considers that there should be a process of co-design to establish mechanisms that address the risk at the least cost to organisations operating in this vitally important sector, and that are consistent with other compliance and reporting requirements already in place.
- It appears as though this proposal bears the same historical hallmarks of previous governments putting in place 'tax policy by press release'; a practice which we understand this Government has actively sought to avoid in the recent past. The Institute believes that if this measure is to be progressed in the short-term, the rules should not come into effect until the year after Royal Assent has been given to the relevant legislation. The enactment of retrospective tax legislation which operates to the detriment of taxpayers is inconsistent with good policy-making principles.

All of these matters are expanded upon further in Part A of the submission.

GPO Box 9985
in your capital city

Customer Service Centre
1300 137 322

NSW
33 Erskine Street
Sydney NSW 2000
Phone 61 2 9290 1344
Fax 61 2 9262 1512

ACT
L10, 60 Marcus Clarke Street
Canberra ACT 2601
Phone 61 2 6122 6100
Fax 61 2 6122 6122

Qld
L32, 345 Queen Street
Brisbane Qld 4000
Phone 61 7 3233 6500
Fax 61 7 3233 6555

SA / NT
L11, 1 King William Street
Adelaide SA 5000
Phone 61 8 8113 5500
Fax 61 8 8231 1982

Vic / Tas
L3, 600 Bourke Street
Melbourne Vic 3000
Phone 61 3 9641 7400
Fax 61 3 9670 3143

WA
Ground, 28 The Esplanade
Perth WA 6000
Phone 61 8 9420 0400
Fax 61 8 9321 5141

For completeness, we have also provided some preliminary comments in response to the questions posed in the Consultation Paper in Part B of the submission.

The Institute looks forward to being involved in further consultation on the development of appropriate initiatives in this area that strike the right balance between delivering on the Government's policy objectives, without unnecessarily jeopardising the on-going viability of the critically important services provided by NFPs across Australia.

If you need any further information please contact me on 02 9290 5623 or Karen Smith on 0425 326 564.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Yasser El-Ansary', with a long horizontal stroke extending to the right.

Yasser El-Ansary
Tax Counsel
The Institute of Chartered Accountants in Australia

PART A – Why the measures should be delayed

The Institute is concerned about the scope of the overarching proposals put forward in the Consultation Paper and we believe that the Government should delay the commencement of any major reforms in this area for the reasons set out below.

1. Context of reforms to the not-for-profit (NFP) sector

There are a number of specific aspects of the proposals in the Consultation Paper that we are concerned with. In addition, the speed with which change is being proposed is, in our view, too fast in the context of policy initiatives that are not sufficiently developed for implementation at this point. We do not think that this initiative has been sufficiently connected with the various other major reforms being worked through or considered and that there are likely to be significant unintended consequences created as a result which will reduce the efficiency and effectiveness and the NFP sector that is relied on by hundreds of thousands of Australians across our community.

Major reforms to the NFP sector either currently underway, or in the pipeline, include:

- Establishment of a national regulator from 1 July 2011 so that it will be operational from 1 July 2012
- Adopting a statutory definition of charities (from 1 July 2013).

We have included an overview of the reforms to the NFP sector in Appendix 1.

Our primary concerns regarding the Consultation Paper in this context are:

- There is a lack of overall control and communication with regard to the various state and federal initiatives being undertaken to reform the sector which is leading to greater complexity and difficulty for the sector. The Council of Australian Governments (COAG), the Australian Accounting Standards Board (AASB), State Governments and the ATO are all keen to reform the sector but there is very little co-ordination or even communication between the various bodies;
- The lack of centralised control is also affecting the credibility of the policy initiatives and is very likely to create significant detrimental outcomes for NFPs;
- It is poor policy to establish specific initiatives before establishing the regulator itself. Further, no explanation has been provided by the Government as to how these changes fit into the larger reform agenda. We believe that the Government should place a complete plan for reform before the sector and the wider community, into which the taxation changes can be contextualised;
- The timing of the taxation changes is too fast and it is evident that little consideration has been given to the details of its implementation making comment difficult, but confirming our concern that it would be better to establish the regulator and then to consider the taxation and other aspects;
- The initiative considers the NFP sector to be homogenous and this is going to create considerable difficulties for the sector. The creation of the national regulator and the development of a taxation regime that is nuanced and well thought out would take some time but would achieve a better and more sustainable outcome from the regulator's and the sector's point of view.

