



Operational statement

ED0207/b

Charities and donee organisations: Part 2: Donee organisations

Operational statements set out the view of the Commissioner of Inland Revenue (the Commissioner) of the law with respect to the matters discussed and deal with practical issues arising out of the administration of the Inland Revenue Acts.

This Statement outlines how Inland Revenue will monitor and advise donee entities of the requirements for donee status and income tax exemptions and donations tax credits.

This Statement is in 2 parts that together make up Operational Statement OS 19/xx – *Charities and donee organisations*. The 2 parts of the Operational Statement are:

- Part One: Charities, and
- Part Two: 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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Summary of main points

1. The following is a summary only and more detail is provided within this Statement.
 - From 1 April 2020 all entities established for a “charitable purpose” (including those entities established for a charitable purpose and listed on the Commissioner’s donee list before 1 April 2020), will be required to register as a charitable entity with Charities Services. Any such entities not registered with Charities Services after 1 April 2020 will not be included on the Commissioner’s donee organisation list (unless they get approval from the Commissioner to be placed on the list for purposes other than charitable purposes).
 - Entities not registered as a charitable entity with Charities Services may still apply to the Commissioner for approval as a donee organisation for purposes other than charitable purposes; these are benevolent, philanthropic or cultural purposes (see s LD 3(2)(a)).
 - If an entity is approved as a donee organisation for benevolent, philanthropic or cultural purposes and was on the Commissioner’s published list of donee organisations before 1 April 2020 then after 1 April 2020 its donee status will continue unless the Commissioner has information to the effect that it no longer qualifies.
 - A fund separately established and maintained exclusively for the purposes of providing money for charitable, benevolent, philanthropic, or cultural purposes within New Zealand may apply to be included on the list of donee organisations (see s LD 3(2)(c)).
 - Inland Revenue provides guidance on what qualifies as a “gift” for donation tax credit purposes in QB 16/05, and for gifts to state and to state-integrated schools in QB 18/10 and QB 18/11 respectively.

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 available tax benefits.
3. This Part 2 of OS 19/xx 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 donee organisations
 - the benefits of being a donee organisation
 - how to get approval as a donee organisation
 - the requirements for a “charitable or public benefit gift”
 - the donation tax receipt requirements.
4. This Statement also addresses other administrative tax matters relevant to donee organisations like record-keeping and the implications of a donee organisation with charitable purposes being deregistered from the Charities Register.

Application date of this Statement

5. This Statement will apply from (**tba).

Introduction

6. **Individuals, companies and Māori authorities may qualify for income tax** benefits when they make gifts of money of \$5 or more to a donee organisation. The tax advantage for individuals is a refundable tax credit of up to 33½% of such gifts, while **companies and Māori** authorities can qualify for an income tax deduction for the amount of the gift (limited to income as at [66]).
7. To qualify as a donee organisation an entity must satisfy certain requirements. Most entities will require the **Commissioner’s approval** to be placed on the donee list even if the entity is registered as a charity with Charities Services.
8. Generally, an entity may qualify as a donee organisation if it applies its funds wholly or mainly to charitable, benevolent, philanthropic or cultural purposes within New Zealand. Certain other entities may also qualify, such as a school board of trustees, tertiary education institutes, or community housing entities.

Types of donee organisation

9. To qualify as a donee organisation an entity must satisfy at least one of the 8 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.
10. Administratively, there are essentially 3 types of donee organisations:
 - entities requiring approval from the Commissioner as being donee organisations and which, once approved, are placed on the list of donee organisations published by Inland Revenue. These are entities seeking donee status under any of the descriptions in ss LD 3(2)(a), (ab), (b), (c), or (d),

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- entities that meet one of the descriptions in ss LD 3(2)(ac), (bb), or (bc) – that is, community housing entities, school boards of trustees, and tertiary education institutions, and
 - entities listed as recipients of charitable or other public benefit gifts in Schedule 32. These entities are usually charitable but apply the principal part (or all) of their funds for purposes outside New Zealand.
11. An entity may qualify for donee organisation status even though it is not eligible for an exemption from income tax, for example, a council-controlled organisation.

