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

By Email: NFPReform@treasury.gov.au

Dear Sir/Madam

Exposure Draft: Restating the "In Australia" special conditions for tax concession entities

Mission Enterprises Victoria Limited (Mission Enterprises) welcomes the opportunity to put forward its views on the exposure draft legislation and accompanying Explanatory Material (EM) released on 4 July 2011.

Mission Enterprises was established in Australia in 1974 as a charitable institution for the purpose of financially supporting charitable, benevolent and religious objects in Victoria and elsewhere around the world. Over the last 35 years, hundreds of Australian and international charitable organisations have received gifts from Mission Enterprises. These gifts have ranged from small once off gifts of a few hundred dollars to long standing commitments towards specific projects of over $50,000 per annum.

Many other charities have come to recognise Mission Enterprises as a generous supporter that can act quickly in times of crisis or strategic need. Projects that Mission Enterprises seeks to support range from programs headed up by large Australian based overseas aid funds to small initiatives managed by overseas organisations. Mission Enterprises is currently focussed on projects that address health, education and poverty relief needs around the world.

Our funds are raised partly from investment income and partly from donations. Donations to our organisation are not tax deductible.

Concerns with the draft legislation

As currently drafted, the proposed legislation raises serious issues in regards to the operation of our organisation. In particular we are concerned that:

1. The exemption currently available in section 50-50(d) of the Income Tax Assessment Act 1997 (the Act) for Australian resident prescribed institutions has not been retained in the draft legislation.
2. The proposed subsection 50-50(2)(c) is too broad in its application and seems to extend further than what is intended by the EM. The fact that there is no definition of the term "donations" in the draft legislation exacerbates the uncertainty. The current drafting of this subsection will prevent Mission Enterprises from carrying out many of its overseas assistance projects resulting in a significant loss to the poor communities overseas who benefit from these projects.

3. The proposed subsection 50-50(3) is drafted too widely. Minor non-compliance with an organisation's governing rules and purposes should not immediately result in the loss of that organisation's income tax exempt status.

Income tax exemption for Australian resident prescribed institutions

Section 50-50(d) of the Act currently provides income tax exemption for an entity which is a prescribed institution and which has a physical presence in Australia but which incurs its expenditure and pursues its objectives principally outside Australia. Such prescribed institutions and their members are listed in Regulation 50.50.02

Mission Enterprises currently donates funds to some Australian resident prescribed institutions for use in various overseas community development projects. Under the exposure draft legislation, the exemption for Australian resident prescribed institutions has been removed. Foreign resident prescribed institutions can be income tax exempt pursuant to the new Section 50-51(3)(b) however there is no provision for Australian resident prescribed institutions. Accordingly entities currently exempt under section 50-50(d) will no longer be income tax exempt. In addition, they will lose the FBT rebate and GST concessions.

Mission Enterprises operates and pursues its purposes principally in Australia. Therefore under the exposure draft legislation, Mission Enterprises will need to meet the requirements of section 50-50 in order to remain income tax exempt. This will include compliance with section 50-50(2)(c) which states that an entity must not donate money to any other entity, unless the other entity is an exempt entity. Should the exemption for Australian resident prescribed institutions not be reinstated, Mission Enterprises will be prevented from giving to such organisations. This will severely hamper our ability to deliver the benefits to our overseas recipients in an effective way.

Paragraph 1.13 of the EM identifies the intent of the original law as allowing a charity to only be able to pass funds to an overseas charity that was endorsed as a DGR or an entity specifically prescribed in the regulations. Accordingly it appears that the exclusion of the income tax exemption for Australian resident prescribed institutions is an inadvertent omission. We recommend that the income tax exemption currently available in section 50-50(d) of the Act be reinstated in the new section 50-51.

Donation of money only to tax exempt entities

One of the income tax exemption requirements, as listed in the new section 50-50(2)(c), is that an entity must not donate money to any other entity, unless the other entity is an exempt entity. We have outlined our concerns above regarding donations to Australian resident prescribed institutions. However, the new legislation will also restrict us in our ability to directly fund various overseas development projects.

We note that the EM states that "if an entity pursues its purposes through the donation of monies to other entities – the entity is not entitled to be income tax exempt unless the donations are solely to entities that are also income tax exempt and the entity operates principally in Australia". This implies that the subsection 50-50(2)(c) is intended to cover situations where the entity is acting solely as a conduit. The entity pursues it purpose by simply donating funds to other entities. However we contend that the proposed subsection, as currently drafted, has a much wider application.

There is no definition of "donation" in the legislation. Therefore in practice there will be uncertainty as to whether an amount is a donation or whether it is an amount expended as part of the organisation's normal operations. "Entity" as defined in the Act includes individuals. Therefore the proposed legislation could even operate to prevent donations to individuals in need. Given the consequence of making an incorrect donation is the immediate loss of income tax exemption, organisations such as ours will be unable to direct funds to any entity that is not tax exempt. This will include individuals, Australian community organisations that are not income tax exempt and overseas organisations and projects.

Alternatively we will need to restructure in order to segregate our Australian operations from our overseas activities, even though those direct overseas activities are minor. The income

tax exemption will be available for our Australian operations but the entity undertaking overseas activities will lose its income tax exemption and FBT and GST concessions. It is important to note that the cost to our organisation would not just be that of income tax. The restructuring costs would be significant as would the on-going additional administration costs. It is also likely that we would lose a significant component of our donation revenue as donors may well be unwilling to give to a taxable entity.

We also point out that the EM states that it is the intention that "any tax concessional money stays within the exempt entity framework and gets used principally in Australia for the broad benefit of Australians". However, in many instances the funds our organisation receives are not tax concessional money. The donations we receive from individuals are made out of after tax dollars. Donors are not seeking a tax deduction for their donations. It should be possible to direct after tax monies offshore without the loss of our income tax exemption.

We recommend that subsection 50-50(2)(c) be redrafted to clarify its meaning. At the very least it should be restricted only to situations considered in the EM, being where the entity pursues its purposes through the donation of monies to other entities. However, in reality this will still create uncertainty. We contend a definition of donation is also required. This definition should ensure that the term donations exclude any funds directed to other entities as part of the organisation's normal charitable operations.

Governing Rules

Subsection 50-50(3) as currently drafted requires an entity to comply with all the requirements in its governing rules and to use its income and assets solely to pursue the purposes for which it was established. This section is too broad in its application and has the potential to catch minor non-compliance with the entity's governing rules, including instances where the contravention is an administrative issue only, such as form of notice of meetings.

In addition, the term "governing rules" is not defined. No doubt it includes the organisation's constitution but whether it extends beyond this is unclear.

Accordingly we recommend that subsection 50-50(3) be redrafted to clarify the meaning of governing rules and to limits its scope to material contraventions of the organisation's objects and distribution clauses.

If you have question regarding the above, please do not hesitate to contact us.
Yours sincerely

Adrian Price
Chief Operating Officer