# The Art of Tax Reform: What Tax Reforms should be Introduced to Assist the Australian Arts Sector?

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Abstract: Within the 2020 Summit coordinated by the Australian Federal Government, at least 19 recommendations by the committee on 'Towards a creative Australia' related to proposed tax changes. This would indicate that those on this Committee consider that Australia's tax system has an important role to play in contributing to a sustainable arts sector. This article reports on the survey results of 236 people involved in the arts sector (either as artists, art organisations, advisors or supporters), and details the findings in terms of ascertaining a greater appreciation of which possible tax reforms to assist the arts have greater appeal and to identify any possible problems with their implementation. Given the survey results, it is argued that some reforms have greater potential – and it is these that serious consideration should be given to contribute to a sustainable arts sector.

Keywords: Australia, Survey, Tax, Reforms, Arts

#### Introduction

S HIGHLIGHTED IN the 2020 Summit, there are contentions that the arts sector would benefit from tax reforms, some of which reflect international practice. Indeed, the there are a number of international tax strategies not currently utilised in Australia, including exempting artistic income and GST concessions.

However, to what extent are the tax reforms put forward by the 2020 Summit and others considered worthwhile by those in the art sector or their advisors? This analysis may determine which reforms are more worthwhile in pursuing. This article reports the findings of survey of those in arts sector or advisors to a list of 40 potential tax reforms.

Initially, after providing an overview of the arts sector and some of the issues facing this sector, the methodology for the survey is provided, followed by the descriptive statistics. Next, the results and discussion in terms of the 'potential tax reforms' are covered. The article then outlines the recommendations, followed by the limitations of the survey before concluding.

<sup>&</sup>lt;sup>2</sup> Freudenberg, B. (2008). Report #2: An international comparative study of tax concessions for the arts (Tax: Contributing to a Sustainable Arts Industry). Griffith University. Available from: http://www.arts.qld.gov.au/publications/tax.html



<sup>&</sup>lt;sup>1</sup> Within the 2020 Summit, at least 19 recommendations by the committee on 'Towards a creative Australia' related to proposed tax changes. Indeed the word 'tax' was mentioned 41 times in their chapter. Australia. 2020 Summit – Final Report: Chapter Eight – Towards a creative Australia – the future of the arts, film and design, Barton, Department of the Prime Minister and Cabinet, 2008. Some of these recommendations were controversial, such as the reintroduction of death duties with the exemption for public art and performing arts in public places: Recommendation number 8.27.

#### The Australian Arts Sector

The arts sector can cover many types of endeavour, either government or privately provided, including writers, visual artists, craft practitioners, theatre, dancers, choreographers, musicians, singers and composers, as well as to museums, heritage centres, festivals and digital media. In this analysis, the arts sector is divided into three broad categories: artists, <sup>3</sup> art organisations <sup>4</sup> and contributors. <sup>5</sup>

While defining the arts sector can be problematic,<sup>6</sup> it has been estimated that it directly represents approximately 1.6 per cent of Australia's gross domestic product (GDP);<sup>7</sup> however, its impact could be greater due to its influence on complimentary services such as tourism. In 2007 an estimated 3.5 million Australians were involved in either paid or unpaid work in the arts and leisure sector, representing 22 per cent of Australians.<sup>8</sup> However, of those involved, two-thirds were unpaid.<sup>9</sup> Accordingly, the support of volunteers appears to be critical for the arts sector.<sup>10</sup>

It is estimated that 474,000 Australians were employed in a cultural occupation or cultural industry as their main job in 2006.<sup>11</sup> In terms of lodgement of tax returns, there were 121,532 taxpayers conducting businesses in both the arts and recreational services, with the vast percentage of businesses conducted as sole traders.<sup>12</sup> These sole traders generated a total of \$1,457 million of arts income, <sup>13</sup> an average of \$12,000 income per taxpayer.<sup>14</sup>

<sup>&</sup>lt;sup>3</sup> The term 'Artist' is used to describe individuals who are creating art, whether the artists are authors of literary, dramatic, musical or artistic works; inventors; performing artists; or production associations. Artists may either trade under their own names (sole trader or independent contractor) or use a business form (such as company, discretionary trust or general partnership). Alternatively, artists can undertake their artistic endeavours as employees.

<sup>&</sup>lt;sup>4</sup> The term 'Art Organisations' describes organisations that act as collectors of artistic work (such as museums, libraries and galleries), and/or that facilitate and organise artistic endeavours (such as dance or theatre companies). These Art Organisations may be form of incorporated associations, unincorporated bodies, corporations limited by shares, corporations limited by guarantee, aboriginal corporations, or be government or statutory authorities

<sup>&</sup>lt;sup>5</sup> The term 'Contributors' describes individuals or organisations supporting artistic endeavours through direct funding, contributions, grants and/or donations. Contributors cover a spectrum of different people and entities.

<sup>&</sup>lt;sup>6</sup> For example an alternative term that may be used is 'culture industry'; see: A Payne, *Role of Government Panel: The Cultural Industry*, Ontario, Department of Economics, McMaster University, 2003.

