

CASE SUMMARY

Court of Appeal decides that payments made in support of overseas mission services qualify for tax credits

Decision date: 6 May 2020

CSUM 20/04

Case

The Church of Jesus Christ of Latter-Day Saints Trust Board and Coward v Commissioner of Inland Revenue [2020] NZCA 143

Legislative References

Income Tax Act 2007, s LD 1

Legal terms

Appeal; Missionary; Overseas; Donations; Donor; Gifts; Tax Credits; Charitable; Public Benefit.

Summary

The Court of Appeal found that the High Court Judge was correct when she concluded that payments made by a missionary's sibling and other more distant relatives, as well as unrelated members of the Church of Jesus Christ of Latter-Day Saints ("the Church") were gifts for the purposes of s LD 1(1) of the Income Tax Act 2007 ("the Act").

The Court of Appeal found that the High Court Judge erred in concluding payments made by a missionary, their parents, guardians or grandparents were not gifts. The Court of Appeal determined these payments were also gifts, making the payors eligible for donation tax credits.

Impact

The decision will mean donations to support missionaries of the Church will be eligible for donation tax credits and the Church is entitled to issue donation receipts. The decision could have wider implications for other charitable or not-for-profit entities as well.

Facts

This judgment concerned an appeal of the decision of the High Court addressing two proceedings which were heard together. The first appellant is The Trust Board of the Church of Jesus Christ of Latter-Day Saints ("the Trust Board"). The Trust Board is the New Zealand based arm or entity of the Church. The second appellant is Mr Coward, a New Zealand tax resident and member of the Church, whose daughter was a missionary of the Church. The Commissioner of Inland Revenue ("the Commissioner") is the respondent in both appeals.

The Church itself is based in Salt Lake City, Utah, but has a worldwide presence, including in New Zealand. Under the Church's missionary programme, young members may take part in an 18 to 24-month mission service overseas. As part of their application, a missionary is expected to commit to raising a "standard amount" to go towards supporting the Church's missionary work. At the time of Mr Coward's daughter's application, the "standard amount" for New Zealand was \$475 per month or \$5,700 per annum.

These payments are made to the Trust Board and intermingled with the Trust Board's funds and applied, at the sole discretion of the Trust Board, towards activities of the New Zealand Church. The payment is voluntary and non-refundable.

The Trust Board makes no payment towards the costs of a New Zealand missionary serving overseas. Their basic travel, accommodation, food and mission-related costs are met by the relevant Church-related entity in the country where their mission takes place.

Mr Coward's tax challenge concerned the Commissioner's decision to not allow him a tax credit for the payments he made to the Trust Board. The Trust Board applied under the Declaratory Judgments Act 1908 for various declarations that payments made by a missionary, his or her family, and members of the Church in New Zealand were gifts for the purposes of s LD 1(1) of the Act.

The High Court found in *The Church of Jesus Christ of Latter-Day Saints Trust Board and Coward v Commissioner of Inland Revenue* [2019] NZHC 52 [High Court judgment] at [128]:

- The "standard amount" payments made to the Trust Board by a missionary, their parents, and/or grandparents are not gifts; and
- Payments by other relatives and Church members unrelated to the missionary are gifts.

Issues

The Court of Appeal was required to determine whether the payments made by taxpayers to the Trust Board are gifts and therefore eligible for a tax credit under ss LD 1(1) and (2) of the Act.

The Court also considered there were two sub-issues that stem from the principal issue:

- whether any of the taxpayers receive a material benefit from the financial assistance received by those performing missionary services overseas; and if so
- whether there is a connection between the payments made by the taxpayer and the financial assistance received by the New Zealand missionary serving overseas so that the payments cannot be treated as gifts.

Decision

The Court of Appeal held that the payments made to the Trust Board by a missionary, their parents, grandparents, other relatives and/or friends were "gifts" and therefore eligible for a tax credit under s LD 1 of the Act.

The Court of Appeal considered that the correct approach was to follow *Mills v Dowdall* [1983] NZLR 154 (CA), by focusing on the legal form of the arrangements over a substance-based approach.

Text and purpose of s LD 1(1) of the Act

The Court noted that the term "gift" is not defined in the Act and so it must be taken to bear its ordinary and natural meaning.

Accordingly, in order to be a “gift” for the purposes of s LD 1(1) of the Act there must be no material benefit bestowed on the taxpayer in addition to the tax credit prescribed in the Act.

Sub Issue 1 – was there a material benefit to the taxpayers?

The Court held there was no material benefit to the taxpayers and no distinction should be drawn between the various categories of taxpayers covered in the proceedings. It noted:

- The payments are used for the purposes of the New Zealand Church.
- The overseas missionary’s basic costs that are met by either the church in the host country or the Church in Utah were necessary to facilitate missionary work.
- The opportunity to participate in missionary service overseas is not a genuine material benefit because the missionary is performing a charitable service.
- The real benefit to missionaries serving overseas is a sense of spiritual and moral satisfaction.
- Taxpayers other than missionaries do not receive a material benefit. At most they gain the spiritual or moral satisfaction of knowing the missionary is performing a charitable service on behalf of the Church overseas.

Sub Issue 2 – was there a connection between the payments made and any benefit received?

The Court held there was a disconnection in fact and in law between the payments made by the taxpayers and the receipt of basic costs by a missionary serving overseas, meaning even if there was a material benefit, there was little to no connection between the payment and the benefit.

The Court noted there was no legal arrangement connecting the payment by a taxpayer to the Trust Board and the payment by the church in the host country or the Church in Utah to meet the missionary’s basic costs.

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