Tax Guide for Arts Organisations

creative partnerships australia

Australian Government
Australian Taxation Office

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Introduction

This guide will help not-for-profit arts/cultural organisations and individual artists understand the rules associated with receiving philanthropic income.

It will introduce:

- the legal and tax requirements associated with receiving tax deductible gifts
- terminology associated with giving
- different types of tax deductible 'gifts' and their conditions
- the legal and tax requirements associated with fundraising events.

[Division 30 of the Income Tax Assessment Act 1997] sets out the conditions associated with tax deductible giving.

Philanthropic income for artists and arts organisations has grown substantially in the last decade and the trend is expected to continue.

1 Background

Philanthropic income

Income sources for not-for-profit arts/cultural organisations and artists are typically a mix of:

- earned income – from box office, sales and events
- government grants, and
- private sources – sponsorship and philanthropy.

Philanthropic income can come from:

- individuals – as direct gifts of money, shares, goods, services and property (e.g. buildings or artwork), from fundraising events or bequests
- business – as gifts of money, shares, goods, services and property
- philanthropic trusts and foundations (individual, family or corporate) – as money (grants), shares or property.

On paper, philanthropic income can appear similar to sponsorship and government grants, but clear differences arise with the financial, legal and tax obligations associated with receiving gifts. For instance, gifts do not incur GST.

What is a gift?

A gift is a transfer of money or property (including goods) which is made voluntarily, and the donor does not expect anything in return for the gift and does not benefit materially from the gift. A gift can be given for a specific purpose but ultimately the gift recipient must be able to decide how to use the gift.

To receive a tax deduction for a gift the recipient of the gift must be endorsed as a deductible gift recipient (DGR). Only certain types of organisations can be endorsed as a DGR. *More information is available on the* ATO's website.

A bequest is a donation of money or property (including goods) that is transferred to the recipient on the donor's death, as specified in the donor's will. It can be given unconditionally or with conditions, which are legally binding.

Definitions

Australian Business Register (ABR)

The Australian Business Register provides access to certain publically available information about businesses including GST, charity and DGR status.

Australian Charities and Not-for-Profits Commission (ACNC)

The Australian Charities and Not-for-profits Commission is the independent national regulator of charities.

Australian Cultural Fund (ACF)

The Australian Cultural Fund enables eligible individual artists and arts organisations without deductible gift recipient (DGR) status to receive tax deductible gifts.

Australian Taxation Office (ATO)

The Australian Taxation Office is the Australian Government's principal revenue collecting agency. The ATO is responsible for administration of not-for-profit and charity tax concessions.

Bequest

A donation of money or property (including goods) upon the donor's death as specified in the donor's will.

Charity

Charity has a special legal meaning, but this can include a wide range of not-for-profit organisations. An organisation will be a charity if it is not-for-profit, and all of its purposes are charitable purposes for the benefit of the public.

Deductible gift recipient (DGR) endorsement

DGR endorsement is provided by the ATO to eligible not-for-profit organisations. Being endorsed as a DGR enables the organisation to receive income tax deductible gifts.

Fringe Benefits Tax (FBT)

FBT is a tax payable by employers on certain non cash benefits they provide to their employees – including the employees' family or other associates. An example of a fringe benefit on which FBT may be payable is when an employer allows an employee to use a work car for private purposes.

Fundraising

Fundraising is the act of soliciting money or property (including goods) from the public for general or specific purposes and is regulated by legislation in each state and territory of Australia. Further, it may be necessary to obtain a permit from local government authorities to conduct fundraising in their area.

Gift

A gift is the term used in tax law to refer to a sum of money or property (including goods) voluntarily transferred to you or your organisation for its use and benefit.

Goods and services tax (GST)

GST is a broad-based tax of 10 per cent on the supply of most goods and services consumed in Australia. If an organisation is registered for GST – or required to be – the goods and services its sells in Australia are generally taxable, unless they are GST-free or input-taxed . *Visit the ATO's website for more information.*

Grant

A grant is a payment of financial assistance from one organisation (usually a government entity or a grant making foundation) to another organisation by means of direct contributions, subsidies, co-payments or similar. *Visit the ATO's website for more information.*

Input taxed

For GST purposes, a sale is input taxed where no GST is included in the price and no credit is claimed by the supplier in respect of GST paid for goods and services to enable the provision of the supply. For example, a DGR may choose to treat all sales it makes in connection with certain fundraising events as input taxed.

Arts Minister

The Arts Minister administers the Cultural Gifts Program up to the point when claims for tax deductions are lodged with the ATO.

