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17 June 2010

The Secretary
Senate Economics Committee
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600



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Dear Secretary

Tax Laws Amendment (Public Benefit Test) Bill 2010

We appreciate this opportunity to make a submission to your inquiry.

EVANGELICAL ALLIANCE

The Australian Evangelical Alliance Inc is a fellowship principally comprising over 500 Australian churches, religious and welfare organisations. It is a catalyst for Christian unity, cooperation and mission across the evangelical community within Australia. Its mission is to serve the Christian community by:

- linking people and networks in strategic partnerships
- stimulating and communicating biblical thinking in church and society about contemporary issues
- providing services to optimise the use of resources encouraging and supporting innovative ministries
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- giving voice to Christian concerns.

The Australian Evangelical Alliance Inc has three sub-entities – Missions Interlink, Christian Management Australia, and Ethos – each engaged in the evangelical community within Australia.

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1.0 EXISTING PUBLIC BENEFIT TEST

- 1.1 We are not convinced that the proposed amendment to Taxation Law is a workable solution to satisfactorily remedy the problem it seeks to address, namely the abuse of income tax exemption provided to charitable institutions.
- 1.2 Currently, Taxation Ruling 2005-21 states that –
- “A charitable institution is an institution established and maintained for purposes that are charitable in the technical legal sense for a purpose to fall within the technical legal meaning of 'charitable' it must be:
- beneficial to the community, or deemed to be for the public benefit by legislation applying for that purpose; and
 - within the spirit and intendment of the Statute of Elizabeth, or deemed to be charitable by legislation applying for that purpose.
- [TR 2005-21 paras 7&8]
- 1.3 A number of our members have experienced how strictly the Taxation Office administers this 'public benefit' test. One such member was taken all the way to the High Court by the ATO in a challenge to the charitable status of a fundraising activity they had established (refer the 'Word Investments' case). However, we note that the ATO apply this criteria mainly at the time an entity applied for its Tax Concession Charity status – but rarely thereafter.

2.0 PROPOSED PUBLIC BENEFIT TEST

- 2.1 Under the proposed Bill, a Public Benefit Test would include the following key principles:
- There must be an identifiable benefit arising from the aims and activities of an entity;
 - The benefit must be balanced against any detriment or harm; and,
 - The benefit must be to the public or a significant section of the public, and not merely to individuals with a material connection to the entity.
- 2.2 Because the above tests are so subjective and open to interpretation, we do not believe that a Public Benefit Test as proposed would significantly mitigate the risk of abuse of the type identified in the Explanatory Memorandum.
- 2.3 We therefore do not support the Bill in its present form.

3.0 RECOMMENDATION

- 3.1 Because we believe the practice of the Taxation Office to allow charities to voluntarily 'self assess' their ongoing entitlement to income tax exempt status is relatively passive, we recommend –

That the Commissioner of Taxation review the current practice of requiring charities to 'self assess' their own entitlement to income tax exemption, and examine the feasibility of requiring them to submit a simplified annual return similar to those required by revenue authorities overseas.

- 3.2 Note that the IRS (Internal Revenue Service – USA) have recently released a redesigned Form 990 – "Return of Organization Exempt from Income Tax" which has the objective of –
- enhancing transparency
 - promoting tax compliance, and
 - minimizing the burden on the filing organization.

A simplified version of this Form would go a long way to addressing the concerns this Bill is seeking to overcome.

Yours faithfully

Cheryl Catford ✓
National Director
Evangelical Alliance