Strategies for churches to maximise income (and donations)

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Introduction

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A little about us...

Same

- Same team, same mission
- Still called to deliver Just, Redemptive Outcomes®
- General practice of law with a particular focus on not-for-profit & charity law.

Different:

- Name change - Vocare (pronounced vo-ka-ray); latin meaning "to be Called.
- Additional **new** office in North Ryde, Sydney.

Strategy 1
Establish a Business Unit

- Churches are generally Tax Concessional Charities usually endorsed under the Subtype of Advancement of Religion.
- Churches do not pay income tax but are required to apply their income and profits to their purposes.
- Churches can either establish subsidiary entities (also Tax concessional charities under the subtype of Advancement of Religion) or a business units and then apply the profits to the parent entity or to another operation (ie. the church actual).
- The question of whether to establish a subsidiary or not is largely a question of risk and liability.

KEY CASE

Commissioner of Taxation v Word Investments Ltd

- Word Investments Ltd ("Word") was founded as a company limited by guarantee by members closely associated with Wycliffe Bible Translators (Australia) ("Wycliffe"). Wycliffe was an Income Tax Exempt Charity engaged in the training or dispatching of missionaries overseas, the publishing of the Bible and the preaching of the gospel. Word did not conduct such activities itself directly, but instead conducted both an investment business and a funeral business. The profits of such businesses, after operating expenses, were given to Wycliffe, and other similar Christian organisations.
- Held:
  - The Court held that the inclusion of clauses within Word's memorandum of association empowering Word to 'carry on any business activity' and to invest funds did not state an object in itself, but merely created a 'power' to be utilised 'in aid of its charitable purposes'.
  - An entity which does not conduct any significant charitable activities itself but, rather, conducts a commercial activity for profit can be a charitable institution where it distributes, its profits to charitable institutions.
  - "One case would arise where a company limited by guarantee which had religious charitable objects organised itself into two divisions, one of which employed the company's assets to make profits, the other of which spent the profits on those objects. A second case would exist where a company limited by guarantee had the same objects and made the same profits, but gave them to other organisations which spent them on those objects."

Strategy 2
Establish a DGR Fund

- A deductible gift recipient (DGR) is an Organisation or Fund that can receive tax deductible donations.
- If a donation is tax deductible, donors can deduct the amount of their donation from their taxable income when they lodge their tax return.
- Churches (that is, charities established for the purposes of Advancement of Religion) are generally not eligible themselves for DGR endorsement but can establish funds for this purpose.
- DGR Funds can apply their funds for limited purposes. Accordingly, they are suitable for specific ministries not the whole operation of the church.
- As this gift is pre-tax it can provide a significant uplift in giving depending on the marginal tax rate of the donor.

Necessitous Circumstances Fund

- The term 'necessitous circumstances' refers to financial necessity. It does not extend to needs generally. For example, being sick, incapacitated or aged are not necessitous circumstances on their own.
- Being in necessitous circumstances:
  - involves poverty, though it may not be abject poverty or destitution
  - does not mean just being without luxuries.
- A person is in necessitous circumstances where they don't have enough financial resources to have a modest standard of living in Australia.
- Effectively, this is a fund for the poor.
- Churches may use this fund to fund soup kitchens, domestic violence shelters, homelessness programs etc.
- It may also include gifts to individuals experiencing temporary poverty.

School and College Building Fund

- Item 2.1.10
- Most schools are not eligible to be endorsed as a DGR. Instead, a school (or a foundation affiliated with the school that is registered as a charity) will operate 'public funds' such as a school building fund, which will be eligible for endorsement as a DGR if it meets the following requirements:

- It is a public fund (to which the public is invited to contribute, and does in fact contribute).
- There is a school or college.
- There must be a building or buildings.
- The building must be used by a qualifying body (such as a not for profit society or association) as a school, to provide instruction.
- The fund must be used for the acquisition, construction or maintenance of a building.
- If the fund is an entity that is a charity (or eligible to be a charity), it must be registered with the ACNC.

KEY CASE

The Buddhist Society of Western Australia Inc v Commissioner of Taxation (No 2) [2021] FCA 1363

