

Submission to Treasury on “in Australia” requirements for tax exempt bodies.

Exposure Draft for the Tax Laws Amendment (2011 Miscellaneous Measures) Bill (No. 1) 2011.

Submitted by the Australian Council for International Development (ACFID)

26 August 2011

1 Introduction and recommendation

The Australian Council for International Development (ACFID) appreciates the opportunity to provide Treasury with our comments on the Exposure Draft for the Tax Laws Amendment (2011 Miscellaneous Measures) Bill (No.1) 2011: tax exempt body “in Australia” requirement (Exposure Draft) and its accompanying explanatory material.

On July 14th, 2011 we met with Treasury officials and were assured that the purpose of the proposed amendments was to reinstate the law as it existed prior to the Word Investments case in 2008 and as such ACFID and its members would not be affected. This is also the message propounded throughout the explanatory material.

As drafted, the effects of the legislation are quite contrary to the intentions expressed by the Government. It will damage, most particularly, the international aid and development segment of the charities sector. It will nullify the deductible gift recipient and income tax exempt status of many ACFID members and will cause those same aid agencies to be in breach of the various tests that come about as a result of the legislation.

The problems have arisen through the complexity of the various legal structures to which the legislation relates and as a result of the multiple avenues that the Government provides for tax free and tax deductible status. The proposed legislation attempts to apply simple tests, the result of which would be to create intractable clashes amongst the various legal statuses of the aid funds and their parent entities. In addition, the problem with the proposed legislation is that it seems to have been drafted without an understanding of the most practical considerations as to how charitable agencies go about doing their work. We hope that the examples that we have provided clearly demonstrate the consequences of the proposed legislative changes.

As elaborated upon later, the act of a charitable agency giving support to a recipient would be cause for it to lose its whole of organisation Deductible Gift Recipient (DGR) status. It would also be a cause for the agency to lose its tax exempt status. The benefits provided by a tax exempt status or being a Public Benevolent Institution are vital to the viability of charitable organisations. The subject of these concessions has been reviewed by Senate committees and the Productivity Commission; it is well understood in the media and government spheres that charitable agencies rely on these concessions to attract and retain staff. The Government has stated that it will do nothing that will disadvantage the not-for-profit sector and yet the proposed legislation would cripple the efforts of charities both in terms of their staffing and also their ability to provide the relief that is their reason for being.

Recommendation: We request that the Exposure Draft be withdrawn and the current process be suspended until after the establishment of the National Charities and Not-for-Profit Commission. Future attempts at reform should be undertaken under the auspices of the Commission as part of an holistic and consultative process.

In preparing this submission we have intentionally avoided using legal references. We have instead tried to focus on the issues at hand and the actual effects that the proposed changes would have on development agencies. To assist in this process we have provided a number of examples.

A number of our members have contributed to this submission and have explicitly endorsed it, see appendix 1. Some of our members will also make their own submissions that will address concerns specific to their circumstances and we commend these to you.

2 About ACFID and its members

2.1 General

The Australian Council for International Development (ACFID) is the peak body for Australian non-government organisations working for the eradication of poverty through international development co-operation. We have seventy member organisations that operate in over one hundred developing countries worldwide. Some of our members are large organisations with hundreds of employees and with revenues in the hundreds of millions of dollars while others are very small organisations with a handful of employees and supported by volunteers. The membership of ACFID is supported by the giving of over 1.3million Australian households to the tune of over \$850 million dollars per year (2009/10). The Australian people are generous supporters of our sector and the work that it does to alleviate suffering in developing countries.

2.2 Typical member organisation structure types

The structure of our member organisations can be split into two key types and have the following characteristics:

(a) Type 1 Organisations:

- benefit from whole of organisation endorsement as a deductible gift recipient (DGR);
- have whole of organisation income tax exemption and whole of organisation fringe benefits tax (FBT) exemption;
- will also be endorsed through AusAID for an Overseas Aid Gift Deductible Fund (OAGD Fund); and
- may also be endorsed as a DGR for the operation of one or more other funds such as a necessitous circumstances fund and/or a public benevolent institution fund (PBI Fund).

(b) Type 2 Organisations:

- share many of the characteristics of Type 1 Organisations but do not benefit from whole of organisation DGR endorsement;
- like Type 1 Organisations, are endorsed as a DGR for the operation of an OAGD Fund; and
- may also be endorsed for the operation of one or more other funds.

