

30 August 2012

Dr Richard Grant
Committee Secretary
Parliamentary Joint Committee on Corporations and Financial Services
PO Box 6100
Parliament House
Canberra ACT 2600

Submitted by email: corporations.joint@aph.gov.au

Dear Dr Grant

RE: Inquiry into the Tax Laws Amendment (Special Conditions for Not-for-profit Concessions) Bill 2012

On 23 August 2012, the House of Representatives referred 3 bills to the Parliamentary Joint Committee (PJC) on Corporations and Financial Services; I have taken the opportunity to write on behalf of our member research institutes to re-state our position on the *Tax Laws Amendment (Special Conditions for Not-for-profit Concessions) Bill 2012*.

The Bill, if passed, will essentially require organisations with deductible gift recipient (DGR) status to operate solely in Australia and to pursue their purposes solely in Australia.

Australia's independent medical research institutes are charities, and rely on donations and their deductible gift recipient (DGR) status for their livelihoods. Many other health and medical research organisations, including universities, are also the recipients of tax deductible donations. There are also a large number of charitable funds and foundations with the specific mission of funding health and medical research.

AAMRI and other sector representatives have had constructive discussions at Ministerial and departmental level and is pleased that the most recent draft of the legislation provides an in-principle foundation for DGR status to continue for those medical research institutions that conduct research both in Australia and overseas.¹ And further, we now look forward post the passage of the Bill to the timely tabling of Regulations which will formally list those institutions.

The Federal Government has also advised us that it intends to implement a long-term solution for new entrants into the sector, which we applaud.

At the end of the day, health and medical research is an international activity and from that perspective Australia cannot conduct health and medical research in isolation from the rest of the world. Health and medical research is necessarily collaborative in nature, and in many cases involves partners based overseas, including at some of the most renowned universities such as Oxford University and Harvard

¹ s30-18 of the Income Tax (Transitional Provisions) Act 1997.

University as well as organisations such as the World Health Organisation. Working with overseas collaborators necessarily involves overseas expenditure.

Finally, just as health and medical research is a partnership between its collaborators, the funding of health and medical research is a partnership between the Australian Government, the private sector and the not-for-profit sector. The nature of the activity and the funding models adopted in Australia are such that it is not practical (or in many cases possible) to quarantine tax deductible donations from the overseas activities and expenditure of health and medical research organisations.

Australian medical research institutes rank among the best in the world. The success of their work and growing reputations has led to increasing requests for international collaboration. Any change from current policy could have resulted in some key activities being halted and could have jeopardize the health of Australians and the potential for cutting edge healthcare treatments developed by Australian organisations.

We attach our original submission that was co-authored with Research Australia on the issue for your reference.

Yours sincerely

Professor Julie Campbell AO, FAA
President

About AAMRI

The Association of Australian Medical Research institutes (AAMRI) represents Australia's 42 independent medical research institutes. Independent medical research institutes are affiliated with, but independent from, universities and hospitals, and represent a vital and highly successful sub-group of the health and medical research sector. Combined they account for over 8,000 staff and students, and an annual research income of over \$700 million.

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**Submission to the revised exposure draft of the Tax Laws
Amendment (2012 Measure No 4) Bill 2012: tax exempt
body 'in Australia' requirements**

Association of Australian Medical Research Institutes
Research Australia

May 2012

About Research Australia

Research Australia is the peak body representing the health and medical research sector in Australia. Independent of government, Research Australia's activities are funded by its members, donors and supporters from leading research organisations, academic institutions, philanthropy, community special interest groups, peak industry bodies, biotechnology and pharmaceutical companies, small businesses and corporate Australia.

About the Association of Australian Medical Research Institutes

The Association of Australian Medical Research institutes (AAMRI) represents Australia's 42 independent medical research institutes. Independent medical research institutes are affiliated with, but independent from, universities and hospitals, and represent a vital and highly successful sub-group of the health and medical research sector. Combined they account for over 8,000 staff and students, and an annual research income of over \$700 million.

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Introduction

This submission is made jointly by Research Australia and the Association of Australian Medical Research Institutes (AAMRI).

