Tax facts and legal structures

The treasurer must ensure that the organisation meets all its tax responsibilities – and takes all its tax opportunities.

The not-for-profit sector is organised along diverse structures. Some are incorporated, many of the largest have their own acts of parliament, some are mutual societies, and others are branches of church organisations.

If you don't have a legal structure, your organisation is a group of individuals with no independent legal identity. Your members, and in particular, the committee members, are personally liable for your organisation and any debts it might incur.

Incorporation is one possible structure for your organisation. If your organisation is incorporated, it is recognised as a separate body by law and exists separately from its members.

Incorporation offers some protection for those in decision-making roles from debts or liabilities incurred by the organisation, but if an individual member acts illegally or negligently they can still be personally sued for losses and damages.

An incorporated organisation can hold property, enter into contracts, sue or be sued, and be left property in a will.

To become incorporated, a not-for-profit organisation must observe the requirements for the State in which you operate. For the details, see www.ourcommunity.com.au/management/

Not-for-profit organisations may have to pay income tax, Goods and Services Tax (GST), fringe benefits tax, and payroll tax. This will have implications for the way you keep your accounts and your transaction records.

You have to make decisions about how you want to approach the GST and may need to consult an accountant.

Tax concessions

Many community organisations are exempt from paying income tax, but this is not an automatic right.

If you are a charity, you can apply to the Australian Taxation Office (ATO) to become income tax exempt.
Not-for-profit organisations that are not charities can self-assess their income tax status and exemption.

Ask the ATO for their requirements if you're not certain whether your organisation is tax exempt. Material for not-for-profits is also available on-line at www.ato.gov.au/nonprofit/

To qualify for a tax exemption your activities must not be carried out for the profit or gain of individual members. Organisations, such as professional associations which operate for the common benefit of members, can qualify as not-for-profit organisations.

Your not-for-profit organisation can still make a profit, but these profits must be used to carry out your organisation's objectives, not distributed for personal gain to members, owners or other individuals.

Are you tax-exempt?

Organisations that can be exempt from income tax include:

- Community service organisations
- Cultural organisations
- Educational organisations
- Employment organisations
- Friendly societies
- Health organisations
- Religious organisations
- Resource development organisations
- Scientific organisations
- Sporting organisations

www.ato.gov.au

Although not-for-profits can't operate for the financial gain of individual members, they can pay their members for their services or compensate them for expenses they incur on behalf of the organisation.

Not-for-profit organisations are generally treated as companies for income tax purposes, but some organisations are more correctly treated as partnerships. An organisation that is exempt from income tax will be exempt whether it is a company or a partnership.

Taxable threshold

Not-for-profit organisations with taxable income of $416 or less a year do not have to lodge an income tax return. If your organisation's taxable income is more than $416 a year, you have to lodge an income tax return.

Concessions

Two concessions available to many not-for-profit organisations are:

- The exclusion from income tax of the effect of mutual dealings with members.
- Exemption from charging GST if your organisation qualifies.

Allowable and non-allowable deductions

It is usually easy to identify allowable and non-allowable deductions. For example, buying bags for members is not an allowable deduction, but buying bags to sell to the public as part of a fund-raising drive is an allowable deduction.

Sometimes separating expenses is not possible and in these instances, the ATO will usually accept the most practical and appropriate method of apportioning expenses.

Salary-packaging your committed staff

If you are classified as a charity, your staff can salary-package up to $30,000 worth of benefits before triggering the Fringe Benefits Tax (FBT).

Charities survive on a shoestring budget which can prevent them from matching the salaries offered by commercial employees. But the FBT breaks allow them to attract good quality staff by offering packages. Effectively, the staff get more for their salary dollar.

For example, Melissa George, an administration manager with Community Health and Tuberculosis Australia (CHATA), has mortgage and credit card repayments paid out of her gross (before-tax) salary.

The payments Ms George packages would normally attract a 48.5 per cent FBT bill if she worked for a run-of-the-mill business. The ability to re-package her mortgage and credit card bills was a significant drawcard.

This example is given to us courtesy of Money magazine, whose March 2004 edition contained an analysis of salary sacrifice.