While not part of our membership, there is a third type of organisation that might be referred to as a start-up overseas aid organisation. Such organisations may become members of ACFID in time; they reflect the philanthropic interests of niche sections of the Australian public and are an important component in keeping Australia's non-government overseas aid initiatives fresh. We believe their development should be encouraged and not hindered. Organisations of this type are described below.

(c) Type 3 Organisations:

- wish to start providing overseas aid, or have recently done so;
- wish to start raising money in Australia to fund their overseas aid programs; and
- commonly have the goal of achieving DGR endorsement for the operation of an OADG Fund but, due to the Overseas Aid Gift Deductible Scheme (OAGDS) requirements, need to operate for a number of years before becoming eligible to participate in this scheme.

3 Headlines

The headline issues below exemplify the key questions and concerns affecting our members. While not all issues are applicable to all members, the table below covers the issues that will most commonly arise.

Concern	Comments
<p>Many of the amendments proposed by the Exposure Draft will result in law that is ambiguous and open to interpretation.</p>	<p>Unclear and ambiguous drafting has the very real potential to cause confusion, leaving it to secondary materials and the Courts to provide clarity (see 4).</p> <p>The Exposure draft introduces a number of new and undefined terms such as 'donate' and 'particular entities' and uses terms that are defined in unusual ways such as 'entity'. The effects and consequences of this is described in the examples at parts 5 and 6.</p>
<p>Change to the 'in Australia' test could lead to loss of whole of organisation DGR endorsement.</p>	<p>Loss of whole of organisation DGR endorsement will cause a huge disruption to the work of Type 1 Organisations, requiring them to change how they operate, fundraise and support overseas aid initiatives and will almost certainly result in the need to restructure. Such loss of endorsement may also have a cascading effect resulting in the loss of whole of organisation income tax exemption (see 5 and 6)</p>
<p>Change to the 'in Australia' test, together with the repeal of the section that excludes distributions of funds overseas in certain circumstances when applying this test, could lead to the loss of whole of organisation income tax exemption.</p>	<p>Loss of whole of organisation income tax exemption has the potential to affect all three organisation types, though in varying ways. Some will need to restructure to comply with the new conditions, some will find parts of their organisation without income tax exemption regardless of what they do and some will be left with no income tax exemption at all (see 6).</p>
<p>Loss of income tax exemption as a result of the new 'in Australia' test will lead to the loss of the FBT rebate.</p>	<p>If members that are currently endorsed to access the FBT rebate fail to meet the proposed 'in Australia' test for income tax purposes, they will no longer be eligible to access this rebate (see 7).</p>
<p>The proposed requirement to comply with governing rules on an on-going basis appears overly harsh.</p>	<p>Without any further qualification, even the slightest breach to a member's governing rules or the governing rules of a fund it operates, could result in the loss of its income tax exemption even if the breach was inadvertent and quickly rectified (see 8.1)</p>
<p>Proposed restrictions on 'donating' could lead to loss of income tax exemption and/or DGR endorsement.</p>	<p>The requirement under the Exposure Draft that an organisation if income tax exempt can only 'donate' to another exempt entity, or if the organisation is endorsed as a DGR, can only 'donate' to another DGR, is extremely problematic, not least because it is unclear what is meant by "donate". This could stop members from legitimately furthering its purposes through the direct provision of money to individuals and organisations both in Australia and overseas. The effects and consequences of this is described in the examples at parts 5 and 6.</p>
<p>Removal of income tax exemption will prohibit new entrants to the Australian overseas aid sector</p>	<p>It will be very difficult for new aid organisations to become established without the benefit of income tax exemption. Not least because people will be less likely to give if they know that the money they donate could be subject to tax.</p>

4 Amendments to law will result in ambiguity

The proposed amendments within the Exposure Draft are far from clear and leave ample room for interpretation which in and of itself is cause for great concern. The accompanying EM provides some guidance, however it is itself far from complete and is quite unclear and ambiguous in places. While the explanatory material may be used in some circumstances in the interpretation of the law, it does not form law and gives little comfort.

Unclear and ambiguous drafting has the very real potential to cause confusion, leaving it to secondary materials and the Courts to provide clarity. Any ambiguity should be clarified at the earliest opportunity. Seeking clarity before the Courts will involve significant time, effort and expense to both the Australian Taxation Office (ATO) and the effected organisations – taking valuable resources away from the organisation’s ability to further its core purposes and pursue its activities.

5 Example 1 - loss of whole of organisation DGR endorsement

5.1 The issue

Type 1 Organisations that have whole of organisation DGR endorsement, other than by being specifically listed in the ITAA97, will find that they are no longer eligible for such endorsement.

