

# Freehills

## **Charitable institutions and trusts – income tax issues**

### **Introduction**

- 1 Until 1 July 1997, charitable institutions and trusts could largely ignore income tax legislation. Since 1922, (when the Income Tax Assessment Act was only 41 pages long), the income of a charitable institution and the income of a fund established by will or instrument of trust for public charitable purposes (provided that the fund was being applied for the purpose for which it was established) has been exempt from income tax.
- 2 Division 50 of the Income Tax Assessment Act 1997 imposes tax on the income of certain charitable institutions and funds derived on or after 1 July 1997.
- 3 This legislation was intended to prevent charities shifting tax exempt income offshore. In some circumstances, the income was apparently not ultimately used for charitable purposes.
- 4 The provisions are complex and in many cases it will be necessary for institutions and trusts to obtain professional advice as to the applicability of the legislation to them. Some institutions and trusts are clearly exempt from tax. Others will have difficulty in determining their position.
- 5 Further, as from 1 July 2000 it has been necessary for all charities (other than some prescribed institutions) to also be endorsed as income tax exempt charities to be exempt from tax on their income.
- 6 This paper attempts to provide an outline of the legislation and some practical suggestions as to how, so far as is legally possible, an institution or trust can minimise the risk of not falling within an exemption that may be applicable to it.

### **Scope of paper**

- 7 Charitable funds and institutions which fall within more specific exemption provisions are not expressly covered in this paper although many of the comments are relevant to them. Accordingly, no reference is made to the provisions relating to religious, scientific, or public educational institutions, scientific research funds, community service bodies, cultural bodies, public hospitals, or non-profit hospitals.

### **Legislation**

#### **Charitable institution conditions**

- 8 The income of a charitable institution will be exempt from income tax if:
  - under section 50-50 the institution:
    - "(a) has a physical presence in Australia and, to that extent, incurs its expenditure and pursues its objectives principally in Australia; or
    - (b) is an institution that meets the description and requirements in item 1 of the table in section 30-15; or

- (c) is a prescribed institution which is located outside Australia and is exempt from income tax in the country in which it is resident; or
- (d) is a prescribed institution that has a physical presence in Australia but which incurs its expenditure and pursues its objects principally outside Australia."<sup>1</sup>

(these are referred to in this paper as institution conditions (a) (b) (c) and (d)); and

- the institution is endorsed as exempt from income tax under Subdivision 50-B<sup>2</sup> or is prescribed for the purposes of institution conditions (c) or (d)<sup>3</sup>.

### Charitable fund conditions

9 The income of a fund established for public charitable purposes by will before 1 July 1997 is exempt from income tax if:

- the fund is applied for the purpose for which it was established<sup>4</sup>; and
- is endorsed as exempt from income tax under Subdivision 50-B<sup>5</sup>.

10 However, where assets are given to the fund, or left to the fund under a will, those assets, any assets received in substitution for them, and any income derived from those assets are deemed to comprise a new fund created on or after 1 July 1997 and the income of that new fund will only be exempt if it satisfies the strict requirements outlined in the following paragraph (except that it is not necessary for the fund to be established in Australia).

11 The income of a fund established in Australia for public charitable purposes by will on or after 1 July 1997 or by instrument of trust is exempt from tax if the fund is applied for the purposes for which it was established and if:

- under section 50-60 it:
  - "(a) incurs, and has at all times since 1 July 1997 incurred, its expenditure principally in Australia and pursues, and has at all times since 1 July 1997 pursued, its charitable purposes solely in Australia; or
  - (b) is a fund which is referred to in a table in Subdivision 30-B or in item 2 of the table in section 30-15; or
  - (c) distributes solely, and has at all times since 1 July 1997 distributed solely, to a charitable fund, foundation or institution which, to the best of the trustee's knowledge, is located in Australia and incurs its expenditure principally in Australia and pursues its charitable purposes solely in Australia; or
  - (d) distributes solely, and has at all times since 1 July 1997 distributed solely, to a charitable fund, foundation or institution that, to the

<sup>1</sup> Sections 50-1 and 50-5, item 1.1, section 50-50.

<sup>2</sup> Section 50-52(1) and see paragraph 3.7 below.

<sup>3</sup> Section 50-52(2).

