



Operational statement

ED0207/a

Charities and donee organisations: Part 1: Charities

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

This Statement outlines how Inland Revenue and Charities Services (formerly the Charities Commission) will monitor and advise charitable entities of the requirements for income tax exemptions and donee status.

This Statement is in 2 parts that together make up Operational Statement OS 19/xx – *Charities and Donee Organisations*. The 2 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* (***)

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Summary of main points

1. The following is a summary only and more detail is provided in this Statement. In brief, Inland Revenue's operational practice provides advice on the following:
 - Charities are required to have IRD numbers.
 - Charitable organisations (including charitable trusts registered under the Charitable Trusts Act 1957) must be registered with Charities Services under the Charities Act 2005 (the Charities Act) to qualify as a "tax charity". Failure to do so will result in tax-exempt status being denied until the entity is registered.
 - Charities that are registered under the Charities Act will, prima facie, qualify for the income tax exemption for non-business income in s CW 41.
 - For charities that derive business income, registration under the Charities Act alone will not be sufficient to qualify for the business income tax exemption in s CW 42. Those charities must self-assess the extent to which their charitable purposes are carried out in New Zealand. The income tax exemption is only available for that part of the business income carried out for charitable purposes in New Zealand.
 - From 2020-21 and later income years, charities with income derived directly or indirectly from a business carried on by, or for the benefit of a trust, society, or institution of a kind referred to in s CW 41(1) will be exempt from income tax on that income only if the entity carrying on the business is, at the time that income is derived, also registered as a charitable entity under the Charities Act.
 - A charitable bequest is a gift in a will. Charities that receive such bequests are exempt from income tax, under ss CW 41 or CW 42, on the amount received. The amount that is derived by the executors/administrator of the will, that will be passed onto a charity, is exempt income s CW 43.
 - Newly registered charities will not need to make a separate application to Inland Revenue for donee status.
 - From 1 April 2020, registered charities will be automatically treated by the Commissioner as being exempt from resident withholding tax (RWT) so applications for RWT-exempt status. will no longer be required.
 - The FBT concessions for charitable organisations with donee status applies to a charity only to the extent that any fringe benefits provided are part of the charity's business activities that are within its charitable, benevolent, philanthropic or cultural purposes.
 - From 15 May 2018 rules have been introduced amending the concessionary GST treatment of charities under the Goods and Services Tax Act 1985 (the GST Act), including rules relating to the valuation of assets on disposal, and upon deregistration.
 - Various tax consequences arise for charities that are removed (deregistered) from the Charities Services register, including charities that have been voluntarily removed. The rules, with application generally from 14 April 2014, clarify how a deregistered charity should treat its assets and liabilities for tax purposes when it becomes a tax-paying entity.
 - From 1 April 2019, the deregistration rules apply to the valuation of assets and liabilities and a de minimis threshold for low value of accumulated assets.

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- Some specific rules apply to Māori organisations that are registered charities, including those relating to a marae on Māori reservation land and trusts established under the Te Ture Whenua Māori Act 1993.
- The deregistration rules (with retrospective effect from 14 April 2014) ensure that for marae built on reservation land established under the Te Ture Whenua Māori Act 1993 the value of the land and improvements on the land will be excluded from the net asset calculation upon deregistration.
- The Commissioner may approve an exemption from income tax for an international/non-resident charity that is unable to be registered with Charities Services, if certain criteria are met.
- Certain disclosure and reporting obligations may apply to charities that are financial institutions under the Foreign Account Tax Compliance Act (FATCA), and/or the Automatic Exchange of Information obligations under the Common Reporting Standards, a global form of FATCA.
- The Commissioner no longer requires a charity's rules to contain a clause preventing it from altering certain clauses without the Commissioner's prior approval.
- During the transitional period following enactment of the Taxation (Annual Rates for 2018-19, Modernising Tax Administration, and Remedial Matters) Act 2019 charities retain their existing tax-exempt status for income tax, fringe benefit tax, and resident withholding tax for the period between 18 March 2019 (the date of Royal assent of that Act) to 1 April 2020.
- Charities may also refer to Inland Revenue's tax guide *Charitable and donee organisations* (IR 255), for further information on forms and guides.

Scope of this statement

2. The purpose of OS 19/xx is to assist organisations in the charities and not-for-profit sectors to understand their tax obligations and the tax exemptions available to them.
3. This Part 1 of OS 19/xx provides guidance to charities including, for example:
 - charitable registration requirements and obligations,
 - qualifying for income tax exemptions,
 - how other tax rules such as GST, FBT etc apply to charities,
 - non-resident charities, and
 - specific tax treatment relating to Māori charities.
4. This statement also addresses other tax matters relevant to charities like record-keeping and the implications of being deregistered from the Charities Register.
5. Under the Income Tax Act, a "charity" is any charitable entity registered on the Charities Register. A charitable entity is a society, an institution, or the trustees of a trust registered as a charitable entity under the Charities Act. This terminology is consistent with that used by Charities Services.

Application date of this statement

6. This Part 1 of OS 19/xx will apply to charities from (**tba).

Introduction

7. Charities and not-for-profits make important contributions to the wellbeing of New Zealanders. One of the ways the Government supports charities and not-for-profits is by providing favourable tax treatment. This comes in the form of income tax deductions and concessions, tax concessions for donations, GST concessions, and FBT concessions for certain employees.

Establishment and role of Charities Services

8. The Charities Commission was established (as a Crown entity) under the Charities Act. The Commission's functions included promoting public trust and confidence in the Charities Register, and effective use of charitable resources. The Commission was responsible for administering the Charities Act and for the establishment of a register of charitable entities, known as the Charities Register.
9. The commencement of the Charities Register on 1 February 2007 has significantly increased the collection of information about registered charities as well as providing more information about who benefits from those activities.
10. The Charities Commission was disestablished in 2012, with its functions becoming the responsibility of the independent Charities Registration Board and Department of Internal Affairs. The Charities Registration Board is an independent statutory decision maker and is responsible for decisions on the registration and deregistration of charities. The Board delegates routine decisions to Charities Services, a business of the Department of Internal Affairs (DIA). As well as facilitating registration, Charities Services has functions to educate and assist charities, receive annual returns, monitor and, where appropriate, investigate charities, and to promote research into any matter regarding charities. Registration remains voluntary and charities can elect to deregister from the Charities register.
11. Charities Services' objectives are to promote trust and confidence in the charitable sector, to encourage and promote the effective use of charitable resources, to provide for the registration of societies, institutions, and trustees of trusts of charitable entities, and to require charitable entities and certain other persons to comply with them.

Inland Revenue and Charities Services working together

12. One of the Government's aims in establishing the charities registration process was to ensure, as much as possible, a seamless interface between a charity's registration and its entitlement to tax exemptions. However, the registration of a charity under the Charities Act does not mean a charity is automatically eligible for the tax exemptions provided to charities. One of Charities Services' functions is to provide information that supports Inland Revenue in its decisions for available tax benefits.
13. To further enable Charities Services and Inland Revenue to work together effectively under s 18 of the Tax Administration Act 1994 (TAA), provision was made in a Memorandum of Understanding (dated March 2013) for the sharing of information between Charities Services and Inland Revenue. Most charities registered with Charities Services will immediately receive tax exemption.

14. In addition, s 30 of the Charities Act provides for the supply of Charities Register information by Charities Services to Inland Revenue for the performance of the functions of the revenue Acts. All such information exchanges take account of relevant legislative secrecy provisions and also the requirements of the Privacy Act 1993 and the Official Information Act 1982.
15. Charities Services' website at www.charities.govt.nz provides general information about charities and how to apply for registration.

