

## Fact sheet: community organisations with overseas objectives

**Note:** The information contained in this fact sheet is intended as a guide only, and is not legal advice. If you do have 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 resident in, or affected by, the laws that apply in Victoria, Australia and is current at 1 June 2010.

### Overview

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This fact sheet is to assist community organisations with overseas objectives who wish to apply to the Australian Taxation Office (ATO) for endorsement as a Tax Concession Charity (TCC) or as a Deductible Gift Recipient (DGR). It sets out, for community organisations with overseas objectives:

- the extra test these organisations need to satisfy before being eligible to be a TCC; and
- DGR categories that may be available.

### Tax concession charity (TCC) endorsement

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#### What is TCC endorsement?

The PilchConnect fact sheet 'Applying for Tax Concession Charity (TCC) endorsement' explains TCC endorsement and the application process.

#### Our organisation has overseas objectives. Is it eligible to be endorsed as a TCC?

The characteristics of a charity are:

- ▶ it is an entity;
- ▶ it exists for the public benefit or the relief of poverty;
- ▶ its sole purpose is charitable, within the legal sense of that term;
- ▶ it is non-profit; and
- ▶ it has a physical presence in Australia and incurs its expenditure and pursues its objectives principally in Australia.

It is generally the last point (referred to as the 'activity test') which creates the difficulties for an organisation with overseas objectives.

## The activity test

To satisfy the activity test, your organisation must have some charitable objects in Australia. This means that your organisation cannot receive TCC endorsement if it is established just to raise money for an overseas organisation. Objects that may satisfy this test could be raising awareness in Australia and educating Australians about the particular situation overseas, supported by some activities in Australia.

Your organisation will also have to review where its funding comes from or is likely to come from, eg gifts, government grants, fundraising activities.

This is because when the Australian Tax Office (ATO) decides whether your organisation's expenditure is incurred and objects are pursued principally in Australia, it disregards how it spends gifts (eg. fundraising by raffles, dinners, auctions, jumble sales etc) and government grants.

The effect of disregarding how gifts and government grants are spent, is that money received from other sources (eg. sponsorship from businesses, membership fees, trading activities) must be spent principally in Australia. Gifts and government grants received will be presumed to be the money which is spent overseas.

It might be easier to see how this works using an example:

### Case study

ABC Ltd sends money and pursues relief activities overseas. It received income from the following sources in 2009:

Fundraising dinner	\$20,000
Membership fees	\$10,000
Corporate sponsorship	\$30,000
<u>Government grant</u>	<u>\$40,000</u>
Total income	\$100,000

It spent \$65,000 on its overseas activities and \$35,000 on Australian activities. Did ABC Ltd incur its expenditure and pursue its objectives principally in Australia?

At first glance, it seems that the answer is 'no', however, gifts and government grants (\$60,000 in total) are ignored for the purpose of the activity test and are presumed to be spent overseas. Where did ABC Ltd spend its remaining income of \$40,000?

Overseas: \$5,000 (ie \$65,000 less \$60,000)  
In Australia: \$35,000

ABC Ltd therefore satisfies the activity test as it incurs its expenditure and pursues its objectives principally in Australia.

## Deductible Gift Recipient (DGR) endorsement

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### What is DGR endorsement?

The PilchConnect fact sheet 'Deductible Gift Recipient (DGR) Categories' provides a brief summary of available DGR categories and the DGR endorsement process.

### Our organisation has overseas objectives. Is it eligible to be endorsed as a DGR?

As you will see from the following, it is not easy for a community organisation with overseas objectives to obtain endorsement as a DGR, and it is time consuming.

There are two possible categories of DGR under which your organisation may be eligible for endorsement (ie. that allow some operations overseas):

1. Environmental organisation - for more information please see our Checklist: Deductible Gift Recipient (DGR) categories.
2. Overseas Aid Fund - this is 'a public fund declared by the Treasurer to be a relief fund' under the Overseas Aid Gift Deduction Scheme (OAGDS). The rest of this fact sheet deals with overseas aid funds.

