



EXPOSURE DRAFT – FOR COMMENT AND DISCUSSION ONLY

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OPERATIONAL STATEMENT

Charities and donee organisations: Part 1: Charities

Issued: XX

OS xx/xx

Operational statements set out the Commissioner of Inland Revenue's view of the law in respect of the matter discussed and deal with practical issues arising out of the administration of the Inland Revenue Acts.

This Statement outlines the tax treatment and obligations that apply to charities and donee organisations and how the Commissioner will apply the relevant legislation.

This Statement is in two parts that together make up Operational Statement OS 22/xx – Charities and donee organisations. The two parts are:

Part 1: Charities, and

Part 2: Donee organisations.

All legislative references are to the Income Tax Act 2007 (the Income Tax Act) unless otherwise stated. Relevant legislative provisions are reproduced in the appendix to this Statement.

This Statement also appears in *Tax Information Bulletin* xx/xx.

Contents

Scope	4
Application date of this statement.....	4
Not-for-profit sector.....	5
What is a charity?	5
Role of Charities Services.....	7
Charitable purposes.....	9
Summary of concessionary tax treatment available to charities.....	10
Income tax exemptions.....	11
Qualifying for income tax exemptions.....	11
Income tax exemption for non-business income (s CW 41).....	12
Income tax exemption for business income (s CW 42).....	12
Tax charity derives income directly or indirectly from a business	13
Business carried on by, or for, or for the benefit of the tax charity.....	14
Entity carrying on the business must be a registered charity.....	15
Application of the territorial restriction	15
Application of the control restriction.....	16
Meaning of “some control over the business”	17
Meaning of “benefit or advantage”	19
Charitable bequests (s CW 43).....	19
Resident withholding tax exempt status.....	20
Non-resident withholding tax	20
Fringe benefit tax exclusion	21
Meaning of “mainly in connection with employment”	21
Activity that is not a business	22
Activity that is a business and “within the qualifying organisation’s benevolent, charitable, cultural or philanthropic purposes”.....	22
Short term charge facilities.....	23
Goods and services tax and non-profit bodies.....	24
Election for an asset to not be part of taxable activity	25
Valuation on deemed disposal of assets by GST deregistration.....	25

Input tax credit limitation for the acquisition of second-hand goods.....	26
Further GST information	26
Interest-free student loan concession.....	27
Māori organisations	29
Charitable registration of a marae on Māori reservation land.....	30
Registration of Māori entities under the Charitable Trusts Act.....	30
Trusts established under the Te Ture Whenua Māori Act 1993	30
Deregistration for marae built on reservation land established under the Te Ture Whenua Māori Act.....	31
Charitable Trusts.....	31
Non-resident charities.....	32
Guidelines for non-resident charities applying to be a tax charity	33
Tax implications of ceasing to be a tax charity or deregistration.....	34
The date from which tax obligations will apply.....	34
Income tax rates applicable after ceasing to be a tax charity or upon deregistration	35
Income tax on net assets of deregistered charity (“deregistration tax”).....	35
When a charity will not be liable for deregistration tax	36
Value of net assets.....	37
Organisations that run businesses for charity and deregistration tax	38
RWT-exempt status when a charity is deregistered.....	38
FBT-exclusion when a charity is deregistered	38
Donee organisation status when a charity is deregistered	38
More information on consequences of deregistration.....	39
Administrative matters.....	39
Record keeping requirements.....	40
Alterations to a charity’s founding documents.....	41
Binding Ruling Applications	41
Other disclosure and reporting regimes	42
Charities that are foreign trusts for income tax purposes	42
Charities and international financial reporting obligations.....	42
Appendix - Hyperlink / web address cross-reference table	44
Appendix – Legislation.....	49

Scope

1. New Zealand's not-for-profit sector makes an important contribution to the wellbeing of New Zealanders. One of the ways the Government supports the sector is by providing favourable tax treatments. This comes in various forms depending on the characteristics of the entity involved – for example, various income tax exemptions for the business and non-business income of charities, resident withholding tax (RWT) exemptions, fringe benefit tax (FBT) exclusions, goods and services tax (GST) concessions and interest-free student loans for overseas volunteers of approved charitable organisations. For charities that have donee status, donors may receive favourable tax treatment including donation tax credits, payroll giving tax credits or income tax gift deductions.
2. Part 1 of the Operational Statement will firstly consider what is a charity, including in the context of the two key Acts governing them (the Income Tax Act and the Charities Act 2005 (Charities Act)). Secondly, it addresses the relationship between Charities Services and Inland Revenue. Thirdly, it explains what charitable purposes are, because that is important to deciding whether an organisation is a charity. Fourthly, the Operational Statement outlines the different tax concessions that may be available. Lastly, it sets out administrative tax matters, implications of deregistration and special rules for certain entity types.
3. Part 2 of the Operational Statement provides guidance to entities wanting to become donee organisations or that are already donee organisations including the benefits of being a donee organisation, how to obtain approval as a donee organisation, the requirements for a "charitable or public benefit gift", and the requirements for a donation tax receipt.
4. Part 2 also addresses other administrative tax matters relevant to donee organisations including record-keeping and the implications of a donee organisation with charitable purposes being removed from the Charities Register. Where topics relevant to Part 1 are covered in Part 2 of this Operational Statement, cross-references are included.
5. The Inland Revenue dedicated email address for inquiries regarding charities and donee organisations is: charities.queries@ird.govt.nz. More information for charities and donee organisations can be found on the [Inland Revenue website - charities](https://www.ird.govt.nz/roles/charities) (or enter into your browser: <https://www.ird.govt.nz/roles/charities>). At the end of this document, but prior to the section containing legislation, you will find a directory of all hyperlinks referred to in this Operational Statement.

Application date of this statement

6. Part 1 of this Operational Statement applies to tax charities and charitable organisations.

7. It will apply from (xx/xx/xxxx).

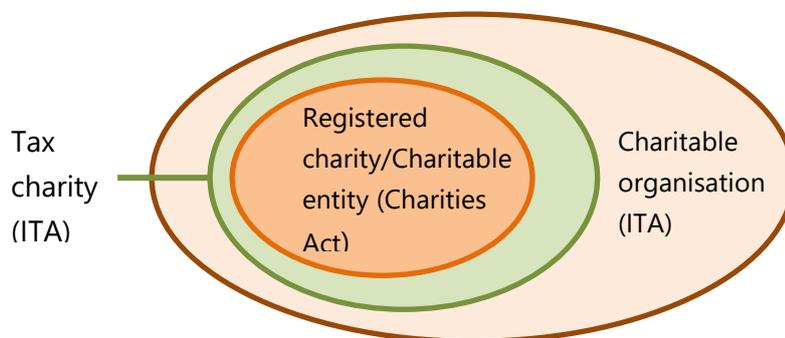
Not-for-profit sector

8. New Zealand's not-for-profit sector is diverse and includes many different types of organisations and entities. A not-for-profit organisation is any society, association or group, which can be incorporated or unincorporated, whose activities are not carried on for the profit or gain of any member and whose rules do not allow any money or property to be distributed to any member.
9. There are different tax concessions and favourable tax treatments for different parts of the not-for-profit sector depending on their characteristics. This includes:
 - tax charities — whose status generally results in an income tax exemption. This category includes organisations registered under the Charities Act (registered charities), deregistered charities (only for a limited period of time), charities that began the process of becoming a registered charity prior to 1 July 2008 (that meet other conditions) and a small number of non-resident charities approved as a tax charity by the Commissioner;
 - donee organisations — whose status gives tax benefits to donors who make monetary donations to them. This category includes charities and not-for-profit organisations with cultural, philanthropic or benevolent purposes;
 - charitable organisations — whose status enables them to benefit from various concessions under the FBT rules. This category is a subset of donee organisations; and
 - other not-for-profit organisations — organisations not otherwise covered above, which do not have the purpose of making a profit for a proprietor, member or shareholder. They can potentially access tax exemptions or other administrative concessions provided for in the Inland Revenue Acts (as defined in s YA 1 and listed in Schedule 1 of the Tax Administration Act 1994 (TAA)), for example the income tax exemption for amateur sports promoters and the income tax deduction of up to \$1,000.
10. A not-for-profit organisation may or may not be a charity, depending upon whether it satisfies the legislative requirements described in Part 1 of this Operational Statement. Additionally, a not-for-profit organisation may or may not be a donee organisation, depending upon whether it satisfies the legislative requirements described in Part 2 of this Operational Statement. Some not-for-profit organisations are both a charity and a donee organisation, while some are neither.

What is a charity?

11. There is no legislative definition of a "charity" in the Income Tax Act or in the Charities Act, however the hallmarks of a charity are that:

- it has a charitable purpose (as those purposes are defined in the two Acts and as set out from [34] below); and
 - the charitable purpose is of a public benefit.
12. Other relevant definitions in the Income Tax Act and Charities Act are set out below. The Income Tax Act defines a “tax charity” and a “charitable organisation,” while the Charities Act defines a “charitable entity”. A charitable entity that has obtained registration under the Charities Act is referred to in this Operational Statement as a “registered charity”.
13. All registered charities will meet the definition of tax charity under the Income Tax Act. However, there are other entities that are tax charities that are not registered charities. The diagram below illustrates how the definitions overlap.



14. Whether or not a charity is registered does not affect its legal status or its ability to accept funds from the public.
15. However, to qualify for concessionary tax treatment, a charity must meet the requirements set out in the Income Tax Act, as described in this Operational Statement.
16. Key definitions are set out below.
17. The Charities Act at s 4 provides that a “charitable entity” is a society, institution or the trustee(s) of a trust that is (or are) registered as a charitable entity under the Charities Act. Requirements for registration (s 13) are:
- for a society or institution – it must be established and maintained exclusively for charitable purposes (see [37] below) and not carried on for the private pecuniary profit of any individual; and
 - for trustees of a trust – the trust is of a kind in relation to which an amount of income is derived by the trustees in trust for charitable purposes. The name of the entity (per Charities Act s 6) must be the name of the incorporated board (if incorporated under Charitable Trusts Act 1957 (Charitable Trusts Act)) or the name of the trust, or a name nominated by the trustees if the trust does not otherwise have a name.
18. Once registered under the Charities Act, the charitable entity is known as a “registered charity”.

19. The Income Tax Act at s YA 1 provides a "charitable organisation" as meaning, for a quarter or an income year, an association, fund, institution, organisation, society or trust to which s LD 3(2) or schedule 32 applies. It may include an entity removed from the charities register (but only for a limited time), but it does not include a local authority, a public authority, or a university. Charitable organisations are discussed in more detail in Part 2 of this Operational Statement.
20. The Income Tax Act (ss YA1 and CW (5)) define a "tax charity" as including:
 - a trustee, society or institution registered as a charitable entity under the Charities Act;
 - a trustee, society or institution that has started the process of registration prior to 1 July 2008 and intends to complete the process and has not notified the Commissioner that it is not a tax charity;
 - a non-resident trustee, society or institution that carries out charitable purposes outside New Zealand which is approved by the Commissioner as a tax charity in circumstances where registration under the Charities Act is unavailable; and
 - entities removed from the register (but only for a limited period of time).

Role of Charities Services

21. The Charities Act provides for the registration of societies, trusts and institutions that advance charitable purposes that benefit the public. The purposes of the Charities Act include promoting public trust and confidence in the charitable sector, to encourage and promote effective use of charitable resources, to provide for registration and deregistration of charities and to require compliance with obligations set out in the Charities Act.
22. Under the Charities Act, three members of the Charities Registration Board (the Board) are appointed by the Minister responsible for administration of the Charities Act and are required to act independently from the Minister. The Board is the statutory decision maker responsible for decisions on the registration and deregistration of charities (s 8 of the Charities Act).
23. In addition, the Board delegates routine decisions to Charities Services, a business unit of the Department of Internal Affairs (DIA) (s 9 of the Charities Act).
24. Charities Services provides (s 10 of the Charities Act):
 - a registration and monitoring system for charitable entities;
 - collection and processing of annual returns, including making available registered charities' annual financial information on the publicly-accessible charities register;

- an inquiry function into alleged serious wrongdoing involving registered charities and significant or persistent breaches of the Charities Act;
 - for the supply of information to Inland Revenue; and
 - support and education to charities on good governance and management practice.
25. Charities Services maintains a [public, searchable register of registered charities](#). This register helps the public, funders and other users make better informed decisions about charities they may wish to support.
26. An association, organisation or fund cannot be registered with Charities Services unless it is also a society, institution or trust.
27. For a society or institution to be eligible to register with Charities Services, generally it must have been established and maintained exclusively for charitable purposes and not be carried on for the private pecuniary profit of any individual. If it is established and maintained for (or partly for) benevolent, philanthropic or cultural purposes that are not also regarded as charitable purposes, it may not be registered with Charities Services unless those purposes are ancillary to the charitable purposes.
28. In the case of trustees of a trust, the trust will qualify for registration with Charities Services if it is of a kind in relation to which an amount of income is derived by the trustees in trust for charitable purposes (s 13 of the Charities Act). Trusts that derive income in trust for benevolent, philanthropic or cultural purposes that are not also regarded as charitable purposes may not be registered with Charities Services unless those purposes are ancillary to the charitable purposes.
29. An entity may be removed from the register at their request or at the direction of the Board. The grounds for removal include where the entity is not, or is no longer, qualified for registration as a charitable entity, where the entity has engaged in serious wrongdoing or any person has engaged in serious wrongdoing in connection with the entity or where it has significantly and persistently failed to comply with the Charities Act (eg non-filing of annual returns). Before an entity can be removed, it has a reasonable opportunity to make submissions to the Board. The decision of the Board can be appealed to the High Court or be subject to an application for judicial review.
30. One of the Government's aims in establishing the charities registration process was to ensure, as much as possible, a seamless interface between a charity's registration and its entitlement to tax exemptions, including by way of s 30 of the Charities Act which allows Charities Services to provide information to Inland Revenue.
31. To further enable Charities Services and Inland Revenue to work together a Memorandum of Understanding (MoU) provides for the [sharing of information in respect of charitable entities](#).