Income tax exemptions

Qualifying for income tax exemptions

16. The registration of a charity under the Charities Act does not mean a charity is automatically eligible for the tax exemptions provided under the Income Tax Act.
17. The Income Tax Act provides three possible income tax exemptions for trusts, societies and institutions that derive their income for charitable purposes:
 - s CW 41 exemption for non-business income;
 - s CW 42 exemption for business income; and
18. From 1 July 2008, it became a pre-requisite for organisations wishing to obtain these income tax exemptions that they register under the Charities Act. In addition, these exemptions also contain their own requirements that must be satisfied for a tax exemption to be available. The requirements of ss CW 41 and 42 must also be met and, although registered on the Charities Register, charities must still assess for themselves whether they meet the income tax exemption requirements.
19. The Commissioner can challenge a charity's decision about the availability of an income tax exemption. This will generally occur through the audit process. The Commissioner will not advise an organisation on its charitable status for income tax purposes prior to its registration on the Charities Register other than by way of a binding ruling under Part 5A of the Tax Administration Act 1994 (the TAA).

Charitable purposes

20. Under the Income Tax Act tax exemptions are available to charities on income derived for charitable purposes. Section YA 1 defines "charitable purpose" with reference to the current common law meaning as including:

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...
21. The Charities Registration Board determines an entity's "*charitable purpose*" under s 5(1) of the Charities Act, which states that:
 - (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.

Income tax exemption for non-business income

22. Section CW 41 provides charities with an income tax exemption for their non-business income. An example of non-business income is investment income (such as interest, dividends and rent).

23. The exemption applies to an amount of income:
- derived by:
 - a trustee in trust for charitable purposes, or
 - by a society or institution established and maintained exclusively for charitable purposes and not carried on for the private pecuniary profit of any individual, and
 - that trust, society or institution is, at the time the income is derived, a tax charity, and
 - the income is not derived from a business carried on by, or for, or for the benefit of:
 - a trustee in trust for charitable purposes, or
 - a society or institution established and maintained exclusively for charitable purposes and not carried on for the private pecuniary profit of any individual a trust, society or institution.
 - [Tax charity](#)
24. To be eligible for the exemption, trusts, societies or institutions must be a “tax charity” under s CW 41(5). Generally, this means the entities must comply with the registration requirements of the Charities Act.
- (5) **Tax charity** means—
- (a) a trustee, a society, or an institution, registered as a charitable entity under the Charities Act 2005:
 - (b) a trustee, a society, or an institution (the **entity**), that—
 - (i) has started, before 1 July 2008, to take reasonable steps in the process of preparing an application for registering the entity as a charitable entity under the Charities Act 2005; and
 - (ii) intends to complete the process of preparing an application described in subparagraph (i); and
 - (iii) has not been notified by the Commissioner that the entity is not a tax charity:
 - (c) a trustee, a society, or an institution, that is or are non-resident and carrying out its or their charitable purposes outside New Zealand, and which is approved as a tax charity by the Commissioner in circumstances where registration as a charitable entity under the Charities Act 2005 is unavailable:
 - (d) a person who is removed from the register, in the period starting with the day they are registered on the register and ending with the earlier of the following days:
 - (i) the day on which the person does not comply with the person’s rules contained in the register:
 - (ii) the day of final decision.
25. For income tax purposes, s YA 1 defines “charitable purpose” with reference to the current common law meaning, as including “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”.
26. Since 1 July 2008 the Charities Registration Board is also empowered to determine an entity’s “charitable purpose”. This is included in s 5 of the Charities Act. The definition of charitable purpose that is used by Charities Services is, for most practical purposes, the same as that used by Inland Revenue and, as a “tax

charity”, the charity will likely be treated by the Commissioner as qualifying for the income tax exemption in s CW 41.

- [Council-controlled organisations exclusion](#)

27. There is one exception to the Commissioner’s practice of treating charities as being eligible for the non-business income exemption, and that relates to council-controlled organisations (CCOs) as defined in the Income Tax Act.
28. Under s CW 41(4) the non-business income exemption does not apply to:
 - income derived by a CCO other than a CCO operating a hospital as a charitable activity, or
 - income derived by a local authority from a CCO other than from a CCO operating a hospital as a charitable activity on behalf of the local authority.
29. Because CCOs are not necessarily entitled to the non-business income tax exemption they are encouraged to contact Inland Revenue’s Significant Enterprises Customer Segment, Customer and Compliance Services – Business, for further advice.

[Income tax exemption for business income](#)

30. Section CW 42 provides charities with an income tax exemption for their business income. The exemption for business income in s CW 42 is different from the exemption for non-business income in s CW 41 because being a charity does not mean *prima facie* eligibility for the s CW 42 exemption.
31. Charities deriving income directly or indirectly from a business carried on by or for or for the benefit of a charity is exempt income to the extent the charity carries out its charitable purposes in New Zealand, providing no person with some control over the business is able to direct or divert income derived from the business to their benefit or advantage.
32. Prior to the 2020-21 income year the business income exemption extends to income derived directly by a charity, or indirectly through a separate business “*carried on for, or for the benefit of* a charity. This means separate businesses could take advantage of the business income exemption without being charities themselves and without being subject to the reporting requirements of charities. However, with application for the 2020-21 and later income years, the business income exemption under s CW 42 has been amended so that it applies only to business income derived by a charity, and not by a separate business carried on for, or for the benefit of a charity that is not, itself, a charity.
 - [Eligibility for business income exemption](#)
33. To be eligible for the business income exemption a charity must be:
 - a trust, society, or institution that carries out its charitable purposes in New Zealand, and
 - a tax charity, and
 - no person with some control over the business must be able to direct or divert income to the benefit or advantage of a person except for charitable purposes.

- Charitable purposes in New Zealand

34. To be eligible for the business income exemption, the charity must carry out its charitable purposes in New Zealand. Where a charity's charitable purpose is not limited to New Zealand, the income is apportioned between those purposes within New Zealand and those outside New Zealand and taxed accordingly. Only the income apportioned to the New Zealand charitable purposes is exempt income (s CW 42(4)).

Example: Business income derived by a charity for the charitable purpose of educating Pacific Island children, will be exempt to the extent that the charitable purposes (of educating Pacific Island children) are carried out in New Zealand. Any business income derived from the charitable business purposes of educating Pacific Island children outside New Zealand would not be exempt.

35. For charities deriving business income, it is imperative they self-assess their tax status correctly. This self-assessment, calculating a reasonable apportionment between charitable purposes within New Zealand and those outside New Zealand, must be undertaken year by year. It is advised the charity can show that where its charitable purposes are carried out, either in New Zealand or outside New Zealand, are separately recorded in its records.
36. The term "New Zealand" is defined in s YA 1. It is an inclusive definition (and so not exhaustive) and includes the continental shelf and the water and air space above the continental shelf that is beyond New Zealand's territorial sea (subject to some limitations). In essence, 'in New Zealand' or similar words referring to New Zealand, when used as a territorial description, means the islands and territories within the Realm of New Zealand; but does not include the self-governing State of the Cook Islands, the self-governing State of Niue, Tokelau, or the Ross Dependency.

- Tax charity

37. From the 2020-2021 tax year any trust, society or institution claiming the business income exemption must be a "tax charity" under s CW 41(5), at the time the business income is derived. (For the requirements of a tax charity see [24] above).