<sup>&</sup>lt;sup>7</sup> Hans Hoegh Guldberg, *The arts economy 1968–1998: Three decades of growth in Australia*, 200, p 150, referring to the 1994 year.

<sup>&</sup>lt;sup>8</sup> ABS Work in Selected Culture and Leisure Activities 6281.0 April 2007, at 3. The data refers to Australians aged 15 years and older.

Source ABS Work in Selected Culture and Leisure Activities 6281.0 April 2007; Table 1.

<sup>&</sup>lt;sup>10</sup> It is estimated that about 207,000 volunteers provided over 30 million hours of work for arts and heritage organisations in 2006. Australia Council for the Arts, Quick art facts, 2008. Available from www.australiacouncil.gov.au [cited 6 March 2009].

<sup>&</sup>lt;sup>11</sup> Australia Council for the Arts, Quick art facts, 2008. Available from www.australiacouncil.gov.au [cited 6 March 2009] referring to the 2006 Census.

<sup>&</sup>lt;sup>12</sup> Source: Table 4: Taxation Statistics 2005–06: A summary of tax returns for the 2005–06 income year and other reported tax information for the 2006–07 financial year.

<sup>&</sup>lt;sup>13</sup> Table 4: Taxation Statistics 2005–06: A summary of tax returns for the 2005–06 income year and other reported tax information for the 2006–07 financial year. The breakdown for business forms for artists was: sole trader: 107,703; general partnership: 4481, trust: 2,520 and corporations: 6.828.

<sup>&</sup>lt;sup>14</sup> It is acknowledged that the use of averages is not as useful as the distribution of income levels. Please note the 'medium' level of wages is outlined in the research of Throsby, D & Hollister, V. (2003). Don't give up your day job: An economic study of professional artists in Australia. Division of Economic and Financial Studies, Macquarie University, Sydney, Australian Council for the Arts, at p 45.

It appears that the plight of artists around the world is universal, as Da Silva has pointed out features common to many artists, including sporadic employment, poor and unpredictable income levels and combining artistic work with another paid employment. To deal with these predicaments, the arts sector can receive support from the government, and in Australia's circumstances this may be at the Federal, State or Local level. The form of this support may be in grants, tax concessions (either exemptions, additional deductions, or tax offsets), regulation or advertisement. Indeed, governments can be pivotal in providing 'cultural infrastructure' from built environments, technology and the funding of pillar cultural organisations.

Baumol has analysed the economic reasons that are used to justify such government support, <sup>18</sup> and these centre on positive externalities, <sup>19</sup> public goods, <sup>20</sup> significant worthiness, <sup>21</sup> greater access <sup>22</sup> and infant industry. However, the overall effectiveness of such concessions whether direct or indirect can be questioned. <sup>23</sup> For example, when the tax system is used to assist industries or achieve objectives it can be hard to determine their success or effectiveness. It has been argued by Surrey that indirect government support, such as tax incentives, should be analysed and assessed in a similar manner to that of direct government expenditure. <sup>24</sup>

Despite reservations about the current effectiveness, there appears to be a belief that further tax reforms could assist the arts industry. However, are some reforms seen as having greater appeal by those in the industry?

# Methodology

The survey instrument sought opinions about 40 potential tax reforms, which were drawn from the recommendations of the 2020 Summit, as well as those mooted by others, <sup>25</sup> including

<sup>&</sup>lt;sup>15</sup> H Da Silva, *Report on the Situation and Role of Artists in the European Union*, Brussels, European Commission, 1999.

<sup>&</sup>lt;sup>16</sup> A Payne, Role of Government Panel: The Cultural Industry, Ontario, Department of Economics, McMaster University, 2003, p 3.

<sup>&</sup>lt;sup>17</sup> Ferres, K., & Adair, D. (2007). Who Profits From the Arts? Taking the measure of culture. Strawberry Hills: Currency House Inc, at p 8.

<sup>&</sup>lt;sup>18</sup> WJ Baumol, 'Applied Welfare Economics' in Ruth Towse (ed), A Handbook of Cultural Economics, Edward Elgar, Cheltenham, UK, Northampton, MA, 2003.

<sup>&</sup>lt;sup>19</sup> Positive externalities may relate to (a) peer effects such as inspiring others; (b) societal benefits, as there may be a connection with people with interest in the arts and their impact on society; (c) economic development, either directly or through complementary goods and services; (d) culture for the future: A Payne, *Role of Government Panel: The Cultural Industry*, Ontario, Department of Economics, McMaster University, 2003, p 6.

<sup>&</sup>lt;sup>20</sup> A Payne, *Role of Government Panel: The Cultural Industry*, Ontario, Department of Economics, McMaster University, 2003, p 6.

<sup>&</sup>lt;sup>21</sup> A Payne, *Role of Government Panel: The Cultural Industry*, Ontario, Department of Economics, McMaster University, 2003, p 7.

<sup>&</sup>lt;sup>22</sup> A Payne, *Role of Government Panel: The Cultural Industry*, Ontario, Department of Economics, McMaster University, 2003, p 7.

