



A National Food Waste Tax Incentive

**Boosting food relief through
Australia's tax system**

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Acknowledgment

KPMG is committed to making sustainable, positive change in our local communities and in society at large, striving to make the world a better place. Our Pro bono @KPMG program is a demonstration of this commitment, aligned to the firm's Corporate Citizenship framework to drive positive impact for Indigenous Australia, Lifelong Learning, Mental Health and Climate Action. We were delighted to undertake this work in collaboration with Foodbank Australia, partly funded by the Fight Food Waste Cooperative Research Centre and partly through our pro bono program supporting climate resilience in Australia's economy, environment and society. The activities of the Fight Food Waste Cooperative Research Centre are funded by the Australian Government's Cooperative Research Centre Program.

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Executive summary

In this report, KPMG Australia (KPMG) finds that Australia has an extensive regime for the tax deductibility of charitable donations, but it does not presently provide tax incentives that specifically target food waste or food relief as a policy objective.

Under the current policy framework, donations of services for food transportation and logistics services, pallet hire and storage, and refrigeration – all food relief services which are required in the food donation process – can only attract limited deductions in limited circumstances. This is a barrier to many companies actively participating in food waste reduction and food relief in Australia.

Given the costs of immediately disposing food can be far lower than the cost incurred in donating food, and the tax deductions allowed for donating food compared to simply discarding food is the same in many instances, it is often more practical and cost effective for businesses to discard food rather than donate it under the current policy framework. As a result, the hunger relief and food waste reduction sectors currently experience difficulty in attracting donations of food and relevant services that are essential to their objectives.

To address these issues, KPMG recommends a tax policy be developed to optimise Australia's food donation incentives by leveraging global examples of food donation policies, as well as the current tax incentive framework established under Australian tax law. The main purpose of this proposed tax policy is to achieve food waste reduction targets and alleviate the food insecurity experienced by many Australians.

A new incentive would support primary producers, processors, manufacturers, the logistics and transport industry, as well as other service providers who are committed to the alleviation of food waste and insecurity in Australia.

Globally, food waste tax incentives have been introduced in a number of other key global jurisdictions (including OECD countries) including the United States, the United Kingdom, France, Canada and the Netherlands.

In this report, KPMG considers the tax incentives offered globally to put forward design options for the introduction of a specific food relief tax incentive in Australia.

KPMG's report considers there to be two options for a specific food waste tax incentive to be implemented (the '**National Food Waste Tax Incentive**'). The first option has design features broadly in line with the current R&D tax offset with appropriate limitations and safeguards.

KPMG's secondary option would be for an enhanced deduction option similar to that adopted by the United States, which would provide the taxpayer with a choice to deduct 200 percent of the cost or 120 percent of the market value of goods or services provided.

If enacted, the proposed National Food Waste Tax Incentive would contribute materially to stimulating activity in the economy at a time when this is greatly needed. An incentive of this kind would support not only the donation of food, but would also potentially create important flow-on economic activity including job creation by stimulating relevant supporting activities and services.

KPMG has estimated a National Food Waste Tax Incentive to have a direct cost to Federal Government revenue of approximately \$50 to \$100 million per annum which is minimal in comparison to the large offsetting social, economic and environmental benefits of approximately \$2 billion per annum¹ and against the current cost of food waste to the Australian economy of over \$20 billion annually.

The National Food Waste Tax Incentive would also directly assist in achieving the 50 percent target for reduction of food waste in Australia by 2030 as announced by the Federal Government in the National Food Waste² giving rise to large net social, economic and environmental returns for all Australians both now and into the future.

¹ Social, economic and environmental benefits of approximately \$2 billion per annum may be estimated by multiplying the estimated \$23 of social, economic and environmental value created per kilogram of food donated against an estimated donation of 87 million kilograms of food.

² Refer Commonwealth of Australia, 2017, National Food Waste Strategy: Halving Australia's food waste by 2030 <https://www.environment.gov.au/system/files/resources/4683826b-5d9f-4e65-9344-a900060915b1/files/national-food-waste-strategy.pdf>; Food Innovation Australia Limited, 2019. A Roadmap for reducing Australia's Food waste by half by 2030 Report. <https://fightfoodwastecrc.com.au/a-roadmap-to-halve-food-waste-by-2030/> This strategy aligns with Australia's obligations in accordance with the United Nations Sustainable Development Goal 12 (ensure sustainable consumption and production patterns as set out in the United Nations Transforming our World: 2030 Agenda for Sustainable Development) and under the United Nations Framework Convention on Climate Change in reducing greenhouse gas emissions, principally through diverting food waste from landfill.



Case study: One option for implementing a National Food Waste Tax Incentive

One option proposed for the National Food Waste Tax Incentive would be in the form of a non-refundable or refundable tax offset (subject to aggregated turnover thresholds) rather than a deduction.

We would suggest a 45 percent cash refundable tax offset incentive would be available for donors with up to \$20 million in aggregated turnover, and a 40 percent non-refundable tax offset would be available donors with turnover of \$20 million or more.

Such an incentive would be advantageous for those smaller taxpayers with aggregated turnover below \$20 million who are not in a taxpaying position (for example primary producers in a tax loss position). Such taxpayers would be eligible for a cash tax refund for donations of food and services.

Other features of the scheme include:

- This incentive would apply to donations of food as well as food relief services (for example costs of services that are directly related to food relief such as transport, logistics and warehousing costs). For simplicity, this incentive would be payable based on the costs incurred in providing the relevant food trading stock or food relief donation services.
- The incentive would be limited to donations made to a registered charity providing food relief or other welfare services to people in need (i.e. a public benevolent institution).
- The incentive would be limited to donations made in the course of carrying on a business. For example, a business that redistributes food to a manufacturing business that processes the donated food for redistribution to those in need would qualify for the tax incentive. The incentive would assist the food manufacturing industry that is currently not operating at full capacity because of the COVID-19 global pandemic by creating new employment opportunities.
- Appropriate safeguards could be put in place in terms of governance relating to this tax incentive. Specific reporting of food waste donations for which the tax incentive is claimed could be similar to, for example, the framework of the current Taxable Payments Annual Reporting ('TPAR') regime providing details to the ATO of all donations subject to the Food Waste Incentive on an annual basis for data matching purposes.