5.2 The scenario

ABC Limited, an overseas aid organisation, performs the vast majority of its activities overseas providing relief in developing countries. It is a PBI for all tax concessions and as a result has whole of organisation DGR endorsement, whole of organisation income tax exemption and whole of organisation FBT exemption. ABC Limited is also endorsed as a DGR for the operation of an OAGD Fund and a necessitous circumstances fund. ABC Limited conducts and supports a broad range of overseas programs and initiatives. Some of which are funded through its OAGD Fund and some that are funded from non-deductible gift sources received by the organisation itself. All programs and initiatives however are consistent with and in the furtherance of its PBI purposes.

It uses its whole of organisation DGR endorsement as a PBI to fund and further the work it does within Australia that cannot be done through its necessitous circumstances fund. Being endorsed as a whole of organisation DGR makes it easier for ABC to administer the deductible gifts it receives and gives greater flexibility on how the funds can be used. This in turn means that more resources can be applied more efficiently, creating greater benefit to those it serves.

5.3 Application of current law

ABC Limited has received whole of organisation DGR endorsement by satisfying all the requirements described under the division of the *Income Tax Assessment Act 1997* (Cth) (ITAA97) dealing with DGR endorsement including the ‘in Australia’ test.

5.4 Application of proposed law

The proposed law imposes a more onerous ‘in Australia’ test for DGR endorsement purposes (the Proposed DGR ‘in Australia’ test) and will also require ABC Limited to satisfy a new condition – being that a DGR may only ‘donate’ to another entity if that other entity is also a DGR (the Proposed DGR Must Not Donate Test).

Under the proposed law ABC Limited’s OAGD Fund will not be required to satisfy either the Proposed DGR ‘in Australia’ test or the Proposed DGR Must Not Donate Test because of its status as an OAGD Fund and should therefore maintain its DGR endorsement for the operation of this fund. On a whole of organisation assessment however, the vast majority of the activities of ABC Limited are performed overseas. In applying the Proposed DGR ‘in Australia’ test, it will no longer satisfy the criteria for whole of organisation DGR endorsement as a PBI or under any other whole of organisation DGR category.

Even if ABC Limited was to somehow meet the Proposed DGR 'in Australia' test, it would still be ineligible for whole of organisation DGR endorsement as it would, based on its current practices, fail to satisfy the Proposed DGR Must Not Donate Test. This is because the overseas recipients of the 'donations' of non-deductible funds will never be a DGR for Australian taxation purposes.

5.5 Implications of the proposed law

In order for ABC to be able to continue its Australian-based PBI work it will need to establish a separate PBI Fund to receive deductible gifts for such activities. ABC Limited may find itself unable to continue its Australian-based relief activities (both through the PBI Fund or the necessitous circumstances fund) as much of its work involves providing money, food and other property to individuals. As individuals cannot be endorsed as a DGR, ABC will be in direct breach of the Proposed DGR Must Not Donate Test by donating to them. Losing whole of organisation DGR endorsement has the effect of converting a Type 1 Organisation to a Type 2 Organisation, leaving it vulnerable to the additional loss of whole of organisation income tax exemption (see 6).

The proposed amendments will effectively prohibit ABC from providing relief to those in need within Australia. They will remove the flexibility ABC depends on to act quickly and to mobilise resources promptly and efficiently as part of its worldwide emergency relief efforts. ABC will not be able to receive deductible gifts as whole of organisation will require ABC to spend more time, money and effort ensuring that gifts are channelled to the correct public funds despite the fact that its overarching charitable purposes have not changed. More time and money spent on administration means less for ABC Limited to use in the performance of its activities and pursuit of its purposes.

6 Example 2 – loss of whole of organisation income tax exemption

6.1 The issue

There is a real risk that the proposed amendments will result in many, if not all, of our members losing their whole of organisation income tax exemption because:

- when looking at each organisation's purposes and activities as a whole, it is unlikely that any will meet the proposed 'in Australia' requirement for income tax exemption;
- the current provisions of the law that allow organisations to exclude certain overseas expenditure when applying the 'in Australia' test are to be repealed;
- very few are 'prescribed institutions'; and
- there is a proposed continuing obligation not to 'donate' money to any other entity unless the other entity is also exempt from income tax.

6.2 The scenario

XYZ Limited, an overseas aid organisation, performs the vast majority of its activities overseas providing relief in developing countries. Unlike ABC Limited, it is not endorsed as a whole of organisation DGR but is endorsed for the operation of an OAGD Fund and a PBI Fund. It is also endorsed for income tax and FBT exemption as a whole of organisation PBI.