32. All such information exchanges take account of relevant legislative provisions regarding confidentiality of tax information and also the requirements of the Privacy Act 1993 and the Official Information Act 1982.
33. The [Charities Services website](#) provides general information about charities and how to apply for registration.

Charitable purposes

34. For a society or institution to be a charity, it must be established and maintained exclusively for charitable purposes. For a trust to be a charity, its income must be derived by the trustees in trust for charitable purposes.
35. A charitable purpose must be for a public benefit within the sense the law recognises as charitable (*Re Greenpeace of New Zealand Incorporated* [2014] NZSC 105, [2015] 1 NZLR 169 at [29]; *NZ Society of Accountants v CIR* [1986] 1 NZLR 147 (CA) at 157). To constitute a public benefit, the benefit must be available to a large section of the community and the activities must not result in private benefit or profit to any individual. This is known as the public benefit test.
36. The public benefit test is applicable to charitable purposes, other than the relief of poverty (*Dingle v Turner* [1972] AC 601).
37. It is noteworthy that the matter of *Attorney-General v Family First New Zealand* (SC79/2020) was heard by the New Zealand Supreme Court in June 2021. In that matter, the Attorney-General appealed to the Supreme Court on the grounds that the majority of the Court of Appeal (which had found in favour of Family First) had erred in its decision that the Society's advocacy is charitable. The Court of Appeal reached this decision applying the Supreme Court's earlier decision in *Re Greenpeace of New Zealand Incorporated* [2014] NZSC 105, [2015] 1 NZLR 169.
38. The definitions of "charitable purpose" contained in s 5 of the Charities Act and s YA 1 are materially the same and relevantly provide that charitable purpose includes: "every charitable purpose, whether it relates to the relief of poverty, the advancement of education or religion, or any other matter beneficial to the community."
39. The definitions of charitable purpose also provide that a marae will have a charitable purpose where:
 - its physical structure is on Māori reservation land; and
 - its funds are only used for the administration and maintenance of the land and the structure of the marae, or for a purpose that is a charitable purpose (s 5(2)(b) of the Charities Act and s YA 1).

40. Further, the definitions of charitable purpose provide that the public benefit requirement for charitable purposes will not be defeated simply because beneficiaries or members are related by blood (s 5(2)(a) of the Charities Act and s YA 1).
41. An entity may be eligible for charitable registration, even if it has a non-charitable purpose, where the non-charitable purpose is merely ancillary (s 5(3) of the Charities Act).
42. In some circumstances, the promotion of amateur sport may be charitable. Sporting organisations are eligible for registration if the promotion of sport is the means by which a charitable purpose is purposed for example, the advancement of education or health (see s 5(2A) of the Charities Act).

Summary of concessional tax treatment available to charities

43. Tax charities in New Zealand are generally treated favourably for tax purposes as a reflection of wider government objectives to support the work that charities do.
44. This support is provided for in the Income Tax Act, primarily through income tax exemptions. One exemption is for the non-business (passive) income of a tax charity (s CW 41). Another exemption is for the business income of a tax charity, subject to the additional territorial and control restrictions defined below (s CW 42).
45. Income tax exemptions are a departure from the Government's broad-based, low-rate tax framework. Therefore, as a matter of general principle, exemption from income tax is restricted to organisations that are both not-for-profit and operate for the public benefit – the main category being registered charities.
46. Registered charities and certain other not-for-profit organisations with New Zealand purposes are also eligible to be treated as a donee organisation, meaning that taxpayers may receive tax benefits for donations of money made to these organisations. Donee organisations are discussed in more detail in Part 2 of this Operational Statement.
47. Other tax concessions available to charities include RWT exemptions, FBT exclusions, GST concessions, interest-free student loans for overseas volunteers of approved charitable organisations and concessions. Also discussed below are some special tax treatments of Māori organisations, including Māori organisations that are tax charities.
48. Tax concessions available to tax charities will not be available to a board incorporated under the Charitable Trusts Act, unless the board becomes a registered charity. For more information regarding the tax treatment of charitable trusts, see the section below on Charitable Trusts from paragraph [183].

49. One area where tax charities do not receive concessionary treatment is the imputation system. Under the imputation system, a company effectively attaches income tax credits (known as "imputation credits") to dividends distributed to shareholders. The shareholders then use those imputation credits to reduce their own income tax liability in respect of the dividend they receive. Where a shareholder is a tax charity that does not have to pay tax on the dividend received, the imputation credits cannot be used nor can the credits be refunded.
50. Queries concerning tax concessions can be directed to charities.queries@ird.govt.nz.

Income tax exemptions

Qualifying for income tax exemptions

51. Income tax exemptions for tax charities are provided pursuant to:
 - s CW 41 - exemption for non-business income;
 - s CW 42 - exemption for business income; and
 - s CW 43 - charitable bequests.
52. In addition, some entities that are not tax charities have specific exemptions from income tax. These entities include, amongst others, community housing trusts and companies (s CW 42B), friendly societies (s CW 44) and bodies promoting amateur games and sports (s CW 46).
53. There are also restrictions on when the non-business income of a council-controlled organisation (CCO) will be eligible for the income tax exemptions.
54. A CCO is defined in s YA 1 more broadly than in s 6(1) of the Local Government Act 2002 and can include an organisation that is not a company. Generally, an organisation will be a CCO where it:
 - is subject to the direct or indirect control of one or more local authorities; or
 - has the direct or indirect power to control at least 50% of the votes at any meeting of the members or controlling body of the organisation, or the direct or indirect right to appoint at least 50% of the trustees, directors or managers of the organisation.
55. A CCO will not be eligible for tax exemptions for non-business or business income unless it is (ss CW 41(4) and CW 42(2)):
 - operating a hospital as a charitable activity; or
 - operating a hospital as a charitable activity on behalf of the local authority.

Income tax exemption for non-business income (s CW 41)

56. Section CW 41 provides a tax charity with an income tax exemption for non-business income. An example of non-business income is investment income (for example, interest or dividends). Section CW 41 also allows the income tax exemption for non-business income of a deregistered charity (but only for a limited time).
57. This exemption does not apply to any income derived from a business carried on by, or for, or for the benefit of the tax charity (this situation is dealt with under s CW 42).

Income tax exemption for business income (s CW 42)

58. Section CW 42 provides an income tax exemption for business income when certain conditions are satisfied at the time the income is derived.
59. Where a tax charity carries on a business, its business income will be exempt if it satisfies requirements in s CW 42 including that it must be a registered charity.
60. A registered charity that carries on a business for or for the benefit of another tax charity is referred to as the "operating entity". A tax charity that receives income derived from a business carried on by an operating entity is referred to as the "controlling entity". (The controlling entity may also be a registered charity, but it is not required to be one.)
61. The main difference between the tests under s CW 41 and s CW 42 is that exemption under s CW 42 is subject to the additional territorial and control restrictions defined below.
62. Where the controlling or operating entity's charitable purposes are not limited to within New Zealand, the business income must be apportioned, and only the income apportioned to charitable purposes in New Zealand can be exempt. This is referred to as the "territorial restriction."
63. The "control restriction" requires that no person with some control over the business can direct or divert income derived from the business to their benefit or advantage.
64. To qualify for the business income exemption:
 - a tax charity must derive the income directly or indirectly from a business;
 - the business must be carried on by, or for, or for the benefit of the tax charity;
 - the entity carrying on the business must be a registered charity at the time the income is derived;
 - the territorial restriction must be satisfied; and

- the control restriction must be satisfied.
65. Each of these five requirements is discussed in a separate subsection below.
66. *Tax Information Bulletin* Vol 31, No 4 (May 2019) at pages 132-133 contains more information concerning the [applicability of the business income exemption under s CW 42](#).

Tax charity derives income directly or indirectly from a business

67. The first requirement in order to qualify for the business income tax exemption is that the tax charity must derive income directly or indirectly from a business.
68. "Business" is defined for the purposes of the Income Tax Act in s YA 1 as including any profession, trade, or undertaking carried on for profit.
69. The leading case on the meaning of "business" is *Grieve v CIR* [1984] 6 NZTC 61,682, which established:
- The words "for profit" in the context of the definition of "business" mean with the intention of making a profit;
 - A business means an activity of a commercial nature that is carried on in an organised and coherent way with the intention of making a profit (being a profit ascertained in accordance with ordinary commercial principles and excluding allowances and deductions provided as tax incentives);
 - To determine whether there is a business, it is necessary to consider the nature of the activities and the taxpayer's intention in carrying on the activities;
 - Both subjective and objective evidence is relevant in determining whether the taxpayer's intention in carrying on an activity is to make a profit. However, subjective evidence must be tested against objective evidence. The objective matters that may be relevant in determining a taxpayer's intention in carrying on an activity include the nature of the activity, the period over which it is engaged in, the scale of the operations and the volume of transactions, the commitment of time, money and effort, the pattern of activity and the financial results;
 - A taxpayer's motive (underlying purpose) for carrying on an activity is irrelevant in determining whether the activity is a business.
70. Many organisations in the not-for-profit sector engage in activities on a continuous and ongoing basis, commit time, money and effort to those activities, and conduct a large volume of transactions, with the intention of making a surplus. Organisations

that carry on this type of activity are carrying on a business, as that term is defined in s YA 1.

71. A trustee is treated as carrying on a business if they derive rents, fines, premiums, or other revenues from a trust asset and the asset was disposed of to the trust by a person having control over the business (as described below), and either the person retains or reserves an interest in the asset or the asset will revert to the person (s CW 42(3)).
72. Inland Revenue's Public Ruling *BR Pub 17/06 - Charitable and Other Donee Organisations and Fringe Benefit Tax*, while dealing primarily with the exclusion from FBT (under s CX 25), outlines [what constitutes a "business"](#).

Business carried on by, or for, or for the benefit of the tax charity

73. The second requirement in order to qualify for the business income tax exemption is that the business is carried on by the tax charity or the business is carried on for, or for the benefit of, the tax charity.
74. If the tax charity is carrying on a business the second requirement will be satisfied.
75. A business is carried on "for, or for the benefit of, a tax charity" where a registered charity (the operating entity) is carrying on a business for or for the benefit of the tax charity (the controlling entity).
76. Further, where a business is carried on by a registered charity in partnership with a non-charitable entity, or when an operating entity is carrying on a business with a non-charitable entity for, or for the benefit of, a controlling entity, the income derived may still be exempt under s CW 42 (subject to satisfaction of the territorial and control restrictions). See QB 21/03 - [Charities business exemption - business carried on in partnership](#).
77. A business is not automatically considered to be carried on for, or for the benefit of, a tax charity merely because some of the income from the business is paid to a tax charity. Instead, the business must be carried on for or for the benefit of the tax charity.
78. A business does not cease to be carried on for, or for the benefit of, a tax charity if the business income is accumulated from year to year, as long as the income and resulting assets are ultimately paid to the tax charity, see *Calder Construction Co Ltd v Commissioner of Inland Revenue* [1963] NZLR 921 (SC).

Entity carrying on the business must be a registered charity

79. The third requirement in order to qualify for the business income tax exemption is that the entity carrying on the business must be a registered charity at the time the income is derived.
80. From the 2020-21 income year, where business income is derived by an operating entity for a controlling entity, the operating entity must itself be a registered charity in order to qualify for the business income exemption. The controlling entity must be a tax charity. It may also be a registered charity (although this is not a requirement for a controlling entity).

Application of the territorial restriction

81. The fourth requirement in order to qualify for the business income tax exemption is that the territorial restriction is satisfied.
82. Where an entity's charitable purposes are limited to within New Zealand, the territorial restriction is satisfied and so no apportionment of income will be required.
83. However, where the charitable purposes are not limited to within New Zealand, the territorial restriction will apply, and the business income must be apportioned reasonably between the purposes within New Zealand and those outside New Zealand and taxed accordingly. Only income apportioned to the charitable purposes in New Zealand is exempt income (s CW 42(4)).
84. There is no prescribed apportionment methodology in s CW 42. However, in *CIR v Dick* [2002] 2 NZLR 560, (2001) 20 NZTC 17,396 (HC), Glazebrook J noted that one just and reasonable manner of apportioning income would be to examine the historical distribution pattern and apportion in that manner.
85. It is considered that a method which is based on the historical distribution pattern might be reasonable, subject to the following caveats:
 - where income has been retained by the taxpayer, an apportionment based on the historical distribution pattern might still be appropriate, provided that there are no indications the purposes of the taxpayer are to change in the future;
 - if apportionments have been based on a historical distribution pattern in the past, but the taxpayer's purposes change, apportionment would be justified to take that change into account.