<sup>&</sup>lt;sup>23</sup> For an extensive overview of the various considerations for tax policy and culture see: Schuster., J. (2006). Tax Incentives in Cultural Policy. In V. Ginsburgh & D. Throsby (Eds.), *Handbook of the Economics of Art and Culture* (Vol. 1, pp. 1253-1298). Amsterdam: Elsevier.

<sup>(</sup>Vol. 1, pp. 1253-1298). Amsterdam: Elsevier. <sup>24</sup> S Surrey, 'Pathways to Tax Reform: The concept of tax expenditures', Harvard University Press, Cambridge, M.A. 1973.

<sup>&</sup>lt;sup>25</sup> For example: Arts Law Centre. (2004). The impact of the non-commercial loss provisions of the ITAA on professional artists. Submission to the Board of Taxation, 2004, Sydney; National association of the Visual Arts. (2004). Submission to the Board of Taxation, For the Post-implementation Review of the Non-commercial Losses

mechanisms adopted overseas.<sup>26</sup> To gauge the desirability of the potential tax reforms, participants were asked to rank them on a scale of 1 (unacceptable) to 7 (excellent) – although they were also given the choice to indicate that they 'did not understand' the proposed reform (which was given a zero weighting).

The methodology in part uses a variant of the Delphi method, <sup>27</sup> known as the 'ranking type' which is used to develop a group consensus about issues. <sup>28</sup> By getting those involved in the arts sector, some prioritization of the potential reforms could be achieved. Such input into the development of public policy was recently argued for by Shergold. <sup>29</sup> To facilitate data collection, an electronic version of the survey was constructed via Survey Monkey, which allowed respondents to complete the survey unanimously via a distributed URL.

Invitations to participate in the survey were distributed via a number of means within Queensland and through the broader Australian arts community. This included publicising the survey through articles and websites, <sup>30</sup> as well as emails from art organisations notifying their members of the survey (including Arts Queensland). The survey was also distributed to academics within the arts faculties of a number of Queensland universities. To gain an appreciation of advisors' opinions towards the potential reforms the survey was publicised by a number of professional bodies. <sup>31</sup>

# **Descriptive Statistics**

A total of 236 usable fully completed surveys resulted from this process (a total of 338 had commenced the survey with 69.8% fully completing it). Of these, 97 identified themselves as artists, 52 were from art organisations, 1 was an art trader, 42 were advisors and the remaining were supporters or others. Summary descriptive statistics for the sample are provided Table 1.

<sup>(</sup>Division 35) of the ITAA 97, Sydney. Tucker, B. (2004). Post-implementation review of the quality and effectiveness of the non-commercial losses legislation. Submission to the Board of Taxation, 13 January 2004, Brisbane. C Hunt and P Shaw, 'A Sustainable Arts Sector: What will it take?' In *Platform Papers Quarterly Essays on the Performing Arts, No 15*, Currency House Inc, Strawberry Hills, 2008.

<sup>&</sup>lt;sup>26</sup> See: Freudenberg, B. (2008). *Report #2: An international comparative study of tax concessions for the arts* (Tax: Contributing to a Sustainable Arts Industry). Griffith University. Available from: http://www.arts.qld.gov.au/publications/tax.html

<sup>&</sup>lt;sup>27</sup> Okoli, C and Pawlowski, SD. (2004). The Delphi method as a research tool: an example, design considerations and applications, *Information & Management* 42: 15-29.

<sup>&</sup>lt;sup>28</sup> Schmidt, RC. (1997). Managing Delphi surveys using nonparametric statistical techniques, *Decision Sciences* 28(3): 763-774.

<sup>&</sup>lt;sup>29</sup> Shergold, R. (2010). Give Third Sector Higher Priority. *The Australian Financial Review*, 17 March.

<sup>&</sup>lt;sup>30</sup> For example the article 'Leading the Revolution: Can Tax Reform Assist the Australian Art Sector' was published on-line in The Brisbane Line, April 2009 by The Brisbane Institute: www.brisinst.org.au.

<sup>&</sup>lt;sup>31</sup> Including the Taxation Institute of Australia, CPA Australia, Australasian Tax Teachers' Association, and the publishing house CCH Australia.

<sup>&</sup>lt;sup>32</sup> Because of the low response rate from art dealers, their responses were combined with the 'artist' category. Those participants who identified themselves as 'other' were reviewed and allocated to a more specific category if their description warranted it.

**Table 1: Summary of Survey Participants** 

How Best would you Describe your Involvement with the Arts?	Response Count
Artist and creative businesses (directly creating artistic work)	97
Art organisation (organisation that collects artistic work or organise artistic endeavours)(ie museum)	52
Art dealer (buy and sell art to generate income)	1
Supporter of the arts (individuals or companies that support artistic endeavours through direct funding, grants, donations or purchases)	30
Business advisor to the arts (such as accountant or lawyer)	42
Others	14

#### **Artists**

The artists participating in the survey represented a number of artistic endeavours, with the three largest representations from theatre, music and visual art. Similar to statistics from Australian Bureau of Statistics (ABS), there was a predominance of artists conducting their business as a sole trader (56.4%), with approximately one-fifth as a corporation (20.5%), and 6.4% and 2.6% as a general partnership or trust, respectively. Approximately 14% of the artists identified themselves as employees.

