



PHILANTHROPY
Australia

10 May 2012

Mr Chris Leggett
Manager
Philanthropy and Exemptions Unit
Indirect Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: NFPReform@treasury.gov.au

Philanthropy Australia Inc

Level 2, 55 Collins Street
Melbourne VIC 3000
Australia

Tel (61 3) 9662 9299
Fax (61 3) 9662 2655

info@philanthropy.org.au
www.philanthropy.org.au

Assn. No. A0014980 T
ABN 79 578 875 531

Patrons

Sir Gustav Nossal AC CBE
Lady Southey AC

Dear Mr Leggett,

Re: Tax Laws Amendment (2012 Measures No. 4) Bill 2012: tax exempt body “in Australia” requirements.

Thank you for the opportunity to comment on the above legislative draft and associated Explanatory Memorandum.

Philanthropy Australia supports the principle that income tax exempt entities generally must be operated principally in Australia and for the broad benefit of the Australian community, and that it is appropriate to ensure that taxation concessions are properly targeted and funds remitted overseas are not used for improper purposes.

Philanthropy Australia believes that this legislation may have unintended consequences for the charitable sector, and in particular makes the following comments.

1. Section 50-50 (3) (b) of the draft legislation states that an entity must “use its income and assets solely for the purpose for which the entity is established and operated and for which it is entitled to be exempt from tax.”

Philanthropy Australia notes that the question of whether an entity must use its income and assets solely in furtherance of its charitable purposes was one of the consultation questions put before the charitable sector in the Consultation Paper, A Definition of Charity in 2011. Philanthropy Australia queries whether the responses to that Consultation Paper and the resulting recommendations have informed the drafting of this legislation and suggests that section 50-50 (3) is adequately covered by the existing law and any statutory restating is better done in connection with the proposed legislation on the definition of charity.

Further, the whole of section 50-50(3) is relevant to an entity’s status as charitable or otherwise exempt and not specific to the ‘in Australia’ special conditions and therefore should not be included in this Bill.

If it is to be included, this phrasing could potentially strip an entity’s tax exemption status if any income or assets are used, however incidentally, for purposes other than those for which the entity was established, even if those other purposes are themselves exempt. For example, a charity could have its status removed if it engages in a charitable activity outside its stated charitable purpose, even inadvertently. Further the reference to use of assets for the purpose for which the entity is operated appears circuitous.



PHILANTHROPY
Australia

2. Section 30-18 (3) and section 50-50 (4), which deal with an entity giving funds to another entity, are intended to make the giving entity responsible for ensuring that its funds are used correctly. However, the phrase “the use of the money by the recipient (or any other entity)” places responsibility upon the giving entity to trace the use of its funds practically without limit, which is beyond the practical ability of any organisation and seems unnecessarily onerous.

It is also unclear whether a charitable foundation which has a duty to make grants or to provide money, property or benefits for charitable purposes comes within these sub-sections – arguably a distribution from a charitable fund is not a ‘gift’ or a ‘donation’ as noted in our previous submission on these special conditions. The examples in the Explanatory Memorandum do not include philanthropic foundations unless the reference to the ‘passive investment income fund’ in example 1.9 is intended to be a philanthropic charitable foundation. In which case we do not support that the foundation could know that one year out of many others the entity would apply all the funds overseas, and as a result the foundation loses its income tax exemption. This surely cannot be the intended consequence of section 50-50(4)?

3. Philanthropy Australia urges that consideration be given to medical and scientific research institutions which engage in collaborative research with similar bodies overseas and which must necessarily expend some funds overseas as part of the collaboration. These types of collaboration improve the overall quality of the research and of the international standing and effectiveness of Australian research. As such, the expenditure of some funds overseas in these circumstances remains in the broad public interest.

Yours sincerely

Dr Deborah Seifert
Chief Executive Officer