

**EXPOSURE DRAFT - FOR COMMENT AND DISCUSSION ONLY**

Deadline for comment: **7 February 2023**

Please quote reference: **PUB00340 – Income tax**

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**QUESTIONS WE'VE BEEN ASKED**

# **Income Tax – Donation tax credits and payments made by parents to childcare centres**

Issued: xxxxxxx

**QB 22/XX**

This Question We've Been Asked explains when a parent's payment to their child's childcare centre will qualify for a donation tax credit. It includes some [examples](#).

## **Key provisions**

Income Tax Act 2007 – ss LD 1 to LD 3

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## Question

When will a parent's payment to their child's childcare centre qualify for a donation tax credit?

## Answer

Payments parents make to childcare centres are gifts for donation tax credit purposes where:

- the childcare centre is a donee organisation;
- the payment is money of \$5 or more;
- the parent makes the payment voluntarily to benefit the centre either generally or for a specific purpose or project; and
- the parent or child gains no material benefit or advantage in return for making the payment.

## Key terms

**Parent** includes a child's guardian or caregiver who makes payments to a childcare centre.

**Childcare centre** includes kindergartens, daycare centres, preschools, early learning centres, crèches, kōhanga reo, Pacific Island language centres, Playcentres, playgroups and the like. It does not include home-based carers or early learning services provided by in-home educators.

## Explanation

1. The Commissioner has been asked to clarify when payments parents make to childcare centres will qualify for a donation tax credit. ([QB 22/XX](#): Goods and Services Tax – Payments made by parents to childcare centres<sup>1</sup> clarifies the GST treatment of payments parents make to childcare centres.)
2. In the past some parents have made payments incorrectly called "donations" to childcare centres in substitution for paying no or low childcare fees. The

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<sup>1</sup> Inland Revenue, 2022.

Commissioner's view on this practice was addressed in [Revenue Alert 14/01](#).<sup>2</sup> There are no donation tax credits for any payments paid by parents to childcare centres incorrectly described as "donations".

## How are childcare centres funded?

3. Before considering whether a payment a parent makes to a childcare centre is eligible for a donation tax credit, it is helpful to understand the government's role in funding childcare centres, as this helps with understanding the types of payments childcare centres may ask parents to make.
4. The Early Childhood Education (ECE) Funding Subsidy is the primary form of government funding paid to childcare centres that are licensed as ECE service providers under the Education and Training Act 2020. According to Ministry of Education guidelines in [ECE Funding Handbook](#),<sup>3</sup> the ECE Funding Subsidy is a contribution to a centre's operating costs, paying for part of each hour each child spends in early childhood education, to a maximum of 6 hours per child-place per day (that is, 30 hours per child-place per week). The subsidy is available for any enrolled children aged up to 6 years.
5. Licensed childcare centres that provide ECE services to children aged 3 to 5 years can obtain a higher rate of funding, up to a maximum of 6 hours per child per day and 20 hours per week. This is referred to as "20 Hours ECE". A centre can choose whether to offer parents 20 Hours ECE. Those centres that offer 20 Hours ECE may also claim the ECE Funding Subsidy for any additional hours a child attends over the hours covered by 20 Hours ECE, up to the maximum of 6 hours per day/30 hours per week.
6. According to the *ECE Funding Handbook*, childcare centres cannot charge parents fees for hours claimed as 20 Hours ECE. Parents may be charged fees for attendance hours outside of the hours claimed as 20 Hours ECE per week.
7. Where preschool children need additional hours of care in excess of 20 Hours ECE or are too young to access the 20 Hours ECE (that is, the child is younger than 3 years) some families may qualify for assistance like the Work and Income Childcare Subsidy or Early Learning Payment.
8. Both the ECE Funding Subsidy and the Work and Income payments are paid directly to the childcare centre and not to the parents. While the funding assists families with

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<sup>2</sup> Inland Revenue, 2014.

<sup>3</sup> Ministry of Education, no date, issued under s 548(5) of the Education and Training Act 2020.

their childcare costs, the payments are not taxable income of the parents and do not affect a parent's Working for Families tax credit entitlement.

## What types of payments do parents make to childcare centres?

9. Despite receiving some government funding many childcare centres will also charge parents fees for attendance and other things. The amount of fees charged, or whether fees are charged, will usually depend on the type of childcare centre (for example, whether it is a private "for-profit" childcare centre or a community-based, parent-led not-for-profit organisation).