Australian health and medical research is key to the future health of all Australians and the long-term health of the nation's economy. Research helps reduce the burden of disease on Australia's health care system and economy by pioneering new diagnostics, treatments and technologies, and safeguards the community against future health threats. It also improves the efficiency and cost-effectiveness of health care.

Australia's independent medical research institutes are charities, and rely on donations and their deductible gift recipient (DGR) status for their livelihoods. Many other health and medical research organisations, including universities, are also the recipients of tax deductible donations. There are also a large number of charitable funds and foundations with the specific mission of funding health and medical research.

This submission addresses the concerns our organisations and memberships have in relation to the requirements of section 30-18 of the exposure draft, in particular the requirement for organisations with deductible gift recipient status to operate solely in Australia and to pursue their purposes solely in Australia.

AAMRI and Research Australia submit that the nature of health and medical research means that this requirement is not appropriate for organisations undertaking health and medical research. Rather than ensuring that tax deductible donations are used for the broad (Australian) public interest, this requirement will, in fact, severely restrict and hamper Australian health and medical research in a manner that is detrimental to the Australian public interest.

We propose an amendment to the exposure draft that will enable organisations that undertake health and medical research to be exempted from the strict 'solely in Australia' requirement, with appropriate integrity controls.

The collaborative nature of health and medical research

Modern health and medical research is, by its very nature, collaborative. While Australia has a long established expertise in health and medical research, we are a relatively small country, conducting only a small fraction of the world's total health and medical research. Success in health and medical research is best achieved by collaborating with other researchers and research organisations and in many cases, the most appropriate collaborators are overseas.

This is a fact recognised by the Australian Government. The Government has commissioned a Strategic Review of Health and Medical Research in Australia. One of its terms of reference is:

- Opportunities to improve national and international collaboration between education, research, clinical and other public health related sectors to support the rapid translation of research outcomes into improved health policies and practices.

The National Health and Medical Research Council is the main Australian Government agency providing grants to support health and medical research. It has specific grants and funding mechanisms to support international collaboration on health and medical research. The importance of international collaboration, and its benefit to Australia, is outlined in the *NHMRC Strategic Plan 2010-12*. (Source: www.NHMRC.gov.au)

The Australian Government has also provided support for a range of initiatives to support international collaboration in research, including the Forum for European and Australian Science and Technology (FEAST). FEAST is specifically designed to foster collaboration between researchers in Australia and the European Union. (Source: www.FEAST.org.au)

And there is evidence that international research collaboration improves the quality of research undertaken. The Organisation for Economic Cooperation and Development has studied the growing phenomenon of international scientific collaboration:

The production of scientific knowledge is shifting from individuals to groups, from single to multiple institutions, and from a national to an international level. Researchers are increasingly networked across national and organisational borders and so are research institutes.

Greater scientific specialisation and cross-border collaboration can result in increased innovation. New Science, Technology and Industry (STI) Scoreboard indicators show that international scientific collaboration among institutions results in research with high impact (as measured by normalised citations) – and the broader the collaboration, the higher the impact of the research.

OECD SCIENCE, TECHNOLOGY AND INDUSTRY SCOREBOARD 2011: HIGHLIGHTS © OECD 2011, page 9

It is also important to note that international research collaborations result in a substantial influx of research income into Australia from international charities and foundations (e.g. The Bill and Melinda Gates Foundation), international governments (e.g. Human Frontier Science Program), and investment from international biotechnology and pharmaceutical companies.

International collaboration between institutions almost invariably involves the collaborating institutions undertaking activities and spending funds overseas.

Examples include:

- researchers from Australian research institutions working for periods in the research facilities of overseas partner institutions (the reverse also occurs)
- researchers attending meetings overseas with international partner organisations
- conducting clinical trials and population health studies with Australian populations and overseas populations to obtain a statistically representative sample
- providing funding, research samples or resources for collaborative projects with international laboratories that have highly specialised research expertise not available in Australia
- sharing costs for software licences and other overheads with international collaborators
- international research consortiums, involving the sharing and exchange of resources, and often based on joint grant funding.