Similar to the earlier research by Throsby and Hollister,<sup>34</sup> the gross level of income generated by artists from their artistic endeavours was on the majority less than \$20,000, with 42.3% of artists surveyed indicating in the last financial year that their gross level of income generated from artistic endeavours was less than \$10,000.

# Art Organisations

For the art organisations participating in the survey a number of artistic endeavours were represented, with the largest representation in theatre, music and visual art. This is similar to categories identified by the artists and may mean that the results of this survey are more reflective of those categories rather than of the arts sector broadly. Many of the art organisations' business structure were as an incorporated association (35%), followed a corporation limited by guarantee (29%) and statutory authority (27%).

In comparison to artists, the gross level of income of art organisations was greater, with approximately 40% above \$2 million.<sup>35</sup>

<sup>&</sup>lt;sup>33</sup> ABS Statistics indicated 87% as sole traders, 6% as corporations, 4% as general partnerships, and 2% as trusts. Table 4: Taxation Statistics 2005–06: A summary of tax returns for the 2005–06 income year and other reported tax information for the 2006–07 financial year.

<sup>&</sup>lt;sup>34</sup> Throsby and Hollister found that the median figure for Australian artists' earned income in 2001 ranged from \$9,200 to \$23,600: Throsby, D & Hollister, V. (2003). Don't give up your day job: An economic study of professional artists in Australia. Division of Economic and Financial Studies, Macquarie University, Sydney, Australian Council for the Arts, at p 45.

<sup>&</sup>lt;sup>35</sup> Approximately, two thirds of the art organisations identified themselves as being income tax exempt (67%), with three-quarters of them registered for GST.

#### **Advisors**

For the advisors participating in the survey the vast majority were either accountants (52.8%) or tax agents (36.1%), which is probably due in part to the professional bodies that supported the distribution of the survey.

Approximately two-thirds of these advisors gave advice to small and medium artistic businesses. Nearly 42% of the advisors had less than five years experience in advising the arts, with around 39% between five and twenty years experience, and approximately 16.7% having greater than 20 years experience.

# **Results and Discussion**

The survey asked participants to rank a list of 40 potential tax reforms (as detailed in Table 2 in the appendix) that were categorised as reforms:

- directly affecting artists;
- directly affecting art organisations;
- · affecting tax administration; and
- affecting donors/donations.

The responses to these potential reforms have been divided between non-advisors (artists, art organisations, supporters) and advisors<sup>36</sup> – and sorted by their average score, as well as their rating in terms of 'do not understand'. It is suggested that the 'do not understand' score may be a proxy for the potential complexity of the specified reform.

# Highly Ranked Potential Reforms

The top 15 reform responses based on their average rating for both non-advisors and advisors are listed in Table 3 and Table 4. Interestingly both segments considered that the best reform is that the tax system should be made simpler for all taxpayers (averaging 6.35: non-advisors and 6.22: advisors – on a 7 point scale). Also there was agreement with the second reform that tax information should be presented in a format easily understood by artists (5.98 and 5.71, respectively). Indeed, for the top 15 responses there was similarity in all but four reforms between non-advisors and advisors.

The difference between the two segments was:

- Reform #20 'A centralised body should collate summaries of best practices ...' (ranked 12th by advisors and only 20th by non-advisors);
- Reform #1 'Artists conducting a business receive a voucher of up to \$2,000 ..." (ranked 15th by advisors and only 22nd by non-advisors).
- Reform #26 'Introduce a matching scheme ...' (ranked 14th by non-advisors and only 19th by advisors); and

<sup>&</sup>lt;sup>36</sup> Advisors were separated from the other respondents as it was considered that they are likely to have a different perspective of the tax provisions and of the potential impact that the reforms could have.

<sup>&</sup>lt;sup>37</sup> However, in looking at 'artists' alone, they ranked this reform 18th with an average score of 5.49. Note there was no particular difference with artists earning more or less than \$50,000 in respect of this ranking, as artists earning less than \$50,000 artistic income ranked this on average at 5.5.

• Reform #25 'Private enterprises making space available ...' (ranked 15th by non-advisors and 16th by advisors).

