

EXPOSURE DRAFT

1 Inserts for

EXPOSURE DRAFT

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Tax and Superannuation Laws Amendment (2014 Measures No. 3) Bill 2014: in Australia special conditions

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Commencement information

Column 1

Column 2

Column 3

Provision(s)

Commencement

Date/Details

1. Schedule ?—
Restating and
standardising the
special conditions
for tax concession
entities

The day after this Act receives the Royal
Assent.

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11/3/2014 4:34 PM

EXPOSURE DRAFT

EXPOSURE DRAFT

Schedule ?—Restating and standardising the special conditions for tax concession entities

Part 1—Deductible gift recipients

Income Tax Assessment Act 1997

1 Subsection 30-15(2) (paragraph (a) of the cell at table item 1, column headed “Special conditions”)

Repeal the paragraph, substitute:

- (a) the fund, authority or institution must satisfy the conditions in section 30-18; and

2 At the end of Subdivision 30-A

Add:

30-18 Fund, authority or institution must operate in Australia etc.

- (1) Subject to subsections (5) and (6), a fund, authority or institution satisfies the conditions in this section if:
 - (a) it is established in Australia; and
 - (b) it operates solely in Australia; and
 - (c) it pursues its purposes solely in Australia.
- (2) Despite subsection (1), a fund, authority or institution that operates or pursues its purposes outside Australia does not fail the conditions in paragraphs (1)(b) and (c) merely because:
 - (a) its activities outside Australia are merely incidental to its operations and pursuit of purposes in Australia; or
 - (b) its activities outside Australia are minor in extent and importance when considered with reference to its operations and pursuit of purposes in Australia.
- (3) Subject to subsection (4), if a fund, authority or institution provides money, property or benefits to another entity that is not a *deductible gift recipient, take into account the use of the money, property or benefits by that other entity (or any other entity) when

EXPOSURE DRAFT

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- 1 determining whether the fund, authority or institution satisfies the
2 conditions in paragraphs (1)(b) and (c).
- 3 (4) For the purposes of applying subsection (3), take into account the
4 use of the money, property or benefits by an entity outside
5 Australia only to the extent that it would be reasonable to expect
6 the fund, authority or institution to have knowledge of, or to obtain
7 knowledge of, the use of the money, property or benefits outside
8 Australia.
- 9 (5) A fund, authority or institution established and maintained solely
10 for the purpose of providing money for scholarships, bursaries or
11 prizes to which section 30-37 applies satisfies the conditions in this
12 section if it satisfies the condition in paragraph (1)(a).
- 13 (6) A fund, authority or institution covered by section 30-80
14 (international affairs deductible gift recipients) satisfies the
15 conditions in this section if it satisfies the condition in
16 paragraph (1)(a).
- 17 (7) For the purposes of determining whether a fund, authority or
18 institution (the *parent entity*) satisfies the conditions in
19 paragraphs (1)(b) and (c), disregard the activities of any other fund,
20 authority or institution covered by subsection (8) or section 30-80
21 that is operated by the parent entity.
- 22 (8) A fund, or an organisation that maintains a fund, covered by
23 item 6.1.1 of the table in subsection 30-55(1) (register of
24 environmental organisations) satisfies the conditions in this section
25 if:
26 (a) it satisfies the condition in paragraph (1)(a) of this section;
27 and
28 (b) the *Environment Minister makes a determination in relation
29 to the fund or organisation under subsection 30-19(1).
- 30 (9) A fund, or an organisation that maintains a fund, covered by
31 item 12.1.1 of the table in subsection 30-100(1) (register of cultural
32 organisations) satisfies the conditions in this section if:
33 (a) it satisfies the condition in paragraph (1)(a); and
34 (b) the *Arts Minister makes a determination in relation to the
35 fund or organisation under subsection 30-19(2).
- 36 (10) Disregard the use of the following amounts in determining whether
37 a fund, authority or institution satisfies the conditions in this
38 section:
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EXPOSURE DRAFT

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- 1 (a) a grant from a *government entity for the purpose of allowing
2 the fund, authority or institution to carry on activities outside
3 Australia;
4 (b) a payment under a contractual arrangement from a
5 government entity for the purpose of allowing the fund,
6 authority or institution to carry on activities outside Australia.

