



‘In Australia’ Special Conditions for Tax Concession Charities

Submission in response to Exposure Draft released 4 July 2011

Submitted on behalf of:

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In Australia' Special Conditions for Tax Concessions Entities

This submission is in response to the Exposure Draft released by the Assistant Treasurer on 4th July 2011 titled "In Australia' Special Conditions for Tax Concession Entities".

Australian Baptist Ministries, State Baptist Unions and local Baptist churches welcome the opportunity to contribute to the discussion on this important issue by way of this submission and we look forward to the opportunity of continuing to interact with the Government as it further develops policies on these matters.

1. Who we are

Australian Baptist Ministries is the trading name of The Baptist Union of Australia. The Baptist Union of Australia is a voluntary association of State Baptist Unions and is incorporated under the Australian Capital Territory Associations Incorporation Act 1991.

Australian Baptists are a multi-cultural and multi-generational movement of people serving communities in metropolitan, regional, coastal, rural and remote Australia through a network of approximately 1,000 churches with a regular combined attendance of around 150,000 people.

Australian Baptist Ministries is a federated organisation, partnering with local churches through State Union organisations. While some local Baptist Churches are incorporated entities (usually incorporated associations), most operate as separate unincorporated entities.

2. What we do

Together with the State Baptist Unions, Australian Baptist Ministries is committed to:

- supporting and equipping local churches,
- training and equipping individuals for professional and lay ministry,
- supporting overseas missions,
- assisting the disadvantaged within our own communities and overseas.

There are a number of ministries that operate under the auspices of Australian Baptist Ministries to provide these opportunities. These ministries include:

- State Baptist Unions in all states and territories of Australia,
- Baptist Care Australia,
- Global Interaction,
- Baptist World Aid Australia,
- Crossover Australia,
- Remote Churches Ministry,
- Baptist Financial Services,
- Australian Baptist Insurance Services.

Local Baptist Churches and many of the above organisations commenced and continue to exist through the generosity and foresight of Australian Baptists. In many cases they have been contributing to the social fabric of Australian communities and in an International setting for well over 100 years.

While some of the above organisations operate solely within the Baptist community of churches, many of them have a far-reaching impact on Australian communities. For example Baptist Care Australia encompasses 2,700 packaged community aged care places, over 4,400 residential aged care places, family services, refugee services, employment services, youth services, low cost housing, chaplaincy, counselling, disability and mental health services and other diverse programs to meet community need.

The international ministries listed above (Global Interaction and Baptist World Aid Australia) provide humanitarian, development, medical and educational support services and capacity building amongst some of the world's most disadvantaged people.

3. General Comments on Tax Concessions

There have been a number of inquiries into the Not-for-Profit sector over the past decade. Each of these has emphasised the importance of the contribution made by the Not-for-Profit sector in assisting Government to provide services to those in need as well as providing assistance to the broader Australian and International community.

In particular we note the Henry Report on Australia's Future Tax System states at Recommendation 42:

“Categories of NFP organisations that currently receive income tax or GST concessions should retain these concessions.”

Following the release of the Henry Review, Treasurer Wayne Swan stated:

“We will not implement any changes that harm the Not-for Profit sector, including removing tax concessions.”

The proposed draft legislation released for public comment has the potential to significantly alter the tax concession status of many Not-for-Profit entities that operate within Australia as well as those that operate outside of Australia.

The explanatory notes that accompanied the exposure draft point to recent court decisions and the issues of terrorist financing, money laundering and ensuring the “proper operation of not-for-profit entities and their use of public donations and funds” as key reasons for the changes.

In our view the proposed changes included to discourage improper operation of not-for-profit entities are not appropriately targeted and may result in organisations operating in a proper manner, within or outside of Australia, losing their Income Tax Exempt status. This is of great concern to us and is further discussed in paragraph 4 (b).

In our view the proposed legislation will significantly harm many Not-for-Profit organisations which are currently prescribed as income tax exempt under the Income Tax Assessment Regulations 1997 that, while commenced and based in Australia, pursue their objectives principally outside of Australia.

If the tax exempt status of these (currently) prescribed organisations is changed the flow-on effect to other tax exempt organisations which donate to those currently prescribed organisations would, in our view, be significant, and potentially jeopardise their own Income Tax Exempt status.

