NB On 29 August 2008, the ATO announced that it is appealing this decision. The ATO will continue to apply its long held view of what is a charity, consistent with Taxation Ruling TR 2005/21 (*Income tax and fringe benefits tax: charities*), pending the outcome of the appeal.

AID/WATCH Incorporated is an incorporated association which researches, monitors and campaigns about the delivery of overseas aid. It sought exemption from income tax as a charitable institution pursuant to s 50-5 *Income Tax Assessment Act 1997*. The objection of the Commissioner was that first it was an institution which did not itself distribute aid and thus was not charitable and second, it achieved its objects through campaigning which amounted to a political purpose.

The constitutional objectives of AID/WATCH are as follows:

“2. **Objectives**

AID/WATCH monitors, researches, campaigns and undertakes activities on the environmental impact of Australian and multinational aid and investment programs, projects and policies.

The main objectives of the Association are to seek to ensure that:

- Aid projects and development programs and projects are designed to protect the environment and associated human rights of local communities in countries that receive Australian aid.

- There is increased aid funding for environment programs with specific attention to renewable energy, end-use efficiency and energy conservation, small scale irrigation schemes and sustainable agriculture, land rehabilitation programs, waste management, and protection of biodiversity.

- There are complete environmental impact assessment (sic) according to the highest standards for all projects, incorporating meaningful public/community participation.

- Aid and development projects and programs incorporate the principles of ecologically sustainable development.

- There is respect for the rights of indigenous people and a recognition of their expertise in ecological management.

- Aid agencies, development banks and export credit agencies conduct full and regular consultations with community organisations, regarding the identification, planning, implementation, monitoring and evaluation of projects.

- There is accountability and transparency in the Australian aid and export credit programs including freedom of information on
all aspects of projects and programs of development agencies and multilateral development banks.

- There is greater recognition of women’s needs and greater involvement of women on development projects, and greater gender equity at all levels of the development process, including in consultancy firms contracted to implement aid programs and projects.
- There is a halt to structural adjustment programs that contribute to environmental degradation and dislocate or damage the poorest populations.
- There is an increased proportion of appropriate professional staff in Australia’s official overseas development agency (currently AusAID), official Export Credit Agency (currently EFIC) and multilateral development agencies and consultancy firms contracted for aid programs and projects and the development banks.
- There is increased funding of development education activities within Australia and an increased public awareness of the environmental and social impact of the Australian Overseas Development Assistance Program and related private investment, including input into environmental and developmental studies.
- There is a public fund to which gifts of money or property are to be made which will be used only to support AID/WATCH’s key purposes. This fund will be named the AID/WATCH fund.”

The tribunal found that there was evidence that the activities of AID/WATCH were in accord with its formal objectives. However, the activities were characterised as “at the edges of appropriate conduct”, but not “so extreme that it loses its charitable quality” (para 35). The Tribunal considered that the objects came within the first head of charity being the relief of poverty, even though no direct aid was given. Further the body could also fall under the education head of charity and the fourth head in promoting the most advantageous delivery of aid.

After examining some of the leading cases on charity and political purposes and noting that times have changed in respect of openness and accountability of government and that governments at all levels support the grant of overseas aid and protection of the environment, the tribunal found that AID/WATCH’s objects and activities did not breach the political boundary. The tribunal concluded:

“Because Aid/Watch does not have changes to the law as a main object it is not disqualified from charitable status by direct application of the principles enunciated in the Secular Society or National Anti-Vivisection Society cases. It may be disqualified if its objects and activities, although not overtly political, still place undue emphasis on
attempts to influence government, particularly with respect to priorities and methods. The argument against charitable status may be enhanced because of its activist approaches and confrontational methods. However, I consider that Aid/Watch’s objectives and activities, as I have found them to be, fall short of disqualifying it from being a charity.” (para 49)

The tribunal concluded that Aid/Watch was a charitable institution.

Implications of the case
This case should be used with caution until the appeal process is concluded. The tribunal has placed the boundary between charity and political activity quite differently from where the ATO believes that it is situated. Further, the finding that the charitable head of ‘relief of poverty’ does not necessarily have to involve direct provision of relief to those in need appears to allow more room for ‘advocacy’ organisations to fall within the charity definition.

The judgment may be viewed online at [http://www.austlii.edu.au/au/cases/cth/AATA/2008/652.html]