The cost of the scheme is estimated at \$50 to \$100 million in forgone revenue based on the following assumptions:

- A \$522 million direct cost estimate is based on an average retail value of food of \$6 per kilogram, and an estimated annual demand of 87 million kilograms of food donations.
- Based on the application of a non-refundable tax offset of 40 percent applicable to a corporate taxpayer paying tax at a 30 percent tax rate, a tax incentive of 10 percent would be available (\$52 million)
- Based on the application of a refundable tax offset of 45 percent applicable to a small business taxpayer paying tax at a 25 percent rate (applicable from the 2021-22 income year), a refundable tax incentive of 20 percent would be available (\$104 million).

Section 1: Food relief donation tax incentives

Summary of Australia's current position

Supply chain of food production

Food waste in Australia occurs at all points in the supply chain as shown in the table below.³

The food relief sector has been playing an active role in trying to reduce food waste and hunger in Australia but would be better supported by a tax policy that enhances the incentive to donate food and relevant food relief services throughout the supply chain. This policy would support primary producers, food processors, manufacturers, wholesalers, retailers, the logistics and transport industry, as well as other service providers who are committed to the alleviation of food waste and insecurity in Australia, but for whom the existing policy framework does not necessarily provide optimal incentives for the promotion of these objectives.

The main purpose of this proposed tax policy is to achieve food waste reduction targets and alleviate the food insecurity experienced by many Australians. To achieve this goal, the tax policy has been developed to optimise Australia's food donation incentives by leveraging global examples of food donation policies, as well as the current tax incentive framework established under Australian tax law.



Production	Handling and storage	Processing and packaging	Distribution and market	Consumption
Definition				
During or immediately after harvesting on the farm.	After produce leaves the farm for handling, storage and transport.	During industrial or domestic processing and/ packaging.	During distribution to markets, including losses at wholesale and retail markets.	Losses in the home or business of the consumer, including restaurants/caterers.
Includes				
Fruits bruised during picking or threshing.	Edible food eaten by pests.	Milk spilled during pasteurization and processing (e.g. cheese).	Edible produce sorted out due to quality.	Edible products sorted out due to quality.
Crops sorted out post harvest for not meeting quality standards.	Edible produce degraded by fungus or disease.	Edible fruit or grains sorted out as not suitable for processing.	Edible products expired before being purchased.	Food purchased but not eaten.
Crops left behind in fields due to poor mechanical harvesting or sharp drops in prices.	Livestock death during transport to slaughter or not accepted for slaughter.	Livestock trimming during slaughtering and industrial processing.	Edible products spilled or damaged in market.	Food cooked but not eaten.
Fish discarded during fishing operations.	Fish that are spilled or degraded after landing.	Fish spilled or damaged during canning/smoking.		

³World Resources Institute. 'Reducing Food Loss and Waste'. (2013). <https://pdf.wri.org/reducing_food_loss_and_waste.pdf>

Current tax law

Currently, Australia allows taxpayers to claim certain deductions for certain donations made to food relief organisations, and other similar organisations. These deductions are available both under the general rules for deductions in Australia's tax law, and specific rules regarding organisations that are Public Benevolent Institutions ('PBI') with Deductible Gift Recipient ('DGR') status.

Under the general rules in section 8 – 1 of the Income Tax Assessment Act 1997 ('ITAA 1997'), deductions may be allowable if there is a sufficient nexus between the donation and the purpose of gaining assessable income (for donors who carrying on a business). For instance, business expenses incurred on sponsorships, advertisements and marketing, would broadly be deductible due to the fact that they are commercial in nature (subject to a case-by-case analysis).

Additionally, section 30 – 15 of the ITAA 1997 allows for a specific type of deduction with regard to gifts made to DGR recipients. Gifts of money, property and trading stock from a taxpayer to a food relief charity, such as a DGR, may be deductible under this section. The following table provides a more detailed summary.

Donation type	Deductibility
Section 8 – 1 ITAA 1997	
General	A deduction can broadly be allowed if there is a sufficient nexus between the donation and whether the expense has been necessarily incurred in gaining assessable income or carrying on a business for producing or gaining assessable income subject to the application of the 'negative limbs' of section 8 – 1. The deductibility of costs and outgoings under section 8 – 1 is, however, a case-by-case determination, and will not always be readily determinable.
Services including sponsorships, advertisements, and marketing services	A deduction may be allowable if the donation is incurred in carrying on a business. On the basis the services were provided in carrying on a business under a sponsorship, advertising or marketing arrangement, a deduction may be allowed for any loss or outgoing incurred (but not for the market value of the services provided). Services provided outside the course of a business, for example, by an individual, would not be deductible under section 8 – 1 or section 30 – 15.
Services including sponsorships, advertisements, and marketing services	A deduction may be allowable if the donation is incurred in carrying on a business. On the basis the services were provided in carrying on a business under a sponsorship, advertising or marketing arrangement, a deduction may be allowed for any loss or outgoing incurred (but not for the market value of the services provided). Services provided outside the course of a business, for example, by an individual, would not be deductible under section 8 – 1 or under section 30 – 15.

Donation type	Deductibility
Section 30 – 15 ITAA 1997⁴	
Money	A transfer of money is considered as a gift, and therefore will be eligible for deduction under section 30 – 15. The amount that can be deducted is the amount of the donation.
Property generally (including trading stock)	A gift of property that the donor purchased during the 12 months before making the gift may be deductible. The amount that can be deducted is the lesser of the market value of the property on the day the donation was made and the amount paid for the property.
Trading stock	A gift of an item of trading stock may also be deductible if the gift is a disposal of the item outside the ordinary course of the donor’s business subject to there being no election made in relation to electing to spread or defer profit from the forced disposal or death of livestock. The amount that can be deducted is the market value of the item on the day the donor made the gift.
Property valued at over \$5,000 by the Commissioner	A deduction is allowable and the amount that can be deducted will generally be for the valuation amount if the property was not purchased during 12 months before the gift was made.
Testamentary gifts	Testamentary gifts or contributions are not deductible under section 30 – 15.
Workplace giving	Workplace giving donations of money \$2 or more should be deductible to the donor.

⁴ Summary subject to additional conditions and limitations (including in section 78A of the ITAA 1936).

