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Senate Standing Committees on Economics
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8 November 2024

Dear Sir/Madam,

Tax Laws Amendment (Incentivising Food Donations to Charitable Organisations) Bill 2024

CPA Australia is Australia's leading professional accounting body and one of the largest in the world. We represent the diverse interests of more than 173,000 members in over 100 countries and regions. We make this submission in response to The Treasury in relation to **Tax Laws Amendment (Incentivising Food Donations to Charitable Organisations) Bill 2024** (the **Bill**) released on 2 July 2024 on behalf of our members.

CPA Australia supports the introduction of a Food Donations Tax Offset, as proposed in the Bill, which offers tax relief for expenditure incurred in providing food and specified services including storage and transportation of food to registered food relief charities. This legislation is particularly timely given the current economic climate, where rising living costs are exacerbating food insecurity across Australia.

Food insecurity and food waste remain pressing societal and environmental challenges, and this legislation represents a meaningful step toward addressing both issues. By incentivising food donations, the Bill, in principle, promotes responsible food management and supports those most vulnerable to food scarcity. We make the following key recommendations:

- Broaden eligibility for the 40 percent offset, by removing the current $50 million cap so that those entities that collectively contribute significantly to food waste in Australia are in scope.
- Remove the 30 percent tax non-refundable offset tier such that there are only two tiers and that a 40 percent non-refundable tax offset applies for all companies with aggregated turnover in excess of $20 million.
- In the event an aggregated turnover limit is to be retained, we recommend setting the maximum threshold at a significantly higher level (i.e. $5 billion). In addition, we recommend further modelling be undertaken to assess the legislation's effectiveness in reducing food waste and enhancing food relief efforts (a cap of $5 billion versus $250 million versus $50 million versus no cap).

CPA Australia fully supports the passage of this legislation, with the suggested amendments, and looks forward to the successful implementation of the Food Donations Tax Offset.

Please refer to the Appendix for our detailed discussions. If you have any queries, contact Jenny Wong, Tax Policy Lead on jenny.wong@cpaaustralia.com.au.

Yours sincerely,

Elinor Kasapidis
Chief of Policy, Standards & External Affairs

Appendix

Summary

CPA Australia supports the introduction of a Food Donations Tax Offset, as proposed in the Tax Laws Amendment (Incentivising Food Donations to Charitable Organisations) Bill 2024, which offers tax relief for expenditure incurred in providing food to registered charities. This legislation is particularly timely given the current economic climate, where rising living costs are exacerbating food insecurity across Australia.

Food insecurity and food waste remain pressing challenges, and this legislation represents a meaningful step toward addressing both issues. By incentivising food donations, the Bill, in principle, promotes responsible food management and supports those most vulnerable to food scarcity.

We commend the targeted nature of this incentive, which focusses relief efforts on those in need through the donation of food and related activities to food relief organisations.

However, we recommend that the Bill be amended to broaden eligibility for the 40 percent offset, extending it to a greater range of entities that collectively contribute significantly to food waste in Australia.

As currently drafted, the $50 million aggregated turnover cap (inclusive of the aggregated turnover of connected entities and affiliates) is too restrictive and will exclude a substantial portion of contributors to food waste (and potential donors of food relief and associated services). As a result, the offset's potential impact on food insecurity relief efforts and food waste reduction may be limited. One of the key goals of the Food Donations Tax Offset was to assist in the reduction of food waste in Australia by 50% by 2030 in accordance with Australia's National Food Waste Strategy. It is submitted that in order to meet this goal, any incentive will need to be broad enough to have a measurable impact.

CPA Australia fully supports the passage of this legislation, with the suggested amendments highlighted below, and looks forward to the successful implementation of the Food Donation Tax Offset.

Further detailed discussion is set out below.

Detailed discussion

Food Donations Tax Offset eligibility threshold

The current drafting of the legislation provides a tax offset capped at the lower of $5 million or the amount based on a specified percentage of food donations expenditure incurred depending on the company's aggregated turnover. The specified percentage is:

- For a company with an aggregated turnover of less than $20 million - 45% (cash refundable tax offset).
- For a company with an aggregated turnover of at least $20 million and less than $50 million - 40% (non-refundable tax offset).
- For a company with an aggregated turnover of at least $50 million—30% (non-refundable tax offset).

It is important to note that the definition of aggregated turnover includes not only the annual turnover of the food donor but also the turnover of all connected entities and affiliates, which may include foreign entities. The 'associate-inclusive' nature of this definition means that a small Australian entity with foreign ownership could easily exceed the $50 million aggregated turnover threshold. Even if the aggregated turnover threshold were raised to $250 million, it could still be relatively easy for such entities to breach, potentially limiting access to the offset only for smaller, domestically owned food donors.

The largest contributors to food manufacturing in Australia highlight the importance of striking the right balance of including entities with higher turnover thresholds in the offset eligibility criteria and having legislation that makes enough of a difference to address food insecurity and reduce food waste in Australia. We consider that a $50 million aggregated turnover threshold in the proposed legislation (and even $250 million as set out in some submissions) is too low and unlikely to achieve the intended impact of this proposed measure. In particular, one of the key goals of the Food Donations Tax Offset was to assist in the reduction of food waste going to landfill in line with Australia's National Food Waste Strategy which set a goal to halve the country's food waste by 2030.