7 **30-19 Determination by Environment Minister or Arts Minister**

- 8 (1) The *Environment Minister may make a determination in relation
9 to a fund, or an organisation that maintains a fund, if the
10 Environment Minister considers that the fund or organisation meets
11 the requirements specified in the regulations for the purposes of
12 this subsection.
- 13 (2) The *Arts Minister may make a determination in relation to a fund,
14 or an organisation that maintains a fund, if:
15 (a) the fund or organisation is a *touring arts organisation; and
16 (b) the Arts Minister considers that the fund or organisation
17 meets the requirements specified in the regulations for the
18 purposes of this subsection.

19 *Meaning of touring arts organisation*

- 20 (3) A fund, or an organisation that maintains a fund, is a ***touring arts***
21 ***organisation*** if it:
22 (a) is a *cultural organisation that is entered on the register of
23 cultural organisations; and
24 (b) has the principal purpose of promoting the performing arts;
25 and
26 (c) meets the requirements specified in the regulations for the
27 purposes of this subsection.

28 *Review of determination*

- 29 (4) A fund, or an organisation that maintains a fund, may apply to the
30 *AAT for review of a decision (as defined in the *Administrative*
31 *Appeals Tribunal Act 1975*):
32 (a) to make a determination under subsections 30-19(1) or (2) in
33 relation to the fund or organisation; or
34 (b) to not make a determination under that subsection in relation
35 to the fund or organisation.

EXPOSURE DRAFT

3 Subsection 30-25(2) (table items 2.2.28, 2.2.33 and 2.2.39)

Repeal the items.

4 Subsection 30-40(2) (table item 3.2.13)

Repeal the item.

5 Subsection 30-45(2) (table items 4.2.1 and 4.2.28)

Repeal the items.

6 Subsection 30-55(2) (table item 6.2.22)

Repeal the item.

7 Subsection 30-80(1) (at the end of the table)

Add:

- 9.1.3 an authority or institution that: none
- (a) is engaged solely in research into the causes, prevention or cure of disease in human beings; and
 - (b) undertakes its research in collaboration with other institutions or authorities outside Australia

8 Subsection 30-80(2) (at the end of the table)

Add:

9.2.26	Australian-American Educational Foundation	the gift must be made after 30 April 2003
9.2.27	International Specialised Skills Institute Incorporated	the gift must be made after 11 August 2005
9.2.28	The Charlie Perkins Scholarship Trust	the gift must be made after 1 August 2010
9.2.29	United States Studies Centre	the gift must be made after 26 July 2009
9.2.30	Amnesty International Australia	none
9.2.31	International Social Service Australia	the gift must be made after 17 March 2004
9.2.32	the World Wide Fund for Nature Australia	

9 Subsection 30-280(1)

Repeal the subsection, substitute:

- (1) The *Environment Secretary must enter on the register:
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EXPOSURE DRAFT

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- 1 (a) each *environmental organisation, and the public fund that it
2 maintains, that he or she has been directed to enter by the
3 Treasurer and the *Environment Minister; and
4 (b) each environmental organisation for which a determination
5 has been made under subsection 30-19(1).

6 **10 Subsection 30-305(1)**

7 Repeal the subsection, substitute:

- 8 (1) The *Arts Secretary must enter on the register:
9 (a) each *cultural organisation, and the public fund it maintains,
10 that he or she has been directed to enter by the Treasurer and
11 the *Arts Minister; and
12 (b) each cultural organisation for which a determination has been
13 made under subsection 30-19(2).

14 **11 Section 30-315 (cell at table item 3, column headed** 15 **“Provision”)**

16 Repeal the cell, substitute:
item 9.2.30

17 **12 Section 30-315 (after table item 12)**

18 Insert:

12A	Australian-American Educational Foundation	item 9.2.26
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19 **13 Section 30-315 (table item 30A)**

20 Repeal the table item, substitute:

30A	Charlie Perkins Scholarship Trust	item 9.2.28
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21 **14 Section 30-315 (cell at table item 63A, column headed** 22 **“Provision”)**

23 Repeal the cell, substitute:
item 9.2.31

24 **15 Section 30-315 (cell at table item 63B, column headed** 25 **“Provision”)**

