



THE LAW SOCIETY  
OF NEW SOUTH WALES

Our ref: IndigenousIssues:JD:VK:644375

31 August 2012

Manager  
Corporate Tax Unit  
Business Tax Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

By email: [nativetitle@treasury.gov.au](mailto:nativetitle@treasury.gov.au)

Dear Sir/Madam

**Tax treatment of native title benefits: income tax exemption**

I write to you on behalf of the Indigenous Issues Committee ('Committee') of the Law Society of NSW. The Committee represents the Law Society on Indigenous issues as they relate to the legal needs of people in NSW and includes experts drawn from the ranks of the Law Society's membership.

The Committee commends the Australian Government's recognition of expanding the range of native title benefits to include tax incentives. The Committee supports the government's broader strategy of promoting Indigenous economic development, as stated by the Hon Jenny Macklin MP, "It is important to look closely at existing arrangements to make sure they are working effectively to harness the potential of native title payments to create employment and economic benefits over the long-term, for generations of Indigenous Australians."<sup>1</sup>

The Committee's view is that reform to taxation for native title should aim for a tax regime that is clear, consistent and culturally appropriate. Indigenous communities are at various stages of business development and a nuanced approach to tax reform is required to facilitate Indigenous economic development. The Committee submits that the principles of Indigenous self-determination articulated in the *United Nations Declaration on the Rights of Indigenous Peoples 2007* should inform any proposed amendment to native title instruments.

In respect of the exposure draft legislation, the Committee would support amendments that would result in a taxation regime where native title benefits are not subject to income tax (including capital gains tax), including in instances when there

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<sup>1</sup> Minister for Families, Housing, Community Services and Indigenous Affairs and The Hon Robert McClelland MP Attorney General press release, "Start of national consultation on the tax treatment of native title" 18 May 2012, available online from here: <http://ministers.treasury.gov.au/DisplayDocs.aspx?doc=pressreleases/2010/108.htm&pageID=003&min=njsa&Year=&DocType=>

is interest derived from investment of native title benefits in economic and community development as this approach will build capacity within Indigenous communities and generate intergenerational equity.

However, the Committee notes that native title benefits provided for any other purpose than the provision to an Indigenous holding entity or an Indigenous person (or applied for their benefit) will not be classified as non-assessable non-exempt (NANE) income. The Explanatory Material provides example 1.3 where it is clarified that interest derived from invested native title benefits is not NANE income. The Committee respectfully submits that this may act as a disincentive for native title groups to actually use native title benefits to engage in the above activities which build community, social and economic capacity.

It is critical for governments to support investment in Indigenous Enterprise by ensuring that NANE resources can be invested by Indigenous communities without tax liability disincentives. Examples include Indigenous Tourism, Bush food and Bush Medicine research and development, Technical and Vocational Training, Rural Enterprises, Indigenous Consulting and Contracting Services and Cultural and Heritage-based Enterprises.

The Committee's view is that the Government's overarching goal of 'Closing the Gap' must be to promote and facilitate Indigenous economic development. Appropriate incentives should be built into the tax regime so that native title holders are able to invest native title benefits in a way that increases community and individual capacity and resilience.

If you have any questions please feel free to contact Vicky Kuek, policy lawyer for the Committee on [victoria.kuek@lawsociety.com.au](mailto:victoria.kuek@lawsociety.com.au) or (02) 9926 0354.

Yours faithfully



Justin Dowd  
**President**