As a result, and subject to applicable conditions and exclusions, donors can claim deductions for donations to the food relief sector, as a DGR, as follows:

- **Donations of money to food relief organisations** – a deduction can be claimed by the donor for the full monetary value of the donation if the donation qualifies as a ‘gift’ for the purposes of section 30 – 15.
- **Donations of services (such as sponsorship, food transportation, or storage services) to food relief organisations** – a deduction will generally not be claimable by the donor *unless* the services are provided under an arrangement which creates a deduction for the donor under section 8 – 1. However, even if this is the case, we note that the deduction can only be claimed for the value of certain costs incurred under the arrangement, and *not* the market value of the relevant services. There may also be, from case-to-case, considerable uncertainty as to whether a deduction under section 8 – 1 is allowable.
- **Donations of food (and other property) to the food relief sector** – will generally give rise to a deduction for the donor provided the donation qualifies as a ‘gift’ for the purposes of section 30 – 15, and:
 - The food (or other property) is trading stock of the donor and the disposal is made outside the ordinary course of the donor’s business;
 - The food (or other property), regardless of whether it is the donor’s trading stock, was purchased by the donor during the 12-month period prior to the making of the gift; or
 - The food (or other property), regardless of whether it is the donor’s trading stock, is valued by the Commissioner at more than \$5,000.

Pro bono services are not deductible in any circumstances under the current tax rules.

Australia’s current food waste policy setting

The National Food Waste Strategy (‘**NFWS**’) focuses on halving Australia’s food waste by 2030. The NFWS is aligned with the United Nations *Transforming our world: 2030 Agenda for Sustainable Development*.⁵ As stated, food waste occurs at every level of the supply and consumption chain globally and in Australia.

The federal Government has invested approximately \$10 million to support research in respect of reducing food waste in conjunction with industry practices.⁶ States and Territories are also involved in managing food waste through the following avenues:

- research programmes;
- data collection on household food wastes;
- providing funding, financial support and programs to save food; and
- supporting the process of converting food waste into bioenergy productions.

The NFWS has identified four main areas in support of reaching Australia’s goal of reducing food waste:

- 1) Policy support – whereby policies introduced support the target to reduce food waste and improve the repurposing of food.
- 2) Business improvements – ensuring businesses consider food waste prevention practices.
- 3) Market development – research into the source of food wastage and using this to understand how to better alleviate food waste in Australia.
- 4) Behavioural change – instilling new practices and mindsets of individuals to ensure that the food waste reduction strategy has a lasting impact.

⁵ United Nations, ‘Transforming Our World: The 2030 Agenda for Sustainable Development’ (2015).

⁶ Commonwealth of Australia, ‘National Food Waste Strategy; Halving Australia’s food waste by 2030’, (2017). (see page 16)



As a supplement to the NFWS, Australia's Department of Agriculture, Water and the Environment has also released a *Roadmap*⁷ which establishes an approach to the achieving a 50 percent reduction of food waste by 2030.

The NFWS is funded with a \$1.37 billion investment which comprises the following:

- \$1 million provided by the Government to Food Innovation Australia Limited ('**FIAL**') to develop resources required to implement strategy. FIAL has developed a roadmap and framework for a commitment programme to encourage business to participate in food waste reduction activities.
- \$370,000 from the National Environmental Science Programme ('**NESP**') to create a return on investment study.

Food waste, food relief and a specific food relief donation tax incentive.

Currently, about 652,000 Australians receive food relief. Despite the fact that 60 million meals are provided to more than 2,600 charities, almost 65,000 Australians are still unable to receive food relief.⁸

It would be possible to further promote the objectives of the NFWS whilst providing relief to food insecure Australians by creating a specific regime enacting a specific food relief donation tax incentive that would use the tax system to effectively subsidise the donation of food and relevant food relief services.

This report will continue to identify the potential reform framework and make an assessment of potential reform options for such an incentive at **Sections Two to Four**.

⁷ Department of Agriculture, Water and the Environment; Food Innovation Australia Limited, 'A Roadmap for reducing Australia's food waste by half by 2030 (2020)

⁸ Department of Agriculture, Water and the Environment; Food Innovation Australia Limited, 'A Roadmap for reducing Australia's food waste by half by 2030 (2020) <<https://www.environment.gov.au/system/files/resources/fca42414-c4df-4821-b195-4948ad673f69/files/roadmap-reducing-food-waste.pdf>>

Section 2: Analysis of current tax incentives under Australian income tax laws

Several tax incentives under Australian federal law are relevant when considering the design of a specific food relief donation tax incentive that supports the elimination of food waste.

The policy rationales underlying these incentives are diverse, and include:

- The promotion of research and development ('R&D') activities – e.g. the R&D tax incentive;
- Economic stimulus / support in times of economic crisis – e.g. coronavirus economic support measures;
- Environmental incentives – e.g. an immediate deduction for capital expenditure on certain environmental protection expenses; and
- Encouraging taxpayers to invest in small companies and start-ups – e.g. incentives for investing in small mineral exploration companies, early stage venture capital limited partnerships and early stage investors in innovation companies.

Our analysis of the current tax incentives provided for under Australian tax law informs our discussion of the options for a specific food relief donation tax incentive at **Section Four**.

Tax deductions, offsets, and incentives in general

Under Australia's federal income tax rules, taxation is levied at the applicable rate on a taxpayer's net income. A tax deduction is effectively an amount that reduces a taxpayer's net income and thus, their tax liability. A tax offset is an amount that directly reduces a taxpayer's liability after the tax rate is applied to their net income. As such, deductions and offsets can create different degrees of economic benefit for a taxpayer, depending on their circumstances. The table below explains this at a high level.

Category of deduction / offset	Broad description	Economic benefit to the taxpayer
General tax deduction	As enacted under section 8 – 1 of the <i>ITAA 1997</i> and described in Section One .	The value of the deduction multiplied by the taxpayer's marginal income tax rate. If the taxpayer doesn't have any net income to deduct, the excess deduction translates into a tax loss which may be carried forwards to deduct against future income (subject to loss recoupment rules).