26 Repeal the cell, substitute:
item 9.2.27

EXPOSURE DRAFT

1 **16 Section 30-315 (cell at table item 118B, column headed**
2 **“Provision”)**

3 Repeal the cell, substitute:
4 item 9.2.29

4 **17 Section 30-315 (cell at table item 127, column headed**
5 **“Provision”)**

6 Repeal the cell, substitute:
7 item 9.2.32

7 **18 Paragraph 31-10(2)(a)**

8 Repeal the paragraph, substitute:
9 (a) satisfy the requirements in section 30-18; and

10 **19 Subsection 995-1(1)**

11 Insert:
12 *touring arts organisation* has the meaning given by
13 subsection 30-19(3).

EXPOSURE DRAFT

1 **Part 2—Tax exempt entities**

2 *Income Tax Assessment Act 1936*

3 **20 Paragraph 23AG(1AA)(c)**

4 Omit “paragraph 50-50(1)(c) or (d)”, substitute “paragraph 50-51(2)(c)
5 or (d)”.

6 *Income Tax Assessment Act 1997*

7 **21 Before Subdivision 50-A**

8 Insert:

9 **Guide to Division 50**

10 **50-1 What this Division is about**

11 Certain entities that satisfy the conditions in this Division may be
12 endorsed as exempt from income tax.

13 An entity will not generally be exempt from income tax unless it
14 satisfies all of the following conditions:

- 15
- 16 • it operates principally in Australia;
 - 17 • it pursues its purposes principally in Australia;
 - 18 • it complies with all of the substantive requirements in its governing rules;
 - 19 • it applies its income and assets solely to pursue the purposes
20 for which it is established;
 - 21 • it is a non-profit entity.

22 Certain entities are not required to satisfy all of these conditions.

23 **22 Section 50-1**

24 Renumber as section 50-3.

EXPOSURE DRAFT

1 **23 Section 50-5 (cells at table items 1.3 and 1.4, column**
2 **headed “Special conditions”)**

3 Repeal the cells, substitute:
see section 50-50

4 **24 Section 50-5 (cells at table items 1.6 and 1.7, column**
5 **headed “Special conditions”)**

6 Repeal the cells, substitute:
see section 50-50

7 **25 Section 50-10 (cell at table item 2.1, column headed**
8 **“Special conditions”)**

9 Repeal the cell, substitute:
see section 50-50

10 **26 Section 50-15 (cell at table item 3.1, column headed**
11 **“Special conditions”)**

12 Repeal the cell, substitute:
the association:
(a) is registered or recognised
under the *Fair Work*
(Registered
Organisations) Act 2009
or an *Australian law
relating to the settlement
of industrial disputes; and
(b) satisfies the conditions in
section 50-50.

13 **27 Section 50-15 (cell at table item 3.2, column headed**
14 **“Special conditions”)**

15 Repeal the cell, substitute:
see section 50-50

16 **28 Section 50-30 (cell at table item 6.1, column headed**
17 **“Special conditions”)**

18 Repeal the cell, substitute:
see section 50-50

EXPOSURE DRAFT

1 **29 Section 50-30 (cell at table item 6.2, column headed**
2 **“Special conditions”)**

3 Omit “section 50-55”, substitute “section 50-50”.

4 **30 Section 50-45 (cells at table items 9.1 and 9.2, column**
5 **headed “Special conditions”)**

6 Repeal the cells, substitute:
7 see section 50-50

7 **31 Section 50-50**

8 Repeal the section, substitute:

9 **50-50 Special conditions for certain items**

10 *General*

- 11 (1) An entity covered by item 1.1, 1.3, 1.4, 1.6, 1.7, 2.1, 3.1, 3.2, 6.1,
12 6.2, 9.1 or 9.2 is not exempt from income tax unless it:
13 (a) is a non-profit entity; and
14 (b) satisfies the conditions in subsection (2) (about operating and
15 pursuing its purposes in Australia); and
16 (c) satisfies the conditions in subsection (3).

17 *Operating and pursuing purposes in Australia*

- 18 (2) The entity must:
19 (a) operate principally in Australia; and
20 (b) pursue its purposes principally in Australia.