Donee organisations requiring approval of donee status

12. Entities seeking to be recognised as donee organisations under any of the descriptions in ss LD 3(2)(a), (ab), (b), (c), or (d) must apply to the Commissioner for approval. If approved, those entities are then placed on the Commissioner's published list of donee organisations. This process **is referred to as "obtaining donee status"**. The process for obtaining donee status is outlined from [50].
13. At a minimum, entities seeking to obtain donee status must be able to satisfy the Commissioner that they are established and apply their funds for charitable, benevolent, philanthropic, or cultural purposes within New Zealand.
14. The general description of a donee organisation is set out in s LD 3(2)(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"*.
15. Therefore, the attributes of an entity seeking donee status are that it:
- is a society, institution, association, organisation, trust or fund,
 - is not carried on for the private benefit of any individual, and that
 - is established for charitable, benevolent, philanthropic, or cultural purposes within New Zealand.
16. A fund separately established and maintained exclusively for providing money for charitable, benevolent, philanthropic, or cultural purposes within New Zealand may also seek donee status (see s LD 3(2)(c)). To do so, the fund needs its own IRD number and, if established for charitable purposes, must be registered with Charities Services as a separate entity unless it is operating as part of another registered charity.
17. Entities that apply the principal part or all of their funds outside New Zealand may be approved as donee organisations only by Parliament. Once approved by Parliament, those organisations are listed in Schedule 32. See further at [46].
18. From 1 April 2020, all donee organisations that have obtained donee status by being included on the list of donee organisations must continually self-assess to determine whether they continue to meet the donee status requirements. If an organisation determines it no longer meets the requirements, it must immediately cease issuing donation tax receipts and inform Inland Revenue of its change in circumstances. The Commissioner will remove the organisation from its published donee organisation list.

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Donee organisations established for charitable purposes

19. Before 1 April 2020 an entity established for charitable purposes within New Zealand does not have to be registered as a charity with Charities Services to be eligible to apply for donee status. However, from 1 April 2020 if the entity has only charitable purposes it must register as a charity with Charities Services to obtain donee status. Go **to the Charities Services' website at www.charities.govt.nz** for information on how to apply for registration as a charity. In addition, *Part 1: Charities* of this Operational Statement OS 19/XX provides further information about charities and their tax obligations. This Statement can be found at www.ird.govt.nz/technical-tax/.
20. From 1 April 2020 any entities established for charitable purposes and not registered with Charities Services will not be listed on the donee organisation list (unless they get approval from the Commissioner to be placed on the list for purposes other than their charitable purposes).
21. Registration as a charity by Charities Services does not in itself confer donee status on the entity. The granting of donee status is administered by the Commissioner. However, Charities Services advises the Commissioner when a charitable entity is registered as a charity so that a newly registered charity generally does not need to make a separate application to the Commissioner for donee status. It will be placed on the list automatically if it has ticked the box on their charitable registration application that they will be receiving donations and are within the **'wholly or mainly' threshold** of 75% (for the application of its funds to charitable, benevolent, philanthropic or cultural purposes within New Zealand). You can find out more in **Inland Revenue's guide *Charitable and donee organisations (IR255)***.
22. The Commissioner will advise those charities that they have been added to the donee list following advice received from Charities Services. Note that those donee organisations required (from 1 April 2020) to become registered charities and that already have donee status will not receive a further letter of confirmation from the Commissioner following charitable registration with Charities Services, unless written confirmation is requested.
23. From 1 April 2020, charities that are deregistered as a result of failing to meet their filing obligations with Charities Services will lose their donee status between the dates of deregistration and any re-registration. This will mean that donors to these deregistered entities will not qualify for donation tax credits or income tax deductions for any gifts they may make. Additionally, a deregistered entity will not be able to access FBT concessions for their employees in this period between deregistration and any re-registration.
24. If the deregistered entity considers it is entitled to retain its donee status because it has subsequently been re-registered or because it considers it qualifies for donee **status on the basis of its "benevolent, philanthropic or cultural" purposes** it should advise the Commissioner, in writing, why it qualifies. See further at [53]. From 1 April 2020 there will be less scope for backdating donee status for periods when the entity is not registered. The Commissioner's **decision to remove an organisation's donee status is a "disputable decision"** (defined in s 3(1) of the TAA) meaning **the Commissioner's decision may be challenged** under Part 8A TAA.