<sup>4</sup> Sections 50-1 and 50-5, item 1.5 and section 50-57.

<sup>5</sup> Section 50-52(1) and see paragraph below.

best of the trustee's knowledge, meets the description and requirements in item 1 or 2 of the table in section 30-15."<sup>6</sup>

(these are referred to in this paper as fund conditions (a), (b), (c) and (d)); and

- the fund is endorsed as exempt from income tax under Subdivision 50-B<sup>7</sup>.

12 The references in:

- (a) institution condition (b) to "an institution that meets the description and requirements in item 1 of the table in section 30-15";
- (b) fund condition (b) to "a fund which is referred to in a table in Subdivision 30-B or in item 2 of the table in section 30-15"; and
- (c) fund condition (d) to "a charitable fund, foundation or institution that, to the best of the trustee's knowledge, meets the description and requirements in item 1 or 2 of the table in section 30-15",

are references to funds foundations and institutions which have deductible gift recipient status, that is, gifts to which of \$2 or more are deductible for income tax purposes.

## Application

13 It is necessary for an institution or trust to comply with only one of the institution conditions or fund conditions respectively as outlined in paragraphs 8 or 11. (In this paper, the institution conditions and fund conditions are together described as the "institution/fund conditions".)

14 The fund conditions are particularly complex and the attached flow charts outline the legislative theme with regard to them (see annexure A).

## Consequences of ceasing to be exempt from tax

15 If an institution or trust fails on even one occasion to comply with an institution/fund condition (as applicable), its income will permanently cease to be exempt from tax. There is no provision enabling the ATO to excuse minor or inadvertent breaches. Further, if the failure to comply was due to the negligence of the trustees (or the directors or committee members of an incorporated entity), they may be personally liable for the loss to the institution or trust, that is, the tax payable!

16 Similarly, if the endorsement of a charitable institution or fund as an income tax exempt charity is revoked by the Commissioner because the entity is not entitled to be endorsed or because the entity fails to provide information to the Commissioner relevant to its entitlement to be endorsed within the time specified in the request, the income of the institution or fund will cease to be exempt from tax from the date specified by the Commissioner (which may be before the Commissioner decides to revoke the endorsement – but not before the date the entity first ceased to be entitled to be endorsed).<sup>8</sup>

17 The consequences of an institution or trust ceasing to be exempt from tax are complex and will require detailed examination in each case. In general terms, Division 57 of Schedule 2D of the Income Tax Assessment Act 1936 will apply as from the date that

<sup>6</sup> Sections 50-1 and 50-5, item 1.5B, section 50-60.

<sup>7</sup> Section 50-52(1) and see paragraph below.

<sup>8</sup> Section 50-155.

the institution or fund becomes taxable. This Division has the broad effect that only expenditure, receipts, gains and losses relating to the period after that date are relevant in determining tax liability. However, the Division should be considered carefully as certain of its provisions may be thought of as unexpected. For example, a charity which has ceased to be exempt will not be able to deduct annual leave or long service leave payments to the extent to which the payments relate to services rendered prior to it ceasing to be exempt.

- 18 Generally, a non-exempt institution (if characterised as a company for income tax purposes) would be liable to pay tax at the rate of, currently, 30% on its taxable income. However, determining the taxable income of a charitable institution could well raise difficult and novel issues beyond the scope of this paper.
- 19 The position with regard to a charitable fund which has ceased to be exempt is even more difficult and the consequences to the fund will depend, among other things, upon whether it accumulates income, whether it distributes to non-exempt non-resident beneficiaries and if so, whether those beneficiaries are institutions or trusts.<sup>9</sup>

### Clear exemptions

- 20 Certain charitable institutions and funds will have no difficulty complying with the institution/fund conditions. These are as follows:
- (a) a fund established for public charitable purposes by will before 1 July 1997 (ie the death occurred before 1 July 1997)<sup>10</sup> provided the fund is applied for the purposes for which it was established<sup>11</sup> and that at no time on or after 1 July 1997 assets are given to the trust or become part of the trust under another will;<sup>12</sup>
  - (b) an institution which has deductible gift recipient status (ie, gifts of \$2.00 or more to it are deductible) (institution condition (b));<sup>13</sup>
  - (c) a fund which has deductible gift recipient status (fund condition (b));<sup>14</sup>
  - (d) an institution prescribed to be exempt by the regulations pursuant to the legislation (institution conditions (c) and (d)).<sup>15</sup>

### Specific issues in relation to institution/fund conditions

<sup>9</sup> See, for example, sections 97(1), 97(2)(b), 98(3) and (4) and 99A(4) or (4A), Income Tax Assessment Act 1936.