The Institute's view is that the tax measures in the Consultation Paper should be delayed as they need to be considered in the context of, and in conjunction with, the other reforms to the NFP sector and not in isolation.



2. Policy divergence

The *Future Tax System Review* (the Review) report released in May 2010 referred to the High Court's decision in *Commissioner of Taxation of the Commonwealth of Australia v Word Investments Limited* [2008] HCA 55 and considered the consequences of the decision – being that “NFP organisations now have a significantly larger scope to undertake commercial activities on a concessionally taxed basis”.

Against this backdrop, the Review investigated the three main tax concessions (income tax, GST and FBT) from a competitive neutrality perspective. Specifically for income tax this was through Samuelson's invariant valuations theorem, the finding being that the NFP income tax concessions do not generally violate the principle of competitive neutrality where NFPs operate in commercial markets. The same was also found to be the case for GST concessions.

This led to the recommendation that NFP organisations receiving income tax and GST concessions should be allowed to apply these to their commercial activities (recommendation 42). Further it was recognised that by conducting commercial activities freely, costs associated with education, assistance, advice, disputes and litigation on the ATO's interpretation of a ‘charitable purpose’ would be reduced and would reflect the principles of the High Court of Australia's *Word Investments* decision.

When releasing the Review on 2 May 2010, the Treasurer and then Prime Minister stated in a media release that the Government would not “[d]o any changes to the tax system that harm the not-for-profit sector, including removing the benefit of tax concessions, raising the gift deductibility threshold or changing income tax arrangements for clubs (see Rec 9e, 13, 41, 43 & 44)”.

About one year on, the Consultation Paper states:

32. The Government provides valuable tax concessions to NFPs to support their altruistic activities. But the Government believes that it is important that these tax concessions are only used to further the altruistic purposes of NFPs, and not their unrelated commercial activities. Such an approach is consistent with that followed by comparable overseas jurisdictions.

The Institute considers that this change in policy needs to be better explained as it is difficult to reconcile this with the findings of the Review and the Government's commitment at that time.

Also important to bear in mind is the fact that the *Word Investments* decision acted to clarify the existing legislation – it did not change it. Therefore it is of concern that in his speech on 27 May 2011 to the National Press Club in Canberra, the Assistant Treasurer said:

“...the Government has acted based on the strong advice of the Treasury and ATO that the loophole created by *Word Investments* posed a significant risk of exploitation and presents a risk to revenue for all levels of Government.”

We do not understand the use of ‘loophole’ in this context nor the risk to revenue when the Assistant Treasurer said in the same speech that:

“This is not a revenue raising measure – you won't see a single dollar gained in the forward estimates as a result of this reform.”

The Institute believes that the apparent change in policy needs to be better explained publicly before it is taken further.



3. Distribution of profits

Although not clearly stated in the Consultation Paper, the measures are aimed at taxing any profits that are retained by the unrelated commercial business.

It is stated in the paper that the policy intent of the proposed measure is to ensure that:

- Tax concessions are only used to further the altruistic purposes of NFPs;
- The focus of the entity remains the altruistic purpose, promoting efficient use of resources for altruistic purposes and lessening business risk to altruistic assets from unprofitable commercial activities¹; and
- The preservation of a level playing field between small, large and NFP commercial activities.

Significantly, the paper does not provide any evidence that the ability to retain funds for future use for altruistic purposes is a significant detriment to any of the above, nor any evidence that the exemption is likely to cause detriment in the future.

In fact, the reviews that have been carried out in relation to the sector over the last decade have concluded to the contrary and that the accumulation of profits from commercial ventures is necessary for security of funding of the sector.

Accordingly, the Institute questions whether the proposal is directed at a possible taxation revenue integrity issue that might be addressed by a different mechanism than that which is proposed. It is evident that the proposal will divert resources of the sector away from the altruistic purposes and efficiency to which it is stated that it is directed. It is complex and inconsistent with the broader aims of “single reporting” and self-sufficiency toward which ends the Government is assisting the industry. NFPs do not seek to divert profits from altruistic activities by retaining profits. Rather this is generally done to be able to continue to operate the business going forward to generate further profits.