Without this collaboration, Australian research institutions will be less effective in undertaking research, Australia will be less successful in attracting overseas funding and investment in research conducted here, and our reputation for health and medical research will be diminished. Ultimately this will lead to less health and medical research being undertaken in Australia, loss of talented Australians to overseas research institutions, and poorer health outcomes for Australians. Such an outcome is clearly not in the Australian public interest.

Other overseas research expenditure

Even where research is undertaken without international collaboration there is a range of circumstances in which money is expended overseas.

These include:

- contracting overseas laboratories to undertake analysis that cannot be undertaken in Australia due to a lack of specific expertise or equipment
- attending international meetings to promulgate research findings, foster research collaborations and networks, and provide professional development opportunities for early career researchers
- an early or mid career researcher working in an overseas research institution to develop their expertise and experience
- conducting fieldwork in overseas countries to supplement research in Australian environments and populations

- conducting clinical trials and population health studies with Australian populations and overseas populations to obtain a statistically representative sample.

In many cases these activities are partly or fully funded with donations. Although the funds are expended overseas, there is a clear Australian public benefit from these activities through the improvement in the quality of Australian research and assisting the professional development of Australian researchers.

The role of philanthropy in Australian health and medical research

While reliable data is difficult to obtain, health and medical research is a significant recipient of tax deductible donations in Australia and donations are a significant proportion of total funding of health and medical research. Australia's independent medical research institutes, for example, are estimated to collectively receive over \$100 million each year in DGR funds to carry out vital research projects. Many other research organisations that receive Government funding to conduct health and medical research also receive, and rely on, donations to enable them to undertake their research.

Government policy actively encourages the participation of philanthropy in health and medical research. The DGR status of health and research organisations under sections 30-20 and 30-40 of the Income Tax Assessment Act 1997 is evidence of this support.

The approach taken to the funding of Australian cancer research is also informative. Cancer Australia is an Australian Government agency. Its primary research funding program is the Priority-driven Collaborative Cancer Research Scheme (PCCRS). This scheme brings together the Government funding administered by Cancer Australia with funding provided by other cancer research fundraising bodies in the philanthropic sector (including Cancer Council Australia, the Leukaemia Foundation and the National Breast Cancer Foundation). One of the aims of the Scheme is to better coordinate philanthropic and Government funding of cancer research, and it provides grants to a range of health and medical research organisations that combine both Government and philanthropic funds.
(Source: www.canceraustralia.gov.au)

The Government is keen to enlist more philanthropic funding of health and medical research. Another of the terms of reference of the Government's Strategic Review of Health and Medical Research reflects this:

- Opportunities to improve coordination and leverage additional national and international support for Australian health and medical research through private sector support and philanthropy.

These programs continue to emphasise the public benefit of international collaboration and philanthropic funding to Australian health and medical research.

It is common for a particular research activity to be funded from a range of different sources, including Government funding and philanthropy. It is not normally possible to identify discrete components of research activity for a single funding source. The total funding from all sources is necessary to continue to produce the important outcomes of Australia's health and medical research organisations.

Operation and purposes solely in Australia

AAMRI and Research Australia note that the requirements for DGR status in section 30-18 of the exposure draft are stricter than the requirements for tax exempt status contained in section 50-50.

We recognise that this stricter test is designed to ensure that tax deductible donations are used for the benefit of the Australian community, with exceptions for specific purposes such as disaster relief in foreign countries.

We support the policy objective of ensuring that tax deductible donations are used for the broad (Australian) public benefit, and recognise that the 'operated solely in Australia' restriction helps achieve this aim and is appropriate for the activities of many charities. However, in the case of health and medical research, this restriction neither achieves this policy objective (instead hindering it), nor is it appropriate.

Health and medical research is an international activity. Australia cannot conduct health and medical research in isolation from the rest of the world. Health and medical research is necessarily collaborative in nature, and in many cases the best partners for collaboration are overseas. Working with overseas collaborators necessarily involves overseas expenditure. The qualifications of the proposed section 30-18 relating to 'minor' and 'merely incidental' activities are inadequate to cover these activities.