<sup>10</sup> Section 50-5 item 1.5.

<sup>11</sup> Section 50-57.

<sup>12</sup> Section 50-80 - (which, in very broad terms, grandfathers the pre July 1997 assets and makes the new assets subject to the new legislation).

<sup>13</sup> Sections 50-1 and 50-5, item 1.1 and section 50-50(b).

<sup>14</sup> Sections 50-1 and 50-5, item 1.5B and section 50-60(b).

<sup>15</sup> Sections 50-1 and 50-5, item 1.1 and sections 50-50(c) and (d).

## Charitable institutions

### ***"physical presence in Australia" (institution condition (a))***

21 The explanatory memorandum to the legislation states that a broad interpretation will be adopted in relation to this requirement – "all that is required is for an organisation to operate through a division, sub-division or the like in Australia. The structure of the organisation is immaterial as is whether it has its central management in control or principal place of residence in Australia. On the other hand, the term does not apply where an organisation merely operates through an agent based in Australia".<sup>16</sup>

### ***"principally" (institution conditions (a) and (d))***

22 The explanatory memorandum notes that this term is not defined in the legislation. "The dictionary definition of the word principally is mainly or chiefly. Accordingly, it is not possible to specify a particular percentage but less than 50% would not be considered to meet the principally requirement. Where there is some doubt whether this requirement is satisfied it will be necessary to examine each institution's individual circumstances."<sup>17</sup>

## Charitable funds

### ***General scope of fund condition (a)***

23 It is understood the ATO takes the view that this condition applies only to funds which provide or carry on direct "hands on" charity work and that it does not apply to funds which merely distribute funds to agencies etc for use by them.

24 The correctness of this view is important as if fund condition (a) extends to both types of trust referred to in the preceding paragraph, it may be possible for a fund which merely distributes to agencies to argue that is not necessary for it to comply with fund conditions (c) or (d) and that it should be exempt from tax provided that the recipient agencies appear to be "Australian".

25 Although the issue is not free from doubt, in my view it is well open for a court to support the ATO view that funds which merely distribute to agencies etc must comply with the more specific distribution requirements of either fund condition (c) or (d) and that fund condition (a) is limited to funds directly involved with charity work.

### ***"pursued, its charitable purposes solely in Australia" (fund condition (a) - see also fund condition (c))***

26 It is prudent to assume that any overseas pursuit of purpose or direct or indirect provision of benefit may prevent a charitable fund relying on fund condition (a).

27 Even though the explanatory memorandum states that this requirement "does not mean, however, that an incidental activity or pursuit outside Australia will prejudice the exempt status of a charitable trust"<sup>18</sup>, (and while this statement in the explanatory memorandum may provide some comfort in practice), if a charitable fund in any way pursues its charitable purposes offshore, there is in my view a risk that it will not fall within this condition.

<sup>16</sup> See para 3.12 of the explanatory memorandum to Taxation Laws Amendment Bill (No 7) 1997 .

<sup>17</sup> See para 3.14 *ibid*.

<sup>18</sup> See para 3.14 *ibid*.