Category of deduction / offset	Broad description	Economic benefit to the taxpayer
Specific tax deduction	<p>In addition to the general deduction rules, amounts may also be deemed to be specifically deductible under the tax rules either immediately or over time.</p> <p>Examples include deductions for expenses incurred on environmental rehabilitation, which may be immediately deductible, and charitable donations.</p>	<p>The value of the deduction multiplied by the taxpayer's marginal income tax rate. If the taxpayer does not have any net income to deduct, the excess deduction translates into a tax loss which may be carried forward to deduct against future income (subject to loss recoupment rules).</p>
Non-refundable tax offset	<p>Tax offsets reduce the amount of tax payable on taxable income.</p> <p>This offset lowers the tax an individual is liable to pay. Excess unused offsets cannot be refunded as a cash benefit.</p> <p>Certain excess non-refundable offsets may be carried forward to later years.</p>	<p>Equivalent to 100 percent of the value of the offset, limited to the taxpayer's outstanding tax liability.</p>
Refundable tax offset / cash tax incentive	<p>A refundable offset negates a taxpayer's tax liability. Any offset amount that exceeds the liability can be refunded as a cash benefit.</p> <p>This is similar to a cash tax incentive payable to a taxpayer.</p>	<p>Equivalent to 100 percent of the value of the offset / incentive (i.e. 100 percent of the offset / incentive is available as a current year cash benefit).</p>



Research and development tax incentive

The R&D tax incentive is a tax incentive that enables companies who engage in R&D activities to be eligible for a refundable tax offset of 43.5 percent, broadly provided the company has an aggregated turnover of less than \$20 million for the year. Otherwise, a non-refundable tax offset of 38.5 percent is available to eligible companies, and they may be able to carry forward any unused offset amounts to future income years subject to the application of the tax loss recoupment rules.

This provides an incentive for smaller businesses to engage in R&D activities, as well as industries to conduct R&D activities that had previously not been engaged in doing so.

Coronavirus economic support incentives

To support individuals and business during the coronavirus pandemic, the Australian Government released a series of support incentives, including:

- **The Jobkeeper subsidy ('Jobkeeper')** – This subsidy currently enables eligible businesses to continue paying their employees during the COVID-19 pandemic, and broadly provides eligible businesses a specified amount per fortnight in relation to their eligible employees for the duration of the program (subject to additional legislative revisions).
- **Cash flow payment for employers** – Eligible small and medium sized business employers with a turnover of up to \$50 million (and non-profits of an equivalent size) have been granted tax free cash flow boosts of between \$20,000 and \$100,000, to provide support to during the pandemic.
- **Instant asset write-off threshold** – An immediate deduction of the cost of a depreciating asset (valued up to \$150,000) has been made available for eligible businesses with an aggregated turnover of less than \$500 million. Additional measures providing accelerated capital depreciation were also enacted for eligible businesses.

Environmental incentives

The income tax law contains a number of incentives relating to the environment, including:

- An immediate deduction for expenditure on certain environmental protection activities;⁹
- Deductions for expenditure for establishing trees in carbon sink forests;¹⁰
- Deductions for expenditure on registered emissions units;¹¹
- An immediate deduction for certain expenditure on mine site rehabilitation;¹²
- Income tax concessions for landowners entering certain perpetual conservation covenants, including an income tax deduction for any decrease in land value as a result of entering into a conservation covenant (provided the landowner receives no payment in respect of entering into the covenant).¹³ Further, the Capital Gains Tax provisions will apply where a conservation covenant is entered into as if it were a sale or gift of the land;¹⁴ and
- An income tax deduction for gifts of property valued at more than \$5,000 to an entity on the Register of Environmental Organisations (the deductions may be spread over five years).¹⁵

Tax incentives to invest in small companies and start-ups

The Australian Government has also enacted, at various stages, tax incentives to promote investment in smaller companies and start-ups:

- **Junior Minerals Exploration Incentive ('JMEI')** – The JMEI encourages investment in small mineral exploration companies. This is achieved through generating tax credits by choosing to give up losses from their exploration expenditure. The tax credits are then distributed to investors who purchase shares during the eligible period.
- **Incentives for early stage venture capital limited partnerships ('ESVCLP')** – Taxpayers who invest in early stage venture capital limited partnerships can receive a 10 percent non-refundable carry-forward tax offset on investments made through an ESVCLP.
- **Tax incentives for early stage investors in innovation companies** – Tax incentives are granted to eligible investors who purchase new shares with an early stage innovation company. Eligible investors are able to receive a non-refundable carry forward tax offset that is equal to 20 percent of the amount paid of their eligible investments (with the maximum offset of \$200,000 for each investor and affiliate(s) combined in the income year);

⁹ Section 40 – 755 of the ITAA1997.

¹⁰ Section 40 – 1010 of the ITAA1997

¹¹ Division 420 of the ITAA1997

¹² Section 40 – 735 of the ITAA1997.

¹³ Section 31 – 5 of the ITAA1997.

¹⁴ Section 104 – 47 of the ITAA1997, under CGT event D4.

¹⁵ Section 30 – 15 of the ITAA1997.

Section 3: Case studies of international approaches to food relief donation tax incentives

Overview

Different countries have different policy approaches on food relief tax incentives. At a high level, there are countries such as the United States of America (US) that offer generous tax incentives to food donors by way of enhanced deductions that exceed the value of the food donated whilst other countries in the European Union (EU) have broadened the scope of these tax incentives to include the cost of logistics, storage and transport services related to the food donation. The incentives in these countries provide precedent tax policies that could be adopted by Australia to encourage food donation and redistribution to reduce food waste, and support food relief, while also addressing the cost of storage and logistical concerns in relation to food waste. Australia should look to considering a tax policy framework that draws on these international experiences and we have set out our recommendations in this regard in

Section Four.

United States of America¹⁶

To address concerns around the significant amount of food wastage in the US, the US federal government has recognised the importance of food donation and uses the tax and legal framework to incentivise businesses to donate food. Under the tax framework, the US federal government offers an enhanced tax deduction to encourage businesses to donate food inventory.¹⁷ All businesses in the US (including C-corporations, S-corporations, limited liability corporations (LLCs), partnerships and sole proprietorships) are eligible for the enhanced tax deductions if they make donations of food inventory that meet certain criteria, including that:

- the donations qualify as charitable contributions made to qualified charitable organisations;¹⁸
- the food is used in a manner that is consistent with the recipient organisations exempt status;¹⁹
- additional compliance obligations are met including that a written statement in the required form is provided to the donor; and²⁰
- that federal quality standards are met in respect of donated food.²¹

¹⁶ US Department of Agriculture, 'Donations'; <<https://www.usda.gov/foodlossandwaste/donating>>

¹⁷ Harvard Food Law and Policy Clinic, 'Tax Deduction for food Donation, a legal guide' (April, 2016) <<http://www.chlpi.org/wp-content/uploads/2013/12/Food-Donation-Fed-Tax-Guide-for-Pub-2.pdf>>

¹⁸ Section 170(c), (e)(3) of the Internal Revenue Code of 1954.

