

## FACT SHEET

# Operational Statement Charities and donee organisations: Part 1 Charities

Issued: 10 October 2022

OS 22/04 - Part 1 FS

This fact sheet accompanies *Operational Statement Charities and donee organisations: Part 1 Charities*, which assists entities in the not-for-profit sector to understand their tax obligations and available tax benefits.

*Part 1 Charities* explains what is a charity, what charitable purposes are and the different tax treatments that may be available. It also explains the implications of ceasing to be a tax charity or being deregistered and special rules for certain entity types.

All paragraph references (in this Fact Sheet) are to *Operational Statement Charities and donee organisations: Part 1 Charities*.

## Key provisions

All section references are to the Income Tax Act 2007 (ITA) unless otherwise specified. Other key provisions are included in the Charities Act 2005 (Charities Act).

## What is a charity

There is no legislative definition of a “charity” in the ITA or Charities Act. Common law has established the hallmarks of a charity. Related terms defined legislatively include: “charitable entity” (aka “registered charity”), “charitable organisation”, “donee organisation” and “tax charity” described in the Key terms section below. Figure 1 illustrates the relationship between the overlapping definitions.

For a more detailed discussion of what is a charity, see [13] – [23].

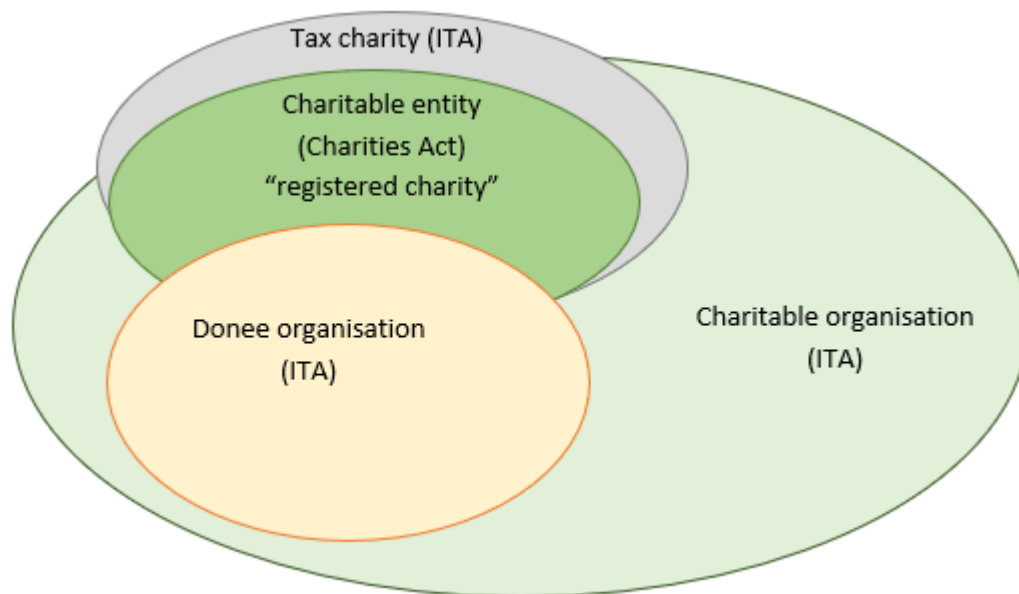
## Key terms and tax treatments

<p><b>charity</b></p>	<p>Not defined in the ITA or Charities Act, but common law has established the hallmarks of a charity are that:</p> <ul style="list-style-type: none"> <li>• the purpose of the charity is for the public benefit; and</li> <li>• the purpose is charitable</li> </ul>	
<p><b>charitable entity (referred to as a “registered charity”)</b></p>	<p>Defined in the Charities Act:</p> <ul style="list-style-type: none"> <li>• a society, institution or the trustee of a trust</li> <li>• that is registered as a charitable entity under the Charities Act</li> </ul>	<p>May be entitled to:</p> <ul style="list-style-type: none"> <li>• RWT-exemption; and/or</li> <li>• donee organisation status</li> </ul>
<p><b>charitable organisation</b></p>	<p>Defined in the ITA s YA 1, for a quarter or an income year:</p> <ul style="list-style-type: none"> <li>• an association, fund, institution, organisation, society or trust; <ul style="list-style-type: none"> <li>○ that is not carried on for the private pecuniary profit of an individual; and</li> <li>○ whose funds are applied wholly or mainly to charitable, benevolent, philanthropic, or cultural purposes within New Zealand; or</li> </ul> </li> </ul>	<p>May be entitled to:</p> <ul style="list-style-type: none"> <li>• FBT exclusion;</li> <li>• GST concessions; and/or</li> <li>• interest-free student loans for volunteers.</li> </ul>

