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LAWYERS

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The Manager
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The Treasury
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PARKES ACT 2600

Dear Sir/Madam

Restating the "In Australia" Special Conditions for Tax Concession Entities

We are a law firm based in Sydney which has a proud history of having provided professional advice to the Charities and Not-For-Profit (**NFP**) sector since the firm's inception in 1859.

We act for a large number of Church bodies, community groups, welfare organisations and others involved in the NFP sector.

We are of the view that the proposed restatement of the "In Australia" Special Conditions for Tax Concession Entities will have unintended consequences which will have significant impacts upon our clients.

We make the following comments in respect of the issues raised in the Exposure Draft:

1. The proposed section 30-18(3) should not apply in respect of donations of money or property for tax deductible receipts were not given by the deductible gift recipient (**DGR**). In our experience, a number of DGRs will receive donations for which they do not give tax deductions and pay out moneys for charitable purposes to other entities which are not endorsed as DGRs for an appropriate worthy cause. This can generally be done by DGRs in a manner which is consistent with their objects and purposes. We submit that there is no adverse impact on revenue if the donation received by the DGR has not attracted tax deductibility for the donor is donated out to a charitable organisation which is not necessarily a DGR.

2. The provisions of section 50-50(2)(c) will have serious adverse impact on a number of tax concession charities who donate funds to other entities which are not necessarily endorsed in Australia as exempt entities. Examples of these would

include payments made to individuals in need - the expression 'entity' under tax law would include individuals.

This provision will also have significant impacts upon the missionary activities of Church charitable entities. Many of these have been setup and operated for many decades to provide relief and to address charitable needs in overseas jurisdictions (and which do not qualify as overseas aid funds). The proposed legislation should allow for those entities to continue to pursue those charitable activities outside of Australia.

One method of addressing this would be to add an additional exemption in proposed section 50-51(3) to allow for entities to be prescribed and exempt from the provisions of section 50-50(2) for an institution that has a physical presence in Australia but which incurs its expenditure and pursues its objects principally outside Australia in the same way as the current section 50-50(d) allows for such an exemption. Another would be to amend the proposed section 50-50(2)(c) to read:

> "(c) except for charitable purposes (whether or not within Australia), not donate money to any other entity, unless the other entity is an *exempt entity".

3. Many of our Church clients do not have "*governing rules*" and, therefore, would be unable to comply with section 50-51(3)(a).

4. The provisions of section 50-50(3)(b) are excessively harsh in that the entity must use its income and assets **solely** (our emphasis) to pursue its purposes. A minor transgression which could easily occur might have the effect of disentitling the institution to tax concessions. We submit that incidental or minor activities should be exempted in a similar way as the proposed section 30-18(2) provides for DGRs.

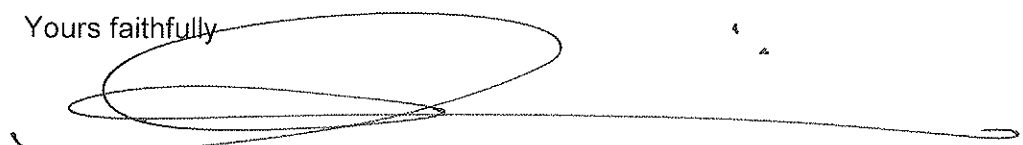
5. In addition, section 50-50(3)(d) refers to the purposes for which an entity **was** (our emphasis) established. This implies that there is no opportunity for purposes to be changed. We suggest that the words "*which it was established*" may be substituted with words such as "*which is entitled to tax concessions*" or some similar concept.

6. The requirements in proposed section 207-117 that compliance occurs "*at all times*" is in our view unnecessarily harsh and unrealistic, particularly in circumstances where an entity has been established part way through a financial year.

7. The definition of "*not-for-profit entity*", proposed in subsection 995-1(1) does not allow for an entity to be a "*not-for-profit entity*" where it is possible that its owner or member may obtain some financial advantage either from its operations or upon winding up. The definition should allow for an entity to be a not-for-profit entity in circumstances where its owner or member who would be entitled to some financial reward on operational winding up is itself a not-for-profit entity. This is consistent with TR2005/21 and TR2005/22. It is agreed that the definition should preclude payment to individual people or entities that are not themselves not-for-profit entities.

We submit that a further Exposure Draft should be issued for public consultation prior to the Government making a final decision on restating the "In Australia" Special Conditions for Tax Concession Entities.

Yours faithfully



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