



Submission to The Treasury

Restating the 'in Australia' special conditions for tax concession entities - revised exposure draft

May 2012

Introduction

This very brief submission should be read in conjunction with the previous CCA submission in August this year in response to the release by Treasury of draft legislation that will restate the 'in Australia' special conditions for tax concession entities.

This submission has been prepared with the members of the Community Council for Australia as well as other key organisations in the not-for-profit sector, academics, lawyers, government officials, and key policy advisors.

It is important to note that this submission does not over-ride the policy positions outlined in the individual submissions from CCA members.

The CCA welcomes this opportunity to comment on the second exposure draft and commends the Treasury for engaging in this consultation process, especially the manner in which almost all the previous concerns have been addressed in the revised exposure draft. CCA would be more than willing to engage in further discussion about any of the issues raised in this submission.

The Community Council for Australia

The Community Council for Australia is an independent, non-political member-based organisation dedicated to building flourishing communities primarily by enhancing the extraordinary work and effort undertaken within the not-for profit sector in Australia. CCA seeks to change the way governments, communities and the not-for-profit sector relate to one another. This includes establishing a regulatory environment that works for community organisations and not against them.

The mission of CCA is to lead by being an effective voice on common and shared issues affecting the contribution, performance and viability of not-for-profit organisations in Australia through:

- providing thought and action leadership
- influencing and shaping sector policy agendas
- informing, educating, and assisting organisations in the sector to deal with change and build sustainable futures
- working in partnership with the government, the business sector, and the broader Australian community.

Executive summary

CCA supports the apparent policy intent of the draft legislation that is to ensure income tax exempt entities generally must be operated principally in Australia and for the broad benefit of the Australian community. Likewise, deductible gift recipients (DGRs) generally must be operated solely in Australia and for the broad benefit of the Australian community.

CCA believe it is appropriate to ensure that taxation concessions to charitable and not-for-profit organisations are properly targeted and that funds remitted overseas (whether through the established overseas aid and development framework, or in any other way) are not used for improper purposes.

It is also important to acknowledge and continue to support those charities that operate in the international development area. This means continuing to support the well-established framework of regulation that applies to overseas aid and development organisations, and maintaining the option of providing charitable status to those international development agencies that satisfy the current requirements to achieve Direct Gift Recipient status for their international aid work.

CCA is pleased that the revised exposure draft addresses most of the concerns raised in our previous submission.

CCA believe there is clearly still some concern in the sector about the way in which the legislation will be enacted and enforced. CCA would be very disappointed if the passing of this legislation led to a significant number of charities having to either significantly alter their international activities or to withdraw from their involvement in overseas charitable work.

Support for the revisions

CCA supports the key changes to the exposure draft. In particular, CCA is pleased to see that:

- Australian charitable organisations may now provide funds to an overseas entity that is not entitled to be income tax exempt provided the purpose to which the funds are being applied is consistent with the charitable purpose of the Australian organisation providing the funds
- Charitable organisations will not lose their charitable status for minor breaches of their governance rules
- The rewritten definition of not-for-profit organisations is more lenient in allowing transfers of funds and property between not-for-profit organisations with similar purposes
- Existing entitlements of organisations that are currently prescribed in regulation will be grandfathered
- When fulfilling the requirements of a government contracts and grants to provide services overseas, a more lenient approach will be taken
- Public hospitals, public schools and some environmental groups will not be subject to the full 'in Australia' provisions
- The emphasis in the revised legislation is on the level of activity undertaken rather than applying a simple 50 / 50 expenditure formula.

Ongoing concerns

CCA members still have some concerns about the way in which the legislation might be applied.

Most CCA member organisations involved in international aid and development have DGR status for this work and operate with the well-established regulatory framework around international aid and development.

There are, however, a number of medium to larger not-for-profit member organisations that have some form of interaction with international groups and communities, much of which is supplementary to the core activities and purpose of the organisation.

CCA understands that provided the work remains supplementary and consistent with the primary purpose of the organisation the 'in Australia' provision will not apply. Clearly where the primary work of the organisations is 'in Australia' these organisations can continue to be actively involved in international aid and development activities.

CCA believes such work is invaluable to both the organisations and to those receiving the benefit of their international activities. Any threat to this work would be detrimental and counter to the best interests of Australia and the international beneficiaries. The 'in Australia' provisions should not be seen by any organisation as a barrier to this form of supplementary work.

Recommendations

CCA would like to see two additional activities factored into the enactment of the restated 'in Australia' legislation:

1. The government should provide a clear and definitive public statement that it supports the supplementary international activities of Australian charities and not-for-profit organisations
2. The government should commit to a two year review of the 'in Australia' provisions to ensure there are no unintended consequences.

Conclusion

CCA supports the policy goal of ensuring the proper targeting of tax concessions for the broad benefit of Australian community.

CCA was initially concerned that the consequences of the proposed legislation would have placed significantly more restrictions on not-for-profit organisations doing invaluable work. The proposed changes also had the potential to call into question the activities of all not-for-profit organisations, going beyond the overseas aid sector.

Most of CCA's concerns appear to have been addressed in the revised draft. This is a pleasing recognition that the Treasury have listened and acted on the issues raised by the not-for-profit sector.

The sector is still concerned about the way the new legislation will be enacted.

CCA welcomes any opportunity to be involved in future consultations or any other discussion process.