21 *Other conditions*

- 22 (3) The entity must:
23 (a) comply with all the substantive requirements in its governing
24 rules; and
25 (b) apply its income and assets solely for the purpose for which
26 the entity is established.
- 27 (4) Subject to subsections (4A) and (5), if an entity provides money,
28 property or benefits to another entity that is not an *exempt entity,
29 the use of the money, property or benefits by the recipient (or any
30 other entity) must be taken into account when determining whether

EXPOSURE DRAFT

1 the first mentioned entity satisfies the requirements in
2 paragraphs (2)(a) and (b).

3 (4A) For the purposes of applying subsection (4), take into account the
4 use of the money, property or benefits by an entity outside
5 Australia only to the extent that it would be reasonable to expect
6 the first-mentioned entity to have knowledge of, or to obtain
7 knowledge of, the use of the money, property or benefits outside
8 Australia.

9 (5) If the entity complies with the conditions (if any) prescribed in the
10 regulations for the purposes of this subsection, disregard the use of
11 the following amounts in determining (for the purposes of this
12 Subdivision) whether an entity operates and pursues its purposes in
13 Australia:

- 14 (a) an amount received by the entity as a grant from a
15 *government entity;
- 16 (b) an amount received by the entity as a gift or contribution
17 (whether of money or other property) in circumstances where
18 the provider:
 - 19 (i) was not entitled to a deduction under Division 30 in
20 respect of the gift or contribution; and
 - 21 (ii) is not an *exempt entity.

22 **50-51 Exemption from conditions about non-profit entities and** 23 **entities pursuing their purposes in Australia**

24 (1) The condition in paragraph 50-50(1)(a) does not apply to the
25 following entities:

- 26 (a) an entity covered by section 50-15 (about employers and
27 employees);
- 28 (b) a *government entity covered by item 1.4 in the table in
29 section 50-5 (about public educational institutions);
- 30 (c) a government entity covered by item 6.1 in the table in
31 section 50-30 (about public hospitals).

32 (2) The conditions in subsection 50-50(2) do not apply to any of the
33 following:

- 34 (a) an entity endorsed as a *deductible gift recipient (other than
35 in respect of operating a fund, authority or institution);
- 36 (b) an entity endorsed as a deductible gift recipient for the
37 operation of a fund, authority or institution, to the extent that
38 it operates that fund, authority or institution;

EXPOSURE DRAFT

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- 1 (c) an entity that:
- 2 (i) is a foreign resident that is exempt from *foreign income
- 3 tax in the country in which it is resident; and
- 4 (ii) is prescribed in the regulations for the purposes of this
- 5 subsection; and
- 6 (iii) satisfies the conditions (if any) prescribed in the
- 7 regulations for the purposes of this subsection;
- 8 (d) an entity that:
- 9 (i) is an Australian resident; and
- 10 (ii) operates and pursues its purposes principally outside
- 11 Australia; and
- 12 (iii) is prescribed in the regulations for the purposes of this
- 13 subsection; and
- 14 (iv) satisfies the conditions (if any) prescribed in the
- 15 regulations for the purposes of this subsection;
- 16 (e) an entity described by name in Subdivision 30-B.
- 17 Note: Different requirements apply to deductible gift recipients: see
- 18 section 30-18.

19 **32 Sections 50-55, 50-65, 50-70, 50-72 and 50-75**

20 Repeal the sections.

21 **33 Subparagraphs 320-37(1)(d)(i) and (iii)**

22 Omit “under section 50-1”, substitute “under former section 50-1”.

EXPOSURE DRAFT

1 Part 3—Miscellaneous amendments

2 *Income Tax Assessment Act 1936*

3 **34 Section 24AT (paragraphs (c) and (d) of the definition of** 4 ***excluded STB*)**

5 Omit “to which any of paragraphs 50-55(1)(a) to (c) of the *Income Tax*
6 *Assessment Act 1997* applies”, substitute “that meets the conditions in
7 sections 50-50 and 50-51 of the *Income Tax Assessment Act 1997*”.

8 **35 Section 121C (paragraph (a) of the definition of overseas** 9 ***charitable institution*)**

10 Omit “if the institution had a physical presence in Australia and
11 incurred its expenditure and pursued its objectives principally in
12 Australia”, substitute “if it satisfied the conditions in
13 subsection 50-50(2) of that Act”.

