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EVERYTHING MATTERS

VHA Tax Status Forum

Nature of Tax Status Issue - Overview

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*Reggio Calabria Club
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Timeline 2004 – 2008

- A New Tax System (Fringe Benefits) Act 2000 was passed providing for the “capping” of FBT for public hospital (lower rate) and PBI’s and HPC’s (higher rate)
- In 2001 CHCs obtained endorsement as
PBI’s or
HPCs
new “capping” rules came into effect
- In 2003 & 2004 extended to lower exempt benefit to ambulance services

Overview of current situation

- ATO reviews meaning of “public hospital” and now includes public hospitals that were primarily aged care and MPSs. They are given transitional funding to cover the gap between lower and higher cap. Funding expired on 31 March 2008.
- ATO commences review of CHCs – VHA organises meeting with ATO.
- DHS provides information to ATO explaining the registration mechanism and “reserve” powers argument in an attempt to convince ATO of lack of real government control.
- VHA working group briefs Chris Maxwell QC for a preliminary opinion (April 2005).

Overview of current situation

- Central Bayside (Court of Appeal) decision handed down (July 2005).
- Chris Maxwell appointed to President of Court of Appeal
- Michelle Gordon QC briefed and options obtained – including providing for “reserve” powers in a service and funding agreement (August and September 2005).
- In November 2005 Parliamentary Secretary for Health (Daniel Andrews) agrees to establish Working Party to review ATO proposed actions and DHS response.
- Working Party and sub-committee meet on a number of occasions and discuss various options.

Overview of current situation

- 4 May 2006 Daniel Andrew writes to Working Party members advising that Working Party will re-convene when Central Bayside decision of High Court known.
- VHA receives no further indication from DHS regarding ATO intentions, but March 2007 Briefing Note indicates DHS position.
- Late February 2008, ATO advises withdrawal of endorsement of charitable status.
- Discussion with ATO again confirms provisions of Act it considers offensive.
- On 17 March 2008 VHA writes to Minister Andrews pointing out the option to ensure CHCs remain PBIs/HPCs.
- Minister makes a public statement of a review.

Overview of current situation

- ATO withdraws its revocation pending the review with the following important comments:



If the review does not result in any substantive changes, you are aware that the Tax Office view of the current arrangements is that they do not entitle you to endorsement as a Tax Concession Charity (TCC), or Deductible Gift Recipient endorsement as a public benevolent institution (PBI) or health promotion charity (HPC)

In relation to the media release, we place particular importance on the following paragraph:

“Our priority is to ensure that the delivery of important services can be maintained which is why I have also commenced a review of arrangements with a view to making future arrangements consistent with the requirements flowing from the decision of the Full Federal Court.”

Overview of current situation



continued...

The Tax Office regards the commitment of the Victorian Health Minister to commence a review with a view to make future arrangements consistent with the law as an important new factor to take into account before finalising any decision to revoke status.

The Tax Office will monitor the progress of the review and if significant progress has not been made by the end of the current income tax year (30 June 2008), we may have to further consider our position.

ATO's reasons for withdrawing endorsement

- The ATO has relied on a series of cases, the latest being :

Ambulance Service of New South Wales v Deputy Commissioner of Taxation for the Commonwealth of Australia [2003] FCAFC 161

Overview of current situation

- In that case, the Full Federal Court held that the NSW Ambulance Service could not be a PBI as it was organised or controlled by government.

"It is in any event inappropriate to characterise activity organised or controlled by government, or predominantly by government, and thus activity effectively funded by taxpayers, as activity of a public benevolent institution according to its established meaning. The antecedents of that statutory notion cannot allow for room for what may be described as the 'quantum leap' from its juridical origins originating in 1931."

- This is the basis on which the ATO has relied and also underpins the current review. Minister Andrews has given the following commitment:

"Our priority is to ensure that the delivery of important services can be maintained which is why I have also commenced a review of arrangements with a view to making future arrangements consistent with the requirements flowing from the decision of the Full Federal Court."