# Lowest Ranking Potential Reforms

The ten lowest-ranked reforms for both non-advisors and advisors included potential reforms #24, #5, #7, #19, #12, #9, #6, #40, #11 and #8 (non-advisors) and #5, #7,#24, #6, #11, #40, #19, #12, #9 and #14. Again there is great similarity between non-advisors and advisors, with only two differences:

- Reform #8 'The GST should not apply to ...' (ranked 31st by non-advisors and just outside the bottom ten at 30th by advisors); and
- Reform #14 'Exclude Not-for-profit Organisations form the PAYG obligations ...' (ranked 31st by advisors; however, this was ranked 16th by non-advisors). 38

A commonality between non-advisors and advisors was the low ranking of the re-introduction of death duties – or the equivalence thereof, by amending the current CGT rules applicable at death. Also, a low ranking potential reform was for artists to pay no income tax on their artistic endeavours (whether subject to a cap or not). Interestingly those artists earning greater than \$50,000 artistic income also were not in favour of exempt income reforms even though they would potentially benefit the most: 3.18 to 4.13. This ranking was lower than those artists earning less than \$50,000, who ranked the exempt income reforms marginally better from 3.56 to 5.00.<sup>39</sup>

<sup>&</sup>lt;sup>38</sup> This may indicate that there are some problems for small not-for-profit organisations with PAYG obligations.

<sup>&</sup>lt;sup>39</sup> Those artists earning less than \$50,000 from their artist endeavours ranked Reform #6 'Artists should not have to pay tax on income generated from artistic endeavours (\$50,000 pa cap)' at 5.

Table 3: Top 15 Potential Reforms – Non-advisors

Ranking	Potential Tax Reforms	Rating Average	% Good, Very Good or Excellent
1	18. The tax system should be made simpler for all tax-payers	6.35	90%
2	17. Tax information should be presented in a format easily understood by artists	5.98	89%
3	23. People volunteering their time should be able to claim expenses incurred (i.e. travel costs) as a tax deduction	5.83	85%
4	15. Broaden the concessional tax treatment of research and development to include research in the social sciences, arts and humanities	5.82	80%
5	30. Establish an Endowment Fund for the arts that is funded through lottery taxes	5.81	79%
6	16. Tax rebates should be offered to Art Organisations that support local artists	5.73	79%
7	28. The tax incentives to people who leave money and/or goods to the arts in their will should be broadened	5.70	82%
8	29. Businesses should be given tax concessions for commissioning public works of art	5.68	82%
9	21. More guidelines should be produced to promote giving/donations to the arts	5.64	77%
10	10. Increase the \$40,000 'other income' threshold for the non-commercial loss provisions to allow artist to offset their artistic losses against other income they have (such as salary income)	5.61	70%
11	22. Make it easier for people to make a tax deductible donation to the Australia Cultural Fund (AbaF) on the grounds the money is forwarded to a specified artistic endeavour – such as a theatre performance	5.61	78%
12	4. The tax film incentive scheme should be broadened to apply to other artistic endeavours	5.55	69%
13	39. Tax returns should have a facility allowing taxpayers to nominate a charity to receive their tax refund. (The taxpayer would then claim the donation as a tax deduction in the next year)	5.51	75%

14	26. Introduce a 'matching scheme' where the government matches dollar for dollar donations made to an Art Organisation	5.44	75%
15	25. Private enterprises making space available for creative purposes should be allowed to claim an increased tax deduction	5.42	78%

Table 4: Top 15 Potential Reforms – Advisors

Ranking	Potential Tax Reforms	Rating Average	% Good, Very Good or Excellent
1	18. The tax system should be made simpler for all taxpayers	6.22	88%
2	17. Tax information should be presented in a format easily understood by artists	5.71	86%
3	39. Tax returns should have a facility allowing taxpayers to nominate a charity to receive their tax refund (the taxpayer would then claim the donation as a tax deduction in the next year).	5.43	69%
4	10. Increase the \$40,000 'other income' threshold for the non-commercial loss provisions to allow artist to offset their artistic losses against other income they have (such as salary income)	5.40	71%
5	21. More guidelines should be produced to promote giving/donations to the arts	5.40	76%
6	22. Make it easier for people to make a tax deductible donation to the Australia Cultural Fund (AbaF) on the grounds the money is forwarded to a specified artistic endeavour – such as a theatre performance	5.38	74%
7	23. People volunteering their time should be able to claim expenses incurred (i.e. travel costs) as a tax deduction	5.17	71%
8	30. Establish an Endowment Fund for the arts that is funded through lottery taxes	5.12	71%
9	15. Broaden the concessional tax treatment of research and development to include research in the social sciences, arts and humanities	5.10	74%

10	4. The tax film incentive scheme should be broadened to apply to other artistic endeavours	5.07	62%
11	28. The tax incentives to people who leave money and/or goods to the arts in their will should be broadened	5.05	74%
12	20. A centralised body should collate summaries of best practices in terms of fundraising and business procedures for the arts	5.03	62%
13	29. Businesses should be given tax concessions for commissioning public works of art	4.98	67%
14	16. Tax rebates should be offered to Art Organisations that support local artists	4.90	67%
15	1. Artists conducting a business receive a voucher of up to \$2,000 to get advice from an accountant.	4.74	67%

Also there was a reluctance to alter the GST system in terms of its treatment of artistic endeavours or art organisations. This may have been because it was considered that such preferential treatment would breach fairness or add undue complexity to the GST system.

Given the top ranking of the reform idea that the 'tax system should be made simpler for all taxpayers', it is surprising that reform idea #19 that 'all tax concessions for the arts sector should be removed with the goal of simplifying the tax system' ranked poorly. This may be due to the fact that a large percentage of the participants in the survey did consider that fundamentally the arts sector should be given tax concessions compared to other industries.

