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Mr. Mark Warner
Committee Clerk,
Standing Committee on Legislation
GPO Box A11
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BY EMAIL - lccl@parliament.wa.gov.au

Dear Mr. Warner

Submission in response to the Taxation Legislation Amendment Bill 2014

I refer to the Taxation Legislation Amendment Bill 2014 introduced to the Parliament of Western Australian in June 2014 that seeks to amend the Duties Act 2008, the Land Tax Assessment Act 2002, the Pay-Roll Tax Assessment Act 2002 and the Taxation Administration Act 2003.

Co-operative Bulk Handling Ltd ("CBH") welcomes the opportunity to provide a submission to the Standing Committee on Legislation inquiry into the Taxation Legislation Amendment Bill 2014 ("the Bill").

Background - The CBH Group

Co-operative Bulk Handling Limited ("CBH") is a unique organisation with a history almost as long as the grain industry it serves. CBH's commitment to maintaining a partnership with its Western Australian grain grower members has helped build an industry that has been the backbone of the State's rural economy since the beginning of the bulk handling system 80 years ago.

This partnership has also been the basis of CBH's strength and success.

Now Australia's biggest co-operative and a leader of the nation's grain industry, CBH is controlled by 4,200 grain growers.

Rather than motivated by profit and shareholder dividends, CBH seeks to invest in supply chain infrastructure and undertakes its business operations in order to ensure Western Australian grain growers are part of an efficient, well managed supply chain that contributes to their farm-gate returns.

CBH currently employs around 1,000 permanent employees supported by up to 2,000 casual staff during the months of harvest. These employees are located across the co-operative's ten regional offices, 195 receival site locations, four ports, engineering workshops, representative offices in Melbourne, Hong Kong, Tokyo and Portland (USA) and a head office located in West Perth, Western Australia.

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Comment on the Bill

CBH has a range of concerns regarding provisions in the Bill that would remove "fourth limb" organisations from existing exemptions on payroll tax, transfer duty and land tax provisions.

Removal of these exemptions would add significant cost back into the Western Australian grain sector that is fundamentally dependent on exporting grain into an increasingly competitive world grain market.

These additional costs are ultimately borne by grain growers with compounding negative economic and social impact on regional Western Australian communities.

The existing exemptions in conjunction with CBH's co-operative structure provide a key framework from which the organisation is able to support and indeed enhance Western Australia's \$3.5 billion grain industry.

It is as such CBH's very strong view that these exemptions must be maintained on the basis that:

- As a co-operative owned and controlled by Western Australian grain growers, CBH operates to create and return value to Western Australian growers and to promote the development of the grain industry in Western Australia;
- Driven by grower member needs and a majority grower Board, CBH is committed to the long term sustainability and livelihood of Western Australian growers and the rural communities in which they live;
- Over the last 5 years alone, CBH has invested over \$500 million in grain supply chain infrastructure to provide growers with the most efficient, least cost pathway to international markets. This level of investment is unparalleled throughout Australia or the rest of the world and is critical to Western Australian grain growers' long term competitiveness;
- Since 2008 CBH has invested over \$28 million on grain related research and development;
- CBH's co-operative structure allows the organisation to take a longer term view when making investment decisions and without the constraints of short term profit imperatives faced by listed companies. This has allowed CBH to make significant infrastructure investments such as the Kwinana Grain Terminal and more recently the cooperative's \$175 million rolling stock acquisition which have changed the very landscape of the Western Australian grain industry and created considerable supply chain efficiencies;
- CBH has introduced a rebate program that allows any trading, operational or investment surpluses (such as returns from CBH's Asian flour milling investments) to be returned to growers in the format of a rebate from their storage and handling fees. Over the past 6 years up to \$14 per tonne has been rebated to the WA growers;
- CBH's presence in and commitment to rural communities creates a range of attendant benefits including increased capital investment and enhanced employment opportunities;
- CBH makes considerable and ongoing commitment to rural communities through sponsorships and partnerships providing support for critical services that may not otherwise be available. In 2013, CBH announced a further annual commitment of \$1.5 million in rural partnership and sponsorship programs;
- Under common law, CBH is recognised as a charity and is registered as such with Australian Charities and Not-for-profit Commission. This purpose has been tested and reaffirmed by the 2010 Full Federal Court's conclusion in CBH's Federal tax exemption case where it was confirmed that CBH was established for the purposes

of promoting the development of the Australian agricultural resources by promoting the development of the grain growing industry in Western Australia. In addition, the Australian Tax Office has also endorsed CBH as a charity, retrospectively with effect from 1 July 2000; and

- CBH is prohibited by law from directly or indirectly paying any income to its members by way of dividend or bonuses. CBH carries out many activities for the benefit of all growers (not just CBH members), the industry and the community which do not deliver a commercial return for CBH. CBH is ultimately a not-for-profit organisation and all income derived by CBH is invested back into the WA community.

