

ROYAL AUSTRALASIAN COLLEGE OF SURGEONS



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16 May 2012

The Hon David Bradbury MP
Assistant Treasurer
The Treasury
Langton Crescent
PARKES ACT 2600

By email: NFPReform@treasury.gov.au

Dear Mr Bradbury

Revised Exposure Draft – Restating and standardising the special conditions for tax concession entities (including the ‘in Australia’ conditions)

The Royal Australasian College of Surgeons is pleased to have the opportunity to respond to the Treasury's Revised Exposure Draft published on 17 April 2012.

The “Australasia” in the College’s name has been integral to the development of surgical specialties since 1927. The College has numerous overseas members and trainees. The College has also supported international development in nearby countries which lack the surgical expertise and facilities to provide needed medical assistance. The proposal to require all deductible gift recipients to operate “solely in Australia” may unintentionally jeopardise these important activities.

We would appreciate the opportunity to discuss and work with the Treasury to address the College’s concerns before any draft legislation is introduced into Parliament.

Yours faithfully

A handwritten signature in black ink, appearing to read 'David Hillis'.

Dr David Hillis
Chief Executive Officer

Copies have been emailed to:
Mr Chris Leggett, Manager, Philanthropy and Exemptions Unit, Indirect Tax Division, The Treasury
Mr Michael Gorton, Solicitor, Russell Kennedy Legal Group
Mr James McAdam, Director of Relationships & Advocacy

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14 May 2012

Submission on the Revised Exposure Draft – Restating and standardising the special conditions for tax concession entities (including the ‘in Australia’ conditions)

The Royal Australasian College of Surgeons is pleased to have the opportunity to respond to the Treasury’s Revised Exposure Draft published on 17 April 2012.

1 About the Royal Australasian College of Surgeons

The College was formed in Australia in 1927 as the “College of Surgeons in Australasia”. It is a not-for-profit organisation which trains surgeons and maintains surgical standards. The College is a membership-based organisation, with about 6,666 members, including approximately 90 per cent of all surgeons practising in Australia.

The College has a proud history of providing a wide range of charitable initiatives, including improving specialist health services and developing surgical capacity in Australia and the Asia Pacific.

2 Requirement for deductible gift recipients to operate “solely in Australia”

The College as a whole is presently entitled to receive deductible gifts because it is listed as a specific “health” deductible gift recipient in the income tax legislation.

At the time the College was listed in the legislation, Parliament would have known of the College’s Australasian focus. If there was a requirement for the College to apply deductible funds solely for the benefit of the Australian community, we would have expected to see express restrictions in the legislation. The College is not aware of any such restriction in the income tax legislation.

The College has dramatically expanded since it was formed in Australia in 1927 and has a long and rich history of operating across the region. As at 30 December 2011, the College had 733 Fellows from New Zealand and 353 Fellows from other overseas countries out of a total of 5,626 active Fellows. In relation to active surgical trainees, the College had 183 trainees in New Zealand and 7 overseas trainees out of 1,224 active trainees.

These numbers reflect the reality that surgical training and skills are equally applicable to Australia, New Zealand and around the world, and that health care should have no borders. For example, the 81st Annual Scientific Meeting earlier this month was hosted in Malaysia and drew a range of Australian, New Zealand and overseas delegates.

It is difficult to say conclusively that:

- the College operates “solely in Australia”; or
- the College’s activities outside Australia are “merely incidental” to its Australian activities; or
- the College’s activities outside Australia are “minor in extent and importance” when considered with reference to its activities in Australia (although they are small in relation to the financial resources of the College – see page 3).

The overseas Fellows of the College might take great offence to the idea that they are insignificant, unimportant, minor, or an after-thought to the College's history and Australian activities. This could be construed as highly disrespectful to our international peers.

The College also supports (or the Fellows of the College are involved with) numerous specialty societies which operate across Australia and New Zealand. The College is aware that these and other not-for-profit organisations may face similar issues operating across Australia and New Zealand.