# Non-understanding of Potential Reforms

The proxy used to measure complexity of the potential reforms was the response rate of 'do not understand' to the potential reforms. Of course this is not a precise measure, and it may be the circumstance that participants did not understand the reforms due to the brevity of the description provided in the survey instrument. Due to this 'non understanding', a potential reform may have been incorrectly rated by participants. Nevertheless the six reforms that were least understood by participants (non-advisors and advisors) are detailed in Table 5 and Table 6.

Again there is much similarity between the two segments – with the top three least understood reforms being common. Two potential reforms concerning Prescribe Private Funds (PPFs)<sup>40</sup> are ranked as the least understood – which may in part relate to the low level of awareness of them as reported in other research.<sup>41</sup> Also reform #37 ranked in the six least understood provisions for both segments ('taxpayers should be able to claim a tax deduction for transfers of property to a charity even though after the transfer the donor lives in the

<sup>&</sup>lt;sup>40</sup> Now to be known as Private Ancillary Funds. For the new guidelines see: N Sherry (Assistant Treasurer), *Private Ancillary Fund Guidelines 2009: Taxation Administration Act 1953*, commencing from 1 October 2009.

<sup>&</sup>lt;sup>41</sup> Madden, K and Newton, C. (2006). *Is the Tide Turning? Professional Advisers' Willingness to Advise about Philanthropy*. Working Paper No CPNS 30, Centre of Philanthropy and Nonprofit Studies, Queensland University of Technology, Brisbane, Australia, at pp 36-37: (a) Advisers who do not advise on charitable strategies 83%; and (b) Advisers who do advise on charitable strategies 40%.

property until death'). Similarly reform #38 ('taxpayers should be able to transfer assets to a trust or charity, even though after the transfer the donor continues to receive income from the property for a period of time (or up until their death') ranked the seventh (non-advisor) and sixth (advisor) least understood reform. It is submitted that this recognises the complexity behind such deferred gift arrangements, and is a critical consideration as to whether these arrangements should be introduced.

Table 5: Six Least Understood Potential Reforms - Non-advisors

Potential Tax Reforms		% Not Understand	
1	32. Increase the type of activities to which Prescribed Private Funds can contribute without affecting their current tax concessions	35%	
2	31. Increase the tax incentives provided to taxpayers setting-up Prescribed Private Funds	34%	
3	40. Capital gains tax should be altered so that on the death of a taxpayer all capital gains on transfer of assets to beneficiaries become payable rather than deferred. Such a CGT liability could be then decreased by the beneficiaries making donations	34%	
4	36. Taxpayers should be able to donate goods to a Deductible Gift Recipients over time rather than immediately. The tax deduction would follow the extent of the fractional donation. For example, an art gallery has a painting for 4 months, and for the remaining 8 months it is part of a private collection		
5	34. In addition to a tax deduction for donated land and non-cultural goods, such donations should also be exempt from capital gains tax.	17%	
6	37. Taxpayers should be able to claim a tax deduction for transfers of property to a charity even though after the transfer the donor lives in the property until death	17%	

Table 6: Six Least Understood Potential Reforms – Advisors

Po	Potential Tax Reforms	
1	32. Increase the type of activities to which Prescribed Private Funds can contribute without affecting their current tax concessions	19%
2	31. Increase the tax incentives provided to taxpayers setting-up Prescribed Private Funds	19%
3	40. Capital gains tax should be altered so that on the death of a taxpayer all capital gains on transfer of assets to beneficiaries become payable rather than deferred. Such a CGT liability could be then decreased by the beneficiaries making donations	12%
4	13. Artists and art dealers should be able to claim the 'market value' (as opposed to the 'cost') of art work donated to charities or DGR as a tax deduction	10%
5	37. Taxpayers should be able to claim a tax deduction for transfers of property to a charity even though after the transfer the donor lives in the property until death	7%
6	38. Taxpayers should be able to transfer assets to a trust or charity, even though after the transfer the donor continues to receive income from the property for a period of time (or up until their death)	7%

### Recommendations

A matrix analysis was then made comparing the rankings provided to the potential reforms compared to the level of understanding, which resulted in a number of recommendations, being:

- Reforms to pursue, as the reform is highly regarded and appears to be well understood.
   These were characterised by a ranking greater than 5 within 0 to 10% of non-understanding; and
- Reforms that need to be revised before pursuing, as there is some support for them but
  they may involve an increased level of uncertainty or complexity. These were characterised by a ranking greater than 4 but with 10 to 20% of non-understanding.

This means that the other reforms not referred too are not recommended in pursuing due to either their low ranking and/or level of complexity. For example potential reforms ranking less than 5 and within 0 to 10% of non-understanding should not be pursued, on the basis that the reform is not highly ranked and appears to be well understood. Potential reforms ranking less than 4 with 10 to 20% non-understanding should be discarded, due to low ranking and mild complexity. Potential reforms with greater than 20% non-understanding need careful consideration as the level of uncertainty and complexity that they may entail could be too high – and therefore currently are not recommended in pursuing.