¹⁹ Section (e)(3) of the Internal Revenue Code of 1954.

²⁰ Section 1.170A-4A(b)(4) of the Code of Federal Regulations (CFR).

²¹ Specifically, the food must be 'apparently wholesome food' within the meaning of the Bill Emerson Good Samaritan Food Donation Act (42 U.S.C. 1791(b)(2)) under section 170 of the Internal Revenue Code of 1954.

The value of the enhanced deduction to the donor is the value of the *lesser of*:

- Twice the basis (essentially, 200 percent of the cost of the food donated); or
- The basis of the donated food plus one-half of the expected profit margin of the food inventory (i.e. the profit margin the donor would expect to capture if the food were sold at its fair market value).

To illustrate the US enhanced tax deduction, take a grocery store that donates potatoes with a fair market value of \$100. The store's basis in the potatoes is \$30. The expected profit margin is \$70 (\$100 less \$30). Under the enhanced deduction in the US, the grocery store is eligible to deduct the lesser of:

- $\text{Basis} \times 2 = \$30 \times 2 = \$60$
- $\text{Basis value} + (\text{expected profit margin}/2) = \$30 + (\$70/2) = \65

The lesser amount is \$60, and the grocery store would be entitled to a deduction of \$60 for the food donated (which has a basis of \$30). This would be higher than the general tax deduction equal to basis that a business would otherwise get for the donation of food inventory – \$30 in the case of the grocery store. Other aspects of the US enhanced tax deduction include:

- The federal tax framework only covers food donations and does not include the cost of services, however in certain circumstances deductions for costs incurred and not reimbursed for the delivery of services will be allowable.²² However, some States in the US such as California offer a tax credit of 50 percent of the transportation costs incurred by the donor in connection with the transportation of the donated food.

- Businesses that do not account for inventory and are not required to capitalise indirect costs have the option to calculate the basis at 25 percent of the product's fair market value which is the value at which goods can be sold.
- Total annual charitable deductions for food inventory donations cannot exceed 15 percent of the C corporation's taxable income for the tax year or, in the case of an owner of a business other than a C-corporation, 15 percent of the owner's aggregate net income for the tax year from all trades or businesses from which such contributions were made for the year. Taxpayers may carry forward any excess donations beyond the 15 percent income limitation for up to five years. This 15 percent limit was increased to 25 percent for 2020 contributions.

²² Section 1.170A-1(g). Internal Revenue Code of 1954.

Canada

Under Canadian federal law, food relief donation tax incentives include a tax credit for individuals and a charitable donation deduction for corporations, subject to certain conditions being met.

Some key aspects of the incentives under Canadian federal law can be summarised as follows:

- **Credit for individuals²³** – a non-refundable credit is offered when an eligible donation of food is made. The benefit of the credit broadly equals 15 percent of the first CAD\$200 donated, with amounts above this threshold attracting a 29 percent credit (a higher rate may apply depending on the individual's income). Eligible donation amounts are capped at 75 percent of the donor's net income.²⁴
- **Deduction for corporations²⁵** – corporations may deduct an amount for eligible donations equalling to the fair market value of the food donated (up to 75 percent of the donor's net income).

Tax credits not claimed in a year may be carried forward for up to 5 years from the year of donation.

We note that additional relevant tax incentives are also available at the provincial level.

For example, in Ontario under the community food program donation tax credit for farmers, farmers are able to deduct 25 percent of the fair market value of the qualifying donation provided to an 'eligible community food program'.²⁶ Similarly, Quebec provides farmers with a tax credit of 50 percent based on the fair market value of products donated to foodbanks.²⁷ Under section 20.1 of British Columbia's Income Tax Act, farmers who donate produce to foodbanks are entitled to a deduction of not more than 25 percent of the total amount of donation for the income year.²⁸ Nova Scotia also offers a food bank tax credit for farmers. It is a non-refundable income tax credit for both individuals and corporations that carry on the business of farming and donate agricultural product to an eligible food bank in Nova Scotia. The credit is calculated as 25 percent of the fair market value of the products donated.²⁹

²³ Section 118.1, Income Tax Act 1985.

²⁴ An exception to the general rules is in the year of death, the limit is 100 percent of the person's net income on the final return vs. 75 percent; Government of Canada, 'Limitations on claim amount of gift'. <<https://www.canada.ca/en/revenue-agency/services/tax/individuals/life-events/what-when-someone-died/final-return/complete-final-return-steps/common-types-income-a-final-return/federal-non-refundable-tax-credits/line-34900-donations-gifts/limitations-on-claim-amount-gift.html>>

²⁵ Section 110.1, Income Tax Act 1985.

²⁶ Bill 36 2013 (2013)

²⁷ Revenue Quebec, 'Increase in the eligible amount of food donations by processors. (2016)

²⁸ Section 20.1, Income Tax Act 2016; Government of Canada, 'British Columbia farmers' food donation tax credit' (2020)

²⁹ Section 50A of the Nova Scotia Income Tax Act.

France

France has a fiscal incentive which provides a 60 percent tax credit of the value of gift donations (including donated food), capped at a limit of the higher of 0.5 percent of the donor company's revenue or EUR20,000 (for the FY20 year, and before then EUR 10,000).³⁰ The rate of the tax credit available decreases to 40 percent for the amount of the gift exceeding EUR2,000,000, but remains at 60 percent irrespective of the amount donated for payments made to non-profit organization's which provide free meals, housing assistance, or free care, furniture and basic necessities to people experiencing difficulty. Taxpayers are also able to deduct 60 percent of the value of related logistics costs (such as costs expended on the delivery and storage of food) from the tax payable on their revenue.³¹

In case of food donations, the amount to be taken into account is the cost price ('prix de revient') of the food which includes the costs incurred by the company to acquire / produce the food donated. This value also includes logistics costs including, transportation costs and storage costs.

Although the tax credit is not refundable, excess credit amounts over the 0.5 percent threshold can be carried forward for up to 5 years.