The College notes that New Zealand has granted tax exemptions to the College on the basis that New Zealand deductible gifts must be used principally in New Zealand and must be transferred to a New Zealand charity if the New Zealand operations of the College were to cease. But the College is not required, for this purpose, to operate "solely in New Zealand".

If the reforms are implemented in their present form, there may be the unintended result that no not-for-profit organisation could operate across Australia and New Zealand. This would have the potential to create additional compliance costs, trigger the unnecessary restructure of the College, and be contrary to the Government's stated intention of reducing red tape for charities and not-for-profit organisations.

Suggested solution

To address this issue consistently with Treasury's stated policy, the College proposes that:

- (a) the requirement to operate "solely" in Australia should be replaced with a requirement to operate "substantially" or "principally" in Australia;
- (b) the requirement to pursue purposes "solely" in Australia should be replaced with a requirement to pursue purposes "substantially" or "principally" in Australia;
- (c) alternatively or in conjunction with paragraphs (a) and (b) (but subject to the comments regarding the College's international aid activities), the requirement to operate in Australia should apply to the application of deductible funds, rather than the whole of the institution. The remainder of the institution should have the requirement to operate "principally" in Australia in the manner proposed for income tax charities; and
- (d) where a fund, authority or institution operates branches in New Zealand or overseas that are subject to similar laws requiring deductible gifts received in that jurisdiction to be quarantined or applied primarily, principally or solely within the relevant jurisdiction, these activities should be disregarded under the "in Australia" requirements.

3 Incidental activities and international affairs exemption to the 'in Australia' conditions

Since 1994, the College's International Development Program has worked with AusAID and other funders to deliver specialist quality surgical and medical support and training in Timor Leste, Papua New Guinea and the Pacific Islands, including the Cook Islands, Fiji, Kiribati, Federated States of Micronesia, Marshall Islands, Nauru, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu.

The College's International Development Program also provides scholarships for surgeons from developing countries in Asia, the Pacific and occasionally Africa, through the Rowan Nicks Scholarship and Fellowship, Surgeons International Award, Weary Dunlop Boon Pong

Exchange Fellowship, and International Travel Grants. These scholarships and grants fund training opportunities in Australia, New Zealand and other appropriate countries, and facilitate professional development through the College's international network. This program is designed to enable the transfer of knowledge to develop medical (including surgical), teaching, management and research skills in developing countries, to support capacity development and improve the delivery of their health services.

This has resulted in the treatment of over 30,000 people and the delivery of specialist surgical services and training across the region.

There are clearly synergies between the College's international activities and those undertaken by AusAID. However, the College is uniquely placed to deliver aid in the areas of medical knowledge, expertise and support.

The College's international activities have also been high profile and of special interest to the Fellows of the College. For example, many Fellows have given up numerous pro bono hours to support developing countries and to provide equipment to enable them to support their surgical needs.

Despite the profile and interest, the College's international activities are extremely small relative to the overall work. Based on 2010 foundation figures, this comprised less than 0.4% of the College's turnover.

It has been asserted by the Australian Taxation Office that the word "incidental" is to be assessed relative to absolute dollar expenditure, rather than in proportion to overall activities. The College disagrees with such a narrow interpretation of "incidental".

In any event, the College has no way to ascertain if its expenditure is more than incidental in absolute terms. There is no readily available information regarding the typical expenditure of an Australian based international aid charity.

Given the size of the College, this lack of legislative certainty may place the international development program at risk of needing to be suspended or cancelled. This would have severe impacts for the College and developing countries.

Suggested solution

To address this issue consistently with Treasury's stated policy, the College proposes that:

- (a) the College should be exempted from the requirement to operate "solely" in Australia in respect of its international aid activities. For example, the College could be exempted by legislation or regulation, or by having the College listed under both health and international affairs categories;
- (b) alternatively to paragraph (a), the legislation should specify that "incidental" is to be assessed relative to the fund, authority or institution's non-incidental operations and purposes. "Incidental" should not be assessed in absolute or dollar terms.