



AccessPay Pty Ltd

Submission to the Productivity Commission

in respect of the Draft Research Report

Contribution of the Not-For-Profit Sector

November 2009

Contact Details:

Contact

Grant Octoman

Email

grantoctoman@accesspay.com.au

Mobile

0419 250 544

Telephone

1300 133 697

Contents

1.0	EXECUTIVE SUMMARY	3
2.0	ABOUT ACCESSPAY	3
2.1	OUR BUSINESS.....	3
2.2	ABOUT THE AUTHOR.....	4
3.0	THE NOT-FOR-PROFIT SECTOR	4
3.1	ORGANISATIONAL DEMOGRAPHICS.....	4
3.2	WORKFORCE PROFILE.....	5
4.0	NOT-FOR-PROFIT FUNDING	6
4.1	OUR APPROACH.....	6
4.2	WHY DOES THE GOVERNMENT PROVIDE INDIRECT FUNDING?.....	6
4.3	THE SYSTEM IS COMPLEX, INEQUITABLE AND COSTLY TO ADMINISTER.....	7
5.0	COMPETITIVE NEUTRALITY	8
5.1	OUR APPROACH.....	8
5.2	INCOME TAX EXEMPTION (PP 8.8).....	8
5.3	INPUT TAX CONCESSIONS (PP 8.8).....	8
5.4	SALARY PACKAGING BENEFITS.....	10
5.5	FBT BENEFITS ARE MAINLY ENJOYED BY HIGH INCOME EARNERS (PP 8.16).....	10
5.6	SECURE REVENUE FLOWS (BOX 8.6 PP 8.18).....	10

1.0 Executive Summary

AccessPay Pty Ltd ('AccessPay') is a specialist provider of salary packaging administration services.

This submission seeks to acknowledge the broad range of not-for-profit organisations in terms of size, scope, services and their ability (or even the necessity in the case of small organisations) to access taxation concessions. We submit that input tax concessions are not complex, and certainly less complex than the implication of having these organisations subject to income tax.

Further, our view is that the input tax concessions are targeted to a not-for-profits major cost item, salaries and wages, and is administratively likely to be more efficient than a direct funding model.

The argument that indirect funding is less transparent than direct funding is merely a matter of introducing a measurement/reporting mechanism. Much of the relevant information is produced by organisations, just not submitted because no Fringe Benefits Tax is payable. Collection of this information could be as simple as lodgement of a one or two page return annually.

We have also recommended two reforms to the input tax concessions that would remove significant administration and cost from eligible not-for-profit organisations. Both of these recommendations relate to the private use of cars.

Through this submission you will also note that we agree with the observation that not-for-profits do have difficulty in accessing capital. That said, we also hold the view that the input tax concessions available enable organisations to retain and accumulate resources that allow them to make capital investments.

We also argue that a balanced view of the input tax concessions must also consider the nature of the organisations able to access them, and the services that they provide. As noted by the Royal Flying Doctor Service, to focus on one aspect only of the input tax concessions as providing (unfair) advantage is a 'significant oversimplification'.

2.0 About AccessPay

2.1 Our Business

AccessPay is a specialist provider of salary packaging administration services, having commenced providing these services on 1 December 2001. Our clients are located throughout Australia with 98.26% of these clients (by client numbers) and 99.87% of employees with packages managed for these clients from the not-for-profit sector.

Our clients are both member based and community based, with the significant majority from community based not-for-profit organisations. These organisations operate in the disability, youth, community, aged care, healthcare sectors.

Our links with a national accounting practice allows AccessPay to provide advice and guidance to organisations about their (proposed) status and the consequences of this on their operations, costs and ability to provide employee benefits.

2.2 *About the Author*

Grant Octoman is the founder and Managing Director of AccessPay. Grant is a member of the Institute of Chartered Accountants in Australia, holds a Bachelor of Arts (Accounting) and was awarded a Master of Business Administration during 1998.

Having joined the public accounting profession during 1980, Grant became a partner with the national accounting practice Nelson Wheeler during 1992. Grant resigned as a partner to join AccessPay full-time on 1 December 2007.

Grant is a councillor at the Royal Agricultural & Horticultural Society of South Australia Inc.

3.0 The Not-For-Profit Sector

3.1 *Organisational Demographics*

Not-for-Profit organisations can be broadly classified into two groups:

- (i) Member-based organisations; and
- (ii) Community-based organisations.

These organisations provide a very broad range of services from member-based sporting clubs through to significant charitable organisations operating in aged care, disability and community care sectors (for example).

This is in fact one of the difficulties associated with the not-for-profit sector. This difficulty relates to the diversity of organisations (size, scope, services etc) that fall within the not-for-profit classification. This is particularly true when considering an organisation's ability to access 'indirect funding' by way of input tax concessions.

We often receive enquiries from organisations about their Fringe Benefits Tax status. Generally the confusion surrounding the status revolves around an organisation's ability to access 'Exempt' status which is assumed to be offered to all not-for-profit organisations. This is not the case, as to be 'Exempt' an organisation must fall within one of those of the nature identified in Section 57A of the Fringe Benefits Tax Assessment Act 1986 ('FBTAA').