United Kingdom (UK)

A UK Parliament report published on *Food waste in England: Government Response to the Committee's Eighth Report of Session 2016 – 17*³² highlights the current UK tax breaks or incentives that are available to companies, to support their efforts to redistribute surplus food. Generally, a UK company can deduct the value of their donations from their total business profits before tax. If a UK company donates trading stock to a charity then generally sales income is not included for the value of the gift, which means the UK company will obtain tax relief for the cost of stock it has given away.³³

In the case where a UK company gives away food to a charity in the UK, which the charity in turn gives away, this will be a business gift and subject to value-added tax ('VAT') – however insofar as the items are food items covered by the zero rate of VAT, no VAT will be applicable. The UK VAT rules on the liability of food items are complex so the nature of the food items would need to be considered. In the case where a UK company donates any food items to a UK charity which will export the items outside of the UK, this would be zero rated for VAT purposes.

It is worthwhile noting there was a comprehensive inquiry in the UK Parliament in 2016 on the right legislative framework to encourage businesses to redistribute their surplus food to people in need and reduce food wastage. Some key points coming out of that inquiry include:³⁴

- There was a lack of awareness in the food industry of the current general tax incentives under UK law to assist with redistribution of food waste.

³⁰ Article 238 bis Code general des impots (2018)

³¹ European Commission, 'EU guidelines on food donation' 2017 361(01) Official Journal of the European Union

³² The Environment, Food and Rural Affairs Committee, 'Food waste in England: Government Response to the Committee's Eighth Report of Session 2016-17' (2017) <<https://publications.parliament.uk/pa/cm201719/cmselect/cmenvfru/444/444.pdf>>

³³ Government UK, 'Tax when your limited company gives to charity' <<https://www.gov.uk/tax-limited-company-gives-to-charity>>

³⁴ House of Commons, 'Oral evidence: Food Waste in England, HC 429' (2016) <<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/environment-food-and-rural-affairs-committee/food-waste/oral/44092.pdf>>

- There is a suggestion that this may not be enough and further tax relief should be given to haulage and transport firms who delivered surplus food from retailers to charities.
- Concern was expressed that surplus food that could legally go to people was often sent for anaerobic digestion instead, even though anaerobic digestion was further down the food waste hierarchy. This was encouraged by tax incentives for waste that was turned into green energy, while there was no similar financial support to enable businesses to redistribute their surplus food to people in need.
- The UK Inquiry also reported that France offered tax deductions for redistribution schemes to cover the direct costs of charity redistribution. It called for fiscal incentives to be available in England to provide 'a level playing field', so that it did not cost businesses more to redistribute surplus food to charities and community groups than it did to turn it into energy or animal feed. This would ensure that economic incentives were more aligned with the food waste hierarchy.
- The UK Inquiry also heard evidence on whether a tax break will incentivise the production of surplus food. The proposition put forward is businesses are unlikely to be profitable from the surplus food (more likely a significant loss will be made). The submission made was that no part of the food industry willingly produces food that they know they are not going to be able to sell. If the direct additional costs for a business that is absolutely on the margins of sustainability (because the discounters and the retailers have tied them down to an absolute minimum profit margin) and the business is not losing money on redistributing that food to charities, then they are more likely to do so. At present, food redistribution to charities compete with other forms of disposal.

The Netherlands

In the Netherlands, individuals and corporations are subject to income tax under separate legislation.

The income tax legislation for corporations, the *Wet op de vennootschapsbelasting 1969*, provides for deductions to be claimed by corporate donors of their donations to institutions for public benefit ('ANBI') and to supporting foundations representing social interest institutions ('steunstichtingen SBBI') in certain circumstances. These donations include donations of food. Generally, the deduction available is capped at a maximum of 50 percent of the annual profit or EUR100,000.

An enhanced deduction is available for donations to cultural institutions. The value of a deduction where a donation is made to one of these institutions is increased by 50 percent, subject to a cap of EUR2,500.³⁵ When a donation is made in kind, it is in principle deducted according to the economic value of the donation. If the gift has a business character, it is considered part of ordinary operating costs and can in principle be deducted from the total income amount.³⁶

The income tax act for individuals, the *Wet inkomstenbelasting 2001*, provides for deductions to be claimed for donations to ANBI's and steunstichtingen SBBI's made by individuals, including in-kind donations of food. Broadly, a deduction, which is capped at 10 percent of the individual's income, is available for the value of the donation. The annual threshold for deduction is 1 percent of the income and at least EUR60. The value of the donation is increased by 25 percent (up to a cap of EUR1,250) for certain donations to cultural institutions.³⁷ The threshold and cap do not apply to certain periodic donations.

³⁵ Article 16 of *Wet op de vennootschapsbelasting 1969*.

³⁶ Article 3.25 of *Wet Inkomstenbelasting 2001*; Article 8 of *Wet op de vennootschapsbelasting 1969*.

³⁷ Article 6.39, 6.39a of *Wet inkomstenbelasting 2001*.

Section 4: Assessment and options for a specific food relief donation incentive

Executive Summary of recommendations

- Donating food for human consumption diverts food waste from landfills and to people in need. This will become particularly important as Australia moves to address social issues and the economic hardship facing households in a global pandemic. Major developed countries such as the US and EU members recognise the need to address food wastage and have already implemented tax and legal frameworks to address the issue of food waste.
- The key problem for Australia is that the high cost of logistics such as storage and transportation may act as a disincentive for businesses to redistribute food away from landfill.
- To address the issue, the Australian tax law could be amended to enact a specific food relief donation incentive (the “National Food Waste Tax Incentive”) to encourage donations of both food and related services:
 - One option is for a National Food Waste Tax Incentive with design features broadly in line with the current R&D tax offset with appropriate limitations and safeguards, and drawing on international precedents of food relief donation incentives.
 - An aspect of this option would be to ensure the law specifies the different circumstances where delivery and storage costs should be covered by the tax incentive as in the case of France. This could also include amendments to the current Section 30 – 15 of the ITAA1997.
 - Alternatively, a secondary option is a US-style enhanced deduction for all businesses (not limited to those with trading stock) to encourage the donation of food for human consumption.

Summary of current food relief donation tax incentives – what gaps and opportunities exist?

