



OPERATIONAL STATEMENT

Charities and Donee Organisations

Part 1: Charities

Issued: 10 October 2022

OS 22/04

Operational statements set out the Commissioner of Inland Revenue's view of the law in respect of the matter discussed and deal with practical issues arising out of the administration of the Inland Revenue Acts.

This statement outlines the tax treatment and obligations that apply to charities and donee organisations and how the Commissioner will apply the relevant legislation.

This statement is in two parts that together make up *Operational Statement OS 22/04: Charities and Donee Organisations*. The two parts are Part 1: Charities and Part 2: Donee organisations.

All legislative references are to the Income Tax Act 2007 (ITA) unless otherwise stated. Relevant legislative provisions are reproduced in the appendix to this statement.

This statement is also published as "OS 22/04: Charities and Donee Organisations", *Tax Information Bulletin* Vol 34, No 10 (November 2022).

Contents

Scope	4
Further information	5
Application date of this statement	5
Not-for-profit sector	5
Definition of a “charity”	6
Role of Charities Services	8
Charitable purposes	10
Summary of tax treatment available to charities	11
Income tax exemptions	12
Qualifying for income tax exemptions.....	12
Income tax exemption for non-business income (s CW 41).....	13
Income tax exemption for business income (s CW 42)	13
Charitable bequests (s CW 43).....	20
Resident withholding tax exempt status.....	21
Non-resident withholding tax.....	22
Fringe benefit tax exclusion.....	22
Meaning of “mainly in connection with employment”	23
Activity that is not a business.....	24
Activity that is a business and “within the qualifying organisation’s benevolent, charitable, cultural or philanthropic purposes”	24
Short term charge facilities	25
Goods and services tax and non-profit bodies	25
Election for an asset to not be part of taxable activity	27
Valuation on deemed disposal of assets by GST deregistration	27
Input tax credit limitation for the acquisition of second-hand goods	27
Further GST information.....	28
Interest-free student loan concession	29
Māori organisations	31
Charitable registration of a marae on land that is a Māori reservation.....	31
Registration of Māori entities under the Charitable Trusts Act 1957	32
Trusts established under Te Ture Whenua Maori Act 1993 the Maori Land Act 1993	32
Deregistration for marae on land that is a Maori reservation established under the Te Ture Whenua Maori Act	33

Charitable trusts	33
Non-resident charities.....	34
Overview	34
Guidelines for non-resident charities applying to be a tax charity.....	35
Tax implications of ceasing to be a tax charity or deregistration.....	36
Date from which tax obligations will apply.....	37
Income tax rates applicable after ceasing to be a tax charity or upon deregistration....	37
Income tax on net assets of deregistered charity (“deregistration tax”)	38
When a charity will not be liable for deregistration tax.....	38
Value of net assets	39
Organisations that run businesses for charity and deregistration tax.....	40
RWT-exempt status when a charity is deregistered	40
FBT-exclusion when a charity is deregistered.....	40
Donee organisation status when a charity is deregistered.....	41
More information on consequences of deregistration	41
Administrative matters	41
Record-keeping requirements.....	42
Alterations to a charity’s founding documents.....	43
Binding ruling applications	44
Other disclosure and reporting regimes	44
Charities that are foreign trusts for income tax purposes	44
Charities and international financial reporting obligations	45
Appendix – Legislation.....	47
Income Tax Act 2007	47
Tax Administration Act 1994	57
Charities Act 2005.....	60
References	62
Legislative references.....	62
Case references.....	62
Other references	63

Scope

1. The purpose of *Operational Statement OS 22/04: Charities and Donee Organisations* is to assist entities in the not-for-profit sector to understand their tax obligations and available tax benefits. This statement is published in two parts: Part 1 discusses charities and Part 2 discusses donee organisations.
2. New Zealand's not-for-profit sector makes an important contribution to the wellbeing of New Zealanders. One way the Government supports the sector is by providing favourable tax treatments for the sector. These come in various forms, depending on the characteristics of the entity involved; for example, various income tax exemptions for the business and non-business income of charities, resident withholding tax (RWT) exemptions, fringe benefit tax (FBT) exclusions, goods and services tax (GST) concessions and interest-free student loans for overseas volunteers of approved charitable organisations. For charities that have donee status, donors may receive favourable tax treatments such as donation tax credits, payroll giving tax credits and income tax gift deductions.
3. Following brief comments about where to get more information, the application date of this statement, and the not-for-profit sector, Part 1 of the Operational Statement:
 - considers what is a charity, including in the context of the two main Acts governing charities: the ITA and Charities Act 2005 (Charities Act) (see from [13]);
 - addresses the relationship between Charities Services | Ngā Ratonga Kaupapa Atawhai (a unit of the Department of Internal Affairs | Te Tari Taiwhenua) and Inland Revenue (see from [24]);
 - explains what charitable purposes are, because that is important to deciding whether an organisation is a charity (see from [37]);
 - outlines the different tax treatments that may be available (see from [44]);
 - discusses the implications for Māori organisations (see from [171]), explains the rules for charitable trusts (see from [183]), and non-resident charities (see from [192]);
 - discusses the tax implications of ceasing to be a tax charity or deregistration (see from [202]); and
 - sets out administrative matters (see from [231]) and highlights other disclosure and reporting regimes (see from [252]).

An appendix of legislation and list of references conclude Part 1.

4. Part 2 of the Operational Statement provides guidance to entities wanting to become donee organisations or that are already donee organisations, including the benefits of being a donee organisation, how to obtain approval as a donee organisation, the requirements for a “charitable or public benefit gift” and the requirements for a donation tax receipt.
5. Part 2 also addresses other administrative tax matters relevant to donee organisations, including record-keeping and the implications of a donee organisation with charitable purposes being removed from the register maintained by Charities Services (Charities Register, described at [28]).
6. Topics relevant to Part 1 that are covered in Part 2 are cross-referenced.

Further information

7. Inland Revenue has a dedicated email address for inquiries about charities and donee organisations: **charities.queries@ird.govt.nz**
8. More information about charities is on the Inland Revenue website.¹ All references whether to webpages, reports or other items are listed with their full URL in the References at the end of this document.

Application date of this statement

9. This Operational Statement (Parts 1 and 2) will apply from 10 October 2022.

Not-for-profit sector

10. New Zealand’s not-for-profit sector is diverse and includes many different types of organisations and entities. A not-for-profit organisation is any society, association or group, incorporated or unincorporated, the activities of which are not carried on for the profit or gain of any individual and the rules of which do not allow any money or property to be distributed to any member.
11. Different parts of the not-for-profit sector have different tax treatments, depending on their characteristics:
 - Tax charities – the status of which generally results in an income tax exemption. This category includes organisations registered under the Charities Act (registered charities), deregistered charities (only for a limited period), charities that began the process of becoming a registered charity

¹ Inland Revenue, [Charities | Ngā kaupapa atawhai](#) (webpage).

before 1 July 2008 (which meet other conditions) and a small number of non-resident charities approved as a tax charity by the Commissioner.