The proposed amendments to the Taxation Legislation Amendment Bill 2014 will have a major impact on CBH's ability to maintain its considerable investment in support of Western Australian growers and the State's \$3.5 billion grain industry.

The Explanatory Memorandum to the Bill states that the amendments aim to narrow the scope of the existing payroll tax, transfer duty and land tax exemptions as they apply to 'fourth limb' charities.

As a 'fourth limb' charity, CBH would likely be one of the organisations affected by the Bill due to its purpose being for the promotion of trade, industry or commerce (i.e. promotion of the grain industry). While the intention of the Bill has been stated as stopping what the State government considers to be 'inappropriate' exemptions, our view is that it is entirely appropriate for CBH to be able to access State tax concessions.

In CBH's case, at both a Federal and State level, CBH is endorsed as a charitable body. As shown above, the benefits that CBH generate for Western Australian growers and the State's grain industry is a major asset to the Western Australian community. The role CBH currently plays is a role that the government cannot perform. It is therefore entirely critical that the State government supports the investment a charity like CBH makes by easing its tax burden in order to allow for further growth and development in Western Australia.

Should CBH no longer be eligible for State tax exemptions in Western Australia, this position would also be inconsistent with how CBH is treated in other jurisdiction across Australia, including at a Commonwealth level. The fact that CBH's tax concession status in Western Australia would be considered to be 'inappropriate' by the State Government where it is accepted as appropriate in other State and at a Commonwealth level highlights how the proposed changes to 'fourth limb' charities will have a far reaching impact in particular to the WA growers.

Ministers Determination

CBH also raise concerns with the current drafting of the Bill in relation to the revocation of exemptions and the Ministerial power to allow exemptions.

Should the Bill pass in its current form, it would be likely that CBH would be notified by the Office of State Revenue that it is a 'relevant body' due to its purpose to promote an industry, and as such have its payroll tax, land tax and duty exemption withdrawn. Based on the current wording of the Bill, CBH would have no recourse to object to this determination given the definition of 'trade, commerce and industry' is so broad as to surely encompass the activities of CBH.

CBH would then have the opportunity to apply to the Minister of Finance to seek a determination as a 'beneficial body' in order to regain access to State tax concessions. However, CBH would like to raise its concern with the determination being made by the Minister of Finance, with the concurrence of the Treasurer, under this process.

For the Minister to make a beneficial body determination, he must be 'of the opinion that it is in the public interest to do so and after considering any information that the Minister considers relevant'. CBH would submit that as a charity with a reach of its size in the State of Western Australia, it would fall within the realm of being in the public interest. However, given the Minister has the power to consider any other information he considers relevant, this creates unnecessary uncertainty and the resulting decision would be largely subjective.

For example, CBH would consider the below reasons as to why it would be in the public interest for it to receive State tax concessions:

- Without access to its current State tax concessions, a significant cost will be added back to CBH's operations. This cost will impact the ability for CBH to deliver the same level of value it currently provides to the Western Australian grain industry and broader community;
- As a not-for-profit, any financial benefit CBH receives in terms of tax concessions would be returned back to further its main purpose of promoting the Western Australian grain industry; and
- CBH is a registered charity. It has not previously had the State of Western Australia dispute its entitlement to State tax concessions. Only as a result of this Bill would it lose the concessions it currently receives.

The fact that the Minister's decision is also non-reviewable means that charities like CBH will be at the discretion of what the Minister of the day may decide constitutes a relevant factor.

Further, we would submit that the determination should be made on the grounds of public interest or benefit in particular the WA grain industry and community. Without clear guidelines as to who can and cannot access State tax concessions and the reasons as to why, CBH may be unfairly prejudiced solely due to the purpose which makes it such an asset to the Western Australian community in the first place.

The opportunity therefore to discuss the implications of these amendments would be very much appreciated and our General Manager Grower and External Relations, Ms Karlie Mucjanko along with our Chief Financial Officer, Mr Edward Kalajzic and Group Tax Manager, Mr Anthony Liaw are available to appear before the Committee at your convenience

Yours sincerely



Karlie Mucjanko
General Manager - Grower and External Relations