

FACT SHEET

Income tax - Donations – what is required to establish and maintain a “public fund” under s LD 3(2)(d) of the Income Tax Act 2007?

Issued: 26 July 2022

QB 22/02 FS

This fact sheet accompanies [Question We've Been Asked QB 22/02: Donations – what is required to establish and maintain a “public fund” under s LD 3\(2\)\(d\) of the Income Tax Act 2007?](#) (Inland Revenue, April 2022) (the item). This fact sheet summarises the key conclusions reached in the item. For greater detail please refer to the item.

RELATED DOCUMENTS

For more information on donations tax credits and deductions for gifts to donee organisations, see:

- [Interpretation Statement IS 18/05: Income tax – donee organisations – meaning of wholly or mainly applying funds to specified purposes within New Zealand](#) (Inland Revenue, September 2018).
- [Question We've Been Asked QB 19/10: Donations – what is required to establish and maintain a fund under s LD 3\(2\)\(c\) of the Income Tax Act 2007?](#) (Inland Revenue, June 2019).

Key provisions

Section LD 3(2)(d): states that a “public fund” is a **donee organisation** if it is established and maintained exclusively for the purpose of providing money for one or more charitable, benevolent, philanthropic or cultural purposes within **New Zealand**.

Key terms

Approved donee organisation	A donee organisation that is on the list Inland Revenue publishes under s 41A(14) to (16) of the Tax Administration Act 1994 (the Donee Organisations list).
Charitable or other public benefit gift	A gift of money of \$5 or more paid to a donee organisation that is an approved donee organisation , unless it is given by will, or by way of a full or partial debt forgiveness, or is a subscription paid to an entity that confers rights arising from membership in that entity or in any other society, institution, association, organisation, trust or fund.
Donee organisation	An entity or fund (including a “public fund”) described in s LD 3(2) or listed in schedule 32 of the Income Tax Act 2007, unless the entity or fund is a registrable but unregistered charity .
Founder	The person or group of people who establish a “public fund”.
Gift	Broadly, a payment for which no material benefit is given in exchange.
New Zealand	Does not include Niue, the Cook Islands, Tokelau or the Ross Dependency of Antarctica.
Registered charity	An entity that is registered as a charity under the Charities Act 2005 with the Department of Internal Affairs’ Charities Services.
Registrable but unregistered charity	An entity that is not a registered charity but, in the Commissioner’s opinion, is eligible to be a registered charity.

Introduction

1. **Charitable or other public benefit gifts to donee organisations** attract donations tax credits (for most individuals) or deductions (for companies and Māori authorities).
2. A “public fund” is a **donee organisation** under s LD 3(2)(d) if it is established and maintained exclusively for the purpose of providing money for one or more charitable, benevolent, philanthropic or cultural purposes within **New Zealand**.
3. This fact sheet and the item it accompanies discuss who can establish a “public fund”, what is a “public fund”, and how to establish and maintain one.

Who can establish a “public fund”?

4. Anyone can establish a “public fund”. However, funds established by non-profit organisations (such as **registered charities**) can be **donee organisations** under s LD 3(2)(c) of the Income Tax Act 2007 and have no need to rely on the fund being “public” to attain **donee organisation** status. A fund that is itself established as a new **registered charity** (eg a trust fund) usually qualifies as a **donee organisation** under s LD 3(2)(a) of the Income Tax Act 2007 and automatically becomes an **approved donee organisation**.
5. Therefore “public funds” are most likely to be established by:
 - public and local authorities (as they cannot be **registered charities**), and
 - individuals or groups of individuals who establish a “fund” for the purposes of providing money for one or more charitable, benevolent, philanthropic or cultural purposes within **New Zealand** but who, for whatever reason, cannot establish an entity that is registrable with the Department of Internal Affairs’ Charities Services. This may be because the types of entity that are registrable under the Charities Act 2005 (trusts, societies and institutions) are not fit for purpose in the circumstances or because the fund has benevolent, philanthropic and cultural purposes that are not ancillary to charitable purposes (the fund may not have any charitable purposes).