- Donee organisations — the status of which gives tax benefits to donors who make gifts of money (donations) to them. This category includes charities and not-for-profit organisations with cultural, philanthropic or benevolent purposes.
 - Charitable organisations — the status of which may enable them to benefit from exclusion from the FBT rules.
 - Other not-for-profit organisations — organisations not otherwise covered above, which do not have the purpose of making a profit for any individual. They can potentially access tax exemptions or other administrative concessions provided for in the Inland Revenue Acts. (The Inland Revenue Acts are defined in s YA 1 of the ITA and listed in schedule 1 of the Tax Administration Act 1994 (TAA).) Examples of tax exemptions available to not-for-profit organisations are the income tax exemption for amateur sports promoters (s CW 46) and the income tax deduction of up to \$1,000 (s DV 8).
12. A not-for-profit organisation may or may not be a charity, depending on whether it satisfies the legislative requirements described in this part. Additionally, a not-for-profit organisation may or may not be a donee organisation, depending on whether it satisfies the legislative requirements described in Part 2 of this Operational Statement. Some not-for-profit organisations are both a charity and a donee organisation, while some are neither.

Definition of a “charity”

13. There is no legislative definition of a “charity” in the ITA or Charities Act. However, common law² has established that the hallmarks of a charity are that:
- the purposes of the charity are for the public benefit; and
 - the purposes are charitable within the sense the law recognises.

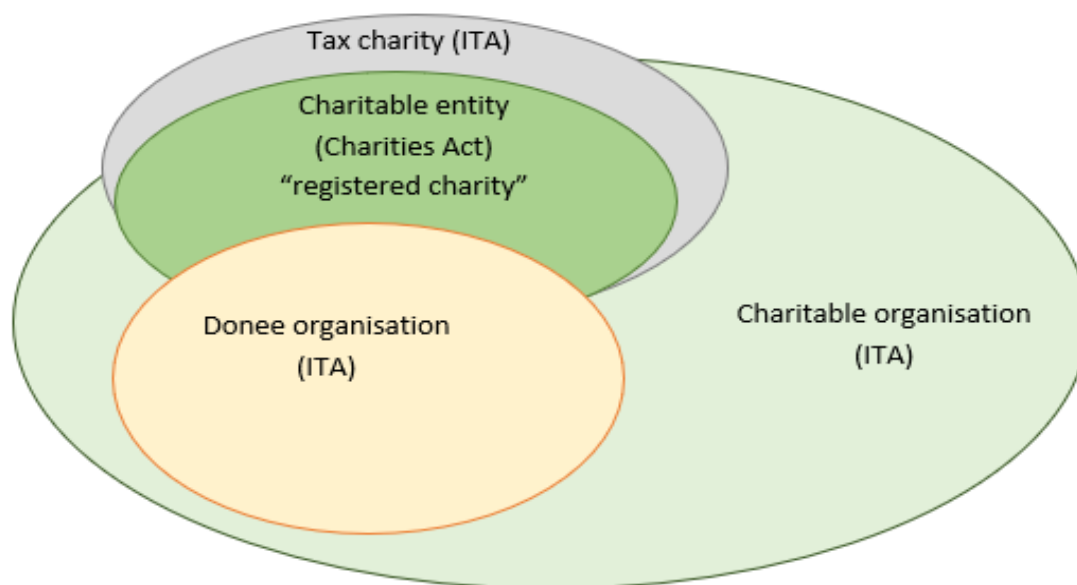
Both public benefit and charitable purposes are discussed from [37].

14. The ITA defines a “tax charity, “charitable organisation” and “donee organisation” and the Charities Act defines a “charitable entity”.
15. A charitable entity that has obtained registration under the Charities Act is referred to in this Operational Statement as a “registered charity”.

² *A-G v Family First NZ* [2022] NZSC 80 at [10] – [12], *Re Greenpeace of NZ Inc* [2014] NZSC 105, [2015] 1 NZLR 169 at [18].

16. All registered charities will meet the definition of tax charity under the ITA. However, there are other entities that are tax charities that are not registered charities.
17. The definitions under the ITA and Charities Act overlap.

Figure 1: Relationship between overlapping definitions in the ITA and Charities Act



18. Whether or not a charity is registered does not affect its legal status or its ability to accept funds from the public. However, to qualify for the favourable tax treatments, a charity must meet the legislative requirements described in this Operational Statement.
19. A "charitable entity" is a society, institution or the trustee(s) of a trust that is (or are) registered as a charitable entity under the Charities Act (s 4 of the Charities Act).
20. Requirements for registration (s 13 of the Charities Act) are as follows:
 - For a society or institution to be registered, it must be established and maintained exclusively for charitable purposes (see from [38]) and not carried on for the private pecuniary profit of any individual.
 - For trustees of a trust to be registered, the trust must be of a kind in relation to which an amount of income is derived by the trustees in trust for charitable purposes. The name of the entity (as per s 6 of the Charities Act) must be the name of the incorporated board (if incorporated under the Charitable Trusts

Act 1957) or the name of the trust or a name nominated by the trustees if the trust does not otherwise have a name.

21. Once registered under the Charities Act, the charitable entity is commonly known as a “registered charity”.
22. A “charitable organisation” means, for a quarter or an income year, an association, fund, institution, organisation, society or trust to which s LD 3(2) or schedule 32 applies (s YA 1). It may include an entity removed from the Charities Register (but only for a limited time), but it does not include a local authority, a public authority or a university. Charitable organisations are discussed in more detail in Part 2 of this Operational Statement.
23. A “tax charity” (defined in ss YA1 and CW 41(5)) is:
 - a trustee, society or institution registered as a charitable entity under the Charities Act;
 - a trustee, society or institution that has started the process of registration before 1 July 2008 and intends to complete the process and has not notified the Commissioner that it is not a tax charity;
 - a non-resident trustee, society or institution that carries out charitable purposes outside New Zealand that is approved by the Commissioner as a tax charity in circumstances where registration under the Charities Act is unavailable; and
 - entities removed from the register (but only for a limited period).

Role of Charities Services

24. The Charities Act provides for the registration of entities (defined in s 4 of that Act as societies, institutions or trustees of a trust) as charitable entities. The purposes of the Charities Act (s 3 of that Act) include promoting public trust and confidence in the charitable sector, encouraging and promoting effective use of charitable resources, providing for registration and deregistration of charities, and requiring compliance with certain obligations.
25. Under the Charities Act, three members of the Charities Registration Board (the Board) are appointed by the Minister responsible for the administration of the Charities Act and are required to act independently from the Minister. The Board is the statutory decision maker responsible for decisions on the registration and deregistration of charities (s 8 of the Charities Act).
26. In addition, the Board delegates routine decisions to Charities Services, a unit of the Department of Internal Affairs (s 9 of the Charities Act).

27. Charities Services (s 10 of the Charities Act):
- provides a registration and monitoring system for charitable entities;
 - collects and processes annual returns, including making available registered charities' annual financial information on the publicly accessible Charities Register;
 - provides an inquiry function into alleged breaches of the Charities Act or serious wrongdoing in connection with a registered charity;
 - supplies information to Inland Revenue; and
 - provides support and education to charities on good governance and management practice.
28. Charities Services maintains a public, searchable Charities Register³ containing a list of all charities registered under the Charities Act. The Charities Register helps the public, funders and other users make better-informed decisions about charities they may wish to support.
29. For a society or an institution to be eligible to register with Charities Services, generally it must have been established and be maintained exclusively for charitable purposes and not be carried on for the private pecuniary profit of any individual. If it is established and maintained partly for charitable purposes and partly for benevolent, philanthropic or cultural purposes it may be able to register with Charities Services, provided the benevolent, philanthropic or cultural purposes are ancillary to the charitable purposes.
30. In the case of trustees of a trust, the trust will qualify for registration with Charities Services if it is of a kind in relation to which an amount of income is derived by the trustees in trust for charitable purposes (s 13 of the Charities Act). Trusts that derive income in trust for benevolent, philanthropic or cultural purposes that are not also regarded as charitable purposes may not be registered with Charities Services unless those purposes are ancillary to the charitable purposes.
31. An entity may be removed from the Charities Register at its request or at the direction of the Board. The grounds for removal include where:
- the entity is not or is no longer qualified for registration as a charitable entity;
 - the entity has engaged in serious wrongdoing;
 - any person has engaged in serious wrongdoing in connection with the entity;
- or

³ Charities Services, [Search the register](#) (webpage).

