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Manager
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The Treasury
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By email: NFPReform@treasury.gov.au

Dear Sir/Madam

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

CPA Australia represents the diverse interests of more than 132,000 members in 111 countries throughout the world. Our vision is to make CPA Australia the global accountancy designation for strategic business leaders.

Against this background, we provide the following comments regarding the abovementioned Exposure Draft Legislation (EDL) recently issued by Treasury. These comments are made not only on behalf of our members but also for the accounting profession generally and in the broader public interest.

Our organisation supports the Government’s intentions in restating the ‘in Australia’ special conditions for tax concession entities to ensure that the tax supported funds remain in Australia and prevent possible abuse of their tax exempt status for other unrelated purposes such as money laundering and terrorist financing.

That said, and subsequent to discussions with members, we now also raise the following concerns relating to the EDL, in particular:

- the meaning of ‘particular entities’ and the proposed restrictions on profit distributions within the proposed definition of a ‘not-for-profit-entity’;
- the strict requirement to comply with all of the conditions specified in an NFP’s governing rules, and
- the strict requirement for the use of income and assets solely for the purposes for which the tax exempt entity was established.

In relation to the first point above, we are concerned that the proposed definition may give rise to uncertainty as to the meaning of NFPs and thus give rise to some confusion and debate about its application. It is also unclear as to why wholly-owned subsidiaries of tax exempt entities, where the subsidiaries have the same primary objectives as their parent entities, are not allowed to distribute to their tax exempt owners or members without losing their tax exempt status. Accordingly we suggest this needs to be clarified.

The proposed ‘strict requirement’ test also seems to be unduly onerous for NFPs as any breach of the governing rules would appear to mean that an NFP could lose its tax exempt status as a result of inadvertent or minor breach of the relevant rules. We do not believe that an NFP should incur the risk of a loss of its tax exempt status due to a minor breach of such rules.

Further, the 'strict requirement' test mentioned above also seems to be unduly onerous for NFPs and would seem likely to give rise to the need for them to seek further clarification or guidance from the ATO. This is potentially both costly and time consuming for such bodies, and perhaps seriously undermine their capacity to provide appropriate and timely assistance in accordance with their organisational objectives.

In light of the above, we would welcome the opportunity to have some further dialogue with Treasury on how the government's objectives in this area can be achieved without causing significant problems for the important work undertaken by NFPs.

If you have any queries regarding the above, please contact Garry Addison, Senior Tax Counsel on (03) 9606 9771 or via email at garry.addison@cpaaustralia.com.au in the first instance.

Yours faithfully



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