### Overseas aid funds

The Australian overseas aid program is managed by the Australian Agency for International Development (AusAID). The seven criteria for acceptance of an overseas aid fund are outlined in the OAGDS Guidelines which are available on the AusAID website (see Related resources at the end of this document).

Being accepted as an overseas aid fund is a two step process. First, the organisation must be accepted as an 'approved organisation' by the federal government. Secondly the organisation must satisfy the ATO that it has established a public fund exclusively for the relief of persons in countries declared by the Minister for Foreign Affairs as 'developing'. A list of declared developing countries is on the AusAID website (see Related Resources at the end of this document).

The criteria for being accepted as an 'approved organisation' are outlined the Guidelines. Amongst other things, the organisation must establish that:

1. it can demonstrate a successful track record of carrying out development or relief activities overseas for at least one and preferably two years;
2. it works in partnership with one or more overseas organisations; and
3. it is community based and accountable to its members, with a 'reasonable' number of voting members.

This fact sheet will now discuss each of these criteria in turn.

## **1. Are your organisation's activities development and/or relief?**

AusAID and the ATO use different criteria when assessing an applicant's activities. The ATO must be satisfied that the organisation has established a public fund for the 'relief' of persons in developing countries. AusAID, however, requires the organisation to have a successful track record in 'development or relief activities'. Some organisations have experienced problems with this distinction when applying for tax deductibility because their activities are 'development', not 'relief'. If your organisation wishes to receive DGR status as an overseas aid fund, the fund can only be established for the 'relief' work that your organisation undertakes.

The organisation's activities must be in the nature of development or relief, not welfare, partisan political, or evangelistic/missionary activities. 'Development', 'relief', 'welfare', 'partisan political' and 'evangelistic/missionary' are all defined in the Guidelines.

The main difficulties arise in establishing that your organisations activities are 'relief and/or development' as opposed to 'welfare' based. In summary, relief activities are relatively specific. They are defined as short-term, basic assistance in response to an emergency such as a natural disaster, famine or conflict. Development projects aim to produce broad sustainable benefits to the community that will be maintained after the Australian organisation's assistance ceases. In contrast 'welfare' is defined as direct assistance to individuals which addresses immediate needs and which is not related to an emergency or part of a broader community development program. Examples of welfare activities are funding a school, orphanage or hospital, or providing food or clothing to poor communities.

## **2. Is your organisation in partnership with an overseas organisation?**

To be eligible to be an overseas aid fund, your organisation must work in partnership with an overseas organisation, not just be a fundraising body for the overseas organisation. Ideally there should be a written partnership agreement with the overseas organisation.

Your organisation will need to show AusAID how it, and its overseas partner, approach each stage of the project lifecycle and provide examples of ongoing communication and reporting, and monitoring and evaluation of each project.

The Australian organisation must also ensure the overseas communities know that the assistance they receive comes from Australia, by, for example, having 'Australia' in its name and including in the partnership agreement a requirement that the overseas organisation discloses the nature and extent of the Australian contribution to its projects in annual reports, websites and publicity materials, for example.

### **3. Is your organisation community based and accountable to its members, with a 'reasonable' number of voting members?**

In order to meet the criteria about accountability and voting members, your organisation will need to identify:

- ▶ who is the governing body (ie. the board of director or committee of management);
- ▶ who the members are and how they are involved in the governance of the organisation;

A majority of members of the governing body need to be 'responsible persons', ie. people with a degree of responsibility to the community as a whole because of their positions in the community or public office. You will also need to have audited financial statements and annual reports.

#### **The application process**

The following list summarises some important things to consider before applying to AusAID to be declared an 'Approved Organisation':

- ▶ Is your organisation: Assisting a developing country? Doing more than raising funds? In partnership with an overseas organisation?;
- ▶ Does your organisation: Have activities in Australia? Have a successful track record of preferably two years? Undertake 'development and/or relief activities?' Have a reasonable number of members?; and
- ▶ Has the above been properly documented so that it can be demonstrated to AusAID?.

