



EXPOSURE DRAFT – FOR COMMENT AND DISCUSSION ONLY

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OPERATIONAL STATEMENT

Charities and donee organisations: Part 2: Donee organisations

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 that applies 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* (**tba).

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Scope

1. The purpose of Operational Statement OS xx/xx – *Charities and donee organisations* is to assist entities in the not-for-profit sector to understand their tax obligations and available tax benefits.
2. This part of the Operational Statement (Part 2) focuses on donee organisations including the criteria for becoming a donee organisation and the associated obligations. It also explains the benefits available to donors.
3. What is a charity, including in the context of the Income Tax Act and the Charities Act 2005 (Charities Act), is addressed in Part 1 of the Operational Statement. Part 1 also addresses the relationship between Charities Services and Inland Revenue, what charitable purposes are, and the different tax concessions that may be available. It also sets out administrative tax matters, implications of deregistration and special rules for certain entity types. Where topics relevant to Part 2 are covered in Part 1 of this Operational Statement, cross-references are included.
4. Part 2 of this Operational Statement provides guidance to entities wanting to become donee organisations or that are already donee organisations including, for example:

- the types of entities that can become a donee organisation;
 - 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.
5. 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.
6. The Inland Revenue dedicated email address for general inquiries regarding charities and donee organisations is: **charities.queries@ird.govt.nz**. More information for charities and donee organisations can be found on [Inland Revenue’s website](#) (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

7. This Operational Statement will apply from xx/xx/xxxx.

What is a donee organisation and donee status

8. “Donee organisation” is defined in section YA 1 as “an entity described in section LD 3(2) (Meaning of charitable or other public benefit gift) or listed in schedule 32 (Recipients of charitable or other public benefit gifts).”
9. Section LD 3(2) refers to “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” among others.
10. An organisation that meets the definition of donee organisation is referred to as having “donee status”.
11. The main advantage of being a donee organisation is the benefit it brings to the donors who make charitable or other public benefit gifts of \$5 or more. Individuals who make such gifts can qualify for tax benefits (such as donation tax credits or payroll giving tax credits), while companies and Māori authorities can qualify for tax benefits (such as income tax gift deductions). These tax benefits are subject to maximum limits.

Types of donee organisations

12. To qualify for donee status, an entity must satisfy at least one of the descriptions of a donee organisation set out in s LD 3(2) or be listed in schedule 32 to the Income Tax Act as a recipient of charitable or other public benefit gifts.
13. There are four types of donee organisations:
 - most entities registered with Charities Services;
 - entities with benevolent, philanthropic or cultural purposes (not registered with Charities Services) approved by the Commissioner;
 - entities that automatically qualify by satisfying specific definitions; and
 - entities that apply funds for other than charitable, benevolent, philanthropic or cultural purposes within New Zealand, approved by Parliament and listed on schedule 32 of the Income Tax Act.

Donee organisations registered with Charities Services

14. Part 1 of this Operational Statement describes the function of the Department of Internal Affairs / Charities Services with regards to charities and its interrelationship with Inland Revenue.
15. From 1 April 2020, an entity with charitable purposes must register as a charity with Charities Services, if eligible to do so, to obtain donee status.
16. Eligibility criteria for registering as a charity with Charities Services is explained in Part 1 of this Operational Statement. Charities Services' website contains the [Charities Register](#) listing all registered charities.
17. For a registered charity to qualify for and maintain donee status, it must apply its funds "wholly or mainly" to charitable, benevolent, philanthropic or cultural purposes within New Zealand (s LD 3(2)). In administration of this requirement, the Commissioner uses a "safe harbour" basis of 75% or more satisfying wholly or mainly for qualifying for donee status. To maintain donee status, an entity calculate its percentage by using a rolling three-year average, however, if in any year it applies less than 50% to these purposes, it will need to notify Inland Revenue immediately. Refer to [53] below for more detail.
18. Accordingly, entities registering with Charities Services are required to indicate if they intend to receive donations and the percentage of the entity's funds that will be applied towards carrying out charitable, benevolent, philanthropic or cultural purposes overseas. If the registered charity indicates it intends to receive donations, then Inland Revenue uses the percentage information to determine whether the entity meets the

“wholly or mainly” requirement of s LD 3(2) and is eligible for donee status without the registered charity making a separate application to the Commissioner.

19. If the registered charity meets the “wholly or mainly” requirement, it is published on the [Commissioner’s list of Approved Donee Organisations](#). It is the responsibility of a donee organisation to advise Inland Revenue as soon as they cease meeting the “wholly or mainly” requirement (see [167] below).
20. Entities established for charitable purposes after 1 April 2020 and not registered with Charities Services will not be published on the Commissioner’s Approved Donee Organisation list. The exceptions to this are entities that obtain the Commissioner’s approval (see from [26] below) or in a rare case, Parliament might approve a donee organisation that is not a registered charity (see from [98] below).
21. Further information is available in Inland Revenue’s guide [Charitable and donee organisations \(IR255\)](#) (search term IR255). In addition, Part 1 of this Operational Statement provides further information about charities and their tax obligations.

Entities requiring the Commissioner’s approval for donee status

22. Entities not eligible to register as a charitable entity with Charities Services may still apply to the Commissioner for donee status if they meet the definition of donee organisation in s YA 1. This definition refers to entities described in s LD 3(2) and includes entities whose funds are applied for benevolent, philanthropic or cultural purposes, as described in more detail below from [39].
23. Applications to the Commissioner for donee status should be made in writing, see from [91].
24. If approved, these entities are placed on the [Commissioner’s list of Approved Donee Organisations](#). This process is referred to as “obtaining donee status”.
25. Donee organisations have a responsibility to monitor and self-assess their donee status and to advise the Commissioner as soon as they cease to be eligible to be a donee organisation. This is so that the Commissioner can remove the entity from the Approved Donee Organisation list.

Types of entities that can seek Commissioner’s approval for donee status

26. There are four categories of entities eligible for the Commissioner’s approval of donee status, each with slightly different requirements. These are:

- a society, institution, association, organisation, or trust;
 - a public institution;
 - a fund; and
 - a public fund.
27. The carrying out of the above listed entities' purposes must result in a public benefit (one that is available to a large section of the community) except where the charitable purposes are for the relief of poverty (*Dingle v Turner* [1972] AC 601).
28. Other specific requirements for each of these categories are explained below.

Requirements for a society, institution, association, organisation, or trust to obtain donee status

29. The first category eligible for the Commissioner's approval of donee status includes a society, institution, association, organisation, or trust. For an entity of this type to obtain donee status from the Commissioner under s LD 3(2)(a), it must not be eligible to be a registered charity with Charities Services (for example because its purposes are not charitable, but rather are benevolent, philanthropic or cultural), and it must be able to satisfy the Commissioner that:
- it is a society, institution, association, organisation or trust;
 - its funds are applied wholly or mainly to charitable, benevolent, philanthropic or cultural purposes within New Zealand; and
 - it is not carried on for the private pecuniary profit of any individual.
30. It is the Commissioner's view that it will be difficult for a sports organisation to show benevolent, philanthropic or cultural purposes. However, it may be possible for a sports organisation to have charitable purposes and thus become a donee organisation by first becoming a registered charity.
31. Certain elements of these requirements are explained in detail below as follows:
- Charitable purpose
 - Benevolent purpose
 - Philanthropic purpose
 - Cultural purpose
 - "Wholly or mainly" application of funds
 - Requirement of no private pecuniary profit.

32. The terms benevolent, philanthropic and cultural are not defined in the Income Tax Act. It is therefore appropriate to consider the common law definitions and where New Zealand courts have not considered the definitions, decisions of other courts provide some guidance.
33. While the courts have found it difficult to determine the precise meaning of these words, they have generally considered the meanings to be as follows:

Charitable purpose

34. The definitions of "charitable purpose" contained in s 5 of the Charities Act and s YA 1 of the Income Tax Act are materially the same. Both definitions 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."
35. To be a charitable purpose, a purpose must also 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) except where the charitable purpose is for the relief of poverty (*Dingle v Turner* [1972] AC 601).
36. Generally, the Commissioner will only consider applications where an entity has benevolent, philanthropic or cultural purposes (as opposed to charitable purposes). Where an entity has only charitable purposes (as opposed to benevolent, philanthropic or cultural purposes), the Commissioner cannot approve that entity as a donee organisation unless it is not eligible for registration with Charities Services.
37. Although distinctly defined purposes, there can be considerable overlap between the meaning of "charitable purpose" and the meanings of "benevolent", "philanthropic" or "cultural" purposes as described below.
38. For more on charitable purposes see Part 1 of this Operational Statement.

Benevolent purpose

39. The courts generally consider the meaning of benevolent to be similar to the ordinary meaning of "charitable," which relates to the provision of relief to people in need (*Chichester Diocesan Fund v Simpson* [1944] 2 All ER 60). A benevolent purpose relates to the provision of aid to people who need help and who are unable to help themselves.
40. Benevolence is not limited to the provision of money, housing, food, medicine or other basic elements. Additionally, the provision of services to relieve distress may be benevolent, even if the services are not free. (See *Australian Council of Social Service*

Inc v Commissioner of Pay-roll Tax 85 ATC 4235; *Mines Rescue Board of New South Wales v FCT* (2000) ATC 4191; *Trustees of the Indigenous Barristers' Trust* (2002) ATC 5,055; *Northern Land Council v Commissioner of Taxes (NT)* (2002) ATC 5117.)

