



Treasury Laws Amendment (2021 Measures No. 2) (Deductible Gift Recipients—Extended Application Date) Instrument 2021

I, Michael Sukkar, Assistant Treasurer, Minister for Housing and Minister for Homelessness, Social and Community Housing, make the following instrument.

Dated 7 October 2021

Michael Sukkar
Assistant Treasurer
Minister for Housing
Minister for Homelessness, Social and Community Housing

Contents

| | |
|---|---|
| Part 1—Preliminary | 1 |
| 1 Name | 1 |
| 2 Commencement | 1 |
| 3 Authority..... | 1 |
| 4 Definitions | 1 |
| Part 2—Mandatory considerations for determining an extended application date | 3 |
| 5 Criteria to which the Tax Commissioner must be satisfied in determining an extended application date..... | 3 |
| 6 Matters to which the Tax Commissioner must have regard in determining an extended application date..... | 3 |

Part 1—Preliminary

1 Name

This instrument is the *Treasury Laws Amendment (2021 Measures No. 2) (Deductible Gift Recipients—Extended Application Date) Instrument 2021*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

| Commencement information | | |
|---------------------------------|--|--------------|
| Column 1 | Column 2 | Column 3 |
| Provisions | Commencement | Date/Details |
| 1. The whole of this instrument | The day after this instrument is registered. | |

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *Treasury Laws Amendment (2021 Measures No. 2) Act 2021*.

4 Definitions

In this instrument:

ACNC Commissioner means the Commissioner of the Australian Charities and Not-for-profits Commission.

application date has the same meaning as in item 12 of Schedule 1 to the Act.

deductible gift recipient has the meaning given by the *Income Tax Assessment Act 1997*.

extended application date has the same meaning as in item 12 of Schedule 1 to the Act.

Tax Commissioner means the Commissioner of Taxation.

the Act means the *Treasury Laws Amendment (2021 Measures No. 2) Act 2021*.

Section 4

transitional application date has the same meaning as in item 12 of Schedule 1 to the Act.

Part 2—Mandatory considerations for determining an extended application date

5 Criteria to which the Tax Commissioner must be satisfied in determining an extended application date

Under subitem 16(7) of Schedule 1 to the Act, all of the following criteria are prescribed:

- (a) as at the time the application is given to the Tax Commissioner, there has been no change in the circumstances of the applicant that would affect the applicant's entitlement to endorsement as a deductible gift recipient under section 30-125 of the *Income Tax Assessment Act 1997*, but for the amendments made by Schedule 1 to the Act;
- (b) as at the time the application is given to the Tax Commissioner, the applicant has never previously had an application for registration under section 30-10 of the *Australian Charities and Not-for-profits Commission Act 2012* refused;
- (c) as at the time the application is given to the Tax Commissioner, the applicant has never previously, under section 35-10 of the *Australian Charities and Not-for-profits Commission Act 2012* had their registration under that Act revoked (except where registration was revoked solely because the condition in paragraph 35-10(1)(e) of that Act was met).

6 Matters to which the Tax Commissioner must have regard in determining an extended application date

Under subitem 16(7) of Schedule 1 to the Act, all of the following matters are prescribed:

- (a) during the period between the application date and the transitional application date, whether the applicant took reasonable steps:
 - (i) to meet or satisfy all of the requirements for entitlement for registration as a type of entity under section 25-5 of the *Australian Charities and Not-for-profits Commission Act 2012*; and
 - (ii) to apply for registration under section 30-10 of the *Australian Charities and Not-for-profits Commission Act 2012*; and
 - (iii) if the ACNC Commissioner has required the applicant under subsection 30-15(1) of the *Australian Charities and Not-for-profits Commission Act 2012* to give information or a document—to give that information or document;
- (b) whether it is reasonably possible that the applicant will, by the extended application date, be able to meet or satisfy the requirements mentioned in subparagraph (a)(i);
- (c) if the applicant believes that they are unlikely to be able to meet or satisfy the requirements mentioned in subparagraph (a)(i) by the transitional application date—whether it is reasonable, having regard to all the circumstances, that the applicant be given additional time to wind-up,

Section 5

including additional time to identify another deductible gift recipient with the same or similar purposes (including awaiting the establishment of a new deductible gift recipient with the same or similar purposes), and to distribute all remaining assets upon winding-up to that other deductible gift recipient;

- (d) any views expressed by the ACNC Commissioner about any of the matters referred to in paragraphs (a) to (c).