- No person with some control over the business can divert income

38. For the business income exemption to apply charities are also required to ensure no person with some control over the business is able to divert an amount derived from the business for their own benefit, or for the benefit of another person except for a purpose of the charity (see ss CW 42(5) to (8)).
39. Whether a person is able to divert an amount by materially influencing decisions is a matter of fact and degree. It is not necessary for the benefit or advantage to be actually received. In any audit the documentation of charities (trust deeds or constitutions, board minutes and resolutions, accounting records, etc) will be examined to determine whether a person with some control over the business is able to exert influence that would enable a person to receive a benefit or advantage which is not for a purpose of the charity. A determination has to be made as to whether a benefit is gained or is able to be gained by a person had it not been for the influence of that person (who has some control of the business). The person's legal, as well as practical, ability to influence will be examined. (Refer to the discussion by the High Court in *CIR v Dick* (2001) 20 NZTC 17,396).

40. A person does not have some control over a business merely because they provide professional services to the business and their ability to determine the benefit or advantage arises because they are:
- providing services in professional public practice,
 - a statutory trustee company,
 - the Public Trust, or
 - the Māori Trustee.
41. If it is clear that the establishment of any benefit or advantage has been undertaken in such a manner to ensure that no more than market value was paid, the Commissioner will likely accept that there has been no material influence (under *CIR v Dick*). For example, something acquired through the provision of goods or services at market value will not be considered a benefit or advantage.
42. The ability for private pecuniary profit or to gain a benefit or advantage are criteria that may affect a charity's registration and will be examined by Charities Services as part of the registration process. Where there is the potential for private pecuniary profit it is likely the organisation will not be registered as a charity. However, the Commissioner has a duty to apply the tax legislation and so may, notwithstanding the charity being registered, generally decide whether in any particular situation the exemption for business income should apply.
- [Meaning of "control over business"](#)
43. There is a wide spectrum of situations in which a person may be able to exercise some control over a business. At one extreme, particularly with potential also for benefit or advantage, there would be situations of duress or oppressive conduct, or where the person controls the decision-making in terms of majority voting rights, or with associated persons controlling the board, or where the trust instrument grants a right of veto over decisions to that person. At the other end of the spectrum are cases where the settlor is consulted but has no power to direct, or the person in question is only one of a number of trustees or directors involved in decision making.
44. Whether a person is able to exert material influence is a matter of fact and degree. It will depend upon the facts, the particular arrangement, the degree of relationship of the parties, the documentation of the charitable entity and the way it makes its decisions.
45. Where there is a sole trustee, it would be implied that the sole trustee would be able to exert the requisite influence.
46. In instances where there are two or more persons who are able to influence a decision, whether a person is able to *materially* influence may depend on whether the person actually participates in the discussion and decision making. Even if in a minority on the decision-making group, material influence could still be exerted. For example, a person whose advice is well regarded by the trustees is able to influence the other trustees.
47. The past behaviour of the entity, such as the pattern of distributions or whether any benefits have been given at any time to any person who is able to influence the entity through their status, can be a guide as to whether in practice the person in question is able to materially influence the setting of benefits.

48. Adequate records (for example, minutes of meetings) should be kept as an indication of the decision-making process.
- [Meaning of “benefit or advantage”](#)
49. A benefit or advantage may include an amount regardless of whether it is convertible into money. It also includes retaining or reserving an interest in an asset that has been disposed of to a charitable trust.
50. Companies that are in business are, in some cases, subject to rights or powers granted to shareholders and directors under the Companies Act 1993. However, where any such rights enable a person to influence the decisions of the business, so that a person other than for a purpose of the charity obtains a benefit, or is able to obtain a benefit or advantage, the income derived from that business will not be exempt from tax. Special provisions may be required eliminating such powers that could enable a person to influence company decisions. For example, Charities Services have outlined its guidance for such provisions on its website at: <http://www.charities.govt.nz/ready-to-register/need-to-know-to-register/charitable-purpose-and-your-rules/>. Similar guidance for Inland Revenue’s requirements may be found in its booklet **IR 255**, at page 31.
51. A benefit or advantage that is received or able to be received by a person is defined widely in s CW 42(8) and includes, for example, property obtained by theft, something that may or may not be convertible into money, etc. Where a person receives or could receive any one of the benefits in s CW 42(8) the business income exemption in s CW 42 does not apply.

[Council-controlled organisations exclusion \(re business income exemption\)](#)

52. Similar to the tax exemption exclusion for CCO’s non-business income (see [27] to [29]), the business income exemption does not apply to:
- income derived by a CCO **other than** a CCO operating a hospital as a charitable activity, or
 - income derived by a local authority from a CCO **other than** from a CCO operating a hospital as a charitable activity on behalf of the local authority.

[Charitable bequests](#)

53. A charitable bequest is a gift made in a will. Under s CW 43 an amount of income derived by the executor or administrator of the deceased’s estate is exempt income if:
- the amount arises or is attributable to assets of the estate that have been left to a charity, and
 - the amount, if derived by the charity would be exempt income under s CW 41 or s CW 42.
54. Section CW 43 is not available to the extent the charity carries out its charitable purposes outside New Zealand.

Resident withholding tax exempt status

55. From 1 April 2020 registered charities exempt from income tax under s CW 41 and s CW 42 will be automatically treated by the Commissioner as being resident

withholding tax (RWT) exempt, so applications for RWT-exempt status will no longer be required. (See *Tax Information Bulletin Vol 30, No.5, June 2018*)

56. A New Zealand resident who holds a RWT exemption will not have RWT deducted from payments made to them of resident passive income, such as interest, dividends or royalties, from bank accounts and investments in New Zealand.
57. An application for a RWT exemption may be made on form **IR451- Application for exemption from resident withholding tax (RWT) on interest and dividends**. An exemption is allowed so long as the Commissioner is satisfied that the applicant is an eligible person. The Commissioner will accept registration with Charities Services as proof that the applicant is charitable and therefore eligible for RWT exemption.
58. From 1 April 2020, registered charities will be automatically treated by the Commissioner as having RWT exemption status, and they will no longer need to apply for exemption certificates.

Fringe benefit tax exclusion

59. Charitable organisations (including charities) are liable for fringe benefit tax (FBT) *unless* the exclusion from FBT in s CX 25 applies to them. Section CX 25 excludes some benefits provided to employees by charitable organisations from being fringe benefits.
60. The exclusion from FBT in s CX 25 is addressed in Inland Revenue's Public Ruling **BR Pub 17/06 - Charitable and Other Donee Organisations and Fringe Benefit Tax**. [This Ruling replaced BR Pub 09/03: *Charitable Organisations and Fringe Benefit Tax* which was withdrawn with effect from 1 July 2017. However, BR Pub 09/03 will continue to apply to arrangements entered into before 1 July 2017 for a further 3 years. After 30 June 2020 BR Pub 17/06 will apply to all arrangements, regardless of when they were entered into.]
61. The exclusion in s CX 25 applies to "charitable organisations" of the types referred to in s LD 3(2) or listed in Schedule 32 which together are referred to as 'donee organisations' in s YA 1. This term is defined in s YA 1 and, in the FBT context, has a wider meaning than simply charities registered under the Charities Act 2005. It includes most organisations usually referred to as "donee organisations", that is, any association, fund, institution, organisation, society or trust that is not carried on for the private pecuniary profit of an individual and whose funds are applied wholly or mainly to benevolent, charitable, philanthropic or cultural purposes. Local authorities, public authorities and universities are specifically excluded from being "charitable organisations" for FBT purposes (and so the ordinary FBT rules apply to them). For ease of reference, in this operational statement the types of charities that can rely on the FBT exclusion in s CX 25 are referred to as "qualifying organisations". See further in Part 2 of this Operational Statement – *Donee organisations*.
62. Qualifying organisations carry on a variety of activities. Those activities may include business activities. Those business activities may be within the organisation's benevolent, charitable, cultural or philanthropic purposes or outside those purposes – even if undertaken to help fund the organisation's benevolent, charitable, philanthropic or cultural purposes.

