

Submission to the Tax Laws Amendment (2012 Measures No.4) Bill 2012 Exposure Draft

1. Hope Worldwide (Australia) Ltd (HOPE) is a public benevolent institution conducting charitable activities within Australia and overseas.
2. Consistent with the overseas activities, HOPE is the operator of an endorsed overseas aid fund under s30-85 of the ITAA 1997, named as the "Hope Worldwide (Australia) Overseas Fund". Any fund under s30-85 is eligible for tax deductability for donors under s30-80.
3. HOPE also conducts other activities consistent with its purpose as a public benevolent institution, mostly within Australia, however the scale of these activities do not yet permit endorsement as a deductible gift recipient under subdivision 30B. When this situation has sufficiently changed, HOPE is likely to seek whole-of-entity DGR endorsement.
4. HOPE has qualified under Div 50 as a tax exempt body due to the charitable nature of its purposes and activities.
5. HOPE meets the current provisions of s50-50(a), the current "In Australia" test, rather than using the Div 30 test due to the lack of whole-of-entity DGR endorsement as described above. As the overseas aid fund is endorsed under s30-85, this fund qualifies under s30-15.
6. The Commonwealth Treasury has been considering changes to Div 30 and Div 50 in response to the "Word Investments" case (COMMISSIONER OF TAXATION v WORD INVESTMENTS [2008] HCA 55) and other developments. In particular, proposals have been made to change the "In Australia" requirements.
7. HOPE is aware of a submission from Moores Legal to the Exposure Draft, where Moores Legal draws attention to the operation of proposed clause s30-18(4). Part 2.10 of that submission highlights that the proposed s30-18(4) acts to limit the "In Australia" test of s30-18(1) to subpart (a) only, however this concession would only be operative for an organisation that has a whole-of-entity endorsement. As highlighted in Paragraph 2, HOPE is not endorsed, however the overseas aid fund that we operate is. Moores Legal hold the position that an entity that only in part is covered by s30-80 not be entitled to the concession provided in s30-18(4) and HOPE cannot disagree with this view. This would **directly affect us** if HOPE was to gain DGR endorsement in the future.

HOPE submits that **this clause should be redrafted** along similar lines to the Moores Legal submission.

8. s50-75(2) of the current act, which is scheduled to be repealed by the proposed bill, makes provision that:

"In determining for the purposes of this Subdivision whether an institution, fund or other body incurs its expenditure or pursues its objectives principally in Australia, distributions of any amount from a fund that is referred to in a table in Subdivision 30-B and operated by the institution, fund or other body are to be disregarded."

This current provision acts to ensure that the activities of HOPE through the overseas aid fund are disregarded for the purposes of the Div 50 "In Australia" test for exemption from income tax under that division.

9. The proposed provision to replace s50-72(2) is contained in s50-51(2). This provision **does not contain the same clarity**, and considering the issues highlighted in paragraph 7, we are not satisfied that the proposed clause s50-51(2)(b) preserves HOPE's current entitlement for the activities of the overseas aid fund to be exempt from the "In Australia" provisions of the proposed clause s50-50(2). We submit that **this clause should be redrafted** so that any distributions from a fund referred to in a table in Subdivision 30-B are **clearly exempted** from s50-51(2).

This clarity is critical for HOPE as a significant portion of distributions made by us are connected with our endorsed overseas aid fund.

Regards,

Wayne Merry, director

for and on behalf of

Hope Worldwide (Australia) Ltd

11th May 2012