

Manager
Philanthropy and Exemptions Unit
Personal and Retirement Income Division
The Treasury
Langton Crescent PARKES ACT 2600
Email: NFPReform@treasury.gov.au



12th August 2011

Dear Manager,

“In Australia test” Submission

I am writing with reference to the draft changes in conditions for tax concession entities which are proposed for introduction on 1 July 2012.

Community Housing Limited (CHL) is an Australian endorsed charity providing affordable housing in Australia and overseas to poor people in housing need. CHL operates as a regulated community housing organisation with its principal activity of providing affordable rental housing to those in housing crisis and with high needs in Australia and the other incidental activity of assisting the poor in developing countries to achieve secure housing and escape slum conditions in developing countries. In addition to the direct development activity undertaken by CHL in the provision of affordable housing, CHL also provides training, stimulates employment creation and technology transfer related to affordable housing development. These operations cover development of skills in project management, design and construction and materials production to assist the development of poor communities with particular focus on remote aboriginal Australia and those developing countries in which it operates.

It should be noted that despite the incidental funding of CHL operations in relation to overseas activity our impact on the development of the environments in which we operate is entirely out of scale with financial contribution made. For example, CHL has trained and provided employment in construction of housing to hundreds of formerly unskilled Timorese people through partnership agreements with the International Labour Organisation and national vocational training centres.

We have also assisted with development work, namely the introduction of technology which improves environmental sustainability, reduces building costs, creating local employment and skills development. The longer term impact of stimulating a domestic residential building industry could create direct and indirect employment for up to 20% of the people in the country thereby improving standards of living and increasing the potential for the ongoing stability of the country. CHL is at the forefront of this development providing ongoing employment for trainees since 2006. CHL has become operational in other developing countries in the last two years and developing similar impacts despite a similarly incidental funding contribution.

We would like to express our concern about the possible impact and unintended consequences of some of the proposals. We are of the view that the new proposed section 30-18 of the Income Tax Assessment Act 1997 (the Act) to be imposed upon us and similar Not for Profit organisations is not fully justifiable or appropriate for organisations like CHL that are taking part in valuable international development whilst the majority of their operations remain in Australia.

Our approach to overseas operations is to incorporate a subsidiary in each overseas jurisdiction to conduct development activities. The subsidiaries work in partnership with other community organisations and entities in the overseas jurisdiction and predominantly employ nationals of that country. These subsidiaries are registered according to the incorporation laws prevailing in the jurisdictions where we operate.

Some jurisdictions do not have laws for the incorporation of effective Not for Profit entities and may have laws which simply allow the incorporation of private companies. Even so when CHL incorporates a private entity the constitutions of these companies reflect the constitutional object of CHL and all proceeds are distributed to the parent company or to the charitable aims of it. In effect the subsidiaries act in a benevolent fashion because profits are either transferred to the parent company which is a charity or more usually dispersed to the charitable aims as directed by the object and mission of the CHL group of companies.

The proposed change to the Act in form of insertion of a new section 30-18 would ensure that the funding we provide to ensure that the overseas operations are sustainable would cease. The operations would no longer be sustainable and they would close down despite their benevolent effect and the goodwill created for Australia in those jurisdictions in which we operate. Therefore, we propose the following solution for CHL and similar NFP organisations, including religious institutions, across Australia which conduct various operations overseas:

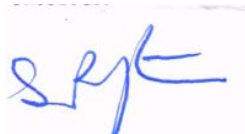
1. that overseas subsidiaries of Australian exempt charities be exempt from section 30-18(1)(d) and subsequently section 30-18(3) of the Act; and/or
2. consent to perform their current development activity under the proposed section 30-18 (2) of the Act;
3. We also request a definition be provided for the following terms as part of the changes:-
 - a) *solely*;
 - b) *principally*;
 - c) *merely incidental*;
 - d) *minor in extent and importance*

It is important to state that our current development activities do not contradict the ATO's 'key principle'. CHL also complies with two requirements for exemption from income tax. First, we have a physical presence in Australia and, secondly we incur our expenditure and pursue our objectives principally in Australia.

It is our view that imposition of the entire proposed section 30-18 on CHL and other similar Not for Profit organisations would have little material increase to tax revenues in Australia whilst suddenly ending development work provided by most Australian charitable organizations overseas. It will have the unintended consequence of damaging the reputation of Australia, negatively impacting the health and livelihood of many people in need of assistance from Australian organisations overseas and reducing the credibility of the Australian Government amongst the people in Australia once such a change is implemented and its effect becomes public.

If you require any further information please do not hesitate to contact me on steve.bevington@chl.org.au or +61405533636.

Yours sincerely



Steve Bevington
Managing Director