Department of Communication and the Arts

The Department of Communication and the Arts administers the Register of Cultural Organisations (ROCO) and the Cultural Gifts Program.

Not-for-profit

An organisation is not-for-profit if it is prohibited from distributing profits or gains to its individual members either during operation or on winding up. *Visit the ATO's website for more information.*

Philanthropy

Philanthropy is 'the planned and structured giving of money, time, information, goods and services, voice and influence to improve the wellbeing of humanity and the community'.

Private Ancillary Funds (PAFs)

A Private Ancillary Fund is a trust that is limited to receiving contributions from a private group (such as a family) rather than the public and making distributions to DGRs (other than Item 2 DGRs, that is, other ancillary funds). Until October 2009 PAFs were known as Prescribed Private Funds (PPFs).

Property

'Property' has a wide meaning, and includes real property (such as land and buildings), physical things (such as artwork, books, costumes and other goods or objects), and rights and interests that can be owned and have a value (such as shares and ownership rights).

Public Fund

A fund that operates on a not-for-profit basis and is designed to attract public contributions, and be administered by the public. ROCO requires the recipient of gifts or deductible contributions to be a public fund. The ATO has outlined their requirements for public funds in Taxation Ruling TR 95/27.

ROCO (Register of Cultural Organisations)

Cultural organisations listed on the ROCO have a public fund which is endorsed as a DGR and is eligible to receive tax deductible gifts. Listing on the ROCO is suitable only for non-collecting arts/cultural bodies (such as art gallery societies). Collecting cultural bodies (such as art galleries) are approved under other general DGR categories.

Sponsorship

Sponsorship is a business agreement between an organisation and a sponsoring business with the aim of mutual benefit—material and organisational. Sponsors can provide cash, advertising, signage in exchange for tickets to performances, new audiences, markets or naming rights etc. Sponsoring businesses can claim a tax deduction for legitimate business expenses.

Tax Concession Charity (TCC)

Charities that are endorsed to access charity tax concessions (TCCs). Charities must be registered with the ACNC before they can be endorsed by the ATO to access charity tax concessions. Charity tax concessions are income tax exemption, FBT exemption or FBT rebate, and GST charity concessions.

Taxable supply

For GST purposes, a taxable supply is a supply of goods and services that must have GST included in its price. Organisations that make taxable supplies are entitled claim credits for the GST in the price of the goods and services used to make the goods or services it sells.

Will

A legal document in which an owner specifies how to deal with or allocate their assets after their death.

Workplace giving

Workplace giving is a mechanism for salaried employees to make regular pre-tax or post-tax gifts to DGRs.

2 Organisations

While anyone can give your organisation a gift, a donor can only get a tax deduction for it if your organisation, or the fund, authority or institution that it operates, is endorsed as a deductible gift recipient (DGR).

Certain philanthropic foundations and trusts can only make grants to organisations with DGR status as well as tax concession charity (TCC) status.

If your organisation does not yet have these endorsements or are not eligible for them, you will have to look into whether you may be eligible for assistance from other bodies.

Having endorsement as both a DGR and a TCC organisation will maximise your organisations access to philanthropic income.

Should we become a deductible gift recipient (DGR)?

Before your organisation undertakes the process of applying for DGR endorsement, it is crucial to be aware of the long-term implications of having it.

Having DGR endorsement comes with legal and organisational obligations.

Your organisation also needs to be aware that, if it needs to cancel its DGR endorsement because its fundraising strategies change, and it no longer needs to provide tax deductions to its donors for their gifts, or it decides to change its objects and activities and will not be entitled to DGR status, it will be required to distribute any surplus deductible gifts or contributions, and money or property received because of such gifts and contributions, to another DGR. This will mean that your organisation, or its public fund (depending on which has the DGR endorsement), will have to distribute all of its assets to another organisation or fund that has DGR endorsement. Your organisation may effectively cease to exist as it will not be able to continue to hold the assets it obtained as a DGR.

This would also apply if an organisation's DGR endorsement was revoked by the ATO, which can occur if the organisation is no longer meeting its obligations.

This may be a reason why an organisation may choose not to apply for DGR endorsement. Another reason may be, if its funding comes predominantly from government grants or bequests, it does not need to be set up to provide tax deductions. Some organisations successfully attract gifts without DGR endorsement.

To help your organisation decide, it is advisable to get legal advice from a lawyer or agencies that specialise in the not-for-profit sector for your organisations specific needs.