- the entity has significantly or persistently failed to comply with the Charities Act (for example, non-filing of annual returns).
32. Before an entity can be removed from the Charities Register at the direction of the Board, it has a reasonable opportunity to make submissions to the Board. The Board's decision can be appealed to the High Court or be subject to an application for judicial review.
 33. One of the Government's aims in establishing the charities registration process was to create, as much as possible, a seamless interface between a charity's registration and its entitlement to tax exemptions, including by way of s 30 of the Charities Act, which allows Charities Services to provide information to Inland Revenue.
 34. To further enable Charities Services and Inland Revenue to work together, a memorandum of understanding provides for the sharing of information in respect of charitable entities.⁴
 35. All such information exchanges take account of relevant legislative provisions regarding confidentiality of tax information and the requirements of the Privacy Act 1993 and the Official Information Act 1982.
 36. The Charities Services website provides general information about charities and how to apply for registration.⁵

Charitable purposes

37. 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.
38. The definitions of "charitable purpose" in s YA 1 of the ITA and s 5 of the Charities Act are materially the same and relevantly 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".
39. A charity's purpose or purposes must be of public benefit within the sense the law recognises as charitable.⁶ This is assessed by considering the end that is

⁴ Inland Revenue, Department of Internal Affairs (DIA) | Te Tari Taiwhenua (DIA) - [Supplying of information in respect of charitable entities](#) (webpage).

⁵ Charities Services, [Charities Services | Ngā Ratonga Kaupapa Atawhai](#) (webpage).

⁶ *A-G v Family First NZ* [2022] NZSC 80 at [10] – [12], *Re Greenpeace of NZ Incorporated* [2014] NZSC 105, [2015] 1 NZLR 169 at [18]

advocated, the means promoted to achieve that end and the manner in which the cause is promoted (*Re Greenpeace* at [76]).

40. The definitions of charitable purpose (in s YA 1 of the ITA and s 5 of the Charities Act) also provide specifically that a marae will have a charitable purpose where its:
 - physical structure is on Māori reservation land; and
 - funds are used only for the administration and maintenance of the land and the structure of the marae or for a purpose that is a charitable purpose (s YA 1 of the ITA and s 5(2)(b) of the Charities Act).
41. Further, the definitions of charitable purpose provide that the public benefit requirement for charitable purposes will not be defeated simply because beneficiaries or members are related by blood (s YA 1 of the ITA and s 5(2)(a) of the Charities Act).
42. An entity may be eligible for charitable registration, even if it has a non-charitable purpose, where the non-charitable purpose is merely ancillary (s 5(3) of the Charities Act).
43. Sporting organisations may be eligible for registration, provided the promotion of amateur sport is the means by which its charitable purpose is pursued (see s 5(2A) of the Charities Act).

Summary of tax treatment available to charities

44. Tax charities in New Zealand are generally treated favourably for tax purposes as a reflection of wider government objectives. The annual Tax Expenditure Statement the Treasury produces for the Budget provides further transparency around policy-motivated “expenditures”. These tax expenditures take the form of an exemption, allowance, preferential tax rate, deferral or offset that reduces a tax obligation to achieve a specific policy objective. This Operational Statement focuses on the expenditures related to charities and not-for-profit organisations, sometimes referred to as “concessions”.
45. This support is provided for in the ITA, primarily through income tax exemptions. One exemption is for the non-business (passive) income of a tax charity (s CW 41). Another exemption is for the business income of a tax charity (s CW 42), subject to the additional territorial and control restrictions (see from [81]).
46. Income tax exemptions are a departure from the Government’s broad-based, low-rate tax framework. Therefore, as a matter of general principle, exemption from income tax is restricted to organisations that are both not-for-profit and operate for the public benefit – the main category of such organisations being registered charities.

47. Certain charities and not-for-profit organisations with New Zealand purposes are also eligible to be treated as donee organisations, meaning taxpayers may receive tax benefits for donations of money made to these organisations. Donee organisations are discussed in more detail in Part 2 of this Operational Statement.
48. Other tax treatment available may include RWT exemptions, FBT exclusions, GST concessions and interest-free student loans for overseas volunteers of approved charitable organisations. Also discussed from [171] are special tax treatments of Māori organisations that are registered charities.
49. The favourable tax treatment available to tax charities will not be available to a board incorporated under the Charitable Trusts Act 1957 unless the board becomes a registered charity. For more information about the tax treatment of charitable trusts, see from [183].
50. One area where tax charities do not receive favourable treatment is in the imputation system. Under the imputation system, a company effectively attaches income tax credits (known as “imputation credits”) to dividends distributed to shareholders. The shareholders then use those imputation credits to reduce their own income tax liability in respect of the dividend they receive. Where a shareholder is a tax charity that does not have to pay tax on the dividend received, the imputation credits cannot be used and the credits cannot be refunded.

Income tax exemptions

Qualifying for income tax exemptions

51. Income tax exemptions for tax charities are provided under:
 - s CW 41 – exemption for non-business income; and
 - s CW 42 – exemption for business income.
52. In addition, charitable bequests may be exempt from income tax (s CW 43). There are further specific exemptions from income tax, for example for community housing trusts and companies (s CW 42B), friendly societies (s CW 44) and bodies promoting amateur games and sports (s CW 46), amongst others provided under Subpart CW of the ITA.
53. There are also restrictions on when the non-business income of a council-controlled organisation will be eligible for the income tax exemptions.
54. A council-controlled organisation is defined in s YA 1 more broadly than in s 6(1) of the Local Government Act 2002 and can include an organisation that is not a

company. Generally, an organisation will be a council-controlled organisation where:

- it is subject to the direct or indirect control of one or more local authorities; or
- a local authority has the direct or indirect power to control at least 50% of the votes at any meeting of the members or controlling body of the organisation, or the direct or indirect right to appoint at least 50% of the trustees, directors or managers of the organisation.

55. A council-controlled organisation will not be eligible for tax exemptions for non-business or business income unless it is operating a hospital as a charitable activity or operating a hospital as a charitable activity on behalf of the local authority (ss CW 41(4) and CW 42(2)).

Income tax exemption for non-business income (s CW 41)

56. Section CW 41 provides a tax charity with an income tax exemption for non-business income. An example of non-business income is investment income (for example, interest or dividends). Section CW 41 also allows the income tax exemption for non-business income of a deregistered charity (but only for a limited time).
57. This exemption does not apply to any income derived from a business carried on by, or for or for the benefit of, the tax charity (this situation is dealt with under s CW 42).

Income tax exemption for business income (s CW 42)

58. Section CW 42 provides an income tax exemption for business income when certain conditions are satisfied at the time the income is derived.
59. To qualify for the business income exemption:
- a tax charity must derive the income directly or indirectly from a business (see from [66]);
 - the business must be carried on by, or for, or for the benefit of the tax charity (see from [72]);
 - the entity carrying on the business must be a registered charity at the time the income is derived (see from [79]);
 - the territorial restriction must be satisfied (see from [81]); and
 - the control restriction must be satisfied (see from [90]).
60. Each of these five requirements is discussed in a separate subsection below.