### Fees

10. Subject to the rules relating to 20 Hours ECE (see [6]), a childcare centre can charge fees for a child's attendance at the centre. This includes those childcare centres known as "free kindergartens" (see s 26 of the Education and Training Act 2020).
11. Where a childcare centre charges fees for a child's attendance at the centre, a contractual relationship exists between the centre and the parents for the provision of ECE services in return for the payment of fees. Donation tax credits are not available for any attendance fees parents pay to childcare centres.

### Optional charges

12. Childcare centres can charge parents for optional activities or goods. These are things a parent purchases from a centre in addition to or to supplement the ECE services the childcare centre provides. The parent can choose whether to purchase the goods or services. No donation tax credits are available for any charges parents agree to pay to childcare centres in return for the optional activities or goods.
13. The *ECE Funding Handbook* includes information on the optional charges that licensed childcare centres can request, a list of unacceptable charges, and the level of service that must be provided to a parent who chooses not to pay optional charges. Acceptable optional charges include charges for transport, sunscreen, music teachers and sunhats. Unacceptable optional charges include contributions towards the cost of high-quality education, premiums for being a well-regarded service, and administration of 20 Hours ECE. Childcare centres that do not offer 20 Hours ECE are not subject to these rules.

## Donations, koha and voluntary contributions

14. Parents may choose or be asked to make donations, pay koha or make voluntary contributions to childcare centres. This is more likely to occur in respect of community-based centres such as free kindergartens, kōhanga reo, Playcentres and playgroups. However, it is possible (although less likely) that private for-profit childcare centres may also receive donations, koha or voluntary contributions from parents.
15. Where the centre is a donee organisation, and the donation, koha or voluntary contribution is a "charitable or public benefit gift" (as defined in s LD 3 ), then parents may be entitled to a donation tax credit under s LD 1 for the donation, koha or voluntary contribution.

## What is a donation tax credit?

16. A donation tax credit is a refundable tax credit available for charitable or other public benefit gifts that an individual makes to a donee organisation where the requirements in ss LD 1 to LD 3 are met.
17. An individual can claim a donation tax credit of one-third of the payment amount. An individual's claim for a donation tax credit must be supported by appropriate donation receipts from the donee organisation. The Commissioner reviews an individual's claim, then notifies the individual of the amount of tax credit that will be allowed.
18. The sum of charitable or other public benefit gifts an individual taxpayer makes in a tax year must not exceed their taxable income for that year. Therefore, the Commissioner will reduce the donation tax credits for gifts an individual makes in a tax year, if, in total, the credits claimed exceed the individual's taxable income for that year (see s 41A(3) and (4) of the Tax Administration Act 1994).

## When are donation tax credits available for parents' payments?

19. Donation tax credits are available for payments of money of \$5 or more that a parent makes to a childcare centre only where they satisfy the requirements in ss LD 1 to LD 3. That is, donation tax credits are available where:
  - the childcare centre is a "donee organisation"; and
  - the payment is "a charitable or other public benefit gift".

## What childcare centres are donee organisations?

20. Childcare centres can be run in different ways and for different purposes. This can affect whether a centre qualifies as a donee organisation. For example, a childcare centre might be a private for-profit business or it might be a community-based, not-for-profit organisation.
21. Donation tax credits can be claimed for gifts parents make to only childcare centres that are donee organisations:
  - Childcare centres operated by private for-profit organisations are not donee organisations, so donations parents make to those centres will never qualify for donation tax credits.
  - The Commissioner automatically recognises childcare centres operated by charitable organisations registered under the Charities Act 2005 as being donee organisations. From 1 April 2020, all entities with charitable purposes that qualify for registration under the Charities Act are required to be registered with the Charities Service of the Department of Internal Affairs to qualify as donee organisations. The advancement of education is included as a charitable purpose.
  - Childcare centres operated by other types of non-profit organisations need to have obtained approved donee status from the Commissioner to be recognised as donee organisations. Generally, a childcare centre that is not a charitable organisation may qualify as a donee organisation if it applies its funds wholly or mainly to benevolent, philanthropic or cultural purposes within New Zealand.
22. For additional guidance on donee organisations, see [OS 22/04 Part 2: Charities and Donee Organisations: Part 2 – Donee Organisations](#).<sup>4</sup>