Much of XYZ Limited's overseas activities are conducted through its OAGD Fund but some overseas activities are funded from non-deductible sources received by the organisation itself. It uses its PBI Fund to fund and further the work it does within Australia.

XYZ Limited runs each of its OAGD Fund and PBI Fund under its own set of governing rules and not through a trust structure under a trust deed. It ensures that all deductible gifts and contributions and other sources of funds specifically earmarked for a particular fund end up in that fund and are used for the purposes for which that fund was established. However, it keeps monies raised through general fundraising activities and general bequests to the organisation separate from these monies and uses them to further its objectives both inside and outside of Australia.

Having whole of organisation income tax exemption allows XYZ to perform its activities and further its charitable objectives without the need to worry about incurring an income tax liability. It can operate its funds under their own governing rules or under a trust as it so chooses and can channel as much as possible to its work. It can be innovative in how it generates income for the furtherance of its charitable purposes.

6.3 Application of current law

XYZ Limited has received whole of organisation income tax exemption by satisfying all the requirements described under the division of the ITAA97 dealing with income tax exemption including the 'in Australia' test. While the 'in Australia' test for income tax exemption purposes is more onerous than the 'in Australia' test for DGR endorsement purposes, XYZ Limited is nevertheless able to satisfy this requirement as the money it spends overseas outside of the OAGD Fund have come from non-deductible gift sources.

6.4 Application of Proposed Law

The proposed law removes the current provisions that allow organisations to exclude the spending of non-deductible donations overseas from the income tax exemption 'in Australia' test. Without the ability to exclude certain overseas expenditure, XYZ will no longer meet the Income Tax 'in Australia' test and will no longer be eligible for whole of organisation income tax exemption.

Even if XYZ Limited was somehow able to meet the Income Tax 'in Australia' test or was otherwise able to find a relevant exemption or exception to this test, it will still be required to satisfy the other requirements to maintain income tax exemption. The key additional requirement for XYZ Limited is the requirement not to 'donate' money or property to another entity unless that other entity is also an income tax exempt entity (the Proposed Income Tax Must Not Donate Test).

While the proposed law provides that an entity endorsed as a DGR will not need to comply with the Income Tax 'in Australia' test or the Proposed Income Tax Must Not Donate Test, the way in which the defined term 'entity' is to be interpreted in the context of these carve outs is unclear. This makes it difficult to apply the law.

(a) Reference to 'entity' is to the whole organisation

On one interpretation the reference to 'entity' is referring to XYZ Limited itself regardless of whether it is endorsed as a whole of organisation or endorsed just for the operation of its OAGD Fund and PBI Fund. Under this interpretation XYZ Limited would not be subject to the Income Tax 'in Australia' test or the Income Tax Must Not Donate Test because it is endorsed as a DGR for the operation of its public funds. Under this analysis it is only XYZ Limited's OAGD Fund and PBI Fund that are required to comply with the Proposed DGR 'in Australia' test and the Proposed DGR Must Not Donate Test and even then its OAGD Fund will be exempt from these requirements.

So long as XYZ Limited continued to meet all the other requirements for income tax exemption, based on the above interpretation it would still be eligible for whole of organisation income tax exemption. While this is a favourable interpretation for many of our members, we cannot be certain that this is in fact the intention of the proposed amendments as the analysis elaborated above can apply to any DGR endorsed fund. In other words, all an organisation would need to do to be exempt from the requirements of the Income Tax 'in Australia' test and the Income Tax Must Not Donate Test is to establish any DGR endorsed fund at all, including a school building fund.

As we cannot be sure of the intention of the proposed amendments for the reasons described above, we also need to explore the likely outcome if the alternate intention behind the use of the word 'entity' is used.

(b) Reference to 'entity' is just to the fund the organisation operates

If XYZ Limited's public funds are themselves each a DGR entity then XYZ Limited itself will still be required to meet the income tax exempt requirements including the Proposed Income Tax 'in Australia' test and the Proposed Income Tax Must Not Donate Test. If these conditions cannot be met then XYZ Limited, like many other overseas aid organisations, will lose their whole of organisation income tax exemption.

XYZ Limited supports and conducts overseas initiatives and programs and supports other organisations both through its OAGD Fund and through sources of non-deductible funds it receives. All such support is consistent with its overall charitable purposes. If XYZ Limited wishes to maintain its whole of organisation income tax exemption it will be forced to stop much of the work it performs outside of the OAGD Fund as none of the overseas-based recipient organisations of such funds will be an income tax exempt entity for Australian income tax purposes.