61. The main difference between the tests under ss CW 41 and CW 42 is that exemption under s CW 42 is subject to the additional territorial and control restrictions.
62. The “territorial restriction” applies where the charitable purposes of the tax charity that derives the business income are not limited to within New Zealand (see from [81]). The territorial restriction requires that the business income be apportioned and only the income apportioned to charitable purposes in New Zealand can be exempt.
63. The “control restriction” requires that no person with some control over the business can direct or divert income derived from the business to their benefit or advantage (see from [90]).
64. A registered charity that carries on a business for or for the benefit of another tax charity is referred to as the “operating entity”. The tax charity that the operating entity carries on its business for, or for the benefit of, is referred to as the “controlling entity”. (The controlling entity may also be a registered charity, but it is not required to be one.)
65. For more information about the applicability of the business income exemption under s CW 42, see the explanation of the amendments to the legislation.⁷

Tax charity derives income directly or indirectly from a business

66. The first requirement to qualify for the business income tax exemption is that the tax charity must derive income directly or indirectly from a business.
67. “Business” is defined for the purposes of the ITA in s YA 1 as including any profession, trade or undertaking carried on for profit.
68. The leading case on the meaning of “business” is *Grieve v CIR* [1984] 6 NZTC 61,682 (CA), which established the following:
 - The words “for profit” in the context of the definition of “business” mean with the intention of making a profit.
 - A business means an activity of a commercial nature that is carried on in an organised and coherent way with the intention of making a profit (being a profit ascertained in accordance with ordinary commercial principles and excluding allowances and deductions provided as tax incentives).
 - To determine whether there is a business, it is necessary to consider the nature of the activities and the taxpayer’s intention in carrying on the activities.

⁷ Inland Revenue, “Charities and donee organisations” section on “New Legislation” in *Tax Information Bulletin* Vol 31, No 4 (May 2019) at 132-133 (publication).

- Both subjective and objective evidence is relevant in determining whether the taxpayer's intention in carrying on an activity is to make a profit. However, subjective evidence must be tested against objective evidence. The objective matters that may be relevant in determining a taxpayer's intention in carrying on an activity include: the nature of the activity; the period over which it is engaged in; the scale of the operations and volume of transactions; the commitment of time, money and effort; the pattern of activity; and the financial results.
 - A taxpayer's motive (underlying purpose) for carrying on an activity is irrelevant in determining whether the activity is a business.
69. Many organisations in the not-for-profit sector engage in activities on a continuous and ongoing basis, commit time, money and effort to those activities, and conduct a large volume of transactions, with the intention of making a surplus. Organisations that carry on this type of activity are carrying on a business as that term is defined in s YA 1.
70. A trustee is treated as carrying on a business if they derive rents, fines, premiums or other revenues from a trust asset and the asset was disposed of to the trust by a person having control over the business (as described at [94]), and either the person retains or reserves an interest in the asset or the asset will revert to the person (s CW 42(3)).
71. Inland Revenue's Public Ruling BR Pub 22/06,⁸ while dealing primarily with the exclusion from FBT of benefits provided to employees of qualifying non-profit organisations (under s CX 25), outlines what constitutes a "business".

Business carried on by, or for, or for the benefit of the tax charity

72. The second requirement to qualify for the business income tax exemption is that the business is carried on by the tax charity or the business is carried on for or for the benefit of the tax charity.
73. If the tax charity is carrying on a business, the second requirement will be satisfied.
74. A business is carried on "for, or for the benefit of, a tax charity" where a registered charity (the operating entity) is carrying on a business for or for the benefit of the tax charity (the controlling entity).

⁸ Inland Revenue, *Public Ruling BR Pub 22/06 - Fringe Benefit Tax - Charitable and Other Donee Organisations and Fringe Benefit Tax* (May 2022) at page 9 (publication).

75. Further, where a business is carried on by a registered charity in partnership with a non-charitable entity, the income derived may still be exempt under s CW 42 (subject to satisfaction of the territorial and control restrictions).⁹
76. This will also be the case where a non-charitable entity is in partnership with an operating entity carrying on a business for, or for the benefit of, a controlling entity.¹⁰
77. A business is not automatically considered to be carried on for, or for the benefit of, a tax charity merely because some of the income from the business is paid to a tax charity. Instead, the business must be carried on for or for the benefit of the tax charity.
78. A business does not cease to be carried on for, or for the benefit of, a tax charity if the business income is accumulated from year to year, as long as the income and resulting assets are ultimately paid to the tax charity.¹¹

Entity carrying on the business must be a registered charity

79. The third requirement to qualify for the business income tax exemption is that the entity carrying on the business must be a registered charity at the time the income is derived.
80. From the 2020/21 income year, where business income is derived by an operating entity for a controlling entity, the operating entity must itself be a registered charity to qualify for the business income exemption. The controlling entity must be a tax charity. The controlling entity may also be a registered charity (although this is not a requirement).

Application of the territorial restriction

81. The fourth requirement to qualify for the business income tax exemption is that the territorial restriction is satisfied.
82. Where an entity's charitable purposes are limited to within New Zealand, the territorial restriction is satisfied, so no apportionment of income is required.
83. Where an entity's charitable purposes are not limited to within New Zealand, the territorial restriction applies and the business income must be apportioned reasonably between the purposes within New Zealand and those outside

⁹ Inland Revenue, QB 21/03: *Charities business [income] exemption - business carried on in partnership* (Question we've been asked / 2021, May 2021) at (11) (publication).

¹⁰ Inland Revenue, QB 21/03: *Charities business [income] exemption - business carried on in partnership* (Question we've been asked / 2021, May 2021) at (13) (publication).

¹¹ *Calder Construction Co Ltd v CIR* [1963] NZLR 921 (SC).

- New Zealand and taxed accordingly. Only income apportioned to the charitable purposes in New Zealand is exempt income (s CW 42(4)).
84. There is no prescribed apportionment methodology in s CW 42. One just and reasonable manner of apportioning income would be to examine the historical distribution pattern and apportion in that manner.¹²
85. It is considered that a method based on the historical distribution pattern might be reasonable, subject to the following caveats:
- Where the taxpayer has retained income, an apportionment based on the historical distribution pattern might still be appropriate, provided there are no indications the purposes of the taxpayer are to change in the future.
 - If apportionments have been based on a historical distribution pattern in the past, but the taxpayer's purposes change, apportionment would be justified to take that change into account.
86. This does not mean the "historical distribution pattern" apportionment method is the only reasonable apportionment method. Other methods may be reasonable, depending on the facts of the case.
87. The courts have considered apportionment more generally in the context of allowable deductions.¹³ This case law can be useful in determining a reasonable apportionment. These cases establish that when determining what is reasonable in cases of apportionment:
- where an amount can be apportioned between purposes it should be, but where it serves two purposes indifferently the best apportionment that can be made must be made based on the facts of the case; and
 - although an apportionment cannot be based on mere speculation, absolute precision may not be possible, and some degree of arbitrariness is acceptable if no better apportionment can be made on the facts.
88. The term "New Zealand" is defined in s YA 1. It is an inclusive definition (that is, it is not exhaustive) and includes the continental shelf and the water and air space above the continental shelf that is beyond New Zealand's territorial sea (subject to some limitations). In essence, "in New Zealand," when used as a territorial description, means the islands and territories within the Realm of New Zealand; but does not include the self-governing state of the Cook Islands, the self-governing state of Niue, Tokelau or the Ross Dependency.