Donee organisations established for benevolent, philanthropic or cultural purposes

25. Entities not registered as a charitable entity with Charities Services may still apply to the Commissioner for donee status if they are established for purposes other than charitable purposes, that is, benevolent, philanthropic or cultural purposes. **There is considerable overlap between the meaning of “charitable” (as defined in s YA 1) and the meaning of “benevolent”, “philanthropic” or “cultural”** (see below at [26]). However, a benevolent, philanthropic or cultural purpose would not be charitable even if it is beneficial to the community (has a public benefit) unless it is similar to a purpose that is already found to be a charitable purpose.

26. In brief:

(a) The courts generally have considered the meaning of *“benevolent”* to be similar to the **ordinary meaning of ‘charitable’**, which relates to the provision of relief to people in need. That is, a benevolent purpose relates to the provision of aid to people who need help and who are unable to help themselves and to whom the proceeds or funds are used to benefit all or a large part of the public. Benevolence is not limited to the provision of money, housing, food, medicine or other basic elements and the provision of services to relieve stress may be benevolent.

However, the courts have held that the promotion of sport, the relief of suffering by animals, and an entity with the purposes of making a profit for its owners, are not benevolent purposes.

(b) A *“philanthropic”* purpose relates to the promotion of the welfare of other human beings in general and whose proceeds or funds are used to benefit all or a large part of the public. 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.

However, **the term ‘philanthropic’ does** not include entities with purposes directed at the care and welfare of animals, rather than human beings.

(c) A *“cultural”* purpose relates to artistic and intellectual aspects of human activity and might include dramatic, theatrical, operatic, ballet, choral or musical purposes, and purposes relating to the training, development and refinement of mind, taste and manners. 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’.

The Commissioner has taken the view that **the term ‘cultural purpose’**, in this context, does not include sport.

27. If an entity has been approved as a donee organisation for benevolent, philanthropic or cultural purposes and is on the published list of donee organisations before 1 April 2020 then, after 1 April 2020, its donee status will continue unless the Commissioner has information showing that it no longer qualifies. The organisation has a responsibility to self-assess its donee status and to advise the Commissioner if it ceases to be a donee organisation.

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Funds applied wholly or mainly to charitable, benevolent, philanthropic or cultural purposes in New Zealand

28. In addition to being established and applying its funds for charitable, benevolent, philanthropic, or cultural purposes, to obtain donee status under s LD3(2)(a) an **entity's funds must** be applied wholly or mainly to charitable, benevolent, philanthropic or cultural purposes in New Zealand. This means that the **entity's** aims or purposes should be carried out in New Zealand.
29. The Commissioner **administers the "wholly or mainly" requirement on a "safe harbour" basis of "75% or more"**. This means she will generally accept that an entity meeting or exceeding the safe harbour percentage of 75% has wholly or mainly applied funds to charitable, benevolent, philanthropic or cultural purposes within New Zealand. This applies for the 2019/20 income year onwards.
30. The safe harbour percentage may be relevant if the organisation does not apply all of its funds to purposes that are charitable, benevolent, philanthropic or cultural purposes within New Zealand.
31. For more information on this requirement, see Interpretation Statement IS 18/05 – *Meaning of wholly or mainly applying funds to specified purposes within New Zealand*, and its **accompanying fact sheet on applying the "safe harbour" approach**. This can be found at www.ird.govt.nz/technical-tax/interpretations/.