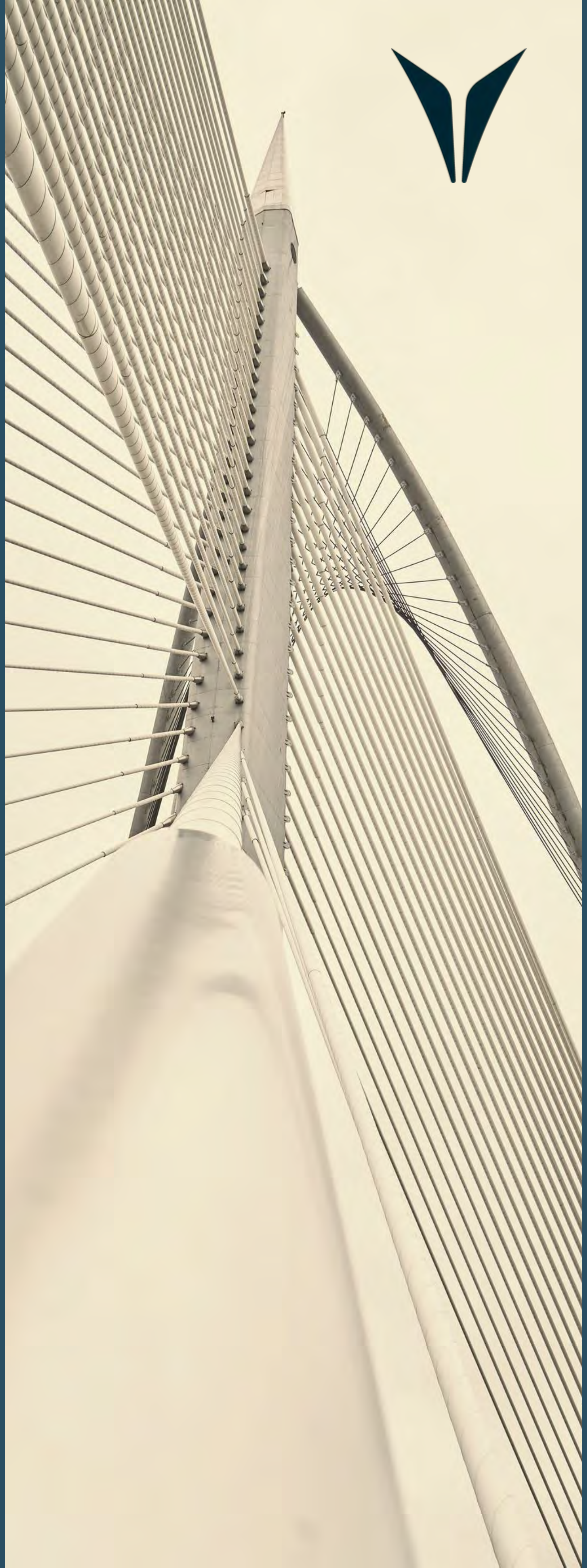
- The Buddhist Society of WA ("the Society") was an entity with designated deductible gift recipient ("DGR") status for the purposes of running the Dhammaloka Buddhist Centre Building Fund ("the Fund"). However, in late 2019, the Commissioner of Taxation revoked the DGR status of the Society to operate the fund, perceiving that the buildings the subject of the fund were not being used as either a "school" or "college" as required by the ITAA Act.
- Held:
  - The ATO, in considering an application for DGR status for a School Building Fund, will now assess the overall purposes for which the building was established and maintained, and the nature of the activities that support the overall purposes.
  - A school is 'a place where people, whether young, adolescent or adult, assemble for the purpose of being instructed in some area of knowledge or of activity' … [A] school is 'an institution in which instruction of any kind is given'. [Barwick CJ in Cromer Golf].
  - The ATO now adopts the Court's views that the education provided by a "school" does not have to be "vocational as opposed to recreational", and will accordingly shift its attention to the activities undertaken and whether it can be demonstrated that "instruction is being given in an activity or area of knowledge".

Other DGR Funds/ Institutions

- Public Benevolent Institutions
- Community Shed (Item 1.1.9)
- Scholarship Fund (Item 2.1.13)
- Harm Prevention Institution (item 4.1.4)
- Disaster Relief fund (Item 4.1.5)
- Marriage Education Fund (Item 8.1.1)
- Religious Instruction Fund in Government Schools Fund (Item 2.1.8)

General Fund Requirements

- Given that Deductible Gift Recipient Status is such a favourable category, the ATO is rigorous in ensuring that the property and income of the fund is applied to its purposes.
- Governors of the fund need to be “Responsible Persons” – that is they need to hold positions of public trust.
- There are rigorous accounting standards to be met.
- The fund must strictly ensure its property and income is applied to its purpose only – careful thought must be given when there is potential for a benefit to be gained by a related party.



A few things to note:

1. If the church has a number of DGR funds (or associated organisations) it can establish a Public Ancillary Fund which is a catch-all clearing house for DGR contributions which can direct gifts to the actual funds (A PAF cannot apply funds directly).
2. There is usually some education required so that congregation members maintain donations to the church (as well as their DGR contributions).
3. Care needs to be taken that DGR funds are applied strictly to DGR operations.

Strategy 3
Giving from Family Trusts

- A discretionary trust is an arrangement by which a trustee (individual or company) agrees to hold property ("trust property") "on trust" for a number of potential beneficiaries (usually family members). This arrangement is often informally referred to as a family trust. The property held by the trust could be a business or investment (e.g. shares or real estate).
- When a discretionary trust holds property, the usual intention is that income will be derived from the trust property. Under the Trust Deed terms, the trustee has discretion as to who among the trust beneficiaries will receive trust income.
- If income is taxed in the hands of the beneficiary, and the beneficiary is tax exempt then no income tax is paid on that income. The beneficiary does not need to be able to receive tax deductible donations (i.e. Deductible Gift Recipient). As long as the beneficiary is income tax exempt (for instance a 'tax concessional charity'), then no tax is paid on the income distributed to it.
- Therefore, to the extent that the trust gives income to a tax-exempt entity (e.g. the family's church) the gift is in pre-tax dollars.

