



# Navigating the maze of tax entitlements

*At PwC, we work with a broad range of charities to ensure that they are receiving all of the tax concessions their organisation is entitled to.*

When it comes to the state and federal charity regulators, the level of complexity and conflicting assessment approaches can be overwhelming.

Broadly speaking, the Charities Act 2013 requires 3 things for an organisation to be deemed a charity:

- 1) that it is a not-for-profit entity; and
- 2) its charitable purpose has a public benefit; and
- 3) **it's** not an individual, political party or government entity.

It should be straight-forward for organisations to claim their specific tax entitlements, however in reality, Australian charities face a number of challenging and inconsistent tax scenarios.

*PwC has worked with many charities to help unravel the complexity and confirm their tax entitlements.*

## Registration at both federal and state level matters

Sometimes charities are registered with the federal charities regulator (ACNC) but not at the state level (or vice versa). Such organisations may not understand the consequence of not being registered in the other jurisdiction. At a state level, the key outcome of being registered as a charity is the entitlement to be exempt from payroll tax.

As an example, PwC worked with a charity that was registered at a federal level but not at a state level, and they were unaware of the financial impact of this situation. Once the organisation was registered as a charity in their state they were able to apply for a refund of their **previous five years' worth** of payroll tax, valued at over \$2,000,000, plus they saved over \$400,000 p.a. in future payroll tax.

## Federal versus State - not always on the same page

Another scenario **we've seen is** where a charity that was ACNC registered, with charitable status originally confirmed by the ATO, was not aware that they were entitled to refundable franking credits from their share portfolio. We helped this organisation to successfully claim a refund of previous years' refundable franking credits and then pursued other entitlements at a state level, thinking that this would be a straight-forward process given the federal precedent. This application was surprisingly rejected by state regulator without a clear rationale, and we continue to pursue this application via an objection process.

We have other cases where an organisation is deemed to be a charity by some state regulators and not by other states. Each state ultimately makes an independent decision, and even where there is consistent legislation **we don't necessarily see** consistent interpretation of the underlying common law principles. This complexity combined with the inconsistent interpretation of charity law between state and federal regulators is why our clients engage PwC to determine and manage the best way forward.

## Sometimes, litigation is required

In a similar scenario, an organisation was a registered charity with the ACNC however the state regulator deemed that it did not satisfy the requirements to be considered a charity and therefore was not entitled to access the tax concessions for charities.

Litigation ensued as PwC was confident that this was not the correct assessment and the courts agreed in our favour – that the organisation did in fact meet the requirements for charitable status and therefore qualified for the relevant tax concessions.

## Constitutional change

We have also worked with organisations that require a revision to their constitution in order to be consistent with their charitable purpose. This may be appropriate where the objects of the constitution are outdated and no longer accurately reflect the purpose of the organisation. In these instances, where the organisation (under the revised constitution) meets the criteria required to be recognised as a charity, the applicable tax concessions are accessible on a prospective basis, but may not apply retrospectively.

Again, registration as a charity with the federal and relevant state regulators needs to be undertaken as separate processes, and what is accepted by one is not necessarily accepted by all.

While the state regulators act independently, there is growing momentum toward achieving greater harmonisation in the future which has the potential to reduce the inconsistencies currently experienced.

## The takeaway

Australian charity tax law is highly complicated and nuanced. It requires specialist expertise in order to navigate the legislation and this is where not-for-profit organisations typically lack the resources to effectively manage these complex scenarios that can take years to adequately resolve.

Complicated or nuanced tax matters typically fall **into the 'too hard' basket** for organisations, and are not pursued. PwC has found that, in cases where we believe organisations are not receiving their correct tax entitlements, perseverance for the appropriate cases is key to achieving a successful resolution of these matters. Often, applications take a considerable time - several months or even years - to reach a sensible outcome.

Also, while situations can sometimes be quite frustrating for our clients, adversarial behaviour is not helpful, rather, due process needs to be steadily adhered to and respectful relationships with the authorities upheld.

If you suspect your not-for-profit or charity organisation is not availing itself of federal and/or state exemptions, contact us – **we're** happy to discuss your scenario with you.

## Key contacts



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