FBT exclusion

63. The FBT exclusion in s CX 25 applies where a qualifying organisation provides a benefit to an employee mainly in connection with their employment, in an activity carried on within the organisation's benevolent, charitable, philanthropic or cultural purposes.
- [Meaning of the term 'business'](#)
64. The Commissioner's BR Pub 17/06 clarifies that the definition of "*business*" in s YA 1 must be applied to determine whether a charitable organisation is carrying on a business.
- [Meaning of 'carrying on a business'](#)
65. BR Pub 17/06 also clarifies that the distinction between the business activities that are within, or outside of, the qualifying organisation's benevolent, charitable, philanthropic or cultural purposes is specific to the FBT exclusion. It is not relevant for income purposes or when determining whether an organisation is a charitable entity for the purposes of the Charities Act.
- [Meaning of "in connection with employment"](#)
66. BR Pub 17/06 clarifies that where benefits are received mainly in connection with employment, to the extent an employee is engaged in activities carrying out a charitable organisation's benevolent, charitable, philanthropic or cultural (including the carrying on of a business activity), benefits provided to them will not attract FBT.
67. However, to the extent a qualifying organisation's employee is engaged in business activities of the organisation that are **not** of themselves benevolent, charitable, philanthropic or cultural, any benefits provided to the employee will not fall within the exclusion provided by s CX 25 and so may attract FBT.
- [Meaning of "the extent to which..."](#)
68. The exclusion does not apply where a qualifying organisation provides a benefit to an employee mainly in connection with their employment, to the extent to which the benefit is provided in a business activity carried on **outside** the qualifying organisation's benevolent, charitable, philanthropic or cultural purposes.
69. The Commissioner considers that the phrase "the extent to which" in s CX 25(1) contemplates apportionment. This means, in brief, that the Commissioner considers FBT will apply only to benefits provided to an employee mainly in connection with their employment, and then only to the extent to which those benefits are received in connection with employment in a business carried on outside a qualifying organisation's purposes. See further BR Pub 17/06 at p14-16.
- [Short term charge facilities](#)
70. The FBT exemption to benefits provided by a qualifying organisation to an employee by way of short-term charge facilities, for example, credit or charge cards, vouchers, was limited. From 2014 the cap on the value of those benefits in a tax year was limited to the lesser of 5% of the employee's salary or wages for the tax year, or \$1,200.

71. In brief, a short-term charge facility is an arrangement that enables an employee of the charitable organisation to obtain goods or services that have no connection with the organisation or its operations and the liability for the payment of the goods or services obtained is placed on the organisation. A short-term charge facility includes some vouchers but does not include an employment-related loan.

Goods and services tax

72. The GST treatment of charities (and other not-for-profit bodies) that carry on a taxable activity (see s 6 of the GST Act) is more concessionary than for other taxpayers because charities may claim back GST on most of their expenses, even if they are unrelated to the charity's taxable activity. This means they often receive GST refunds.
73. In essence, the GST treatment of charities (and other not-for-profit bodies) differs from that of other entities in two areas:
- The supply of donated goods and services by a charity is an exempt supply for GST purposes. This means no GST is paid on the sale of these goods and services, and no input tax deductions are available for GST costs incurred in making those sales. For example, the sale of donated clothing by a charity shop is an exempt supply, so no GST is charged on such sales, but GST is not claimable on the shop expenses paid, such as power and shop fittings.
 - Other than for exempt supplies (such as the sale of donated goods), input tax deductions can be claimed by charities for all GST incurred for any activity that is not an exempt activity of a charity. The receipt and payment of donations is outside the scope of GST rather than specifically exempt. Under current GST legislation charities can therefore claim input tax deductions (often in the form of refunds) for the GST costs involved in fundraising and distributing funds or providing services.

GST on disposals of assets by charities

74. Special rules apply where an asset used by a charity in the course or advancement of an activity that is not a taxable activity is disposed of.
- Under s 20(3K) of the GST Act goods and services used by a charity are always treated as being used in the course or advancement of its taxable activity. This includes where a charity uses an asset **except** where it is an asset for which the charity has made an election under s 20(3KB), (which must be before 1 April 2021), to the extent that the goods and services are not used for the making of exempt supplies, and if the goods and services are not excluded from the effect of this subsection by an election of the registered person under subsection (3KB).
 - A charity can elect under s 20(3KB) for an asset to be used outside its taxable activity. When an election is made the charity is treated as disposing of the asset and reacquiring it at the time of the election. The output tax on the disposal is limited by the amount of input tax on supplies that relate solely to the asset related to the charity's non-taxable activity and were received by the charity before the election. When the charity eventually disposes of an elected asset used outside its taxable activity no GST needs to be charged.
75. Section 88 provides for the valuation of supplies of assets used by GST-registered charities. In particular it provides for:

- a charity to be bound by a tax position concerning the output tax on the disposal of an asset if the tax position is taken in a return **before** 15 May 2018 (see ss 88(1) and (2)),
- the availability of an election concerning the value of a supply that is made **during the period** 15 May 2018 to 1 April 2021 as a consequence of the deregistration of the charity (see ss 88(3) to (5)), and
- a limitation to the amount of input tax for a charity, or an associated person, who acquires from an unregistered person an asset for which a charity has made an election under s 88(4) or under s 20(3KB) within the period of 5 years before the acquisition (see ss 88(6) and (7)).

Non-resident withholding tax

76. If a charity pays interest, dividends or royalties to a non-resident this is called non-resident passive income. As such, the charity may be required to deduct non-resident withholding tax (NRWT) from the payments made to the non-resident.
77. Note that non-resident passive income does not include exempt income, such as the investment income of a non-resident charity recognised as a "tax charity" and no NRWT would need to be deducted in those circumstances.
78. For more information see Inland Revenue's *Non-resident withholding tax-payer's guide (IR291)*.

Administrative tax requirements

79. Under the Inland Revenue Acts, charities must meet certain administrative tax requirements. These requirements include things like having an IRD number and keeping tax records.

Requirement for IRD numbers

80. Charities are required to have IRD numbers. Further information and application forms are available on the Inland Revenue website. (ird.govt.nz (search keywords: IRD numbers.))
81. Note that the guide IR 255 *Charitable and donee organisations* advises (at page 21) that an IRD number is needed for Charities Services when applying for charitable registration.

Record keeping

82. While charities have information and reporting obligations under the Charities Act 2005, they must also comply with the requirements of the Revenue Acts.
83. Under s 32 of the TAA all gift exempt bodies must keep sufficient records in English or Te Reo Māori to enable the Commissioner to determine both the sources of donations made to them and the application of their funds within New Zealand or within a country or territory outside New Zealand. The Commissioner may, however, authorise a gift exempt body to keep those records in a language other than English or Te Reo Māori if the gift exempt body applies in writing to the Commissioner for the authorisation.
84. A "gift exempt body" is defined in s 3(1) of the TAA and means:

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- (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.

