

11 August 2011

SUBMISSION

Manager

Philanthropy and Exceptions Unit

Personal and Retirement Income Division

The Treasury

Langton Crescent

PARKS ACT 2600

BY EMAIL: NFPReform@treasury.gov.au

EXPOSURE DRAFT – ‘IN AUSTRALIA’ SPECIAL CONDITIONS FOR TAX CONCESSION ENTITIES

TAX LAWS AMENDMENT (2011 MISCELLANEOUS MEASURES) BILL (NO.1)

Dear Manager

Interested Party Details

1. This submission is made by Nexus Church (“Nexus”).
2. Nexus is an autonomous Christian Church in the northern suburbs of Brisbane and comprises approximately 1900 individuals.

3. Nexus applauds the published intention of the measures but considers there are unintended consequences exposed in certain provisions of the draft legislation.
4. We write to inform you of the impact these provisions will have upon our local and overseas mission (including the relief of poverty) and, undoubtedly, thousands of other churches in Australia.

Overseas mission

5. Nexus is an endorsed tax concession charity under Item 1.1 in the Schedule to Sec 50-5 of the *Income Tax Assessment Act 1997*.
6. We conduct, and have done for more than 60 years, an overseas Christian missionary program.
7. It should be noted that funds applied to our overseas missionary program are received from donations by church members after they have already paid tax on their income.
8. These programs do not involve donations in respect of which a tax deduction has been obtained in any way. Whilst there are significant secondary aid outcomes to the particular arenas of our programs the primary purpose has always been Christian mission.
9. The programs have proceeded either under the allowance of Sec 50.75 (which is to be repealed under the new measures) or by affiliation through a prescribed institution under the provisions of Sec 50-50(d) which does not have any equivalent in the exposure draft.
10. Whilst there is provision (in proposed Sec 50-51(3) for a foreign resident to be prescribed in regulations along the lines of former Sec 50-50(c), there is now no provision equivalent to the old section 50-50(d) relating to a prescribed institution that has a physical presence in Australia but incurs its expenditure and pursues its objectives principally outside Australia.
11. In the proposed measures we see that Trade Unions are excluded¹ from the application of Sec 50-50 (2) and foreign residents may be prescribed. Nexus will not enjoy the benefits afforded to Trade Unions nor have the opportunity to be prescribed as foreign residents will have.

¹ Proposed Sec 50-51 (2)

12. We cannot understand how this is consistent with the stated goals for the measures.
13. The ambit of the overseas missionary program of Nexus would most certainly not amount to “pursuing its objectives principally outside Australia” as most missional endeavour is in Australia.
14. The failure to allow for prescribed institutions pursuing objectives principally outside Australia does mean, however, every overseas department of a denomination in Australia will fail to qualify for exemption.
15. Whilst many individual churches, such as Nexus, pursuing their own overseas missions programs will not fail due to the omission of a provision similar to existing Sec 50-50(d) these activities will now fail due to the operation of the proposed Sec 50-50(2)(c). They will not be allowed to donate money to any other entity (including a missionary individual or group) as, by their very nature, the overseas entities to which missionary funds are provided will never qualify as an “exempt entity” within the meaning of the section.
16. Because the definition² of “entity”, as the term is used in proposed 50:50(2)(c), includes an individual, it means that if we are wishing to support one of our number going overseas for missionary work we will now lose our exemption status.
17. We will no longer be able to support indigenous churches in other parts of the world to spread the Christian gospel.
18. Surely these consequences are not intended.

Impact on local charitable work

19. We, as part of our mission to advance the Christian religion, regularly gift money and food parcels to needy individuals.
20. It is a matter of plain interpretation of the proposed measures to forecast that our ability to give a donation to a needy person (“entity”), except at the risk of loss of exempt status on the basis of proposed Sec 50-50 (2) (c), will be lost.

² Sec 960-100 ITAA 97

21. It is not reasonable for the state to assert, on the basis of the structure of exemption legislation, that relief of poverty is only a function of society to be supported through an endorsed PBI and not through a church. Relief of poverty is, and always has been, integral to the church and the proposed measure will, in our submission, remove its ability to lawfully do so if it wishes to maintain its exemption.
22. Surely this consequence, too, is not intended.

Summary

23. We can see the reasoning behind the proposed measures but, for the reasons given above and in the ways indicated, the inclusion of proposed Sec 50-50 (2) (c) in its current form, and the exclusion of the previous Sec 50-50 (d) provision, will seriously damage the lawful charitable ends of churches such as Nexus, namely the advancement of religion.
24. On the one hand, the law will continue to theoretically declare that the advancement of religion is a legitimate charitable purpose, but on the other hand these measures in particular will deny us the capacity to outwork the purpose and thus render it practically illegitimate in Australian society.
25. We suggest a provision with a similar effect to the previous Sec 50-50 (d) be included in the measures.
26. We also suggest proposed Sec 50-50 (2) (c) be amended to read as follows

“(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”

Yours faithfully



Murray Averill

Senior Pastor