

# EXPOSURE DRAFT



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## Tax Laws Amendment (2014 Measures No. 2) Regulation 2014

Select Legislative Instrument No. , 2014

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I, Quentin Bryce AC CVO, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulation under the Acts mentioned in section 3.

Dated 2014

Quentin Bryce  
Governor-General

By Her Excellency's Command

Arthur Sinodinos AO  
Assistant Treasurer

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## 1 Name of regulation

This regulation is the *Tax Laws Amendment (2014 Measures No. 2) Regulation 2014*.

## 2 Commencement

This regulation commences on the day after it is registered.

## 3 Authority

This regulation is made under the *Income Tax Assessment Act 1997*.

## 4 Schedule(s)

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

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## Schedule 1—Amendments relating to determinations

### *Income Tax Assessment Regulations 1997*

#### **1 Division 30 (heading)**

Repeal the heading, substitute:

#### **Division 30—Gifts or contributions**

#### **2 Before regulation 30-212.01**

Insert:

#### **30-19.01 Requirements for determination by Environment Minister in relation to a fund or an organisation that maintains a fund**

- (1) For subsection 30-19(1) of the Act, this regulation sets out requirements relating to a fund, or an organisation that maintains a fund.

Note: Under subsection 30-19(1) of the Act, the Environment Minister may make a determination in relation to a fund, or an organisation that maintains a fund, if the Environment Minister considers that the fund or organisation meets the requirements specified in the regulations.

- (2) The fund or organisation must:
- (a) apply to the Environment Minister for the making of a determination under subsection 30-19(1) of the Act; and
  - (b) make the application in a form approved by the Environment Minister for this paragraph; and
  - (c) include in the application:
    - (i) the information required to meet the requirements in subregulations (3) to (8); and
    - (ii) any other information that is sufficient to allow the Environment Minister to consider whether to make the determination.

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- (3) The fund or organisation must have a genuine need to conduct one or more activities outside Australia in order to give effect to its purposes.

Examples: The following are circumstances that show a need to conduct one or more activities outside Australia:

- (a) a purpose of the fund or organisation is to protect the environment in one or more places outside Australia;
  - (b) equipment or expertise necessary to give effect to the purposes of the fund or organisation is located outside Australia.
- (4) The fund or organisation must take reasonable steps to obtain evidence showing that:
- (a) the activities it has conducted outside Australia have been a genuine attempt to achieve its purpose; and
  - (b) the activities it is conducting outside Australia are an effective means of achieving its purpose.
- (5) If the fund or organisation works with another person (however described) that:
- (a) is located in a country in which the fund or organisation conducts an activity; and
  - (b) works with the fund or organisation on the activity;
- the fund or organisation must take reasonable steps to obtain evidence showing that it effectively interacts and coordinates the conduct of the activity with that person.
- (6) The fund or organisation must not have engaged in conduct, or failed to engage in conduct, in circumstances in which the conduct or failure may be dealt with under an Australian law:
- (a) as an indictable offence (whether or not the law also permits it to be dealt with as a summary offence); or
  - (b) by way of a civil penalty of at least 60 penalty units.

Note 1: The fund or organisation is always expected to comply with all Australian laws. An infringement of an Australian law that is serious enough to attract a penalty mentioned in this subregulation means that the fund or organisation cannot be the subject of a determination under subsection 30-19(1) of the Act.

Note 2: Section 4AA of the *Crimes Act 1914* explains the current value of a penalty unit.

Note 3: The operation of some Australian laws has been extended to overseas jurisdictions. This subregulation is not intended to extend the operation of any Australian law to an overseas jurisdiction.

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- (7) If the fund or organisation is a registered entity under the *Australian Charities and Not-for-profits Commission Act 2012*, it must be in compliance with the governance standards under that Act to which it is subject.
- (8) If the fund or organisation is not a registered entity under the *Australian Charities and Not-for-profits Commission Act 2012*, it must have reasonable processes in place:
  - (a) to ensure that it is giving effect to its purposes as set out in its governing rules; and
  - (b) to manage the risk of a breach of its governing rules; and
  - (c) to manage the risk of fraud or misconduct by an entity responsible for the management or administration of the entity.

## **30-19.02 Requirements for determination by Arts Minister in relation to a fund or an organisation that maintains a fund**

- (1) For subsection 30-19(2) of the Act, this regulation sets out requirements relating to a fund, or an organisation that maintains a fund.