Retaining profits is necessary for reasons as simple as having to fund working capital. It is also required for investments and to “grow” a business. The level of profits retained depends upon numerous issues such as the nature of the business (for example how capital intensive it is), the stage of the business cycle (whether in the set-up phase or established) and the needs of the NFP entity as a whole.

Draft Taxation Ruling TR 2011/D2 recognises that an institution can be charitable even though it has a power to accumulate profits. Indeed it quotes from *Word Investments* decision where the High Court said [paragraph 22]:

“... a power to retain profits conferred on directors of a company which has charitable purposes cannot negate its character as a charitable institution. Its exercise, while it may delay the moment when assets are applied to charitable purposes, also increases the chance that more assets will eventually be so applied.”

The draft ruling goes on [paragraphs 204 and 205] to say that review of the position is needed to show on a year by year basis that accumulation is still consistent with it having a charitable purpose. Importantly the draft ruling recognises that there are “relevant considerations” to take into account.

As a result of perceived issues around retained earnings, it appears that a complex regime is being imposed on the NFP sector to target all retained profits. The Institute is yet to be convinced of the need for this.

¹ Unprofitable commercial activities have nothing to fear from this proposal, since there would be no retained earnings upon which income tax could be paid.



This regime may in turn have added complexity to provide safeguards against alternative methods of providing funds in a manner other than by way of retaining earnings. These aspects are not raised in the Consultation Paper.

As the Consultation Paper does not identify the revenue loophole or risk at which these proposals are directed, the Institute submits that the proposal be deferred and a process of co-design be undertaken to establish mechanisms that address the risk at the least cost to the sector and that are consistent with its other compliance and reporting requirements.

4. Announced date of effect

The announced date of effect (1 July 2011) for unrelated commercial activities commenced from Budget night on 10 May 2011 is highly problematic. In light of the issues discussed in more detail below, the Institute submits that this is not acceptable and the Government should not seek to impose tax retrospectively. Rather, if this measure is to be proceeded with in the short-term and isolated from other changes in the NFP sector (which the Institute does not support), consultation should commence on the proposals with a view to formulating rules which do not come into effect ideally until the year after Royal Assent of the enacting legislation.

4.1 Length of time since *Word Investments* decision

The apparent urgency stems from risks to revenue seen by Treasury and the ATO relating to the High Court's decision in *Word Investments*. However, as noted above under '2' this did not create any new law.

Even if one accepts the view of the Treasury and the ATO, this judgment was handed down way back on 3 December 2008 after the proceedings made their way through the lower courts. In fact, the matter was originally considered by the Administrative Appeals Tribunal in a decision dated 27 September 2005.

With this history in mind, the Institute is surprised that rather than undertaking consultation as to whether there is a need for such measures and their possible design (which could have been begun any time after the High Court's decision), the Government has found it necessary to impose tax by announcement in this way.

4.2 Problems with a 'tax policy by press release' approach

In its 2008 report to the Assistant Treasurer, the Tax Design Review Panel recommended that tax measures announced by the governments should generally only operate prospectively (recommendation 3). The rationale behind this was that it would enable taxpayers to structure their affairs according to the enacted law and respect the role of Parliament to make the laws. It is worth pointing out that this recommendation, alongside all the others, in the report was accepted by the Government.

Admittedly, the Panel goes on to say that retrospective changes may be appropriate in some circumstances but states:

"3.19 While it may occasionally be appropriate to announce measures that apply before legislation is enacted, these should be kept to a minimum. Where amendments apply before the legislation is enacted, the announcement should clearly state why retrospective application is necessary."

The Institute is of the view that neither the announcements made by the Assistant Treasurer on 10 May and 27 May 2011, nor the Consultation Paper itself, provide adequate explanations as to why the unrelated commercial activities reforms should apply from 1 July 2011 onwards.

We also note that the Panel considered that where retrospective measures are appropriate, the Government should aim to introduce legislation within six months of announcement. Given the myriad of issues still to be considered, the Institute is unconvinced that such a timetable will be achievable.



4.3 Lack of detail

There are major conceptual difficulties with the Consultation Paper and it is apparent that the proposals are still in their infancy even though specific activities within the boundaries of these reforms are intended to be taxed from 1 July 2011.