6.5 Implications of the proposed law

The new requirements imposed by the proposed amendments, in particular the Proposed Income Tax 'in Australia' test and the Proposed Income Tax Must Not Donate Test, as well as the loss of whole of organisation income tax exemption itself, has a number of significant cascading ramifications for XYZ Limited.

(a) As the whole of the organisation is reliant on the whole of organisation income tax exemption, without it all of its income, including that generated out of its OAGD Fund and PBI Fund will be assessable for income tax purposes;

(b) Each of the OAGD Fund and PBI Fund will need to seek income tax exemption from the ATO requiring, amongst other things, for them to each apply for an Australian Business Number (ABN);

(c) To be eligible for an ABN and to otherwise meet the criteria for income tax exemption it is likely that each of XYZ Limited's public funds will need to be converted into trusts;

(d) Moving public funds under a trust structure will not just require the drafting of compliant trust deeds for each of XYZ Limited's public funds, but will also move the 'responsible person' test from what is currently a stand-alone committee to the directors of XYZ Limited as the corporate trustee. This may require an immediate board reshuffle and adds an extra layer of compliance for XYZ limited when ensuring that its corporate governance responsibilities are carried out properly;

(e) When establishing a trust there are stamp duty and other tax liabilities and issues to consider which, although they may inevitably be waived, such waivers will still need to be sought;

(f) Non-deductible funds currently received, retained and used by XYZ itself and not by its public funds may be assessable for income tax purposes. This in itself will have a significant negative impact because:

- by channelling non-deductible funds into the OAGD Fund and/or the PBI Fund to minimise its income tax liability, XYZ will be dramatically constrained in the types of charitable and benevolent activities it engages in, particularly under any overseas program or initiative. In other words, it will be forced to only carry out such overseas aid work as is permitted by an OAGD Fund and not by any other means. For instance, XYZ Limited would not be able to 'donate' funds to an overseas organisation that specialised in the development of new technologies for use in the field. This is despite the fact that the newly developed equipment would directly assist XYZ Limited in furthering its charitable purposes, would directly benefit thousands of people in need around the world (including within Australia) and would inevitably be used as part of its activities performed through its OAGD Fund. Money raised for this purpose could not be deposited into the OAGD fund and would be held by XYZ Limited in its own right thereby attracting an income tax liability.
- every item of revenue received by XYZ limited that it retains within the organisation itself, will need to be assessed against the income tax rules (eg, is this one-off gift income? is this bequest income? is this regular donation of \$30 per month for 12 months income?). This will divert time, energy and money away from the core purpose and activities of XYZ Limited at the detriment of those it exists to assist; and
- there will be no incentive for XYZ to be innovative in the way it goes about generating additional funds to support its activities outside of its public funds when there is a real risk that anything generated will be subject to income tax.

7 FBT rebate may no longer be available to some organisations

Some of our members are classified as charitable institutions, not PBIs, for the purpose of income tax exemption. This means that they are eligible to access the FBT rebate, not the FBT exemptions. Proposed changes to the FBT Act directly reference the ITAA97 such that any organisation that has not been exempt from income tax in the previous 12 months is no longer considered a 'rebatable employer' and is therefore not able to access the rebate.

Loss of the FBT rebate will have a significant effect on our members' ability to attract and retain high-calibre staff – yet this was precisely the public policy intent of the rebate, an intent which has not, to our knowledge, changed.

8 Other concerns

8.1 Requirement to comply with governing rules

Under the Exposure Draft an organisation and its funds will need to comply with the relevant governing rules (including its constitution) on an on-going basis to receive and maintain income tax exempt status. This could be interpreted to mean that even the slightest breach to an organisations constitution or OAGD Fund, even if minor and inadvertent and even if it was rectified quickly, could result in the loss of its income tax exemption.

8.2 Definition of 'not for profit'

The introduction of the undefined term 'particular entities' into the Definition of 'not for profit' expands the class of recipient prohibited from receiving profits of the organisation. As the term 'particular entities' is not defined, it could be interpreted narrowly to mean 'specifically stated entities' but could also be interpreted more broadly to include classes or subsets of entities.

At a minimum this is likely to result in the need to amend the various not for profit and winding up provisions of organisation's constitution to include the newly formulated not for profit definition. This change could however have far greater consequences in restricting the way in which not-for-profit organisations are permitted to distribute any profits made. This wording could in fact have the consequence of stopping organisations from giving to their own DGR funds.

