



'In Australia' Special Conditions for Tax Concession Charities
Submission in response to Exposure Draft released 4 July 2011

Contact: Mr Trevor Spicer
Director of Finance, Administration & Risk
Global Interaction
597 Burwood Road
HAWTHORN VIC 3122.

Tel: (03) 9815-7121
Email: tspicer@globalinteraction.org.au

Global Interaction Incorporated ABN 74 130 443 130

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".

Global Interaction is incorporated under the South Australian Associations Incorporation Act 1985.

1. Who we are

Global Interaction is the cross-cultural mission organisation affiliated with Baptist churches in Australia. In various forms and with several name changes through the years the organisation has been operating continuously since the early 1880's.

Global Interaction is incorporated under the South Australian Associations Incorporation Act 1985. The Board of Global Interaction oversees its governance and is made up of representatives from all states together with board members with particular skills.

2. What we do

Currently, Global Interaction has approximately 100 staff working in cross-cultural settings in thirteen different countries around the world. There are a further 35 staff in training to work cross-culturally and a support network of thirty five staff employed throughout Australia to provide training, staff development and care, administration support and strategic direction to the organisation.

Global Interaction's staff working in other cultures are involved in working amongst the most disadvantaged people in the world through many different ventures, including:

- Medical work
- HIV prevention training
- Mother and child nutrition training
- Literacy training
- Community support
- Community Leadership development
- Mediation and reconciliation training
- Rehabilitation
- Physiotherapy & Occupational therapy training
- Leadership training

In the course of any week it would be usual for these staff to work with in excess of 1,500 people in providing this training and development. In one case Global Interaction staff are some of the few foreign trained staff in their country of operation in their particular field of expertise.

In our view the proposed legislative changes would be significantly detrimental to the organisation, to the ability of staff to continue to work in these cross-cultural settings and would significantly impact those communities overseas where Global Interaction staff work to enhance life, health and spiritual welfare.

3. General Comments on Tax Concessions

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

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 and particularly on 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 legislation will significantly harm many Not-for-Profit organisations which are currently prescribed as exempt under the Income Tax Assessment Regulations 1997 that, while commenced and based in Australia, pursue their objectives principally outside Australia. If the tax exemption status of these 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.

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 religious 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. Many overseas mission 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 may be 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. This is certainly the case for Global Interaction as described above.

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 work due to the impost of tax that would become payable under the proposed legislation and also because of the additional administration 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.

(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.

It is understood that the reasoning for the current provision is that most gifts are funded from after-tax monies.

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

Many institutions currently prescribed under section 50-50(d) of the Income tax Assessment Act 1997, derive a significant percentage of their income by way of gifts from local churches. They also receive support of other types from these groups as well. This support could be in the form of:

- Financial donations by churches and individuals,
- 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 those organisations that are currently prescribed, the income tax exempt status of any organisation, Baptist Church or other currently exempt organisation would 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.

While 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 that the impact on Australian 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 control by the Australian Government over the transfers of funds.

(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.*

As with most large charitable movements, the Baptist movement in Australia is structure 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. This 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.

This definition, if adopted, would prevent the distribution of such funds between Baptist charitable 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 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 missions, churches, and other not for profit bodies to continue their altruistic work.

7. Recommendations

(a) 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.

(b) 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.

(c) 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.

(d) 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.