



AUSTRALIAN CATHOLIC BISHOPS CONFERENCE

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Tax Laws Amendment (2012 Miscellaneous Measures No. 4) Bill 2012

The Australian Catholic Bishops Conference (ACBC) is the permanent institution of the Australian Catholic Bishops, which deals with the Catholic Church's national representations and initiatives.

The Church welcomes the opportunity to comment on the Government's Exposure Draft – 'In Australia' Special Conditions for Tax Concession. The Church looks forward to continuing to participate in discussions about important issues raised in this and other reports and papers about Not-For-Profit Organisations (NFPs).

Some sectors of the Church may make additional sector-specific responses to the Exposure Draft.

The ACBC offers the following additional comments:

1. The ACBC welcomes the changes that have been made following consultation on the 2011 Exposure Draft and in particular the new proposals relating to the use of funds that have been made available to charities for which no tax deduction is claimed.

2. **Section 50-50(5)**

The new proposals require compliance with certain governance arrangements and measures of effectiveness to be set out in regulations, described in paragraph 1.69 in the Explanatory Memorandum. The ACBC would appreciate the opportunity to participate in the consultation relating to the

drafting of these regulations. In particular there will need to be clarity about the expectations for how detailed the requirements for monitoring will need to be. The criteria to measure effectiveness should also be set out with clarity.

3. Section 50-50(4) uses the phrase 'the use of the money by the recipient or any other entity' while section 30-18(3) uses the phrase 'the use of the money or property by that other entity (or any other entity)'. It is difficult to know the full extent of the inquiry that the giving entity must undertake and the depth of tracing that might be required. The legislation or regulations should put some practical limits to this. The ACBC would appreciate the opportunity to participate in further consultations as to how these limits are to be defined.

4. **Section 50-50(3)(a)**

Under proposed section 50-50(3)(a) an entity is required to comply with "all the substantive requirements in its governing rules'. There are many entities, including Church entities, such as dioceses and parishes, which do not have separate formal governing rules. In the case of some Catholic Church entities they are established under internal Church law. The ACBC understands that this will be adequate for the purposes of compliance with this provision and suggests that it would be helpful if specific commentary was included in the Explanatory Memorandum to make this clear.

The words **substantive requirements** introduce concepts not otherwise known in the legislation. The comments in paragraph 1.86 of the Explanatory Memorandum are clear and useful. The ACBC suggests that they be incorporated into the legislation.

5. **Section 50-50(3)(b)**

Section 50-50(3)(b) requires income or assets to be used **solely** for the purpose for which the entity is established and operated. As previously noted in the ACBC submission of 30 July 2011 this is very harsh and impractical.

Although it should be the case that income and assets are applied for this purpose, for cases that are at the margin or otherwise are doubtful, a safe harbour could apply without jeopardising the policy intent. For example, 30-18(2)(a) and (b) which allows for minor and incidental activity outside the nominated purpose should apply also to minor and incidental expenditure and use of assets.

6. **Section 207-117**

The current section 207-117 provides that an exempt entity satisfies the residency requirements for entitlement to franking credits on the basis that it needs to satisfy *only* the existing "In Australia" conditions in Division 50.

The proposed section 207-117 would require an exempt institution to satisfy all the conditions in section 50-50 at all times to be entitled to the benefit of franking credits. Such a requirement would include concepts of structure and governance that are outside of the intention of section 207-117, which is limited to identifying residency requirements for the purposes of section 207-115.

We submit that the parts of section 50-50 which are relevant to residency requirements are sections 50-50(2) and 50-50(4).

The exposure draft proposes a new section 50-51 which is apparently intended to replace the concept in the current section 50-50(b). Reference to this should also be included in proposed section 207-117.

The proposed section 207-117 provides that an exempt institution would not be entitled to franking credits, unless it satisfied conditions **at all times** during the income year. The ACBC understands that when an entity is established during the course of a year and has not been in existence at all times during the year it is sufficient that it satisfies the residency requirements at all times during its existence. Some further clarification of this policy intent would be helpful.

In light of the above matters, we submit that section 207-117 should read as follows:

“An entity satisfies the **residency requirement** for the purposes of determining whether, at the time a *franked distribution is made, the entity is an *exempt institution that is eligible for a refund, if it satisfies the conditions in section 50-50(2) (subject to the application of section 50-50(5)) or section 50-51 at all times during its existence in the income year in which the distribution is made.”

7. **Section 995-1(1)**

The definition of ‘not for profit entity’ is critical, not only entitlements to exemption under the *Income Tax Act*, but also under other tax acts, such as *A New Tax (Goods and Services Tax) Act* and the *Fringe Benefits Tax Assessment Act*. The ACBC notes that the comments in its previous submission on this point have been accepted. To create greater certainty the ACBC proposes that the first sentence of paragraph 1.77 in the Explanatory Memorandum be included in the legislation.

8. **Overseas Aid Agencies**

The ACBC is concerned about the possible unintended consequences where an authority or institution conducts a fund covered by section 30-80 and

where the whole of that authority or institution is also endorsed as a deductible gift recipient.

There are a number of authorities and institutions who are endorsed as DGRs as a whole and who carry on their activities both within Australia as a public benevolent institution or a health promotion charity for example and who also conduct an overseas aid fund which is separately endorsed. The operation by that authority or institution of such a fund may cause the institution as a whole to fail some of the requirements of proposed section 30-18(1).

We submit that the proposed legislation should be amended to acknowledge that the location of the operations and pursuits of a fund covered by section 30-80 should be disregarded in assessing whether the authority or institution satisfies the conditions in section 30-18(1)(b) and (c) in respect of its other activities.

Church representatives are available to discuss these comments further with relevant Treasury officers.

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