¹² *CIR v Dick* [2002] 2 NZLR 560 (HC).

¹³ *Buckley & Young Ltd v CIR* (1978) 3 NZTC 61,271 (CA); *NZ Co-operative Dairy Co Ltd v CIR* (1988) 10 NZTC 5,215 (HC); *Christchurch Press Co Ltd v CIR* (1994) 16 NZTC 11,124 (HC).

89. When tax charities undertake an ongoing self-assessment (required of all tax charities at least year by year), they must calculate a reasonable apportionment between charitable purposes within New Zealand and those outside New Zealand, where applicable. The tax charity must keep records to show where its charitable purposes are carried out, in New Zealand or outside New Zealand. Additionally, the tax charity must keep records of the method and rationale it used to apportion business income.

Application of the control restriction

90. The fifth requirement to qualify for the business income tax exemption is that the control restriction is satisfied.
91. In this regard, the controlling entity and the operating entity are each required to ensure no person with some control over the business can divert an amount derived from the business for their own benefit or advantage or for the benefit or advantage of another person that is not for the purpose of the tax charity (see s CW 42(5) to (8)).
92. In any audit, documentation will be examined to determine whether a person with some control over the business is able to exert influence that would enable someone to receive a benefit or advantage.
93. Adequate records of the decision-making process (for example, minutes of meetings and resolutions), as well as documentation such as trust deeds, constitutions and accounting records must be kept. The meanings of "some control over the business" and "benefit or advantage" are discussed from [94] and [106] respectively.

Meaning of "some control over the business"

94. The first matter to be consider within the control restriction is whether any person has some control over the business to be able to divert an amount.
95. A wide spectrum of situations exists in which a person may be able to exercise some control over a business. At one extreme are situations of duress or oppressive conduct, or where the person controls the decision-making in terms of majority voting rights or with associated persons controlling the board, or where the trust instrument grants a right of veto over decisions to that person. At the other end of the spectrum are situations where the settlor is consulted but has no power to direct or the person in question is only one of several trustees or directors involved in decision making.
96. Generally, whether a person can divert an amount by materially influencing decisions is a matter of fact and degree. When considering whether a person has

some control over the business, it is not necessary for the benefit or advantage to be actually received.

97. Under s CW 42(7), a person does not have some control over a business merely because they provide professional services to the trust or company by which the business is carried on and their ability to determine the benefit or advantage arises because they are:
- providing services in professional public practice;
 - a statutory trustee company;
 - the Public Trust; or
 - the Māori Trustee.
98. In some circumstances a person will be treated as having some control over the business of the charity and as being able to direct or divert amounts from the business to their own benefit or advantage (s CW 42(5)). This will be the case if they are directly or indirectly able to determine or materially influence the determination of the nature or extent of a relevant benefit or advantage, or the circumstances in which a benefit or advantage is given or received, because they are:
- a settlor or trustee of the trust carrying on the business;
 - a shareholder or director of the company carrying on the business;
 - a settlor or trustee of a trust that is a shareholder of the company carrying on the business; or
 - an associated person of any settlor, trustee, shareholder or director described above.
99. In instances where two or more people can influence a decision, whether a person is able to **materially** influence may depend on whether the person actually participates in the discussion and decision making. Even if a person is in the minority of the decision-making group, they may still exert material influence over the decision to their advantage (for example, because they are well regarded).
100. Where there is a sole trustee, the implication is that the sole trustee can exert the requisite influence.
101. Past behaviour (such as the pattern of distributions or whether benefits have been afforded to any person who is able to influence the entity by virtue of their status) can be a guide to whether, in practice, the person in question can materially influence the setting of benefits (*CIR v Dick*).¹⁴

¹⁴ *CIR v Dick* [2002] 2 NZLR 560 (HC).

102. Where it is clear that the setting of any benefit or advantage has been undertaken in a scientific manner to ensure market value is paid, the Commissioner will accept that there has been no material influence to provide a benefit or advantage (*CIR v Dick*).
103. A person's legal, as well as practical, ability to divert an amount by influencing the decision will be considered (*CIR v Dick*).
104. The Companies Act 1993 provides certain rights and powers to shareholders and directors. The control test will not be satisfied where those rights enable a person to influence the decisions of the business to divert an amount from the business to the benefit or advantage of a particular person that is not for the purpose of the operating entity or controlling entity. When the control test is not satisfied, the income derived from that business will not be exempt from tax under s CW 42.
105. The company's board may enact special provisions to restrict or eliminate the powers given by the Companies Act to shareholders or directors that could enable them to influence company decisions.

Meaning of "benefit or advantage"

106. The second matter to be considered within the control restriction is whether a person with some control over the business (as described above) can direct or divert an amount derived from the business to the benefit or advantage of a person as described in s CW 42(1)(c).
107. A benefit or advantage that is received or can be received by a person is defined widely in s CW 42(8) and includes:
 - receiving something that may or may not be convertible into money;
 - deriving an amount that would be income of the person (with certain exclusions); and
 - retaining or reserving an interest in an income-earning asset, if the person has disposed of the asset to the trust or the asset will revert to them.

Charitable bequests (s CW 43)

108. Another income tax exemption that may be available relates to charitable bequests. A charitable bequest is a gift made to a charity in a will.
109. The intent of s CW 43 is to exempt income accruing to an executor or administrator of a deceased's estate to the extent to which the amount:

- arises or is attributable to assets of the estate that have been left to a tax charity (s CW 43(2)); and
 - if derived by the tax charity, would have been exempt income under s CW 41 (non-business income) or s CW 42 (business income) (s CW 43(3)).
110. Section CW 43 operates to allow income derived by the deceased's executor or administrator between the date of death and the end of the income year following the income year in which death occurred to be exempt, regardless of the charity not being registered under the Charities Act. Income accruing between the date of death and the distribution of the estate would be taxable, if it were not for s CW 43(4) and (5). However, any such income the charity derives after this period will not be exempt, unless the charity is a tax charity.

Resident withholding tax exempt status

111. Another type of income tax exemption available to charities relates to RWT. RWT is a tax that is deducted from investment income before the investor receives it.
112. From 1 April 2020, the Commissioner accepts a person registered under the Charities Act as having RWT-exempt status for the duration of their registration and they will no longer need to apply for an exemption certificate.
113. Entities that held an RWT certificate of exemption before 1 April 2020 were added to the electronic register of those with RWT-exempt status unless:
- their exemption was cancelled, expired or revoked; or
 - if the entity was exempt under an Act other than the Inland Revenue Acts and it had not been approved under criteria contained in the Inland Revenue Acts.
114. Payers of non-business income to tax charities can now check in real-time, by IRD number, that an entity has RWT-exempt status and the date from which that exemption started on the RWT-exemption register (see s RE 29).¹⁵
115. The Commissioner also publishes the date RWT-exempt status ended on the RWT-exemption register. (The start and end dates of RWT-exemption are no longer published in the *New Zealand Gazette*.)
116. Entities on the RWT-exemption register must notify the Commissioner if they no longer meet the criteria for the exemption (s 32K(2) of the TAA), unless they are a charity that is deregistered, in which case the Commissioner will receive the information from Charities Services directly. For more information about RWT-exemption status when a charity is deregistered, see [223].