This issue is often cited as an example of complexity leading to confusion and uncertainty. We submit that this issue is not that complex. Indeed the taxation laws are full of examples of this nature. For example, the ability to access an 'Investment Allowance' depends on whether the business is small or large. Whether a capital improvement is depreciable or able to be written down (claimed) in some other fashion is subject to specific consideration of the item involved. Further there are specific taxation rules that apply to particular industries; car retail and mining are examples of these.

The 'rules' surrounding an organisation's ability to be classified as 'Exempt' are there to target the input tax concessions to particular organisations, similarly to the way investment allowance provisions impact differently based on whether the taxpayer is small or large.

Organisations classified as 'Exempt' tend to be community based, often offering services and support to the disadvantaged within the community. This is not to say that the classification system is perfect. It is not, and a very good example of this is contained in Section 6.5, page 6.33 of the Draft Research Report where 'prevention of poverty' has been determined not to be an appropriate purpose for a Public Benevolent Institution. This is though a matter for policy/legislative intervention to ensure that funding is provided to organisations to whom it is intended.

3.2 *Workforce Profile*

In our experience, employees of not-for-profit organisations are dedicated to the purpose of the organisation. Whether that be the promotion of agriculture, as with a show society, or care for the disabled, we find that employees are intensely dedicated to the organisation's purpose and as a result strongly motivated to achieving the best outcomes for the organisation and its clients.

Volunteers are also a significant part of the not-for-profit workforce.

Generally speaking the not-for-profit sector offers 'sought services'. That is, services that are sought out by their customers/clients and supports.

One of the challenges confronting not-for-profit organisations is the coordination and channelling of services toward meeting their customer/client/support needs.

4.0 Not-For-Profit Funding

4.1 *Our Approach*

The Draft Research Report contemplates funding for not-for-profit organisations in Chapter 7. Essentially our approach to this issue has been to provide input to the issues, comments or observations contained in that Chapter.

4.2 *Why does the Government Provide Indirect Funding?*

Funding Certainty (pp 7.6)

In addition to the benefit of the potential for less volatility in funding (when comparing indirect funding to direct funding) is that the majority of the indirect funding, via the fringe benefits tax concessions, is specifically targeted to what is typically a not-for-profit organisation's major cost – salaries and wages.

Administrative Efficiency (pp 7.6)

Subjecting not-for-profit organisations to tax and possibly a reduction in input tax concessions and moving to a direct funding mechanism would introduce a far more complex environment within which a not-for-profit would operate. This would also see the need for funding applications, tenders, assessments (etc) all of which would increase cost to government, the not-for profits and society.

Less Efficient Targeting of Intended Beneficiaries (pp 7.7)

The tax concessions considered throughout the chapter relate to organisational cost, be it salaries, payroll tax or income tax. The beneficiary of the concessions is the organisation, and it is difficult to see how this approach is less efficient than an alternative where 'profits' are subject to income tax and distributed back to the organisation. As noted above, the fringe benefits tax concessions are specifically targeted at the organisation's salary and wages cost.

Abuse of Tax Concessions (pp 7.7)

It is difficult to agree with the comment that tax concessions raise the complexity of the tax system overall. Organisations that need to consider fringe benefits tax

concessions (as Exempt organisations) typically do not need to be concerned with income tax issues applicable to their taxable income. It is not necessarily true therefore that there is more complexity, merely a differing set of applicable rules.

Lack of Funding Transparency (pp 7.7)

This issue could be simply addressed by introducing a measurement/reporting requirement on not-for-profit organisations.

4.3 *The System is Complex, Inequitable and Costly to Administer*

Administrative Complexity (pp 7.14)

Peak Care Queensland submit that “complex analysis and complicated administrative and accounting processes surrounding salary packaging often take the benefit from it.”

We have noted previously that the environmental rules relating to salary packaging are not that complex. It is also unlikely that a well-run salary packaging arrangement would have the benefits “taken up” by complicated administrative and accounting processes. Any alternative arrangement (for example lodgement of an income tax return) would not be cost free in this regard in any event.

That said, there is a degree of complexity in relation to salary packaging, and this relates to the provision of and use of motor vehicles by employees of not-for-profits. This complexity could be addressed by either:

- (i) Adopting a non-reporting threshold of \$2,000 in relation to car benefits – this would remove the complexity associated with “occasional private use” of cars; and/or
- (ii) Allowing not-for-profits to adopt averaging in relation to its car fleet similar to the option available to motor vehicle dealers and their demonstrator vehicles and used car stock (refer MT2023).

Different Organisational Categorisation (pp 7.15)

Family Relationship Services Australia refer to the perceived inequities of some organisations being categorised as Public Benevolent Institutions and others not. Taxation laws are full of such perceived inequities (and some have been identified in Section 3.1 above).

As noted previously certain organisations are able to access concessions because they are classified as eligible pursuant to Section 57A of the FBTAA. An organisation's eligibility depends on the nature of it and the services it provides. Where an organisation is eligible the legislation provides a framework for benefits to be provided and/or organisational cost savings realised.