Clearly, significant work and consultation is still required to establish the way forward.

In the absence of clear principles and guidance, the NFP sector is being left in limbo and facing what the Institute considers is an unacceptable level of uncertainty. This arises on numerous fronts, for example:

- Assessing whether an activity may or may not be unrelated
- Whether the small scale activity exemption may apply
- Whether a separate entity might need to be established to conduct a new activity and/or whether other restructuring should be contemplated
- Whether FBT and GST benefits may be lost
- Whether apportionment of certain costs between related and unrelated activities may be required.

In turn, these uncertainties may have unintended consequences such as proposed activities being put on hold pending the clarification of rules or unnecessary costs being incurred in anticipating them.

4.4 ATO “readiness”

The ATO’s is unlikely to be able to respond to requests by NFPs’ for advice and guidance (e.g. application for endorsements or private binding rulings, etc.) until any legislation receives Royal Assent. Therefore, NFPs potentially affected by the rules will not be able to get any certainty on whether the new rules will apply until after that time.

By way of background, practice statement PS LA 2004/6 sets out the ATO’s role in providing information or advice on the potential application of announced changes to the tax law. Broadly the practice statement says that tax officers must not provide indicative interpretative advice on legislation prior to its Royal Assent as this could mislead taxpayers if the legislation is altered. Any ATO advice is limited to what its Policy Implementation Forum (PIF) determines is appropriate.

Therefore, NFPs potentially affected will not be able to get any certainty as to the application of the rules.

In summary, the Institute considers that tax by announcement on this matter is highly problematic for the foregoing reasons. We therefore submit that if this measure is to be proceeded with in the short-term and isolated from other changes in the NFP sector (which the Institute does not support), the rules should not come into effect ideally until the year after Royal Assent of the enacting legislation.

5. FBT & GST concessions and deductible gift recipient (DGR) status

We are concerned, at a number of levels, by the comments that appear at paragraph 4 of the Consultation Paper that “An NFP entity will also not have access to FBT exemption or rebate, GST concession or deductible gift recipient (DGR) support in relation to their unrelated commercial activities”.

It appears that the treatment of the above concessions will be inconsistent to that proposed for the income tax exemption. Whilst the income tax exemption may be effectively preserved if unrelated commercial activities’ profits are applied to the NFP’s altruistic purpose (e.g. direct application, gift or dividends), it would appear that the same will not apply to the FBT exemption or rebate, GST concession or deductible gift recipient (DGR) support - these will be automatically lost if there is any unrelated commercial activities in the NFP entity irrespective of how it is applied. In our view there is no justification for this inconsistency. FBT and GST concessions should be capable of being accessed if the profits from unrelated commercial activities are applied to the NFP’s altruistic purpose.



Existing GST concessions do not apply on an entity wide basis: they are already targeted to particular types of NFP sector activity (where any unrelated commercial activity is likely to be limited). In our view GST concessions do not require any further integrity measures.

We are particularly concerned that DGR support may be impacted by these reforms. We submit that the Government should reconsider its proposal to deny DGR support to NFP entities that are carrying on unrelated commercial activities, as this aspect of the proposed reforms is draconian and inequitable. DGR status is an important aspect of fundraising for many entities in the NFP sector. The existing eligibility criteria for DGR support is already rigorous and a further exclusion for unrelated commercial activities is not required or justified, from a competition policy or integrity perspective.

In summary then, the Institute considers that there is an inadequate explanation given in the Consultation Paper as to the rationale behind the proposals as they apply to FBT and GST and how they are to operate in practice.



PART B – Comments on Consultation Paper questions

As is apparent from the first Part of our submission, the Institute does not support the measures and their timing as currently proposed in the Consultation Paper for a number of reasons.

Nevertheless, we have set out preliminary comments in relation to some of the questions raised in the Consultation Paper that should be taken into account in any further design of a suitable regime.

1. Related business

The Institute considers that a comprehensive list of matters to take into account in determining what activities are related (or primary purpose) activities of an NFP is needed urgently as the Consultation Paper is severely lacking in this area.