41. An institution with the predominant purpose of making a profit for its owner will not have a benevolent purpose because it is not "desiring to do good for others" (*Commissioner of Pay-Roll Tax v Cairnmillar Institute* 92 ATC 4307).
42. Additionally, the courts have held that the following are not benevolent purposes: promotion of sport (*Northern NSW Football Ltd v Chief Commissioner of State Revenue* [2011] NSWCA 51), and the relief of suffering by animals (*FCT v Royal Society for the Prevention of Cruelty to Animals Queensland Inc* 92 ATC 4441).

Philanthropic purpose

43. A "philanthropic" purpose relates to the promotion of the welfare of other human beings in general (*Re MacDuff* [1895-99] All ER Rep 154; *Residence "Joie de Vivre" Inc v Niagara Falls (City)* [1994] OJ No 749; *Rotary International v Commissioners of Customs & Excise* [1991] VATTR 177; *Hallé Concerts Society v Revenue and Customs Commissioners* [2016] UKFTT 294; *Wilson v Flowers* 58 NJ 250 (1971)). A philanthropic purpose is not limited to the provision of basic necessities. The provision of schools, libraries, public art galleries, museums, or free or subsidised concerts could be philanthropic purposes (*Hallé Concerts Society v Revenue and Customs Commissioners* [2016] UKFTT 294).
44. However, the term philanthropic does not include entities with purposes directed at the care and welfare of animals, rather than human beings (*Kitchener-Waterloo and North Waterloo Humane Society v City of Kitchener* [1973] 1 OR 490).

Cultural purpose

45. A "cultural" purpose relates to artistic and intellectual aspects of human activity. Examples of cultural purposes include dramatic, theatrical, operatic, ballet, choral or musical purposes, and purposes relating to the training, development and refinement of mind, taste and manners. (See *Molloy v CIR* (1981) 5 NZTC 61,070; *Pooh-Bah Enterprises v Cook County* 905 N.E.2d 781 (2009).)
46. It is the Commissioner's view that cultural purposes could be for the benefit of the community on the basis that they result in the improvement of the artistic tastes of the community and/or they benefit all or a large part of the public.
47. It is also the Commissioner's view that the promotion of sport is not a cultural purpose.

“Wholly or mainly” application of funds

48. To qualify for and maintain donee status under s LD 3(2)(a), an entity’s funds must be applied “wholly or mainly” to charitable, benevolent, philanthropic or cultural purposes within New Zealand. For the purposes of this section of the Operational Statement, charitable, benevolent, philanthropic or cultural purposes will be referred to collectively as “specified purposes.”
49. An entity applying to the Commissioner for donee status must indicate the percentage of its fund it anticipates applying to purposes other than for specified purposes within New Zealand. Provided the entity indicates this percentage is at or below 25%, the Commissioner will generally accept that the wholly or mainly requirement is satisfied (see the description of safe harbour from [53] below). The donee organisation should subsequently assess its continuing compliance with this requirement each year.
50. The expression “funds are applied” suggests:
- The application of funds arises as a result of the organisation either spending money or taking some action to invest or set aside the money for future spending for some purpose or purposes;
 - The decision to accumulate funds has been made at the appropriate level in the organisation for decisions of that type according to its established management practices. For example, the trustees of a charitable trust resolving to set aside money in the trust’s on-call savings account pending a capital purchase;
 - The decision to accumulate funds will need sufficient detail to be able to characterise that application of funds as advancing specified purposes within New Zealand.
51. The application of funds can occur on a continuing basis over the lifetime of the donee organisation. This is so, even though for administrative purposes to gauge compliance with the on-going wholly or mainly requirement, it is more practicable to look at funds applied over a discrete period of time, such as a year, and then, from year to year.
52. It is the specified purposes that must be “within New Zealand” not the application of funds. This means the location where funds are spent is not relevant. It is the objectively determined purpose sought to be achieved through the application of the funds that is important. For example, if funds were spent in Australia to produce an educational video to be used by a New Zealand charity in New Zealand, then the funds have been applied for charitable purposes in New Zealand (see *Case T50 (1998) 18 NZTC 8,346 (TRA)*). Conversely, if funds are spent in New Zealand to produce an educational video for use in Australia, these funds are not applied for charitable purposes within New Zealand.

53. In terms of the requirement that the funds are applied wholly or mainly for specified purposes within New Zealand, the Commissioner will generally accept, without further enquiry, that a donee organisation meets the wholly or mainly requirement when it is within the administrative safe harbour percentage of 75% or more of its funds being applied for specified purposes within New Zealand.
54. An accepted method of calculating the percentage of funds being applied for specified purposes within New Zealand is:
- Step 1: using the statement of cash flows or statement of receipts and payments from the charity's financial statements/performance reports – gather the charity's "total funds";
 - Step 2: determine the amount of the charity's "funds applied to specified purposes within New Zealand";
 - Step 3: calculate the charity's safe harbour percentage (step 1 amount divided by step 2 amount).
55. In determining Step 2 it is necessary to decide whether money was spent, invested or set aside:
- entirely for specified purposes within New Zealand;
 - entirely for purposes other than specified purposes within New Zealand; or
 - for a combination of specified purposes within New Zealand and other purposes (apportion on a reasonable basis, including overheads and operating funds).
56. If a donee organisation fails to meet the safe harbour of 75% in any year, the Commissioner will accept a revised calculation based on the current year and the two preceding years. In such a case, the donee organisation can recalculate the percentage based on the cumulative total of its funds applied over the current and preceding two years. This allows some year-on-year variation for exceptional years. This is illustrated in the table below.

	Year 1 \$	Year 2 \$	Year 3 \$
Total funds	10,000.00	5,000.00	5,000.00
Funds applied to specified purposes within New Zealand	9,000.00	4,000.00	3,000.00
Percentage of total funds applied to specified purposes within New Zealand	90%	80%	60%
Cumulative total funds	10,000.00	15,000.00	20,000.00
Cumulative funds applied to specified purposes within New Zealand	9,000.00	13,000.00	16,000.00

Cumulative percentage total funds applied to specified purposes within New Zealand	90%	87%	80%
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57. For more information on these requirements, see Interpretation Statement – [Meaning of wholly or mainly applying funds to specified purposes within New Zealand \(IS 18/05\)](#).
58. For more information on applying the safe harbour approach, including examples of how to determine when funds are applied to specified purposes within New Zealand and how to apply the rolling three-year cumulative approach that Inland Revenue will accept, see the Fact Sheet – [Applying the "safe harbour" approach \(IS 18/05 FS\)](#).

Requirement of no private pecuniary profit

59. Another condition under the Income Tax Act for obtaining the Commissioner's approval as a donee organisation is that the entity cannot be carried on for the private pecuniary profit of an individual. (This is also a requirement under the Charities Act for those entities that apply to become a registered charity.) This means a donee organisation's funds must not be used to provide more than a minor personal benefit to its members, officers, trustees, related parties or associates.
60. Sometimes the stated aims or powers of an entity may allow benefits to members, but these benefits should be very limited. Examples of acceptable benefits are:
- newsletters that don't require a subscription;
 - voting rights to appoint officers of the entity; and
 - benefits also available on the same terms to the general public.
61. If any member can receive more than these benefits, the entity is not eligible to be a donee organisation. Further, if a member can in any way influence (by way of their position or otherwise) the amount of any benefit they receive, the entity will not qualify as a donee organisation.
62. Examples of private or pecuniary profit to members include, but are not limited to:
- members being paid either beyond what is reasonable (more than the normal commercial rate) for their services or for services not actually provided;
 - members being reimbursed for expenses incurred on the donee organisation's behalf beyond what is reasonable;
 - members transferring items to a donee organisation for a price that is above the arm's length price; and
 - members earning interest on money lent to the donee organisation at higher than a normal commercial rate.

63. If an entity's rules allow unrestricted benefits to members, a clause preventing this must be added before the Commissioner will grant donee organisation status. Examples of such a clause include:
- all income, benefit, or advantage must be used to advance the charitable, benevolent, philanthropic or cultural purposes of the entity;
 - no member of the entity, or anyone associated with a member, is allowed to take part in, or influence any decision made by the entity in respect of payments to, or on behalf of, the member or associated person of any income, benefit, or advantage;
 - any payments made must be for goods or services that advance the charitable, benevolent, philanthropic or cultural purposes and must be reasonable and relative to payments that would be made between unrelated parties; and
 - the provisions and effect of this clause shall not be removed from this document and shall be included and implied in any document replacing this document.
64. Companies must also have clauses in their rules that either:
- prevent distribution of dividends or payments to shareholders; or
 - restrict current shareholders and the transfer and issue of shares to registered charitable entities or trustees of a trust for charitable purposes.
65. This information concerning the requirement of no private pecuniary profit is also contained in Inland Revenue guide - [Charitable and donee organisations \(IR255\)](#) (search term IR255)

Requirements for a public institution to obtain donee status

66. The second category eligible for the Commissioner's approval of donee status is a public institution. For a public institution to obtain donee status from the Commissioner under s LD 3(2)(b), it must be maintained exclusively for one or more of the following purposes within New Zealand:
- charitable;
 - benevolent;
 - philanthropic; or
 - cultural.
67. These purposes are described above at [34] to [46].
68. As the public institution must be maintained exclusively for specified purposes within New Zealand, the wholly or mainly requirement is met.