Note: Under subsection 30-19(2) of the Act, the Arts Minister may make a determination in relation to a fund, or an organisation that maintains a fund, if the Arts Minister considers that the fund or organisation meets the requirements specified in the regulations.

- (2) The fund or organisation must:
  - (a) apply to the Arts Minister for the making of a determination under subsection 30-19(2) of the Act; and
  - (b) make the application in a form approved by the Arts Minister for this paragraph; and
  - (c) include in the application:
    - (i) the information required to meet the requirements in subregulations (3) to (8); and
    - (ii) any other information that is sufficient to allow the Arts Minister to consider whether to make the determination.
- (3) The fund or organisation must:
  - (a) have a genuine need to conduct one or more activities outside Australia in order to give effect to its purposes; and



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- (b) enhance Australia's international reputation in the performing arts.

Examples: The following are circumstances that show a need to conduct one or more activities outside Australia:

- (a) a purpose of the fund or organisation is to promote the arts in one or more places outside Australia;
  - (b) equipment or expertise necessary to give effect to the purposes of the fund or organisation is located outside Australia.
- (4) The fund or organisation must take reasonable steps to obtain evidence showing that:
    - (a) the activities it has conducted outside Australia have been a genuine attempt to achieve its purpose; and
    - (b) the activities it is conducting outside Australia are an effective means of achieving its purpose.
  - (5) If the fund or organisation works with another person (however described) that:
    - (a) is located in a country in which the fund or organisation conducts an activity; and
    - (b) works with the fund or organisation on the activity;the fund or organisation must take reasonable steps to obtain evidence showing that it effectively interacts and coordinates the conduct of the activity with that person.
  - (6) The fund or organisation must not have engaged in conduct, or failed to engage in conduct, in circumstances in which the conduct or failure may be dealt with under an Australian law:
    - (a) as an indictable offence (whether or not the law also permits it to be dealt with as a summary offence); or
    - (b) by way of a civil penalty of at least 60 penalty units.

Note 1: The fund or organisation is always expected to comply with all Australian laws. An infringement of an Australian law that is serious enough to attract a penalty mentioned in this subregulation means that the fund or organisation cannot be the subject of a determination under subsection 30-19(2) of the Act.

Note 2: Section 4AA of the *Crimes Act 1914* explains the current value of a penalty unit.

Note 3: The operation of some Australian laws has been extended to overseas jurisdictions. This subregulation is not intended to extend the operation of any Australian law to an overseas jurisdiction.

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- (7) If the fund or organisation is a registered entity under the *Australian Charities and Not-for-profits Commission Act 2012*, it must be in compliance with the governance standards under that Act to which it is subject.
- (8) If the fund or organisation is not a registered entity under the *Australian Charities and Not-for-profits Commission Act 2012*, it must have reasonable processes in place:
  - (a) to ensure that it is giving effect to its purposes as set out in its governing rules; and
  - (b) to manage the risk of a breach of its governing rules; and
  - (c) to manage the risk of fraud or misconduct by an entity responsible for the management or administration of the entity.

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## Schedule 2—Amendments relating to special conditions

### *Income Tax Assessment Regulations 1997*

#### 1 Division 50 of Part 2

Repeal the Division, substitute:

#### **Division 50—Exempt entities**

##### **50-50.01 Special conditions for certain items**

- (1) For subsection 50-50(5) of the Act, this regulation sets out conditions relating to an entity mentioned in subsection 50-50(1) of the Act.

Note: Under subsection 50-50(5), if an entity complies with the conditions (if any) prescribed in the regulations the use of certain amounts can be disregarded in determining whether the entity operates and pursues its purposes in Australia.

- (2) The entity must take reasonable steps to obtain evidence showing that:
- (a) the activities it conducts outside Australia are a genuine attempt to give effect to its purposes; and
  - (b) the use by the entity of money or property outside Australia is effective in achieving the entity's purposes.
- (3) If the entity works with another person (however described) that:
- (a) is located in a country in which the entity conducts an activity; and
  - (b) works with the entity on the activity;
- the entity must take reasonable steps to obtain evidence showing that it effectively interacts and coordinates the conduct of the activity with that person.
- (4) The entity must not have engaged in conduct, or failed to engage in conduct, in circumstances in which the conduct or failure may be dealt with under an Australian law:
- (a) as an indictable offence (whether or not the law also permits it to be dealt with as a summary offence); or

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(b) by way of a civil penalty of at least 60 penalty units.