As is set out in further detail at Section One, the following table summarises the key food relief tax donations that are currently in place:³⁸

Type of Donation	Incentive	Comment
A donation of trading stock donated outside the ordinary course of the donor's business (this includes food).	Deduction for 100 percent of the market value of food. The economic benefit of the deduction will be limited to 30 percent of the amount of the deduction for larger corporate donors and may be deferred if the taxpayer is in losses.	The type of donation allows most potential donors of food in the food supply chain to utilise this deduction, however it may be relatively difficult to calculate market value (as opposed to the cost), although the deduction (and therefore benefit) may be greater.
A donation of other property if purchased in previous 12 months, subject to certain conditions (this includes food).	Deduction for the lower of 100 percent of market value or cost of food.	As above, except the deduction (and benefit) will be lower if the cost is lower than the market value (which is likely for many donors).
Services for food relief.	Deduction may be available for cost of service if incurred in carrying on business under section 8 – 1.	Only for taxpayers carrying on a business. The deduction is only for the cost of the services, and not the market value of the services provided.

Donation of food – gaps and reform opportunities

As a practical matter, most potential food donors in the food supply chain would be donating food on the basis that it is their trading stock. This means a 100 percent deduction for the market value of the food will be available to most potential donors considered by this report under the current rules.

Whilst the current approach does provide an incentive to donate food, this does not necessarily exceed the economic benefit that is available for writing off food as obsolete trading stock (which also gives rise to a tax deduction outcome).³⁹ While there are advantages to this approach, we believe that there is still nonetheless scope for reform in this area.

For completeness, it is not necessarily the case that a trading stock write-off creates a deduction outcome equal to the market value of the food. This will depend on the valuation method utilised by each relevant holder of trading stock. However, when the additional logistical burden associated with donating food is taken into account, as well as the potential administrative costs of calculating market value, it is clear that an enhanced benefit would be needed to create a material economic incentive for food donation in many instances (irrespective of the trading stock valuation method chosen).

³⁸ NB: this table is not intended to be a comprehensive overview of the relevant incentives that are available in Australia currently. Some other donations of shares, other property, and money may also be deductible if the relevant conditions are met. For more detail, refer to **Section One**.

³⁹ Refer to Division 70 ITAA 1997 for trading stock rules.

Donation of food relief services – gaps and reform opportunities

As the above summary illustrates, this area presents significant opportunity for reform. Even though services, particularly logistics and transport services, are essential to supporting food relief and food waste reduction through greater food relief donations, the incentives that are currently in place would provide only minimal economic benefits to potential service donors, and even then, only under a relatively narrow set of conditions.

A deduction for costs incurred in providing services provides minimal scope for a potential service donor to recover a material portion of the opportunity cost associated with providing those services. That is, the provision of, for instance, logistics and transport services by a potential donor would only result in the donor recovering a small fraction of the revenue that they could earn from providing them at market value (assuming that they were even eligible for a deduction under section 8 – 1).

Conclusion

There is an opportunity to create a specific food relief donation tax incentive – the National Food Waste Tax Incentive – that would enhance the available incentives for donations of food and food relief services to a level that would create a real economic benefit for potential donors of food and food relief services, thereby enhancing the provision of food relief in Australia. With the right design features, drawing on international and domestic precedents, this could create a real economic incentive for potential donors compared to what is available under the current law.



Assessment of potential incentives – with regard to other Australian tax incentives and international examples

As set out in **Sections Two and Three**, there are two high-level options for designing a specific food relief donation incentive:

Option	Description	Example
Option 1: offset / cash tax incentive payment	<ul style="list-style-type: none"> This option would involve the provision of a refundable or non-refundable tax offset for the cost value or market value of food donations as well as donations of food relief services. This incentive could be modelled on the design of the R&D tax incentive which provides a refundable cash tax offset to smaller taxpayers (i.e. aggregated turnover below \$20 million) and a non-refundable tax offset which is available as a credit against tax payable to larger taxpayers (i.e. aggregated turnover of \$20 million or more). The benefit of such a design feature would be that taxpayers who are non-tax paying would obtain the benefit of a cash tax incentive (for example, primary producers in a tax loss position). 	<p>A corporate taxpayer who donates food/ related services of \$100,000 will receive either:</p> <ul style="list-style-type: none"> A cash refundable tax offset of 45 percent if aggregated turnover below \$20 million.⁴⁰ A non-refundable tax offset of 40 percent if aggregated turnover of \$20 million or more.⁴¹
Option 2: enhanced deduction	<ul style="list-style-type: none"> This option would involve the provision of a broader deduction than what is allowable under the current system covering services. An uplift factor or optionality feature could also be included. For instance, a deduction of either: 120 percent of the market value of donations of food and food relief services, or 200 percent of the cost of the food or food relief services could be provided, (either at the donor's discretion or subject to a cap of the lower amount). 	<p>A corporate taxpayer who donates food/ services costing \$100,000 but with a market value of \$150,000 will receive:</p> <ul style="list-style-type: none"> A tax deduction of \$200,000 (being 200 percent of cost); or A tax deduction of \$180,000 (being 120 percent of market value). <p>For taxpayers in a nil tax payable/ tax loss position, any tax losses generated by the incentive may be carried forward to future income years subject to the tax loss recoupment rules.</p>

⁴⁰ For example, assuming a corporate tax rate of 25 percent for a small business entity (with effect for the 2021/22 income year) which was in a nil tax payable position, the company would add back the deduction of \$100,000 (\$25,000 tax effected), and claim a tax offset of \$45,000, giving rise to a net cash tax refundable benefit of \$20,000.

⁴¹ For example, assuming a corporate tax rate of 30 percent for a large corporate entity, the company would add back the deduction of \$100,000 (\$30,000 tax effected), and claim a tax offset of \$40,000, giving rise to a net tax benefit of \$10,000. This non-refundable tax offset may be applied against a current year tax liability. Where the company was in a tax loss position or the current year tax liability was below the amount of the tax offset, any unutilised tax offsets are not refundable, but may be carried forward to future income years subject to utilisation under the tax loss recoupment rules.

- These high-level options both have the benefit of essentially utilising the existing mechanics of Australia’s tax system to extend the benefit to potential donors.
- The deduction option has features in common with the US approach.
- The offset / cash tax incentive approach has aspects in common with other offshore jurisdictions including in the EU (e.g. France has a capped incentive available for a percentage of donation amounts). It also could be designed to utilise features of existing incentives under Australian tax law (e.g. the R&D tax incentive).
- Additionally, an incentive that adopted features of the incentive in France, which has similar characteristics to a number of other EU member incentives, discussed in Section Three, would have the additional advantage of applying to food relief donation services as well as food donations.