If an organisation does not have DGR status

Organisations that do not yet have, want, or cannot have DGR status, may find the Australian Cultural Fund useful.

Which DGR category should I apply for?

There are a number of different categories of DGR endorsement and your organisation may be entitled for endorsement under more than one. You should apply under the category that is most appropriate for what you want to achieve.

Some classifications that may be relevant for your organisation include:

- Public fund on the ROCO
- public library, museum or gallery, and
- scholarship fund.

How can an organisation get deductible gift recipient (DGR) status?

An eligible organisation may obtain DGR endorsement by application to the Australian Tax Office (ATO). The ATO can give DGR endorsement to the organisation as a whole, or to a fund, authority or institution that the organisation operates. In the second case, only gifts to the fund, authority or institution are tax deductible.

Many categories of DGR (including public museum, library or gallery) require the organisation to be a registered charity (or an eligible government entity). An organisation applying to be registered as a charity with the ACNC, can use the ACNC application form to request DGR endorsement from the ATO.

If you plan to apply for DGR endorsement, first check that you are eligible.

Gift fund

For an organisation to be endorsed for the operation of a fund, authority or institution, the organisation must maintain a 'gift fund' for the principal purpose of the fund, authority or institution. This does not apply, however, where the organisation is endorsed as a DGR as a whole.

The gift fund requirement helps ensure that an organisation that operates a DGR only uses gifts to the DGR for the principal purpose of the DGR. This involves special conditions, including holding gifts separately from other property until they are used, and having rules to transfer unused gifts to other DGRs on winding up or cessation of endorsement.

General DGR

Organisations responsible for cultural collections (such as public art galleries, museums and libraries) can apply directly to the ATO for DGR endorsement or as part of their application for ACNC charity registration (a pre-requisite for non-government DGR endorsement in these DGR categories). Once endorsed, they can issue tax deductible receipts for gifts of money and property. They may also be able to offer donors a tax deduction for gifts of cultural material under the Cultural Gifts Program.

Register of Cultural Organisations

Non-collecting cultural organisations may obtain DGR endorsement by application for listing on the Register for Cultural Organisations (ROCO).

ROCO is administered by the Department of Communication and the Arts. To receive tax deductible gift under ROCO, an organisation is required to establish a public fund that is endorsed as a DGR. Find out more at the ATO's website.

DGR Item 1 and Item 2

Deductible Gift Recipient endorsement will also identify you as either an 'Item 1' or 'Item 2' DGR.

'Item 1' DGRs are the general DGR categories that provide charitable and other programs to the public, or section of the public (for example ROCO, public museums, art galleries or libraries, and scholarship funds).

'Item 2' DGRs are grant making entities that collect and distribute funds to item 1 DGRs e.g. Private Ancillary Funds and Public Ancillary Funds. 'Item 2' DGRs cannot distribute funds to other item 2 DGRs except in very limited circumstances.

The Australian Business Register provides information on whether an entity is an 'Item 1' or 'Item 2'.

DGR Specific listing

A handful of cultural organisations that fall outside the 'General DGR' categories have DGR status through specific listing in the Income Tax Assessment Act 1997.

Specific listing is a last resort option for approval as a DGR where none of the categories of endorsement are suitable for the organisation. For an organisation to be specifically listed as a DGR, the Commonwealth Parliament must amend the ITAA 1997 to list it specifically by name as a DGR. Requests for listing as a DGR should be directed to the Treasurer

What do I have to do once I have DGR?

DGR endorsement comes with a number of obligations. Accurate record keeping and self-review of entitlement to be a DGR are fundamental. If you do not comply with these obligations, your DGR status may be revoked.

Self-review

Organisations that are endorsed as DGRs and TCCs are required to regularly review their purposes, activities and transactions to ensure that they are still entitled to endorsement, and in the event that they are not, notify the ATO that they are no longer entitled to endorsement.

Record keeping

Organisations with DGR status have a legal requirement to keep separate records and explain transactions associated with their DGR status. Where an organisation has a number of funds, authorities or institutions that is operates, its records must clearly separate gifts made to each fund, authority or institution, and must show that the gifts have been used for the principal purpose of the relevant fund, authority or institution.

Reporting

Arts and cultural organisations that are on the Register of Cultural Organisations are required to complete a report every six months, documenting the gifts and grants it received from philanthropic trusts and foundations.

Certain DGRs are also expected to be audited or reviewed annually (for example, public and private ancillary funds).

