



**CORNEY
&
LIND**
LAWYERS

Your Ref:
Our Ref: 120050
Contact: Alistair Macpherson
Direct email: Alistair.Macpherson@corneyandlind.com.au

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Manager
Philanthropy and Exemptions Unit
Indirect Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

By Email: NFPReform@treasury.gov.au

Dear Colleagues

**RESTATING AND STANDARDISING THE SPECIAL CONDITIONS FOR TAX
CONCESSION ENTITIES
SUBMISSION ON THE REVISED EXPOSURE DRAFT**

SUBMISSION ON BEHALF OF ASSOCIATED CHRISTIAN SCHOOLS LTD

We act for Associated Christian Schools Ltd (ACS), a company limited by guarantee based in Queensland.

Our client is an association of 29 independent Christian Schools within Queensland. The member schools collectively have more than 18,000 enrolled students. Our client represents the majority of independent Christian schools in Queensland.

Our client has carefully considered the revised Exposure Draft released by the Assistant Treasurer on 17 April 2012, and has instructed us to make the following comments for your consideration.

Our client acknowledges the efforts made by The Treasury to take into account the concerns the NFP Sector had regarding the initial Exposure Draft. Whilst ACS did not make a submission to the initial Exposure Draft, it shared many of the concerns raised by other NFP entities.

Our client would like to make the following representations for your consideration before you finalise the legislative amendments, focusing on how the draft legislation might affect the independent education sector.

1. The Entity must use its income and assets solely to pursue the purposes for which it was established

Section 50-50(3)(b) provides that the entity must use its income and assets solely for the purpose for which the entity is established and operated and for which it is entitled to be exempt from tax.

Unfortunately this provision does not receive any commentary in the explanatory material.

Our member schools are usually established and operated for the advancement of education. Under section 50-50(3)(b), the income and assets of the school must therefore be used **solely** for the advancement of education. While this would generally be the case, it is possible that our member schools

B R I S B A N E

P (07) 3252 0011
F (07) 3257 7890

PO Box 236
RBH Post Office Q 4029

Suite 43, Level 4
Royal Brisbane Place
17 Bowen Bridge Rd. Herston
(Opposite Royal Brisbane Hospital)

E admin@corneyandlind.com.au
W www.corneyandlind.com.au
ABN 19 986 469 033

might use a small proportion of its income or assets for other non-educational purposes (such as assisting a school family in need, allowing a religious or community entity to use school premises etc). Such activities would not come within “advancement of education”, and potentially place the school in breach of section 50-50(3), even though the activities were still of a general charitable nature.

To resolve this, the legislation could introduce a “solely or almost solely” test. A test of this nature is found in section 415 of the Duties Act 2001 (Qld). This would enable schools to have a degree of latitude to use assets or income for non-educational purposes.

2. Disregarding monies received through gifts or grants

Our client notes the addition of section 50-50(5), to enable entities to exclude funds donated or received by grant.

For our client’s member schools, this particular exclusion is most likely to apply where the school sends a team of students and teachers overseas for the purpose of engaging in a particular community program (such as the building of a church, orphanage or school building), and the team engages in fund raising to facilitate the program. Depending on the success of the fund-raising program, the funds raised through donations or gifts could be significant.

Our client’s member schools would generally not need to rely on the exclusion in section 50-50(5), because their overall operations and purposes would usually satisfy section 50-50(2) regardless of this fund-raising activity.

However, if the fund-raising was significant, it is possible that a school might need to rely on this exclusion (particularly if it involves a smaller school with lower levels of expenditure). In this event, the member school must also comply with any conditions prescribed in the regulations. We note that the following conditions have been suggested by Treasury:

- a) the entity must demonstrate that any activities undertaken outside Australia and the use of any money or property outside Australia is effective in achieving the entity’s purpose;
- b) the entity must comply with all Australian and foreign laws, Australia’s international treaty obligations, and uphold the high reputation of Australia and it’s not-for-profit sector when sending money overseas; and
- c) the entity must show it has in place current and appropriate governance arrangements for the proper monitoring of any overseas activities undertaken by both it and any in-country partners to ensure that any money and property is being used in an proper and effective manner.

Whilst our client appreciates the policy intent behind these conditions, it is concerned about the breadth of the conditions. These conditions place stringent obligations on the member schools, which schools would generally not be sufficiently resourced to properly understand and apply the conditions (particularly smaller member schools). For example, a member school is unlikely to have a detailed understanding of “all Australian and foreign laws and Australia’s international treaty obligations.” Our client asks that Treasury acknowledge these difficulties and not unnecessarily over-regulate in this area. It seems to us that the policy intent could be achieved without the inclusion of condition (b).

3. New definition of Not-For-Profit Entity

The definition of Not-For-Profit Entity, which is being inserted into subsection 995-1(1) allows distribution to members or owners where it is “genuine compensation for services provided to, or reasonable expenses incurred on behalf of, the entity”.

In some circumstances, the distribution might also relate to goods provided by the member or owner to the school (for example, curriculum materials, the use of fixtures, fittings or other assets, lease of premises etc). Whilst we would anticipate this being captured within the concept of "services", we suggest that this could be clarified by amending the definition to including "genuine compensation for **goods** or services". Of course, the caveat would remain that such a distribution still needs to represent "genuine compensation".

Our client thanks you for the opportunity to make this submission. If you have any queries regarding it, please contact the author on 07 3252 0011.

Yours faithfully
CORNEY & LIND

per:



Alistair Macpherson
Partner

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