



11 August 2011

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

Dear Sir/Madam

Submission in relation to Exposure Draft – "In Australia" special conditions for tax exempt entities

Children First Foundation (**Foundation**) would like to submit comments in relation to the Exposure Draft for the "in Australia" special conditions for tax exempt entities (**Exposure Draft**).

The Foundation was established in July 1999 to support and expand the humanitarian work of Moira Kelly, AO. The Foundation's mission is to transform the lives of children who need us most by giving hope, exceptional care and pathways to a brighter future.

The proposed restatement of the "in Australia" requirements brings about a significant change to concepts that have been in place for a number of years, on which charities and other not-for-profit entities (**NFP**) operate. In particular, the requirement to pursue purposes "principally" or "solely" in Australia is overly restrictive. While most of the Foundation's funds are spent "in Australia", much of it is spent on children from overseas and not on Australian children. Accordingly, it is unclear whether the Foundation would be taken to pursuing its purposes principally or solely in Australia.

We feel that these proposed changes impose a requirement that threatens the ability of the Foundation to retain its tax exempt and DGR status, and, therefore, also threatens the existence of our organisation and those to whom we provide assistance.

1. PURSUIT OF PURPOSES "PRINCIPALLY" OR "SOLELY" IN AUSTRALIA

Under the Exposure Draft, the Foundation will be required to "pursue its purposes principally in Australia" in order to retain its tax exempt status or "pursue its purposes solely in Australia at all times" in order to remain endorsed as a deductible gift recipient (**DGR**).

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As noted above, most of the Foundation's funds are spent in Australia. However, although the Foundation does have programs that assist Australian children (for example, our *Between the Gaps* program), the majority of the recipients of the aid we provide through our principal program, the *Miracle sMiles* program, are children from overseas. We feel that the humanitarian work we do is for the broad benefit of the Australian community. However, because the majority of the recipients of our assistance are children from overseas, it is unclear whether the broad benefit we provide to Australia is enough for us to be considered to be pursuing our purposes principally or solely in Australia.

We submit that the proposed "in Australia" legislative requirements should be clarified so that an entity's tax exempt or DGR status is not tainted by providing assistance in Australia to recipients who are from overseas. In our view, the fact that the children helped by us in Australia are foreign should not impact on the Foundation's tax status. The children that benefit from the care and assistance that the Foundation provides are desperately in need and cannot receive the medical treatments that they require in their own countries. We consider that the ability of Australia to assist those in need, wherever they are from in the world, should be supported. The Foundation should not lose its DGR status simply because it is providing care to children in need from overseas, rather than children "solely" from Australia.

The enclosed documents provide examples of some of the many children that Australian medical teams have recently helped through the *Miracle sMiles* program. Given the large public donations that are provided to NFPs in Australia that support those in need, including donations and support to the Foundation, the tax concessions should similarly support the work provided to those in need. Also, the amendments proposed in the Exposure Draft should not restrict other NFP's from providing assistance to Children First.

2. BENEFITS PROVIDED IN OR ARISE FOR AUSTRALIA

We recognise that there is policy intent behind amending the "in Australia" rules as a result of the High Court of Australia decision in the case of *Federal Commissioner of Taxation v Word Investments* (2008) 236 CLR 204. However, we do not think that this case should result in NFPs, like the Foundation, losing its tax exempt status simply because the assistance is provided in Australia to recipients from overseas.

The activities that the Foundation supports often create once in a lifetime opportunities for medical teams in Australia. Most notably, the Foundation facilitated the separation of conjoined twins, Krishna and Trishna, to worldwide acclaim, through the *Miracle sMiles* program. This provided Australian doctors and medical staff with incredible experience and exposure to an extremely difficult and complex procedure. We understand that the techniques used in that procedure, and in many other procedures that have saved the lives of other children from overseas, have helped in developing and furthering the medical treatment of children in Australia. It has also showcased the medical talents of Australian medical staff, profiled Australian hospitals and put Australia at the forefront of medical treatment in the world. We consider that this has been very much to the benefit of Australia.

If we did not fund such activities, not only would that limit the care provided to the relevant children in need, it would also limit the opportunities and benefits that arise for the Australian medical community and medical treatment in Australia.

If the Foundation's mission is restricted to transforming the lives of Australian children only, not only would this leave many children overseas in need, but it would also minimise the opportunities and benefits that arise for developing medical treatments in Australia. Therefore, we submit that the Exposure Draft is too strict in requiring entities to pursue purposes "principally" (in the case of tax exempt entities) or "solely" (in the case of DGRs) in Australia.

3. IMPACT OF INTRODUCING THE PROPOSED "IN AUSTRALIA" RULES

To obtain the relevant tax concessions, the Exposure Draft prohibits DGRs from donating money or property to other entities that are not themselves DGRs (section 30-18(3)) and, similarly, prohibits tax exempt entities from donating money to other non-exempt entities (section 50-50(2)(c)).

Much of the funding that the Foundation receives is from other DGRs or tax exempt entities that have been established to support other charitable and benevolent causes, such as the assistance that the Foundation provides. The other DGRs and tax exempt entities will only provide us with such funding if the Foundation is also a DGR or a tax exempt entity. Therefore, if the Foundation is unable to be endorsed as a DGR or obtain tax exempt status, we could potentially lose a large amount of our funding, which threatens our ability to assist and provide aid to children from overseas and in Australia.

To continue our operations, the Foundation will be forced to apply for a specific listing in Division 30 or Division 50 of the *Income Tax Assessment Act 1997*. However, seeking a specific listing as a DGR or income tax exempt entity is very time consuming and would also have a significant impact on both our resources and Government resources. Given the small size of our organisation, we do not have the resources to be able to undertake seeking a specific listing as a DGR or income tax exempt entity in the near future. Also, given the specific requirements of being listed as a DGR or income tax exempt entity, the Foundation may not necessarily meet the requirements to obtain tax exempt status or be endorsed as a DGR. This means that the Foundation may no longer be able to operate and provide the assistance and medical care to children in both Australia and overseas.

Therefore, we strongly submit that the "in Australia" requirements in the Exposure Draft be clarified to ensure that our Foundation's current tax concessions are not removed.

Please do not hesitate to contact me if you have any queries in relation to this submission.

Yours sincerely

Margaret Smith
Chief Executive Officer/Director
Children First Foundation