Further information

Search for the following document at www. ato.gov.au:

- QC 26714 'Record keeping for small business'

Issuing receipts

A DGR is not required to issue receipts for tax deductible gifts it receives. Where a DGR does issue a receipt, the receipt must include the following information:

- the name of the DGR
- the DGR's ABN
- it is for a gift.

It is also recommended you include:

- the amount donated and method of payment
- description of the gift/s or property
- date the gift was made
- donor name and contact details.

A Donor can elect to spread a deduction for certain gifts (including money of $2 or more, and property valued by the Commissioner of Taxation at more than $5000) over a period of up to 5 years. The election must be made in writing and made before the donor lodges their tax return in the year the gift was made. An election can be varied at any time to change the amount that will be deducted in an income year.

You must comply with the national privacy laws regarding donor information.

What can a donor give?

For a gift to an item 1 or item 2 DGR to qualify for a tax deduction to the donor, the gift must be one of the following:

- $2 or more in cash
- Shares – Australian Stock Exchange (ASX) listed shares valued at $5,000 or less, and acquired at least 12 months before the gift was made
- Property purchased during the 12 months before the gift was made
- Property valued by the Tax Office at more than $5,000
- Trading stock of a business – disposed of outside the ordinary course of the donor’s business

Cultural gifts and heritage gifts are also tax deductible to the donor, but special rules apply to be able to claim a deduction.

What can a donor expect?

No material benefit

To qualify for a tax deduction to the donor, a gift to an item 1 or item 2 DGR must be free of any obligation, and the donor cannot receive any material benefit.

The ATO considers the following to be material benefits, which could jeopardise a tax deduction:

- Free or discounted tickets
- Free meals, drinks and programs
- Free expertise
- Discounts on purchases and facilities

The following are ***not*** considered material benefits by the ATO:

- Public acknowledgement e.g. on donor lists, annual reports
- Meeting the cast and management, attending rehearsals or similar
- A personalised ticket booking service
- Free newsletters
- Invitations to special events for which the donor pays to attend
- Naming rights on capital projects.

Can a gift be subject to conditions?

A donor may make a gift for a specified purpose or use. However, it is ultimately the decision of the gift recipient how to use the gift.

Do we have to accept a donation?

Being offered a donation may appear to be a benefit, but sometimes it may be onerous or may present a risk to your organisation (e.g. from a non-ethical or illegal business). There is no legal obligation for you to accept a donation or bequest, and you can refuse any donation at your discretion without giving any reason.

Australian Cultural Fund: a service for arts organisations without DGR

If your organisation does not have DGR status, Creative Partnerships Australia may be able to assist through its Australian Cultural Fund (ACF). Creative Partnerships is able to use its DGR status to receive gifts (from individuals) and grants from foundations and pass them on to arts organisations which don't have DGR and which meet Creative Partnerships eligibility guidelines. Creative Partnerships Australia provides a tax deductible receipt to individual donors.

Registering with the ACF

Artists planning to register must meet eligibility criteria and provide a summary of the project, its budget and timeline.

How does it work?

Donors (individuals) can make tax deductible gifts to the ACF (as long as they are not associated to the recipient) and foundations (that do not require TCC) can make grants to Creative Partnerships Australia and express a preference for the arts organisation or group to which they would like their donation granted.

Creative Partnerships board takes into consideration the preferences of the donors when making its grants. Creative Partnerships only accepts cash gifts.

DGR resources

Further Information

Search for the following documents at www.ato.gov.au:

- QC 24063 'Application for endorsement as a deductible gift recipient'
- QC 33657 'Receiving tax-deductible gifts'

The why and how of Tax Concession Charity endorsement

If a registered charity is endorsed by the ATO it will be entitled to claim the following tax concessions:

- income tax exemption
- GST charity concessions; and
- FBT rebate or FBT exemption (depending on the type of charity registration with the ACNC)

Many philanthropic foundations and trusts require their grant recipients to be endorsed as a tax concession charity (TCC).

Are you eligible for TCC?

To be eligible for endorsement as a TCC you must first be registered as a charity with the ACNC.

An organisation is a charity if it is not-for-profit, and all of its purposes are charitable purposes for the benefit of the public.

Charitable purposes include:

- advancing education;
- advancing culture;
- advancing the natural environment;
- any other purpose beneficial to the general public

You are not a charity if you exist primarily for commercial or private benefit, for the provision of services to members, or solely for political, recreational or social activities.

How can you get endorsement as a TCC?

To attain TCC endorsement, your organisation will need to be a registered charity and apply to be endorsed. Application for endorsement can be made as part of an online application for ACNC charity registration (in which case the ACNC forward the TCC endorsement to the ATO information to the ATO) or, if your organisation is already a registered charity with the ACNC, your organisations endorsement application can be made directly to the ATO.