**"to the best of the trustee's knowledge"<sup>19</sup> (fund conditions (c) and (d))**

- 28 Many difficulties are likely to arise from this requirement. While it appears to impose a subjective test relating to the actual state of the trustee's knowledge, the state of knowledge of several trustees (if individuals) or of a corporate trustee can be difficult to establish.
- 29 The explanatory memorandum states that as "it would be unreasonable to expect the trustee of a charitable trust to be aware whether the organisation to which it distributes funds was undertaking its work solely in Australia, the requirement in the legislation is simply, 'to the best of the trustee's knowledge, is located in Australia and pursues its charitable purposes solely in Australia'. Accordingly, the trustee does not need to undertake a detailed examination of the charity to whom the distribution is to be made. The trustee cannot, however, ignore the fact that a charity is known not to pursue its charitable purposes solely in Australia".<sup>20</sup>
- 30 However, there is an issue as to whether the statement in the explanatory memorandum would be accepted as correct by a court. Does a statement of best belief imply that there are objectively reasonable grounds for the belief?<sup>21</sup> In view of the potential difficulties, it is prudent for trustees of a grant making trust seeking to rely on fund conditions (c) or (d) to obtain a certificate and indemnity from proposed recipients of grants. Among other things, a certificate will mean that trustees can more easily evidence their knowledge.
- 31 Where the grant making trust seeks to fall within fund condition (c) the certificate could be along the lines of annexure B. It is strongly suggested that without exception, the trust obtain from the proposed recipient a copy of the advice from the ATO to the recipient as referred to in the certificate that the recipient has been endorsed as an Income Tax Exempt Charity.
- 32 Where the trust seeks to fall within fund condition (d), the certificate could be similar to the certificate in annexure C.
- 33 Some grant making trusts may not wish to ask potential recipients for an indemnity. If this is the case, the last paragraph of the certificates should be omitted and the heading changed to omit the reference to an indemnity. For a number of reasons, the indemnity may be unenforceable and grant making trusts should not assume it is. However, the indemnity should at least make potential recipients take the certificate more seriously than they would if it were not included. It would, of course, be necessary for the trustee to have no contrary knowledge of the activities or status of the recipient organisation. Any actual contrary knowledge by the trustee would negate the effectiveness of the certificate.
- 34 As mentioned above, the explanatory memorandum states that it would not be necessary for the trust to make a detailed examination of the charity to whom the distribution is to be made. However, in addition to obtaining a certificate from potential recipients, in some circumstances and pending the issue of any further statements of comfort by the ATO on this matter, cautious trusts may well wish to obtain direct evidence of the

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<sup>19</sup> Sections 50-60 (c) and (d).

<sup>20</sup> See paras 3.24 and 3.25.

<sup>21</sup> In the context of insurance contract representations and the UK Marine Insurance Act 1906, this issue was considered by the UK Court of Appeal in *Economides v Commercial Assurance Co. Plc.* [1997] 3 WLR 1066. Many of the relevant principles with regard to statements of belief are examined in that case and in an article appearing in the November 1998 Modern Law Review by Howard Bennett.

purposes and activities of the proposed recipient before making each grant or if grants are made throughout a year, at, say, annual intervals.

- 35 This evidence would normally involve reviewing the constituent documents (eg the memorandum and articles of association or constitution of a company limited by guarantee, the statement of purposes and statement of rules of an incorporated association, the statement of purposes and rules of an unincorporated association, and the instrument establishing a trust) and its last financial statements and annual report.
- 36 This would be done in an attempt to ensure the certificate appears accurate. Unfortunately, it is to be expected that incorrect certificates will be issued by some grant-seekers due, in the main, to them not fully understanding them.

**"located in Australia" (fund condition (c))**

- 37 The explanatory memorandum states that a "much narrower meaning is intended in relation to the term 'located' [than the term 'physical presence']". A mere physical presence is not sufficient to satisfy this requirement although it is not necessary for an organisation to be resident for income tax purposes. A separate centre of operations such as a branch falls within the meaning of this term".<sup>22</sup>

**"or" means "or"**

- 38 Fund conditions (c) and (d) (like all of the conditions) are expressed in the alternative. Accordingly, a charitable fund will fail to comply with either condition if it distributes in part to institutions which fall within paragraph (c) and the balance of its distributions were to institutions which fall within paragraph (d).
- 39 A trust may well assume that this could not possibly have been the intention of the legislation and accordingly distribute to both categories of recipients. This would not be acceptable. The ATO has advised that the "or" is deliberate.
- 40 One would think that if a charitable fund complies with either of those conditions, the policy of the legislation would be satisfied. For example, if a fund distributed one-half of its income in a year to a charitable fund, foundation or institution which incurs its expenditure principally in Australia and pursues its charitable purposes solely in Australia (see fund condition (c)) and the other half to a charitable fund, foundation or institution that meets the requirements of item 1 or 2 of the table in section 30-15 (in other words, is a type of deductible gift recipient) (see fund condition 50-60(d)), then the legislative requirement should be satisfied.
- 41 But this is not the case. Each of paragraphs (c) and (d) require that at all times since 1 July 1997 distributions have been made by the particular fund "**solely**" to the particular type of recipient. In the context of that section, "or" very clearly means "or"!
- 42 An example would be a private charitable trust which distributes to a variety of charitable organisations including both deductible gift recipients and non-deductible gift recipients. However, if one of those organisations was an overseas aid fund endorsed as a Deductible Gift Recipient, the trust would cease to be entitled to be exempt from tax because it did not comply with **either** paragraphs (c) or (d). It would not comply with paragraph (c) because one of the recipients was an overseas aid fund which of course did not pursue its charitable purposes solely in Australia and it would not comply with

