

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

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Please quote reference: **PUB00341 – Income Tax**

Send feedback to [Public.Consultation@ird.govt.nz](mailto:Public.Consultation@ird.govt.nz)

**QUESTIONS WE'VE BEEN ASKED**

# **Income Tax – Payments made by parents to private schools and donation tax credits**

Issued:

**QB 22/XX**

This Question We've Been Asked explains when a parent's payment to their child's private school will qualify for a donation tax credit.

Another QWBA on the GST treatment of a parent's payment to their child's private school (QB 22/XX) and more QWBAs on donation tax credits and payments by parents to state schools ([QB 18/10](#)) and state integrated schools ([QB 18/11](#)) can be found on our Tax Technical website.

## **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 private school qualify for a donation tax credit?

## Answer

Payments parents make to private schools are gifts for donation tax credit purposes where:

- the school is a donee organisation;
- the payment is money of \$5 or more;
- the parent makes the payment voluntarily to benefit the school 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 term

**Parent** also includes a child's guardian or caregiver who makes payments to a private school.

**Private school** means a school registered under s 214 of the Education and Training Act 2020.

## Explanation

1. The Commissioner has been asked to clarify when payments parents make to private schools will qualify for a donation tax credit. (*QB 22/XX: Goods and Services Tax – Payments made by parents to private schools*<sup>1</sup> clarifies the GST treatment of payments parents make to private schools.)
2. This QWBA complements the earlier QWBAs published for parents with children attending state schools ([QB 18/10](#)) and state integrated schools ([QB 18/11](#)).
3. Parents with children attending private schools are charged fees for their children to attend the school. There is a contractual relationship between the school and the

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

parents for the provision of education and education-related goods and services in return for the payment of fees.

4. From time to time parents may choose to make donations to private schools. Where the school is a donee organisation, and the donation is a “charitable or public benefit gift”, then parents may be entitled to a donation tax credit under s LD 1 for the donation.
5. In the past, there have been situations where parents have made “donations” to private schools in substitution for paying no or low school fees. The Commissioner’s view on this practice was addressed in [Revenue Alert 14/01](#). There are no donation tax credits for any payments paid by parents to private schools incorrectly described as “donations”.

## What is a donation tax credit?

6. 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.
7. 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 tax receipts from the donee organisation. The Commissioner reviews an individual’s claim and then notifies the individual of the amount of tax credit that will be allowed.
8. 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 taxpayer 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?

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

## When is a private school a donee organisation?

10. A private school will be a donee organisation if it:
  - is registered as a charitable entity under the Charities Act 2005 or otherwise meets the requirements of s LD 3(2); and
  - appears on Inland Revenue's searchable list of approved donee organisations at [ird.govt.nz](http://ird.govt.nz).
11. Only donee organisations may issue donation tax receipts for donation tax credit purposes. Donations by parents to private schools that are not donee organisations will never qualify for donation tax credits.
12. For additional guidance on Donee organisations, see [OS 22/XX](#): Charities and donee organisations: Part 2: Donee organisations.<sup>2</sup>

## When will payments to a private school be “charitable or other public benefit gifts”?

13. While s LD 3(1) defines the phrase “charitable or other public benefit gift” (and specifically excludes gifts made by will and forgiveness of debt), it does not define the word “gift”. Aotearoa New Zealand courts say that the meaning of “gifting” and “gift” is to be determined by reference to the text and purpose of the legislation. That meaning is then to be applied by considering all of the arrangements that were actually entered into and carried out.<sup>3</sup>
14. In the absence of a statutory definition of “gift”, the courts agree that for donation tax credit purposes the word “gift” should be given its ordinary and natural meaning.<sup>4</sup>
15. Based on case law, and taking into account the text of s LD 3(1) in the light of its purpose and its context,<sup>5</sup> the Commissioner considers that the ordinary and natural meaning of “gift” is a payment of money of \$5 or more:
  - made voluntarily;
  - made by way of benefaction (ie, made to benefit the donee organisation); and

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<sup>2</sup> Inland Revenue, 2022.

<sup>3</sup> *The Church of Jesus Christ of Latter-Day Saints Trust Board and Coward v Commissioner of Inland Revenue* [2020] NZCA 143 at [28].

<sup>4</sup> For example, *Chief Executive of Ministry of Social Development v Broadbent* [2019] NZCA 201 at [80], *Coward* at [55] and *Federal Tax Commissioner v McPhail* (1968) 117 CLR 111 at 116.

<sup>5</sup> Section 10(1) of the Legislation Act 2019.

- where the payer receives no material benefit or advantage in return.

## Payment is made voluntarily

16. To qualify as a gift, a parent must make their payment to the private school voluntarily. For gifting purposes, this means the payment is made willingly, freely by choice.
17. As a general 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>6</sup>
18. However, the absence of a contract or a legal obligation on a parent to contribute to the school 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 private school, the payment still will not be considered “voluntary” for donation tax credit purposes.
19. For example, in *FCT v McPhail* 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 obligation on the school to provide education facilities for the reduced fee. As a result, the court found that 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.
20. Occasionally, a school 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 school 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, it will not be a gift.