The cap of $30,000 of grossed-up taxable value per employee does not apply in some instances, such as housing provided to a minister of religion.

Fringe benefits tax (FBT) is tax payable by employers which provide fringe benefits to employees.

Fringe benefits include:

- Allowing the employee to use the work car for private use.
- Providing a cheap loan.
- Paying an employee's private health insurance.

You need to distinguish between volunteers and employees. Volunteers are not paid in either cash or fringe benefits, though they may be reimbursed for out of pocket expenses. When you provide more than reimbursement, the person is generally regarded as an employee.

When the total taxable value of an employee's fringe benefit exceeds $1,000 in a financial year, it must be reported on the employee's annual payment summary. The employee doesn't have to pay income tax on the reportable fringe benefits.

Fringe benefits exempt from FBT include some minor benefits less than $100, some taxi travel, certain work-related items, such as mobile phones and work-related preventive health care.

The following organisations can also provide some exempt benefits. They are:

- Public benevolent institutions
- Religious institutions for certain employees
- Not-for-profit institutions whose activities include caring for elderly or disadvantaged people and who provide benefits to live-in carers

You need to keep employment records about employees, including personal details and tax file numbers. These records must be kept in a secure place. Records should include:

- Full name
- Contact details – address, phone and email address
- Emergency contacts
- Tax file number
- Date employment started
- Holiday leave
- Sick leave
- Superannuation fund

Australian Business Number

Even if your organisation is tax exempt, you need an Australian Business Number (ABN) for other tax obligations.

These tax obligations stipulate that your organisation must:

- Register for GST and claim tax input credits
- Register for Pay As You Go (PAYG)
- Have an ABN to deal with investment bodies
- Apply to the ATO for endorsement as a deductible gift recipient (DGR) if you operate a gift deductible fund or institution
- Avoid having tax withheld from your income
- Deal with the ATO on other taxes

If your organisation has independent branches or units, these can be treated as separate entities for GST purposes. If the sub-entity applies for an ABN, it can only be used for GST.

Goods and Services Tax

Goods and Services Tax (GST) is a broad-based tax of 10 per cent on most goods and services. It is a transaction-based tax, so no organisation is exempt.

Not-for-profit organisations must register for GST if their annual turnover is $100,000 or more and they may choose to register if it is lower. Other organisations must register for GST if their annual turnover is $50,000 or more and they may choose to register if it is lower.

If your organisation is not registered for GST, you cannot charge GST on your supplies or claim a GST refund on goods and services you've bought.

If you are registered for GST, you must add 10 per cent to the price of your taxable goods and services and pay the ATO 1/11th of the price you charge for them.

GST is included in the purchase price of many things you buy for your organisation. If you're registered for GST, you can claim a credit for the GST you've paid – this is called an input tax credit. You must have a tax invoice for your purchase in order to claim input tax credits.

Some goods and services are GST-free, for example, basic food, exports and some health services. However, if you make GST-free supplies, you can claim an input tax credit for the GST component of the goods and services you bought to make the GST-free supplies.

Some goods and services, such as financial services, are input taxed and so do not include GST in the price. You can't claim input tax credits for GST for anything you acquired to make an input taxed supply.

The ATO gives the example of a bank buying a calculator to calculate interest on its housing loans. GST is included in the price of the calculator, but the bank can't claim an input tax credit for this GST.

Another example is charity fund-raising events such as fetes, balls, galas and dinners. These can be input taxed, which means that no GST is charged on the fund-raising revenue and you can't claim any input tax credits for the expenses of running the events.

Pay As You Go system

The Pay As You Go (PAYG) tax system covers taxes payable to the ATO. For not-for-profit organisations, this will probably include:

- Income tax
- Tax withheld from employees' remuneration

PAYG consists of PAYG instalments and PAYG withholding. PAYG instalments allow you to pay tax instalments throughout the year.

PAYG withholding

With the PAYG system you withhold tax from payments you make. Even if you are a tax-exempt organisation, you are not exempt from PAYG withholding.

Under PAYG withholding, if you make certain listed payments you must withhold an amount from the payment and send it to the ATO.

