

7 April 2014

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Dear Treasury

## **Exposure draft — Tax Laws Amendment (2014 Measures No. #) Bill 2014**

Governance Institute of Australia is the only independent professional association with a sole focus on the practice of governance. We provide the best education and support for practising chartered secretaries, governance advisers and risk managers to drive responsible performance in their organisations.

Our Members are all involved in governance, corporate administration and compliance with the *Corporations Act 2001*. Many of our Members serve as officers of not-for-profit (NFP) organisations, or work for, or are involved with NFP organisations, many of which are companies limited by guarantee and various of which are entitled to tax concessions. Governance Institute of Australia itself is a NFP operating in the legal form of a company limited by guarantee, established to promote and advance the efficient governance, management and administration of commerce, industry and public affairs and the development of secretaryship of organisations through education and the dissemination of information.

Governance Institute of Australia (Governance Institute) welcomes the opportunity to comment on the Exposure Draft — Tax Laws Amendment (2014 Measures No. #) Bill 2014 (the bill) and draws upon the experience of our Members in providing our response.

### **Tracing the use of money, property or benefits**

Governance Institute is broadly supportive of the bill, noting that further amendments have been made to the earlier proposed legislation. In particular, Governance Institute had expressed in our earlier submission on the previous version of the draft legislation our concerns over the lack of clarity contained in the provisions, particularly those requiring an entity to investigate and/or trace the 'use of money' by a recipient.

The legislation, as previously drafted, applied a broad catch-all provision requiring entities to take into account the use of the money 'by the recipient (or any other entity)' when determining if they are continuing to operate within the 'in Australia' provisions. We noted that this would be an extremely difficult and unclear provision for NFPs to implement and burdensome for the very many smaller NFPs which do not have the resources to undertake a due diligence practice at the level being sought.

We believe, however, that these concerns have been alleviated by the introduction in ss 30-18 and 50-50 of additional qualifications, which note that an entity need only investigate the use of

money, property or benefits by a recipient to the extent that it would be reasonable to expect the entity to 'have knowledge of, or to obtain knowledge of, the use of the money, property or benefits outside Australia.

### **The requirement to principally operate in Australia**

Governance Institute notes that access to endorsement as income tax exempt requires an entity to satisfy the provisions that it:

- operates principally in Australia
- pursues its purposes principally in Australia
- complies with all of the substantive requirements in its governing rules
- applies its income and assets solely to pursue the purposes for which it is established, and
- is a non-profit entity.

We note that the explanatory memorandum describes that no one factor will determine whether or not an entity is operating in Australia, with consideration given to all surrounding circumstances. We note further that 'principally' is defined as meaning mainly or chiefly and references that less than 50 per cent will not be considered principally.

Governance Institute believes that the threshold of 50 per cent may be problematic for those entities that operate in Australia, but provide substantial assistance in other countries, as it is unclear if they will be considered income tax exempt. Governance Institute notes that the conditions in which these entities will be considered income tax exempt for the purposes of the 'in Australia' provisions will be prescribed in regulations. The exposure draft of those regulations notes that the exemption is intended to apply only in 'exceptional circumstances', at the discretion of the Governor-General in Council.

While Governance Institute understands that some entities have already been prescribed in the Tax Laws Amendment (2014 Measures No. 2) Regulation 2014 (the regulations), we note that without the provision of further information on 'exceptional circumstances', other charities will not be able to reasonably assess whether or not they meet the requisite requirements to qualify for the exemption without seeking legal advice to help them ascertain their tax concession status. This will strain the financial resources of such charities, and will likely require the diversion of valuable resources from the achievement of the charities' core purpose.

For example, charities that are based in Australia and receive most of their funding from AusAid for overseas development work would remain fully compliant with their charitable purpose while having a large percentage of overseas expenditure on the AusAid project work. Yet the current drafting of the regulations for overseas entities, or entities which are resident in Australia but operate and pursue their objectives principally outside Australia, does not provide certainty as to the capacity of such charities to maintain their ongoing and important work and still access tax concessions.

Governance Institute believes that the requirement to operate principally in Australia, and/or the exemption which allows a charity to be able to continue to access tax concessions despite not meeting the 'in Australia' provisions, must be stated more clearly. Otherwise the provisions risk placing an onerous compliance burden on some charities, requiring them to re-state, at their own expense, their case as entities entitled to tax concessions.

**Conclusion**

Governance Institute is otherwise supportive of the bill and changes which have been made to the legislation since the previous exposure draft. We look forward to seeing the final bill.

Yours sincerely

A handwritten signature in black ink, reading "Tim Sheehy". The signature is written in a cursive, flowing style with a large initial 'T' and 'S'.

Tim Sheehy  
Chief Executive