Note 1: The entity is always expected to comply with all Australian laws. An infringement of an Australian law that is serious enough to attract a penalty mentioned in subregulation (4) means that the entity cannot obtain the benefit of subsection 50-50(5) of the Act.

Note 2: Section 4AA of the *Crimes Act 1914* explains the current value of a penalty unit.

Note 3: The operation of some Australian laws has been extended to overseas jurisdictions. Subregulation (4) is not intended to extend the operation of any Australian law to an overseas jurisdiction.

(5) If the entity is a registered entity under the *Australian Charities and Not-for-profits Commission Act 2012*, it must be in compliance with the governance standards under that Act:

(a) to which it is subject; or

(b) to which it would be subject but for any provision of that Act limiting the application of those standards to it.

(6) If the entity is not a registered entity under the *Australian Charities and Not-for-profits Commission Act 2012*, it must have reasonable processes in place:

(a) to ensure that it is giving effect to its purposes as set out in its governing rules; and

(b) to manage the risk of a breach of its governing rules; and

(c) to manage the risk of fraud or misconduct by an entity responsible for the management or administration of the entity.

## 50-51.10 Prescribed entities (foreign residents—religious)

For subsection 50-51(2) of the Act, each entity mentioned in an item in the following table is prescribed on and after the date, or for the period, specified in the item.

Note: See paragraph 50-51(2)(c) of the Act.

Prescribed entities		
Item	Entity	Date or period
1	Catholic Bishops' Conference of the Pacific (Fiji)	1 July 1997
2	Catholic Diocese of Rarotonga (Cook Islands)	1 July 1997
3	Catholic Diocese of Bougainville (Papua New	1 July 1997

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<b>Prescribed entities</b>		
<b>Item</b>	<b>Entity</b>	<b>Date or period</b>
	Guinea)	
4	Catholic Diocese of Port Vila (Vanuatu)	1 July 1997
5	Catholic Diocese of Suva (Fiji)	1 July 1997
6	Catholic Diocese of Noumea (New Caledonia)	1 July 1997
7	Catholic Diocese of Tonga	1 July 1997
8	Catholic Diocese of Auki (Solomon Islands)	1 July 1997
9	Catholic Archdiocese of Rabaul (Papua New Guinea)	18 August 2003
10	Diocese of Honiara Registered Trustees (Incorporated)	10 June 2005

## 50-51.11 Prescribed entities (foreign residents—sporting)

For subsection 50-51(2) of the Act, each entity mentioned in an item in the following table is prescribed on and after the date, or for the period, specified in the item.

Note: See paragraph 50-51(2)(c) of the Act.

<b>Prescribed entities</b>		
<b>Item</b>	<b>Entity</b>	<b>Date or period</b>
1	International Cricket Council Development (International) Limited	Between 1 July 2013 and 30 June 2018

## 50-51.20 Prescribed entities (Australian residents—religious)

(1) For subsection 50-51(2) of the Act, each entity mentioned in an item in the following table is prescribed on and after the date, or for the period, specified in the item.

Note: See paragraph 50-51(2)(d) of the Act.

<b>Prescribed entities</b>		
<b>Item</b>	<b>Entity</b>	<b>Date or period</b>
1	Australasian Christadelphian Mission Incorporated	1 July 1997

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<b>Prescribed entities</b>		
<b>Item</b>	<b>Entity</b>	<b>Date or period</b>
2	Australian Advisory Council of the Christian Leaders' Training College of Papua New Guinea	1 July 1997
3	Australian Evangelical Alliance Incorporated (Missions Interlink)	1 July 1997
4	Evangelical Missionary Alliance NSW	1 July 1997
5	Mango Tree Foundation Limited	1 July 1997
6	Orphans Refugees Aid International Incorporated	1 July 1997
7	Steer Incorporated	1 July 1997
8	Trustees of the Marist Missions of the Pacific	1 July 1997
9	Zebedee Investments Ltd	1 July 1997
10	Alkitab Inc	1 July 1997
11	The Australian Centre Berlin Limited	19 June 2001
12	Millennium Relief and Development Services Incorporated	3 September 2001
13	Asia-Pacific Educational Research Association Limited	26 November 2001

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(2) For subsection 50-51(2) of the Act, an entity that is a member of an entity mentioned in an item in the table in subsection (1) is prescribed on and after the date, or for the period, specified in the item.

Note: See paragraph 50-51(2)(d) of the Act.