	<ul style="list-style-type: none"> <li>• an entity approved by Parliament and listed in schedule 32 (Recipients of charitable or other public benefit gifts);</li> <li>• an entity that has been removed from the register of charitable entities (for a limited time while appeal is pending);</li> <li>• does not include a local authority, a public authority or a university</li> </ul>	
<b>tax charity</b>	<p>Defined in the ITA ss YA 1 and CW 41(5) – generally:</p> <ul style="list-style-type: none"> <li>• a registered charity (including a deregistered entity for a limited time while appeal of deregistration is pending); and</li> <li>• any non-resident entity carrying out charitable purposes overseas the Commissioner has approved as a tax charity</li> </ul>	<p>May be entitled an income tax exemption on certain parts, or all, of its income.</p>
<b>donee organisation</b>	<p>Defined in ss YA 1 and LD 3(2) (Meaning of charitable or other public benefit gift):</p> <ul style="list-style-type: none"> <li>• a society*, institution*, association*, organisation*, or trust*; <ul style="list-style-type: none"> <li>○ that is not carried on for the private pecuniary profit of an individual;</li> <li>○ whose funds are applied wholly or mainly to charitable, benevolent, philanthropic, or cultural purposes within New Zealand;</li> </ul> </li> <li>• certain community housing entities, public institutions*, boards constituted under the Education and Training Act 2020,</li> </ul>	<p>Entitled to donee organisation status, the main advantage of which is the benefit it brings to the donors who make charitable or other public benefit gifts:</p> <ul style="list-style-type: none"> <li>• individuals who make such gifts of \$5 or more may qualify for tax benefits (such as donation tax credits or payroll giving tax credits).</li> <li>• companies and Māori authorities may qualify for tax benefits (income tax gift deductions).</li> </ul> <p>These tax benefits are subject to maximum limits (the taxable</p>

	<p>tertiary education institutions, funds,* and public funds*;</p> <ul style="list-style-type: none"> <li>• an entity approved by Parliament and listed in schedule 32 (Recipients of charitable or other public benefit gifts)</li> <li>• an entity that no longer meets the requirements of donee organisation because it is removed from the charities register (for a limited time while appeal is pending)</li> </ul> <p><i>* these entities must be a registered charity, if eligible</i></p>	<p>income of the individual, company or Māori authorities).</p>
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**Figure 1: Relationship between overlapping definitions in the ITA and Charities Act**



## Charitable purposes

For a society or institution to be a charity, it must be established and maintained exclusively for charitable purposes. For a trust to be a charity, its income must be derived by the trustees in trust for charitable purposes.

The definitions of “charitable purpose” in s YA 1 of the ITA and s 5 of the Charities Act are materially the same and provide that charitable purpose includes “every charitable purpose, whether it relates to the relief of poverty, the advancement of education or religion, or any other matter beneficial to the community”. A charity’s purpose or purposes must be of public benefit within the sense the law recognises as charitable.

For a more detailed discussion of charitable purposes, see [37] – [43].

## Tax treatment available to charities

Tax treatment available may include income tax exemption, RWT exemption, FBT exclusion and GST concessions, while some overseas entities’ volunteers’ student loans may be eligible to remain interest-free. Also, donee organisation tax treatment may be available.

With regard to the income tax exemptions for business and non-business income of a tax charity, see the attached flowchart.

For a more detailed discussion of the variety of tax treatments available to charities, see [44] – [172].

## Implications of ceasing to be a tax charity or deregistration

A charity ceases to be a tax charity when it no longer meets the requirements in the definition of tax charity in the ITA. A charity is deregistered when it is removed from the register held by Charities Services.

A charity that has ceased to be a tax charity or been deregistered needs to determine whether any new tax obligations apply and from what date, for example income tax obligations, RWT-exemption, FBT-exclusion and donee organisation status may all be affected if the charity ceases to be a tax charity or is deregistered.

Additionally, a charity may be subject to a “deregistration tax” when it ceases to be a tax charity or is deregistered.

For a more detailed discussion of the implications of ceasing to be a tax charity or deregistration, see [204] – [232].

