

**Submission to: Building Community – ministerial guidelines for community foundations**  
**Feedback on the Taxation Administration (Community Charity) Guidelines 2024 exposure draft**  
**prepared by The Intrepid Foundation**

### **Executive Summary**

- The Intrepid Foundation supports local communities to create impact for charitable purposes in environment protection and community development around the world.
- There is currently no single deductible gift receipt (**DGR**) category that enables The Intrepid Foundation to provide tax deductibility for Australian donations covering all of its charitable activities.
- We seek clarification from Treasury on the *Taxation Administration (Community Charity) Guidelines 2024 (Guidelines)*, specifically relating to clause 10 which applies geographical limits to the work of Community Charities, excluding global foundations such as The Intrepid Foundation.
- We submit that clause 10 of the Guidelines should be amended to allow Community Charities to engage in activities that are the principal activities or purposes of other Item 1 DGRs<sup>1</sup> (**DGR1s**) irrespective of geographical location.

### **About The Intrepid Foundation**

- The Intrepid Foundation is the not-for-profit arm of Intrepid Travel, and exists to provide travelers the opportunity to make a charitable impact in the places they visit. Since 2002, The Intrepid Foundation has raised more than \$17 million and supported over 160 communities around the world.
- The Intrepid Foundation comprises two entities:
  - a) The Intrepid Foundation Limited (ABN 69 137 870 181), which is a not-for-profit Australian Public Company Limited by Guarantee that is not entitled to receive tax deductible gifts; and
  - b) The Trustee for The Intrepid Foundation (ABN 94 629 272 383), which is a public ancillary fund (**PubAF**) that is registered with the ACNC and endorsed as a DGR with the ATO.

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<sup>1</sup> DGRs covered by Item 1 of the table in section 30-15 of the *Income Tax Assessment Act 1997* (Cth). This includes funds, authorities and institutions that are endorsed or listed by name.

- The Intrepid Foundation exists to support the charitable purposes relevant to local communities in 40 countries visited by Intrepid Travel customers. We do this by:
  - a) Encouraging travelers to make a donation to The Intrepid Foundation following their trip with Intrepid Travel:
    - i) Approximately two thirds of our annual income comes from public donations, and one third in company donations from Intrepid Travel;
    - ii) In 2023, 13,000 individual donors contributed to The Intrepid Foundation.
  - b) Partnering with 54 not-for-profit organisations in Intrepid Travel’s key travel destinations:
    - i) In 2023, we distributed AU\$2.8 million to charitable projects around the world;
    - ii) 10 partners are DGR1 charities including the Blue Dragon Children’s Foundation, Greening Australia and World Bicycle Relief;
    - iii) 44 partners are not DGR1 charities registered in Australia. These include Grand Canyon Conservancy (501c3 charity in the US), Water First (registered charity in Canada), Gorilla Doctors (registered charity in the UK), Education for All (registered charity in Morocco), and High Atlas Foundation (501c3 charity in the US).
- The Intrepid Foundation plays a critical role in growing philanthropic activity in Australia, and growing confidence in giving globally by Australian donors.

### **Existing DGR Framework**

The Intrepid Foundation would be an ideal candidate for endorsement under the new DGR category set out in section 30-110 of the *Income Tax Assessment Act 1997 (Cth)* (**ITAA 97**) as a “Community Charity”. This is because The Intrepid Foundation does not neatly fit into any of the existing general DGR1 categories, but rather spans several of the existing general DGR categories (e.g. Public Benevolent Institute and Environmental Organisation).

The Intrepid Foundation’s ambition to grow philanthropic giving from Australian donors is currently severely limited by our governance structure namely:

- Australian donors cannot receive a tax deduction unless they restrict their gift, through our PubAF, to one of our 10 charity partners who are endorsed as a DGR1.
- The Intrepid Foundation is unable to accept donations from Private Ancillary Funds.
- The Intrepid Foundation is limited in our ability to attract major donations for most overseas activities due to the lack of tax deductibility.