Do Not-For-Profits Have Difficulty Accessing Capital?

Not-for-profit organisations face difficulties in accessing capital from traditional means. They are typically unable to raise capital from their owners, and as a result of the nature of their revenues they are unable to access debt funding.

5.0 Competitive Neutrality

5.1 *Our Approach*

The Draft Research Report contemplates funding for not-for-profit organisations in Chapter 8. Essentially our approach to this issue has been to provide input to the issues, comments or observations contained in that Chapter.

5.2 *Income Tax Exemption (pp 8.8)*

Box 8.3 notes that organisations which are aiming to maximise their surplus are unaffected in their business decisions by their taxable or tax exempt status.

This observation is flawed in two respects.

Firstly it assumes that organisations, including not-for-profits, seek to maximise economic surplus. This is not necessarily the case as generally speaking the aim of not-for-profit organisations is to maximise member or community (or the subset of community) benefits provided.

Secondly, business decisions are significantly impacted upon by an organisation's income tax status as many investments, particularly capital investments, are assessed on the basis of after-tax cost. In as much as input tax concessions provide benefit to (some) not-for-profit organisations, "investment allowances", accelerated write-off provisions etc provide benefit to for-profit organisations.

5.3 *Input Tax Concessions (pp 8.8)*

Box 8.3 notes that input tax concessions provide distortions in the choice of inputs due to the consequent 'distortion' in the price of inputs.

It is also noted that many of the services offered by not-for-profit organisations, that is their core reason for being, is labour intense and indeed the cost of the distortion may not be significant.

Essentially the fringe benefits tax concession is specifically targeted at an organisation's labour cost which is sensible given the labour intensity of the organisations. The concession allows these organisations to compete for labour and direct resources into their core service areas.

Box 8.3 argues that these concessions allow organisations to attract resources away from others, possibly into a less efficient use. There are of course numerous examples of how availability of these concessions allow not-for-profit service providers to compete for scarce labour including:

- (i) Government salaries paid to disability service employees are typically significantly higher than can be paid by the disability service providers themselves. The concessions allow these service providers the ability to attract and retain the best employees;
- (ii) Nursing agencies pay above-award rates to their staff which can be passed on to organisations in critical need for the service. Making salary packaging benefits available to casual staff provides (some) not-for-profits with a tool with which this significant cost item can be minimised.

Input Tax Concessions and Outputs

Focusing solely on the input tax concessions does not provide a balanced view of the nature of the exemptions. It is necessary to also consider the nature of the organisations outputs – the services it provides.

It is generally accepted that for-profit organisations will offer services where they are profitable. Not-for-profit organisations often 'fill the gap' where these services are not offered by for-profit operations. Therein lies the danger in looking at broad industry groups (like hospitals), because not all hospitals offer the same services to the same people. The overall environment needs to be considered including the overall work environment, choice of and nature of services provided, and the nature of the service provider itself.

As noted in the Royal Flying Doctor Service submission (pp 8.5) a focus on one aspect of the input tax concessions as providing an (unfair) advantage over their for-profit competition is a 'significant oversimplification'.

It is also necessary to consider the nature of the disadvantages being overcome by the provision of the input tax concessions. As noted previously in this submission access to funding is one of the known disadvantages faced by not-for-profit organisations. Arguably the access to the input tax concessions allows organisations to retain and accumulate resources (cash) that allows them to make capital investments to improve processes, promote growth, and most importantly invest in member and community services consistent with their reason for being.

5.4 *Salary Packaging Benefits*

Box 8.4 on page 8.15 provides examples of Meal Entertainment benefits.

AccessPay has provided advice to numerous not-for-profit organisations throughout Australia on this benefit (and the Entertainment Facility Leasing Expense benefit). Our advice has constantly been that whilst the benefit items themselves are legislatively uncapped, that a responsible approach from the employer, employee and social perspective is to have a cap on the value of the benefits to be provided.

This advice is generally accepted and has resulted in industry wide recommendations in some industries.

5.5 *FBT Benefits are Mainly Enjoyed by High Income Earners (pp 8.16)*

A comment like this comes as some surprise. Certainly the cost savings available to (some) not-for-profit organisations is greater for higher income earners than lower income earners, but this does not mean that low income earners do not benefit.

What is true is that where an employee would not be paying tax anyway then there are no savings to be had. Generally people in this group are receiving other Commonwealth funded benefits in any event.

5.6 *Secure Revenue Flows (Box 8.6 pp 8.18)*

Access to capital has been previously discussed in this submission. Box 8.6 provides examples of significant capital expenditures by not-for-profit hospitals.

Our comments here are two-fold:

- (i) The purchase/sale transaction does not cover settlement terms;

- (ii) The Epworth redevelopment is announced but may not be funded as the Foundation may be seeking donations for this.

In addition, the lack of access for not-for-profit organisations to capital will be reduced where the organisation operates a 'business'. This is because the organisation has a bankable income flow as opposed to potentially government funded, contract based revenues.