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The Manager
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Personal and Retirement Income Division
The Treasury
Langton Crescent
PARKES ACT 2600

25 August 2011

Dear Sir

Proposed amendments to Income Tax Assessment Act 1937 in relation to “in Australia” requirements for tax exempt bodies

We refer to the Submission to the above proposed amendments being made by the Australian Council for International Development.

The purpose of this letter is to endorse the views put forward by ACFID in its submission. The proposed amendments will have far reaching detrimental effects on many organizations which are members of ACFID and on my own as is made clear in our own response which has been sent to you by email on 12 August 2011.

We support ACFID's recommendation for the Exposure Draft legislation to be withdrawn and the current process be suspended until after the establishment of the National Charities and Not-for-Profit Commission and further that future attempts at reform should be undertaken under the auspices of the Commission as part of an holistic and consultative process.

Yours faithfully



Tim Costello
Chief Executive Officer
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25 August 2011

Manager
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PARKES ACT 2600

Dear Sir/Madam

Re: Exposure Draft – ‘In Australia’ Special Conditions for Tax Concession Entities

The Fred Hollows Foundation (The Foundation) is a member of the Australian Council for International Development (ACFID).

The Foundation fully endorses ACFID’s submission on the Exposure Draft for the *Tax Laws Amendment (2011 Miscellaneous Measures) Bill (No. 1) 2011*. We would also like to bring to your attention our specific concerns as set out below.

At this point in time, the actual impact of the amendments is not certain due to the way in which critical terms such as ‘donate’ and entity’ are used. Nonetheless The Foundation holds grave concerns that the changes, if implemented in their current form, will severely compromise our organisation’s ability to fulfill its charitable purposes.

This both surprises and dismays us. It represents a complete departure from the current situation where the fundamental purpose of The Foundation has long had the backing and support of the Australian Government as evidenced by its 15 year accreditation with AusAid and its long-held endorsement as:

- a Public Benevolent Institution (exempt from both income tax and the fringe benefit tax); and
- a Deductible Gift Recipient for the operation of two public funds, including our Overseas Aid Fund.

Our two main concerns are that these amendments could mean that:

- The Foundation loses its whole of organization income-tax exemption due to the proposed repeal of the current legal provisions that allow organisations to exclude certain overseas expenditures when applying the ‘in Australia’ test for income tax exemption purposes. This would severely dilute the funds we have available for our International and Indigenous aid and development work because non-deductible gifts and contributions that we do not direct to either of our public funds will become subject to income tax assessment. This would not only give donors pause for thought; but also undercut the intent of successive governments to encourage the Australian public to support organisations such as ours.

- Even if the exclusion of overseas expenditures is retained in new legislation, The Foundation would only retain its whole of organisation income-tax exemption by ensuring that any 'donations' we make of money not contained within one of our DGR funds go only to another income tax exempt entity. This would prevent us from providing funds derived from sources such as bequests or government grants (that we choose not to divert to one of our DGR funds) to either individuals or to organisations in Australia that are not income tax exempt. It would also completely preclude us from providing funds from these sources to development partners based overseas. The latter seems a particularly perverse outcome and one that again undercuts the intent of successive governments in terms of Australia's aid and development program.

We therefore strongly endorse ACFID's call for these amendments to be withdrawn and for any proposed changes and reforms to await the establishment of the National Charities and Not-for-Profit Commission and be progressed under its ambit.

Yours sincerely

A handwritten signature in black ink, appearing to read "B. Doolan", followed by a long horizontal flourish.

Brian Doolan
CEO

28 August 2011

Manager
Philanthropy and Exemptions Unit
Personal and Retirement Income Division
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Sir/Madam

Exposure Draft – “In Australia” Special Conditions for Tax Concession Entities

ChildFund Australia is an independent and non-religious international development organisation that works to reduce or eliminate poverty for children in the developing world. ChildFund Australia is a member of the international ChildFund Alliance which assists more than 15 million children in 55 countries. ChildFund Australia is a registered charity and is fully accredited by the Australian Agency for International Development (AusAID). Our work is supported by over 55,000 regular donors in Australia.

ChildFund undertakes child-focused development programs in partnership with community leaders, parents and children that address issues of education, healthcare, water & sanitation, food & livelihoods, HIV & AIDS, child protection. By empowering people to voice their needs and supporting them to address the issues that affect their daily lives, ChildFund is actively supporting sustainable community development.

