Research Australia

An alliance for discoveries in health

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

August 2012

About Research Australia

Research Australia is the peak body representing the health and medical research sector in Australia. 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.

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The 'in Australia' requirement

Australian health and medical research is key to the future health of all Australians and is a strong contributor to 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. Without further expansion and improvement in health and medical research in Australia, we will be unable to meet the challenges of an ageing population, the growing incidence of chronic disease, international competition and workforce scarcity.

Many of Australia's not–for-profit health and medical research organisations rely on a combination of government funding and donations. These organisations include Australia's independent medical research institutes, universities, research institutes that are auspiced by universities, and major hospitals.

This submission addresses Research Australia's concerns in relation to the requirements of section 30-18 of the *Income Tax (Transitional Provisions) Act 1997.*

Research Australia has been engaged in the consultation process on the legislation and has successfully argued the case with Treasury as to why it is important that health and medical research be exempted from the 'in Australia' requirements of the proposed section 30-18 of the Income Tax Assessment Act 1997.

Briefly, this is because health and medical research is an international enterprise, and many Australian researchers collaborate with overseas researchers to achieve the very best research. There are also many Australian researchers who are working on health issues that largely or solely affect developing countries. In both cases, while much of the research will be undertaken in Australia, some funds will necessarily be expended overseas. Examples include attending conferences, working overseas temporarily with an international colleague, and paying for analysis to be undertaken in a specialist laboratory overseas. Such expenditure is a reasonable use of donations, and remains in Australia's broad national interest.

Treasury has responded to the concerns of Research Australia and other representatives of the health and medial research sector by drafting section 30-18 of the *Income Tax (Transitional Provisions) Act 1997,* reproduced below.

> Income Tax (Transitional Provisions) Act 1997
>
> **23 After section 30-5**
> Insert:
> **30-18 Prescribed medical research institution need not operate in Australia etc.**
>
> (1) This section applies to a medical research institution that:
> (a) was a deductible gift recipient just before the commencement of Schedule 1 to the Australian Charities and Not-for-profits Legislation Amendment (Conditions for Tax Concessions) Act 2012;

and

(b) is prescribed by the regulations for the purposes of this section.

(2) The medical research institution satisfies the conditions in section 30-18 of the Income Tax Assessment Act 1997 if the institution satisfies the condition in paragraph (1)(a) of that section.

While pleased that the case for an exemption has been acknowledged, Research Australia has two concerns relating to the above provision.

'Medical research institution'

The first is the use of the expression 'medical research institution'. This expression is not defined in the Income Tax Assessment Act 1997. Research Australia is concerned that this term needs to be interpreted broadly enough to encompass all medical research organisations that undertake health and medical research and are eligible to receive tax deductible donations. This includes independent medical research institutes that exist as distinct entities and attract donations in their own right; research institutes which are part of a university, and are currently able to receive tax deductible donations through the university; and medical research conducted within university departments and major hospitals.

While Research Australia is of the view that the term 'medical research institution' is sufficiently broad to apply to all these types of medical research organisations, we note that the Assistant Treasurer referred specifically to medical research institutes when addressing this provision in his second reading speech for the Bill (underlined in the text below):

> 'The bill has also been revised to provide a regulation-making power to allow certain medical research institutions to be listed in the regulations, reflecting that medical research is an activity dependent on international collaboration. Listed <u>medical research institutes</u> will still be required to be established in Australia but will be exempt from the remainder of the 'in Australia' special conditions.'

Research Australia submits that the term 'medical research institution' must be applied broadly when regulations are made so as to be able cover all of the medical research organisations described above, and asks the Committee to make a recommendation to the Government to this effect.

Exemption for new medical research organisations

Research Australia's second concern relates to the fact that the provision applies only to a medical research institution that is a deductible gift recipient just before the commencement of this new legislation.

New medical research organisations are formed on a reasonably regular basis. There has also been a trend in recent years for existing medical research organisations to merge. As international collaboration is almost universal across the medical research sector, nearly every new (or merged) medical research organisation that accepts tax deductible donations is going to require an exemption from the 'in Australia' provisions. These new organisations will need to be specifically named in the legislation if they are to be provided with DGR status and be able to undertake and/or fund some overseas activities.

Research Australia accepts that there should be appropriate integrity controls around the granting of an exemption from the 'in Australia' requirements. However amending the legislation every time a new medical research organisation is created seems unnecessarily onerous and has the potential to significantly delay the establishment and effective operation of new research organisations. Research Australia is of the view that appropriate integrity controls could be established in a process that enabled new medical research organisations to be exempted by regulation rather than by amending the legislation to include them in the Schedule.

Research Australia submits that the Income Tax Assessment Act 1997 should be amended to allow both existing and new medical research organisations to be prescribed by regulation and to satisfy the conditions of 30-18 of the Income Tax Assessment Act 1997 if they satisfy the conditions of paragraph 1(a) of that section.

Such a measure will ensure the integrity of the measures contained in the legislation without imposing an unnecessary regulatory burden on the medical research community.

Conclusion

Research Australia is pleased to have had the opportunity to make this submission. If you require any further information or wish to discuss this submission further, please contact Elizabeth Foley, CEO. (Contact details are provided on page 2 of the submission.)