It is our view that the Exposure Draft will have far reaching application to essentially all Income Tax Exempt organisations operating in Australia, whether they pursue their charitable purposes within Australia, outside Australia or a combination. This appears to be contrary to the suggestion in the title of the Exposure Draft that the amendments relate only to the determination of whether an organisation is 'in Australia'.

4. Explanation of Specific Issues

In our view there are two key issues which we believe will impact significantly on Not-for-Profit entities, particularly overseas mission organisations and those groups, including churches and other organisations which provide financial support to them.

A third issue is relevant to the interconnected nature of the Baptist movement within Australia and, potentially in our view, to other mainstream Christian denominations within Australia.

A fourth issue relates to the inclusion of gifts in the determination of whether an institution meets the 'in Australia' test.

(a) Loss of Income Tax Exempt status

Currently under section 50-50(d) of the *Income Tax Assessment Act 1997 (Cth)* organisations can be prescribed by law under regulation 50.50.02. These organisations are either prescribed in their own right under this section of the Act or are members of one of the prescribed organisations. The Regulations provide that:

each institution mentioned in an item in the following table, and each institution that is a member of that institution, is a prescribed institution on and after the date mentioned in the item.

In the case of overseas mission organisations, while often the intent and the commencement of their operation in a particular international location is related to the advancement of religion (in itself a charitable purpose), it is seldom restricted to this, often including the provision of medical, educational and other humanitarian services.

The provision of these services in a holistic manner, that is, providing for the physical, emotional and spiritual needs of people is, in our view, beneficial to the long term development of international communities, increases the sphere of influence of Australia in the world, heightens the sense of well-being of supporting organisations and individuals and gives expression to the beliefs of members of Baptist communities around Australia.

The loss of the income tax exempt status for such organisations would seriously curtail their ability to provide services to the communities in which they work due to the impost of tax that would become payable under the proposed legislation and also because of the additional compliance costs that would likely be required to fulfil the requirements of the Australian Tax Office.

In addition to these factors the following point, in our belief, would have a significant detrimental impact on the ability of these organisations to raise funds and receive donations and to continue the valuable service and ministry which they provide, often amongst the most disadvantaged people of the world.

(b) Donations received by Tax Exempt Entities

Currently under the Income Tax Assessment Act 1997 section 50-75 (1) gifts received by the institution (whether by money or property) are to be disregarded in determining whether an institution meets the current 'in Australia' test.

The proposed draft legislation repeals this section while providing no reasoning and no alternative provision. Further, no mention is made of this provision or of its repeal in the explanatory memorandum to the Exposure Draft.

(c) Donor Organisations could lose their own Income Tax Exempt Status

Most, if not all Australian Baptist churches and many other organisations within the Baptist network in Australia are keen supporters both in a financial and a physical sense of many of these currently prescribed organisations. This support could be in the form of:

- Financial donations by churches,
- Volunteering,
- Travel on short term mission trips,
- Long term or career service.

It appears that, if the proposed legislation was introduced and income tax exemption was removed from these currently prescribed organisations, the income tax exempt status of any organisation, Baptist Church or other currently exempt organisation would also be lost.

This is evidenced in the Exposure Draft section 50-50(2)

The entity must: (c) not donate money to any other entity, unless the other entity is an exempt entity.

We are concerned that the impact of both of these issues regarding Income Tax Exempt status would, in our view, have a major impact on the donor and recipient organisations because both parties would be subject to income tax and increased compliance costs we believe the impact on Australia income tax revenues would be immaterial.

It is also likely, in our view, that this situation would result in individual donors or subsequently taxable donor organisations sending funds directly overseas which would mean there would be less oversight by the Australian Government over the transfers of funds.

We are also concerned that the broad nature of section 50-50(2) (c) could restrict the day to day ministries of Australian Baptist Ministries and related organisations. There is no definition of donation in the legislation and therefore the section has the potential to prevent the direction of funds to any entity, whether in Australia or offshore, that is not tax exempt. Organisations should be able to direct funds to entities and individuals as part of their normal operations.

As noted above, these proposals would significantly impact Australian Baptist churches from being able to act in accordance with their religious convictions which do not have an “in Australia” limitation.

(d) Definition of Not-for-Profit Entity

In the context of the many reviews and inquiries into the Charitable sector the definition of non-profit, charitable and not-for-profit has been re-visited a number of times.