69. An institution is public if its purpose is to benefit an appreciable section of the community, *Maughan v FCT* (1942) 66 CLR 388, 397-398. As a public institution, no funds could be applied for a private pecuniary profit, as described above at [59] to [65].

Requirements for a fund to obtain donee status

70. The third category eligible for the Commissioner's approval of donee status is a fund.
71. For a fund to obtain donee status from the Commissioner under s LD 3(2)(c), the fund must be established and maintained:
- by a non-profit entity (being a society, institution, organisation or trust that is not carried on for the private pecuniary profit of an individual); and
 - exclusively for the purpose of providing money for one or more of the charitable, benevolent, philanthropic or cultural purposes within New Zealand of the non-profit entity.
72. The fund must become a registered charity if it is eligible to do so. If Charities Services determines that the fund is not eligible to register, the fund should provide evidence of this to the Commissioner, who may still consider the fund's application for donee status if the fund satisfied all the requirements to become a donee organisation. It is the responsibility of the non-profit entity to monitor and self-assess the fund's donee status and to advise the Commissioner as soon as the fund ceases to be eligible to be a donee organisation. This is so that the Commissioner can remove the entity from the Approved Donee Organisation list.
73. The meanings of charitable, benevolent, philanthropic and cultural purposes are described above at [34] to [46].

What is a fund

74. In general terms, a "fund" in this context means an actual stock of money or assets set aside for charitable, benevolent, philanthropic, or cultural purposes within New Zealand, as opposed to a mere accounting expression. This includes, for example, a fund represented by a credit balance in a bank account.

Establishing the fund

75. A non-profit entity can set up such a fund by making book entries in its financial accounts, but it must ensure the entries are supported by an actual stock of money or other assets and show that the fund has been set up on a firm or permanent basis for the provision of money for charitable, benevolent, philanthropic, or cultural purposes within New Zealand of the non-profit entity. Best practice suggests a fund is established and maintained through a combination of book entries and a document

setting out terms for the establishment, operation and winding up of the fund (either as part of the rules of the non-profit entity or as a stand-alone document).

76. The fund must apply to the Commissioner to obtain donee status. In the application it should be made clear that donee status is being sought for the fund (not for the non-profit entity).

Use of the fund's money

77. The fund's money must be used for, or used to provide money for, the charitable, benevolent, philanthropic, or cultural purposes within New Zealand of the non-profit entity when it was established. Whether money is used for these purposes is determined by where those purposes are advanced (that is, within New Zealand) rather than where the fund's money is spent.
78. The fund's money may be used for purposes other than the provision of money for charitable, benevolent, philanthropic, or cultural purposes within New Zealand, if those other purposes are subordinate or incidental to this purpose and are not independent purposes.
79. The fund's money may be used by the non-profit entity to meet or reimburse costs it incurs specifically in administering the fund. This includes a contribution to meet a reasonable share of the non-profit entity's administration costs where such costs include the costs of administering the fund.
80. The fund's money may be used by the non-profit entity to meet or reimburse costs it incurs advancing the non-profit entity's own purposes, provided these are exclusively charitable, benevolent, philanthropic, or cultural purposes within New Zealand and are consistent with the purposes of the fund.

Maintaining the fund

81. The fund must be maintained for the provision of money for charitable, benevolent, philanthropic, or cultural purposes within New Zealand of the non-profit entity throughout its lifetime, including the disposal of the fund's money or other assets if wound up.
82. Maintaining the fund requires maintaining the actual stock of money or other assets consistent with any book entries, as the fund's actual stock of money or other assets at its establishment may change over time. Best practice suggests movements of the money or other assets in the fund are tracked and specifically reported on in the non-profit entity's financial accounts.
83. It may be preferable to keep the fund, and in particular the fund's money, separate from the non-profit entity's other money and assets, for instance, by having a separate bank account for the fund. This would make it easier to show that there is an actual

stock of money and show that the purposes of the fund have been maintained over time (by seeing how the money in the account has been used).

84. Further guidance is provided in the Inland Revenue Questions We've Been Asked (QWBA) document - [Donations: What is required to establish and maintain a fund under s LD 3\(2\)\(c\) of the Income Tax Act 2007 \(QB 19/10\)](#). This QWBA considers what is needed to establish and maintain such a fund so that it qualifies as a "donee organisation" and clarifies the Commissioner's views and expectations for those setting up and operating funds under s LD 3(2)(c). The item complements the Inland Revenue Interpretation Statement - [Meaning of wholly or mainly applying funds to specified purposes within New Zealand \(IS 18/05\)](#), and its accompanying [fact sheet on applying the "safe harbour" approach](#).

Requirements for a public fund to obtain donee status

85. The fourth category eligible for the Commissioner's approval of donee status is a public fund.

What is a public fund

86. In general terms, a "public fund" in this context means an actual stock of money or assets set aside for charitable, benevolent, philanthropic, or cultural purposes within New Zealand, as opposed to a mere accounting expression. This includes, for example, a public fund represented by a credit balance in a bank account.
87. For a public fund to obtain donee status from the Commissioner under s LD 3(2)(d) the public fund must be established and maintained exclusively for the purpose of providing money for one or more of the following purposes within New Zealand:
- charitable;
 - benevolent;
 - philanthropic; or
 - cultural.
88. These purposes are described above at [34] to [46].
89. A public fund must meet the requirements for use of the fund's money (above at [77]) and for maintaining the fund (above at [83]) with the modification that where there is a reference to a registered charity, it should be read as the public fund.
90. Once it has been finalised, additional information will be available in a [Questions We've Been Asked](#) publication (currently out for external consultation) which can be found by searching for the title *Donations: What is required to establish and maintain a "public fund" under s LD 3(2)(d) of the Income Tax Act 2007*.

Written applications to the Commissioner for donee status

91. Charities will automatically be considered for donee status upon registration by Charities Services (where they have indicated they intend to receive donations). These charities should not make a separate application to the Commissioner for donee status.
92. Entities that do not have charitable purposes, or for any other reason are not eligible to register with Charities Services, may seek donee status by applying to, and receiving approval by, the Commissioner (for example if they have benevolent, philanthropic or cultural purposes). There is no prescribed form of application. Instead, those entities seeking to obtain donee status approval from the Commissioner should either send their request through myIR or write to the Commissioner seeking approval to be placed on the Commissioner's list of Approved Donee Organisations.
93. The written application to Inland Revenue should be sent through myIR or by mail to Inland Revenue, PO Box 1147, Palmerston North Central, Palmerston North 4440 and should include the following information:
 - the entity's IRD number – if the entity has no IRD number then an application for an IRD number needs to be made, and this can be made online at [-online application for IRD number for a business or organisation](#);
 - a copy of the entity's rules, constitution, trust deed or other founding documents;
 - a copy of the entity's certificate of incorporation (if applicable);
 - details of how the entity has been, or will be, operating, including:
 - (i) where and how the entity's funds will be applied; and
 - (ii) whether (and what percentage) of the funds will be applied for purposes outside New Zealand).
94. It is often helpful to include further information if it illustrates the objects, activities and achievements of the entity, such as website references, reports, newsletters, media articles or testimonials.

Other entities that automatically qualify as donee organisations by definition

95. Section LD 3(2) describes certain types of entities that are recognised as being donee organisations. This includes:
 - a community housing entity, if at the time the gift is made the entity is eligible to derive exempt income under s CW 42B (community housing trusts and companies) (see s LD 3(2)(ac));

- a Board of Trustees that is constituted under subpart 5 Part 3 of the Education and Training Act 2020 and is not carried on for the private pecuniary profit of any individual (see s LD 3(2)(bb)); and
 - a tertiary education institution that is established under subpart 3 or 4 of Part 4 of the Education and Training Act (and which has not been disestablished under that Act) that is not carried on for the private pecuniary profit of any individual (see ss LD 3(2)(bc) and YA 1).
96. Entities meeting these definitions do not need to seek approval from the Commissioner and will generally not be included on the Commissioner's list of Approved Donee Organisations (although historically, many of these entities have been included on the list). This type of entity may appear on the list if it is a registered charity.
97. For example, school boards of trustees of state schools and state integrated schools are donee organisations by virtue of s LD 3(2)(bb), even though they may not be listed in the Commissioner's list of Approved Donee Organisations. School parent-teacher associations or parent support groups that are established independently from the school's board may qualify as donee organisations, but they will need to apply to the Commissioner to obtain donee status. Further guidance on gifts made by parents to state and state-integrated schools can be found in QWBA – [Income tax – state schools and donation tax credits \(QB 18/10\)](#) and [Income tax – state integrated schools and donation tax credits \(QB 18/11\)](#).