The 17 reforms that are recommended to pursue are detailed in Table 7. The seven reforms that are recommended to be pursued after potential revision due to complexity are detailed in Table 8.

#### **Table 7: Category one Reforms – Pursue**

- 18. The tax system should be made simpler for all taxpayers
- 17. Tax information should be presented in a format easily understood by artists
- 23. People volunteering their time should be able to claim expenses incurred (i.e. travel costs) as a tax deduction
- 29. Businesses should be given tax concessions for commissioning public works of art
- 21. More guidelines should be produced to promote giving/donations to the arts
- 28. The tax incentives to people who leave money and/or goods to the arts in their will should be broadened
- 22. Make it easier for people to make a tax deductible donation to the Australia Cultural Fund (AbaF) on the grounds the money is forwarded to a specified artistic endeavour such as a theatre performance
- 16. Tax rebates should be offered to Art Organisations that support local artists
- 39. Tax returns should have a facility allowing taxpayers to nominate a charity to receive their tax refund. (The taxpayer would then claim the donation as a tax deduction in the next year)
- 15. Broaden the concessional tax treatment of research and development to include research in the social sciences, arts and humanities
- 30. Establish an Endowment Fund for the arts that is funded through lottery taxes
- 25. Private enterprises making space available for creative purposes should be allowed to claim an increased tax deduction
- 26. Introduce a 'matching scheme' where the government matches dollar for dollar donations made to an Art Organisation
- 1. Artists conducting a business receive a voucher of up to \$2,000 to get advice from an accountant.
- 2. Extend the definition of 'employee' to include all artists (even contractors) so they are covered by the Superannuation Guarantee scheme
- 14. Exclude Not-for-profit Organisations from the PAYG obligations when their total employee wages are less than \$25,000 per annum
- 20. A centralised body should collate summaries of best practices in terms of fundraising and business procedures for the arts

#### Table 8: Category two Reforms – Revise before Pursuing

- 10. Increase the \$40,000 'other income' threshold for the non-commercial loss provisions to allow artist to offset their artistic losses against other income they have (such as salary income)
- 4. The tax film incentive scheme should be broadened to apply to other artistic endeavours
- 13. Artists and art dealers should be able to claim the 'market value' (as opposed to the 'cost') of art work donated to charities or DGR as a tax deduction
- 33. Allow private sales of art to galleries to be exempt from capital gains tax and thereby encourage sales at lower prices due to vendor not paying tax
- 38. Taxpayers should be able to transfer assets to a trust or charity, even though after the transfer the donor continues to receive income from the property for a period of time (or up until their death)
- 34. In addition to a tax deduction for donated land and non-cultural goods, such donations should also be exempt from capital gains tax.
- 37. Taxpayers should be able to claim a tax deduction for transfers of property to a charity even though after the transfer the donor lives in the property until death

#### Limitations

The research outlined in this article has limitations that affect its findings and recommendations, including that many of the participants are likely to be from Queensland and not other states. The electronic nature of the survey may have excluded those who do not have access to the internet – although conversely such a distribution technique may have opened up the survey to those who otherwise would not have been able to participate. Through the demographic data obtained there is a large representation from theatre, music and visual art, which may mean the results are not representative of other artistic endeavours.

#### Conclusion

As stated by others, artists and art organisations can be plagued by characteristics that make their sustainability problematic. While tax reforms may appeal as an 'easy fix', their effectiveness can be questionable. This article has detailed a survey undertaken to ascertain opinions about mooted tax reforms. Thus allowing those in the sector (and their advisors and supporters) to evaluate a list of potential reforms. An analysis of their responses accumulated in a number of recommendations for which tax reforms should be pursued.

While a number of the recommended reforms are expressed to be for the arts sector, they could (and should) be extended to others in similar circumstances. For example, many artists in business face similar challenges to other small businesses, and art organisations to other not-profit entities. For as agreed by many of the participants in this survey, 'fairness' of the tax system is critical – although how this can be achieved is problematic.

It is hoped that the findings and recommendations of this article go some way to making the Australian tax system more conducive in assisting the arts sector to be more sustainable – as it needs to be appreciated that there is no 'easy fix'.