Questions for designing a specific food relief donation tax incentive

Having established these high-level options, we can now identify three more specific, key questions that underlie the design of a specific food relief donation tax incentive. These questions each inform a key design element of each potential incentive.

Question one – what is the amount of incentive?

The amount of a food relief donation incentive will depend on a number of sub-questions:

- *What will the incentive be applied to?* In the example of food relief donation incentives, the main question to resolve is whether the application of the incentive is limited to donations of food, or extended to include relevant food donation services.
- *Will the incentive be based on the market value of the relevant donations, or the cost of the relevant donations?* An incentive that is based on market value will generally be more generous than an incentive based on cost but may be harder to calculate, potentially requiring greater compliance costs.
- *Will the incentive be payable as a deduction or offset / cash incentive?* As discussed above, a refundable tax offset / cash incentive provides a greater benefit to a non-refundable incentive or deduction for taxpayers who are making tax losses.

Question two – capped or uncapped incentive?

An incentive amount can be capped (e.g. at a fixed amount or percentage of taxpayer income) or uncapped. Excess amounts over a cap can also be carried forward (such as, for instance, they are under the Canadian example set out above, and other examples under local and international law). If the Government wished to cap the food waste scheme, a cap could be applied to deductions under the scheme as a whole (for example as applied to the JMEI), although this would add significantly to the administrative complexity of the scheme and add uncertainty for taxpayers in terms of eligibility for credits.

Question three – blended / optional incentives?

It is possible to provide a blended incentive depending on certain conditions. For example, a donor may be given the option of claiming a deduction for cost or market value, or it may be stipulated that an incentive is refundable or non-refundable depending on the claimant’s income level.

Estimated Policy costs

We have estimated our options for National Food Waste Tax Incentive to have a direct cost to Federal Government revenue of approximately \$50 to \$100 million per annum, calculated as follows:

- A \$522 million direct cost estimate is based on an average retail value of food of \$6 per kilogram, and an estimated annual demand of 87 million kilograms of food donations.
- Based on the application of a non-refundable tax offset of 40 percent applicable to a corporate taxpayer paying tax at a 30 percent tax rate, a tax incentive of 10 percent would be available (\$52 million)
- Based on the application of a refundable tax offset of 45 percent applicable to a small business taxpayer paying tax at a 25 percent rate (applicable from the 2021-22 income year), a refundable tax incentive of 20 percent would be available (\$104 million).

The above costs appear small in comparison to the large offsetting social, economic and environmental benefits of approximately \$2 billion per annum⁴² and against the current cost of food waste to the Australian economy of over \$20 billion annually.

Conclusion – our assessment

In our assessment, there are two options for a National Food Waste Tax Incentive in Australia one being utilising the framework of existing incentives such as the R&D incentive. A secondary option may be an enhanced deduction.

Primary option – refundable / non-refundable tax offset / incentive for donations of food and food relief services.

Our primary option is for a cash tax incentive or offset to be implemented with design features broadly in line with the current R&D tax incentive, and drawing on international precedents of food relief donation incentives – particularly with regard to the incentive in France discussed in **Section Three** – albeit with some modifications. The features of this option are summarised below:

- This incentive would be in the form of a non-refundable or refundable tax offset (subject to aggregated turnover thresholds) rather than a deduction. We would suggest a 45 percent cash refundable tax offset incentive would be available for donors with up to \$20 million in aggregated turnover, and a 40 percent non-refundable tax offset would be available donors with turnover of \$20 million or more. Such an incentive would be advantageous for those smaller taxpayers with aggregated turnover below \$20 million who are not taxpaying (for example primary producers in a tax loss position). Such taxpayers would still be eligible for a cash tax refund for donations of food and services.
- This incentive would apply to donations of food as well as food relief services (for example costs of services that are directly related to food relief such as transport, logistics and warehousing costs). Food would be limited to food for human consumption.
- For simplicity, this incentive would be payable based on the costs incurred in providing the relevant food trading stock or food relief donation services.
- The incentive would be limited to donations made to a registered charity providing food relief or other welfare services to people in need (i.e. a public benevolent institution).

⁴² Social, economic and environmental benefits of approximately \$2 billion per annum may be estimated by multiplying the estimated \$23 of social, economic and environmental value created per kilogram of food donated against an estimated donation of 87 million kilograms of food.

- The incentive would be limited to donations made in the course of carrying on a business. For example, a business that redistributes food to a manufacturing business that processes the donated food for redistribution to those in need would qualify for the tax incentive. The incentive would assist the food manufacturing industry that is currently not operating at full capacity because of the COVID-19 global pandemic by creating new employment opportunities.
- Appropriate safeguards could be put in place in terms of governance relating to this tax incentive. Specific reporting of food waste donations for which the tax incentive is claimed could be similar to, for example, the framework of the current Taxable Payments Annual Reporting ('TPAR') regime providing details to the ATO of all donations subject to the Food Waste Incentive on an annual basis for data matching purposes.

It is our assessment that an incentive with these design features would provide a relatively low fiscal cost in many instances if the double deduction for food trading stock donations that is available in the US is considered a benchmark, but greater present value of incentive for loss-making taxpayers – a crucial element supporting donations, especially in the current environment. The fiscal cost of this would be, in our preliminary assessment, comparable to the cost of the secondary option below.

Secondary option – optional enhanced deduction for donations of food and food relief services (120 percent of market value or 200 percent of cost at the choice of the donor or subject to cap)

Our secondary option for a National Food Waste Tax Incentive would be for an enhanced deduction option as adopted by the United States providing the taxpayer with a choice to deduct 200 percent of cost or 120 percent of the market value provided. This incentive would have the following features:

- This incentive would apply to donations of both food trading stock and food relief services provided in the course of carrying on a business, given the essential role of both of these donation types in providing food relief in Australia.
- To provide simplicity and also to ensure the greatest benefit provided, this incentive would be payable based on either the costs incurred in providing the benefit or the market value of the relevant food trading stock or food relief donation services at the choice of the donor (with a mark-up applying). Similar to the US approach we assess that a mark-up be applied to the quantum of the donation such that a 200 percent deduction for the cost of providing the donation could be claimed, or alternatively 120 percent of the market value of the donation could be claimed at the discretion of the taxpayer or subject to a cap of the lower amount.
- In line with existing rules concerning tax deductions, this would not be a refundable incentive.



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