Charities approved as donee organisations by Parliament

98. Entities that apply a significant part (or all) of their funds for purposes other than charitable, benevolent, philanthropic or cultural purposes within New Zealand can only be approved as donee organisations by Parliament. As a guide, the Commissioner accepts donee status for entities that apply 25% or less of their funds for these other purposes provided the entity meets the other requirements (see wholly or mainly and the safe harbour above at [48]).
99. Legislation, rather than approval by the Commissioner, is used to implement decisions to grant donee status in these cases. This is because it is an exception to the policy that tax benefits for donations should be limited to entities with purposes within New Zealand.
100. The Commissioner makes a recommendation to Cabinet on whether an application should be granted or not. If approved by Parliament as donee organisation, the entity is listed in schedule 32 to the Income Tax Act.
101. A charity seeking to obtain donee status in this way should be prepared to provide, among other things:

- the charity's goals and long-term vision;
 - the charity's governing documents (constitution and trust deed) showing that its activities and purposes are consistent with Cabinet's criteria;
 - evidence that its purposes are entirely within the purposes described in the Cabinet criteria and that no personal pecuniary profit can be derived;
 - governing documents that contain clauses governing the nature and extent of discretionary powers, the winding-up clause, and the ability to amend the governing document;
 - the charity's internal policies and procedures, where relevant, including for example: anti-money laundering, child protection, memorandum of understanding with the charity's key stakeholders;
 - information regarding the charity's past, current, and proposed activities;
 - the charity's in-country partners;
 - the charity's financial statements;
 - evidence of the degree of control over the application of the charity's funds overseas, and procedures in place to ensure accountability for funds;
 - the planning, monitoring, and evaluation processes used regarding the application of the charity's funds, including how recipients use the funds, as well as the processes used to select beneficiaries and/or projects to support; and
 - evidence of the charity's legal presence in New Zealand and if it is a registered charity.
102. [Applicants for overseas donee status](#) should complete form **IR464** and send it together with supporting documents by either email to policy.webmaster@ird.govt.nz or post to Inland Revenue, Policy and Regulatory Stewardship, PO Box 2198, Wellington 6140.
103. Inland Revenue makes an initial assessment and contacts the charity's representative to make any necessary further enquiries. Any concerns or issues with the charity or its officers or trustees are communicated to the relevant parties directly. Generally, trustees/officers will be asked to consent to a Police vetting check.
104. The review process is very involved (multi-year including enactment) in order to manage risk, to inform spending decisions to be made by Ministers and because Ministers want to be assured of the credibility, transparency and accountability of the applicant to ensure that tax relief afforded by donee status is appropriately targeted and the potential misuse of public monies is minimised.
105. Following review, the Commissioner makes a recommendation to Cabinet.

106. Cabinet decisions to grant donee status are made using the [overseas donee guidelines set by Cabinet](#). The guidelines require that the funds of the charity should be principally applied towards:
- the relief of poverty, hunger, sickness or the ravages of war or natural disaster; or
 - the economy of [developing countries](#) (recognised by the United Nations); or
 - raising the educational standards of a developing country (recognised by the United Nations).
107. In terms of which are “developing countries,” Cabinet uses as a guideline, the United Nations’ List of Least Developed Countries, which is reviewed every three years by the United Nations Economic and Social Council, considering the recommendations by the Committee for Development Policy.
108. The eligible purposes set out in the guidelines are aligned to the Government’s overseas development objectives (disaster relief, provision of humanitarian aid, and assisting developing countries) and narrower than the common law meaning of “charitable purpose” and the legislative framework in the Charities Act 2005.
109. Additionally, a charity seeking donee status must be resident in New Zealand and it is preferable that the charity be registered under the Charities Act. A charity formed for the principal purpose of fostering or administering any religion, cult or political creed will not qualify.
110. There are ongoing requirements once an entity gains donee status and is placed on schedule 32, including the requirement to self-assess and notify changes [167]; for donation tax receipt [147]; record keeping [161]; and winding up [172].

Tax benefits of being a donee organisation

111. The main advantage of being a donee organisation is the benefit it brings to the donors who make charitable or other public benefit gifts. Individuals, companies, and Māori authorities may qualify for tax benefits, such as donation tax credits, payroll giving tax credits or income tax gift deductions.
112. In addition, donee organisations that are not local authorities, public authorities, or universities may be excluded from having to pay fringe benefit tax (FBT) on qualifying fringe benefits they provide to their employees.

Tax credits and deductions for charitable or other public benefit gifts

113. As noted above, individuals may claim donation tax credits, and companies and Māori authorities may claim income tax gift deductions, if they make qualifying “charitable or other public benefit gifts”.
114. Charitable or other public benefit gift is defined in s LD 3 and means a gift of money or a subscription of \$5 or more paid to a donee organisation (so long as any subscription provides no rights arising from membership). It does not include testamentary gifts (that is, a gift made in a will) or gifts made by forgiving some or all of a debt (s LD 3(1)(c)).

Gift to a donee organisation

115. To qualify as a charitable or other public benefit gift, the gift must be made to an entity which:
- is included on the Commissioner’s list of Approved Donee Organisations; or
 - is not included on the Approved Donee Organisation list, but meets one of following descriptions of a donee organisation: a community housing entity (s LD 3(2)(ac)), a school board of trustees (s LD 3(2)(bb)), or a tertiary education institution (s LD 3(2)(bc)); or
 - is listed in schedule 32 of the Income Tax Act (recipients of charitable or other public benefit gifts).

Gift of money of \$5 or more

116. To qualify as a charitable or other public benefit gift for the purposes of s LD 3, there must be a “gift of money of \$5 or more”.
117. The Commissioner considers that to qualify as a “gift of money of \$5 or more” there must be a payment of money of \$5 or more that is made voluntarily and in circumstances where the donor receives no material benefit or advantage in return. Ordinarily a gift will confer a benefit on the donee organisation.
118. The Court of Appeal in *The Church of Jesus Christ of Latter-day Saints Trust Board and Coward v Commissioner of Inland Revenue* (2020) NZCA 143 (“LDS”) found that whether a payment is a gift for the purposes of s LD 1 (where no sham and tax avoidance is at issue) must be ascertained by:

- considering the true nature of the transactions by carefully considering the legal arrangement actually entered into and carried out within its context and in light of the surrounding circumstances; and
 - determining whether the payments made under those transactions are gifts in light of the text and purpose of the donation tax credit rules.
119. A charitable or other public benefit gift does not include the transfer of property or services to a donee organisation.
120. If something is purchased from a donee organisation, such as a ticket to an event or the purchase of goods (for example, at a charity auction), the payment is not a gift.
121. The Court of Appeal in *Commissioner of Inland Revenue v Roberts* [2019] NZCA 654 found that the forgiveness of debt could qualify as a gift of money. However, following the *Roberts* decision, s LD 3(1)(c) was amended to specify that a charitable or other public benefit gift does not include “a gift made by forgiving some or all of a debt.” This amendment was retrospective to 1 April 2008, with a savings provision that means taxpayers who claimed a donation tax credit or income tax gift deduction for the forgiveness of debt prior to 16 December 2019 will be allowed the claim or deduction.
122. A gift does not need to be made directly to a donee organisation. For example, it can be made through a third-party such as an employer via payroll giving (see from [132] below) or through an online fundraising platform.
123. Online fundraising platforms such as crowdfunding services allow a donor to authorise the service provider to pass on their donation to the recipient of the funds. Whether the donor has made a qualifying gift of money of \$5 or more to a donee organisation is determined on the same criteria as any other gift. For the purposes of claiming a tax credit refund or deduction, the donation will not be reduced by any reasonable charge made by the fundraising platform.
124. Further guidance on the attributes of gifts to donee organisations can be found in the QWBA – [Income tax - donee organisations and gifts \(QB 16/05\)](#). The QWBA also provides examples to illustrate the Commissioner’s view on when certain common fundraising activities may or may not involve gifts. For example, a charity dinner and dance, charity auction, supporter package for dramatic society, supporter package for performing arts centre, supporter afternoon tea, friends’ packages, and payments supporting a local football club. However, QB 16/05 should be considered in conjunction with subsequent legislative amendments and the decisions in *LDS* and *Roberts* described above.

Donation tax credits for individuals

125. When individuals make qualifying charitable or other public benefit gifts, they are entitled to a refundable donation tax credit of 33 $\frac{1}{3}$ % of such gifts, provided the gift is no more than the amount of the individual's taxable income for the year (s LD 1; s 41A TAA).
126. Gifts of less than \$5 to a donee organisation can still qualify an individual for a donation tax credit if they are made under an instalment arrangement that is approved by the donee organisation. This means that regular instalments can be made and recorded throughout the year for that donor, with each donation clearly attributable to the donor. At the end of the year the total gift, as returned on the organisation's end-of-year accounts for that person, must be \$5 or more to qualify for a donation tax credit.
127. Individuals can submit their donations tax receipts to the Commissioner through myIR during the tax year or at the end of the tax year. Whichever method is used, the application is processed at the end of the tax year. Individuals have four years from the end of the tax year in which the donation was made to claim donation tax credit refunds (s 41A(6) TAA).
128. When the Commissioner has considered an application, the person will be notified of the amount of the credit and refund allowed. If the Commissioner refuses a refund of a tax credit (in full or in part), the taxpayer can challenge that decision through the disputes process by issuing a Notice of Proposed Adjustment. Inland Revenue's website contains additional [information about the disputes process](#).
129. Individuals can also make charitable or other public benefit gifts by way of payroll giving, discussed below at [132].
130. A donor may ask the Commissioner to apply some, or all, of a donation tax credit to satisfy a liability under the Inland Revenue Acts (s RM 10(2) and s 173T of the TAA). If a donor does not make such a request, the Commissioner may apply the refund to satisfy any liability of that donor (s RM 10(3)).
131. Inland Revenue's website contains further information on [making donation tax credit claims](#).