- 85. A charity will usually be a gift exempt body. This is because the reference to s 32E(2)(k) of the TAA in the definition brings s CW 41 and s CW 42 tax charities within its requirements.
- 86. Section 58 of the TAA requires that every gift exempt body may be required to provide, if requested, a return of its funds derived or received in any tax year and showing the source and application of those funds.
- 87. Section 75 of the GST Act requires generally that every registered person must keep records including books of account (whether contained in a manual, mechanical, or electronic format) recording receipts or payments or income or expenditure, and also includes vouchers, bank statements, invoices, tax invoices, credit notes, debit notes, receipts, and such other documents as are necessary to verify the entries in any such books of account. Note also that s 57 of the GST Act that contains specific requirements for those unincorporated bodies carrying on a taxable activity.
- 88. For further information on record keeping refer to the Commissioner's Standard Practice Statement **SPS 13/01: Retention of business records, application to store records offshore and application to keep records in Māori**.

Alterations to a charity's founding documents

- 89. In the past, the Commissioner suggested charities include clauses to restrict the alteration of certain clauses without prior approval from the Commissioner in their founding documents. The relevant clauses were those defining the charitable purposes or objects, the clause relating to personal advantage, the rule change clause and the winding up clause.
- 90. The Commissioner no longer gives prior approval to clause changes and recommends that charities remove any such requirement from their rules. To enable this to happen, the Commissioner will provide her consent to an amendment to the alterations clause to contain, for example, a clause stating that "*No addition to or alteration or removal from the rules shall be made if it detracts from the charitable nature of the organisation or allows private pecuniary benefits to any individual(s)*".
- 91. Charities Services must be notified of any rule change to a registered charity's documents within 3 months after the changes have been made. If a charity is incorporated under the Incorporated Societies Act 1908 it must also inform the Registrar of Incorporated Societies of any changes.

Binding ruling applications

- 92. An entity may apply to the Commissioner for a binding ruling under Part 5A of the TAA for an arrangement that considers if income derived is exempt from tax under s CW 41 and/or s CW 42.
- 93. If the entity receives a positive ruling it will be treated as complying with the "charitable purposes" component of the requirements for registration under the

Charities Act 2005, for the duration of the binding ruling. This registration is currently provided for in s 13(2) and (3) of the Charities Act 2005.

94. In addition, under s 91CB(1) of the TAA a private ruling can be made on the status of a taxpayer without the need for an arrangement.

Tax implications of deregistration of charities

95. Where a charity is deregistered under s 31 of the Charities Act it is removed from the Charities Register and ceases to be a “tax charity” for income tax purposes. It also ceases to be tax exempt from the “day of final decision”, being the later of:
- the day the charity is removed from the Charities Register, or
 - the day on which the charity exhausts all disputes and appeals with Charities Services regarding its charitable status.
96. As charities on the Charities Register are entitled to various tax concessions, there are several specific deregistration rules relating to the tax consequences that arise when entities are removed (or deregistered) from the Charities Register. The deregistration rules also apply to entities that voluntarily request to be removed from the Register. The deregistration rules clarify how a deregistered charity should treat its assets and liabilities for tax purposes when it becomes a tax-paying entity.
97. There are specific deregistration tax rules to be taken into account, principally set out in ss HR 12 and CV 17. In broad terms these rules are intended to encourage a deregistered charity to dispose of its assets to another person for charitable purposes (or otherwise in accordance with its rules as filed on the Charities Register) within a year of the deregistration date.
98. For further guidance see the Inland Revenue website ird.govt.nz (search keywords: [charity, deregistered](#)); and also, *Tax Information Bulletin Vol 26, No 7, August 2014, pp 65-69*.

Key tax implications of deregistration

99. In summary, the key tax implications of the charity deregistration rules are:
- **Cessation of income tax exemption:**
 - When a charity is deregistered, it will become liable for income tax from that date on. This applies unless the entity qualifies for another income tax exemption. For example, the business and non-business exemptions cease but the entity qualifies for a tax exemption as an amateur sports body (s CW 46) or a community housing entity (s CW 42B).
 - The grounds for deregistration will determine the date on which the charity becomes liable for income tax.
 - **Tax on net assets:**
 - Tax will also be payable on any assets (including accumulated income) less liabilities, that are held by the charity on the end date for its charitable exemption.
 - The tax on net assets also applies to entities not registered with Charities Services, which previously qualified for an exemption from income tax on business income under s CW 42. In this case, the tax will apply to the net

assets held on the date the entity stops meeting the criteria for a charitable income tax exemption. The entity will have to be registered with Charities Services from 1 April 2020 to be able to claim the exemption.

- The tax does not apply to assets that have been disposed of or transferred for charitable purposes or in accordance with the entity's governing documents within 1 year. This applies from:
 - 14 April 2014 for charities which voluntarily deregistered;
 - 1 April 2015 for charities deregistered by Charities Services;
 - 6 April 2016 for entities not registered with Charities Services which were previously exempt from income tax on business income but no longer meet the requirements for exemption.
 - **Valuation of assets and liabilities:**
 - Prior to 1 April 2019 the legislation referred to a deregistered charity being taxed on its "net assets". However, the legislation did not indicate the appropriate valuation method to be used to measure the entity's net assets. From 1 April 2019 s HR 12(7) specifies that assets and liabilities should be valued at their market value. Market value refers in general terms to the price an asset would be sold for in an arm's length transaction. This is usually determined from market-based evidence by appraisal.
 - There are 2 situations where valuing assets and liabilities at market value is **not** required:
 - where certain assets (premises, plant, equipment and trading stock) already have a prescribed valuation method in the deregistration rules. That value should be used for the purposes of the "net assets" calculation, and
 - where the deregistered charity has assets and liabilities not subject to the prescribed valuation method and it valued these assets and liabilities at fair value to comply with the Public Benefit Entity International Not-for-Profit Accounting Standard 17. In that case the fair value should be used for the purposes of the "net assets" calculation.
 - Section 88 of the GST Act clarifies the method of valuation of assets and liabilities at the date of deregistration for non-profit bodies making certain supplies, deregistering, or acquiring certain assets of another non-profit body. This section applies to any assets that do not already have a prescribed valuation method and applies with retrospective effect from 14 April 2014.
100. In addition to these key implications, charities deregistered on or after 1 April 2019 need to consider the following deregistration rules:
- **Deregistering large groups of charities:**
 - Large charities will often operate as part of a group, with charitable entities holding equity investments in other registered charities. If a parent entity and its subsidiaries are deregistered under the Charities Act, then the deregistration rules apply to each of those entities and each entity must pay tax based on the value of the net assets. This means the value of the underlying assets could be taxed more than once.
 - This change ensures that if a parent entity and one or more members of a charitable group deregister at the same time, the value of the parent's shares

in the subsidiary is ignored for the purposes of calculating the parent's income under the deregistration rules (see s HR 12(3)(e)).

- **Disposal of wholly-owned subsidiaries for market value:**
- In circumstances where a charity acquires 100% ownership of an investment company it will typically register that company as a charity in its own right. When it later sells its shares, then the subsidiary may be required to deregister and be taxed on the value of its net assets.
- If a charity sells an interest in a subsidiary at arm's length for market value, the deregistration tax does not apply to that subsidiary if it is deregistered as a result of the sale (see s HR 12(2))
- **De minimis threshold for small deregistered charities:**
- Small deregistered charities with limited resources may find it difficult to value assets for the purposes of the deregistration tax. From 1 April 2019 small deregistered charities with a *de minimis* threshold of \$10,000 in net assets are excluded from the deregistration rules.

101. From 1 April 2020 and subsequent income years charities that have been deregistered as a result of failing to meet their obligations with Charities Services will lose their donee organisation status between the dates of deregistration and any subsequent re-registration. As a result, donations to these deregistered entities also will not qualify for tax credits. The deregistered entities will not be able to access the FBT exclusion or the income tax concessions in this period between deregistration and any re-registration.