ChildFund Australian has been operating since 1985 and is endorsed as a whole of organisation Deductible Gift Recipient (DGR), an Overseas Aid Gift Deductible Fund (OAGD), a Public Benevolent Institution (PBI), and enjoys tax and Fringe Benefit Tax (FBT) exempt status. ChildFund Australia is a member of the Australian Council for International Development (ACFID), a signatory to the ACFID Code of Conduct and is an AusAID Partner organisation.

We are very concerned about the impact the proposed legislation could have on our organisation and on the work we do overseas in alleviating poverty. We commend and fully support ACFID's submission, and join ACFID in recommending that the Exposure Draft be withdrawn, and the current process be suspended until the establishment of the National Charities and Not-for-Profit Commission.

Yours faithfully,

A handwritten signature in black ink, appearing to read "Nigel Spence".

Nigel Spence
Chief Executive Office





Manager
Philanthropy and Exemptions Unit
Personal and Retirement Income Division
The Treasury
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25th August 2011

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Dear Sir/Madam

I write in support of the ACFID submission to Treasury in respect of the "Exposure Draft restating the "in Australia" special conditions for tax concession entities.

This submission endorses WWF's concerns about the proposed changes to the taxation of charities and in particular the introduction of a new "in Australia" test in determining tax exempt and deductible gift recipient (DGR) status of charitable organisations.

The proposed changes, if enacted in their current form, will severely restrict WWF's overseas activities and will therefore adversely impact its effectiveness in achieving both Australian and global environmental outcomes including climate change mitigation, market transformation and protection of migratory threatened species. The proposals would prevent WWF playing its role in achieving WWF International Network's global environmental objectives.

Very broadly, the proposed changes will effectively prevent WWF making donations to overseas organisations that pursue similar environmental goals including other WWF International offices. This represents a fundamental change from the current position.

Please contact me on 02 8202 1255 or pmolloy@wwf.org.au should you require any additional information.

We look forward to working with Treasury to achieve a mutually acceptable outcome.

Yours Faithfully

Paul Molloy
Chief Financial Officer
World Wide fund for Nature Australia

Manager
Philanthropy and Exemptions Unit
Personal and Retirement Income Division
The Treasury
Langton Crescent
PARKES ACT 2600

25 August 2011

Dear Sir/Madam

I refer to Exposure Draft for Tax Laws Amendment (2011 Miscellaneous Measures) Bill (No.1) 2011 ("ED") and am writing on behalf of Anglicord to support the submission made by the Australian Council for International Development ("ACFID") in this respect.

Background

Anglicord is an overseas aid organisation whose vision is to:

- Create and strengthen partnerships in developing countries to overcome poverty, injustice and disaster,
- Support our partners to respond and adapt to environmental challenges; and
- Inspire Australians to be compassionate, involved and responsible global citizens

Anglicord receives public donations and funding through AusAID and our primary activities are in the Pacific, Africa and Middle East. In the last financial year, we received public donations of approximately \$1.1million and our cash alone donated to overseas partners was approximately \$872,000.

As a public company, Anglicord has access to the following concessions:

- Deductible gift recipient ("DGR") status through The Archbishop of Melbourne's International Relief & Development Fund;
- Income Tax exemption;
- GST Concession; and
- FBT Rebate

Submission

In relation to the ACFID submission I would highlight the following areas would have significant impacts on Anglicord should the ED not be withdrawn:

- As the majority of our overseas partners are not exempt entities nor endorsed as DGR, the proposed restrictions "on donating" would severely impact upon Anglicord's ability to continue to provide funds to overseas partners whose work is in furtherance of aid to the poor and disadvantaged.
- The potential loss of our income tax exemption would impact on the viability of Anglicord's future. A loss of DGR status or income tax exemption would result in donors looking to other charities who have DGR status to ensure they continue to maximise their donation dollar through tax deductible donations. We are reliant on public donations to assist our overseas aid partners in funding their necessary works.

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Anglicord

Anglican
Overseas Aid

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w: www.anglicord.org.au

ABN 39 116 072 050
All donations made to Anglicord
are tax deductible

- As an FBT rebatable employee, the loss of this exemption would impact upon our ability to attract and retain staff. As an entity which lost its Public Benevolent Institution status, we are acutely aware of the impact to staff attraction and retention when FBT status is changed.
- A change in legislation with ambiguity such as the ED for an organisation of our size would result in significant funds being required to engage outside consultants to understand the impact to the organisation. It would also require significant time and effort of our limited resources if we be required to re-submit information to the Australian Taxation Office or reorganise our corporate affairs to continue our work.