Note: You may receive gifts as a TCC but you are not allowed to offer or receive tax deductible gifts. For this, you will need endorsement as a deductible gift recipient (DGR).

Other concessions available

In addition to the tax concession mentioned above, a TCC or DGR can claim a refund of franking credits on investments from franked distributions (including dividends from Australian companies and franked distribution from Australian trusts).

Charities may also be entitled to access concessions and exemptions on state/territory duties and taxes that are administered by the relevant state or territory revenue office including:

- Stamp duty
- Payroll tax
- Land tax

Note: Being a TCC for ATO purposes is not the same as being a charity for the State and Territory revenue offices. Each revenue office will have different procedures, which may include registering your charitable status. Contact the revenue office in your state or territory for more information.

State	Authorities
ACT	ACT Revenue Office
NSW	Office of State Revenue NSW Treasury
NT	Territory Revenue Management
QLD	Office of State Revenue
SA	Revenue SA
TAS	State Revenue Office

VIC	State Revenue Office Victoria
WA	Office of State Revenue

GST

GST is charged when there are taxable supplies. A gift to any not-for-profit organisation is not subject to GST as there is no taxable supply.

An organisation that is a DGR or TCC does not need to register for GST until it has a turnover of$150,000 or more (although it may choose to be registered). Where an organisation is not registered for GST it is not required to charge or collect GST in relation to the supply of goods and services. Where a DGR or TCC is registered for GST, GST may apply on certain philanthropic grants seen as payment for a supply of goods or services (e.g. conditional logo placement). It can also apply to goods or services provided by a TCC in return for payment. Where both the grantor and the grantee are registered for GST and the grantee provides a tax invoice, the grantor will be able to claim back the GST paid on the grant.

You should obtain professional advice in relation to the GST obligations of your organisation.

What if your organisation is not endorsed as a Tax Concession Charity?

Organisations that are not endorsed as a TCC will be required to pay income tax on their net taxable income unless they are covered by another income tax exempt category. Some types of non-for-profit organisations which do not have a charitable purpose are able to self-assess as income tax exempt.

You should seek specific advice on income tax matters.

If your not-for profit organisation has a charitable purpose, regardless of whether it is registered with the ACNC as a charity, it cannot self-assess as income tax exempt.

Further information

Search for the following documents at www.ato.gov.au

- QC 16641 ‘Is your organisation a charity?’
- QC 24062 ‘Application for endorsement for charity tax concessions’
- QC 46205 ‘Is my organisation eligible for charity tax concessions?
- QC 21423 ‘GST and Grants’
- QC 19500 ‘Grants and sponsorship’

3 Individual artists

Unlike organisations, individual artists cannot apply for endorsement as a deductible gift recipient (DGR) or tax concession charity (TCC). This does not mean you can't receive philanthropic gifts, but means your donors are not entitled to claim a tax deduction for their donation unless there is some alternate means of facilitating this. The Australian Cultural Fund may be able to assist with this.

Australian Cultural Fund

Individual artists are unable to secure DGR status from the ATO.

However through its Australia Cultural Fund (ACF), Creative Partnerships Australia is able to use its DGR to receive gifts (from individuals) and grants from foundations and pass them on to individual artists which meet Creative Partnerships' eligibility guidelines.

Creative Partnerships provides a tax deductible receipt to individual donors.

How does it work?

Donors (individuals) can make tax deductible gifts to the ACF as long as they are not an associate to the recipient. Also, foundations that do not require TCC can make a grant to Creative Partnerships Australia and express a preference for the cultural organisation or group to which they would like their donation granted.

Creative Partnerships Australia only accepts cash gifts.

Register with the ACF.

The business of being an individual artist

Determining whether an individual's artistic activity is a business or a hobby is important as it will determine the applicable tax framework. Indicators that help define business activity are:

- a commercial purpose
- an intention and prospect of profit
- active pursuit of artistic development and making the artistic work public
- membership of professional associations, and
- a planned and organised manner in which activities are undertaken.

The income for business activities is assessable for income tax, and associated work-related expenses are deductible.

An artist classed as a 'special professional' (an artist, composer, writer—including a computer programmer—inventor, performer, production associate) may be able to average income over a number of years. This is particularly useful for emerging artists, whose early years are characterised by varying income. To ensure that all tax entitlements are accessed, individual artists are encouraged to obtain tax advice.