## Payment benefits the private school

21. The Commissioner considers case law<sup>7</sup> supports benefaction being an element of a gift in the context of donation tax credits. Benefaction is the idea that a gift should provide an advantage or benefit to the donee organisation. While the Court of Appeal

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<sup>6</sup> *Leary v Federal Commissioner of Taxation* 80 ATC 4438 per Bowen CJ.

<sup>7</sup> The Australian Federal Court in *Leary* found benefaction to be an essential idea of a gift, in its ordinary sense.

did not discuss the idea of benefaction in *Coward*, or refer to *Leary*, 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.

22. 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>8</sup> on the donee organisation so that the organisation is prevented from benefiting (in whole or in part) from the payment.
23. In *Case J76*<sup>9</sup> a priest made payments to schools to ensure that disadvantaged children in his parish could access appropriate schooling. The priest argued his payments were gifts and therefore 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 and so no donation tax credit equivalent was allowed.
24. To the Commissioner, benefaction is another measure for determining if a payment is a gift for donation tax credit purposes – along with whether the donor makes the payment voluntarily and whether they gain 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.
25. Such an interpretation of "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>10</sup> For example, if by receiving a payment the private school is placed under a countervailing obligation so that the school 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.

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<sup>8</sup> Deane J in *Leary*: "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."

<sup>9</sup> *Case J76* (1987) 9 NZTC 1,451.

<sup>10</sup> *Coward* at [56].

## No material benefit or advantage in return

26. A payment to a private school will not usually be a gift in circumstances where the payment results in a material benefit or advantage being conferred in return.
27. The material benefit or advantage does not need to come directly from the school. It also does not need to be received directly by the parent who made the payment (for example, the student may receive the education benefit).
28. 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 school newsletter advertises a parent’s business in return for the parent making the payment, that would be a material benefit.
29. 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 school newsletter to acknowledge their gift.
30. Importantly, not every material benefit or advantage will necessarily disqualify a voluntary payment to a private school from being a gift. To disqualify a voluntary payment to a private school 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.
31. For example, sometimes a school may want to thank and acknowledge the generosity of its parents and alumni by inviting them to a function or by giving them a token of appreciation. This is often referred to as “stewardship”. 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.
32. The Court of Appeal considered the strength of the link between a parent’s payment and an education benefit or advantage in *Coward*. On the facts in *Coward* it was concluded there was an insufficient connection between the parent’s payments to the church and any potential material benefit his child received when she was acting as a missionary overseas. However, the court noted that the facts in *Coward* were quite different from the “education benefit” cases<sup>11</sup> referred to in the decision.<sup>12</sup> In the “education benefit” cases, students received the clearly material benefit of an

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<sup>11</sup> *McPhail*; *The Queen v Zandstra* [1974] 2 FC 254; *The Queen v Coleman* (2010) TTC 109; *Winters v Commissioner of Internal Revenue* 468 F 2d 778 (2nd Cir 1972).

<sup>12</sup> *Coward* at [61].

education and the parents gained the benefit of paying reduced or no fees for the education provided.

33. For example, in the Canadian decision *The Queen v Coleman* 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 that 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.
34. The court determined the strength of the link by looking at a range of factors objectively, weighing them and applying them in a common-sense way. The factors included the relationship between the parties, correlation between the amounts paid and the value of the benefit gained, and the circumstances surrounding the payment.
35. In New Zealand, 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 private 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 private school, so that the parents’ contributions were made for the supply of education services, and were not unconditional gifts.
36. While *Case 8/2018* relates to GST and so is only of 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.

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

37. Sometimes gifts will be made to a private school for a specific purpose or project – for example, to build a new gymnasium. The fact that a school 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.

38. Further, the fact that a parent's child may be among those who ultimately benefit from a school community project will not usually disqualify the payment from being a gift. However, 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?

39. 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 schools to later choose to describe a payment as comprising two separate payments – one for consideration (eg, a sale) and one made voluntarily for no consideration (ie, 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 school exceeds the value of the item, the school cannot treat the amount paid above its value as a gift. It may not issue a donation tax receipt in that situation.
40. However, a school may be able to issue a donation tax receipt where a parent makes two payments at the same time. For example, if a parent purchases tickets to an event the school is hosting and at the same time voluntarily supports the school 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 school 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 tax receipt for the gift the parent made.

## Examples

### Example 1: Annual donation to scholarship and building fund

The first newsletter for the school year includes a reminder from the private school's Trust Board that an annual donation from families or friends to help the school with funding its scholarship and building programme would be appreciated.

These payments are gifts for donation tax credit purposes providing they are voluntary and the donors gain no material benefit in return. If this is so, the school (which is a registered charity under the Charities Act 2005) can issue a donation tax receipt to the donors and individual donors can claim donation tax credits up to their allowable limit.