Entity not carried on for private benefit

32. Another condition for approval as a donee organisation is to ensure that the entity cannot be carried on for the private benefit of an individual. This means a donee organisation's funds must not be used to provide personal benefit to its members, trustees or associates.
33. Sometimes the stated aims or powers of an entity may allow benefits to members, but they may only benefit to a limited extent from their membership. Some acceptable benefits are newsletters that don't require a subscription, voting rights to appoint officers of the organisation and any benefit also available to the general public. If any member can receive more than these benefits, the entity cannot be considered as a donee organisation. Also, if a member can in any way influence the amount of any benefit they receive, the organisation will not qualify as a donee organisation.
34. A donee organisation may pay members for their services, so long as the payments are reasonable, not more than normal commercial rates and for services actually provided. A member may also be reimbursed for reasonable expenses incurred on the donee organisation's behalf and earn interest on money lent to the organisation (provided the loan is at a normal commercial rate).
35. If an **entity's** rules allow unrestricted benefits to members, a clause or clauses preventing this must be added before the Commissioner will grant donee organisation status. An example of such a clause/s would be:
 - (1) All income, benefit, or advantage must be used to advance the purposes of the organisation.
 - (2) No member of the organisation, or anyone associated with a member, is allowed to take part in, or influence any decision made by the organisation in respect of payments to, or on behalf of, the member or associated person of any income, benefit, or advantage.

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- (3) Any payments made must be for goods or services that advance the charitable purpose and must be reasonable and relative to payments that would be made between unrelated parties.
- (4) The provisions and effect of this clause/s shall not be removed from this document and shall be included and implied in any document replacing this document.
36. The Commissioner will also need to be satisfied, if the organisation is wound up, that any remaining income and assets will be distributed to another entity that would qualify as a donee organisation. If the donee organisation is also registered as a charity, there is a requirement that on winding up the income and assets will be used for charitable purposes in New Zealand.

[Fund established and maintained exclusively for providing money for charitable, benevolent, philanthropic, or cultural purposes within New Zealand](#)

37. A fund established and maintained exclusively for the purpose of providing money for charitable, benevolent, philanthropic, or cultural purposes within New Zealand under s LD 3(2)(c) (that, in this Statement, are collectively referred to as “specified” purposes) can apply to the Commissioner for donee status.
38. Such a fund must be established and maintained by a not-for-profit entity. It should have the following attributes:
- The fund must comprise an actual stock of money or other assets set aside for the purpose of providing money for one or more specified purposes within New Zealand.
 - The enquiry under s LD 3(2)(a) in regard to the application of funds for specified purposes is to identify objectively whether a sufficient relationship (connection or nexus) exists between the purposes served by the actual or proposed activity and advancing specified purposes within New Zealand. The connection needs to be sufficiently direct, although not necessarily an immediate connection. A not-for-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 required purpose**. 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 not-for-profit entity or as a stand-alone document).
 - 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 **not-for-profit entity’s financial accounts**.
 - **The fund’s money must be used for, or used to provide money for, the** required purpose of the fund when it was established. Whether money is used for the required purpose is determined by where the specified purposes are advanced (that is, within New Zealand) rather than **where the fund’s** money is used.
39. The fund’s money may be used:

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- for purposes other than the required purpose, if those other purposes are subordinate or incidental to the required purpose and are not independent purposes,
- by the not-for-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 not-for-profit entity's administration costs where such costs include the costs of administering the fund, or
- by the not-for-profit entity to meet or reimburse costs it incurs advancing the entity's own purposes, provided these are exclusively specified purposes within New Zealand and are consistent with the purposes of the fund.

The fund must be maintained for the required purpose throughout its lifetime, including the disposal of the fund's money or other assets if wound up.

40. In general terms a "fund" in this context means an actual stock of money or assets set aside for the required purposes, as opposed to a mere accounting expression. This includes, for example, a fund represented by a credit balance in a bank account.
41. It is suggested that 'best practice' for an entity establishing and maintaining a fund is for the creation, operation and winding up of the fund to be included in the rules of the entity's founding documents or in a separate document. It is also suggested that where the fund comprises money (as opposed to other assets) the money is kept in a specific bank account separate from other money.
42. Further guidance is provided in *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)* and is found at www.ird.govt.nz/technical-tax/. 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 Commissioner's 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. See further at www.ird.govt.nz/technical-tax/interpretations/.

Other entities that qualify as donee organisations

43. In addition to entities established for charitable, benevolent, philanthropic, or cultural purposes that are required to seek approval as donee organisations, the donee organisation rules in s LD 3(2) also describe other types of entities that are recognised as being donee organisations. This includes:
 - a community housing entity, if at the relevant time 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 Part 9 of the Education Act 1989 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 Part 14 of the Education Act 1989 (and which has not been disestablished under that Act) and is not carried on for the private pecuniary profit of any individual (see s LD 3(2)(bc)).