14 *Income Tax Assessment Act 1997*

15 **36 Section 207-117**

16 Repeal the section, substitute:

17 **207-117 Residency requirement**

18 An entity satisfies the *residency requirement* for the purposes of
19 determining whether, at the time a *franked distribution is made,
20 the entity is an *exempt institution that is eligible for a refund, if it
21 satisfies the conditions in section 50-50 at all times during which
22 the entity existed during the income year in which the distribution
23 is made.

24 *Taxation Administration Act 1953*

25 **37 At the end of Division 353 in Schedule 1**

26 Add:

27 **353-30 Checking status of tax exempt entities**

28 (1) The Commissioner may require an entity that is a prescribed entity
29 mentioned in paragraph 50-51(2)(c) or (d) of the *Income Tax*

EXPOSURE DRAFT

1 *Assessment Act 1997* to give the Commissioner information or a
2 document that is relevant to its status as a prescribed entity. The
3 entity must comply with the requirement.

4 Note: Failure to comply with this subsection is an offence against section 8C
5 of this Act.

6 (2) If the Commissioner is satisfied of any of the matters set out in
7 subsection (4) in relation to an entity that is a prescribed entity
8 mentioned in paragraph 50-51(2)(c) or (d) of the *Income Tax*
9 *Assessment Act 1997*, the Commissioner must, within 28 days, give
10 written notice to the Minister about that fact.

11 (3) The Minister may only disclose information provided under
12 subsection (2) for a purpose relating to the entity's status as a
13 prescribed entity mentioned in paragraph 50-51(2)(c) or (d) of the
14 *Income Tax Assessment Act 1997*.

15 (4) The matters are as follows:
16 (a) there is a change in the principal purpose of the entity;
17 (b) the entity fails or ceases to comply with any rules or
18 conditions made by the Prime Minister or any other Minister
19 relating to the recipient being a prescribed entity mentioned
20 in paragraph 50-51(2)(c) or (d) of the *Income Tax Assessment*
21 *Act 1997*.

22 (5) The requirement in subsection (1):
23 (a) is to be made by notice in writing to the entity; and
24 (b) may ask the entity to give the information in writing; and
25 (c) must specify:
26 (i) the information or document the entity is to give; and
27 (ii) the period within which the entity is to give the
28 information or document.

29 The period specified under subparagraph (c)(ii) must end at least
30 28 days after the notice is given.

31 (6) In a prosecution of a person for an offence against section 8C of
32 this Act because of this section as it applies because of
33 Division 444 in this Schedule (about obligations of entities on
34 behalf of other entities), it is a defence if the person proves that the
35 person:

36 (a) did not aid, abet, counsel or procure the act or omission
37 because of which the offence is taken to have been
38 committed; and

EXPOSURE DRAFT

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(b) was not in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the act or omission because of which the offence is taken to have been committed.

EXPOSURE DRAFT

1 **Part 4—Application and transitional provisions**

2 **38 Application of amendments**

- 3 (1) Subject to subitem (2), the amendments made by Part 1 of this Schedule
4 apply to a fund, authority or institution from the day this item
5 commences.
- 6 (2) Despite subitem (1), the amendments made by Part 1 of this Schedule
7 apply to a fund, authority or institution from the day that is 12 months
8 after the day that this item commences if:
- 9 (a) the fund, authority or institution is a deductible gift recipient
10 just before the day the Bill for this Act was introduced into
11 the House of Representatives; and
 - 12 (b) does not satisfy the conditions in new subsection 30-18(1) of
13 the *Income Tax Assessment Act 1997* at the time this item
14 commences.
- 15 (3) The amendments made by Parts 2 and 3 of this Schedule apply to
16 income years starting on or after the commencement of this item.

17 **39 Transitional provisions**

18 Regulations:

- 19 (a) made for the purposes of section 50-50, 50-55 or 50-70 of the
20 *Income Tax Assessment Act 1997*; and
- 21 (b) in force just before the commencement of this item;
- 22 have effect from that commencement as if they had been made for the
23 purposes of subsection 50-51(2) of that Act as inserted by this Schedule.