## When are payments to a childcare centre charitable or other public benefit gifts?

23. The second requirement for donation tax credits is that a payment made by a parent to a childcare centre that is a donee organisation is a charitable or other public benefit gift.
24. The phrase “charitable or other public benefit gift” specifically excludes gifts made by will and forgiveness of debt. However, the word “gift” is not defined in the Income Tax Act 2007. Aotearoa New Zealand courts say the meaning of “gifting” and “gift” is to be

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<sup>4</sup> Inland Revenue, 2022.

determined by reference to the text and purpose of the legislation (in this case, ss LD 1 to LD 3). That meaning is then to be applied by considering all of the arrangements that were actually entered into and carried out.<sup>5</sup>

25. In the absence of a statutory definition of the word gift, the courts agree that for donation tax credit purposes the word should be given its ordinary and natural meaning.<sup>6</sup>
26. Based on case law, and taking into account s LD 3(1) in the light of its purpose and its context,<sup>7</sup> the Commissioner considers the ordinary and natural meaning of the word gift is a payment of money of \$5 or more:
  - made voluntarily;
  - made by way of benefaction (that is, made to benefit the donee organisation); and
  - where the payer receives no material benefit or advantage in return.

### **Payment is made voluntarily**

27. To qualify as a gift, a payment by a parent to a childcare centre must be made voluntarily. For gifting purposes, this means the payment is made willingly and freely by choice.
28. As a rule, a payment will not be made voluntarily if it is made under a contract or required to be made under some statutory or other legal obligation.<sup>8</sup>
29. However, the absence of a contract or a legal obligation on a parent to contribute to a centre does not automatically mean payments are voluntary. There can be circumstances where, even though a parent has no legal obligation to make a payment to a childcare centre, the payment still will not be considered "voluntary" for donation tax credit purposes.
30. For example, in *FCT v McPhail*,<sup>9</sup> the High Court of Australia found that contributions a parent made to a school building fund in return for reduced school fees were not gifts. In part, this was because the parent's agreement to contribute to the fund placed an

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<sup>5</sup> *Church of Jesus Christ of Latter-Day Saints Trust Board and Coward v CIR* [2020] NZCA 143 at [28].

<sup>6</sup> For example, *Chief Executive of Ministry of Social Development v Broadbent* [2019] NZCA 201 at [80], *Church of Jesus Christ of Latter-Day Saints Trust Board* at [55] and *FTC v McPhail* (1968) 117 CLR 111 (HCA) at 116.

<sup>7</sup> Section 10(1) of the Legislation Act 2019.

<sup>8</sup> *Leary v FCT* 80 ATC 4,438 (FCA) per Bowen CJ.

<sup>9</sup> (1968) 117 CLR 111 (HCA).

obligation on the school to provide education facilities for the reduced fee. As a result, the court found the contribution to the building fund was not a voluntary payment. Furthermore, it found the parent made the payment in the expectation that in return they would receive, and did in fact receive, a substantial concession in the fees charged for the education of their son.

31. Occasionally, a childcare centre or other parents may put pressure on a parent to make a payment, and this can create a sense of moral obligation on the parent. A payment made under a sense of moral obligation is still voluntary. However, in some circumstances, pressure might also be evidence that a payment is being made under an arrangement between the centre and the parent. If an objective analysis of the legal arrangements governing the payment and the surrounding circumstances establishes that the payment is not, in fact, voluntary, then it will not be a gift.

### **Payment benefits the childcare centre**

32. The Commissioner considers case law supports benefaction being an element of a gift in the context of donation tax credits.<sup>10</sup> Benefaction is the idea that a gift should provide an advantage or benefit to the donee organisation. While the Court of Appeal did not discuss the idea of benefaction in *Church of Jesus Christ of Latter-Day Saints Trust Board*<sup>11</sup> or refer to *Leary*,<sup>12</sup> in the Commissioner's view this should not be taken as meaning a court considering a different set of facts would not see benefaction as being an attribute of a gift for the purposes of s LD 1. Its presence demonstrates that a payment is made to advantage the donee organisation.
33. A payment made without benefaction will not be a gift in the ordinary sense of the word. For example, benefaction will not ordinarily be present where a donor's payment places a "countervailing material detriment"<sup>13</sup> on the donee organisation so that the organisation is prevented from benefiting (in whole or in part) from the payment.

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<sup>10</sup> The Australian Federal Court in *Leary* found benefaction to be an essential idea of a gift, in its ordinary sense.