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44. It is accepted that entities meeting the descriptions set out in ss LD 3(2)(ac), (bb), or (bc) are donee organisations, and gifts of money of \$5 or more made to them **will qualify as being “charitable or other public benefit gifts”**.
45. Entities meeting these descriptions do not need to seek approval from the Commissioner and will not be included on the list of donee organisations (as confirmed in s 41A(15) of the Tax Administration Act 1994 (the TAA) that clarifies that despite the requirement (in s 41A(14)) that the Commissioner publish a list of names of donee entities, ***“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.”***)

Overseas donee organisations

46. Entities established for charitable, benevolent, philanthropic, or cultural purposes but which apply the principal part of (or all) their funds outside New Zealand can only be approved as donee organisations by Parliament. Once approved by Parliament, these entities are listed in schedule 32 to the Income Tax Act. (See further at [58].)
47. Approval by Parliament is limited to those entities whose funds are mainly used for:
- the relief of poverty, hunger, sickness or the results of war or natural disaster,
 - the economy of developing countries (as recognised by the United Nations), or
 - raising the educational standards of a developing country.
48. Charities are specifically excluded if they are formed to foster or administer any religion, cult, or political creed. See <https://www.ird.govt.nz/roles/charities/new-zealand-charities-wanting-overseas-donee-status>
49. Gifts of money of \$5 or more made to entities listed in schedule 32 will qualify as **being “charitable or other public benefit gifts”**.

How to obtain donee status

50. From 1 April 2020, all donee organisations seeking to be recognised as donee organisations under any of the descriptions in ss LD 3(2)(a), (ab), (b), (c), or (d) are required to apply for approval to be **placed on Inland Revenue’s published list** of donee organisations. This process is referred to as “obtaining donee status”. The Commissioner will assume that entities already on the donee list as at 1 April 2020 will meet the necessary criteria. If the entity is unsure of its donee status they should contact Inland Revenue.
51. From 1 April 2020 donee entities with charitable purposes must become registered charities and will be placed on the donee list upon confirmation from Charities Services of their registration (see further at [21]).

Written application to Inland Revenue

52. Entities seeking donee status for other than charitable purposes must apply to and be approved by the Commissioner. There is no particular form of application. Instead those entities seeking to obtain donee status should write to the Commissioner seeking approval to be placed on **the Commissioner’s** published list of donee organisations.

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53. The written application to Inland Revenue (for further contact information see www.ird.govt.nz) 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. To get an IRD number, complete and sign form *IRD number application-non-individual (IR596)* and send it to Inland Revenue. The form can be completed online but will need to be printed, signed and then sent to Inland Revenue,
 - 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* where and how the **entity's** funds will be applied.
54. The Commissioner will need to be satisfied that the entity is not being carried on for the private benefit of an individual. This means **the entity's rules must** not allow funds to be used to provide personal benefit to its members, trustees or associates, and appropriate winding up clauses must be included (see further at [32]).
55. Donee entities established for charitable purposes are also required to apply to Charities Services, in a separate process, for registration as a charity. Go to the **Charities Services' website** at www.charities.govt.nz for information on how to apply for registration as a charity. In addition, *Part 1: Charities* of this Operational Statement OS 19/XX provides further information about charities and their tax obligations. This can be found at www.ird.govt.nz/technical-tax/

Changes in circumstances to be notified to the Commissioner

56. From 1 April 2020, all donee organisations on the Commissioner's **list of donee** organisations must continually self-assess to determine whether they continue to meet the donee status requirements. If a donee organisation determines it no longer meets the requirements in s LD 3, it must immediately cease issuing donation tax receipts, inform the Commissioner of its change in circumstances, and it will be removed from the donee organisation list.