Non-resident charitable organisations

102. Charities Services will consider non-resident charitable organisations for registration where the organisations:

- have a strong connection with New Zealand, and
- fulfil the required criteria for registration as a charity.

103. Non-resident charitable organisations that cannot be registered by Charities Services because they are not established in New Zealand, or do not have a strong connection with New Zealand may still apply to Inland Revenue to be exempt from income tax as a "tax charity". The Commissioner may approve an exemption from income tax for a non-resident charitable organisation if it is unable to be registered with Charities Services under the Charities Act.

Guidelines for non-resident charities

104. Information on how to make an application for exemption as a non-resident charity may be found at [ird.govt.nz/\(search keywords: exemption non-resident-charity](http://ird.govt.nz/(search%20keywords%3A%20exemption%20non-resident-charity)

105. When making an application to the Commissioner for an exemption from income tax the non-resident charity must either:

- produce evidence of having been declined registration by Charities Services, or
- explain why they consider they would not be able to be registered with Charities Services.

106. Applications from a non-resident charitable organisation for exemption as a tax charity that is unable to be registered under the Charities Act must satisfy Inland Revenue that the organisation:
- is not resident in New Zealand,
 - is recognised as being charitable by one or more overseas charities regulators or tax authorities under any of the following charitable heads:
 - the relief of poverty,
 - the advancement of education,
 - the advancement of religion,
 - any other matter beneficial to the community,
 - carries out its charitable purposes overseas, and
 - provides a public benefit and does not apply its funds for private pecuniary profit.
107. The Commissioner will determine whether a non-resident charitable organisation meets the tests for charitable purpose. However, those non-resident charitable organisations will be specifically excluded from overseas donee status if they are established to foster or administer any religion, cult or political creed.
108. It should be noted that Charities Services will not prevent a charity's funds being used for overseas charitable purposes if the charity's rules permit the funds to be spent overseas. So a charity with mainly overseas purposes may be able to register but will not qualify for donee status under the Income Tax Act. Any charity in this position should refer to Inland Revenue about how this may affect its tax liability.

[Charities Services guidelines for non-resident charities](#)

109. The Charities Act does not specifically address international charities and their activities. Instead each application for registration is on a case-by-case basis, based on the criteria set out in that Act.
110. New Zealand entities will not fail the Charities Service's charitable purpose test simply because they have an overseas purpose, or their public benefit is directed overseas. For example, a New Zealand charity established with the purpose of relieving poverty in another country.
111. However, to be eligible for registration under the Charities Act, overseas charities must **either** be established in New Zealand **or** have a very strong connection to New Zealand so that Charities Services' compliance functions can be carried out.
- [Meaning of "established in New Zealand"](#)
112. To be registered under the Charities Act, charities do not have to be incorporated. However, if an overseas organisation is an incorporated body, it must be incorporated under New Zealand law to be "established in New Zealand" for the purposes of the Charities Act.
113. However, an overseas company that is incorporated outside in New Zealand will have their incorporation recognised in New Zealand for the purposes of registering as an overseas company to do business in New Zealand. This generally requires registration on the Company's Office Overseas Register. Some business activities (see s 332 of the Companies Act 1993) do not need to register. However, if an

overseas charity is not incorporated in New Zealand, Charities Services will have to decide whether it has a “very strong connection” with New Zealand.

- [Meaning of “very strong connection”](#)

114. If an overseas charity is not incorporated under New Zealand law, it can still be registered under the Charities Act if it has a very strong connection to New Zealand. This is so Charities Services is able to exercise its monitoring and enforcement powers in relation to it.
115. Further, Inland Revenue may approve an overseas charity if it cannot register with Charities Services. In reviewing the connection an overseas charity has with New Zealand, Inland Revenue will consider matters including:
- whether it has a centre of administration in New Zealand,
 - how many of its officers are resident in New Zealand,
 - how much of its property is held in New Zealand, and
 - if it has any other strong connection with New Zealand.
116. Charities Services considers that matters that may help in determining whether any other strong connection exists for the purposes of monitoring and enforcement include:
- being able to exchange information easily between New Zealand the overseas charities home country,
 - being able to easily get information about the overseas charity, including whether an officer or the charity itself has been found guilty of “serious wrongdoing”,
 - whether the overseas charity has a purpose aimed at the public of New Zealand or carries out activities in New Zealand.

See further its website about the meaning of a “*very strong connection*” for its purposes at: <https://www.charities.govt.nz/ready-to-register/need-to-know-to-register/charitable-purpose/international-charities-and-activities/>.

- [Use of funds on charitable purposes outside New Zealand](#)

117. For charitable registration purposes funds can be used for overseas charitable purposes if the charity’s rules permit funds to be spent overseas. Any changes to the proportion of income expended overseas must be updated in the charity’s details.

Charities that are foreign trusts for income tax purposes

118. The position under New Zealand law is that a trust is not an entity but a description of an equitable obligation the law imposes on a person holding property to deal with that property in a certain way, namely, for the benefit of beneficiaries or a charitable purpose. A “foreign trust” for income tax purposes is a trust established overseas or in New Zealand but where no settlor is resident in New Zealand at any time.
119. Prior to 1 April 2019 a charity that is also a “foreign trust” for income tax purposes was not subject to the foreign trust disclosure requirements in the TAA. The historic reason for this exclusion was that such foreign trusts were already subject

to public disclosure and regulation requirements under the Charities Act 2005, so no further disclosure requirements were considered necessary.

120. However, from 1 April 2019, the foreign trust disclosure requirements require disclosure of some information that is not collected under the Charities Act 2005. This includes identifying particulars and contact details for settlors, trustees and beneficiaries. The amended definition of “resident foreign trustee” ensures registered charities are not exempt from the foreign trust disclosure requirements (see s 3(1) of the TAA) and foreign trusts that are also registered charities will be required to make annual disclosures to Inland Revenue just like any other foreign trust.
121. Inland Revenue’s information disclosure rules in relation to foreign trust regulation (in a new Schedule 7, Part C *Disclosure rules to certain agencies for certain purposes* of the TAA) will apply if Inland Revenue becomes aware of potential money laundering or terrorism financing in a charity. The Commissioner is permitted to share that information with Charities Services (along with whoever else would need to be informed such as the Commissioner of Police or the chief executive of the Department of Internal Affairs) under the potential serious wrongdoing part of the Charities Act.

Charities and international financial reporting obligations

122. Some charities may have certain international financial reporting obligations and for these purposes it is important to know whether the charity is:
- a Foreign Financial Institution (FFI) under the United States Foreign Account Tax Compliance Act (FATCA), or
 - a Financial Institution (FI) under the Common Reporting Standards (CRS), or
 - is both or neither.
123. Under the FATCA and CRS regimes, a charity is regarded as a Financial Institution where:
- at least 50 percent of its income is from investing in financial assets - this includes interest, dividends, royalties, rental income on investment property and similar returns on financial investments, and
 - it is professionally managed where either one or more trustees is a Financial Institution or if the trustees have appointed a discretionary fund manager (e.g. a charitable trust managed by a firm of professional trustees).
124. The term ‘Reporting Financial Institution’ includes obvious financial businesses such as banks and insurers, but it can also include some trusts and other entities that handle investments. As the definition of Financial Institution is broad some charities may be caught by the FATCA and CRS regimes.
125. A charity that meets the above conditions will be an Investment Entity type of Financial Institution and subject to certain financial obligations.

