

Fact sheet: Applying for Tax Concession Charity (TCC) endorsement

Overview

This fact sheet is to assist Victorian community organisations who wish to apply to the Australian Taxation Office (ATO) for endorsement as a Tax Concession Charity (TCC). This fact sheet explains TCC endorsement and the application process.

Note: The information contained in this fact sheet is intended as a guide only, and is not legal advice. If you or your organisation has a legal problem you should talk to a lawyer before making a decision about what to do. The information in this fact sheet is written for people and organisations resident in, or affected by, the laws that apply in Victoria, Australia and is current at 1 October 2008.

What is tax concession charity (TCC) endorsement?

The main benefit of TCC endorsement is that your organisation will be exempt from paying income tax and lodging an income tax return.

Other tax benefits that TCCs may also receive include:

- ▶ some goods and services tax (GST) concessions;
- ▶ fringe benefits tax (FBT) rebate; and
- ▶ entitlement to a refund of franking credits on dividends from investments.

TCCs can apply for funding from philanthropic foundations and other grant makers which can only make grants to organisations which are charitable.

Is our organisation eligible to be a tax concession charity?

To be endorsed as a TCC, your organisation must be established for 'charitable purposes'. This means that the organisation must meet the legal definition of 'charitable'. Its activities must be for the benefit of the community.

Is your organisation charitable?

Definition of charity

The characteristics of a charity are:

- ▶ it is an entity (an institution, incorporated association, unincorporated group, company, trust fund etc.);
- ▶ it exists for the public benefit or the relief of poverty;
- ▶ its purposes are charitable within the legal sense of that term;
- ▶ it is non-profit; and
- ▶ its sole purpose is charitable.

Charitable Purposes

'Charitable purposes' are:

- ▶ the relief of poverty or sickness or the needs of the aged;
- ▶ the advancement of education;
- ▶ the advancement of religion;
- ▶ other purposes beneficial to the community; and
- ▶ the provision of child care services on a non-profit basis.

The purposes or objects in your organisation's rules or constitution must state what the organisation wants to achieve and your activities must reflect this.

Your organisation is not a charity if it is *primarily* for:

- ▶ sporting, recreational or social activities;
- ▶ political or lobbying purposes;
- ▶ running commercial business activities or is for private benefits; or
- ▶ providing services to its members only (ie. a membership club).

Also, the *sole* purpose of the organisation must be charitable. For example, if the organisation is set up as a social club, even if it does some charitable work, the ATO won't endorse it as a TCC.

For more information about what is a charity, and examples of organisations that are and are not charities, see the ATO's guide '*Is your organisation a charity?*'. A link to this publication has been included on our site (see the Related Resources section below).

Not for profit

A charity must also be not-for-profit. This means it can't be established to make a profit for any person, including its owners or members.

Do you need to make any changes to the rules or constitution?

Purposes

Your purposes may need to be amended to show that your organisation is charitable.

Not for profit clause

You will need to include a clause (paragraph) stating that your organisation is not-for-profit.

Winding up clause

You will need to include a clause stating that, on the winding up of the organisation (that is, when it ceases to operate), any remaining property will be distributed to another organisation or fund which is also charitable and also not-for-profit.

The ATO has some sample clauses in its *CharityPack* publication. These are:

Example ATO non-profit clause:

'The assets and income of the organisation shall be applied solely in furtherance of its above-mentioned objects and no portion shall be distributed directly or indirectly to the members of the organisation except as bona fide compensation for services rendered or expenses incurred on behalf of the organisation.'

Example ATO winding up clause:

'In the event of the organisation being dissolved, the amount that remains after such dissolution and the satisfaction of all debts and liabilities shall be transferred to another organisation with similar purposes which is not carried on for the profit or gain of its individual members.'

We have included links to ATO resources on our website - please see the Related Resources section below for link to online resources.

Tip: If your organisation is an incorporated association (or about to incorporate as an incorporated association) it is important to note that the 'Model Rules' that Consumer Affairs Victoria makes available, do not have the necessary clauses for applying to the ATO to be endorsed as a charity.

The 'Model Rules' do not contain a not-for-profit clause or a winding up clause. If your organisation wants to be eligible for income (and other) tax concessions, you will need to amend the Model Rules to have these clauses inserted, as well as a 'purposes' or 'objects' clause which is well-drafted, to show that your organisation is charitable.

For more information about setting up an incorporated association and rules, see the Related Resources section at the end of this document.

How to apply

You may need help from a lawyer or an accountant to take the following steps.

1. Incorporate

Your organisation must be incorporated as an incorporated association, company or co-operative. You will need a set of rules or constitution, depending on your legal structure.

2. Apply for an Australian Business Number (ABN)

You can apply online at www.abr.business.gov.au or by phoning the ATO on 1300 130 248 and asking for an application form.

3. Fill out the TCC application form

You can obtain a TCC application form by contacting the ATO on 1300 130 248 or on-line at www.ato.gov.au. We have also included a link to it on our website.

When you send your application form to the ATO, you should enclose a copy of the constitution or rules, some information about your organisation's activities, and explain why you think your organisation is charitable.

4. Provide any further information, as requested.

The ATO may write back to you, seeking further information about your objects, activities and committee members, before making a decision.

Does TCC endorsement make us tax deductible?

No. To be able to receive tax deductible donations your organisation needs to be endorsed as a deductible gift recipient (DGR). For more information about DGR see the Related Resources at the end of this document.

Related resources

Related PilchConnect fact sheets

Fact Sheet: Deductible Gift Recipients (DGR) categories

Related legislation

Income Tax Assessment Act 1997 (Cth)

Related links

For online legal information resources for Victorian community organisations about:

- ▶ what is a charity? See www.pilch.org.au/incometax
- ▶ income tax and tax concession charity status see www.pilch.org.au/incometax
- ▶ tax generally see www.pilch.org.au/tax
- ▶ setting up an incorporated association (and drafting rules or amending the 'model rules' to insert tax clauses) see www.pilch.org.au/incorporatedassociation
- ▶ setting up a company limited by guarantee and drafting a constitution to insert tax clauses) see www.pilch.org.au/companylg