¹⁵ Inland Revenue, [Resident withholding tax exemption register](#) | Te rēhita aweretanga tāke kaipou kainoho-tāwāhi (webpage).

117. More information about RWT generally is available on Inland Revenue's website¹⁶ including in:

- *Resident Withholding Tax on Interest (RWT) Payer's Guide* (IR283);¹⁷ and
- *Resident Withholding Tax (RWT) on Dividends: Payer's guide* (IR284).¹⁸

Non-resident withholding tax

118. If a charity pays passive income (such as interest or dividends) to a non-resident (referred to as non-resident passive income), the charity needs to register as a non-resident withholding tax (NRWT) payer, deduct NRWT from the payment and remit the NRWT to the Commissioner.

119. Note that non-resident passive income does not include exempt income, such as the passive investment income of a non-resident charity recognised as a "tax charity" (s CW 41(5)).

120. For more information about NRWT generally, see *NRWT: Payer's guide* (IR291).¹⁹

Fringe benefit tax exclusion

121. Not-for-profit organisations are liable for FBT **unless** the exclusion from FBT in s CX 25 applies to them.

122. The exclusion in s CX 25 applies to charitable organisations, which are defined in s YA 1, and include most donee organisations. The definition of charitable organisation also includes registered charities removed from the register that have challenged the decision and have not yet received a final decision.

123. Local authorities, public authorities and universities are excluded from being charitable organisations, so the standard FBT rules apply to them.

124. For ease of reference, in this Operational Statement the types of not-for-profit organisations that can rely on the FBT exclusion in s CX 25 are referred to as "qualifying organisations".

125. Qualifying organisations carry on a variety of activities. Those activities may include business activities. Those business activities may be within the organisation's benevolent, charitable, cultural or philanthropic purposes or

¹⁶ Inland Revenue, [Resident withholding tax \(RWT\)](#) | Te tāke kaiponu kainoho (webpage).

¹⁷ Inland Revenue, [IR283 - Resident withholding tax on interest \(RWT\)- payer's guide](#) (June 2020) (publication).

¹⁸ Inland Revenue, [IR284 - Resident withholding tax \(RWT\) on dividends- payer's guide](#) (September 2020) (publication).

¹⁹ Inland Revenue, [IR291 - NRWT - payer's guide](#) (September 2020) (publication).

outside those purposes – even if undertaken to help fund the organisation’s benevolent, charitable, philanthropic or cultural purposes.

126. The exclusion from FBT for qualifying organisations is set out in s CX 25(1) and applies to the extent to which the qualifying organisation provides a benefit to an employee mainly in connection with their employment and the qualifying organisation’s activity is:
- not a business; or
 - a business and the business activity is within the qualifying organisation’s benevolent, charitable, cultural or philanthropic purposes.
127. The FBT exclusion does not apply where benefits are provided by way of short-term charge facilities (s CX 25(2) and (3)), see [141].

Meaning of “mainly in connection with employment”

128. Section CX 25(1)(a) applies only where the employee receives the benefit mainly in connection with their employment.
129. This wording recognises that a qualifying organisation may provide benefits to people who are acting in different capacities for the organisation. It is not unusual for people to be employed by the organisation in a particular role and for those same people to also provide additional or different services to the organisation, for example, on a voluntary (unpaid) basis.
130. A potential liability for FBT will arise only where an employee receives a benefit from a qualifying organisation mainly in their employment capacity and not in some other capacity (for example, their voluntary capacity).
131. A benefit will be provided to an employee of a qualifying organisation **mainly** in connection with their employment, if the benefit arises primarily in connection with their employment. If an employee is only employed by a qualifying organisation (that is, they do not do voluntary work), then any benefits provided to that employee are provided in connection with their employment. However if, for example, the employee is both employed by and volunteers for a qualifying organisation, it is necessary to determine in which capacity the benefit primarily arises.
132. If the benefit arises equally in connection with both capacities, the benefit will be provided mainly in connection with the capacity in which the employee is predominately engaged.

Activity that is not a business

133. Where the qualifying organisation's activity is not a business and a benefit is provided to an employee mainly in connection with their employment, the exclusion from FBT applies.
134. For the meaning of business and carrying on a business, see from [66].

Activity that is a business and "within the qualifying organisation's benevolent, charitable, cultural or philanthropic purposes"

135. Where the qualifying organisation's activity is a business and a benefit is provided to an employee mainly in connection with their employment, the exclusion from FBT applies only if the business activity is within the qualifying organisation's benevolent, charitable, cultural or philanthropic purposes.
136. Determining whether a qualifying organisation's business activity is within its benevolent, charitable, cultural or philanthropic purposes requires an understanding of the types of activities the qualifying organisation is carrying on.
137. The Commissioner considers activities are carried on within a qualifying organisation's purposes when they:
 - are the performance of a qualifying organisation's benevolent, charitable, cultural or philanthropic purposes; or
 - directly facilitate the carrying out of the qualifying organisation's benevolent, charitable, cultural or philanthropic purposes.
138. Activities the Commissioner considers will usually be characterised as being carried on within a qualifying organisation's purposes include:
 - the carrying out of the qualifying organisation's purposes;
 - appeals for funds for the qualifying organisation's purposes;
 - passive investment and management of the qualifying organisation's funds, so long as the organisation does not carry on a business of fund investment; and
 - the administration of the above activities.
139. If the employment of the qualifying organisation's employee consists of the carrying on by the organisation of a business whose activity is outside the organisation's charitable, benevolent, philanthropic or cultural purposes, benefits provided to the employee will not come within the exclusion provided by s CX 25. When this is the case, the organisation may be subject to FBT.

140. For more information and practical examples of where the FBT exclusion will or will not apply, see Inland Revenue's Public Ruling BR Pub 22/06²⁰.

Short term charge facilities

141. The exclusion from FBT in s CX 25(1) does not apply to benefits provided by way of short-term charge facilities in specified circumstances (s CX 25(2) and (3)).
142. A short-term charge facility, as defined in s CX 25(3), is an arrangement that:
- enables an employee of the qualifying organisation to obtain goods or services that have no connection with the employer or its operations by:
 - buying or hiring the goods or services;
 - charging the costs of the goods or services to an account; or
 - providing consideration other than money for the goods or services; and
 - requires the employer to provide some or all of the payment or other consideration for the goods or services; and
 - is not a fringe benefit under s CX 10.
143. A short-term charge facility includes some vouchers but does not include an employment-related loan (s CX 10). An example of a fringe benefit provided by way of a short-term charge facility is in Inland Revenue's Public Ruling BR Pub 22/06.²¹
144. To determine whether a taxable fringe benefit has been provided when a qualifying organisation provides a benefit to an employee, first determine the lesser of 5% of the employee's salary and wages for the tax year or \$1,200. If the value of the benefit provided by way of a short-term charge facility is more than this figure, then a taxable fringe benefit has been provided (s CX 25(2)).

Goods and services tax and non-profit bodies

145. There are also favourable GST rules for non-profit bodies (including charities). GST is a broadly based consumption tax that is imposed under the Goods and Services Tax Act 1985 (GST Act) on the supply of goods and services in New Zealand and on imported goods.

²⁰ Inland Revenue, *Public Ruling BR Pub 22/06 - Fringe Benefit Tax - Charitable and Other Donee Organisations and Fringe Benefit Tax* (May 2022) at page 20 (publication).

²¹ Inland Revenue, *Public Ruling BR Pub 22/06 - Fringe Benefit Tax - Charitable and Other Donee Organisations and Fringe Benefit Tax* (May 2022) at page 22 (publication).