The Top 100 food manufacturers[1] account for 75% of food manufacturing in Australia, with entities exceeding $250 million in Australian group turnover representing 82% this group. In fact, Australian food manufacturers with a local turnover above $250 million collectively represent 73% of the national food manufacturing industry's turnover[2]. Waste within this sector is also significant; food manufacturing waste alone accounts for 1,276 thousand tonnes, or 17%, of the 7,676 thousand tonnes of total waste[3]. Expanding eligibility for the 40 percent offset to include more larger entities would increase the impact of the legislation on reducing food waste and supporting food relief efforts and also enhance the volume of quality of food that is donated to food relief organisations.

We recommend the Bill be amended to change the 30% tax non-refundable offset to a 40% non-refundable tax offset for all companies with aggregated turnover in excess of $20 million. This would result in only two tiers available for taxpayers – those with less than $20 million aggregated turnover (45 percent food donations tax offset) and those with aggregated turnover of $20 million or above (40 percent food donations tax offset). This is because the food donations tax offset is not available in respect of expenditure that is claimed as a deduction or another tax offset (see s419-20(3)(c)). With a corporate tax rate of 30%, whether the food donations expenditure is deductible or not, the tax benefit will be 30% for the company and therefore Item 3 in s419-10 of the Bill would not make any difference to the outcome to the taxpayer. Item 3 in s419-10 of the Bill should therefore be removed.

In addition, the current drafting of the legislation provides a tax offset that is capped at the lower of $5 million or the amount based on a percentage of food donations expenditure incurred depending on the company's aggregated turnover.

There is a threshold question as to why an aggregated turnover threshold of $50 million (or any other amount) is required when a cap on claims of $5 million is already contained in the Bill. In addition, a non-refundable carry forward tax offset cannot be carried forward if you are unable to meet either the continuity of ownership test (**COT**) or the business continuity test (**BCT**) in Division 165-A of the ITAA 1997. We believe the current $5 million cap on the food donations tax offset for a company and the current integrity provisions of COT and SBT that apply to tax offsets should provide a sufficient limitation and integrity on the amount of the Food Donations Tax Offset for each entity without imposing an additional cap that must be met before entities are entitled the 40 percent Food Donations Tax Offset.

If an aggregated turnover limit concept is to be retained, we suggest setting the maximum threshold at $5 billion to which the 40 percent tax offset is available. In addition, we recommend further modelling to assess the legislation's effectiveness in reducing food waste and enhancing food relief efforts based on thresholds of $5 billion versus $250 million versus $50 million versus no cap. Other alternative approaches to consider include limiting the turnover thresholds to the turnover of the Australian economic group of the food donor and set the threshold to a lower limit in determining the eligibility of the 45 or 40 percent tax offset (with modelling to determine the appropriate limit).

Other issues

To further enhance the effectiveness of the proposed legislation, CPA Australia recommends the following:

- **Clear guidance**: Provide clear guidance to businesses on eligibility criteria, claiming and record keeping process. This is especially important for smaller businesses that may lack the resources to navigate the tax rules.
- **Definitional issues**. It is submitted as an integrity measure, the proposed definition of registered food charity should be limited to those registered charities providing food relief directly or indirectly to people in necessitous circumstances (i.e. food relief organisations, homeless shelters). Further, food should be defined in the Bill (for example, by reference to the definition in the A New Tax System (Goods and Services Tax) Act 1999 (**GST Act**).[4]

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[1] Food and Drink Business, The Top Food and Drink Companies for 2023

[2] Australian Food and Grocery Council media release, Australian food and grocery manufacturing industry shows resilience amid rising costs, 20 August 2024

[3] National Food Waste Strategy Feasibility Study Final Report 2021

[4] section 195-1 of the GST Act provides food has the meaning set out in section 38-4 of the GST Act which states:
Meaning of food
(1) ***Food*** means any of these, or any combination of any of these:
(a) food for human consumption (whether or not requiring processing or treatment);

- **Work with stakeholders on practical and simple implementation of receipt allocation processes** for all donations, including those of related services. This would ensure all participants in the food donation supply chain, including transport providers and food processors, can adequately substantiate their claims.
- **Include entities other than companies.** It is important to recognise that sole-trader and partnership arrangements are the most common business structures used by farming businesses in Australia. The predominant use of partnership structures sets agriculture apart from all other industries where company structures are the preferred model[5]. We submit that farmers in partnerships or sole traders should be allowed to access the Food Donations Tax Offset.
- **Human resources expenses exclusion -** Section 419-20(3)(a)(i) excludes remuneration to persons who perform work or services. This would prima facie, apply to the farmer on the land. We believe the intent of the human resources expenses exclusion is aimed at office workers. Therefore, we submit that this exclusion be clarified and should not apply to farmers on land.

(b) ingredients for food for human consumption;
(c) * beverages for human consumption;
(d) ingredients for beverages for human consumption;
(e) goods to be mixed with or added to food for human consumption (including condiments, spices, seasonings, sweetening agents or flavourings);
(f) fats and oils marketed for culinary purposes;
but does not include:
(g) live animals (other than crustaceans or molluscs); or
(ga) unprocessed cow's milk; or
(h) any grain, cereal or sugar cane that has not been subject to any process or treatment resulting in an alteration of its form, nature or condition; or
(i) plants under cultivation that can be consumed (without being subject to further process or treatment) as food for human consumption.

(2) ***Beverage*** includes water.

[5] The Australian Farm Institute (2016), Farm funding models and business structures in Australia, 5 September 2016