86. This does not mean that a “historical distribution pattern” apportionment method is the only reasonable apportionment method. Other methods may be reasonable, depending on the facts of the case.
87. The courts have considered apportionment more generally in the context of allowable deductions. This case law can be useful in determining a reasonable apportionment (*Buckley & Young Ltd v CIR* (1978) 3 NZTC 61,271 (CA); *New Zealand Co-operative Dairy Co Ltd v CIR* (1988) 10 NZTC 5,215 (HC); *Christchurch Press Co Ltd v CIR* (1994) 16 NZTC 11,124 (HC)). These cases establish that with regard to determining what is reasonable in cases of apportionment:
- where an amount can be apportioned rateably it should be, but where it serves two purposes indifferently the best apportionment that can be made must be made based on the facts of the case; and
 - although an apportionment cannot be based on mere speculation, it is accepted that absolute precision may not be possible, and some degree of arbitrariness will be acceptable if no better apportionment can be made on the facts.
88. The term “New Zealand” is defined in s YA 1. It is an inclusive definition (and so not exhaustive) and includes the continental shelf and the water and air space above the continental shelf that is beyond New Zealand’s territorial sea (subject to some limitations). In essence, “in New Zealand,” when used as a territorial description, means the islands and territories within the Realm of New Zealand; but does not include the self-governing State of the Cook Islands, the self-governing State of Niue, Tokelau, or the Ross Dependency.
89. When tax charities undertake an on-going self-assessment (required of all tax charities at least year by year), they must calculate a reasonable apportionment between charitable purposes within New Zealand and those outside New Zealand, where applicable. The tax charity must keep records to show where its charitable purposes are carried out, either in New Zealand or outside New Zealand. Additionally, the tax charity must keep records of the methodology and rationale it has used to apportion business income.

Application of the control restriction

90. The fifth requirement in order to qualify for the business income tax exemption is that the control restriction is satisfied.
91. In this regard, the controlling entity and the operating entity are each required to ensure no person with some control over the business is able to divert an amount derived from the business for their own benefit or advantage or for the benefit or

advantage of another person that is not for the purpose of the tax charity (see ss CW 42(5) to (8)).

92. In any audit, the documentation will be examined to determine whether a person with some control over the business is able to exert influence that would enable someone to receive a benefit or advantage.
93. Adequate records of the decision-making process (for example, minutes of meetings and resolutions), as well as documentation including trust deeds, constitutions and accounting records must be kept. The meanings of "some control over the business" and "benefit or advantage" are discussed below.

Meaning of "some control over the business"

94. The first matter to be consider within the control restriction is whether any person has some control over the business to be able to divert an amount.
95. There is a wide spectrum of situations in which a person may be able to exercise some control over a business. At one extreme there would be situations of duress or oppressive conduct, or where the person controls the decision-making in terms of majority voting rights, or with associated persons controlling the board, or where the trust instrument grants a right of veto over decisions to that person. At the other end of the spectrum are cases where the settlor is consulted but has no power to direct, or the person in question is only one of a number of trustees or directors involved in decision making.
96. Generally, whether a person is able to divert an amount by materially influencing decisions is a matter of fact and degree. When considering whether a person has some control over the business, is not necessary for the benefit or advantage to be actually received.
97. Under s CW 42(7), a person does not have some control over a business merely because they provide professional services to the trust or company by which the business is carried on and their ability to determine the benefit or advantage arises because they are:
 - providing services in professional public practice;
 - a statutory trustee company;
 - the Public Trust; or
 - the Māori Trustee.
98. Under s CW 42(5), a person is treated as having some control over the business of the charity, and as being able to direct or divert amounts from the business to their own benefit or advantage, if in the tax year they are in any way, directly or indirectly, able to

determine or materially influence the determination of the nature or extent of a relevant benefit or advantage, or the circumstances in which a benefit or advantage is given or received, because they are:

- a settlor or trustee of the trust carrying on the business;
- a shareholder or director of the company carrying on the business;
- a settlor or trustee of a trust that is a shareholder of the company carrying on the business; or
- an associated person of any settlor, trustee, shareholder or director described above.

99. In instances where there are two or more persons who are able to influence a decision, whether a person is able to *materially* influence may depend on whether the person actually participates in the discussion and decision making. Even if a person is in the minority of the decision-making group, they may still exert material influence over the decision to their advantage, for example because they are well regarded.
100. Where there is a sole trustee, it would be implied that the sole trustee would be able to exert the requisite influence.
101. The past behaviour, such as the pattern of distributions or whether any benefits have been afforded at any time to any person who is able to influence the entity by virtue of their status, can be a guide to whether in practice the person in question is able to materially influence the setting of benefits (*CIR v Dick* [2002] 2 NZLR 560, (2001) 20 NZTC 17,396 (HC)).
102. Where it is clear that the setting of any benefit or advantage has been undertaken in a scientific manner to ensure that market value is paid, the Commissioner will accept that there has been no material influence to provide a benefit or advantage (*CIR v Dick* [2002] 2 NZLR 560, (2001) 20 NZTC 17,396 (HC)).
103. A person's legal, as well as practical, ability to divert an amount by influencing the decision will be considered (*CIR v Dick* [2002] 2 NZLR 560, (2001) 20 NZTC 17,396 (HC)).
104. The Companies Act 1993 (Companies Act) provides certain rights and powers to shareholders and directors. Where any such rights enable a person to influence the decisions of the business to divert an amount from the business to the benefit or advantage of a particular person that is not for the purpose of the operating entity or controlling entity, then the income derived from that business will not be exempt from tax under s CW 42 because the control test is not satisfied. Special provisions may be enacted by the company's board to restrict or eliminate the powers given by the Companies Act to shareholders or directors which could enable them to influence company decisions.

Meaning of “benefit or advantage”

105. The second matter to be considered within the control restriction is whether a person with some control over the business (as described above) can direct or divert an amount derived from the business to the benefit or advantage of a person as described in s CW 42(1)(c).
106. A benefit or advantage that is received or able to be received by a person is defined widely in s CW 42(8) and includes, for example:
- receiving something that may or may not be convertible into money;
 - deriving an amount that would be income of the person (with certain exclusions); and
 - retaining or reserving an interest in an income-earning asset, if the person has disposed of the asset to the trust or the asset will revert to them.
107. For example, there will not be a benefit or advantage when the charity lends (or borrows) at current commercial rates, bearing in mind the nature and term of the loan. The Commissioner uses the current commercial rates published by the Reserve Bank as a guide to current commercial rates.

Charitable bequests (s CW 43)

108. Another income tax exemption that may be available relates to charitable bequests. A charitable bequest is a gift made to a charity in a will.
109. The intent of s CW 43 is to exempt income accruing to an executor or administrator of a deceased’s estate to the extent to which:
- the amount arises or is attributable to assets of the estate that have been left to a tax charity (s CW 43(2)), and
 - the amount, if derived by the tax charity would have been exempt income under s CW 41 (non-business income) or s CW 42 (business income) (s CW 43(3)).
110. Section CW 43 operates to allow income derived by the deceased’s executor or administrator between the date of death and the end of income year following the income year in which death occurred to be exempt, regardless of the charity not being registered under the Charities Act. Income accruing between the date of death and the distribution of the estate would be taxable, if it was not for s CW 43(4) and s CW 43(5). Any such income derived by the charity after this period will not be exempt, however, unless the charity is a tax charity.

Resident withholding tax exempt status

111. From 1 April 2020, the Commissioner accepts a person registered under the Charities Act as having RWT-exempt status for the duration of their registration, and they will no longer need to apply for an exemption certificate.
112. Entities that held a RWT certificate of exemption prior to 1 April 2020 were added to the electronic register of those with RWT-exempt status unless their exemption was cancelled, expired or was revoked, or if the entity was exempt under an act other than the Inland Revenue Acts and it has not been approved under criteria contained in the Inland Revenue Acts.
113. Payers of non-business income to tax charities can now check in real-time, by IRD number, that an entity has RWT-exempt status and the date from which that exemption started on the [RWT-exemption register](#) (see s RE 29).
114. The Commissioner also publishes the date that RWT-exempt status ended on the RWT-exemption register. (The start and end dates of RWT-exemption is no longer published in the New Zealand Gazette).
115. Entities on the RWT-exemption register must notify the Commissioner if they no longer meet the criteria for the exemption, unless they are a charity that is deregistered in which case the Commissioner will receive the information from Charities Services directly (s 32K(2) of the TAA). For more information regarding RWT-exemption status when a charity is deregistered see [222].
116. More information about [RWT generally](#) is available on Inland Revenue's website, including in the *RWT on interest – payer's guide (IR283)* and the *RWT on dividends – payer's guide (IR284)*.

Non-resident withholding tax

117. If a charity pays passive income (such as interest or dividends) to a non-resident (referred to as non-resident passive income (NRPI)), the charity will need to register as a non-resident withholding tax (NRWT) payer, deduct NRWT from the payment and remit the NRWT to the Commissioner.
118. Note that NRPI does not include exempt income, such as the passive investment income of a non-resident charity recognised as a "tax charity" (s CW 41(5)).
119. More information about [NRWT generally](#) is available in Inland Revenue's *Non-resident withholding taxpayer's guide (IR291)*.

Fringe benefit tax exclusion

120. Charitable organisations are liable for fringe benefit tax (FBT) *unless* the exclusion from FBT in s CX 25 applies to them.
121. The exclusion in s CX 25 applies to charitable organisations which are defined at s YA 1 with a wider meaning than simply charities registered under the Charities Act. It includes most organisations usually referred to as “donee organisations”, that is, any association, fund, institution, organisation, society or trust that is not carried on for the private pecuniary profit of an individual and whose funds are applied wholly or mainly to benevolent, charitable, philanthropic or cultural purposes. For more detailed information about donee organisation eligibility and obligations see Part 2 of this Operational Statement.
122. The definition of charitable organisation also includes registered charities that have been removed from the register that have challenged the decision and have not yet received a final decision.
123. Local authorities, public authorities and universities are specifically excluded from being charitable organisations (and so the ordinary FBT rules apply to them).
124. For ease of reference, in this Operational Statement the types of charities that can rely on the FBT exclusion in s CX 25 are referred to as “qualifying organisations”.
125. Qualifying organisations carry on a variety of activities. Those activities may include business activities. Those business activities may be within the organisation’s benevolent, charitable, cultural or philanthropic purposes or outside those purposes – even if undertaken to help fund the organisation’s benevolent, charitable, philanthropic or cultural purposes.
126. The exclusion from FBT for qualifying organisations is set out in s CX 25(1) and applies to the extent to which the qualifying organisation provides a benefit to an employee mainly in connection with their employment, and either:
 - the qualifying organisation’s activity is not a business; or
 - the qualifying organisation’s activity is a business, and the business activity is within the qualifying organisation’s benevolent, charitable, cultural or philanthropic purposes.
127. The FBT exclusion does not apply where the benefits provided are certain types of short term charge facilities (s CX 25(2) and (3)).

Meaning of “mainly in connection with employment”

128. Section CX 25(1)(a) applies only where the employee receives the benefit mainly in connection with their employment.

129. This wording recognises that a qualifying organisation may provide benefits to people who are acting in different capacities for the organisation. It is not unusual for people to be employed by the organisation in a particular role and for those same people to also provide additional or different services to the organisation, for example, on a voluntary (unpaid) basis.
130. A potential liability for FBT will arise only where an employee receives a benefit from a qualifying organisation mainly in their employment capacity and not in some other capacity (eg in their voluntary capacity).
131. A benefit will be provided to an employee of a qualifying organisation **mainly** in connection with their employment if the benefit arises primarily in connection with their employment. If an employee is only employed by a qualifying organisation, and does not do voluntary work, then any benefits provided to that employee will be provided in connection with their employment. But if, for example, the employee is both employed by, and works as a volunteer for, a qualifying organisation, it will be necessary to determine in which capacity the benefit primarily arises.
132. If it arises equally in connection with both capacities, the benefit will be provided mainly in connection with the capacity in which the employee is predominately engaged.

Activity that is not a business

133. Where the qualifying organisation's activity is not a business, and a benefit is provided to an employee mainly in connection with their employment, the exclusion from FBT will apply.
134. For the meaning of business and carrying on a business, refer to the section on "Derive income directly or indirectly from a business" above from [67].

Activity that is a business and "within the qualifying organisation's benevolent, charitable, cultural or philanthropic purposes"

135. Where the qualifying organisation's activity is a business, and a benefit is provided to an employee mainly in connection with their employment, the exclusion from FBT will apply only if the business activity is within the qualifying organisations benevolent, charitable, cultural or philanthropic purposes.
136. Determining whether a qualifying organisation's business activity is within its benevolent, charitable, cultural or philanthropic purposes requires an understanding of the types of activities the qualifying organisation is carrying on.

137. The Commissioner considers activities are carried on within a qualifying organisation's purposes when they:
- are the performance of a qualifying organisation's benevolent, charitable, cultural or philanthropic purposes; or
 - directly facilitate the carrying out of the qualifying organisation's benevolent, charitable, cultural or philanthropic purposes.
138. Activities the Commissioner considers will usually be characterised as being carried on within a qualifying organisation's purposes include:
- the carrying out of the qualifying organisation's purposes;
 - appeals for funds for the qualifying organisation's purposes;
 - passive investment and management of the qualifying organisation's funds, so long as the organisation does not carry on a business of fund investment; and
 - the administration of the above activities.
139. If the employment of the qualifying organisation's employee consists of the carrying on by the organisation of a business whose activity is outside the organisation's charitable, benevolent, philanthropic or cultural purposes, benefits provided to the employee will not come within the exclusion provided by s CX 25 and so the organisation may be subject to FBT.
140. Public Ruling - *BR Pub 17/06*, which relates to [charitable and other donee organisations and fringe benefit tax](#) provides a number of practical examples of where the FBT exclusion will apply and/or not apply (from p 16).

Short term charge facilities

141. The exclusion from FBT in s CX 25(1) does not apply to the provision of short-term charge facilities in specified circumstances (see s CX 25(2) & (3)).
142. A short-term charge facility as defined in s CX 25(3), is an arrangement that:
- enables an employee of the qualifying organisation to obtain goods or services that have no connection with the employer or its operations by either: buying or hiring the goods or services, charging the costs of the goods or services to an account, or providing consideration other than money for the good or services; and
 - requires the employer to provide some or all of the payment or other consideration for the goods or services; and
 - is not a fringe benefit under s CX 10.