I would support the ACFID submission that this ED be withdrawn and the current process be suspended until the establishment of the National Charities and Not-for-Profit Commission.

Yours sincerely



Misha Coleman
CEO, Anglicord

Cc David Brooking - Australian Council for International Development



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Burnet Institute
Medical Research. Practical Action.

DIRECTOR and CEO – Professor Brendan Crabb, PhD
CHIEF PATRON – The Honourable Alex Chernov, AO, QC, Governor of Victoria

25th August 2011

Marc Purcell
Executive Director
Australian Council for International Development

Dear Mr Purcell,

Letter of Support: ACFID Submission regarding the 'in-Australia' test for Not for Profit charities

Thank you for providing ACFID's submission to the Treasury Department regarding the "in-Australia" test for Not for Profit charities.

As you are aware the Macfarlane Burnet Institute for Medical Research and Public Health Ltd (Burnet) is a not-for profit medical research institute (with DGR and NGO status) that undertakes significant International Health programs that address major health issues of disadvantaged populations in communities in the developing world.

The Burnet is very concerned at the potential impact that proposed changes to the tax deductibility and tax exemption for charities such that proposed legislation would replace the requirement that a charity be 'in Australia' with a requirement the charity 'operates and pursues its purposes solely in Australia', but for minor and incidental expenses. Burnet expends considerable funds on research activities and public health programs outside Australia in developing countries, which results in direct and tangible benefits to international communities. Burnet may have to cease such operations or put in place significant expensive changes to its structure to continue such activities.

We support ACFID's submission to the Treasury Department and also request that the Exposure Draft be withdrawn until after the establishment of the National Charities and Not-for-Profit Commission where full consideration to all potential issues can adequately discussed and assessed using a consultative approach.

Yours sincerely,

CEO and Director

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Manager, Philanthropy and Exemptions Unit
Personal and Retirement Income Division
The Treasury
Langton Crescent
PARKES ACT 2600

28 August 2011

Dear Sir/Madam

Submission to Treasury RE: Draft 'In Australia' Requirements for Tax Concession Entities

TEAR Australia is a movement of Christians in Australia responding to the needs of poor communities around the world. We work in partnership with other Christian groups, including churches, relief and development agencies and community-based organisations, which are working with the poor in their communities. We seek to build effective relationships with these partners, grounded in mutual respect, trust and accountability. TEAR Australia supports in excess of 200 projects annually, in more than 25 developing countries.

Priority is given to those programs that strive to involve the most marginalised and exploited members of each community, regardless of their religious or political beliefs. In Australia, we work to inform and empower Australians to make an informed response to suffering and oppressed communities.

TEAR Australia is a registered charity, fully accredited by the Australian Agency for International Development (AusAID) and is an AusAID Partner organisation. TEAR Australia is also a member of the Australian Council for International Development (ACFID), and signatory to the ACFID Code of Conduct.

TEAR Australia was established as the Australian TEAR Fund in July 1971 and was reconstituted in Victoria as TEAR Australia in 1998. TEAR Australia is endorsed as a whole of organisation Deductible Gift Recipient (DGR), an Overseas Aid Gift Deductible Fund (OAGD), a Public Benevolent Institution (PBI), and enjoys tax and Fringe Benefit Tax (FBT) exempt status.

Through this letter, we wish to express our concern about the potential impact the proposed legislation could have on our organisation and across the sector. We feel there could be significantly negative impact on the mission of TEAR Australia and the work tens-of-thousands of Australians support us to do with partners in poor communities around the world. Thus, TEAR Australia endorses the ACFID Submission and specifically the request for the Exposure Draft to be withdrawn and the process suspended until the establishment of the National Charities and Not-For-Profit Commission.

Yours sincerely



Matthew Maury
Chief Executive Officer

Christian action with the world's poor



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25 August 2011

Marc Purcell
Executive Director
Australian Council for International Development
14 Napier Close
Deakin ACT 2600

Dear Marc

Re: ACFID's submission to the Treasury Department regarding the 'in-Australia' test for Not for Profit charities

We wholeheartedly support the ACFID submission.

Our Agency is extremely concerned with the proposed legislative changes. If passed, this legislation would have a major detrimental impact on us. We are a fully AusAID accredited agency which gains support from across the 2,000 congregations and many thousands of members of the Uniting Church in Australia. We work with 36 overseas church partners, supporting them to uphold human rights in relation to poverty and injustice.

The proposed legislation will significantly discourage good development. We ask for the proposed legislation to be withdrawn and re-thought.

Yours sincerely

Kerry Enright
National Director