Further information

- Artist career - A business information resource for individual artists

Search for the following documents at www.ato.gov.au:

- QC 31733 'Are you in business?'
- QC 55223 'Income averaging for special professionals 2018'

4 Gift types, conditions and tax implications

Cash gifts

Gifts of money can be given as:

- cash
- cheque
- credit card payment, and
- electronic funds transfer (EFT).

It is important to process gifts promptly and into their correct account/s. Accurate reporting of gifts is a legal requirement so ensure that your accounting systems are well maintained. Receiving gifts electronically is becoming more common, and easier for both giver and receiver.

Further information

Search for the following document at www.ato.gov.au:

- QC 16863 'Managing your small business records'

Gifts of property

Gifts of shares

Donors can claim a tax deduction for donating shares to DGR organisations provided the shares are valued at $5,000 or less and are acquired at least 12 months previously. To be deductible, shares must be in a public company listed on the ASX.

If a gift of shares is valued at more than $5,000 the donor may be entitled to a tax deduction, but the shares will need to be valued by the Commissioner of Taxation.

Donors may trigger capital gains tax on the transfer of the shares, which may reduce the benefit of the tax deduction claimed. It is the donor's responsibility to seek financial advice on these matters.

Further information

- Sharegift Australia facilitates donation of shares to DGRs free of brokerage costs

Search for the following document at www.ato.gov.au:

- QC 19589 'Shares valued at $5000 or less'

Gifts of cultural items: the Cultural Gifts Program

The Australian Government's Cultural Gifts Program provides tax incentives to encourage gifts of culturally significant items from private collections to be donated to public art galleries, museums and libraries.

Gift types can include:

- Paintings and works on paper
- Books
- Sculptures
- Manuscripts and personal papers
- Jewellery
- Ceramics
- Technological, mechanical, scientific and social history collections.

In broad terms, the tax incentives for donors include:

- a tax deduction up to the average market value of their gifts (including GST) as specified by approved valuers
- an exemption from capital gains tax
- a tax deduction to the donors for the costs of obtaining valuations specifically for this program
- the option to spread the tax deduction over five years.

Gifts bequeathed under a will or made by executors of deceased estates are **not** tax deductible and do not qualify for the program.

The Minister for the Arts administers the program in accordance with the gift provisions of the income tax law and with the advice of expert consultants.

Further information

- Cultural Gifts Program homepage
- Relevant forms and certificates
- How the Cultural Gifts Program works

Search for the following document at www.ato.gov.au:

- QC 16803 'Cultural Gifts Program'

Gifts of time

Volunteers and pro bono providers are a useful resource for specific needs and projects – including for fundraising. There is no specific deduction available for the time given by volunteers – such as where a company makes their staff available to an arts organisation.

Pro Bono services

Pro bono providers can generally claim a tax deduction and GST credits for the expenses incurred in providing the services on a reduced fee basis. GST will not be charged for services provided free of charge. If pro bono work is provided on a reduced fee basis, GST is payable by the recipient organisation on the fees actually paid rather than the market value of the services provided.

Further information

- The Australian pro bono manual - a best practice guide for lawyers working pro bono

Search for the following document at www.ato.gov.au:

- QC 16184 'Volunteers'

5 Philanthropic fundraising

Fundraising

Fundraising is the activity of seeking gifts from the public for your, or your organisation's general or specific projects. It includes public collections, fundraising events and raffles.

State and territory fundraising licences and requirements

Each state and territory has its own legal requirements for fundraising activities with the exception of the Northern Territory. You may need to notify state/territory authorities, or receive permits/approvals or licences from these authorities. Further, it may be necessary to obtain permits from the relevant local government authorities for conducting fundraising activities in their area.

The conduct of raffles and lotteries is regulated by legislation in each state and territory and may be relevant even for a charitable entity.

State	Authorities
ACT	ACT Gambling & Racing Commission
	Office of Regulatory Services, ACT Department of Justice and Community Safety
NSW	NSW Office of Liquor, Gaming and Racing, Department of the Arts, Sport and Recreation
NT	Licensing and Regulation Division, NT Department of Justice
QLD	Department of Justice and Attorney-General, Queensland
SA	Office of the Liquor and Gambling Commissioner
TAS	Liquor and Gaming Branch, representing the Tasmanian Gaming Commission
	Consumer Affairs and Fair Trading
VIC	Consumer Affairs Victoria, Department of Justice
	Victorian Commission for Gambling Regulation, Department of Justice

WA	Department of Consumer and Employment Protection
	Department of Racing, Gaming and Liquor

Minor Benefit Rule

At some fundraising events held by DGRs the attendee may make a payment or contribution and receive a minor benefit in return, such as a meal or entertainment. The ATO's minor benefit rule associated with fundraising dinners and events enables individuals to claim a tax deduction for part of the contribution for attending an event even though a benefit was received as a result of the contribution. The value of the minor benefit received must be 20 per cent, or less, of the contribution and cannot exceed $150.