## Special rules for certain entity types

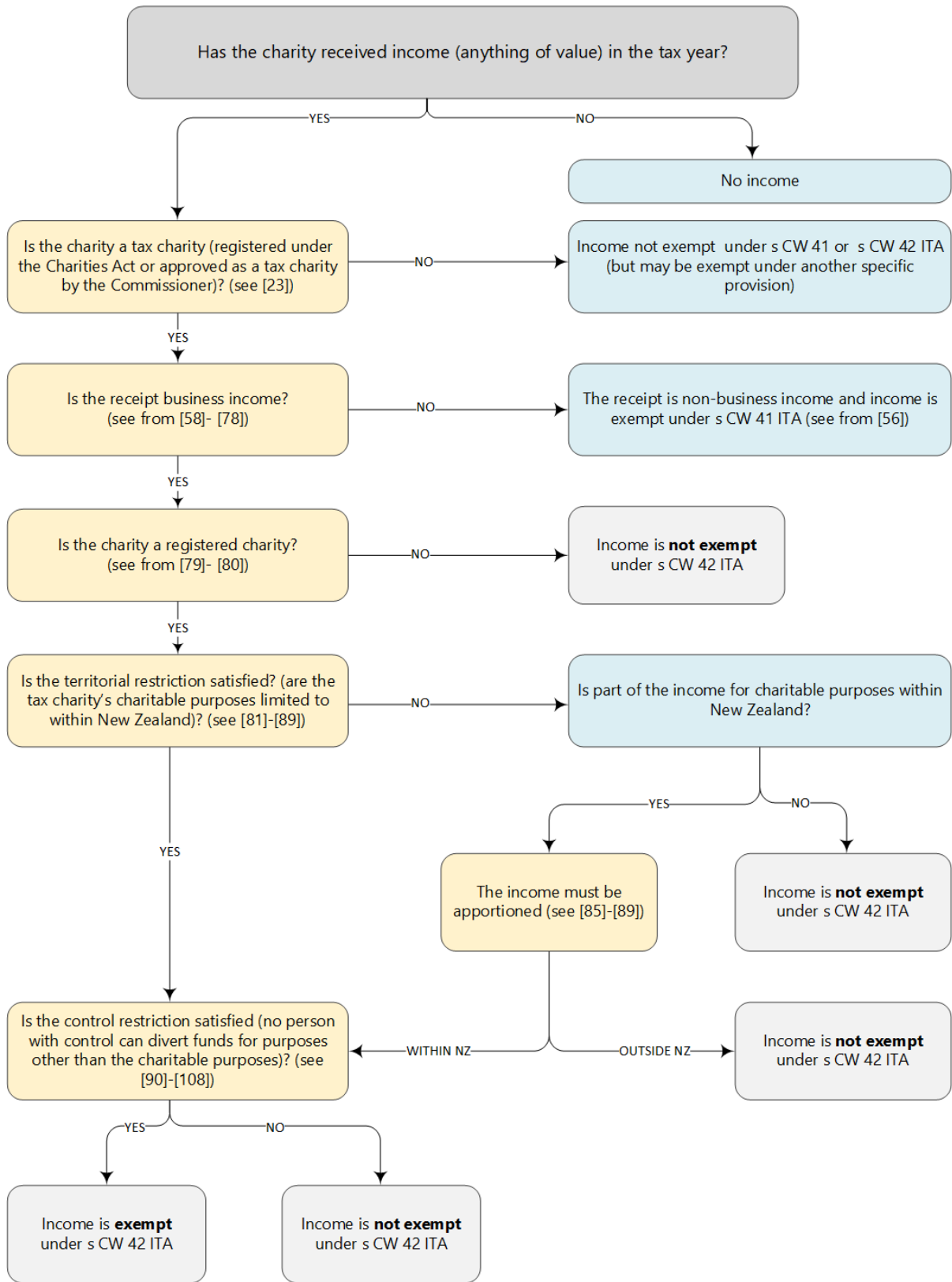
*Part 1 Charities* also discusses special tax treatments of Māori organisations that are registered charities [173] – [184], charitable trusts [185] – [193] and non-resident charities [194] – [203].

### RELATED DOCUMENTS

For more information on donee organisations, see:

- *Operational Statement Charities and donee organisations: Part 2 Donee organisations*

### Is a charity's business and non-business income exempt from income tax?



## About this document

Some of our longer or more complex items are accompanied by fact sheets, which summarise and explain the main points. To fully understand the guidance, a fact sheet should be read alongside the full item.