What is a “public fund”?

6. A “public fund” is a fund that:
 - is established by a **founder** who *intends* that the fund will receive donations from the public and will be administered by the public,

- over time, receives donations from the public, and
 - has public participation in its administration.
7. Where “public funds” are established by public or local authorities, the Commissioner will usually accept that:
- the authority *intends* the fund will receive donations from the public if public donations have been sought, and
 - the fund is administered by the public (by way of the authority’s employees).
8. Refer to [53] to [55] of the item for more information regarding “public funds” established by public and local authorities.
9. Where a fund is established by an individual (or group of individuals), the **founder’s** intention will be ascertained by looking at the:
- documents establishing the fund,
 - nature of any advertising or other publicity the fund attracts,
 - number and amount of donations received from unrelated members of the public, and
 - extent to which the public participates in administering the fund.
10. For more information on the meaning of “public” and “fund”, refer to [11] to [20] of the item.

How do I establish and maintain a “public fund”?

Establishing a fund

11. In practice, you will need founding documents to establish a “public fund”. This is because the onus will be on you as **founder** to show that the fund *is* a “public fund” and meets all the requirements to issue valid donations tax receipts.
12. **Founders** wishing to obtain listing of a “public fund” as an **approved donee organisation** should apply to the Commissioner using the process outlined from [62] to [64] of the item.
13. To apply, you will need a letter from the Department of Internal Affairs’ Charities Services confirming that the fund cannot be a **registered charity**, unless you are applying on behalf of a public or local authority, in which case a letter is not usually required – see [5] and from [70] to [71] of the item.

Maintaining a fund

14. To maintain a “public fund” you will need to keep records that show the sources and amounts of donations received by the fund, and how the fund has applied its money and other assets. This is best achieved by running a separate bank account for the public fund. You should also prepare annual accounts showing the movements of the fund’s monies or other assets.
15. Where a public or local authority maintains multiple “public funds”, Inland Revenue considers separation of money is best achieved by maintaining at least one “Funds” bank account (separate from the authority’s general bank account). In the absence of this, the authority must maintain records that are sufficiently detailed to allow the entries in the ledger account for a fund to be matched to corresponding entries on the authority’s general bank account statements.
16. Public and local authorities (and **registered charities**) have financial reporting obligations under other (non-tax) legislation. The tax record keeping obligations of these entities will overlap with their financial reporting obligations, but financial statements prepared under other legislation will not necessarily cover all of an entity’s tax record keeping requirements.
17. For information on the types of costs that can be reimbursed by a “public fund”, see from [80] to [85] of the item.
18. As an individual **founder** (or group of individual founders) you will also need to be able to demonstrate to the Commissioner that the public participates in the administration of the fund. The Commissioner considers this is best achieved by way of a committee or similar group or body. The committee may be a pre-existing committee already established for similar or related purposes or a new committee specifically established to maintain the “public fund”. Best practice suggests the majority of committee members should be people who have a sufficient degree of responsibility to the public (respected community members). See [86] to [88] of the item for more information. As noted at [7], in most cases the Commissioner will accept that funds maintained by public or local authorities are administered by the public – see [55] of the item for more information.

Examples

19. “Public funds” may be established by individual **founders** who enlist the co-operation of other individuals (eg the committee of a community organisation, or a number of

interested individuals identified through a web-based appeal) to raise funds for discrete projects.

20. Public funds may also be used by local authorities, including in a disaster relief situation where a local authority receives money from the public and there is a relatively short-term need. Larger-scale disasters with longer-term implications will often lead to a **registered charity** being formed for disaster relief (typically a trust), which will be a **donee organisation** under s LD 3(2)(a).
21. For examples of how to establish and maintain a “public fund”, see [89] of the item.

About this document

Some of our longer or more complex items are accompanied by fact sheets, which summarise and explain the main points.