Binding ruling applications

57. An entity established for charitable purposes may apply to the Commissioner for a binding ruling under part 5A of the TAA if it considers it is exempt from tax under s CW 41 and/or s CW 42 and fulfils the **Commissioner's** criteria for a binding ruling. If the entity receives a positive ruling in this regard it will be treated as complying with the "charitable purposes" component of the requirements for registration under the Charities Act, for the duration of the binding ruling. *Part 1: Charities* of this Statement OS 19/XX provides further information about charities and their tax obligations. This can be found at www.ird.govt.nz/technical-tax/

Requests for overseas donee status

58. New Zealand donors cannot qualify for tax benefits on donations to a New Zealand charitable, benevolent, philanthropic, or cultural entity with mainly overseas purposes unless the entity is specifically named in Schedule 32 to the Income Tax Act.

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59. Entities established for charitable, benevolent, philanthropic, or cultural purposes but which apply the principal part of (or all) their funds for those purposes outside New Zealand can only be approved as donee organisations by Parliament. Approval is a policy decision for Ministers and Cabinet followed by legislation used to implement the policy decision. As a result, the application process can be lengthy.
60. An application must be made to the Commissioner for overseas donee status. You can do this by completing a *Overseas donee status request (IR464)*. You can find this form at ird.govt.nz (search keywords: IR464).
61. The Commissioner assesses each application and then, based on the information provided about the **entity's activities**, advises Parliament allowing it to make an informed decision about the request. It is preferable for the entity to be a registered charity. Entities formed for the purposes of fostering or administering any religion, cult or political creed are specifically excluded.
62. The entity must be credible, transparent and accountable for the funds it applies overseas. The purposes of the entity should align with humanitarian purposes. The funds must be mainly applied towards those entities whose funds are mainly used for the purposes listed in [47].
63. There are ongoing requirements once the entity is placed on Schedule 32. These ongoing requirements will be set out in the notice from Inland Revenue confirming the successful application.

Tax benefits of being a donee organisation

64. The main advantage for an entity of being a donee organisation is the income tax benefit it brings to the donors who make gifts to it. Individuals, companies and **Māori authorities can qualify for tax benefits** (such as tax credits or tax deductions) when they make gifts of money of \$5 or more to a donee organisation.
65. In addition, donee organisations that are employers may be excluded from having to pay fringe benefit tax (FBT) on fringe benefits they provide to their employees.

Gifts of money by individuals

66. The tax advantage for individuals when they make gifts of money of \$5 or more to a donee organisation is a refundable tax credit of 33 $\frac{1}{3}$ % of such gifts, up to the **amount of the individual's taxable income for the year** (see s LD 1).
67. The attributes of a qualifying gift are discussed more fully at [85], along with the donation tax receipt requirements at [99].
68. Gifts of less than \$5 to a donee organisation can still qualify for a 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 tax credit.
69. 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. Refer to the process for preparing **receipts on Inland Revenue's Tax credit claim form 2019 (IR256)**.

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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. Further information on making donation tax credit claims can be found on the Inland Revenue website at ird.govt.nz (search keywords: [claim tax credits](#)).

70. From 18 March 2019 donations tax credit refunds are subject to the same time bar rules as apply to income tax returns generally (see further s 41A(6B) of the TAA). This means that, barring any wrongdoing in relation to the donation tax credits claimed, the Commissioner cannot amend an **individual's** tax credit claim (to adjust either up or down) after 4 years have passed from the end of the tax year in which the claim was submitted.
71. From 1 April 2019 debit use-of-money interest and other relevant penalties apply in relation to donation tax credits that are overclaimed by donors (see s 120VD of the TAA).
72. Further, from 1 April 2019, specific anti-avoidance rules apply (see 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.

Gifts of money by companies

73. A company can claim an income tax deduction for a charitable or other public benefit gift it makes to a donee organisation (see s DB 41(2)). A charitable or other public benefit gift is a gift of money of \$5 or more to a donee organisation (see s LD 3). From 1 April 2020, the donee organisation must be on the Commissioner's **list of donee organisations for the gift to be tax deductible**. The attributes of a qualifying charitable or other public benefit gift are discussed more fully at [85], along with the donation tax receipt requirements at [99].
74. **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).
75. Where money is transferred by a charity to another charity in accordance with the charity deregistration rules, that payment does not qualify for a gift deduction.