The Intrepid Foundation has spent over two years exploring alternative methods to attaining the relevant DGR1 status to cover our global charitable activities and generate more philanthropic support from travelers for community development and protection of the environment. We want to avoid establishing multiple DGR entities (on account of the administrative inefficiencies) and seeking specific listing (on account of the opaque, uncertain, and protracted process).

## Submission

We recommend that Treasury amend clause 10 of the Guidelines:

### **10 Operated only in Australia**

- (1) A community charity must be established and operated only in Australia.
- (2) However, subsection (1) does *not* prevent a community charity from making a distribution to a \*deductible gift recipient that operates outside Australia.

We note that the clause has been taken directly from the *Taxation Administration (Public Ancillary Fund) Guidelines 2022* and *Taxation Administration (Private Ancillary Fund) Guidelines 2019* and applied to the *Taxation Administration (Community Charity) Guidelines 2024*. This requirement makes sense for Public and Private Ancillary Funds, which do not undertake activities themselves and only distribute to DGR1s.

However, clause 10 is inappropriate and not fit-for-purpose for Community Charities. Community Charities should be allowed to engage in activities that are the principal activities or purposes of other DGR1s irrespective of geographical location.

We set out three key reasons for this.

#### **(1) It is superfluous to regulatory need**

There are already multiple expressions of the ‘in Australia’ requirement:

- (a) Section 50 In Australia Requirement: Registered charities must have a physical presence in Australia and, to that extent, incur its expenditure and pursue its objectives ‘principally’ in Australia;<sup>2</sup>
- (b) DGR In Australia Requirement: A fund, authority or institution entitled to DGR endorsement under Division 30-B of ITAA 97<sup>3</sup> must be “in Australia”, which the corresponding Taxation Ruling 2019/6 elaborates means that the DGR must be established or legally recognised in Australia, and make operational or strategic decisions mainly in Australia. It does not require DGRs to have purposes or beneficiaries in Australia;<sup>4</sup>
- (c) PAF and PubAF Requirement: Clause 10 of each of the *Taxation Administration (Public Ancillary Fund) Guidelines 2022* and *Taxation Administration (Private Ancillary Fund) Guidelines 2019* requires Public and Private Ancillary Funds to operate or be established ‘only in Australia’, but permits both to distribute to DGR1s that operate outside Australia.

The DGR Requirement applicable to all DGR1s would apply to Community Charities. We consider this to be sufficient to protect the integrity of the DGR system.

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<sup>2</sup> Sections 50-50(1)(a), 50-55(1)(a) and 50-70(1)(a) of ITAA 97;

<sup>3</sup> Special condition (a) of table item 1 in subsection 30-15(2) of ITAA 97;

<sup>4</sup> Taxation Ruling 2019/6 – “Income tax: the ‘in Australia’ requirement for certain deductible gift recipients and income tax exempt entities”, paragraph 7.

## **(2) It duplicates existing regulation**

Registered charities with overseas operations must comply with the ACNC’s External Conduct Standards. The External Conduct Standards provide adequate safeguards to ensure that DGR funds applied overseas reach legitimate beneficiaries and are used for proper purposes.

## **(3) It is internally inconsistent**

It is inconsistent with other provisions in the Community Charity Guidelines and section 30-110 of the ITAA 97.

The word “only” does not make sense in the context of an entity that, in addition to undertaking its own activities, is permitted to provide money to entities that are not DGRs, where expenditure of that money by the other entity will further a purpose of the Community Charity.<sup>5</sup>

We do not understand the policy rationale for imposing this geographical limitation on the kind of activities that a Community Charity may undertake in furtherance of a purpose or principal activity of a general category DGR1.

## **Recommendation**

We request that clause 10 of the Guidelines be removed to ensure that requirement that a Community Charity operate “only in Australia” (clause 10(1) of the Guidelines) does not unduly restrict the activities a Community Charity may undertake in accordance with section 30-110(4) of the ITAA 97.

The combined effect of the DGR In Australia Requirement and the External Conduct Standards are adequate to ensure that Community Charities apply DGR funds for proper purposes.

Removing clause 10 from the Guidelines would enable organisations like The Intrepid Foundation to realise greater impact for the community in Australia and globally in a more efficient and effective manner.

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<sup>5</sup> Note to draft Guideline 13 (4)(a).