<sup>11</sup> *Church of Jesus Christ of Latter-Day Saints Trust Board and Coward v CIR* [2020] NZCA 143.

<sup>12</sup> 80 ATC 4,438 (FCA).

<sup>13</sup> Deane J in *Leary* at 4,453 stated, "It involves, in my view, the concept that the relevant transfer is by way of well doing in that the recipient will be advantaged, in a material sense and without any countervailing material detriment arising from the circumstances of the transfer, to the extent of the property transferred to him".



34. In *Case J76*<sup>14</sup> a priest made payments to schools to ensure disadvantaged children in his parish could access appropriate schooling. The priest argued his payments were gifts, so he was entitled to the equivalent of a donation tax credit. Judge Keane found there was no doubt that the payments were made out of charity, but the payments placed the schools under a contractual duty to educate the children and were made in return for the schools' educational services. The priest's payments were not gifts to the schools, so no donation tax credit equivalent was allowed.
35. To the Commissioner, benefaction is another measure for determining whether a payment is a gift for donation tax credit purposes (along with whether the donor makes the payment voluntarily and gains a material benefit in return for making the payment). If, following an objective analysis of the legal arrangements governing the payment and the surrounding circumstances, benefaction cannot be established, then the payment will not be a gift for donation tax credit purposes.
36. Such an interpretation of the word gift is consistent with the policy underlying the donation tax credit rules: that donation tax credits are available "to encourage New Zealand taxpayers to provide financial support to charities".<sup>15</sup> For example, if by receiving a payment, the childcare centre is placed under a countervailing obligation so the centre gains no advantage or benefit from the payment, then the Commissioner considers the payment is not truly a gift in the ordinary and natural meaning of the word.

### **No material benefit or advantage in return**

37. A payment to a childcare centre will not usually be a gift in circumstances where the payment results in a material benefit or advantage being conferred in return. For example, where payment is a requirement of attendance at a childcare centre then that payment is treated as a fee for tax purposes, and not a gift (even if the childcare centre does not refer to the payment as a fee).
38. The material benefit or advantage does not need to come directly from the centre. It also does not need to be received directly by the parent who made the payment (for example, their child may receive an education benefit).
39. A benefit or advantage will be considered "material" if it is of substance and can be valued or owned or both. For example, if the centre's newsletter advertises a parent's business in return for the parent making the payment, that would be a material benefit.

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<sup>14</sup> (1987) 9 NZTC 1,451.

<sup>15</sup> *Church of Jesus Christ of Latter-Day Saints Trust Board* at [56].

40. A benefit or advantage will not be material if it is intangible and cannot be valued or owned. An example of a non-material benefit or advantage is public acknowledgement, such as printing a parent's name in a centre newsletter to acknowledge their gift.
41. Importantly, not every material benefit or advantage will necessarily disqualify a voluntary payment to a childcare centre from being a gift. To disqualify a voluntary payment to a childcare centre from being a gift, the benefit or advantage needs to arise **in return for** the payment. The extent and strength of any connection between the parent's payment and a benefit or advantage is an important factor in determining whether a payment is a gift.
42. For example, sometimes a centre may want to thank its parents and acknowledge their generosity by inviting them to a function or giving them a token of appreciation. In those situations, the benefit, even if material, does not disqualify a parent's payment from being a gift. This is because the parent had no expectation of being invited to the function when making the payment, so the link between the payment and the benefit is insufficient.
43. The Court of Appeal considered the strength of the link between a parent's payment and an education benefit or advantage in *Church of Jesus Christ of Latter-Day Saints Trust Board*. On the facts in that case, the court concluded an insufficient connection existed between the parent's payments to the church and any potential material benefit the parent's child received when they were acting as a missionary overseas. However, the court noted that the facts in this case were quite different from the "education benefit" cases<sup>16</sup> they had been referred to.<sup>17</sup> In the "education benefit" cases, students received the clearly material benefit of an education and the parents gained the benefit of paying reduced or no fees for the education provided.
44. For example, in the Canadian decision *R v Coleman*,<sup>18</sup> families made voluntary non-refundable payments to a religious charity and in return financial benefits were made available to students from those families to help with the cost of their education. The court found the payments were not gifts because they had a strong link to the financial benefits to the families. The voluntary payments relieved the families from having to pay education costs.
45. The court determined the strength of the link by looking at a variety of factors objectively, weighing them and applying them in a common-sense way. The factors

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<sup>16</sup> *McPhail, R v Zandstra* [1974] 2 FC 254 (Canada); *R v Coleman* (2010) TTC 109 (Canada); *Winters v CIR* 468 F 2d 778 (2nd Cir 1972) (US).