### **Example 2: Discounted tuition fees**

A private school requests donations from parents for its building fund. It offers that in return any families who contribute more than \$1,500 will enjoy a 5% discount off their child's annual tuition fees.

This payment is not a gift for donation tax credit purposes. In return for making the payment, the parents gain a material benefit in the form of reduced tuition costs.

### **Example 3: Contributions and no fees**

St Christopher's School is a private secondary school operated by St Christopher's Church. St Christopher's Church is listed as a donee organisation on Inland Revenue's list of approved donee organisations.

Most parents are only charged low fees for their children to attend the school, and some families pay no fees at all. However, all families are asked to make contributions to the church. The contributions the church requests are determined by reference to the school's operating costs, the number of students attending the school and each family's circumstances. The school's enrolment handbook makes it clear that the school is reliant on the parents' contributions for its continuing operation.

The contributions made by parents 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 receive an education at a school chosen by the parents. There is a strong link between the contributions and the benefit to the families. The amount of the payments relates to the education benefit. The payments place the church under a countervailing obligation to fund the school to educate the children. The church should not issue donation receipts to the parents for their contributions.

#### Example 4: Advertising

A private school asks families and alumni with businesses for donations to its scholarship fund. In return, it offers to place an advertisement for the business in its yearbook.

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

#### Example 5: Fundraising dinner

Mi-young purchases a ticket to a quiz night that her children's private school, which is a donee organisation, is putting on as a fundraising event. The ticket costs her \$80 and entitles her to attend the event. The school calculates it will raise approximately \$50 from each ticket sold to go towards its new performing arts centre. None of the ticket price paid by Mi-young is a gift. The school has sold the ticket to Mi-young for \$80. The school should not issue a donation tax receipt to Mi-young for any portion of the ticket price.

The situation would be different if the school sold each ticket for \$30 and at the same time asked ticket purchasers 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 \$50 donation, the school could issue a donation tax receipt to her for the \$50.

While at the dinner, Mi-young is asked if she would like to contribute towards the school's scholarship fund. She agrees to make a donation of \$500. The school is very grateful and advises Mi-young she will be acknowledged in its next newsletter. The school may issue a donation tax receipt to Mi-young for \$500. The public acknowledgement of her generosity is not a material benefit.

#### Example 6: Charity auction

Mateo has purchased tickets to attend a cocktail party and charity auction to raise funds for a new swimming pool complex at his children's private school. The school is a donee organisation.

Before the auction night, the school 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 \$700. The painting sells at the auction for \$1,000. Although Kaia has donated the painting to the school, the school should not give her a donation tax receipt as she has not made a gift of money.

The auction sells various donated items to the guests. Mateo bids on a signed rugby jersey. A similar jersey recently sold in an online auction for \$200. Mateo is keen to support the pool project so he bids \$800 for the signed jersey and wins the auction. Although Mateo may have purchased the jersey for much more than the recent online auction price, no amount of the purchase price he paid is a gift. The school should not issue a donation tax receipt to Mateo.

### Example 7: Christmas cards and donation

Felicity receives a letter from her children’s private school, which is a registered charity, offering her the opportunity to purchase a pack of Christmas cards that students have painted for \$20. On the order form, Felicity can also choose to add a donation to the school. She chooses to purchase one pack of cards and to make a donation of \$30. She sends the card order away with her credit card details authorising a payment of \$50.

The school then sends her the cards and a donation tax receipt for \$30. This is correct. Felicity’s \$50 payment comprised two separately identifiable amounts she paid to the charity – \$20 to purchase the cards and a \$30 voluntary donation. The cards Felicity receives are not conditional on whether or not she also made a donation.

For additional examples that may be relevant to private school fundraising, see [QB 16/05](#): Income Tax – Donee organisations and gifts.<sup>13</sup>

*Draft items produced by the Tax Counsel Office represent the preliminary, though considered, views of the Commissioner of Inland Revenue.*

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

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<sup>13</sup> *Tax Information Bulletin* Vol 28, No 7 (August 2016): 33.

## References

### Legislative references

Charities Act 2005

Education and Training Act 2020

Income Tax Act 2007, ss LD 1 to LD 3

Legislation Act 2019, s 10(1)

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

### Case references

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

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

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

*Federal Commissioner of Taxation v McPhail* (1968) 117 CLR 111 (Australia)

*Leary v Federal Commissioner of Taxation* 80 ATC 4438 (Australia)

*The Church of Jesus Christ of Latter-Day Saints Trust Board and Coward v Commissioner of Inland Revenue* [2020] NZCA 143

*The Queen v Coleman* (2010) TTC 109 (Canada)

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

*Winters v Commissioner of Internal Revenue* 468 F 2d 778 (2nd Cir 1972) (USA)

### Other references

"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 private schools* (Inland Revenue, 2022)

[OS 22/XX](#): *Charities and donee organisations: Part 2: Donee organisations* (Inland Revenue, 2022).

## 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.