# **Appendix**

**Table 2: Surveyed Potential Reforms** 

No.	Description of Potential Reform	
REFORMS DIRECTLY AFFECTING ARTISTS		
1	Artists conducting a business receive a voucher of up to \$2,000 to get advice from an accountant.	
2	Extend the definition of 'employee' to include all artists (even contractors) so they are covered by the Superannuation Guarantee scheme	
3	A HECS arrangement should be introduced for young and/or emerging artists to assist funding their endeavours. They would pay back their debt once they reach a certain income level	
4	The tax film incentive scheme should be broadened to apply to other artistic endeavours	
5	Artists should not have to pay any tax on income generated from artistic endeavours (with no cap)	
6	Artists should not have to pay tax on income generated from artistic endeavours (\$50,000 pa cap)	
7	Artists should not have to pay tax on income generated from artistic endeavours(\$180,000 pa cap)	
8	The GST should not apply to the supply/sale of artistic endeavours (such as sale of paintings, theatre tickets or admission to galleries)	
9	A reduced rate of GST should apply to the supply/sale of artistic endeavours (such as sale of paintings, theatre tickets or admission to galleries)	
10	Increase the \$40,000 'other income' threshold for the non-commercial loss provisions to allow artist to offset their artistic losses against other income they have (such as salary income)	
11	'Copyright/Royalty' income earned by artists should be exempt from income tax	
12	Artists should be allowed to transfer approved art to the Tax Office or Gallery in satisfaction of their tax bill	
13	Artists and art dealers should be able to claim the 'market value' (as opposed to the 'cost') of art work donated to charities or DGR as a tax deduction	
	REFORMS AFFECTING ART ORGANISATIONS	
14	Exclude Not-for-profit Organisations from the PAYG obligations when their total employee wages are less than \$25,000 per annum	
15	Broaden the concessional tax treatment of research and development to include research in the social sciences, arts and humanities	
16	Tax rebates should be offered to Art Organisations that support local artists	

	REFORMS AFFECTING TAX ADMINISTRATION
17	Tax information should be presented in a format easily understood by artists
18	The tax system should be made simpler for all taxpayers
19	All tax concessions for the arts sector should be removed with the goal of simplifying the tax system
20	A centralised body should collate summaries of best practices in terms of fundraising and business procedures for the arts
21	More guidelines should be produced to promote giving/donations to the arts
	REFORMS AFFECTING DONORS/DONATIONS
22	Make it easier for people to make a tax deductible donation to the Australia Cultural Fund (AbaF) on the grounds the money is forwarded to a specified artistic endeavour – such as a theatre performance
23	People volunteering their time should be able to claim expenses incurred (i.e. travel costs) as a tax deduction
24	Death duties or Estate taxes should be reintroduced in Australia, with donations to the arts exempt from them
25	Private enterprises making space available for creative purposes should be allowed to claim an increased tax deduction
26	Introduce a 'matching scheme' where the government matches dollar for dollar donations made to an Art Organisation
27	The general population should be provided a tax rebate (to decrease their tax payable) for purchasing art, attending theatre etc up to \$3,000 per taxpayer per year
28	The tax incentives to people who leave money and/or goods to the arts in their will should be broadened
29	Businesses should be given tax concessions for commissioning public works of art
30	Establish an Endowment Fund for the arts that is funded through lottery taxes
31	Increase the tax incentives provided to taxpayers setting-up Prescribed Private Funds
32	Increase the type of activities to which Prescribed Private Funds can contribute without affecting their current tax concessions
33	Allow private sales of art to galleries to be exempt from capital gains tax – and there by encourage sales at lower prices due to vendor not paying tax
34	In addition to a tax deduction for donated land and non-cultural goods, such donations should also be exempt from capital gains tax.
35	Entertainment expenses attending 'artistic performances' should be deductible
36	Taxpayers should be able to donate goods to a Deductible Gift Recipients over time rather than immediately. The tax deduction would follow the extent of the fractional donation. For example, an art gallery has a painting for 4 months, and for the remaining 8 months it is part of a private collection

37	Taxpayers should be able to claim a tax deduction for transfers of property to a charity even though after the transfer the donor lives in the property until death
38	Taxpayers should be able to transfer assets to a trust or charity, even though after the transfer the donor continues to receive income from the property for a period of time (or up until their death)
39	Tax returns should have a facility allowing taxpayers to nominate a charity to receive their tax refund. (The taxpayer would then claim the donation as a tax deduction in the next year)
40	Capital gains tax should be altered so that on the death of a taxpayer all capital gains on transfer of assets to beneficiaries become payable rather than deferred. Such a CGT liability could be then decreased by the beneficiaries making donations

# **About the Author**

#### Dr. Brett Freudenberg

Brett Freudenberg is a currently a Senior Lecturer at the Griffith Business School within the Department of Accounting, Finance and Economics at Griffith University (Australia). In addition to his taxation teaching, Brett has been awarded his PhD for this research focusing on Tax Transparent Companies. In 2006 Brett received the Fulbright Award, which saw him conduct research at the University of Illinois to analyse the proliferation of new business forms in the United States and their potential for application to Australian businesses. Brett has received a number of teaching accolades, including most recently in 2008 a teaching citation from the Australian Learning & Teaching Council for his outstanding contributions to student learning. In 2007, he was part of a team that was awarded Griffith University's "Excellence in Teaching for Programs that Enhance Learning Category"; and individually Brett received a "Certification of Commendation for Excellence in Teaching". Previously, in 2005 he was jointly awarded a Griffith Business School Teaching Citation and in 2003 Brett received the Early Career Award for Teaching Excellence from Griffith University. He has pursued the scholarship of learning and has presented his research at number of teaching conferences, as well as publishing in refereed teaching journals. Prior to commencing with Griffith University, Brett was a senior taxation consultant with KPMG and a solicitor with Corrs Chambers Westgarth.