<sup>17</sup> *Church of Jesus Christ of Latter-Day Saints Trust Board* at [61].

<sup>18</sup> (2010) TTC 109.

included the relationship between the parties, the correlation between the amounts paid and the value of the benefit gained, and the circumstances surrounding the payment.

46. In *Case 8/2018* (2018) 28 NZTC 4,015 (TRA), a GST decision, the issue was whether amounts paid by the parents of children attending a private school were consideration for a supply of education services or unconditional gifts. Judge Sinclair found on the facts that while children could not be excluded from attending the school if their parents were unable to pay, the school was still “dependent” on parents’ contributions. It was evident from the background facts, including the related documentation and correspondence between the school and the parents, that if the parents had not made the contributions, the school would not have been able to operate. For this reason, Judge Sinclair found that in the circumstances a sufficient link could be established between the parents’ contributions and the supply of education services by the school, so the parents’ contributions were made for the supply of education services and were not unconditional gifts.
47. While *Case 8/2018* relates to GST, so is of only limited relevance in the context of donation tax credits, it is an example of a situation where a court determined, after taking into account all the circumstances surrounding the payments made by the parents, that a sufficient link existed between the parents’ payments and the material benefit of an education for reduced or no fees.

### **Are koha eligible for donation tax credits?**

48. Sometimes, childcare centres might request koha. Koha might be money, parent help or goods. Koha might be paid in addition to fees or other charges or instead of fees. Donation tax credits are available only for koha that are gifts of money and meet the requirements of a gift (see [26]). Other forms of koha (such as parent help or goods) are not eligible for donation tax credits. In addition, to be eligible for donation tax credits the childcare centre must be an approved donee organisation.

### **Can a gift be for a specific purpose?**

49. Sometimes gifts will be made to a childcare centre for a specific purpose or project, for example, to build a new playground. The fact a centre seeks donations for a specific project does not, in itself, prevent the payment from being a gift. In the Commissioner’s view, a gift made for a specific purpose will not cease to be a gift so long as no material benefit or advantage is provided in return for the payment.
  50. Further, the fact a parent’s child may be among those who ultimately benefit from a community project will not usually disqualify the payment from being a gift. However,
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the stronger the connection between a parent's payment and any material benefit or advantage they gain in return, the less likely it is that the payment will qualify as a gift.

### Can part of a payment be a gift?

51. The legal arrangements that the parties enter into and carry out and the surrounding circumstances establish the nature of the transaction. It is not open to parents and childcare centres to later choose to describe a payment as comprising two separate payments – one for consideration (for example, a sale) and one made voluntarily for no consideration (that is, a gift) – if, in fact, it was a single transaction. For example, if the price paid for an item at a charity auction to raise funds for the centre exceeds the value of the item, the centre cannot treat the amount paid above its value as a gift. It may not issue a donation receipt in that situation.
52. However, a childcare centre may be able to issue a donation receipt where a parent makes two payments at the same time. For example, if a parent purchases tickets to an event the childcare centre is hosting and at the same time voluntarily supports the centre by making an additional payment, the additional voluntary payment may be a gift. For the additional payment to be a gift, the parent must be allowed to attend the event regardless of whether they make any additional payment; that is, the ticket purchase must not depend on the parent making an additional payment. In that situation, the centre may choose to issue a single invoice to the parent, so long as it clearly identifies the two separate payments (the ticket sale and the gift), and may issue a donation receipt for the gift the parent made.

### Examples

53. In addition to the following examples, see examples that may be relevant to childcare centre fundraising in [QB 16/05: Income Tax – donee organisations and gifts](#).<sup>19</sup>

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<sup>19</sup> *Tax Information Bulletin* Vol 28, No 7 (August 2016): 33.

**Example 1: Discounted attendance fees**

A kindergarten requests donations from parents to assist with the upgrade of its playground. Any families who contribute more than \$100 are offered a 5% discount off their child's next two months' fees.

Any donations made by parents in excess of \$100 are not gifts for donation tax credit purposes. This is because in return for making the payment, the parents gain a material benefit in the form of reduced fees for two months.