It is also worth noting that the complete process can take 9 – 12 months and sometimes longer.

**Tip:** It can also be very useful for organisations to discuss the nature of their organisation's overseas activities with AusAID staff prior to preparing an OAGDS application. AusAID can be contacted for further information on the OAGDS by phone (02) 62064688.

If your organisation is unsuccessful in its application you can reapply at any time once you are able to demonstrate that you have made changes which fix the issues identified in the previous application, and are able to provide documentation of these changes.

You will then need to make sure you have in place a developing country relief fund which is exclusively for the relief of persons in declared developing countries before you apply to the ATO.

## Is there another way of achieving tax deductibility?

There is an alternative to the Australian organisation becoming an overseas aid fund in its own right. The Australian organisation may wish to become a project of an existing overseas aid fund (see PilchConnect fact sheet on Auspicing in Related Resources at the end of this document). This could be a long term arrangement or could be used to establish a track record for a future application by the Australian organisation. The overseas aid fund can then receive the tax deductible donations for the project and apply them to your organisation under an agreement. Naturally your objects and activities must come within the objects of the existing overseas aid fund. The list of existing approved organisations is on the AusAID website (see Related resources at the end of this document).

## Related resources

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### Related PilchConnect fact sheets

PilchConnect FactSheet: Applying for Tax Concession Charity (TCC) endorsement

PilchConnect FactSheet: Deductible Gift Recipient (DGR) Categories

Checklist: Deductible Gift Recipient (DGR) categories

PilchConnect FactSheet: Auspicing

### Related legislation

*Income Tax Assessment Act 1997 (Cth)*

### Related external links

ATO

- ▶ Fact sheet 'Overseas aid funds and tax deductible gifts' see <http://www.ato.gov.au/nonprofit/content.aspx?doc=/content/30677.htm>
- ▶ Taxation ruling TR 2000/11 'Income tax: endorsement of income tax exempt charities' - for more detail on the TCC activity test see paragraphs 49 to 55, and for a fund, paragraphs 70 to 74. <http://law.ato.gov.au/atolaw/view.htm?docid=TXR/TR200011/NAT/ATO/00001>
- ▶ Taxation ruling TR 95/2 'Income tax: Overseas Aid Gift Deduction Scheme' see <http://law.ato.gov.au/atolaw/view.htm?Docid=TXR/TR952/NAT/ATO/00001&PiT=99991231235958>

AusAID

- ▶ Overseas Aid Gift Deduction Scheme (OAGDS) Guidelines see <http://www.ausaid.gov.au/ngos/tax.cfm>
- ▶ List of developing countries see [www.ausaid.gov.au/ngos/devel\\_list.cfm](http://www.ausaid.gov.au/ngos/devel_list.cfm)
- ▶ List of approved funds see [www.ausaid.gov.au/ngos/approved\\_funds.cfm](http://www.ausaid.gov.au/ngos/approved_funds.cfm)

- ▶ Summary of application process see [www.aisaid.gov.au/ngos/tax.cfm](http://www.aisaid.gov.au/ngos/tax.cfm)

Federal Government Department of Environment, Water, Heritage and the Arts

- ▶ Register of Environmental Organisations see [www.environment.gov.au/about/tax/index.html](http://www.environment.gov.au/about/tax/index.html)

Organisations which may be able to assist

- ▶ Australian Council for International Development (ACFID) see [www.acfid.asn.au](http://www.acfid.asn.au) (click on 'what we do' for a description of ACFID's services)
- ▶ World Relief Australia (WRA) see [www.worldrelief.org.au](http://www.worldrelief.org.au) (click on 'WRA services' under the 'Improve your serve' box for a description of WRA's services)