

Wednesday 5 February 2014

Committee Secretariat
Finance and Expenditure Select Committee
Parliament Buildings
Wellington

RE: Taxation (Annual Rates, Employee Allowances, and Remedial Matters) Bill

Community Housing Aotearoa (CHA) is the peak body for the community housing sector, and we take great interest in this Bill as it directly affects several of our members, and potentially affects many more who wish to provide a range of services to meet housing needs in their regions. Currently the directly affected members are Habitat for Humanity, the Queenstown Lakes Community Housing Trust, the Marlborough Sustainable Housing Trust, and the New Zealand Housing Foundation. Dwell Housing Trust would be affected when a currently planned mixed tenure development proceeds. Some of our Maori / iwi members have advised that they could be negatively impacted by the Bill, particularly as they seek to advance mixed tenure communities and shared equity models for their tribal members. In the disability sector, Accessible Properties and its parent organisation IHC have identified that they too may become affected in the future.

CHA applauds the intent of the clauses of this Bill that seek to resolve the uncertainty of income tax status for community housing organisations which include paths to homeownership within their local responses to improve housing affordability. Our members work across a broad housing continuum, which aligns with the goals of the housing reform programme. We are worried that unless some key provisions of the Bill are altered, we will not be able to achieve the aims of the reform programme around mixed tenure, mixed income, balanced communities.

The overriding goal of our submission is to ensure that community housing entities that have in the main enjoyed charitable status have certainty of income tax exemption into the future. Typically, these organisations deal with housing

stress in our communities – stress that can't be measured by the simple "poverty" test.

We are commenting on only those sections of the Bill relating to community housing providers, which we understand are the following:

Clause 28 amends section CW 42 as part of granting a tax exemption to certain community housing providers.

Clause 29 inserts new section CW 42 to grant a tax exemption to certain community housing providers.

Clause 110 amends section LD 3, to give a donation tax credit for gifts to certain charities and to certain community housing providers.

Clause 123 amends section YA 1. Subclause (6) amends the definition of charitable organisation, to ensure that certain deregistered charities have access to fringe benefit tax concessions. Subclause (7) inserts a definition of community housing entity for the purpose of granting certain community housing providers a tax exemption.

Clause 159 inserts a new section 225D, to allow the making of regulations in relation to the grant of a tax exemption to certain community housing providers, including the making of retrospective regulations.

We strongly support the general approach of the Bill to allow a new form of tax-exemption for community housing providers that genuinely meet a set of easy to identify criteria we outline in our recommended amendments to the Bill.

The new form of tax exemption must operate to support a social enterprise approach, and not remain within the charity context, if it is to be successful in supporting government and the community housing sector to achieve the nature and scale of the Social Housing Reform Programme.

In this submission, we set out two approaches:

- 1) The preferred approach applies tests on the community housing organization that ensure its income, assets and profits are deployed solely towards the objects of its housing mission, delivered through a non-profit structure. To enable pathways to independent living, this approach cannot require any further tests of the income or assets of the class of recipient household for the purposes of confirming the tax-exempt status of the community housing organization.
- 2) The inferior approach, to work for the affected providers, would apply tests in the income and assets of the assisted household, which must be at the intermediate market level of up to 120% of the median household income,

adjusted annually for inflation, and set for each District and/or City Council jurisdiction across New Zealand. The current proposal suggests that these levels would be set by Order in Council, yet they are to be within the lower quartile. The discrepancy between these two approaches would need to be resolved; even if it were, this will not provide a suitable alternative tax exemption for community housing as it simply repeats the charity approach currently in place.

To achieve the preferred approach, we focus our comments exclusively on the proposed Clause 29. We are generally comfortable with the Definition for Community Housing Entity, proposed in the Bill and therefore highlight it on the next page of this submission as the essential test, with consideration of a proviso.

To ensure clarity of the points we raise in this submission, we would suggest that the preferred approach could be achieved if changes along the lines set out below were to be made to the proposed text:

Clause 29

New section CW 42B inserted (Community housing trusts and companies)

(1) After section CW 42, insert: "CW 42B Community housing trusts and companies

"Exempt income

· "(1) An amount of income derived by a community housing entity from a business of providing new houses (the business) is exempt income so long as the community housing entity operates in a manner that is consistent with the definition of a community housing entity. ~~if the only beneficiaries of the trust or only clients of the company, as the case may be, are—~~

· ~~"(a) community housing entities that derive exempt income 10 under this section:~~

· ~~"(b) persons, or classes of persons, described in regulations made under section 225D of the Tax Administration Act 1994.~~

· "Definition

· "(2) In this section and section LD 3 (Meaning of charitable or other public benefit gift), community housing entity means a trust and its trustees, or a company, that carries on the business, and—

· "(a) the business is not carried on for the private pecuniary profit

of any individual; and

- (b) all profit of the business is reinvested into the business;*
- (c) no person with some control over the business is able to direct or divert, to their own benefit or advantage, an amount derived from the business.*