143. A short-term charge facility includes some vouchers but does not include an employment-related loan (s CX 10). An [example of a fringe benefit provided by way of a short-term charge facility](#) is contained in *BR Pub 17/06* at p17.
144. A taxable fringe benefit is provided when a qualifying organisation provides a benefit to an employee by way of a short-term charge facility and the value of the benefit is more than the lesser of 5% of the employee's salary and wages for the tax year and \$1,200.

Goods and services tax and non-profit bodies

145. The Goods and Services Tax Act 1985 (GST Act) has provisions relating to a "non-profit body" (see s 2(1) of the GST Act). For the purposes of the GST Act, a non-profit body is any society, association, or organisation, whether incorporated or not:
- which is carried on other than for the purposes of profit or gain to any proprietor, member, or shareholder; and
 - which is, by the terms of its constitution, rules, or other document constituting or governing the activities of that society, association, or organisation, prohibited from making any distribution whether by way of money, property, or otherwise howsoever, to any such proprietor, member or shareholder.
146. In general, charities will fall within the definition of non-profit body (within the GST Act), dependent upon the terms of their constitution and rules.
147. The threshold for mandatory GST registration for a non-profit body is the same as for any other entity, as is the requirement for keeping GST records (see the section on "Administrative tax requirements" below for more detail). Non-profit bodies operating below the threshold for mandatory GST registration may voluntarily register. However, in either case (ie, mandatory or voluntary registration) the non-profit body must have a taxable activity to qualify.
148. Consistent with the general rules for GST, the taxable activity of a non-profit body must be a continuous or regular activity involving the making of supplies of goods and/or services for consideration.
149. Consideration in relation to the supply of goods and services to any person, includes any payment made or any act or forbearance, whether or not voluntary, in respect of, in response to, or for the inducement of, the supply of any goods and services, whether by that person or by any other person; but does not include any payment made by any person as an unconditional gift to any non-profit body (s 2(1) of the GST Act).
150. An unconditional gift means a payment, voluntarily made to any non-profit body for the carrying on or carrying out of the purposes of that non-profit body and in respect of which no identifiable direct valuable benefit arises or may arise in the form of a

supply of goods and services to the person making that payment, or any other person where that person and that other person are associated persons; but does not include any payment made by the Crown or a public authority (s 2(1) of the GST Act). The receipt and payment of unconditional gifts (donations) are therefore outside the scope of GST. Further information on [unconditional gifts and GST](#) is contained in IS 20/09 *GST - unconditional gifts*.

151. GST registered non-profit bodies can claim an input tax deduction for most goods and services they acquire (even if the goods and services do not directly relate to the making of taxable supplies), to the extent that they are not used for the making of exempt supplies (s 20(3K)).
152. An example of an exempt supply is the supply by any non-profit body of donated goods and services (s 14(1) of the GST Act). Donated goods and services are goods and services which are gifted to a non-profit body and are intended for use in the carrying on or carrying out of the purposes of that non-profit body (s 2(1) of the GST Act). For example, the sale of donated clothing by a non-profit body would be an exempt supply and therefore not liable to GST.
153. An asset sold by a non-profit body will be subject to GST on the sale (or an equivalent event) if GST input tax deductions have been claimed by the non-profit body in respect of the asset.

Election for an asset to not be part of taxable activity

154. Between 15 May 2018 and 1 April 2021, a non-profit body could have made an election under s 20(3KB) of the GST Act, with respect to a supply, to exclude the supply from the effect of s 20(3K).
155. When such an election was made with regards to an asset, then, when that asset is sold by the non-profit body it will not be subject to GST on the sale (or an equivalent event).

Valuation on deemed disposal of assets by GST deregistration

156. Section 88 of the GST Act provides for the valuation of supplies of assets used by GST-registered non-profit bodies and requires:
 - a non-profit body to be bound by a tax position concerning the output tax on the disposal of an asset if the tax position is taken in a return **before** 15 May 2018 (see ss 88(1) and (2) of the GST Act); and
 - the availability of an election concerning the value of a supply that is made **during the period** 15 May 2018 to 1 April 2021 as a consequence of the GST deregistration of the non-profit body (see ss 88(3) to (5) of the GST Act).

Input tax credit limitation for the acquisition of second-hand goods

157. The amount of input tax credit that may be claimed by a registered recipient of a second-hand good that has been subject to an election under ss 20(3KB) or 88(4) is limited to the amount of GST paid by the non-profit body under the election. This limitation will apply when the recipient is either:
- associated with the original owner;
 - a non-profit body; or
 - associated with a non-profit body (see s 88(6) to (8) of the GST Act).

Further GST information

158. Other provisions of the GST Act that may be relevant to non-profit bodies include s 2A(1)(f)-(h) (*Meaning of associated persons*), s 16(3) (*Taxable period returns*), s 19A(1)(a)(iii) (*Requirements for accounting on payments basis*), s 19D(2B) (*Invoice basis for supplies over \$225,000*) and s 51(5) (*Persons making supplies in course of taxable activity to be registered*).
159. For more information concerning [GST and non-profit bodies](#), including examples, see *Tax Information Bulletin*, Vol 31, No 4 (May 2019) at pages 101 to 106.
160. More generally, the Inland Revenue guide - [Charitable and donee organisations \(IR255\)](#) contains helpful information about GST, and see also the Inland Revenue guide - [GST - Working with GST \(IR375\)](#).
161. A useful [GST reference table](#) sets out below categories of supplies by non-profit bodies that are liable for GST, not liable for GST and exempt from GST.

Type of receipt	Liable for GST	Not liable for GST	Exempt from GST
Subscriptions	✓		
Donations		✓	
Koha		✓	
Bequests		✓	
Grants	✓		
Unconditional gifts		✓	
Subsidies	✓		
Suspensory loans	✓		
Trading activities	✓		

Type of receipt	Liabe for GST	Not liable for GST	Exempt from GST
Raffles or housie proceeds	✓		
Admission fees	✓		
Affiliation fees	✓		
Sale of donated goods or services			✓
Sale of purchased goods	✓		
Sale of assets or equipment	✓		
Insurance receipts	✓		
Hall or equipment hire	✓		
Rent received (residential)			✓
Rent received (commercial)	✓		
Penalty payments (fines)	✓		
Advertising or sponsorship	✓		
Interest or dividends			✓
Gaming machines	✓		

Interest-free student loan concession

162. Normally, when someone with a student loan travels overseas for more than six months, they are charged interest on their loan.
163. If a charitable organisation obtains approval under the Student Loan Scheme Act 2011, then volunteers working for the organisation overseas may be able to keep their student loan interest-free. The concession may apply if work is performed for no more than 24 months and either as a volunteer or for no more than a token payment.
164. The volunteer work for the charitable organisation must be to either:
- relieve poverty, hunger, sickness, or the impacts of war or natural disaster; or
 - improve the economy or raise educational standards in a country that is on the OECD list of countries receiving development assistance.

165. For a charitable organisation to obtain this approval, it must submit a letter to the Commissioner explaining why the organisation should be granted approval. The organisation should send the letter through myIR if it has such an account, otherwise via email to: charities.queries@ird.govt.nz or via mail to Inland Revenue, PO Box 1147, Palmerston North Central, Palmerston North 4440.
166. The letter should include:
- whether the charitable organisation is a registered charity;
 - whether the charitable organisation is a non-resident tax charity with an income tax exemption approved by the Commissioner;
 - information on the work the charitable organisation does;
 - details of the work volunteers will do for the charitable organisation; and
 - details of any payments for which the volunteers will qualify.
167. If the charitable organisation is not a registered charity in New Zealand, it will need to provide additional information such as:
- a copy of the charitable organisation's trust deed, constitution, or other governing rules;
 - whether it is recognized as a charitable organisation with an overseas tax authority or Government charity regulator (if so, copies of the relevant documentation should be provided);
 - evidence of standing and credibility as a charitable organisation;
 - whether the charitable organisation is publicly accountable;
 - the monitoring and evaluation processes in place;
 - accounting and record keeping practices; and
 - any other relevant matters.
168. If the Commissioner approves the charitable organisation as one whose volunteers may be exempted from interest on their student loans, it will be added to the approved charitable organisation list. It may then apply for the suspension of interest on the student loans of its volunteers, if the criteria are satisfied.
169. The application to suspend interest on a particular volunteer's student loan will need to be made to the Commissioner by submitting a letter, on the charitable organisation's letterhead, stating:
- the volunteer's name;

- the volunteer's IRD number;
- the length of time the volunteer will spend overseas;
- the specific tasks and duties the volunteer is undertaking; and
- details of any payments the volunteer may receive for the work.

170. More information is available on the Inland Revenue website regarding the [interest-free student loan concession](#).

Māori organisations

171. A large number of Māori organisations including marae are registered charities with obligations, advantages, and tax treatment consistent with charities generally. However, there are some specific rules to note.

172. In addition to charitable purposes including the relief of poverty, the advancement of education or religion, or any other matter beneficial to the community, the definition of charitable purpose (s YA 1 and s 5 of the Charities Act) also provides that:

- A marae will have a charitable purpose where:
 - (i) its physical structure is on Māori reservation land; and
 - (ii) its funds are only used for the administration and maintenance of the land and the structure of the marae, or for a purpose that is a charitable purpose (s 5(2)(b) of the Charities Act and s YA 1).

173. The definitions of charitable purpose also provide that the public benefit requirement for charitable purposes will not be defeated simply because beneficiaries or members are related by blood (s 5(2)(a) of the Charities Act and s YA 1).

174. Māori organisations can receive many types of payment, such as subscriptions, grants, subsidies, donations or koha, fees, raffle money, and trading profits from selling assets. Most of these income types are taxed under general taxation principles, with some specific treatment. Information relating to the tax treatment of payments and gifts in the Māori community is contained in Inland Revenue's factsheet - [Payments and gifts in the Māori community \(IR278\)](#).

175. Further information can be found in Part 2 of this Operational Statement in relation to, for example, treatment of koha and Māori donee organisations generally.

Charitable registration of a marae on Māori reservation land

176. To register as a charity with Charities Services, a marae on a Māori reservation land should provide Charities Services with the following:

- The Māori reservation location (block name and/or number or Māori Land Court order or Gazette notice relating to the setting apart of land as a Māori reservation);
- a copy of its charter (drawn up by the reservation trustees), if available;
- any other governing document (rules, trust deed, constitution, etc.);
- details (names, position, addresses, dates of birth) of the trustees of the Māori reservation;
- information about the marae - who is part of the marae (such as iwi, hapū, whanau, church, wider community, or other specific groups); and
- details of the activities of the marae (such as provision of facilities for hui, whanau gatherings, wānanga, community gatherings and meetings), organise events (such as cultural, sporting, local community, fundraising and educational events), run programmes (such as training services, social or health services), run events to promote religious beliefs; run language/cultural groups), hold tangi and unveilings and look after urupā, and any other specific activities.

Registration of Māori entities under the Charitable Trusts Act

177. Many Māori organisations with charitable purposes, such as Māori private training establishments and Hauora and certain hapū and iwi organisations, seek incorporation as a board under the Charitable Trusts Act (see the section on Charitable Trusts from [183]).

Trusts established under the Te Ture Whenua Māori Act 1993

178. The Te Ture Whenua Māori Act 1993 was established to assist in retaining Māori land (comprising Māori customary land and Māori freehold land) in Māori ownership. Five types of land-holding trusts can be established under this Act and they are generally designed to limit the further fragmentation of Māori land titles by limiting certain rights of succession.

179. Under s 245 of the Te Ture Whenua Māori Act, the trustees of any trust established under that Act may apply to the court for an order that they hold any part of the trust's income on trust for such charitable purposes as are specified in the court order.
180. Where the income derived by the trustees is deemed to be income derived by trustees in trust for charitable purposes under s 24B of the Māori Trust Boards Act 1955 they meet the principal requirement for registration under the Charities Act (s 13 Charities Act) and if registered under the Charities Act its income could be exempt under ss CW 41 or CW 42.

Deregistration for marae built on reservation land established under the Te Ture Whenua Māori Act

181. A deregistered charity will generally be required to pay tax on the net assets that it retains (deregistration tax). See [201] on deregistration.
182. For the purposes of deregistration tax, in the context of a marae on Māori reservation land, the value of the land and improvements on the land will be excluded from the net asset calculation (s HR 12).

Charitable Trusts

183. Section HC 13 defines a charitable trust, for the purposes of the "trust rules" (also a defined term – see s YA 1), as a trust:
- for which all income derived or accumulated, in the current or any earlier income year, is held for charitable purposes; and
 - for which any income derived in the current year is exempt income under s CW 41(1) or s CW 42(1).
184. The charitable trust may or may not be incorporated under the Charitable Trusts Act, however in order to be eligible for an income tax exemption under ss CW 41 or CW 42, the charitable trust must *also* be a registered charity under the Charities Act.
185. Under the Charitable Trusts Act, a charitable society or the trustees of a charitable trust may be incorporated as a board and included on the register of charitable trusts maintained by the Companies Office. As with any charity, these boards may make profits on their trading activities, but the profits must be used for their charitable purposes and cannot be distributed to members. Boards incorporated under the Charitable Trusts Act may be eligible for tax concessions if they meet the requirements for those concessions. For example, the charitable income tax exemptions (ss CW 41 and CW 42) require a charity to be a tax charity, which may require registration under the Charities Act. Similarly, charities must be registered in order to access donee status unless the Commissioner approves their donee status where they have benevolent,

philanthropic or cultural purposes (see s LD 3(3) and Part 2 of this Operational Statement).