A few things to note:

1. The trust beneficiaries named in the discretionary trust deed must be broad enough to include the Church.
2. To the extent the trust distributes income that is a dividend, the gift will usually come with a credit known as an imputation credit or or franking credit. This is particularly pertinent to keep in mind if the dividend is from a company wholly owned by the trust.
3. In most cases, the donor should seek tax accounting advice to ensure that their giving from a family trust is availing itself of the best tax arrangements.

Strategy 4

Purchase Land and seek Land Tax exemption (Qld)

- In various states a Land Tax exemption applies to real property that is used for charitable purposes.
- Section 47 of the Land Tax Act 2010 (Qld) provides:
  - *Exemption for land owned by or for charitable institution (1) This section applies to all land owned by, or held in trust for, a charitable institution, … (2) The land is exempt land if— (a) it is used predominantly by the charitable institution for 1 or more exempt purposes; or*
- The key terms here are "used…. for …. purposes".

Queensland Revenue Office - Example

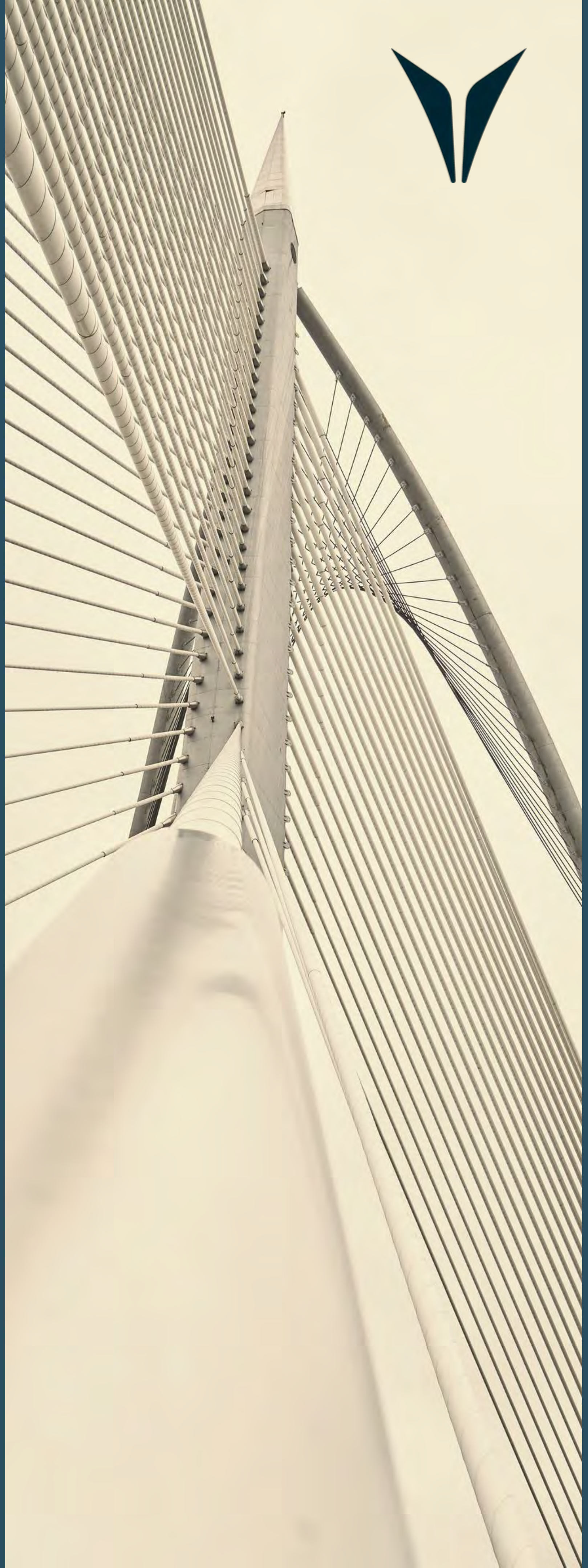
Rental monies used for a charitable purpose

ABC Charity purchased a property to be used as disability accommodation, and is waiting on building approval that will take more than 6 months to finalise. It will rent the property for 12 months from settlement date and use the money for a charitable purpose. The exemption applies because the rental will be used for a charitable purpose for the specified timeframe

- The High Court decision of Commissioner of Taxation of the Commonwealth of Australia v Word Investments Ltd provides that a charity's commercial activities may be charitable if they are conducted in the furtherance of its charitable purposes. For example, commercial activities may be charitable where all profits derived from the activities are applied solely towards the furtherance of the charity's charitable purposes.
- This process involves seeking a Land Tax exemption for the property on the basis the income derived from the land is being used for an exempt purpose.

- This applies in:
    - NSW – The land must be owned by or in trust for a charity - Section 10(1)(d) of the *Land Tax Management Act 1956* (NSW)

- This does not apply in:
    - Victoria – The land needs to be 'occupied' by the charity or vacant or used for 'outdoor sporting, outdoor recreational, outdoor cultural or similar outdoor activities' (s74 LTA)



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Thank you.

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