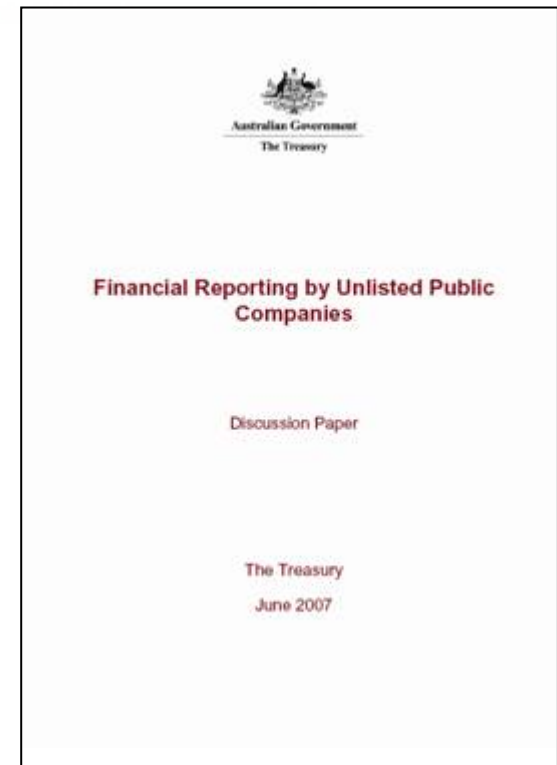
Overview of current situation

- Individual members have the option of challenging the ATO's view that CHCs are under government control.
- This can be reinstated should the Minister's review not achieve the desired results.

Recent developments of interest in the sector

Some interesting developments and information:

- There are 11,000 companies limited by guarantee registered under the Corporations Act 2001
- The table below indicates that the size of these companies is small with approximately 70% having operating revenue of less than \$1,000,000



Recent developments of interest in the sector

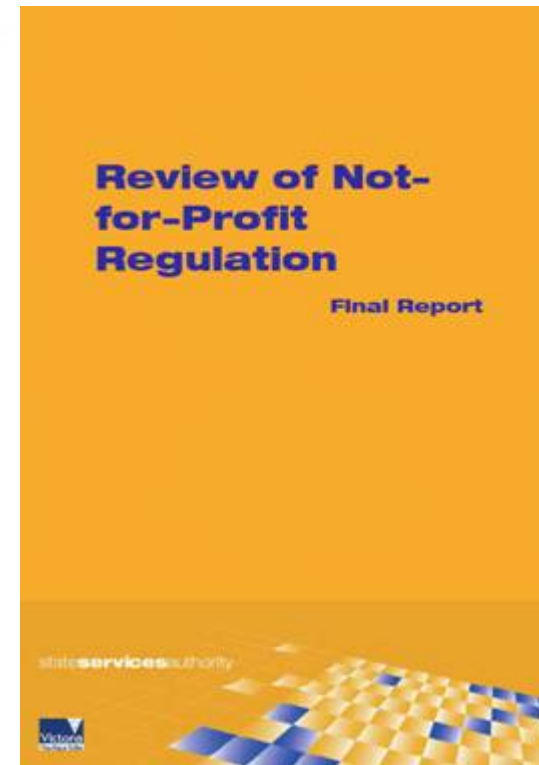
Table 1: Size of companies limited by guarantee

	Revenue (%)	Cumulative Total: Revenue (%)	Assets (%)	Cumulative Total: Assets (%)
Less than \$200,000	41	41	35	35
Between \$200,001 and \$500,000	13	54	10	45
Between \$500,001 and \$1,000,000	14	68	18	63
Between \$1,000,000 and \$12,500,000	28	96	30	93
Between \$12,500,001 and \$25,000,000	2	98	2	95
Greater than \$25,000,000	2	100	5	100

Source: Financial Reporting by Unlisted Public Companies Discussion Paper, The Treasury, June 2007

Recent developments of interest in the sector

- NGO review undertaken by the State Services Authority
- Noted: Commonwealth reporting thresholds for companies limited by guarantee are currently under review. The proposed financial reporting thresholds for proprietary companies may be extended to companies limited by guarantee. If this occurred, only companies that meet two of the following criteria would be required to report to ASIC:
 - \$25 million revenue;
 - \$12.5 million assets;
 - 50 employees.
- 86 associations fit this description in Victoria



Recent developments of interest in the sector

- SSAV recommended that in order to ensure that large associations with significant revenue and assets are appropriately regulated and ensure harmonisation with Commonwealth regulation, DOJ (CAV) should develop: clear criteria for eligibility to incorporate and for directing associations to apply for incorporation under an alternative regulatory regime.
- The criteria should be consistent with the revenue and asset thresholds proposed by the Commonwealth for companies limited by guarantee; and a transition strategy to direct large associations to seek incorporation as companies limited by guarantee as part of a phased approach over time. The threshold for large associations should be based on whether the association fits the Commonwealth's proposed financial reporting criteria for companies limited by guarantee.
- If these recommendations are implemented then a number of CHCs may need to become companies limited by guarantee

Recent developments of interest in the sector

See also:





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