186. Special rules regarding distributions and settlor liability apply to charitable trusts.
187. While many charitable trusts will not have “beneficiaries”, and will instead use funds for charitable purposes, the s YA 1 definition of charitable purposes is broad enough to include trusts that have beneficiaries. Distributions of amounts that are not beneficiary income will be exempt income under ss HC 20 and CW 53. Distributions of beneficiary income, where that income is exempt income of the charitable trust under ss CW 41 or CW 42, will be exempt income of the beneficiary.
188. A settlor can be liable, as agent of the trustee, for the tax liabilities of the trustee where no trustee is resident in New Zealand. However, this rule does not apply to settlors of charitable trusts (s HC 29(4)). This rule ensures residents who make donations to charitable trusts that have non-resident trustees are not liable for any tax liabilities of the trust.
189. Charitable trusts are subject to the provisions of the Trusts Act 2019 that sets out mandatory and default duties of the trustees. However, the one duty that will not impact trustees of Charitable Trusts is the requirement that trustees disclose basic trust information to beneficiaries (s 50(2) of the Trusts Act 2019).
190. For more information regarding the tax treatment of charitable trusts, see Inland Revenue Interpretation Statement IS 18/01 –[Taxation of Trusts](#) at pages 86-89.

Non-resident charities

191. To be eligible for registration by Charities Services, a non-resident charity must be either:
 - established in New Zealand; or
 - have a very strong connection to New Zealand.
192. To be registered with Charities Services, charities do not have to be incorporated. However, if a non-resident charity is incorporated, it must be incorporated under New Zealand law to be considered “established in New Zealand.” For example, a non-resident charity that is a company must be incorporated in New Zealand under the Companies Act.
193. If a non-resident charity is not incorporated under New Zealand law, it can be registered with Charities Services if it has a very strong connection to New Zealand. For more information about how Charities Services determines if there is a “very strong connection to New Zealand” see [Charities Services website page on international charities and activities](#).

194. Non-resident charities that cannot be registered by Charities Services may still apply to the Commissioner for an exemption from income tax as a "tax charity" (s CW 41(5)(c)). The organisation will need to fulfil the Commissioner's required criteria as set out in the [guidelines for being a non-resident tax charity](#).

Guidelines for non-resident charities applying to be a tax charity

195. When making an application to the Commissioner to be recognised as a tax charity, the non-resident charity must either:
- produce evidence of having been declined registration by Charities Services; or
 - explain why it considers it would not be able to be registered with Charities Services.
196. A non-resident charity seeking to be recognised as a tax charity must satisfy the Commissioner that it:
- is not resident in New Zealand;
 - has purposes that are recognised as charitable under any of the following charitable heads - the relief of poverty, the advancement of education, the advancement of religion, or any other matter beneficial to the community;
 - is recognised as having the equivalent of registered charitable status in a jurisdiction other than New Zealand;
 - carries out its charitable purposes overseas; and
 - provides a public benefit and does not apply its funds for private pecuniary profit.
197. Applications to be recognised as a tax charity should include the following:
- a notice of endorsement for charity tax concessions provided by the non-resident charity's domestic revenue authority;
 - a letter from the domestic revenue authority confirming the charity is resident in that country and is exempt from income tax as a charity; and
 - any other evidence of registration as a charity in non-resident charity's home jurisdiction.
198. If the Commissioner approves the non-resident charity as a tax charity, it may be eligible for the non-business (passive) income exemption under s CW 41. The non-resident charity will only be eligible for the business income exemption under s CW 42 if it satisfies all the tests set out above at [58].

199. If a non-resident charity is not exempt from New Zealand tax under the provisions of ss CW 41 or CW 42, it may be eligible for relief from taxation in New Zealand under a Double Tax Agreement (DTA) between New Zealand and the country of residence of the non-resident charity. This hyperlink contains more information on DTAs generally, with links to the [DTAs that New Zealand has in place](#).
200. Application should be made using the [application for a non-resident charity to be a tax charity](#) and should be sent to: Inland Revenue, PO Box 1147, Palmerston North Central, Palmerston North 4440.

Tax implications of ceasing to be a tax charity or deregistration

201. A charity's tax obligations, including income tax, RWT-exemption, FBT- exclusion and donee organisation status may all be impacted if it ceases to be a tax charity or is deregistered. Additionally, a charity may be subject to a "deregistration tax" when it ceases to be a tax charity or when it is deregistered.
202. A charity is deregistered when it is removed from the register held by Charities Services (s 32 of the Charities Act). A charity ceases to be a tax charity when it no longer meets the requirements in the definition of tax charity in the Income Tax Act, above at [16].
203. A charity that has ceased to be a tax charity or that has been deregistered will need to determine whether any new tax obligations will apply and from what date.

The date from which tax obligations will apply

204. Where a charity ceases to be a tax charity, tax obligations will arise from the date that it ceases to qualify as a tax charity.
205. Where a charity is deregistered, when tax obligations will arise depends on why the charity was deregistered:

Situations triggering deregistration	Date tax obligations will apply
Voluntary deregistration (provided the charity does not come within any of three situations below) -	from the date it voluntarily deregistered.
Failure to file annual returns with Charities Services as required (provided the charity has otherwise always kept to its rules held on the Charities Register) -	from the date it is deregistered or all appeals are final or exhausted, whichever comes later.
Failure to keep to its rules held on the Charities Register (after an initial period of compliance) -	from the date it stopped keeping to its rules (unless it is otherwise exempt).
Failure to keep to its rules held on the Charities Register from the time of registration -	as if it was never a tax charity.

Income tax rates applicable after ceasing to be a tax charity or upon deregistration

206. If a charity is incorporated under the Incorporated Societies Act 1908 or the Companies Act, then it is considered to be a company for income tax purposes. If it does not qualify for a tax exemption, its income is taxed at the company rate.
207. A charity that operates as a trust, including trusts incorporated under the Charitable Trusts Act, that are not tax-exempt are liable for tax on the trustee's income. The Inland Revenue guide - [Trusts and estates income tax rules \(IR288\)](#) provides more information.
208. A charity that is not incorporated under a specific Act, that is not entitled to a tax exemption, will be liable for income tax at the same rate as an individual taxpayer. However, it will not qualify for any of the tax credits that individual taxpayers can claim.

Income tax on net assets of deregistered charity ("deregistration tax")

209. A tax applies on the current market value of accumulated net assets of a deregistered charity if it does not dispose of or transfer its net assets for a charitable purpose within one year of deregistration. The value of the net assets retained will be treated as income unless the deregistered charity qualifies for another tax exemption. The

income tax on the value of net assets is commonly referred to as the “deregistration tax” (ss CV 17 and HR 12).

210. Deregistration tax will apply unless a deregistered charity has, within one year from its end date (the day of final decision, s HR 12(7)), either:

- re-registered as a charity; or
- disposed of or transferred its net assets:

to a registered charity; or

for charitable purposes, or

as set out in its rules while it was on the Charities Register.

211. A deregistered charity that has not taken these actions will need to include the current market value of its net assets on deregistration in its income tax return (unless it is exempt under a provision other than ss CW 41 or CW 42).

212. The income tax return which must include the value of the deregistered charity’s net assets is the return for the period that includes the day one year after the end date.

213. For example, if a charity voluntarily deregisters on 1 November 2020 and it keeps some assets, it will need to include the value of these assets in its 2022 income tax return. This is because 2 November 2021 (the day one year after the end date) is in the 2022 income year.

When a charity will not be liable for deregistration tax

214. In the following circumstances, a deregistered charity will not be liable to pay the deregistration tax:

- if the charity was involuntarily deregistered by Charities Services or the Board prior to 1 April 2015 (ss 31 and 32(a) – (e) of the Charities Act);
- if the charity was voluntarily deregistered prior to 14 April 2014;
- if the charity is deregistered after 1 April 2019, and it had net assets worth \$10,000 or less one year after its end date (s HR 12(2)(c)); or
- if the deregistered charity was a company, and it was deregistered because its shares were disposed of, and the disposal was for market value consideration (s HR 12(2)(b)).

Value of net assets

215. The value of the net assets of a deregistered charity is determined by the current market value of the total assets of the charity at its end date, less the current market value of the total liabilities of the charity on its end date (s HR 12(3)).
216. Market value refers in general terms to the price that an asset would be sold for in an arms-length transaction. This is usually determined from market-based evidence by appraisal. There are two situations when valuing assets and liabilities at market value is not required:
- certain assets (premises, plant, equipment and trading stock) have a prescribed valuation method in the deregistration rules. That value should be used for the purposes of the net assets calculation; and
 - if the deregistered charity has assets and liabilities not subject to the prescribed valuation method, and it valued these assets and liabilities at fair value to comply with the Public Benefit Entity International Not-for-Profit Accounting Standard 17, the fair value should be used for the purposes of the net asset calculation.
217. Not included in the value of net assets are the following (s HR 12(3)):
- assets disposed of or transferred for charitable purposes or in accordance with the charity's rules and within 1 year of the end date;
 - assets received from the Crown to settle a Treaty of Waitangi claim;
 - assets received from the Crown to settle a claim under the Māori Fisheries Act 2004;
 - marae land and improvements as defined in the Te Ture Whenua Māori Act 1993;
 - assets, other than money, that were gifted or bequeathed to the charity when it was exempt from income tax; and
 - in some circumstances, assets that are shares in companies.
218. Large charities sometimes operate as part of a group, with charitable entities holding equity investments in other registered charities. If a parent entity and one or more members of a charitable group are deregistered at the same time, the value of the parent's shares in the subsidiary is ignored for the purposes of calculating the parent's income under the deregistration tax rules (s HR 12(3)(d)).
219. The net assets will include the value of depreciable property and financial arrangements held at the time of deregistration.

220. The Inland Revenue guide - *Charitable and donee organisations (IR255)* contains examples of [how to calculate net assets](#) (including how to value depreciable property and financial arrangements) at pages 38-40.

Organisations that run businesses for charity and deregistration tax

221. An entity that is not a registered charity but that derived exempt income under s CW 42 prior to 1 April 2020 that subsequently ceases to meet the requirements for exemption under s CW 42 (for example because it failed to register as a charity by 31 March 2020), will be subject to the deregistration tax.

RWT-exempt status when a charity is deregistered

222. When a charity is deregistered, it will have RWT obligations unless it qualifies for a different exemption from RWT (s 32E(k) of the TAA). Examples of other RWT exemptions include where a charity is a community housing entity (s CW 42B), an amateur sports promoter (s CW 46), a body promoting scientific or industrial research (s CW 49) or a community trust (s CW 52).
223. The deregistered charity will need to notify its bank and anyone else that pays it interest or dividends that its RWT-exempt status has ended.
224. The deregistered charity's status will be updated to "cancelled" on the RWT-exemption Register maintained by the Commissioner.

FBT-exclusion when a charity is deregistered

225. If the deregistered charity does not come within the definition of a charitable organisation (s YA 1), and it remains operating and provides fringe benefits to its employees, it will be liable for FBT (s CX 25).

Donee organisation status when a charity is deregistered

226. When a registered charity is deregistered, it will not lose its donee organisation status, provided it has a philanthropic, benevolent or cultural purpose and it makes an application to the Commissioner to maintain donee status on this basis.
227. If it does not have one of these purposes, and only had a charitable purpose, different rules will apply. It will keep its donee status up to the date it is removed from the Charities Register or when all appeals of the decision to deregister are final or exhausted, whichever is the later.

228. A deregistered charity that only had charitable purposes will lose its eligibility to issue donation tax receipts, meaning that donors to the entity will not be able to claim tax credits or donation deductions for donations made to the entity during the period of deregistration (s LD 3). For more details, see Part 2 of this Operational Statement.

More information on consequences of deregistration

229. For further guidance concerning the consequences of deregistration, see the Inland Revenue guide - [Charitable and donee organisations \(IR255\)](#) at pages 36-40; [Tax Information Bulletin Vol 26, No 7 \(August 2014\)](#) at pages 65-69; [Tax Information Bulletin Vol 30, No 5 \(June 2018\)](#) at pages 107-108; and [Tax Information Bulletin Vol 31, No 4 \(May 2019\)](#) at pages 132-137.

Administrative matters

230. Under the Inland Revenue Acts, charities are required to meet certain administrative tax requirements, for example, obtaining an IRD number (if required, as described below), keeping records, and self-assessing each year whether they meet the income tax exemption requirements and/or the requirements for other tax concessions.

231. An IRD number will be required if the charity:

- has any non-exempt income;
- is a registered charity (registered charities are automatically RWT exempt and the RWT-exemption register operates by IRD number (rather than name));
- has obligations for GST, PAYE, RWT, NRWT or FBT; or
- is a donee organisation.

232. If a registered charity wishes to change its legal structure, it can do so by filling in an update details form and providing its new rules to Charities Services. The new entity will be able to keep its existing Charities Services' registration number - see [Charities Services' website](#). However, being a new legal entity, it will be required to obtain a new IRD number.

233. All tax charities must make a self-assessment each year on whether all of its income is exempt. The Commissioner can challenge a charity's decision about the availability of an income tax exemption through Inland Revenue's disputes process.