For example, a $200 ticket to a fundraising dinner, the benefit (i.e. the dinner) has a market value of $35 (less than 20 percent of the contribution). The participant would be entitled to a tax deduction on the balance - $165.

General fundraising

Regular giving, major gift and capital campaign fundraising can bring in substantial gifts. It is important to apply tax awareness in all these activities.

Subscription add-ons

Annual subscription materials (online, by mail or in published brochures) present an opportunity for add-on gifts. GST will generally apply to the subscription, but not to the donation. This should be clear in the promotional material and on the receipt provided to subscribers.

Further information

- FIA Best practice standard

Workplace giving

Workplace giving is a simple way for salaried employees to make regular pre-tax and post-tax gifts to a nominated DGR organisation. The receiving organisation receives a lump sum, usually monthly, made up of the collective gifts from the employer and is not required to issue receipts to the individual donors.

Workplace giving is an effective strategy with low administration and costs.

Further information

- FIA workplace giving best practice standard

Search for the following document at www.ato.gov.au:

- QC 17036 ‘Workplace Giving Programs’

Bequests

A bequest is an amount of money or an asset that is given to a recipient upon the donor’s death as specified in the donor’s will. The bequest can be given ‘freely’, which means that the receiving organisation may use it as it chooses, or it can come with conditions, which are legally binding. Where conditions are more onerous than beneficial for the organisation, the organisation may choose not to accept the bequest.

The laws applicable to claims on wills are different in each state and territory. These laws will determine an organisation’s rights and obligations when benefactors have bequeathed money or property. State and territory authorities determine whether you are able to receive a copy of the will, administer the application to receive a will once probate is granted and the will is made a public document, and also whether you can obtain a copy of a will before probate is granted.

There are benefits of obtaining a copy of the probate, as often this includes a copy of the will and inventory of assets and liabilities. Where receiving a bequest, a not-for-profit organisation can approximate how long it will take to receive payment of its bequest based on the inventory information. In some states, the estate is required to pay you interest on the bequest if it is not received by a certain period from the date of death.

While an amount from a bequest is not assessable income any income earned from the bequest (through investment, for example) will be assessable, unless the organisation is exempt from income tax. Where the bequest is a gift (i.e. it is a voluntary payment where no material benefit is provided to the payer) no GST applies. An organisation may be seen as providing a material benefit to the payer when complying with conditions associated with the bequest, and GST may apply in these cases.

In addition, often donors may be uncertain as to the tax implications of the bequest, including capital gains tax. If pro bono legal or tax advice does not alleviate this, an option is to suggest that they donate in their lifetime.

It is important to be aware that family provision rules may apply to vary the terms of a will to ensure that dependents and family of the deceased are sufficiently provided for under the will. A consequence of this is that despite being named in a will, the gift may be reduced or removed altogether where these rules apply.

Further information

- QUT: Keeping giving going: Charitable bequests and Australians
- FIA: Standard of bequest fundraising practice

Dinners

Fundraising events may require payments (contributions) which extend minor benefits to the donor. Donors may be able to claim a deduction providing the contribution is made to attend an eligible fundraising event held by a DGR organisation. A donor can claim a deduction if the value of the benefit received by the donor is less than 20% of the contribution or $150, whatever is less. The amount that can be deducted is the amount of the contribution in excess of the benefit received by the donor. An individual cannot deduct more than two contributions in relation to the same fundraising event.

Example

Andrew buys a ticket for $400 to a gala performance organised by a DGR. The gala performance has a ticket price on the open market of $100. Therefore Andrew cannot claim **any** deduction as the market value of the performance (the benefit he receives in return for his payment of $400) exceeds 20 per cent of the value of his payment (20 per cent x $400 = $80).