Payroll giving

132. The payroll giving scheme (ss LD 4-8) provides a tax credit for gifts of money that are deducted from an employee's pay through their employer's payroll. The amount of the tax credit is limited to the amount of tax for the person's pay for the period. Employees receive an immediate reduction in tax by way of tax credit, as a reduction in their PAYE each pay period. This eliminates the need to collect and keep receipts to

claim tax relief on gifts of money at the end of the year. To participate in the payroll giving scheme, the recipient organisation must be a donee organisation.

133. Where payroll giving donations are made to a donee organisation by an employer, the donee organisation must issue a payroll giving donation tax receipt in the participating employer's business name (not in the name of the individual employees who donated).
134. Employees do not include their payroll giving receipts in their *Tax credits claim form (IR526)* at the end of the year. Employers must include employees' payroll giving donations in their *Employment information (IR348)* and adjust the PAYE sent to Inland Revenue by the amount of tax credits for payroll giving donations. For further information see Inland Revenue's [Payroll giving guide \(IR617\)](#).

Income tax gift deductions for companies

135. A company can claim an income tax gift deduction for a charitable or other public benefit gift it makes to a donee organisation (s DB 41(2)). "Company" is defined in section YA 1 of the Income Tax Act broadly enough to include certain societies and clubs.
136. The amount of the company's deduction is limited to the company's net income for the relevant income year (that is, essentially annual income, less annual expenses before the donation is deducted).
137. Where money is transferred by a company that has been deregistered as a charity, to another charity, that payment does not qualify for an income tax gift deduction as a charitable or other public benefit gift (s DB 41(2B)).

Income tax gift deductions for Māori authorities

138. A Māori authority may claim an income tax gift deduction for donations made to a Māori association, or a charitable or other public benefit gift made to a donee organisation (s DV 12).
139. The amount of the Māori authority's deduction is limited to the Māori authority's net income for the relevant income year (that is, essentially annual income, less annual expenses before the donation is deducted).
140. Where money is transferred by a deregistered charity that is a Māori authority to a charity in accordance with the charity deregistration rules, that payment does not qualify for an income tax gift deduction (s DV 12(1B)).
141. For further guidance on Māori authorities go to the Inland Revenue website for information and the following publications:

- [Becoming a Māori authority \(IR487\)](#)
- [Māori authority tax rules \(IR1202\)](#)
- [Payments and Gifts in the Māori community \(factsheet\) \(IR278\)](#)

Administrative provisions - donation tax credits and income tax gift deductions

142. The usual four-year time bar provisions apply to company and Māori authority income tax returns that include deductions claimed for charitable or public benefit gifts (s 108 TAA).
143. For individuals, from 1 April 2019, for the purposes of determining the time bar period (ss 41A(6B)):
- the payment of a refund is treated as an assessment; and
 - the four-year time bar period starts at the end of the tax year in which the person applied for the refund.
144. This means that, absent any wrongdoing in relation to the donation tax credit refund or deduction claimed for charitable or public benefit gifts, the Commissioner cannot amend a taxpayer's claim (to adjust it either up or down) after 4 years have passed.
145. Use-of-money debit interest and other relevant penalties apply in relation to donation tax credits that are overclaimed by donors (s 120VD of the TAA).
146. Specific anti-avoidance rules apply (s GB 55) when a person enters into an arrangement and the arrangement has a purpose or effect of defeating the intent and application of s LD 1. Companies and Māori Authorities will continue to be subject to the general anti-avoidance provision (s BG 1).

Donation tax receipt requirements

147. Inland Revenue's guide [Charitable and donee organisations \(IR255\)](#) outlines the Commissioner's requirements for donee organisations when issuing donation tax receipts to donors for gifts they have made.
148. To assist donors to make claims, and to enable the Commissioner to efficiently consider those claims, the donee organisation should provide the donor with a receipt that includes:
- the donee organisation's official stamp or letterhead with the donee organisation's full name (and branch, if appropriate);
 - the donee organisation's IRD number and Charities Services registration number (if applicable);

- the donor's full name (and their address, if known);
 - the full amount and date of the donation (or, if there were payments made throughout the year, the total donation amount for the income year ending 31 March provided the entity had donee status for the entire income year);
 - a clear statement that the amount received is a donation - the donation amount should be clearly separated from any other amounts covered by the receipt (subscription fees, amounts paid for goods or services or raffle tickets are not donations and so should be shown separately from the donation amount on the receipt);
 - the name, designation and signature of a person authorised to accept donations for the donee organisation (this may be an electronic signature); and
 - a receipt number, unique to each receipt.
149. Where a receipt for the donee organisation is re-issued as a replacement, it must be clearly marked "copy" or "replacement".
150. Treasurers and officers of donee organisations should not authorise or sign their own receipts or those relating to their immediate family members.
151. Donee organisations should keep current the contact details of persons authorised to oversee donations, such as the secretary or treasurer, as Inland Revenue may wish to contact them to verify receipts. To update Inland Revenue, use the form [Appoint an Executive Office Holder to act on your behalf \(IR 401\)](#).
152. Where a donee uses a tax agent or representative to apply for a refund of their donation tax credit, the tax agent or representative must see the receipt of the donee's charitable or other public benefit gift, and the donee must retain the receipt for four tax years after the tax year to which the claim relates (s LD 1(4)).
153. To claim a donation tax credit, a donor will need to have a valid donation receipt.
154. A donor can start the process of claiming donation tax credits during the year by uploading receipts online as donations are made, rather than waiting to submit everything at the end of the tax year.
155. The donation tax credit is limited to the taxable income of the donee, which is only known at the end of the tax year. The claim for all receipts uploaded during the year will be processed as one.
156. If you are unable to upload receipts online, you may still submit them along with [IR526](#) after the year end.

Fringe benefit tax concessions for donee organisations

157. Some benefits provided by employer donee organisations to their employees are excluded from FBT if the benefits are provided mainly in connection with their

employment, in an activity carried on within the organisation's benevolent, charitable, philanthropic or cultural purposes (s CX 25).

158. The exclusion applies to "charitable organisations". This term is defined in s YA 1 and, in the FBT context will include most donee organisations. However, local authorities, public authorities and universities are specifically excluded from being charitable organisations and so the ordinary FBT rules apply to them.
159. If an entity ceases to meet the definition of charitable organisation in s YA 1 of the Income Tax Act, it will cease to be eligible for the FBT concession under s CX 25. The FBT exclusion is discussed in more detail in Part 1 of this Operational Statement.
160. The exclusion from FBT is addressed in Public Ruling – [Fringe benefit tax - charitable and other donee organisations and fringe benefit tax](#) (BR Pub 17/06).

Record keeping

161. While registered charities have information and reporting obligations under the Charities Act, they must also comply with the requirements of the Inland Revenue Acts.
162. All donee organisations should keep sufficient records in English or te reo Māori to calculate any tax liability and to demonstrate eligibility for tax exemptions or concessions. Depending upon the entity, this may include receipt and payment account books, bank statements, invoices (including GST tax invoices), receipts and wage records for employees.
163. Additionally, donee organisations must also keep a record of:
 - the sources of any donations made to it; and
 - how its funds have been used, within New Zealand or overseas.
164. If requested by the Commissioner, a donee organisation may be required to provide a breakdown of all donations paid by a particular donor, including the respective date and payment method for all donations making up the total on the receipt.
165. Records should be kept for a minimum of seven years, even if the donee organisation ceases operating.
166. For further information on record keeping refer to the 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).

Requirement to self-assess and notify changes

167. All donee organisations must continually self-assess to determine whether they continue to meet the donee status requirements.
168. If a donee organisation determines that it no longer meets the requirements in s LD 3, it must immediately cease issuing donation tax receipts and inform the Commissioner of its change in circumstances by mail sent to Inland Revenue, PO Box 1147, Palmerston North Central, Palmerston North 4440 or by email to charities.queries@ird.govt.nz.
169. The entity will then be removed from the Commissioner's Approved Donee Organisation list (if it was included there). If the entity is included in schedule 32, the Commissioner will inform Parliament that the entity no longer qualifies for inclusion and Parliament will take the necessary steps to remove it.

Binding Rulings

170. 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.
171. Inland Revenue's website contains more information about [binding rulings](#).