234. A tax charity must comply with usual GST, PAYE and FBT return filing requirements, if applicable.

Record keeping requirements

235. Charities have information and reporting obligations under the Charities Act (if registered) and pursuant to reporting standards set by the External Reporting Board (XRB), the independent Crown Entity responsible for developing and issuing accounting standards. They must also comply with the record keeping requirements of the Inland Revenue Acts including the usual record keeping requirements under s 22 of the TAA if the charity is in business and under s 75 of the GST Act if it is GST registered. These sections require a taxpayer to keep business and GST records in New Zealand and in either English or te reo Māori.
236. Section 22 of the TAA requires a charity that carries on a business in New Zealand to keep sufficient business records to enable the Commissioner to ascertain whether tax is payable and if so, in what amount, and all other tax matters relating to that business.
237. Section 75 of the GST Act requires generally that every person registered for GST must keep records including books of account (whether contained in a manual, mechanical, or electronic format) recording receipts or payments or income or expenditure, and also includes vouchers, bank statements, invoices, tax invoices, credit notes, debit notes, receipts, and such other documents as are necessary to verify the entries in any such books of account.
238. Charities should keep sufficient records to calculate any tax liability and/or to demonstrate eligibility for tax exemptions or concessions (s 32 of the TAA). Depending upon the entity and its activities, this may include receipt and payment account books, bank statements, invoices (including GST tax invoices), receipts and wage records for employees and donation tax credit receipts.
239. Section 58 of the TAA provides that every gift-exempt body must, when notified by the Commissioner, furnish a return of its funds derived or received in any tax year and showing the source and application of those funds, together with such other particulars as may be required by the Commissioner.
240. A "gift-exempt body" is defined in s 3(1) of the TAA (for purposes of s 32) and means:
- (a) any society, institution, association, organisation, trust, or fund specifically named in Schedule 32 of the Income Tax Act 2007; or
 - (b) any other person who has RWT-exempt status following an application made under section 32E(2)(k) or (l) in relation to a tax year in which they have that status.
241. For further information on record keeping refer to the Inland Revenue Standard Practice Statement *SPS 21/02: [Retention of business records in electronic formats, application to store records offshore and keeping records in languages other than English or te reo Māori.](#)*

Alterations to a charity's founding documents

242. In the past, the Commissioner suggested that charities include clauses in their founding documents that restrict the alteration of certain clauses without prior approval from the Commissioner. The relevant clauses were the clause defining the charitable purposes or objects, the clause relating to personal advantage, the clause regarding rule changes and the winding up clause.
243. The Commissioner no longer gives prior approval to clause changes and recommends that charities remove from their founding documents any such requirement for the Commissioner's approval prior to change from their rules.
244. To facilitate this, the Commissioner suggests an amendment to a charity's alterations clause to include, for example: "No addition to or alteration or removal from the rules shall be made if it detracts from the charitable nature of the organisation or allows private pecuniary benefits to any individual(s)".
245. Charities Services must be notified of any change the rules of a registered charity within 3 months after the effective date of the change. In these cases, the charity must provide Charities Services with a copy of the amendment to its rules. Charities can also provide a copy of the minutes of the meeting (or other record of the decision) specifying the change and the effective date of the change.
246. If a charity is incorporated (under the Charitable Trusts Act, Incorporated Societies Act 1908 or Companies Act), it may also have obligations to provide notice of changes to its rules to other entities.

Binding Ruling Applications

247. An entity may apply to the Commissioner for a binding ruling (which includes short process rulings) under Part 5A of the TAA. A binding ruling is the Commissioner's interpretation of how a tax law applies to a particular arrangement, person, or item of property. This can include, for example, a binding ruling in relation to whether certain types of income derived is exempt from tax under s CW 41 and/or s CW 42 or in relation to the entity's status (eg whether it is a non-profit body for the purposes of the GST Act).
248. If the entity receives a ruling under Part 5A of the TAA, the Charities Act requires that the entity be treated as having satisfied certain of the essential requirements for qualifying as a charitable entity under s 13(2) – (3) of the Charities Act (also referred to in this Operational Statement as a registered charity).
249. The Commissioner enters into memoranda of understanding with the Department of Internal Affairs / Charities Services from time to time to coordinate how their overlapping roles will operate. The Inland Revenue website contains more about

[information sharing between Inland Revenue and the Department of Internal Affairs / Charities Services.](#)

250. It also contains more information about [binding rulings](#).

Other disclosure and reporting regimes

Charities that are foreign trusts for income tax purposes

251. New Zealand law considers that a trust is not an entity, but a description of an equitable obligation the law imposes on a person holding property to deal with that property in a certain way, namely, for the benefit of beneficiaries or a charitable purpose. A "foreign trust" for income tax purposes is a trust established overseas or in New Zealand but where no settlor is resident in New Zealand at any time (s HC 11).
252. A foreign trust that is also a registered charity was exempt from the foreign trust disclosure rules until 31 March 2019. From 1 April 2019, however, a foreign trust that is also a registered charity is subject to the foreign trust disclosure rules which require disclosure of some information that is not collected under the Charities Act. This includes identifying particulars and contact details for settlors, trustees and beneficiaries (s 59B of the TAA).
253. Where the Commissioner becomes aware of potential money laundering or terrorism financing activity by a charity that is a foreign trust, the information disclosure rules (in the TAA, schedule 7, Part C *Disclosure rules to certain agencies for certain purposes*, (28)) will apply. The Commissioner is permitted to share information relating to the registration (or absence of registration) of a foreign trust with the Department of Internal Affairs (of which Charities Services is a part) and the New Zealand Police.
254. For further information see the special report from Policy and Strategy, Inland Revenue - [Foreign trust disclosure rules](#) (March 2017), and [Tax Information Bulletin, Vol 29, No 4 \(May 2017\)](#) from page 24, regarding foreign trust disclosure rules. For general information concerning foreign trusts, see Inland Revenue website pages on [foreign trusts with New Zealand resident trustees](#).

Charities and international financial reporting obligations

255. The United States Foreign Account Tax Compliance Act (FATCA) and the OECD initiated Common Reporting Standard (CRS) for automatic exchange of financial account information are financial reporting regimes that were introduced to combat and prevent tax evasion by persons that invest outside their jurisdiction of tax residence.

256. The TAA at Part 11B gives effect to and implements FATCA and the CRS in New Zealand law.
257. Charities may have obligations under FATCA and/or CRS. These obligations could apply because the charity is a New Zealand financial institution or because the charity holds an account with a New Zealand financial institution. The term “financial institution” includes obvious financial businesses such as banks and insurers, but it can also include some trusts and other entities that handle investments. This definition is broad and will therefore include certain charities.
258. New Zealand and the US have entered into a FATCA Memorandum of Understanding (FATCA MOU) that provides the following organisations are not financial institutions for FATCA purposes:
- organisations incorporated under the Charitable Trusts Act;
 - organisations registered under the Charities Act; and
 - donee organisations as defined in the Income Tax Act.
259. Therefore, under the FATCA MOU, these types of entities will not have FATCA due diligence and reporting obligations. Instead, if they hold accounts with New Zealand financial institutions, they will be required to respond to due diligence queries from those institutions about their FATCA status.
260. The CRS takes a different approach to that under FATCA and does not offer a similar exclusion from the definition of financial institution for certain charities and donee organisations. This means that such entities will need to consider whether they are financial institutions with CRS due diligence and reporting obligations (even if excluded from FATCA requirements).
261. See the Inland Revenue publications: [Automatic Exchange of Information \(IR1033\)](#), [Guidance on the CRS for Automatic Exchange of Information \(IR1048\)](#) and [FATCA – Trusts guidance notes \(IR1087\)](#). Inland Revenue’s website contains more information about [FATCA and the CRS](#), including the [FATCA MOU](#) between New Zealand and the United States of America.

Appendix - Hyperlink / web address cross-reference table

- Binding rulings - https://www.taxtechnical.ird.govt.nz/apply-for/apply-for-a-ruling/what-is-a-binding-ruling#Binding_ruling – referred to at [250].
- Business – what constitutes a business - Inland Revenue binding ruling *BR Pub 17/06 - Charitable and Other Donee Organisations and Fringe Benefit Tax* - <https://www.taxtechnical.ird.govt.nz/en/rulings/public/br-pub-1706-fringe-benefit-tax-charitable-and-other-donee-organisations-and-fringe-benefit-tax> - referred to at [72].
- Business income exemption under s CW 42 - *Tax Information Bulletin* Vol 31, No 4 (May 2019) at pages 132-133 - <https://www.taxtechnical.ird.govt.nz/en/tib/volume-31---2019/tib-vol31-no4> - referred to at [66].
- Business income exemption under s CW 42 – business carried on in partnership – Inland Revenue Questions We've Been Asked *QB 21/03 – Charities business exemption – business carried on in partnership* - <https://www.taxtechnical.ird.govt.nz/questions-we-ve-been-asked/2021/qb-21-03> - referred to at [76].
- *Charitable and donee organisations (IR255)* (March 2020) - Inland Revenue guide - [ir255-2020.pdf \(ird.govt.nz\)](https://www.ird.govt.nz/index/all-forms-and-guides#sort=%40computedz95xshouldernumberz95xalpha%20ascending&numberOfResults=25) or at <https://www.ird.govt.nz/index/all-forms-and-guides#sort=%40computedz95xshouldernumberz95xalpha%20ascending&numberOfResults=25> (search term IR255) – referred to at [160], [220] and [229].
- *Charitable trusts - tax treatment* - Inland Revenue Interpretation Statement IS 18/01 – *Taxation of Trusts* - <https://www.taxtechnical.ird.govt.nz/en/interpretation-statements/is-1801-taxation-of-trusts-income-tax> at pages 86-89 – referred to at [190].
- Charities, general information – Inland Revenue website <https://www.ird.govt.nz/roles/charities> - referred to at [5].
- Charities Services public, searchable register of registered charities: <https://register.charities.govt.nz/CharitiesRegister/Search> - referred to a [25].
- Charities Services website: <https://www.charities.govt.nz> – referred to at [33].

- Charity that operates as a trust - Inland Revenue guide *Trusts and estates income tax rules* (**IR288**) - <https://www.ird.govt.nz/roles/trusts-and-estates/trusts-and-tax-residency> - referred to at [207].
- Charity change in legal structure – maintaining Charities Services’ registration number – Charities Services website - <https://www.charities.govt.nz/im-a-registered-charity/update-charity-details/#Changing-your-legal-entity-type> - referred to at [232].
- Common Reporting Standard (CRS) – Inland Revenue website – CRS information and link to Inland Revenue publication *Guidance on the Common Reporting Standard for Automatic Exchange of Information* (July 2019) (**IR1048**) – <https://www.ird.govt.nz/international-tax/exchange-of-information/crs/aeoi-and-crs> – referred to at [261].
- Deregistration - consequences - see *Charitable and donee organisations* (IR255) above at pp 36-40; *Tax Information Bulletin Vol 26, No 7* (August 2014) at pages 65-69, <https://www.taxtechnical.ird.govt.nz/en/tib/volume-26---2014/tib-vol26-no7>; *Tax Information Bulletin Vol 30, No 5* (June 2018) at pages 107-108, <https://www.taxtechnical.ird.govt.nz/en/tib/volume-30---2018/tib-vol30-no5>; and *Tax Information Bulletin Vol 31, No 4* (May 2019) at pages 132-137, <https://www.taxtechnical.ird.govt.nz/en/tib/volume-31---2019/tib-vol31-no4> - referred to at [229].
- Double Tax Agreement (DTA) – New Zealand double tax agreements - <https://www.ird.govt.nz/international-tax/double-tax-agreements> - referred to at [198].
- Foreign Account Tax Compliance Act (FATCA) – Inland Revenue website – FATCA information and links to the FATCA MOU between New Zealand and the United States of America and Inland Revenue guides including *Foreign Account Tax Compliance (FATCA) – Trusts guidance notes* (October 2017) (**IR1087**) <https://www.ird.govt.nz/international-tax/exchange-of-information/fatca/important-documents> – referred to at [261].
- Foreign Account Tax Compliance Act (FATCA) and Common Reporting Standard (CRS) - General information about FATCA and the CRS - <https://www.ird.govt.nz/international-tax/exchange-of-information> – referred to at [261].

- Foreign trusts, generally - Inland Revenue website pages on foreign trusts with New Zealand resident trustees - <https://www.ird.govt.nz/international-tax/foreign-trusts-nz-resident-trustees> - referred to at [254].
- Foreign trust disclosure rules - Inland Revenue, Policy and Strategy special report – *Foreign trust disclosure rules* (March 2017) - <https://taxpolicy.ird.govt.nz/news/2017/2017-03-27-special-report-foreign-trust-disclosure-rules> and *Tax Information Bulletin*, Vol 29, No 4 (May 2017) from page 24 - <https://www.taxtechnical.ird.govt.nz/en/tib/volume-29---2017/tib-vol29-no4> - referred to at [254].
- Fringe benefit tax (FBT) exclusion – examples where it applies and does not apply - Inland Revenue binding ruling *BR Pub 17/06 - Charitable and Other Donee Organisations and Fringe Benefit Tax* - <https://www.taxtechnical.ird.govt.nz/en/rulings/public/br-pub-1706-fringe-benefit-tax-charitable-and-other-donee-organisations-and-fringe-benefit-tax> - referred to at [140].
- Fringe benefit tax (FBT) exclusion – short-term charge facility – see *BR Pub 17/06* above at page 17 – referred to at [143].
- Goods and services tax (GST) – generally - Inland Revenue guide *GST – Working with GST (IR375)* <https://www.ird.govt.nz/gst/filing-and-paying-gst-and-refunds/filing-gst/file-your-gst-return> - referred to at [160].
- Goods and services tax (GST) and non-profit bodies, including examples - *Tax Information Bulletin*, Vol 31, No 4 (May 2019) at pages 101 to 106 - <https://www.taxtechnical.ird.govt.nz/en/tib/volume-31---2019/tib-vol31-no4> – referred to at [159].
- Goods and services tax (GST) – reference table showing types of receipts and whether liable for, not liable for, or exempt from GST - <https://www.ird.govt.nz/income-tax/income-tax-for-businesses-and-organisations/income-tax-and-gst-for-not-for-profits> - referred to at [161].
- Information sharing between Inland Revenue and the Department of Internal Affairs / Charities Services - memoranda of understanding - Inland Revenue website - <https://www.ird.govt.nz/about-us/information-sharing/mous/dia> - referred to at [249].