**Example 2: Contributions and no fees**

Growing Giants Preschool is listed as a donee organisation on Inland Revenue's list of approved donee organisations. It offers parents 20 Hours ECE.

Parents are not charged fees for their children to attend the preschool, even if their children attend in excess of 20 hours each week.

However, parents are asked for contributions where a child's attendance exceeds 20 hours per week. The requested contribution is calculated on an hourly rate based on the number of hours the child attends in excess of 20 hours per week, and the children of families who choose not to make the suggested contributions are not able to attend in excess of 20 hours per week.

In addition, all parents are asked for contributions towards the cost of providing children with additional items such as a music teacher and a personally monogrammed sunhat and apron. Families who choose not to make the contributions for these additional items do not get to participate in the music programme and do not get the sunhat or apron.

The contributions parents made are not gifts for donation tax credit purposes. Although a parent may have no legal or contractual obligation to contribute, the family gains a material benefit in return for making the requested contributions. That benefit is that their children obtain the additional goods and services and can attend the preschool, and the parents are relieved from having to pay for that attendance. A sufficient link exists between the payments and the benefit to the families. The amount of the payments relates to the education benefits and goods provided. The preschool should not issue donation tax receipts to the parents for their contributions.

### Example 3: Koha paid to kōhanga reo

A kōhanga reo listed on the Inland Revenue website as an approved donee organisation offers its whānau 20 Hours ECE.

The kōhanga reo charges its whānau fees when tamariki attend for more than 20 hours per week. One whānau provides koha in the form of food and other goods instead of paying the fees for their tamariki. This koha is not a gift for tax purposes because the whānau gets the benefit of their tamariki attending at the kōhanga reo in return. The koha is not eligible for donation tax credits.

Another whānau at the kōhanga reo pays the fees for their tamaiti, but they have a surplus of vegetables from their garden. The whānau gives these vegetables to the kōhanga reo, which uses them to provide lunches for the tamariki. This is a gift because it was given voluntarily and there is no material benefit to the whānau. However, the koha is not eligible for donation tax credits because it is not a gift of money.

Some whānau with tamariki may also choose to make cash donations to the kōhanga reo to be spent on improving its teaching facilities. This koha is eligible for donation tax credits providing it is given voluntarily, it benefits the kōhanga reo and there is not a sufficient link between any benefit obtained by the whānau and the koha provided. The kōhanga reo can issue donation tax receipts for qualifying cash donations.

### Example 4: Payments to a community playgroup

St Christopher's Church runs a weekly playgroup in its church hall. The playgroup is open to the community, and any families attending on the day are asked for a gold coin donation. No one is turned away if they do not make a donation.

While a parent's gold coin donation may be a gift, because the donation is less than \$5 the parents cannot claim a donation tax credit. No donation tax receipt should be issued.

Periodically, the church newsletter includes a request for donations to help cover the playgroup's operating costs, along with a request for suitable used toys. Any cash donations of \$5 or more received by the church in response to the newsletter appeal are gifts for donation tax credit purposes. This is so even if a cash donation is made by a parent who regularly attends the playgroup with their child. While the parent may obtain a benefit from making the payment, there will not be a sufficient link between that benefit and the payment to prevent it from being a gift for donation tax credit

purposes. The church can issue a donation tax receipt for the cash donations it receives.

Donations of used toys are not gifts for donation tax credit purposes. No donation tax receipt should be issued.

#### **Example 5: Advertising in exchange for a donation**

A childcare centre asks families with businesses for donations. In return, it offers to place an advertisement for the business in its yearbook.

This payment is not a gift for donation tax credit purposes. The business gains a material benefit in the form of advertising in return for making the payment.

#### **Example 6: Tickets to a quiz night**

Mi-young purchases a ticket to a quiz night being put on by her children's childcare centre. The centre is a donee organisation and is raising funds for a new interactive garden space. The ticket costs Mi-young \$40 and entitles her to attend the quiz night. The childcare centre calculates that about \$20 from each ticket sold will go towards its new garden. However, none of the ticket price paid by Mi-young is a gift. The centre has sold the ticket to Mi-young for \$40. The centre should not issue a donation receipt to Mi-young for any portion of the ticket price.

The situation would be different if the childcare centre sold each ticket for \$20 and at the same time asked parents to consider making a donation of \$20, \$50, \$100 or any other amount. In this case, if Mi-young bought a ticket and opted to make a \$20 donation, the centre could issue a donation receipt to her for the \$20.