FACTA obligations

126. The United States Foreign Account Tax Compliance Act (FATCA) came into effect in New Zealand on 1 July 2014. Under FATCA, the United States aims to detect and prevent tax evasion by US citizens and tax residents on their worldwide income

from financial assets owned by an offshore entity, which they control, for example a family trust or company settled/incorporated in New Zealand.

127. From 1 April 2017 the compliance obligations of the FATCA regime arose for those charities controlled by United States persons holding accounts outside of the United States. A “US controlling person” is someone who exercises control of an entity. Potentially it includes a settlor or protector of a trust, a trustee, a beneficiary of a trust, and a director or shareholder of a company.
128. The FATCA regime classifies all entities (companies, trusts, associations and partnerships) as either a ‘financial institution’, an ‘active non-financial foreign entity’ (active NFFE) or a “passive non-financial foreign entity” (passive NFFE). If a charity is regarded as a Financial Institution under this definition, it may have obligations under FATCA. If the entity is determined to be a financial institution it must register with the United States Internal Revenue Service and complete reporting obligations. Both types of NFFEs may also have reporting obligations.
129. However, if the charity’s income is primarily (at least 50 percent) from gifts, donations (including legacies), grants and similar, the charity will be treated as a Non-Financial Entity which has no reporting obligations. In this case the charity is required, on request by a bank or fund manager, to certify its status as a Non-Financial Entity to Financial Institutions with which it has an account
130. Inland Revenue’s guide “*Foreign Account Tax Compliance Act (FATCA) Trusts Guidance Notes (IR1087)*” sets out our view on how FATCA applies in New Zealand to trusts that maintain or hold financial accounts and outlines how this Act applies to unit trusts, family trusts, trading trusts and charitable trusts.
131. FATCA took the approach of defining certain entities as low risk for tax evasion and certain charities were on this list. This “exemption” from being Reporting Financial Institutions could be applied even if the charity itself did not meet the definition of being a Financial Institution.
132. The **Memorandum of Understanding** that New Zealand has entered into with the U.S., with respect to the Inter-governmental Agreement, provides that:

It is understood that organizations registered under the Charitable Trusts Act 1957 and the Charities Act 2005, and donee organizations as defined in the Income Tax Act 2007, would be treated as Non-Financial Foreign Entities (NFFEs – that is, any non-US entity that is not treated as a Financial Institution) A Reporting NZFI that maintains accounts held by an active NFFE will not be required to report the accounts.
133. Although most charities will be a NFFE, with the FATCA regime now in effect, it is important that all New Zealand entities to which this Act might apply ensure they are aware of their obligations and seek further advice if necessary.

CRS obligations

134. From 1 July 2017, New Zealand endorsed the OECD’s standard Automatic Exchange of Financial Information (AEOI) agreement which incorporates the CRS, a global version of FATCA, and became one of around 100 OECD nations to have signed a multi-lateral agreement to combat offshore tax evasion on a global scale. All citizens of these countries are subject to the same level of tax scrutiny in New

Zealand and the other members or participating countries, as are Americans under FATCA.

135. CRS takes a different approach to that under FATCA and does not offer a similar exclusion for charities. Under the CRS regime, a charity is regarded as a Financial Institution under the same test as applied for FATCA (see [128]). Further, charities that are financial institutions have reporting obligations under the AEOI agreements that came into effect from January 2016.
136. However, it should be noted that not all charities will be 'Financial Institutions' for the purpose of the CRS – just because a charity was a Non-Reporting Financial Institution for FATCA does **not** automatically mean it is not a Reporting Financial Institution for the CRS. The definitions are slightly different.
137. If the charity is a FFI for FATCA then it needs to register on the United States' IRS site, but if the charity is a financial institution under CRS then the entity will have to disclose to the Commissioner all financial information and personal details for those trustees and beneficiaries who are residing overseas in one of the other participating jurisdictions combating offshore tax evasion.

[New Zealand Bankers' Association forms for tax residency and foreign tax Information](#)

138. Under New Zealand law, financial institutions must collect a self-certification from the charity's account holder about its tax residency status (and sometimes that of the charity's controlling persons). This includes, before opening an account or in other situations. The financial institution may provide the charity's and controlling persons' information (even if the charity refuses to provide Inland Revenue with the information or a declaration) to the Commissioner, who may share that information with overseas tax authorities under international agreements.
139. A self-certification form must be completed by the charity's account holder and returned to the Financial Institution where the account is held. Where 2 or more entities jointly hold an account, each entity must complete a separate self-certification. The information required includes:
 - the name of the legal account holder,
 - country of incorporation/establishment,
 - registration number (if applicable),
 - New Zealand IRD number,
 - registered office address/principal place of business or other physical address,
 - city/town, and
 - country.
140. For more information about completing this self-certification form, see Inland Revenue's publication *Automatic exchange of information (IR1033)*.

Charitable trusts

141. The tax treatment of charitable trusts is included in the Commissioner's Interpretation Statement **IS 18/01 - Taxation of Trusts** (that applies to most trusts used in New Zealand).

142. In some situations, different tax rules apply to specific types of trusts including charitable trusts. Section HC 13 defines a charitable trust, for the purposes of the trust rules, as a trust:
- (a) for which all income derived or accumulated, in the current or any earlier income year, is held for charitable purposes; and
 - (b) any income derived in the current year is exempt income under s CW 41(1) or s CW 42(1).
143. For the tax exemptions to apply, the trust must be a “tax charity” under s CW 41(5).
144. For a trust to be a charitable trust, all income derived or accumulated by the trustee must be held for charitable purposes. This test must be satisfied for each income year. That is, for the purposes of the trust rules, a trust is a charitable trust in any tax year if the income derived or accumulated in that and all previous years by the trustee is held in trust solely for charitable purposes and any income derived in that year is exempt income.

Charitable trusts registered under the Charitable Trusts Act 1957

145. The Charitable Trusts Act 1957 allows the trustees of a trust, or the members of an unincorporated society, to become an incorporated body – a “charitable trust board” – by registering under this Act. Upon incorporation under the Act, charitable trusts are registered as a board. These boards may make profits on their trading activities, but the profits must be used for their charitable purposes and cannot be distributed to members.
146. To be registered under the Charitable Trusts Act, a trust must exist principally or exclusively for charitable purposes according to the law of New Zealand, **or** for any purpose that is religious or educational whether or not such purpose is charitable according to New Zealand law. For example, it is also charitable under this Act to establish facilities for recreation and other leisure-time activities if those facilities are provided in the interests of social welfare and are of public benefit. (See further examples at s 38 Charitable Trusts Act)
147. Incorporation as a trust board under the Charitable Trusts Act is not the same as registration on the Charities Register. It is important to note that a charitable trust incorporated under the Charitable Trusts Act is **not** exempt under the Income Tax Act as a “tax charity” unless it also registers under the Charities Act.
148. It is not compulsory to incorporate as a board. The trustees of a charitable trust can continue to hold the trust property in their joint names for the benefit of the charitable purpose. Part I of the Charitable Trusts Act assists by treating the trust property as vesting automatically in “the trustees for the time being”, as inevitably trustees will come and go over time. This is unlike private trusts, where the vesting of the trust property has to be properly documented each time someone retires or is appointed. (See the requirements in s 4 Charitable Trusts Act - *Evidence of appointment of trustees*).

Tax treatment of charitable trust boards

149. It is important to note that a charitable trust incorporated under the Charitable Trusts Act is not tax exempt as a “tax charity” under the income tax legislation simply as a result of its incorporation as a trust board.