- Māori community - tax treatment of payments and gifts - Inland Revenue factsheet *Payments and Gifts in the Māori community (IR278)* - <https://www.ird.govt.nz/income-tax/income-tax-for-businesses-and-organisations/types-of-business-income/donations-koha> - referred to at [174].
- Net assets for deregistration tax – how to calculate - see *Charitable and donee organisations (IR255)* above at pp 38-40 - referred to at [220].
- Non-resident charity – information on criteria and application to be recognized as a tax charity - <https://www.ird.govt.nz/roles/charities/tax-exemptions-for-non-resident-charities> - referred to at [200].
- Non-resident charity - very strong connection to New Zealand – Charities Services website page on international charities and activities - <https://www.charities.govt.nz/ready-to-register/need-to-know-to-register/charitable-purpose/international-charities-and-activities/> - referred to at [193].
- Non-resident Withholding Tax (NRWT) – generally and links to *NRWT-payer's guide (IR291)* - <https://www.ird.govt.nz/income-tax/withholding-taxes/non-resident-withholding-tax-nrwt> - referred to at [119].
- Record keeping - Inland Revenue Standard Practice Statement - *Retention of business records in electronic formats, application to store records offshore and keeping records in languages other than English or te reo Māori (SPS 21/02)* - <https://www.taxtechnical.ird.govt.nz/standard-practice-statements/general/sps-21-02> - referred to at [241].
- Resident Withholding Tax (RWT) exemption register (Inland Revenue maintained) - <https://www.ird.govt.nz/income-tax/withholding-taxes/resident-withholding-tax-rwt/resident-withholding-tax-exemption-register> - referred to at [113].
- Resident Withholding Tax (RWT) – generally – Inland Revenue website - <https://www.ird.govt.nz/income-tax/withholding-taxes/resident-withholding-tax-rwt> - referred to at [116].
- Sharing of information in respect of charitable entities – MOU between Charities Services and Inland Revenue - <https://www.ird.govt.nz/about-us/information-sharing/mous/dia> - referred to at [31].
- Student loans, interest free when volunteering overseas for an approved charitable organisation under scheme - <https://www.ird.govt.nz/roles/charities/charitable-organisations-and-the-student-loan-scheme> - referred to at [170].

- Unconditional gifts - IS 20/09 GST - *unconditional gifts* - <https://www.taxtechnical.ird.govt.nz/interpretation-statements/is-20-09> - referred to at [150].

Note that all Inland Revenue forms and guides can be accessed at - <https://www.ird.govt.nz/index/all-forms-and-guides#sort=%40computedz95xshouldernumberz95alpha%20ascending&numberOfResults=25>

Appendix – Legislation

Income Tax Act 2007

CV 17 Non-exempt charities: taxation of tax-exempt accumulation

An amount of income of a person under section HR 12 (Non-exempt charities: treatment of tax-exempt accumulation) is income of the person for the income year that contains the day 1 year after the day of final decision.

CW 41 Charities: non-business income

Exempt income

- (1) The following are exempt income:
- (aa) an amount of income derived by a person who is removed from the register of charitable entities (the register) under the Charities Act 2005, if it is derived in the period starting with the day they are registered on the register and ending with the earlier of the following days:
 - (i) the day on which the person does not comply with the person's rules contained in the register:
 - (ii) the day of final decision:
 - (a) an amount of income derived by a trustee in trust for charitable purposes:
 - (b) an amount of income derived by a society or institution established and maintained exclusively for charitable purposes and not carried on for the private pecuniary profit of any individual.

Exclusion: trustees, society, or institution not registered

- (2) This section does not apply to an amount of income if, at the time that the amount of income is derived, the trustee or trustees of the trust, the society, or the institution is not, or are not, a tax charity.

Exclusion: business income

- (3) This section does not apply to an amount of income derived from a business carried on by, or for, or for the benefit of a trust, society, or institution of a kind referred to in subsection (1).

Exclusion: council-controlled organisation income

- (4) This section does not apply to an amount of income derived by—
- (a) a council-controlled organisation, other than a council-controlled organisation operating a hospital as a charitable activity:
 - (b) a local authority from a council-controlled organisation, other than from a council-controlled organisation operating a hospital as a charitable activity on behalf of the local authority.

Definition

- (5) Tax charity means,—
- (a) a trustee, a society, or an institution, registered as a charitable entity under the Charities Act 2005:
 - (b) a trustee, a society, or an institution (the entity), that—
 - (i) has started, before 1 July 2008, to take reasonable steps in the process of preparing an application for registering the entity as a charitable entity under the Charities Act 2005; and
 - (ii) intends to complete the process of preparing an application described in subparagraph (i); and

- (iii) has not been notified by the Commissioner that the entity is not a tax charity:
- (c) a trustee, a society, or an institution, that is or are non-resident and carrying out its or their charitable purposes outside New Zealand, and which is approved as a tax charity by the Commissioner in circumstances where registration as a charitable entity under the Charities Act 2005 is unavailable:
- (d) a person who is removed from the register, in the period starting with the day they are registered on the register and ending with the earlier of the following days:
 - (i) the day on which the person does not comply with the person's rules contained in the register:
 - (ii) the day of final decision.

CW 42 Charities: business income

Exempt income

- (1) Income derived directly or indirectly from a business carried on by, or for, or for the benefit of a trust, society, or institution of a kind referred to in section CW 41(1) is exempt income if—
 - (aa) the entity carrying on the business is, at the time that the income is derived, registered as a charitable entity under the Charities Act 2005; and
 - (a) the trust, society, or institution carries out its charitable purposes in New Zealand; and
 - (b) the trustee or trustees of the trust, the society, or the institution is or are, at the time that the income is derived, a tax charity; and
 - (c) no person with some control over the business is able to direct or divert an amount derived from the business to the benefit or advantage of,—
 - (i) if subparagraph (ii) does not apply, a person other than the trust, society, or institution except for a purpose of the trust, society, or institution;
 - (ii) if a trust, society, or institution (the operating entity) is carrying on the business for or for the benefit of another trust, society, or institution (the controlling entity), a person other than the operating entity or the controlling entity except for a purpose of the operating entity or the controlling entity.

Subsections (3) to (8) expand on this subsection.

Exclusion

- (2) This section does not apply to an amount of income derived by—
 - (a) a council-controlled organisation, other than a council-controlled organisation operating a hospital as a charitable activity;
 - (b) a local authority from a council-controlled organisation, other than from a council-controlled organisation operating a hospital as a charitable activity on behalf of the local authority.

Carrying on a business: trustee

- (3) For the purposes of subsection (1), a trustee is treated as carrying on a business if—
 - (a) the trustee derives rents, fines, premiums, or other revenues from an asset of the trust; and
 - (b) the asset was disposed of to the trust by a person of a kind described in subsection (5)(b); and
 - (c) either—

- (i) the person retains or reserves an interest in the asset; or
- (ii) the asset will revert to the person.

Charitable purposes in New Zealand and overseas

- (4) For the purposes of subsection (1)(a), if the charitable purposes of the trust, society, or institution are not limited to New Zealand, income derived from the business in a tax year is apportioned reasonably between those purposes in New Zealand and those outside New Zealand. Only the part apportioned to the New Zealand purposes is exempt income.

Control over business

- (5) For the purposes of subsection (1)(c) and section CW 42B(2)(c) and (4) for an income year, a person is treated as having some control over the business, and as being able to direct or divert amounts from the business if, in the tax year,—
- (a) they are, in any way, whether directly or indirectly, able to determine, or materially influence the determination of,—
 - (i) the nature or extent of a relevant benefit or advantage; or
 - (ii) the circumstances in which a relevant benefit or advantage is, or is to be, given or received; and
 - (b) their ability to determine or influence the benefit or advantage arises because they are—
 - (i) a settlor or trustee of the trust by which the business is carried on; or
 - (ii) a shareholder or director of the company by which the business is carried on; or
 - (i) a settlor or trustee of a trust that is a shareholder of the company by which the business is carried on; or
 - (ii) a person associated with a settlor, trustee, shareholder, or director referred to in any of subparagraphs (i) to (iii).

Control: settlor asset disposed of to trust

- (6) For the purposes of subsection (5) and section CW 42B(2)(c) and (4), a person is treated as a settlor of a trust, and as gaining a benefit or advantage in the carrying on of a business of the trust, if—
- (a) they have disposed of an asset to the trust, and the asset is used by the trust in the carrying on of the business; and
 - (b) they retain or reserve an interest in the asset, or the asset will revert to them.

No control

- (7) For the purposes of subsection (1)(c) and section CW 42B(2)(c) and (5), a person is not treated as having some control over the business merely because—
- (a) they provide professional services to the trust or company by which the business is carried on; and
 - (b) their ability to determine, or materially influence the determination of, the nature or extent of a relevant benefit or advantage arises because they—
 - (i) provide the services in the course of and as part of carrying on, as a business, a professional public practice; or
 - (ii) are a statutory trustee company; or
 - (iii) are Public Trust; or
 - (iv) are the Maori Trustee.

Benefit or advantage

- (8) For the purposes of subsection (1)(c) and section CW 42B(2)(c) and (6), a benefit or advantage to a person—
- (a) may or may not be something that is convertible into money:
 - (b) unless excluded under paragraph (d), includes deriving an amount that would be income of the person under 1 or more of the following provisions:
 - (i) section CA 1(2) (Amounts that are income):
 - (ii) sections CB 1 to CB 23 (which relate to income from business or trade-like activities):
 - (i) section CB 32 (Property obtained by theft):
 - (iv) sections CC 1 (Land), CC 3 to CC 8 (which relate to income from financial instruments), and CC 9 (Royalties):
 - (v) section CD 1 (Dividend):
 - (vi) sections CE 1 (Amounts derived in connection with employment) and CE 8 (Attributed income from personal services):
 - (vii) section CF 1 (Benefits, pensions, compensation, and government grants):
 - (viii) section CG 3 (Bad debt repayment):
 - (ix) sections CQ 1 (Attributed controlled foreign company income) and CQ 4 (Foreign investment fund income):
 - (c) includes retaining or reserving an interest in an asset in the case described in subsection (3), if the person has disposed of the asset to the trust or the asset will revert to them:
 - (d) does not include earning interest on money lent, if the interest is payable at no more than the current commercial rate, given the nature and term of the loan.

Non-exempt business income

- (9) If an amount derived from the carrying on of a business by or for a trust is not exempt income because of a failure to comply with subsection (1)(c), the amount is trustee income.

CW 42 B Community housing trusts and companies

Exempt income

- (1) An amount of income derived by a community housing entity is exempt income.

Definition

- (2) In this section and section LD 3 (Meaning of charitable or other public benefit gift), community housing entity means a trustee or company (the entity) whose activities involve the provision of housing or housing assistance (the activities), and—
- (aa) the entity is a registered community housing provider under the Public and Community Housing Management Act 1992; and
 - (a) the activities are not carried on for the private pecuniary profit of any individual; and
 - (b) all profit is retained by the entity, or distributed or applied to—
 - (i) community housing entities that meet the requirements to derive exempt income under this section:
 - (ii) beneficiaries or clients of the entity:
 - (iii) tax charities:

- (iv) persons to whom distributions would be in accordance with charitable purposes; and
- (c) no person with some control over the activities is able to direct or divert an amount derived from the activities to the benefit or advantage of,—
 - (i) if subparagraph (ii) does not apply, a person other than the entity except for a purpose of the entity or a charitable purpose:
 - (ii) if the entity (the operating entity) is carrying on the activities for or for the benefit of a community housing entity or charity (the controlling entity), a person other than the operating entity or the controlling entity except for a purpose of the operating entity or the controlling entity or for a charitable purpose.

Definition: exception

- (3) Despite subsection (2), community housing entity does not include a trustee or company (the entity) if—
 - (a) more than 15% of the people who become beneficiaries or clients of the entity on a date that is or is after 14 April 2014 have, on that date, income or assets exceeding a value (the entry threshold) set out in schedule 34 (Community housing trusts and companies: income and assets of beneficiaries and clients) that is relevant to the beneficiary or client:
 - (b) the provision of housing or housing assistance to a beneficiary or client who has income and assets not exceeding the entry thresholds is substantially different from the provision of housing or housing assistance to a beneficiary or client who has income or assets exceeding an entry threshold.

Control over activities

- (4) For the purposes of subsection (2)(c), for an income year, a person is treated as having some control over the activities, and as being able to direct or divert amounts from the activities if, in the tax year, they are described in section CW 42(5)(a) and (b) and (6) (Charities: business income).

No control

- (5) For the purposes of subsection (2)(c), a person described in section CW 42(7)(a) and (b) is not treated as having some control merely because of the factors in section CW 42(7)(a) and (b).

Benefit or advantage

- (6) For the purposes of subsection (2)(c), a benefit or advantage to a person includes a benefit or advantage included under section CW 42(8).

CW 25 Value of board for religious society members

The value of personal board and lodging and other basic personal necessities received by a member of a religious society or order is exempt income if—

- (a) the member's sole occupation is service in a religious society or order; and
- (b) it is in the nature of the service that members are not paid for their work and do not receive a reward for it, other than those necessities.

HR 12 Non-exempt charities: treatment of tax-exempt accumulations

Who this section applies to

- (1) This section applies to—
 - (a) a person who—
 - (i) is registered on the register of charitable entities under the Charities Act 2005 for a period; and
 - (ii) derives exempt income under section CW 41 or CW 42 (which relate to charities) in the same period; and

(iii) is deregistered as a charitable entity on the end date:

(b) [Repealed]

When this section does not apply

(2) This section does not apply if—

- (a) the person is re-registered on the register of charitable entities within 1 year of the end date:
- (b) the person's end date arises because they are a company and shares in them are disposed of, and the disposal is for market value consideration:
- (c) the person would, but for this paragraph, have \$10,000 or less income under this section on their end date.