Your organisation has PAYG withholding obligations if you make any of the following types of payment:

- Salary, wages, commissions, bonuses or allowances to an employee
- Remuneration to a director or member of a committee of management
- Salary, wages, commission, bonuses or allowances to an office holder
- Eligible termination payments, pensions and annuities
- Social security and compensation payments
- Payments for work or services under labour hire arrangements
- Payments for work or services where your organisation and an individual have a voluntary agreement to withhold payments for a supply (services or goods) to another business which does not have an ABN.

As an employer, you must withhold the correct amount from your employees' salary or wages and send this to the ATO. Tax tables show you how much to withhold. At the end of the financial year, you must give employees a payment summary to include in their tax returns.

Other common circumstances requiring PAYG withholding obligations are:

- Payment for work under voluntary withholding agreements (rates are in the ATO tax tables)
- Payments to a business which does not quote an ABN (highest marginal tax rate).

Exemptions

You do not need to withhold an amount if:

- The whole of the payment is exempt income of the supplier
- The payer is an individual paying for a supply of a private or domestic nature
- The payment does not exceed $50
- The supply is made by a member of a local governing body under a State or Territory law
- The payee has made a written, signed statement that the supply is private or domestic in nature, or relates to a hobby
- The supplier is a non-resident carrying on an enterprise in Australia
- The supplier has no reasonable expectation of profit or gain from the activity

Business Activity Statements

You will need to lodge a Business Activity Statement (BAS) monthly if your annual turnover is greater than $20 million. Otherwise, you have the option of lodging your BAS monthly or quarterly.

You use your activity statement to report and pay PAYG (instalments and withholding), FBT instalments, GST and related tax obligations, and deferred company instalments.

The ATO will send you a personalised activity statement for you to lodge, with some parts already filled in. Your activity statement will generally only show the obligations that relate to you. For example, if you do not have a PAYG withholding obligation, this section will not appear on your activity statement.

You must complete an activity statement at the end of each reporting period (month or quarter) if you have any PAYG, fringe benefits tax or GST and related obligations, even if the amount for that period is nil.

Deductible gift recipients

Some organisations, called deductible gift recipients (DGR), are entitled to receive income tax deductible gifts. You can become a DGR if you are:

- Listed by name in the income tax law as a DGR, or
- Endorsed as a DGR by the ATO

To apply to the ATO for endorsement, your organisation must:

- Have an ABN
- Be covered by one of the categories of DGR set out in the tax law
- Maintain a special fund to receive gifts

Superannuation Guarantee Levy

If your organisation employs staff, you are subject to the Superannuation Guarantee Levy (SGL).

Under this law, employers are required to pay a prescribed minimum level of superannuation support for most employees even if you are exempt from income tax. If your organisation does not provide enough superannuation support, you must pay a Superannuation Guarantee Charge, which is not a tax-deductible expense.

Most employees, whether full-time, part-time or casual, are covered by this legislation.

Your organisation does not need to pay SGL for employees who are:

- Paid less than $450 in any calendar month
- Aged 70 or over
- Non-resident employees paid solely for work outside Australia
- Under 18 and employed part-time (i.e. no more than 30 hours a week)
- Employed no more than 30 hours a week for work primarily of a private or domestic nature

Taxes you may avoid

You may be able to claim exemptions, concessions and rebates for some of the following taxes. As requirements vary between states and territories, you will need to seek clarification for your local State or Territory revenue office.

Stamp duty

Stamp duty is a tax on written documents and certain transactions including motor vehicle registrations and transfers, insurance policies, leases, mortgages, hire purchase agreements and transfers of property, such as real estate or shares.

Payroll tax

Payroll tax is the tax on wages paid by employers. Your organisation is liable for payroll tax when your total Australian wages exceed a certain level. This level varies from State to State.

Land tax

Land tax is a tax imposed everywhere except the Northern Territory. It is a tax levied on landowners, except in ACT, where it is levied on lessees under a Crown lease. Landowners are generally liable for land tax when the unimproved value of taxable land exceeds certain thresholds.

Capital gains tax

If your not-for-profit organisation is exempt from income tax, it is also exempt from capital gains tax.

Capital gains tax applies to not-for-profit clubs, societies and associations that are treated as companies for income tax purposes. It is the tax an organisation pays on any capital gain it makes and includes in its annual income tax return.