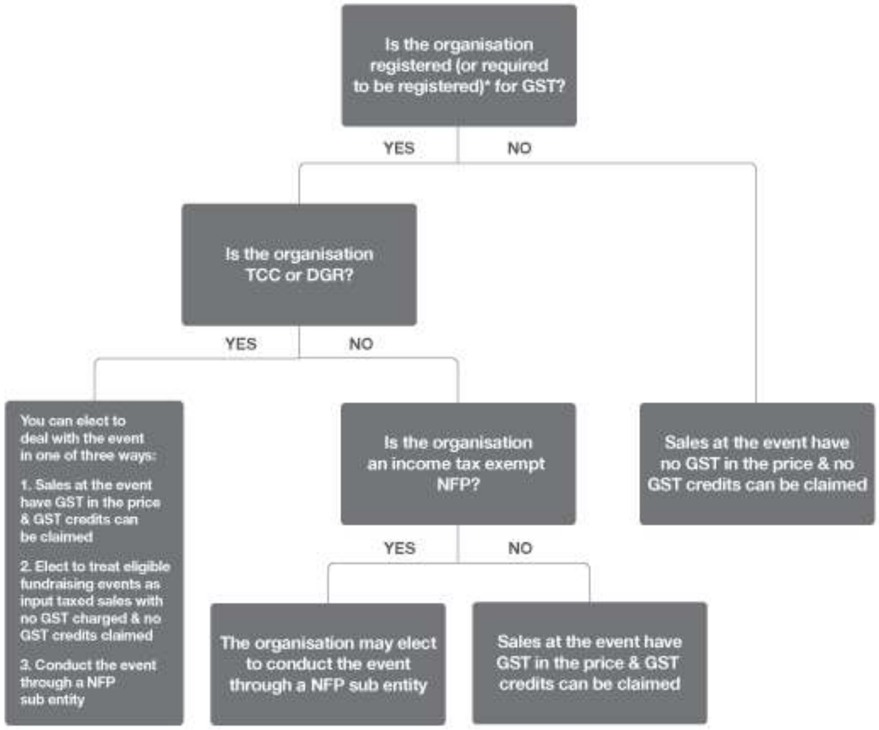
Determining value of the contribution

Where minor benefits have been extended to donors, the onus is on the DGR to value the minor benefit, which is the market value at that point in time.

GST treatment of a fundraising dinner or similar event

A GST concession exists when a DGR organisation or charity treats certain fundraising events as input taxed. This means that the organisation will not be entitled to claim GST credits for any acquisitions in relation to the event and it will not be required to charge GST on the sales it makes. If an organisation holds more than 15 of the same events in a financial year, the GST concession will not apply.

The flowchart on the following page illustrates the different GST treatments of a fundraising dinner or similar event.



We recommend obtaining professional advice in relation to the GST treatment of the fundraising event or events that you intend to conduct. It is good to ensure that you are treating the event appropriately for GST purposes as your supporters may be able to claim increased tax deductions, which in turn may encourage their financial support of your organisation.

Auctions

Payments made at auctions organised by a DGR organisation may qualify as tax deductible gifts. The onus is often on the DGR to determine the value of auction items sold, as these are considered minor benefits extended to the donors.

Further information

Search for the following document at www.ato.gov.au:

- QC 33652 'Gifts and Fundraising'
- QC 16990 'GST concessions'
- QC 46266 'Valuing the minor benefit'
- QC 33659 'State, territory and local government requirements'

Scholarships/bursaries/prizes

A scholarship fund is a public fund established solely to provide money for scholarships, bursaries or prizes.

Scholarships, bursaries or prizes must:

- be awarded only to Australian citizens or permanent residents
- be open to individuals or groups in a region of at least 200,000 people, and
- be awarded on merit or reasons of equity for the promotion of recipients' education in an approved course.

A scholarship fund must meet the public fund requirements which include that the fund must have its own written set of rules and objects. All organisations that are endorsed, or seeking to be endorsed, by the Australian Tax Office as DGRs in respect of a fund that they operate, must maintain a 'gift fund'. These requirements do not apply where the organisation is endorsed as a DGR in respect of the organisation as a whole.

The 'gift fund' requirement helps ensure that an organisation that operates a DGR only uses gifts to the DGR for the principal purpose of the DGR. This involves special conditions, including holding gifts separately from other property until they are used, and having rules to transfer unused gifts to other DGRs on winding up or cessation of endorsement.

The scholarship fund must be a registered charity or operated by a registered charity.

Further information

- QUT Business School: Details of publications and reports
- QUT e-Prints is a free service where you can search for and then download research papers on a wide range of topics including fundraising

Search for the following document at www.ato.gov.au:

- QC 26415 'Scholarship funds'
- QC 26411 'Public funds'
- QC 46264 'Fundraising events'
- QC 33659 'State, territory and local government requirements'
- QC 17084 'Not-for-Profit News Service'