Treatment of income

(3) The person has an amount of income derived on the day that is 1 year after the end date that is equal to the current market value, on the end date, of assets that the person has on the end date less the current market value, on the end date, of liabilities that the person has on the end date, but ignoring:

- (a) assets that are disposed of or transferred within 1 year of the end date, together with any rights and obligations, to another person—
 - (i) for charitable purposes:
 - (ii) in accordance with the person's rules set out in the register of charitable entities immediately before the person's removal from the register:

(b) assets received from the Crown—

- (i) to settle a Treaty of Waitangi claim:
- (ii) in accordance with the Maori Fisheries Act 2004:
- (c) assets that are not money and are gifted or bequeathed to the person when they met the requirements to derive exempt income under section CW 41 or CW 42:
- (d) assets that are land set apart in a Maori reservation for the purposes of a marae or meeting place under Part 17 of the Te Ture Whenua Maori Act 1993:
- (e) assets that are shares in companies, if this section applies to the companies and their end dates are the same as the person's end date.

Person's rules [Repealed]

(4) [Repealed]

Negative amounts

(5) For the purposes of the calculation in subsection (3), if the amount is negative, it is treated as zero.

References to assets and liabilities

(6) In this section, references to assets and liabilities, as applicable,—

- (a) mean the assets and liabilities owned, controlled, or held, wholly or in part, immediately before the end date; and
- (b) include—
 - (i) all assets of any kind; and
 - (ii) all liabilities, including debts, charges, duties, contracts, or other obligations, whether present, future, actual, contingent, payable, or to be observed or performed in New Zealand or elsewhere.

Definitions

(7) In this section,—

end date means, for a person, the day of final decision

current market value means—

- (a) for an asset or liability for which section HR 11 gives a value for the purposes of this Act, that value:
- (b) for an asset or liability for which section HR 11 does not give a value for the purposes of this Act,—
 - (i) the market value of the asset or liability; but
 - (ii) if the person uses the Public Benefit Entity International Not-for-Profit Accounting Standard 17 (the standard), the fair value of the asset or liability under the standard.

LD 3 Meaning of charitable or other public benefit gift

Meaning

- (1) For the purposes of sections DB 41 and DV 12 (which relate to deductions for gifts of money), and this subpart, a charitable or other public benefit gift—
 - (a) means a gift of money of \$5 or more that is paid to a society, institution, association, organisation, trust, or fund (the entity), if—
 - (i) the entity is described in subsection (2)(a), (ab), (b), (c), or (d), and the name of the entity is on the list published by the Commissioner under section 41A(14) to (16) of the Tax Administration Act 1994:
 - (ii) the entity is described in subsection (2)(ac), (bb), or (bc):
 - (iii) the name of the entity is listed in schedule 32 (Recipients of charitable or other public benefit gifts):
 - (b) includes a subscription of \$5 or more paid to an entity only if the subscription does not confer any rights arising from membership in that entity or any other society, institution, association, organisation, trust, or fund:
 - (c) does not include—
 - (i) a testamentary gift:
 - (ii) a gift made by forgiving some or all of a debt.

Description of organisations

- (2) The following are the entities referred to in subsection (1)(a) and (b):
 - (a) a society, institution, association, organisation, or trust that is not carried on for the private pecuniary profit of an individual, and whose funds are applied wholly or mainly to charitable, benevolent, philanthropic, or cultural purposes within New Zealand:
 - (ab) an entity that, but for this paragraph, no longer meets the requirements of this subsection, but only for the period starting on the day it fails to meet those requirements and ending on the later of—
 - (i) the day the entity is removed from the register of charitable entities under the Charities Act 2005:
 - (ii) the day on which all reasonably contemplated administrative appeals and Court proceedings, including appeal rights, are finalised or exhausted in relation to the person's charitable status.
 - (ac) a community housing entity, if the gift is made at a time the entity is eligible to derive exempt income under section CW 42B (Community housing trusts and companies):
 - (b) a public institution maintained exclusively for any 1 or more of the purposes within New Zealand set out in paragraph (a):

- (bb) a board that is constituted under subpart 5 of Part 3 of the Education and Training Act 2020 and is not carried on for the private pecuniary profit of any individual:
- (bc) a tertiary education institution:
- (c) a fund established and maintained exclusively for the purpose of providing money for any 1 or more of the purposes within New Zealand set out in paragraph (a), by a society, institution, association, organisation, or trust that is not carried on for the private pecuniary profit of an individual:
- (d) a public fund established and maintained exclusively for the purpose of providing money for any 1 or more of the purposes within New Zealand set out in paragraph (a).

Exception for certain entities

- (3) Despite subsection (2)(a), (b), (c), and (d), a society, institution, association, organisation, trust, or fund is not a relevant entity for the purposes of subsection (1) if the society, institution, association, organisation, trust, or fund,—
 - (a) is not a tax charity, because it is not registered as a charitable entity under the Charities Act 2005; and
 - (b) in the opinion of the Commissioner, is eligible to be registered as a charitable entity under that Act.

Defined in this Act: charitable or other public benefit gift, charitable purpose, community housing entity, New Zealand, pay, tax charity, tertiary

RE 29 Establishing whether persons have RWT-exempt status

- (1) This section applies for the purposes of section RE 5(2) to set out the ways for person A to establish—
 - (a) whether person B is a person who has RWT-exempt status; and
 - (b) that the status has not ended.
- (2) Person A may establish that—
 - (a) they have made a search of the electronic register that the Commissioner provides on which the details of persons with RWT-exempt status are listed; or
 - (b) they have taken reasonable steps to confirm that person B is a person listed in section 32E(2)(a) to (h) of the Tax Administration Act 1994; or
 - (c) except in relation to a person listed in section 32E(2)(k) or (l) of that Act or to whom the Commissioner has provided RWT-exempt status under section 32I of that Act, they have been given person B's tax file number and have been notified that person B has RWT-exempt status.

YA 1 Definitions

business—

- (a) includes any profession, trade, or undertaking carried on for profit:
- (b) includes the activities of—
 - (i) a statutory producer board:
 - (ii) an airport operator:
- (c) is further defined in section DD 11 (Some definitions) for the purposes of subpart DD (Entertainment expenditure)

charitable organisation—

- (a) means, for a quarter or an income year, an association, fund, institution, organisation, society, or trust to which section LD 3(2) (Meaning of charitable or

other public benefit gift) or schedule 32 (Recipients of charitable or other public benefit gifts) applies—

- (i) in the quarter; or
 - (ii) in the income year, if fringe benefit tax is payable on an income year basis under section RD 60 (Close company option); and
- (ab) includes a person who has been removed from the register of charitable entities (the register) under the Charities Act 2005, but only for the period starting on the day the person is registered on the register and ending on the earlier of the last day of the following periods:
- (i) the quarter, or income year if section RD 60 (Close company option) applies, in which the person does not comply with their rules contained in the register:
 - (ii) the quarter, or income year if section RD 60 applies, in which the day of final decision falls; and
- (b) does not include a local authority, a public authority, or a university

charitable purpose includes every charitable purpose, whether it relates to the relief of poverty, the advancement of education or religion, or any other matter beneficial to the community, and—

- (a) the purpose of a trust, society, or institution is charitable under this Act if the purpose would meet the public benefit requirement apart from the fact that the beneficiaries of the trust, or the members of the society or institution, are related by blood:
- (b) a marae has a charitable purpose if—
 - (i) the physical structure of the marae is situated on land that is a Maori reservation referred to in Te Ture Whenua Maori Act 1993 (the Maori Land Act 1993); and
 - (ii) the funds of the marae are not used for a purpose other than the administration and maintenance of the land and of the physical structure of the marae, or are used for a purpose that is a charitable purpose

council-controlled organisation—

- (a) means—
 - (i) an organisation that is a council-controlled trading organisation as defined in section 6 of the Local Government Act 2002, and is not a company:
 - (ii) a company that is a council-controlled organisation, under paragraph (a)(i) of the definition of council-controlled organisation in section 6(1) of the Local Government Act 2002:
 - (iii) an organisation that is a council-controlled organisation, under paragraph (b) of the definition of council-controlled organisation in section 6(1) of the Local Government Act 2002, and that has, in an organisation of a kind described in subparagraph (i) or (ii), control of at least 50% of the votes at any meeting of the members or the controlling body of the organisation, or the right to appoint at least 50% of the directors, managers, or trustees of the organisation (however the positions are described):
 - (iv) an organisation that would be a council-controlled organisation of a kind described in paragraph (a) or (b) or (c) if it did not have an exemption granted under section 6(4)(i) of the Local Government Act 2002:
 - (iv) the New Zealand Local Government Association Incorporated:
 - (v) a company or organisation, as defined in section 6(2) of the Local Government Act 2002, that is subject to the control, directly or indirectly, of the New Zealand Local Government Association Incorporated:

- (vi) New Zealand Local Government Insurance Corporation and any subsidiaries it has:
- (viii) Watercare Services Limited and any subsidiaries it has: but
- (b) does not include Auckland Transport (as established by section 38 of the Local Government (Auckland Council) Act 2009) or Auckland Regional Holdings (as established by section 18 of the Local Government (Auckland) Amendment Act 2004 or the New Zealand Local Government Funding Agency Limited

Inland Revenue Acts means the Acts listed in the schedule of the Tax Administration Act 1994

input tax—

- (a) is defined in section 3A of the Goods and Services Tax Act 1985; and
- (b) includes, for a supply, GST levied on goods entered for home consumption under the Customs and Excise Act 2018

Tax Administration Act 1994

3 Interpretation

gift-exempt body, in sections 18K, 32, and 58, means—

- (a) any society, institution, association, organisation, trust, or fund specifically named in Schedule 32 of the Income Tax Act 2007; or
- (b) section 32E(2)(k) or (l) in relation to a tax year in which they have that status

32 Records of specified charitable, benevolent, philanthropic, or cultural bodies

- (1) All gift-exempt bodies must keep in New Zealand sufficient records in the English language to enable the Commissioner to determine both the sources of donations made to them and the application, within New Zealand or within a country or territory outside New Zealand, of their funds.
- (2) Despite subsection (1), on application by a gift-exempt body, the Commissioner may notify the body that they are authorised to keep the records in a language other than English.

32E Applications for RWT-exempt status

- (1A) A person who is registered as a charitable trust under the Charities Act 2005 is treated as having RWT-exempt status for the duration of the registration.
- (1) person listed in subsection (2) may apply to the Commissioner for RWT-exempt status.
- (2) The persons are—
 - (a) a registered bank:
 - (b) a building society:
 - (c) the Public Trust or a company that would be a member of the same wholly-owned group of companies as the Public Trust, if it were a company for the purposes of this Act:
 - (d) the Māori Trustee:
 - (e) a statutory trustee company:
 - (eb) a portfolio investment entity:
 - (ec) the trustee of the Niue International Trust Fund:
 - (ed) the trustee of the Tokelau International Trust Fund:
 - (f) a person whose main business is—
 - (i) borrowing money or accepting deposits, or receiving credit or selling a credit instrument; and

- (ii) lending money or granting credit, or buying or discounting a credit instrument:
 - (g) a person that is—
 - (i) a nominee company subject to practice rules made by the Council of the New Zealand Law Society under section 96 of the Lawyers and Conveyancers Act 2006 and operated by a barrister and solicitor or an incorporated law firm; or
 - (ii) a broker's nominee company to which the Securities Act (Contributory Mortgage) Regulations 1988 apply:
 - (h) a practitioner within the meaning of the Lawyers and Conveyancers Act 2006 or incorporated firm within the meaning of that Act in relation to the operation of their trust account which is an account maintained under section 112 of that Act:
 - (i) a person—
 - (i) who has met their obligation to file a return of income under the Inland Revenue Acts within the time allowed; and
 - (ii) whose annual gross income for the tax year for which they last filed a return of income is more than \$2,000,000:
 - (j) a person in an accounting year who reasonably believes their annual gross income for the tax year that corresponds to the next accounting year will be more than \$2,000,000:
 - (k) a person who derives in a tax year an amount that is exempt income under sections CW 38(2), CW 38B(2), CW 39(2), CW 40 to CW 52, and CW 64 of the Income Tax Act 2007 in relation to their activities in the capacity in which they derive the exempt income:
 - (kb) a board that is constituted under subpart 5 of Part 3 of the Education and Training Act 2020 and is not carried on for the private pecuniary profit of any individual:
 - (kc) of the Education and Training Act 2020 and is not carried on for the private pecuniary profit of any individual:
 - (kd) a tertiary education subsidiary that derives exempt income under section CW 55BA of the Income Tax Act 2007:
 - (l) a person to whom section DV 8 of the Income Tax Act 2007 applies and who would, but for that section, have net income of an amount less than the amount set out in the section for their most recently ended accounting year.
- (3) The person must apply to the Commissioner, and the application must—
- (a) state the basis of exemption under subsection (2); and
 - (b) include a declaration by the person or an officer authorised by them that they come within the basis of exemption.
- (4) The person must provide further information in relation to the application as the Commissioner requires.

32K Failing to meet basis of exemption

- (1) This section applies when a person who has RWT-exempt status no longer meets the requirements on which their exemption is based.
- (2) If the person becomes aware that they no longer meet the requirements, they must notify the Commissioner within a period of 5 days after the day on which they become aware.
- (3) The Commissioner may ask the person to provide the full name and last known address of all persons to whom they have advised their RWT-exempt status for the purposes of obtaining an exemption from withholding the amount of tax from a payment of resident passive income. The person must respond to the Commissioner's request within 5 days.

58 Returns of specified charitable, benevolent, philanthropic, or cultural bodies

Every gift-exempt body must, when notified by the Commissioner, furnish a return of its funds derived or received in any tax year and showing the source and application of those funds, together with such other particulars as may be required by the Commissioner.