Gifts of money by **Māori** authorities

76. A **Māori** authority may claim an income tax deduction for donations made to a **Māori** association or a charitable or other public benefit gift made to a donee organisation (see s DV 12). From 1 April 2020, the donee organisation must be on the Commissioner's **list of donee organisations for the gift to be tax deductible**. The attributes of a qualifying charitable or other public benefit gift are discussed more fully at [85], along with the donation tax receipt requirements at [103].
77. The amount of the **Māori authority'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).
78. Where money is transferred by a charity to another charity in accordance with the charity deregistration rules, that payment does not qualify for a gift deduction.
79. For further guidance on **Māori** authorities go to the Inland Revenue website for the following publications:

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- IR 487 - *Becoming a Māori authority* (December 2017) - ird.govt.nz (search keywords: IR487)
- IR 1202 - *Māori authority tax rules* (December 2017) - ird.govt.nz (search keywords: IR1202)
- *Part 1: Charities* of this Operational Statement OS 19/XX.

FBT exclusion for charitable organisations

80. 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** (see s CX 25).
81. This exclusion from FBT is addressed in Public Ruling BR Pub 17/06 - *Charitable and Other Donee Organisations and Fringe Benefit Tax*. This can be found at www.ird.govt.nz/technical-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.]
82. **The exclusion applies to "charitable organisations". This term is defined in s YA 1 and, in the FBT context, includes most donee organisations. Local authorities, public authorities and universities are specifically excluded from being "charitable organisations" and so the ordinary FBT rules apply to them.**
83. If an entity loses its donee status it will be liable to pay FBT on any fringe benefits it provides to its employees, unless another exemption applies, or it is subsequently re-approved for donee purposes.
84. The FBT exclusion is discussed in more detail in *Part 1: Charities* of this Statement OS 19/XX. This can be found at www.ird.govt.nz/technical-tax/.

Charitable or other public benefit gifts

85. Individuals may claim donation tax credits, and companies and Maori authorities may claim tax deductions, if they make qualifying "charitable or other public benefit gifts".
86. **A "charitable or other public benefit gift" is 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).**
87. From 1 April 2020, a charitable or other public benefit gift must be made to an entity which:
- is included on the list of donee organisations published by Inland Revenue; or
 - is listed in Schedule 32 as a recipient of charitable or other public benefit gifts, or
 - meets one of the descriptions of a donee organisation in ss LD 3(2)(ac), (bb), or (bc) – that is, a community housing entity, a school board of trustees, or a tertiary education institution.

A gift of money of \$5 or more

88. The Commissioner considers a “gift” to be a payment of money of \$5 or more:
- made voluntarily,
 - to confer a benefit, and
 - where the donor receives no material benefit or advantage in return.
89. 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.
90. 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. For example, payment may be by cash, cheque, direct debit, credit card or debit card. A charitable or other public benefit gift does not include transfers of value, that is, **money’s worth**. For example, a charitable or other public benefit gift does not include the making of a loan to a donee organisation, or the transfer of other types of property (for example, **art works**) or **money’s worth** (for example, free services) to a donee organisation. Similarly, splitting cash receipts for fundraising/cultural events among the persons who organised or performed at the event is not a gift.
91. When deciding if a payment to a donee organisation is a gift, the true nature of the payment is to be determined by considering the overall arrangements and transactions giving rise to the payment.
92. Further guidance on the attributes of gifts to donee organisations can be found in QB 16/05 *Donee Organisations and Gifts*. This can be found at www.ird.govt.nz/technical-tax/. 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.

Gifts to state and state integrated schools

93. School boards of trustees of state schools and state integrated schools are donee organisations, even though they may not be listed in the Commissioner’s list of donee organisations.
94. 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.
95. Further guidance on gifts made by parents to state and state-integrated schools can be found in QB 18/10 and QB 18/11 respectively. These QWBAs can be found at www.ird.govt.nz/technical-tax/.

Crowdfunding platforms

96. On-line fundraising platforms are an increasingly popular way of giving. Various New Zealand sites include services aimed at raising money for recipients that may include charities, individuals, or projects.