Winding up a donee organisation

172. Upon winding up, consistent with the "wholly or mainly" requirement, a donee organisation's remaining income and/or assets should be applied to charitable, benevolent, philanthropic or cultural purposes within New Zealand. The donee organisation's rules or constitution should contain provisions outlining what will happen to remaining income and assets on winding up.
173. A donee organisation may have other statutory requirements that apply upon winding up (for example, the requirements upon liquidation or dissolution by the Registrar under the Incorporated Societies Act 1908).

Deregistration

174. Charities that are deregistered (for example, voluntarily or as a result of failing to meet their filing obligations with Charities Services) will lose donee status. If the charity

appeals the deregistration, it should notify the Commissioner, as it can then retain donee status until its appeal is determined (s LD 3(2)(ab)).

175. If the deregistered charity does not appeal the deregistration, donors to these deregistered entities will not be able to claim a donation tax credit or income tax gift deduction for any donations made to the charity during the period of deregistration.
176. A deregistered charity must ensure that its donation tax receipts, and its websites and newsletters, clearly state that donations made after the date of deregistration will not qualify a donor for a donation tax credit or an income tax deduction.

Removal as a donee organisation

177. The Commissioner's decision to remove an organisation's donee status is a "disputable decision" (defined in s 3(1) of the TAA) meaning it may be challenged under Part 8A of the TAA. Inland Revenue's website contains additional information about [the disputes process](#).

Appendix - Hyperlink / web address cross-reference table

- Binding rulings - Inland Revenue website - https://www.taxtechnical.ird.govt.nz/apply-for/apply-for-a-ruling/what-is-a-binding-ruling#Binding_ruling – referred to at [171].
- *Charitable and donee organisations (IR255)* (March 2020) - Inland Revenue guide - <https://www.ird.govt.nz/index/all-forms-and-guides#sort=%40computedz95xshouldernumberz95xalpha%20ascending&numberOfResults=25> (search term IR255) – referred to at [21].
- Charities, general information – Inland Revenue website: <https://www.ird.govt.nz/roles/charities> - referred to at [6].
- Charities Register (maintained by DIA/Charities Services) – DIA/Charities Services website - <https://www.charities.govt.nz/charities-in-new-zealand/the-charities-register/> - referred to at [16].
- Commissioner’s list of Approved Donee Organisations - <https://www.ird.govt.nz/income-tax/income-tax-for-individuals/individual-tax-credits/tax-credits-for-donations> - referred to at [19] and [24].
- Disputes process – Inland Revenue website - <https://www.ird.govt.nz/contactus/complaints-disputes-compliments/disputes> - referred to at [128] and [177].
- Donation tax credit claims – Inland Revenue website - <https://www.ird.govt.nz/about-us/how-we-make-sure-people-pay-the-right-tax/making-tax-easy/easier-donation-tax-credit-claims> - referred to at [131].
- Donation tax credit claims submitted via paper – Inland Revenue form IR526 - <https://www.ird.govt.nz/income-tax/income-tax-for-individuals/individual-tax-credits/tax-credits-for-donations/submit-a-donation-receipt> – referred to at [156].
- Donation tax receipts – Inland Revenue website - <https://www.ird.govt.nz/roles/non-profits/helping-your-donors-claim-their-donation-tax-credit> (scroll down to “Other was to do this” - referred to at [147].

- FBT exclusion - Public Ruling – *Fringe benefit tax - charitable and other donee organisations and fringe benefit tax* (**BR Pub 17/06**) - <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 [160].
- “Fund” – establishing and maintaining - Inland Revenue Questions We’ve Been Asked (QWBA) document - *Donations: What is required to establish and maintain a fund under s LD 3(2)(c) of the Income Tax Act 2007* (**QB 19/10**): <https://www.taxtechnical.ird.govt.nz/questions-we-ve-been-asked/2019/qb-1910-donations-what-is-required-to-establish-and-maintain-a-fund-under-s-l-3-2-c-of-the-income-t> - referred to at [84].
- Gifts by parents to state and state-integrated schools - Questions We’ve Been Asked (QWBA) documents – *Income tax – state schools and donation tax credits* (**QB 18/10**): <https://www.taxtechnical.ird.govt.nz/questions-we-ve-been-asked/2018/qb1810-qb-1810-income-tax-state-schools-and-donation-tax-credits> and *Income tax – state integrated schools and donation tax credits* (**QB 18/11**): <https://www.taxtechnical.ird.govt.nz/questions-we-ve-been-asked/2018/qb1811-qb-1811-income-tax-state-integrated-schools-and-donation-tax-credits> - referred to at [97].
- Gifts to donee organisations – Inland Revenue Questions We’ve Been Asked (QWBA) – *Income tax - donee organisations and gifts* (**QB 16/05**) - <https://www.taxtechnical.ird.govt.nz/questions-we-ve-been-asked/2016/qb-1605-income-tax-donee-organisations-and-gifts> - referred to at [122].
- IRD number application – Inland Revenue website online application - <https://www.ird.govt.nz/managing-my-tax/ird-numbers/ird-numbers-for-businesses-and-organisations/apply-for-an-ird-number-for-a-new-zealand-business-or-organisation> - - referred to at [93].
- Māori authorities - Inland Revenue publications – all referred to at [141] –
Becoming a Māori authority (**IR487**) – Inland Revenue publication – <https://www.ird.govt.nz/roles/maori-authorities/maori-authority-eligibility>

Māori authority tax rules (**IR1202**) – <https://www.ird.govt.nz/roles/maori-authorities/maori-authority-eligibility/elect-to-become-a-maori-authority>

Payments and Gifts in the Māori community (Factsheet) (**IR278**) – <https://www.ird.govt.nz/income-tax/income-tax-for-businesses-and-organisations/types-of-business-income/donations-koha>
- No private or pecuniary profit – see *Charitable and donee organisations* (**IR255**) (March 2020) - Inland Revenue guide - <https://www.ird.govt.nz/index/all-forms-and->

[guides#sort=%40computedz95xshouldernumberz95alpha%20ascending&numberOfResults=25](#) (search term IR255) – referred to at [65].

- Overseas charities donee status – Cabinet guidelines - <https://taxpolicy.ird.govt.nz/news/2009/2009-12-09-guidelines-schedule-32-inclusion#guidelines> - referred to at [106].
- Overseas charities donee status – request form - Overseas donee status request form (IR464): <https://www.ird.govt.nz/roles/charities/tax-exemptions-for-charities/apply-for-overseas-donee-status> - referred to at [102].
- Overseas charities requirement to benefit least developed countries - *The United Nations List of Least Developed Countries* (effective 11 February 2021): https://www.un.org/development/desa/dpad/wp-content/uploads/sites/45/publication/lcd_list.pdf (for future periods search for the United Nations Economic and Social Council review/approval of the recommendations by the Committee for Development Policy) – referred to at [107].
- Payroll giving - Inland Revenue publication - *Payroll Giving Guide* (IR617) - <https://www.ird.govt.nz/employing-staff/deductions-from-income/payroll-giving> <https://www.ird.govt.nz/-/media/project/ir/home/documents/forms-and-guides/ir600---ir699/ir617/ir617-2020.pdf> - referred to at [134].
- Persons authorised to oversee donations (keep IR updated) - form *Appoint an Executive Office Holder to act on your behalf* (IR401) - <https://www.ird.govt.nz/managing-my-tax/getting-someone-to-act-on-my-behalf/executive-office-holders/appoint-an-executive-office-holder-to-act-on-my-behalf> - referred to at [151].
- 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 [166].
- Wholly or mainly - Interpretation Statement – *Meaning of wholly or mainly applying funds to specified purposes within New Zealand* (IS 18/05) - <https://www.taxtechnical.ird.govt.nz/interpretation-statements/is-1805-income-tax-donee-organisations-meaning-of-wholly-or-mainly-applying-funds-to-specified-purpo> - referred to at [57] and [84].
- Wholly or mainly “safe harbour” - Fact Sheet – *Applying the “safe harbour” approach* (IS 18/05 FS) - <https://www.taxtechnical.ird.govt.nz/fact-sheets/is-1805-interpretation-statement-1805-fact-sheet-applying-the-safe-harbour-approach> - referred to at [58] and [84].

Note that all Inland Revenue forms and guides can be accessed by searching the form or guide number at:

<https://www.ird.govt.nz/index/all-forms-and-guides#sort=%40computedz95xshouldernumberz95alpha%20ascending&numberOfResults=25>

Appendix – LEGISLATION

Income Tax Act 2007

CX 25 Benefits provided by charitable organisations

When not fringe benefit

- (1) A charitable organisation that provides a benefit to an employee does not provide a fringe benefit except to the extent to which—
 - (a) the employee receives the benefit mainly in connection with their employment; and
 - (b) the employment consists of the carrying on by the organisation of a business whose activity is outside its benevolent, charitable, cultural, or philanthropic purposes.

When employer provides charge facilities

- (2) Subsection (1) does not apply, and the benefit provided is a fringe benefit, if a charitable organisation provides a benefit to an employee by way of short-term charge facilities and the value of the benefit from the short-term charge facilities for the employee in a tax year is more than the lesser for the tax year of—
 - (a) 5% of the employee's salary or wages;
 - (b) \$1,200.