### Example 7: Tickets to a fundraising auction

Mateo purchased tickets to attend a fish and chip night and auction to raise funds for a new sunshade at his children's Playcentre. The Playcentre is a donee organisation.

Before the auction night, the Playcentre asks for contributions of "prizes" that it can auction off to raise funds. Kaia, a local artist, donates a painting. The painting would ordinarily sell at one of Kaia's exhibitions for \$200. The painting sells at the auction for \$350. Although Kaia has donated the painting to the Playcentre, the Playcentre should not give her a donation receipt as she has not made a gift of money.

At the auction Mateo bids on a signed rugby jersey. A similar jersey recently sold in an online auction for \$200. Mateo is keen to support the sunshade project so he bids \$400 for the signed jersey and wins the auction. Although Mateo may have purchased the jersey for more than the recent online auction price, no amount of the purchase price he paid is a gift. The playcentre should not issue a donation tax receipt to Mateo.

### Example 8: Purchase of Christmas cards and a donation

Felicity receives an email from her children's childcare centre, which is operated by a registered charity, offering her the opportunity to purchase a pack of Christmas cards featuring artwork done by the children. On the order form, Felicity can also choose to make a donation to the childcare centre. She chooses to purchase one pack of cards for \$20 and to make a donation of \$30. She completes the order online, making one payment of \$50.

The centre sends her the cards and a donation receipt for \$30. This is correct. Felicity's \$50 payment comprised two separately identifiable amounts she paid to the centre: \$20 to purchase the cards and a \$30 voluntary donation. The card order was not conditional on Felicity also making a donation.

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*In draft form these items may not be relied on by taxation officers, taxpayers, and practitioners. Only finalised items represent authoritative statements by Inland Revenue of its stance on the particular issues covered.*



## References

### Legislative references

Charities Act 2005

Education and Training Act 2020, ss 26, 548(5)

Income Tax Act 2007, ss LD 1 to LD 3

Legislation Act 2019, s 10(1)

Tax Administration Act 1994, s 41A(3) and (4)

### Case references

*Case 8/2018* (2018) 28 NZTC 4,015 (TRA)

*Case J76* (1987) 9 NZTC 1,451

*Chief Executive of Ministry of Social Development v Broadbent* [2019] NZCA 201

*Church of Jesus Christ of Latter-Day Saints Trust Board and Coward v CIR* [2020] NZCA 143

*FCT v McPhail* (1968) 117 CLR 111 (HCA)

*Leary v FCT* 80 ATC 4,438 (FCA)

*R v Coleman* (2010) TTC 109 (Canada)

*R v Zandstra* [1974] 2 FC 254 (Canada)

*Winters v CIR* 468 F 2d 778 (2nd Cir 1972) (US)

### Other references

OS 22/04 Part 2: Charities and Donee Organisations: Part 2 – Donee Organisations (Inland Revenue, 2022). [taxtechnical.ird.govt.nz/operational-statements/2022/os-22-04-part-2](https://taxtechnical.ird.govt.nz/operational-statements/2022/os-22-04-part-2)

QB 16/05: Income Tax – donee organisations and gifts (*Tax Information Bulletin* Vol 28, No 7 (August 2016): 33). [taxtechnical.ird.govt.nz/questions-we-ve-been-asked/2016/qb-1605-income-tax-donee-organisations-and-gifts](https://taxtechnical.ird.govt.nz/questions-we-ve-been-asked/2016/qb-1605-income-tax-donee-organisations-and-gifts)

QB 22/XX: *Goods and Services Tax – payments made by parents to childcare centres* (Inland Revenue, 2022). URL

Revenue Alert RA 14/01 (Inland Revenue, 2014). [taxtechnical.ird.govt.nz/revenue-alerts/ra-1401-revenue-alert](https://taxtechnical.ird.govt.nz/revenue-alerts/ra-1401-revenue-alert)

## About this document

Questions We've Been Asked (QWBAs) are issued by the Tax Counsel Office. QWBAs answer specific tax questions we have been asked that may be of general interest to taxpayers. While they set out the Commissioner's considered views, QWBAs are not binding on the Commissioner. However, taxpayers can generally rely on them in determining their tax affairs. See further [Status of Commissioner's advice](#) (December 2012). It is important to note that a general similarity between a taxpayer's circumstances and an example in a QWBA will not necessarily lead to the same tax result. Each case must be considered on its own facts.