Some examples of aspects to investigate include:

- What if the same organisation takes on multiple activities e.g. religion and education?
- What if different small commercial activities are also undertaken?
- What if a bundle of activities is undertaken where the range and dominance of activities changes over time?
- How will this definition interact with the planned statutory definition for a charity (to come into effect on 1 July 2013)?

Nevertheless our feeling is that this area is likely to be ripe for much controversy unless a robust definition of a related business is formulated.

2. Small scale activities

It is essential that generous carve-outs are provided so that comparatively small operations are not caught up in the proposed rules.

The Institute submits that, at a minimum, activities with a turnover of \$2 million per year for each separate commercial activity of a NFP should be carved-out (basing a definition on that for a small business entity in section 328-10 of the *Income Tax Assessment Act 1997*).

This threshold needs to be reviewed over time so that it maintains its real value.

We also submit that there should be some flexibility around application of such a rule to allow for a breach – say every 3 years – to accommodate changing business conditions. Alternatively, this could be achieved by a Commissioner's discretion. Such discretion might also be applied more broadly – such as where this threshold is unreasonable for an activity to function effectively to achieve its purpose. Examples of where the discretion may be exercised could be set out in the explanatory memorandum.

Once up and running, the rules need to ensure that there could be a straightforward process to access a private ruling from the ATO to confirm the carve-out.

Exclusion of donations and government grants would need to be examined.

3. Entity structure

The Institute submits that the Government should not seek to dictate the structure of organisations. Organisations should remain free to determine and establish their own structure. As the Government's objective here appears to be the visibility and transparency of identification of funds from exempt and non-exempt bodies, the requirement should be on the reporting not on the structure.



The Institute does however make the following preliminary comments and observations:

- Option 1 – if a separate subsidiaries model is adopted, what will be the defining rules?
- Option 2 – this could be simplified by having an allowable threshold for retained profits – say at 20-30 per cent before the entity gets taxed. Another option may be to allow profits to be distributed within say 10 months of the end of the year.
- Option 3 may lead to onerous compliance.
- There is a risk of unnecessary restructuring and costs (e.g. stamp duties).

The refund of franking credits on income taxed in a subsidiary operates effectively for charities that get a full refund but this is not the case for other NFPs. As alluded to in paragraph 57.1 of the Consultation Paper, this would need to be addressed under the measures.

4. Transitional issues

Some considerations that come to mind include (but are not limited to):

- The NFP sector is undergoing enormous change on a number of fronts (such as a new national regulator) and will need assistance to transition to the new tax arrangements. As detailed in “1” the Institute urges that these tax changes not be viewed in isolation to other changes in the NFP space.
- The ATO will need to promptly provide guidance and assistance as soon as it is able. For example, in transitioning to the new rules, many NFPs, in particular those with significant “commercial” activities are likely to seek certainty by way of private rulings.
- The design of any measures should seek to limit costs – be this restructuring costs, set-up costs or on-going costs.
- The operation of annually renewed contracts for Government services. The organisation may have an agreement covering several years but a contract which only covers each year at a time (usually subject to a performance review but otherwise renewed without re-tender). The organisation is thus contractually limited in its ability to cover additional costs (tax) but appears to have a new contract. This could severely impact financial viability of affected organisations. This could be dealt with by allowing any form of contractual obligation to be considered an ongoing activity.
- Complexity and uncertainty will arise in applying the “same business test” to assess existing business activities [paragraph 80] as evidenced by corporate experience.

5. Complexity and compliance costs

As noted in the Consultation Paper, the NFP sector consists of approximately 600,000 entities, ranging in size from large charitable entities right down to very small community based societies. Given the diversity of the sector, the Institute believes that it is crucial that the measures in the Consultation Paper are designed to minimise complexity and compliance costs. Potential compliance costs for the smaller end of the sector seem disproportionate which highlights the importance of appropriate carve-outs.



APPENDIX 1

OVERVIEW OF REFORMS BEING UNDERTAKEN IN THE NFP SECTOR

History of recommendations

Since the reform of the Federal taxation system and the resultant changes in the taxation legislation as it affects NFP organisations in Australia, a number of reports have been developed at the Federal and state levels which have focused on, *inter alia*, questions such as:

- What is the most appropriate regulatory regime for associations and other forms of NFP corporations?
- What constitutes the most appropriate financial and operational reporting regime for NFP organisations?
- How can NFP organisations become more efficient within this context?
- What are the limiting factors in relation to sustainability within the NFP sector?

