

## CASE SUMMARY

# Supreme Court dismisses the Commissioner's application for leave to appeal determination of "gift" for donation tax credit purposes

Decision date: 30-September-2020

CSUM 21/04

## CASE

***Commissioner of Inland Revenue v Church of Jesus Christ of Latter-Day Saints Trust Board and Coward [2020] NZSC 102***

## LEGISLATIVE REFERENCES

- Senior Court Act 2016, s 74(1) and (2)(a) and (c)

## LEGAL TERMS

- Application for leave to appeal - General or public importance – General commercial significance

## Summary

- The Commissioner applied to the Supreme Court for leave to appeal the decision of the Court of Appeal that payments made by missionaries, their parents, grandparents, legal guardians, friends and members of the church community/ward to the Church of Jesus Christ of Latter-day Saints Trust Board (the Board) to support overseas missionaries were all gifts entitling the taxpayers to donation tax credits pursuant to section LD 1 of the Income Tax Act 2007.
- The Supreme Court declined to grant the Commissioner's leave application.

## Impact

- The Supreme Court has noted that whether a benefit to a donor, consequent of a payment made, will disqualify that payment from being a "charitable or other public benefit gift" is an intensely fact-specific question. Following this decision, payments made in a factual scenario that is the same or sufficiently similar to that surrounding the Church members' payments to the Board will qualify the donor for donation tax credits.
- The Commissioner intends to review her position on how she determines when a payment qualifies as a "gift" for donation tax credit purposes, including review of OS 06/02 – *Interaction of tax and charities rules, covering tax exemption and donee status* and QB 16/05 – *Income tax – donee organisations and gifts*. If it is considered necessary, the Commissioner will issue revised statements following public consultation.
- At this time, the Commissioner does not envision proposing legislative amendment to the provisions at issue in this matter.

## Facts

- The Church sends missionaries to proselytise overseas on missions lasting 18-24 months. The Church expects the missionaries and their families to make sacrifices to support these missions including making donations to the Board. The Board sets a recommended donation for New Zealand Church members wishing to go on a mission. The recommended amount does not reflect the actual cost and is currently set at NZ\$385 per month but fluctuates from time to time.

- Donations are applied at the Board’s discretion towards New Zealand activities of the Church. The overseas missionary has basic travel and living expenses paid by the Church organisation of the country where they are serving (or, if the Church in the host country is unable to meet those costs, then by the Church in Salt Lake City, Utah).
- The High Court found that the requirements of s LD 1 for a gift were met in relation to payments by some but not by others, *Church of Jesus Christ of Latter-Day Saints Trust Board and Coward v Commissioner of Inland Revenue* [2019] NZHC 52, (2019) 29 NZTC ¶24-000 (Hinton J) [HC Judgment] at [127]-[128]. The High Court found payments by missionaries, their parents and legal guardians and by their grandparents were not gifts because a material benefit was received by the missionary undertaking the missionary service, HC Judgment at [113]-[114] and [117]. The Court also held there was a clear link between the payments and this benefit, HC Judgment at [103] and a strong understanding between the Board and the donor that the payment would enable the missionary to go on the mission and have their expenses met while on the mission, HC Judgment at [105]-[106].
- The Court of Appeal reversed the findings of the High Court, applying “well settled” principles as set out by Richardson J in *Mills v Dowdall* [1983] NZLR 154 (CA). It found donations by missionaries, their parents, grandparents, legal guardians, friends and members of the church community/ward were all gifts because these donors receive “no more than a spiritual or moral benefit,” *Church of Jesus Christ of Latter-Day Saints Trust Board and Coward v Commissioner of Inland Revenue* [2020] NZCA 143, (2020) 29 NZTC ¶24-066 [CA Judgment] at [53]-[54] and [59]-[63]. and there was no “sufficient connection between the payments and any material benefit received,” CA Judgment at [64]-[69] meaning these donors were all entitled to tax credits pursuant to section LD 1 of the Income Tax Act 2007, CA Judgment at [74]-[75].

## Issue

The issue raised by the Commissioner in seeking leave was whether the Court of Appeal applied an appropriate purposive interpretation of “charitable or other public benefit gift” in s LD 1 of the Income Tax Act 2007 or whether it restricted itself in an inappropriate manner.

## Decision

- The Supreme Court dismissed the Commissioner’s application for leave to appeal.

- The Supreme Court accepted that the correct approach to tax statutes was a matter of public importance and commercial significance, however the Court did not consider this was an appropriate case for that issue to be considered for two reasons:
  - First, it was not convinced that the Court of Appeal did, in fact, apply the Duke of Westminster (legal form) doctrine *The Commissioners of Inland Revenue v The Duke of Westminster* [1936] AC 1 (HL) at 19-20 per Lord Tomlin to fetter purposive statutory interpretation of the meaning of “gift”; and
  - Second the question in the case (whether the alleged benefit derived by donors was such that it meant the payments would not be categorised as gifts) is an intensely fact-specific question and the facts in the case are relatively unusual.
- The Supreme Court found with regard to the meaning of “gift”, the difference between the approaches of the High Court and the Court of Appeal in this matter were matters relating to the interpretation of the facts of the case, rather than matters of legal significance, and therefore the criteria for granting leave to appeal was not met.

## About this document

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