Meaning of short-term charge facilities

- (3) For the purposes of the FBT rules, a short-term charge facility means an arrangement that—
 - (a) enables an employee to obtain goods or services that have no connection with the employer or its operations by—
 - (i) buying or hiring the goods or services;
 - (ii) charging the cost of the goods or services to an account;
 - (iii) providing consideration other than money for the goods or services; and
 - (b) requires the employer to provide some or all of the payment or other consideration for the goods or services; and
 - (c) is not a fringe benefit under section CX 10.

DB 41 Charitable or other public benefit gifts by company

Who this section applies to [Repealed]

- (1) [Repealed]

Deduction

- (2) A company is allowed a deduction for a charitable or other public benefit gift that it makes to a donee organisation.

No deduction

- (2B) Despite subsection (2), a company is not allowed a deduction for the amount of a charitable or other public benefit gift it makes, to the extent to which the amount is, for the company, an asset ignored for the purposes of section HR 12 (Non-exempt charities: treatment of tax-exempt accumulations) and described in section HR 12(3)(a).

Amount of deduction

- (3) The deduction for the total of all gifts made in an income year is limited to the amount that would be the company's net income in the corresponding tax year in the absence of this section.

Link with subpart DA

- (4) This section supplements the general permission. The general limitations still apply.

DV 12 Maori authorities: donations

Deduction

- (1) A Maori authority is allowed a deduction for—
- (a) a donation that it makes to a Maori association, as defined in the Maori Community Development Act 1962, for the purposes of the Act:
 - (b) a charitable or other public benefit gift that it makes to a donee organisation.

No deduction

- (1B) Despite subsection (1), a Maori authority is not allowed a deduction for the amount of a donation it makes or for the amount of a charitable or other public benefit gift it makes, to the extent to which the amount is, for the Maori authority, an asset ignored for the purposes of section HR 12 (Non-exempt charities: treatment of tax-exempt accumulations) and described in section HR 12(3)(a).

Amount of deduction

- (2) The deduction for the total of all donations and gifts made in an income year is limited to the amount that would be the Maori authority's net income in the corresponding tax year in the absence of this section.

Link with subpart DA

- (2) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.

GB 55 Arrangements involving tax credits for charitable or other public benefit gifts

When this section applies

- (1) This section applies when—
- (a) a person enters into an arrangement; and
 - (b) the arrangement has a purpose or effect of defeating the intent and application of section LD 1 (Tax credits for charitable or other public benefit gifts).

Credit reduced

- (3) A tax credit under section LD 1 is reduced to the amount that the Commissioner considers would have arisen had the arrangement not occurred.

LD 1 Tax credits for charitable or other public benefit gifts

Amount of credit

- (1) A person who makes a charitable or other public benefit gift in a tax year and who meets the requirements of section 41A of the Tax Administration Act 1994 has a tax credit for the tax year equal to the amount calculated using the formula in subsection (2).

Formula

- (2) The formula referred to in subsection (1) is—
total gifts × 33⅓%.

Definition of item in formula

- (3) In the formula, total gifts means the total amount of all charitable or other public benefit gifts made by the person in the tax year.

Administrative requirements

- (4) Despite subsection (1), the requirements of section 41A are modified if a tax agent or representative applies for a refund under that section on behalf of a person, and—
- (a) the tax agent or representative sees the receipt for the person's charitable or other public benefit gift; and
 - (b) the person retains the receipt for 4 tax years after the tax year to which the claim relates.

Refundable credits

- (5) A credit under this section is a refundable tax credit under section LA 7 (Remaining refundable credits: tax credits for social policy and other initiatives) and is excluded from the application of sections LA 2 to LA 6 (which relate to a person's income tax liability).

LD 2 Exclusions

Section LD 1 does not apply to—

- (a) an absentee:
- (b) a company:
- (c) a public authority:
- (d) a Maori authority:
- (e) an unincorporated body:
- (f) a trustee liable for income tax under subpart HC, and section HZ 2 (which relate to trusts and distributions from trusts):
- (g) in relation to the credit, a person who has a tax credit for a payroll donation.

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

LD 4 Tax credits for payroll donations

Who this section applies to

- (1) This section applies to a person who—
 - (a) is an employee whose employer—
 - (i) provides employment income information by electronic means with particulars relating to the person's PAYE income payments for a pay period; and
 - (ii) agrees to offer payroll giving to their employees; and
 - (b) chooses to make a payroll donation in the pay period from an amount derived as pay.

Amount of credit

- (2) The person has a tax credit for the pay period equal to an amount calculated using the formula—

$$\text{total donations} \times 33\frac{1}{3}\%.$$

Definition of item in formula

- (3) In the formula, total donations is the total amount of all payroll donations made by the person in the pay period.

Maximum credit

- (4) Despite subsection (2), the amount of the tax credit must not be more than the amount of tax for the person's pay for the period.

Non-refundable credits

- (5) A credit under this section is a non-refundable tax credit to which section LA 4(1) (When total tax credit more than income tax liability) applies for the tax year in which the period falls.

No refunds for donations

- (6) A person who has a tax credit under this section may not make an application under section 41A of the Tax Administration Act 1994 for any refund relating to the amount of a payroll donation.

Meaning of pay for payroll donation purposes

- (7) For the purposes of this section, and sections LD 8(1) and 124ZG of the Tax Administration Act 1994, pay, for a person,—
 - (a) means an amount referred to in section RD 5(1)(a) or (b)(i) (Salary or wages); and
 - (b) includes any similar amount earned by an employee in the normal course of their employment; and
 - (c) [Repealed]

YA 1 Definitions

In this Act, unless the context requires otherwise,—

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

donee organisation means an entity described in section LD 3(2) (Meaning of charitable or other public benefit gift) or listed in schedule 32 (Recipients of charitable or other public benefit gifts)

Tax Administration Act 1994 – ss 3 definitions of disputable decision and gift-exempt body, 32, 41A, 58, 120VD

3 Interpretation

- (1) In this Act, unless the context otherwise requires,—

disputable decision means—

- (a) an assessment:
- (b) a decision of the Commissioner under a tax law, except for a decision—
 - (i) to decline to issue a binding ruling under Part 5A; or
 - (ii) that cannot be the subject of an objection under Part 8; or
 - (iii) that cannot be challenged under Part 8A; or
 - (iv) to issue a Commissioner's notice of proposed adjustment under section 89B, a Commissioner's disclosure notice or statement of position under section 89M, or a challenge notice; or
 - (v) to issue, or to decline to issue, a Commissioner's COVID-19 response variation under section 6I; or
 - (vi) to grant, or to decline to grant, a loan under the small business cashflow scheme under section 7AA; or
 - (vii) to make, or to decline to make, a grant under the COVID-19 resurgence support payments scheme under section 7AAB

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) 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

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.

41A Returns in relation to charitable or other public benefit gifts

- (1) A person who has a tax credit under sections LD 1 to LD 3 of the Income Tax Act 2007 may apply for a refund by—
 - (a) providing the information on the total amount of the charitable or other public benefit gifts they have made for a tax year with the information provided under Part 3, subpart 3B:
 - (b) charitable or other public benefit gift that they have made during the tax year to which the application relates:
 - (c) completing the form prescribed by the Commissioner.
- (2) The total amount refunded, including a refund made on an application under subsection (7), must be no more than the annual amount of the tax credits.
- (3) The sum of the charitable or other public benefit gifts under sections LD 1 to LD 3 of that Act made by a person must be no more than their taxable income in the tax year in which the gift is made.
- (4) If subsection (3) applies, the Commissioner must reduce the total amount of charitable or other public benefit gifts so that the total is no more than the person's taxable income in the tax year in which the gift is made.
- (5) An application under subsection (1) must be made in the manner required by the Commissioner, and be accompanied by any information the Commissioner requires, including—
 - (a) [Repealed]
 - (b) the amount of a charitable or other public benefit gift to which sections LD 1 to LD 3 of that Act apply.
- (6) A taxpayer may apply for a refund for the tax year in which the gift is made in the 4-year period beginning with—
 - (a) the 1 April following the end of the taxpayer's income year corresponding to the tax year, if the taxpayer has a standard balance date or an earlier balance date; or
 - (b) the day after the end of the taxpayer's income year corresponding to the tax year, if the taxpayer has a late balance date.
- (6B) For the purposes of section 108(1),—
 - (a) the payment of a refund under this section is treated as an assessment; and
 - (b) the 4-year period starts at the end of the tax year in which the person applies for the refund.