Just as health and medical research is a partnership between its collaborators, the funding of health and medical research is a partnership between the Australian Government, the private sector and the not for profit sector. The nature of the activity and the funding models adopted in Australia are such that it is not practical (or in many cases possible) to quarantine tax deductible donations from the overseas activities and expenditure of health and medical research organisations.

Rather than ensuring that tax deductible donations are used for the broad (Australian) public interest, the proposed requirements of section 30-18 will, in fact, severely hamper Australian health and medical research. It will also deter charitable donations to the health and medical research sector, increasing the funding burden on the Commonwealth Government. Both these outcomes are detrimental to the Australian public interest.

Proposed Solution

As noted above, the proposed subsections 30-18 (5) and (6) already provide a mechanism for certain types of DGRs to be excluded from the provisions of subsections 30-18(1)(b) and (c). One such exclusion is provided for entities covered by the existing section 30-80 of the Income Tax Assessment Act 1997. Research Australia and AAMRI propose an amendment to section 30-80 to provide additional, specific exclusion for organisations undertaking health and medical research internationally. The specific wording of the suggested exemption is provided in the Attachment to this submission. The proposed solution addresses the following.

Items 9.2.25-9.2.33 in the proposed amendment to section 30-80(2) in the Attachment list those existing medical research institutions currently undertaking overseas activities that are more than 'merely incidental' to their Australian activities. Including these institutions by name in subsection 30-80(2) allows these institutions to be excluded from the strict 'solely in Australia' restriction of the Income Tax Assessment Act, thus allowing current international activities to continue unaffected.

Each of the institutions named is currently a DGR endorsed by the Commissioner of Taxation for their medical research and health promotion activities.

Proposed new Item 9.1.3 and 30-87(1) of the Attachment provides a category for endorsement of medical research and health promotion institutions with overseas activities more than 'incidental' or 'minor in extent and importance' when compared with their Australian activities. Including the general table item will enable institutions established after passing of the Tax Laws Amendment (2012 Measure No 4) Bill, or which undertake such activities after that date, to be appropriately endorsed as DGRs by the Commissioner of Taxation, and excluded from the strict 'solely in Australia' requirement. Suitable integrity controls have been included to ensure the benefit to Australian medical research and the Australian public.

We look forward to discussing the solution further with you, before the draft Bill is finalised.

Subsection 30-80(1) (after table item 9.1.2)

Add:

<u>Item</u>	<u>Fund, authority or Institution</u>	<u>Special conditions</u>
9.1.3	A public institution engaged in international research into the causes, prevention or cure of diseases in human beings, animals or plants, or promotion of the prevention or control of diseases in human beings.	See section 30-87

Subsection 30-80(2) (after table item 9.2.24)

<u>Item</u>	<u>Fund, authority or Institution</u>	<u>Special conditions</u>
9.2.25	The George Institute for Global Health	None
9.2.26	The Macfarlane Burnet Institute for Medical Research and Public Health Limited	None
9.2.27	Baker IDI Heart and Diabetes Institute Holdings Limited	None
9.2.28	The Lowy Medical Research Institute Limited	None
9.2.29	Murdoch Childrens Research Institute	None
9.2.30	Telethon Institute for Child Health Research	None
9.2.31	The Council of the Queensland Institute of Medical Research	None
9.2.32	Menzies School of Health Research	None
9.2.33	Centre for Eye Research Australia Limited	None

10 After Subsection 30-86

Add:

30-87 Medical research institutions undertaking international research

You can deduct a gift that you make to an institution covered by item 9.1.3 of the table in Subsection 30-80(1) if:

- (a) the institution directly or indirectly conducts, carries out, or funds research into the causes, prevention or cure of diseases in human beings, animals or plants, or promotes the prevention or control of diseases in human beings; and
- (b) that research or promotion is conducted, carried out or funded in whole or in part outside Australia; and
- (c) the research or promotion conducted, carried out or funded outside Australia is applied for the benefit of or in furtherance of medical research in Australia, or for the benefit of the prevention, control or cure of diseases in human beings, animals or plants in Australia.