<sup>22</sup> Explanatory memorandum to the No 7 Bill, para 3.13.

paragraph (d) because it did not distribute solely since 1 July 1997 to deductible gift recipients.

### ***Institution versus trust***

- 43 The treatment of charitable institutions is more lenient than charitable trusts. In particular, a charitable institution which carries out its own operating activities will satisfy institution condition (a) if it, among other things, pursues its objectives **principally** in Australia whereas a charitable trust operating with similar activities must, among other things, pursue its charitable purposes **solely** in Australia to satisfy fund condition (a).
- 44 Accordingly, it is important to determine whether the charity is an institution or a trust.
- 45 The legal distinction between the two terms has long been considered difficult and the relevance of the distinction for the institution/fund exemption conditions could well result in litigation.
- 46 While it is clear that a legal entity such as a company limited by guarantee or an incorporated association operating in its own right is not a trust (and would normally be considered to be an institution<sup>23</sup>), it is not clear that a trust can never be an institution. This issue has been the subject of a considerable number of court decisions.<sup>24</sup>
- 47 If a trust operates a "hands on" charitable agency, has a number of employees, and is generally of some "substance", it may well be properly characterised as an institution. However, if a trust operates simply to distribute income or capital for charitable purposes, it is unlikely that the trust would be an institution.<sup>25</sup>
- 48 If the different tax treatment between charitable trusts and charitable institutions is likely to be relevant to a charity operating in a trust structure, it may be worthwhile for that charity to obtain professional advice as to whether, in fact, it could be characterised as an institution.
- 49 In some cases, it may be possible for a charitable trust to be restructured as an institution. Prior to doing so, consideration should be given as to whether it would be prudent to obtain the approval of the ATO to the restructuring.

### ***Overseas distributions of gifts***

- 50 Any distribution by an institution or trust of an amount received by it as a gift or by way of government grant is to be disregarded for the purposes of determining whether an institution incurs its expenditure or pursues its objectives principally in Australia or in determining whether a trust has satisfactorily distributed its income or capital.<sup>26</sup>
- 51 The Treasurer has commented that "funds applied overseas will be taken as being firstly paid out of 'gifts' and then income" and that a charity will retain its tax exempt status in the current income year if the sum of gifts and donations received by it (presumably,

<sup>23</sup> For an example of when it was held to the contrary, see *Pamas Foundation v FCT* 92 ATC 4161.

<sup>24</sup> Eg *Manchester Corporation v McAdam* [1896] AC 496, *Stratton v Simpson* (1970) 125 CLR 138, *Allport Bequest v FCT* 88 ATC 4436, and *Pamas Foundation v FCT* *ibid* (refer, in particular to the cases cited at 4163).

<sup>25</sup> *Allport Bequest v FCT* *ibid*.

<sup>26</sup> Section 50-75.

during the current year) exceeds the total funds applied overseas.<sup>27</sup> Similarly, one of the relevant explanatory memoranda states as follows:

"Charitable trusts will retain their tax exempt status if the total funds applied overseas (excluding government grants and [gifted] moneys) are less than the sum of gifts and donations received. The funds applied overseas will be taken as being firstly paid out of 'gifts' and then income."

52 The word 'gift' in section 50-75 apparently has a wide meaning:

'... receipts from fund raising by means of raffles, dinners, auctions, jumble sales and the like by non-commercial or nonbusiness organisations will be treated as amounts "in the nature of gifts". However, where a donor is likely to obtain a tax deduction (eg, for advertising) the material advantage obtained would disqualify the donation as a gift in the hands of the recipient.'<sup>28</sup>

## Summary

53 For those charitable institutions and trusts which do not fall within a clear institution/fund condition, the legislation is likely to cause considerable difficulties. The consequences of failing to satisfy a condition on even one occasion results in a permanent loss of tax exemption and possible personal liability to the trustees, directors etc.