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97. By participating in on-line crowdfunding services, the donor authorises the service provider to pass on their donation to the recipient of the funds. The recipient may be the beneficiary identified on-line by the organisation, or a recipient who receives the donation on behalf of the beneficiary. Further, it is likely that a percentage of the donation (around 5% is common) will be paid to the fundraising platform, with the remainder passed on to the recipient.
98. If the recipient is a donee organisation, the donor may be eligible for a donation tax credit or tax deduction. The donation receipt for the donee organisation should reflect the amount received by the charity or donee organisation less any fees charged by the crowdfunding service.

Donation tax receipt requirements

99. **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. You can find the guide at ird.govt.nz (search keywords: IR255)
100. The donor must be provided with a receipt issued by the donee organisation 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 Charities Services registration number or IRD number,
 - **the donor's full name** (and their address, if known),
 - the full amount and date of the donation (or, if there were regular payment arrangements made throughout the year, the total donation amount for the income year ending 31 March),
 - 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 and signature of a person authorised to accept donations for the donee organisation, and
 - a receipt number, unique to each receipt.

Where a receipt for the donee organisation is re-issued as a replacement, it must **be clearly marked "copy" or "replacement"**.

Payroll giving

101. There are some additional donation tax receipt requirements for donee organisations who receive payroll giving donations. In addition to the usual requirements relating to donations under sections LD 1 - 3, payroll giving donation tax receipts should clearly state that the donations were received under the payroll giving scheme and should be issued in the participating employer's business name (and not in the names of the individual employees who contributed to the donation).
102. Where payroll giving donations are made to a donee organisation by an employer the employees receive their tax credit when their donation is made, as a reduction in their PAYE. Employees do not include their payroll giving receipts in their *Tax*

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credits claim form (IR256) 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)** ird.govt.nz (search keywords: **IR617**)

Record keeping

103. Under s 32 TAA all "*gift-exempt bodies*" must keep sufficient records to enable the Commissioner to determine both the sources of donations and the application of their funds within New Zealand or within a country or territory outside New Zealand.
104. A "*gift-exempt body*" (defined in s 3 TAA for the purposes of ss 18K, 32, and 58 TAA) includes any society, institution, association, organisation, trust, or fund specifically named in Schedule 32 or any other person issued with a RWT exemption certificate under s 32E of the TAA as a result of being tax exempt under, for example, sections CW 40-52.
105. Every gift-exempt body may be required to furnish, if requested by the Commissioner, a return of its funds derived or received in any tax year and showing the source and application of those funds.
106. Business and other records may be kept in English or Te **Reo Māori**. The Commissioner may 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.
107. The GST Act also enables records to **be kept in English or Te Reo Māori**. However, there are particular requirements for tax invoices and credit and debit notes that must still be met.

Appendix – LEGISLATION

Income Tax Act 2007

1. Section LD 1 provides tax credits for charitable or other public benefit gifts:

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—

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

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**).

2. Section LD 2 identifies certain entities that are excluded from s LD 1:

LD 2 Exclusions

Section LD 1 does not apply to—

- (a) an absentee;
- (b) a company;
- (c) a public authority;
- (d) a **Māori** 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.

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3. Section LD 3 defines 'charitable or other public benefit gift' and describes the entities to which this subsection applies:

LD 3 Meaning of charitable or other public benefit gift

Meaning

(1) For the purposes of 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, described in subsection (2) or listed in schedule 32 (Recipients of charitable or other public benefit gifts) (the entity)

(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 a testamentary gift.

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 of Trustees that is constituted under Part 9 of the Education Act 1989 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).

4. Section DB 41 refers to charitable or other public benefit gifts by a company:

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

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(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.

5. Section DV 12 refers to charitable or other public benefit gifts by Maori authorities:

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

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

6. Section GB 55 is an anti-avoidance rule relating to charitable or other public benefit gifts by Maori authorities:

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

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

Tax Administration Act 1994

7. Section 41A outlines the requirements for persons with tax credits under ss LD1-3 of the Act.

41A Returns by persons with tax credits for 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) notifying the Commissioner by electronic means in relation to an amount of 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. Subsection (2) applies for the 2018–19 and later income years.

(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.

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(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.

8. Section 120VD states that no interest on tax credits is payable 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.