These questions were asked in the context of issues which are often considered to represent inefficiencies resulting from the multi-jurisdictional development of the NFP sector in Australia. Legislation enabling the creation of NFP corporations was first established (like commercial corporations law) at the state level largely in the late nineteenth century with the Federal parliament enacting enabling legislation for the creation of federal NFP corporations (i.e. companies limited by guarantee) coming much later. State based legislation pertaining to incorporation, fund raising and various other aspects of NFP operation have been seen as inefficient.

The key reports developed at the national level since the incorporation of the NFP sector into the tax system in 1999/2000, were:

- Senate Standing Committee on Economics Report 2008
- Productivity Commission Report into the Contribution of the Nonprofit Sector 2009
- *Future Tax System Review* 2010
- Final Report on the Scoping Study for a National Not-for-Profit Regulator 2011.

In general terms, these reports made recommendations pertaining to the development of a single national regulator for NFP organisations, the harmonizing of various legislative arrangements made at the sub-national level (for instance, fundraising legislation) and also made recommendations pertaining to lessons learned in the United Kingdom and other key jurisdictions in relation to their models for the charitable or NFP sectors.

Importantly, one major outcome associated with these reports has been the development of a reform agenda for NFP regulation and supervision.

Progress to date

At a national level, some multi-jurisdictional arrangements have been agreed utilizing the Council of Australian Governments (COAG) structure. These include the development and implementation of a national Standard Chart of Accounts for not-for-profit organisations (SCOA) and the agreed inclusion of a number of initiatives on the COAG work plan relevant to the not-for-profit sector in Australia. The SCOA is now applicable in each state and territory, although not mandatory unless an organisation receives government funding, to all organisations regardless of size and administrative capacity.

While COAG has been developing SCOA and reaching agreement on its implementation, the Australian Accounting Standards Board (AASB) has incorporated into its work plan a number of key activities likely to result in the adoption of additional not-for-profit accounting standards at some future point in time. The current project looking at introducing service performance commentary for not-for-profit organisations, another on the impact of changing the AASB's differential reporting regime together with planned future projects will all result in additional regulation for the sector. The Reduced Disclosure Regime, introduced by the AASB in 2010, is also relevant here as it establishes definitions and tiers which will seek to regulate the financial reporting requirements of the not-for-profit sector.



Additionally, various state jurisdictions have sought to amend or replace their associations incorporation legislation, generally implementing or seeking to implement themes of “reform” that have been discussed at a national level. Together with the recommendations to be found in some of the reports cited above, some state legislatures have or intend to establish more substantial regulatory regimes including such elements as the establishment of a categorization system based on tiers into which not-for-profit organisations are allocated according to such accounting concepts as turnover or net asset position.

Therefore, there is or has recently been reform and regulatory change put forward by the AASB, by COAG, by State Governments and most recently by the Federal Government in its 2011 budget wherein it established the national regulator and also implemented the taxation law changes which are the subject of the Consultation Paper. The regulatory change that is being developed by these various organisations is being undertaken in an uncontrolled and unsynchronized way. For example, there are a number of organisations developing or using definitions relevant to the regulation of the not-for-profit sector including such elements as a definition and tiering to categorise not-for-profit organisations. Clearly, the lack of synchronization of these initiatives, which on the face of it appear to be of value individually, is likely to create real problems for the sector in coming to understand each regulator’s requirements and in trying to meet those requirements.

An additional difficulty created by this process is the assumption that the sector is homogenous. The sector is widespread with many NFP organisations operating in various different industries many of which already have regulators. Since the detail of the national regulator is still to be determined over the next twelve months, we are unsure whether those organisations with existing regulators will have another regulator to deal with (therefore complicating rather than simplifying this aspect for them) or whether the national regulator will replace an existing regulator and changes in the taxation regime may well increase such complication.

Recently announced tax measures

On top of the changes above, in July 2011, the Assistant Treasurer, the Hon Bill Shorten MP, announced consultation on amendments to the “in Australia” special requirements in Division 50 of the *Income Tax Assessment Act 1997* as well as releasing exposure draft legislation and draft guidelines for the new regulatory framework for public ancillary funds.