54 Accordingly, except where a clear exemption applies, specific professional advice as to the applicability of the legislation should be obtained.

## Income tax exempt charity endorsement

55 As mentioned above, a charity seeking exemption from income tax must in addition to complying with the applicable institution/fund conditions, be endorsed as exempt under Subdivision 50-B<sup>29</sup> unless the charity is a prescribed institution under institution conditions (c) or (d). Even those charities which are named as having deductible gift recipient status in the legislation<sup>30</sup> or which also qualify for exemption under a more specific provision of the exemption legislation (eg, religious institutions, public museums, public universities and scientific institutions) must be endorsed.

56 A charity will be entitled to be endorsed as exempt from income tax (commonly known as Income Tax Exempt Charity, or ITEC, endorsement) if:

- (a) it applies on the form approved by the ATO;
- (b) has an ABN;
- (c) is a charitable institution or fund which satisfies the institution/fund conditions relevant to it or which has not commenced to carry on any activities as a charitable institution or a fund for charitable purposes and there are reasonable

<sup>27</sup> Additional Supplementary Explanatory Memorandum to the Senate in relation to *Taxation Laws Amendment Bill (No 4) 1997*.

<sup>28</sup> Paragraph 3.18 of the explanatory memorandum to the *Taxation Laws Amendment Bill (No 7) 1997*. Also see paragraphs 53 to 55 of *Taxation Ruling TR 2000/11*

<sup>29</sup> Section 50-52.

<sup>30</sup> For example, Foundation for Rural Regional Renewal Public Fund and the Scout Association of Australia.

grounds for believing it will comply with the relevant institution/fund conditions.<sup>31</sup>

- 57 The ATO may endorse an ITEC as from a date before the ITEC applied to be endorsed and even before it has an ABN<sup>32</sup> but the practice of the ATO is not to backdate endorsement to a date when the charity was not be complying with the relevant institution/fund conditions.
- 58 If a charity is endorsed as an ITEC, it must notify the ATO before or as soon as practicable after it ceases to be entitled to be endorsed. It is an offence not to give that notification punishable in the case of a first offence, by a fine of up to \$2,000.
- 59 In contrast to endorsement as a deductible gift recipient, ITEC endorsement is not notified publicly on the Australian Business Register.