The additional clarification contained in subsection 995-1(1) **not-for profit entity** means an entity that:

(b) does not distribute its profits or assets to particular entities, including its owners or members, either while it is operating or upon winding up.

This differs considerably to the requirements that the ATO currently makes of not-for-profit entities:

The assets and income of the organisation shall be applied solely in furtherance of its above-mentioned objects and no portion shall be distributed directly or indirectly to the members of the organisation except as bona fide compensation for services rendered or expense incurred on behalf of the organisation.

As with most large charitable movements, the Baptist movement in Australia is structured via a number of discrete entities. We are concerned that if this definition was adopted and compliance was a condition of endorsement, Baptist entities would be prevented from distributing to other Baptist entities.

Our understanding of the law as it stands allows a charity to distribute to another charity without infringing the requirement to be not-for-profit as per the current requirements. This proposed definition, if adopted, would reverse this position.

Further, in our view this sub-clause uses the ambiguous term “particular entities”, which is not defined in the statute or common law.

Within the Baptist community of churches, it is common for property to be held “in trust” by one of our State Unions (or by a designated Property Trust) for the beneficial use of a local church. In the event of the closure of a particular local church and the sale of real property that is owned, the proceeds of that sale are often held for the use of future congregations yet to commence. In some cases when a new congregation commences, a starting grant, gift or distribution is made from these funds realised from previous property sales. Our view is that, under the proposed draft legislation, this would negatively impact the Income Tax Exemption of the State Union or Property Trust despite the funds being used for the charitable uses of the organisation. This proposed definition, if adopted, would prevent the distribution of such funds between Baptist charitable entities.

There are also income tax exempt Baptist entities within Australia that make donations to other income tax exempt Baptist entities in pursuit of their main object; the advancement of religion. This proposed definition of not-for-profit entities, if adopted, would prevent the distribution of such funds between Baptist entities even if in pursuit of this charitable purpose.

Furthermore, if the Baptist entity making the donation or distribution is deemed a commercial operation, this proposed definition, in our view, is at odds with the recently distributed *Better targeting of Not-for-Profit tax concessions* Consultation paper as it broadens the limitation of distributions. The model for commercial operations under the proposal raised in the consultation paper requires 100% distribution of surpluses in order that income tax is not payable. Under this proposed definition, in our view, it is difficult to know to whom these distributions can be made in view of the proposed and undefined limitation around distribution to ‘particular entities’.

5. Perceived mischief

We understand that Treasury has proposed these changes for a number of reasons including to minimise terrorist financing and money laundering. This implies that there are significant numbers of not-for-profits using their tax concessions to engage in such illegal activities. We are not best placed to judge this for the whole sector, but can speak for the Baptist movement in Australia in saying that there has never been any suggestion that any affiliated entity has engaged in such activities.

We recommend that if this is a concern for the Government, the appropriate response is to use the existing criminal laws or make changes to such laws to deter and penalise criminal behaviour.

6. Conclusion

We submit that the proposals as presently drafted do not take into account the realities of relationships and bona fide practices in the not for profit and charitable sector and will severely affect the ability of churches, missions and other not for profit bodies to continue their altruistic work.

7. Recommendations

(a) Our foremost recommendation is to respectfully request that the Exposure Draft be withdrawn.

Failing this, our further and specific recommendations are:

(b) In our view there should be provision within the proposed legislation which will enable prescribed institutions (and their members) listed in the current regulation 50.50.02 to retain their exemption through being prescribed institutions or members of prescribed institutions.

(c) In our view there should be an amendment made to the proposed subsection 50-51(3) to include exemption from the requirements of the proposed subsection 50-50(2) for entities that are prescribed institutions and pursue their objects principally outside Australia.

(d) In our view section 50-75 in the current legislation should not be repealed as proposed and should continue to apply so that gifts received and government grants would be disregarded in determining if an entity has met the requirements of the section 50-50(2) of the proposed legislation.

(e) In our view the proposed section 50-50(2) (c) should be removed.

(f) In our view the proposed section 50-50(3) (b) should be removed as it is not necessary.

(g) In our view the proposed legislation (amended) should not proceed on a 'stand-alone' basis but should rather form part of the broad package of reforms to the regulation of charities and not-for-profit entities. In our view this will make the task of improving the sector easier for Government and will assist the sector in providing the services which are designed to assist those in our community who require that assistance.