

Uniting Church in Australia,  
National Assembly,  
Piccadilly Court,  
Level 10,  
222 Pitt Street,  
Sydney, NSW. 2000

11<sup>th</sup> May 2012.

The Manager,  
Philanthropy and Exemptions Unit,  
Indirect Tax Division,  
The Treasury,  
Langton Crescent,  
PARKES, ACT. 2600

**RESTATING AND STANDARDISING THE SPECIAL CONDITIONS  
FOR TAX CONCESSION ENTITIES (INCLUDING THE 'IN  
AUSTRALIA' CONDITIONS)**

Dear Sir/Madam,

This submission is the response on behalf of the Uniting Church in Australia and its non-community services activities, as the latter by agreed protocol within the Church, is submitted by UnitingCare Australia.

This submission covers a vast array of activities including Congregations, schools, overseas aid and ecumenical support to overseas church partners, theological colleges, National Assembly, synod and presbytery bodies, indigenous and other ministries, and local activities to communities in which our members reside.

Our initial observation is that the exposure draft introduces new dimensions and therefore cannot be described as “restates the ‘in Australia’ special conditions for income tax exempt entities.” However we are pleased that “Charities can now be found to be pursuing their objectives principally ‘in Australia’ if they merely pass funds in Australia to another charitable entity that conducts its activities overseas.” Unfortunately we still have reservations which will be expanded later in this submission.

We also welcome the Government’s goal of standardising conditions for entities to be income tax exempt, the definition of not-for-profit (NFP) and codifying “in Australia”, as well as the recognition of overseas aid funds, developed countries relief funds and similar deductible gift funds as “exempt from the deductible gift recipient “in Australia” special conditions” .

The Church appreciates the opportunity to comment on the latest proposals.

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### **“IN AUSTRALIA “RULE:**

Firstly, it concerns us that we can disregard the spending of Government grants and non-tax deductible donations for the purposes of this rule, so long as we “demonstrate adherence to some regulated basic governance principles”. These principles have yet to be defined to enable us to properly consider the proposal.

Secondly, Exposure Draft paragraph (ED) 1.37 refers to entities which pursue their purposes through the donation of monies to other entities, as being not income tax exempt, unless the other entity is also income tax exempt and carries out its purposes “in Australia”.

This presents a challenge for a congregation which is an income tax entity when it makes a donation to an overseas aid entity which is headquartered in Australia but provides overseas aid. We also have congregations which support overseas aid projects by paying for a ministry in underprivileged areas such as in Africa, Asia and the Pacific. This could involve paying the remuneration, administrative and on the ground aid costs. This poses the question as to whether the Congregation ceases to an income tax entity because of its overseas ministry.

ED1.38 states that to “operates principally in Australia” is a primary test for the Congregation’s income tax exemption. “Principally” is defined in ED 1.55 as “mainly or chiefly. Less than 50% is not considered principally.” However the proposal does not state to what the 50% is applied i.e. the cost of the overseas support against the total congregational expenditure, or of the voluntary efforts of the congregation, or the number of its activities? We need this information to ensure the Congregation does not lose its income tax exemption, just because it desires a more personal and maybe substantial hands on involvement in an overseas aid project rather than through an Australian overseas aid entity which is income tax exempt. In this scenario, neither the Congregation nor its members seek an income tax claimable deduction for its financial support of that project.

### **INCOME TAX EXEMPT ENTITIES:**

ED 1.75 refers to an entity which conducts commercial activities as part of advancing its charitable purposes through the generation of surpluses that are donated to another entity with similar charitable purposes. The donating entity is required to “consider the charitable spending of the donated funds.” This is a tracing condition to retain the donating entity’s income tax exemption and would most likely incur considerable costs in investigating the activities of a third party which could be in an overseas aid environment. Has consideration been given to the level of investigation needed to retain the income tax exemption for the originating entity? Can the originating entity rely on the investigations conducted by the second entity which is an overseas aid organisation? Such organisations are required to do this to satisfy AusAid if they received such government allocations for specified projects. Otherwise, there will be two investigations when one should be all that is necessary.

**GOVERNING RULES AND ESTABLISHED PURPOSES:**

It would appear that the Australian Taxation Office will have a continuing role with Charities and NFPs in the area of governance. This is contrary to the promoted comments that the governance area is to be the purpose of the proposed Australian Charities and Not For Profits Commission (ACNC). Is this duplication a change of direction by Government and if it is, what will be the jurisdictional delineation between this two government bodies? To us, the ACNC is the appropriate one stop location, and legislation should confirm this.

**DEFINITION OF “NOT-FOR-PROFIT”:**

We welcome the allowance of transfers of profits or assets between NFP entities with similar purposes as well as payments for services or expense reimbursements provided between such entities, so long as they are no more than market value or reasonable and on behalf of the NFP entity. However we are unable to be certain that this allows charitable infrastructure activities which support the administration, financing and fundraising of the charity to also be income tax exempt.

**NOT-FOR-PROFIT:**

ED 1.89 states that “a not-for-profit entity is one that does not provide any private benefit, directly or indirectly, to a related party such as a....director, employee, agent or officer of a trustee,.....founder, or to an associate of any of these entities.”

As a religious institution wherein there are several thousand entities, many of which are congregations with ordained and lay ministry, there are benevolent and other funds which can provide support to ministry in necessitous circumstances, or to advance their professional studies, and can include dependents for similar purposes. This assistance can be provided by their synod, congregation or presbytery.

An interpretation of ED 1.89 suggests that this would make the congregation or any other church entity no longer an income tax entity which we believe has never been the situation.

From the Church’s point of view, the minister is paid a stipend, which means she or he receives a living allowance and not a salary. Unexpected situations arise where the Church sees an essential need to supplement the stipend with financial assistance for special situations so that the Minister is able to continue an effective ministry to which he or she is called.

This is incidental to purposes of the church and should not disqualify any Church entity from being an income tax entity.

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**CONCLUSION**

If you have any queries on this submission, we suggest you contact me or our submission coordinator, Mr Jim Mein AM on 0408 660m 591 or on [jimm@nsw.uca.org.au](mailto:jimm@nsw.uca.org.au).

Yours faithfully.

Terence Corkin,  
General Secretary,  
Uniting Church in Australia