**John Emerson**

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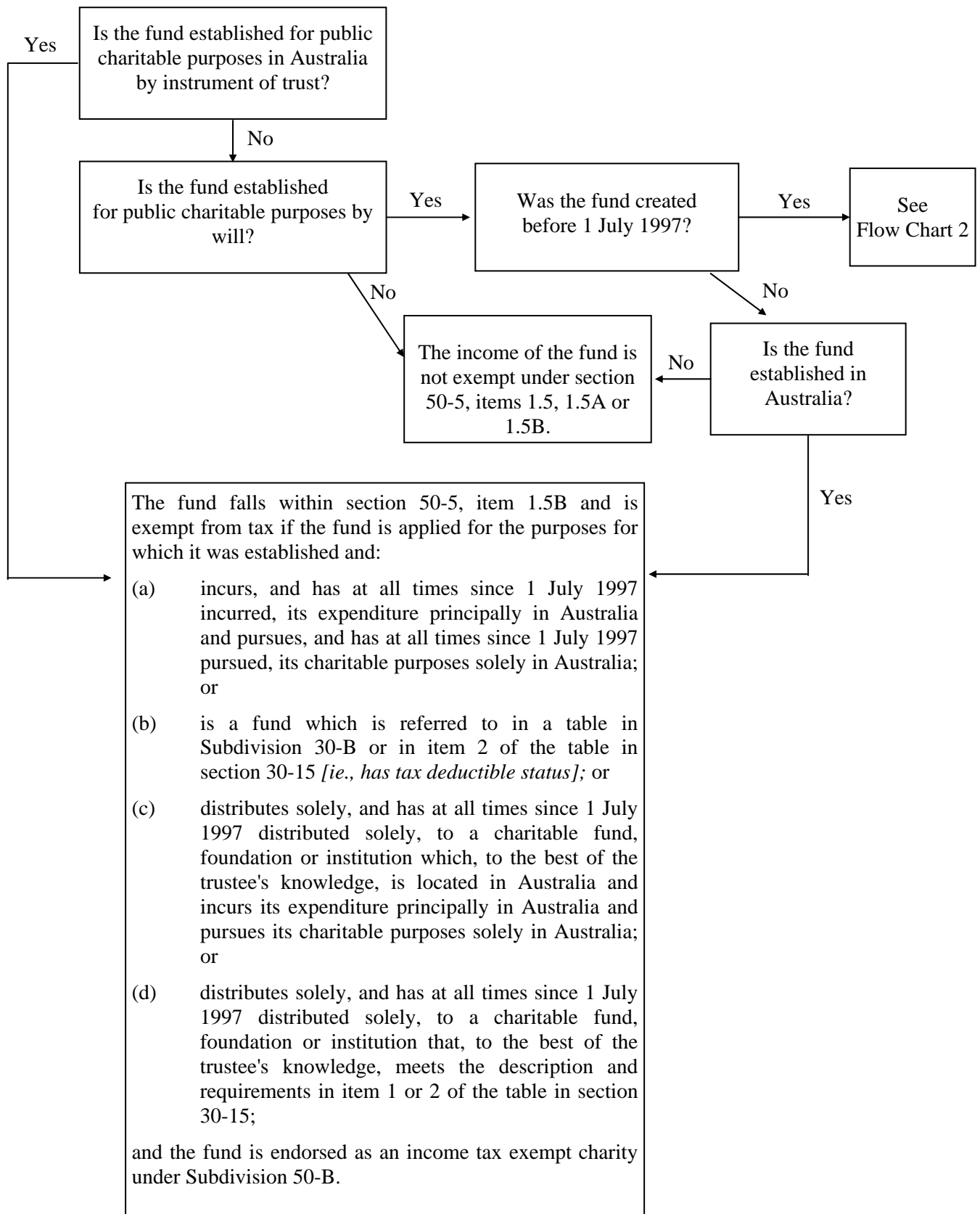
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<sup>31</sup> Sections 50-110 and 50-115.

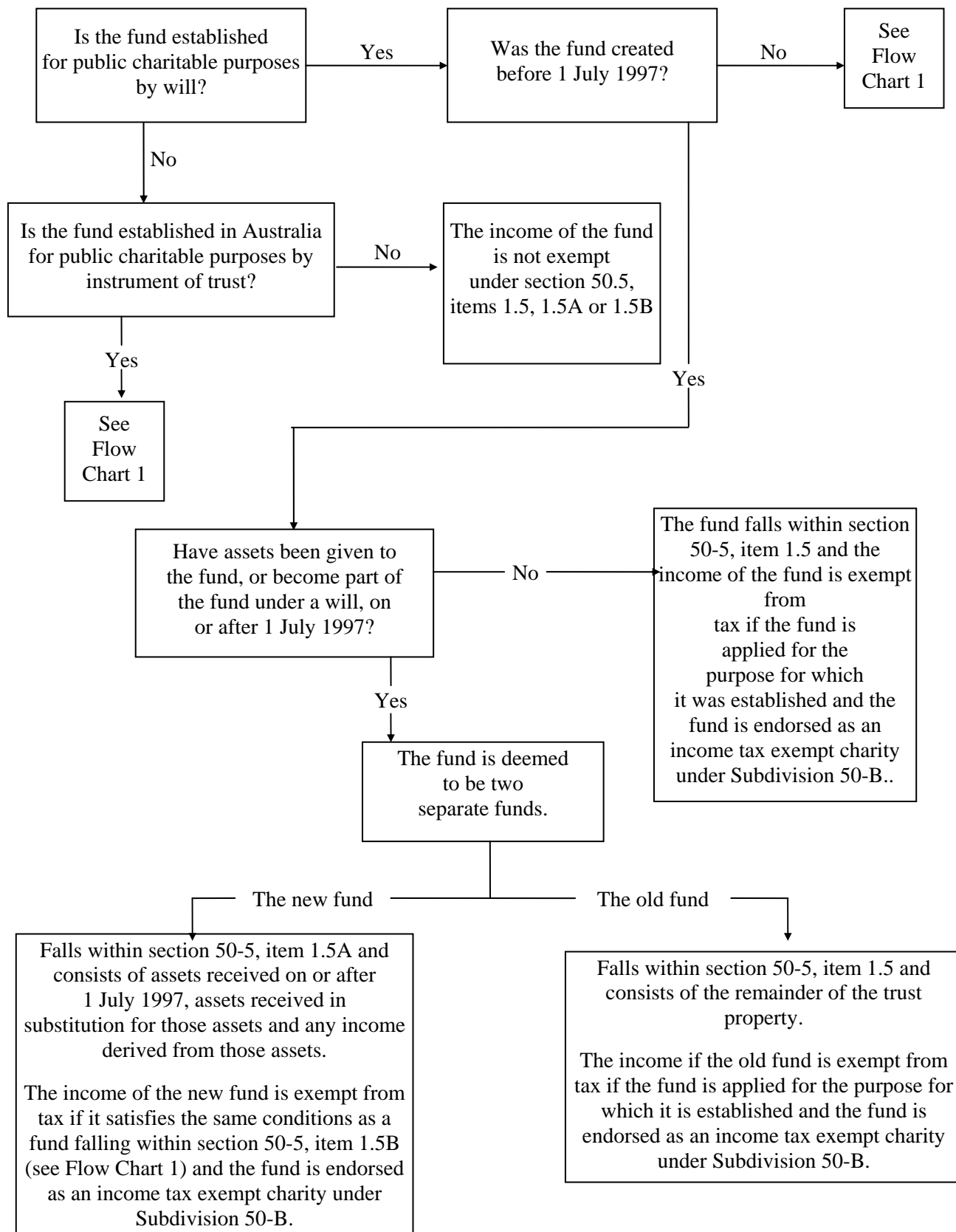
<sup>32</sup> Section 50-135.