Māori charities

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

Payments and gifts in the Māori community

151. Māori charitable organisations can receive many types of payment, such as subscriptions, grants, subsidies, donations or koha, fees, raffle money, and trading profits from selling assets. Most of these income types are taxed under general taxation principles, with some specific treatment. Information relating to the tax treatment of payments and gifts in the Māori community for Māori charities are outlined in Inland Revenue's factsheet *Payments and gifts in the Māori community (IR278)*.
152. Further information can be found in Part 2 – Donee organisations of this Statement in relation to, for example, treatment of koha and Māori donee organisations generally.

Charitable registration of a marae on Māori reservation land

151. If a marae is on a Māori reservation and is to be registered as a charitable entity on the Charities Register, a copy of its charter (drawn up by the reservation trustees) or any other governing document (rules, trust deed, constitution, etc.) must be provided to Charities Services. This includes information about the marae, the trustees, and how the marae operates.
152. Further information to be provided to Charities Services for registration purposes includes:
- the names and details of the trustees of the Māori reservation,
 - who is part of the marae (such as iwi, whanau, church, wider community, or other specific groups), and
 - details of the activities of the marae (such as provision of facilities for hui, whanau gatherings, wānanga, tangi, community gatherings and meetings, events, sports, social or health services, religious beliefs, language/cultural groups, etc.)

Registration of Māori entities under the Charitable Trusts Act 1957

153. Incorporation under the charitable trust structure sometimes is used by Māori organisations whose objectives are charitable and/or may include Māori private training establishments and Hauora, or for hapu and iwi organisations whose objectives are of a social or cultural nature.
154. The trustees of any trust or society that is exclusively or principally for charitable purposes may apply to the Registrar of Incorporated Societies for incorporation as a trust board under the Charitable Trusts Act.
155. To be registered under the Charitable Trusts Act, a trust must exist principally or exclusively for the established charitable purpose according to the law of New Zealand, or for any purpose that is religious or educational whether or not such purpose is charitable according to New Zealand law.

156. Upon incorporation under the Charitable Trusts Act, charitable trusts are registered as a board. These boards may make profits on their trading activities, but the profits must be used for their charitable purposes and cannot be distributed to members. Entities registered under the Charitable Trusts Act are only eligible for tax concessions if they are registered under the Charities Act.

[Trusts established under the Te Ture Whenua Māori Act 1993](#)

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

- [Tax treatment of the land holding trusts established under the Te Ture Whenua Māori Act](#)

158. Under s 245 of the Te Ture Whenua Māori Act, the trustees of any trust established under this Act may apply to the court for an order that they hold any part of the trust's income on trust for such charitable purposes as are specified in the court order.

159. However, s 245 does **not** deem any income derived by an approved trust to be held for charitable purposes of the Inland Revenue Acts, regardless of whether its purposes are charitable at general law. To gain charitable status for the Commissioner's purposes the requirements include charitable registration with Charities Services.

160. However, in 2008 the Commissioner released *BR Pub 08/02 - Māori Trust Boards: Declaration of trust for charitable purposes made under section 24B of the Māori Trust Boards Act 1955 - income tax consequences*, that indicates that income derived by a Māori Trust Board from assets declared to be held on charitable trust **can** be tax-exempt for some trusts when –

- all the purposes of the trust include purposes specified in s 24 or s 24A of the Māori Trust Boards Act 1955;
- all other elements necessary for a charitable trust are present, and
- the declaration of trust (under s 24B of that Act) has been submitted and approved by the Commissioner.

161. **BR Pub 08/02 - Māori Trust Boards: Declaration of trust for charitable purposes made under section 24B of the Māori Trust Boards Act 1955 - income tax consequences**, effectively recognises Parliament's intention to give trusts established by Māori trust boards charitable status in particular circumstances. Provided the trust can satisfy the registration requirements, it will be registered with the Charities Registration Board.

- [Deregistration for marae built on reservation land established under the Te Ture Whenua Māori Act](#)

162. Generally, a deregistered charity can reduce the amount of tax payable under the deregistration rules by disposing of or transferring their assets within one year of the day they were deregistered. However, "reservation land", that marae registered as charities are built on, cannot be disposed of or transferred to reduce their deregistration tax liabilities because of restrictions on alienation of reservation

land under the Te Ture Whenua Māori Land Act. This meant that marae that are registered as charities were previously unable to reduce their deregistration tax liabilities, unlike other deregistered charities.

163. Since 14 April 2014 (when the deregistration tax rules took effect), for marae built on reservation land established under the Te Ture Whenua Māori Act 1993, the value of the land and improvements on the land will be excluded from the net asset calculation upon deregistration.
164. Section HR 12 (*non-exempt charities: treatment of tax-exempt accumulations*) addresses the specific tax treatment of marae assets if a Māori charity (including a marae charity) decides to deregister. This change, which applies from 14 April 2014, ensures that for marae built on reservation land established under the Te Ture Whenua Māori Act the value of the land and improvements on the land will be **excluded** from the net asset calculation upon deregistration.
165. Further advice and explanatory information can be found on the Inland Revenue website ird.govt.nz and the Charities Services website www.charities.govt.nz.

Appendix – Legislation

Income Tax Act 2007

1. Section CW 41 provides an exemption from income tax for non-business income derived by charities:

CW 41 Charities: non-business income

Exempt income

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

Exclusion: trustees, society, or institution not registered

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

Exclusion: business income

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

Exclusion: council-controlled organisation income

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

Definition

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

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- (iii) has not been notified by the Commissioner that the entity is not a tax charity
 - (c) a trustee, a society, or an institution, that is or are non-resident and carrying out its or their charitable purposes outside New Zealand, and which is approved as a tax charity by the Commissioner in circumstances where registration as a charitable entity under the Charities Act 2005 is unavailable:
 - (d) a person who is removed from the register, in the period starting with the day they are registered on the register and ending with the earlier of the following days:
 - (i) the day on which the person does not comply with the person's rules contained in the register:
 - (ii) the day of final decision.
2. Section CW 42 provides an exemption from income tax for business income derived by charities:

CW 42 Charities: business income

Exempt income

- (1) Income derived directly or indirectly from a business carried on by, or for, or for the benefit of a trust, society, or institution of a kind referred to in section CW 41(1) is exempt income if—
 - (aa) the entity carrying on the business is, at the time that the income is derived, registered as a charitable entity under the Charities Act 2005; and [with application for the 2020-21 and later income years...]
 - (a) the trust, society, or institution carries out its charitable purposes in New Zealand; and
 - (b) the trustee or trustees of the trust, the society, or the institution is or are, at the time that the income is derived, a tax charity; and
 - (c) no person with some control over the business is able to direct or divert an amount derived from the business to the benefit or advantage of,—
 - (i) if subparagraph (ii) does not apply, a person other than the trust, society, or institution except for a purpose of the trust, society, or institution:
 - (ii) if a trust, society, or institution (the **operating entity**) is carrying on the business for or for the benefit of another trust, society, or institution (the **controlling entity**), a person other than the operating entity or the controlling entity except for a purpose of the operating entity or the controlling entity.

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

Exclusion

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

Carrying on a business: trustee

- (3) For the purposes of subsection (1), a trustee is treated as carrying on a business if—
 - (a) the trustee derives rents, fines, premiums, or other revenues from an asset of the trust; and

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- (b) the asset was disposed of to the trust by a person of a kind described in subsection (5)(b); and
- (c) either—
 - (i) the person retains or reserves an interest in the asset; or
 - (ii) the asset will revert to the person.

Charitable purposes in New Zealand and overseas

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

Control over business

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

Control: settlor asset disposed of to trust

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

No control

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

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Benefit or advantage

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

Non-exempt business income

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