- (7) Despite subsection (6), the Commissioner may, in special circumstances, accept an application for a refund before the end of the tax year to which the application relates.
- (8) For the purpose of subsection (7), special circumstances include—
 - (a) the person leaving New Zealand, permanently or for a significant length of time:
 - (b) a trustee of a deceased person's estate wishing to wind up the estate.
- (9) Despite subsection (1), the Commissioner must not refund the amount of a tax credit unless the requirements of subsections (2) and (3) are met.
- (10) When the Commissioner has considered an application, the Commissioner must notify the person of the amount of the tax credit under sections LD 1 to LD 3 of that Act and of the amount of refund allowed.
- (11) A tax credit may not be refunded to an absentee, a company, a public authority, a Maori authority, an unincorporated body, or a trustee liable for income tax under sections HC 16, HC 32, or HZ 2 of that Act.
- (12) A refund under subsection (1) must be paid as if it were tax paid in excess.
- (13) A refund under subsection (1), to the extent to which it is more than the correct amount of refund, is recoverable as an excess tax credit under section 142D.
- (14) The Commissioner must publish, from time to time, in a publication chosen by the Commissioner, a list of the names of entities that—
 - (a) have provided the information required under subsection (16):
 - (b) the Commissioner considers appropriate to include on the list (for example, an entity registered under the Charities Act 2005).
- (15) Despite subsection (14), the name of an entity must not be published on the list if the Commissioner determines that the entity is not described in section LD 3(2)(a), (ab), (b), (c), or (d) of the Income Tax Act 2007.
- (16) An entity may request that their name is included on the list by providing information to the Commissioner in the form prescribed by the Commissioner.

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.

120VD Interest on tax credits for charitable or other public benefit gifts

No interest shall be payable by the Commissioner under section 120D(3) on an amount of tax credit calculated under section LD 1 of the Income Tax Act 2007.

Goods and Services Tax Act 1985

75 Keeping of records

- (1) For the purposes of this section, the term records includes 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.
- (2) Without limiting the generality of subsection (1), the records required to be kept and retained, pursuant to subsection (3), shall contain—

- (a) a record of all goods and services supplied by or to that registered person showing the goods and services, and the suppliers or their agents, in sufficient detail to enable the goods and services, the suppliers, or the agents to be readily identified by the Commissioner, and all invoices, tax invoices, credit notes, and debit notes relating thereto; and
 - (b) the charts and codes of account, the accounting instruction manuals, and the system and programme documentation which describes the accounting system used in each taxable period in the supply of goods and services; and
 - (c) any list required to be prepared in accordance with section 19B(3) or section 78B(7).
- (3) Subject to subsections (4) to (7), every registered person must keep, for a period of at least 7 years after the end of the taxable period to which they relate, the records listed in subsection (2) and records that are sufficient to enable ready ascertainment by the Commissioner or an officer authorised by the Commissioner of the registered person's liability to tax.
- (3BA) A registered person required by subsection (3) to keep and retain a record must keep and retain the record—
 - (a) in English or te reo Maori, or in a language in which the Commissioner authorises the person under subsection (6) to keep the record or the type of record; and
 - (b) at a place in New Zealand, or at a place outside New Zealand where—
 - (i) the Commissioner authorises the registered person under subsection (6) to keep the record or the type of record:
 - (ii) the record is kept by a person authorised by the Commissioner under subsection (6) to keep records for persons that include the registered person.
- (3B) For the purposes of section 11(1)(mb), the supplier must maintain sufficient records to enable the following particulars in relation to the supply to be ascertained:
 - (a) the name and address of the recipient; and
 - (b) the registration number of the recipient; and
 - (c) a description of the land; and
 - (d) the consideration for the supply.
- (3C) Subsections (3D) and (3E) apply when a supply that wholly or partly consists of land is made to a person who is, for the purposes of the supply, an agent acting on behalf of an undisclosed principal.
- (3D) The requirements of subsection (3B)(a) and (b) are met if the supplier maintains sufficient records to enable the particulars of the name, and address, and registration number or tax file number, as applicable of the agent to be ascertained.
- (3E) The agent must maintain sufficient records in relation to the undisclosed principal to enable the name, address, and, if the principal is a registered person or expects to be a registered person, the registration number of the principal to be ascertained.
- (3F) Subsection (3BA) does not apply to require a non-resident supplier whose only supplies are supplies of distantly taxable goods to which section 8(3)(ab) applies or of remote services to which section 8(3)(c) applies, to keep and retain records—
 - (a) in English or te reo Maori or in a language authorised by the Commissioner; or

- (b) at a place in New Zealand or at a place outside New Zealand authorised by the Commissioner.
- (4) This section shall not require the retention of any records—
 - (a) in respect of which the Commissioner has given notice that retention is not required:
 - (b) of a company which has been liquidated.
- (5) The Commissioner may, by notice given before the expiry of the 7-year retention period specified in subsection (3), require a registered person to retain the records specified in that subsection for a further period not exceeding 3 years following the expiry of the 7-year period where—
 - (a) the affairs of the registered person are or have been under audit or investigation by the Commissioner; or
 - (b) the Commissioner intends to conduct such an audit or investigation before the expiry of the retention period as so extended, or is actively considering any such audit or investigation.
- (6) The Commissioner may, upon application by a registered person or another person, authorise for the purposes of subsection (3BA),—
 - (a) a registered person to keep and retain a record or a type of record—
 - (i) in a language other than English or te reo Maori:
 - (ii) at a place outside New Zealand:
 - (b) a person to hold, for a registered person, records—
 - (i) at places outside New Zealand; and
 - (ii) in a form approved by the Commissioner; and
 - (iii) accessible by the Commissioner in a way approved by the Commissioner.
- (7) The Commissioner may, for an authorisation under subsection (6) of a person,—
 - (a) impose reasonable conditions on the authorisation:
 - (b) reasonably vary the conditions on the authorisation:
 - (c) withdraw the authorisation, upon request by the person or after giving reasonable notice of the withdrawal:
 - (d) give public notice of an action under subsection (6)(b) or this subsection, in a publication chosen by the Commissioner.
- (8) A registered person who is required under this section to keep and maintain records that are in a language other than English must comply with the requirements of sections 24, 24BA, and 25 relating to English words that must appear on a tax invoice, or a debit note or credit note, provided by the registered person.

Charities Act 2005

5 Meaning of charitable purpose and effect of ancillary non-charitable purpose

- (1) In this Act, unless the context otherwise requires, 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.
- (2) However,—

- (a) the purpose of a trust, society, or institution is a charitable purpose under this Act if the purpose would satisfy 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; and
 - (b) a marae has a charitable purpose if the physical structure of the marae is situated on land that is a Maori reservation referred to in Te Ture Whenua Maori Act 1993 (Maori Land Act 1993) and the funds of the marae are not used for a purpose other than—
 - (i) the administration and maintenance of the land and of the physical structure of the marae:
 - (ii) a purpose that is a charitable purpose other than under this paragraph.
- (2A) The promotion of amateur sport may be a charitable purpose if it is the means by which a charitable purpose referred to in subsection (1) is pursued.
- (3) To avoid doubt, if the purposes of a trust, society, or an institution include a non-charitable purpose (for example, advocacy) that is merely ancillary to a charitable purpose of the trust, society, or institution, the presence of that non-charitable purpose does not prevent the trustees of the trust, the society, or the institution from qualifying for registration as a charitable entity.
- (4) For the purposes of subsection (3), a non-charitable purpose is ancillary to a charitable purpose of the trust, society, or institution if the non-charitable purpose is—
- (a) ancillary, secondary, subordinate, or incidental to a charitable purpose of the trust, society, or institution; and
 - (b) not an independent purpose of the trust, society, or institution.

13 Essential requirements

- (1) An entity qualifies for registration as a charitable entity if,—
- (a) in the case of the 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; and
 - (b) in the case of a society or an institution, the society or institution—
 - (i) is established and maintained exclusively for charitable purposes; and
 - (ii) is not carried on for the private pecuniary profit of any individual; and
 - (c) the entity has a name that complies with section 15; and
 - (d) all of the officers of the entity are qualified to be officers of a charitable entity under section 16.
- (2) The trustees of a trust must be treated as complying with subsection (1)(a) if,—
- (a) in accordance with a ruling made under Part 5A of the Tax Administration Act 1994,—
 - (i) an amount of income derived by the trustees in trust is treated as having been derived by the trustees in trust for charitable purposes for the purposes of section CW 41 of the Income Tax Act 2007; or
 - (ii) income is treated as having been derived directly or indirectly from a business carried on by, or for, or for the benefit of, the trustees in trust for charitable purposes for the purposes of section CW 42 of the Income Tax Act 2007; or
 - (b) the income derived by the trustees is deemed to be income derived by trustees in trust for charitable purposes under section 24B of the Maori Trust Boards Act 1955.

- (3) A society or an institution must be treated as complying with subsection (1)(b) if, in accordance with a ruling made under Part 5A of the Tax Administration Act 1994, that society or institution is treated as being a society or institution that is established and maintained exclusively for charitable purposes and not carried on for the private pecuniary profit of any individual for the purposes of section CW 41 or CW 42 of the Income Tax Act 2007.
- (4) Subsections (2) and (3) cease to apply in relation to an entity if—
 - (a) the period for which the ruling applies has expired; or
 - (b) the ruling has ceased to apply because of section 91G of the Tax Administration Act 1994; or
 - (c) the ruling has otherwise ceased to apply to the entity.
- (5) Despite subsections (1) to (3), an entity does not qualify for registration as a charitable entity if—
 - (a) the entity is a designated terrorist entity as defined in section 4(1) of the Terrorism Suppression Act 2002; or
 - (b) the entity has been convicted of any offence under sections 6A to 13E of the Terrorism Suppression Act 2002.