## Annexure A – Flow charts – charitable funds

### Flow Chart 1 Charitable Funds



## Flow Chart 2 Charitable Funds



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**Annexure B – Fund condition (c)  
(paragraph 31)**

**Certificate and Indemnity**

To *[name of proposed grantmaking trust]*

*[name and ABN of proposed recipient of grant]* certifies as follows:

- it is located in Australia;
- it incurs its expenditure principally in Australia; and
- it pursues its charitable purposes solely in Australia.

We enclose a photocopy of the letter from the Australian Taxation Office advising we have been endorsed as an Income Tax Exempt Charity and certify that the endorsement has not been revoked nor have we ceased to be entitled to be so endorsed.

We request that you rely on this certificate in deciding whether to distribute funds to us and we acknowledge that if this certificate is incorrect, you may suffer significant financial loss as your income may become subject to income tax.

**Some trusts may not wish to ask potential recipients for an indemnity. If this is the case, the following paragraph should be deleted.**

In consideration of you relying on this certificate at our request, we indemnify and hold you harmless against any loss or liability suffered by you resulting directly or indirectly from this certificate being incorrect.

Dated

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Authorised signatory

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**Annexure C – Fund condition (d)  
(paragraph 32)**

**Certificate and Indemnity**

To *[name of proposed grantmaking trust]*

*[name and ABN of proposed recipient of grant]* certifies it is a fund, authority or institution which meets the description and requirements in item 1 or 2 of the table in section 30-15 of the Income Tax Assessment Act 1997 .

We enclose a photocopy of the letter from the Australian Taxation Office advising we have been endorsed as an Income Tax Exempt Charity and certify that the endorsement has not been revoked nor have we ceased to be entitled to be so endorsed.

We enclose a photocopy of the letter from the Australian Taxation Office advising we have been endorsed as a Deductible Gift Recipient and certify that the endorsement has not been revoked nor have we ceased to be entitled to be so endorsed.

We request that you rely on this certificate in deciding whether to distribute funds to us and we acknowledge that if this certificate is incorrect, you may suffer significant financial loss as your income may become subject to income tax.

**Some trusts may not wish to ask potential recipients for an indemnity. If this is the case, the following paragraph should be deleted.**

In consideration of you relying on this certificate at our request, we indemnify and hold you harmless against any loss or liability suffered by you resulting directly or indirectly from this certificate being incorrect.

Dated

.....

Authorised signatory