We argue that this approach is superior and preferred, as it provides a clear separation between where government applies its different tests:

- absolute, enduring certainty of tax status for the organisation as a legal entity, so long as it performs according to tests a,b,c above;
- funding contracts as the proper place for variable settings on who housing assistance is targeted to (for example, the household income and asset tests)

We understand that government policy, as implemented through its funding contracts for the Income Related Rent, or the Social Housing Fund for example, may have clauses as to whom the community housing organization would direct the funding. In some years, that funding may wish to target intermediate market households earning 120% of median income, in need of affordable equity to obtain shared ownership, In other years the priority might be directed exclusively to families earning less than 60% of the median income. We think this separation of function, between the tax status of the community housing organization, and any funding contracts that it may have (whether from government, community trusts, or others) is the more appropriate approach.

We also note that the provisions should not stipulate that this is only for new housing. The problem that these sections of the Bill are resolving relates to both existing charities with portfolios of families living in shared ownership homes, as well as providers who are currently under contract for delivering shared ownership.

In parts (b) and (c) of this definition – where a CHP is required to reinvest all profit into its business, we suggest consideration of a proviso to ensure that community housing entities that are structured as a part of a charitable organisation can deploy surpluses from other social good activities to invest capital. That proviso would be :

“ (b) and (c) does not apply to profits or dividends transferred to a charitable entity”.

This shareholder can quite reasonably expect some flexibility to utilise community housing entity surpluses, if any, for its other social good activities. We suspect this situation applies mostly to community housing entities that have devolved from church or other social support organisations.

Clause 29 continues, and we support the requirement that the community housing organization would need to be registered with the new Regulatory Authority;

Before section CW 42B(2)(a), insert: “(aa) the trust and its trustee or the company, as the case may be, are a registered community housing provider under the Housing Restructuring and Tenancy Matters Act 1992; and”.

It is important, however, that the proposed “Regulatory Framework for Community Housing Providers” dated 20 December 2013 which is currently out for consultation by the Ministry of Business, Innovation, and Employment (MBIE) amend their suggested definitions, such that our preferred definition for community housing entity as set out on page 3 of this submission, is used by the new Regulatory Authority, and that its currently proposed definition for community housing provider be altered to only apply to the social landlord function. It is also important that all categories of registration are turned on at the beginning of the Regulatory Authority’s initiation, as we have affected members who are not currently pre-qualified with the Social Housing Unit, and thus will not be able to satisfy the automatic registration under the Housing Act. These points are more fully explained in CHA’s submission to MBIE.

We ask that the Select Committee integrate its work with the Regulatory Authority to ensure all relevant cross-policy areas are aligned.

The inferior approach will require a significantly higher monitoring and compliance burden, for both government and the community housing sector, in that there would need to be annual setting of median household income by district/city council area, adjusted for household size. And if an organisation’s annual reporting requires it to disclose that a formerly eligible household is now ‘better off’ (which is one of the goals of the housing reforms that our member organisations are to achieve) then that puts the organisation’s tax exemption at constant risk. As organisations grow to larger scale, this could happen frequently. We have not been able to ascertain a way to mitigate this risk.

All of our member organisations providing affordable equity, shared ownership or other pathways to home ownership are at risk of losing their tax exempt status under any regime that requires assessment of the household income level after the family has been initially deemed eligible.

Further, if the household income test were applied to families who have improved their situation and are paying a market rent in affordable rental or social rental housing, the organization may also be at risk of losing their tax exempt status.

The proposed Bill will not achieve its aims if this test, as currently set out in Clause 29 remains in the final Act.

Implementation

Should the preferred approach be achieved, then there are many consequential provisions that we ask officials to ensure are resolved as this moves into the implementation phase. We are happy to speak further to these during the Select Committee hearing:

- How transitional provisions will work for existing charitable organisations;
- Whether an organisation should set up a new legal entity that is registered for this new tax exemption and transfer portions of its community housing, or whether the entire organisation is deemed tax exempt;
- What the preferred structure is for new organisations entering into this area
- Whether all of the current benefits available to a registered charity have been made available to this new tax exempt status, which include
 - FBT exemption
 - GST treatment (questions on taxable supply changes?)
 - Donee status
 - Listing on some form of “register” to provide verification to the public and other grant-making organisations

We ask MBIE to talk with grant making agencies whether they will grant to the new taxable structure entity as if when they were charities.

This last point is of concern, in that we would want to ensure that all community housing organisations who move to this new form of tax exemption can still apply for grants from community and philanthropic trusts. Currently, grant-making trusts are able to confirm that your organisation is charitable by checking the Charities Register. We would want to ensure a similar system is available.

Thank you for your time. Community Housing Aotearoa welcomes the opportunity to speak to the submission at your hearing.

Kind regards



Scott Figenshow
Director
Community Housing Aotearoa

director@communityhousing.org.nz
phone: 021-061-9664