146. The GST Act has provisions relating to a “non-profit body” (s 2(1) of the GST Act). For the purposes of the GST Act, a non-profit body is any society, association or organisation, whether incorporated or not, that is:
- carried on other than for the purposes of profit or gain to any proprietor, member or shareholder; and
 - by the terms of its constitution, rules or other document constituting or governing the activities of that society, association or organisation, prohibited from making any distribution whether by way of money, property or any other way, to any such proprietor, member or shareholder.
147. In general, charities fall within the definition of non-profit body in the GST Act, depending on the terms of their constitution and rules.
148. The threshold for mandatory GST registration for a non-profit body is the same as for any other entity, as is the requirement for keeping GST records (see from [231]). Non-profit bodies operating below the threshold for mandatory GST registration may voluntarily register. However, in either case (that is, mandatory or voluntary registration), the non-profit body must have a taxable activity to qualify.
149. Consistent with the general rules for GST, the taxable activity of a non-profit body must be a continuous or regular activity involving the making of supplies of goods and/or services for consideration.
150. Consideration in relation to the supply of goods and services to any person includes any payment made or any act or forbearance, whether or not voluntary, in respect of, in response to or for the inducement of the supply of any goods and services, whether by that person or by any other person. However, it does not include any payment made by any person as an unconditional gift to any non-profit body (s 2(1) of the GST Act).
151. The receipt and payment of unconditional gifts are outside the scope of GST. An unconditional gift is defined in s 2(1) of the GST Act. It is a payment, voluntarily made to any non-profit body for the carrying on or carrying out of the purposes. No identifiable direct valuable benefit can or may arise in the form of a supply of goods and services to the person making the payment (or any associated person). However, an unconditional gift does not include any payment made by the Crown or a public authority. For more information on unconditional gifts and GST, see *GST: Unconditional gifts* (IS 20/09).²²
152. GST-registered non-profit bodies can claim an input tax deduction for most goods and services they acquire (even if the goods and services do not directly

²² Inland Revenue, Interpretation Statement IS 20/09 – *GST - unconditional gifts* (December 2020) (publication).

relate to the making of taxable supplies) to the extent that they are not used for the making of exempt supplies (s 20(3K) of the GST Act).

153. An example of an exempt supply is the supply by any non-profit body of donated goods and services (s 14(1) of the GST Act). Donated goods and services are goods and services that are gifted to a non-profit body and intended for use in the carrying on or carrying out of the purposes of that non-profit body (s 2(1) of the GST Act). For example, the sale of donated clothing by a non-profit body would be an exempt supply, so not liable to GST.

Election for an asset to not be part of taxable activity

154. From 15 May 2018 to 31 March 2021, a non-profit body could have made an election under s 20(3KB) of the GST Act, with respect to a supply, to exclude the supply from the effect of s 20(3K) of the GST Act.
155. When such an election was made with regards to an asset, when the non-profit body sells that asset it will not be subject to GST on the sale (or an equivalent event).

Valuation on deemed disposal of assets by GST deregistration

156. Section 88 of the GST Act provides for the valuation of supplies of assets used by GST-registered non-profit bodies. This section requires:
- a non-profit body to be bound by a tax position concerning the output tax on the disposal of an asset if the tax position is taken in a return **before** 15 May 2018 (s 88(1) and (2) of the GST Act); and
 - the availability of an election concerning the value of a supply that is made **during the period** 15 May 2018 to 31 March 2021 as a consequence of the GST deregistration of the non-profit body (s 88(3) to (5) of the GST Act).

Input tax credit limitation for the acquisition of second-hand goods

157. The amount of input tax credit that may be claimed by a registered recipient of a second-hand good that has been subject to an election under s 20(3KB) or s 88(4) is limited to the amount of GST paid by the non-profit body under the election. This limitation applies when the recipient is:
- associated with the original owner;
 - a non-profit body; or
 - associated with a non-profit body (s 88(6) to (8) of the GST Act).

Further GST information

158. Other sections of the GST Act that may be relevant to non-profit bodies include ss 2A(1)(f)–(h) (meaning of associated persons), 6(3) (taxable period returns), 19A(1)(a)(iii) (requirements for accounting on payments basis), 19D(2B) (invoice basis for supplies over \$225,000) and 51(5) (persons making supplies in course of taxable activity to be registered).
159. For more information, including examples, see “GST and assets sold by non-profit bodies”.²³
160. For general information about GST, see Inland Revenue website²⁴ and guides:
- *Charitable and Donee Organisations* (IR255);²⁵ and
 - *GST Guide: Working with GST* (IR375).²⁶
161. The following table (Table 1) sets out GST treatment of common types of receipts of non-profit bodies.

Table 1: Categories of supplies by non-profit bodies liable for GST, not liable for GST and exempt from GST

Type of receipt	Liable for GST	Not liable for GST	Exempt from GST
Subscriptions	✓		
Donations		✓	
Koha		✓	
Bequests		✓	
Grants	✓		
Unconditional gifts		✓	
Subsidies	✓		
Suspensory loans	✓		
Trading activities	✓		
Raffles or house proceeds	✓		
Admission fees	✓		
Affiliation fees	✓		

²³ Inland Revenue, “*GST and Assets Sold by Non-profit Bodies*”, *Tax Information Bulletin* Vol 31, No 4 (May 2019) at 101–106 (publication).

²⁴ Inland Revenue, [File your GST return](#) (webpage).

²⁵ Inland Revenue, *IR255 - Charitable and donee organisations* (December 2021) at 13-15 (publication).

²⁶ Inland Revenue, *IR375 - GST guide - Working with GST* (April 2022) (publication).

Type of receipt	Liable for GST	Not liable for GST	Exempt from GST
Sale of donated goods or services			✓
Sale of purchased goods	✓		
Sale of assets or equipment	✓		
Insurance receipts	✓		
Hall or equipment hire	✓		
Rent received (residential)			✓
Rent received (commercial)	✓		
Penalty payments (fines)	✓		
Advertising or sponsorship	✓		
Interest or dividends			✓
Gaming machines	✓		

Source: Inland Revenue, [Income tax and GST for not-for-profits](#) | Te tāke moni whiwhi me te tāke hokohoko mō ngā whakahaere kore moni hua (webpage, last updated 28 April 2021).

Interest-free student loan concession

162. Usually, when someone with a student loan travels overseas for more than six months, they are charged interest on their loan.
163. If a charitable organisation obtains approval under the Student Loan Scheme Act 2011, volunteers working for the organisation overseas may be able to keep their student loan interest free. The concession may apply if work is performed for no more than 24 months and is performed voluntarily or for no more than a token payment.
164. The volunteer work for the charitable organisation must be to:
- relieve poverty, hunger, sickness, or the impacts of war or natural disaster; or
 - improve the economy or raise educational standards in a country that is on the OECD list of countries receiving development assistance.
165. For a charitable organisation to obtain this approval, it must submit a letter to the Commissioner explaining why the organisation should be granted approval. The organisation should send the letter through the online myIR service if it has such an account, otherwise via email to charities.queries@ird.govt.nz or via post to Inland Revenue, PO Box 1147, Palmerston North Central, Palmerston North 4440.
166. The letter should include:

- whether the charitable organisation is a registered charity;
 - whether the charitable organisation is a non-resident tax charity with an income tax exemption approved by the Commissioner;
 - information on the work the charitable organisation does;
 - details of the work volunteers will do for the charitable organisation; and
 - details of any payments for which the volunteers will qualify.
167. If the charitable organisation is not a registered charity in New Zealand, it must also provide:
- a copy of the charitable organisation's trust deed, constitution or other governing rules;
 - whether it is recognised as a charitable organisation with an overseas tax authority or government charity regulator (if so, copies of the relevant documentation should be provided);
 - evidence of standing and credibility as a charitable organisation;
 - whether the charitable organisation is publicly accountable;
 - monitoring and evaluation processes in place;
 - accounting and record keeping practices; and
 - any other relevant matters.
168. If the Commissioner approves the charitable organisation as one whose volunteers may be exempted from interest on their student loans, it will be added to the approved charitable organisation list. It may then apply for the suspension of interest on the student loans of its volunteers, if the criteria are satisfied.
169. The application to suspend interest on a particular volunteer's student loan must be made to the Commissioner by submitting a letter, on the charitable organisation's letterhead, stating:
- the volunteer's name;
 - the volunteer's IRD number;
 - the length of time the volunteer will spend overseas;
 - the specific tasks and duties the volunteer will undertake; and
 - details of any payments the volunteer may receive for the work.
170. For more information about the interest-free student loan concession, see Inland Revenue's website.²⁷

²⁷ Inland Revenue, [Charitable organisations and the student loan scheme](#) | Ngā whakahaere kaupapa atawhai me te kaupapa pūtea taurewa ākongā (webpage).

Māori organisations

171. Many Māori organisations, including marae, are registered charities with obligations, advantages and tax treatment consistent with charities generally. However, additional specific rules should be noted.
172. In addition to charitable purposes including the relief of poverty, the advancement of education or religion, or any other matter beneficial to the community, the definition of charitable purpose (s YA 1 of the ITA and s 5 of the Charities Act) also provides that a marae will have a charitable purpose where its:
- physical structure is on land that is a Māori reservation referred to in Te Ture Whenua Maori Act 1993 | Maori Land Act 1993; and
 - funds are used only for the administration and maintenance of the land and structure of the marae or for a purpose that is a charitable purpose (s YA 1 of the ITA and s 5(2)(b) of the Charities Act).
173. The definitions of charitable purpose also provide that the public benefit requirement for charitable purposes will not be defeated simply because beneficiaries or members are related by blood (s YA 1 of the ITA and s 5(2)(a) of the Charities Act).
174. Māori organisations can receive many types of payment such as subscriptions, grants, subsidies, donations, koha, fees, raffle money and trading profits from selling assets. Most of these income types are taxed under general taxation principles, with some specific treatment. For more information, see Inland Revenue's factsheet *Payments and Gifts in the Māori Community* (IR278).²⁸
175. Further information about, for example, the treatment of koha and Māori donee organisations generally is in Part 2 of this Operational Statement.

Charitable registration of a marae on land that is a Māori reservation

176. To register as a charity with Charities Services, a marae on land that is a Māori reservation referred to in Te Ture Whenua Maori Act 1993 | Maori Land Act 1993 should provide Charities Services with:
- the Māori reservation location (block name and/or number or Māori Land Court order or Gazette notice relating to the setting apart of land as a Māori reservation);

²⁸ Inland Revenue, *IR278 – Non-profit groups | Ngā Roopu Kore Moni Hua: Payments and gifts in the Māori community* (December 2015) (publication).

- a copy of its charter (drawn up by the reservation trustees), if available;
- any other governing document such as rules, a trust deed or constitution;
- details (such as names, positions, addresses and dates of birth) of the trustees of the Māori reservation;
- information about the marae such as who is part of the marae (such as iwi, hapū, whānau, church, wider community or other specific groups); and
- details of the activities of the marae (such as providing facilities for hui, whānau gatherings, wānanga, community gatherings and meetings; organising events such as cultural, sporting, local community, fundraising and educational events; running programmes such as training, social or health services; running events to promote religious beliefs; running language or cultural groups; holding tangihanga and unveilings; looking after urupā; and any other specific activities).

Registration of Māori entities under the Charitable Trusts Act 1957

177. Many Māori organisations with charitable purposes, such as Māori private training establishments and certain hapū and iwi organisations, seek incorporation as a board under the Charitable Trusts Act (see from [183]).

Trusts established under Te Ture Whenua Maori Act 1993 | the Maori Land Act 1993

178. Te Ture Whenua Maori Act 1993 | the Maori Land Act 1993 was established to assist in retaining Māori land (comprising Māori customary land and Māori freehold land) in Māori ownership. Five types of land-holding trusts can be established under this Act, and they are generally designed to limit the further fragmentation of Māori land titles by limiting certain rights of succession.
179. The trustees of any trust established under Te Ture Whenua Maori Act 1993 may apply to the court for an order that they hold any part of the trust's income on trust for such charitable purposes as are specified in the court order (s 245 of Te Ture Whenua Maori Act 1993).
180. Where the income derived by the trustees is deemed to be income derived by trustees in trust for charitable purposes under s 24B of the Maori Trust Boards Act 1955, they meet the principal requirement for registration under the Charities Act (s 13 of the Charities Act) and, if registered under the Charities Act, the income could be exempt under s CW 41 or s CW 42 of the ITA.

Deregistration for marae on land that is a Maori reservation established under Te Ture Whenua Maori Act 1993

181. A deregistered charity will generally be required to pay tax on the net assets it retains (deregistration tax). For more information about deregistration, see [202].
182. For the purposes of deregistration tax, in the context of a marae on Māori reservation land, the value of the land and improvements on the land will be excluded from the net asset calculation (s HR 12 of the ITA).

Charitable trusts

183. Section HC 13 defines a charitable trust, for the purposes of the “trust rules” (also a defined term – see s YA 1), as a trust:
 - for which all income derived or accumulated, in the current or any earlier income year, is held for charitable purposes; and
 - for which any income derived in the current year is exempt income under s CW 41(1) or s CW 42(1).
184. The charitable trust may or may not be incorporated under the Charitable Trusts Act 1957. However, to be eligible for an income tax exemption under s CW 41 or s CW 42, the charitable trust must **also** be a registered charity under the Charities Act.
185. Under the Charitable Trusts Act 1957, a charitable society or the trustees of a charitable trust may be incorporated as a board and included on the register of charitable trusts the Companies Office maintains. As with any charity, these boards may make profits on their trading activities, but the profits must be used for their charitable purposes and cannot be distributed to members. Boards incorporated under the Charitable Trusts Act may be eligible for favourable tax treatment if they meet certain requirements. For example, the charitable income tax exemptions (ss CW 41 and CW 42) require a charity to be a tax charity, which may require registration under the Charities Act. Similarly, charities must be registered to access donee status unless the Commissioner approves their donee status where they have benevolent, philanthropic or cultural purposes (see s LD 3(3) and Part 2 of this Operational Statement).
186. Generally, trustees of a trust who derive assessable income for a tax year must file a tax return and provide certain additional information (see s 59BA(1) of the TAA). However, trustees of a trust incorporated as a board under the Charitable Trusts Act 1957 are relieved of the requirement to include some of the information with the return (s 59BA(3)(c) of the TAA). Additionally, from 30 March 2021, trustees of

a trust that is a registered charity are also relieved of this requirement (s 59BA(3)(d) of the TAA).

187. Special rules regarding distributions and settlor liability apply to charitable trusts.
188. While many charitable trusts will not have “beneficiaries” and will instead use funds for charitable purposes, the s YA 1 definition of charitable purposes is broad enough to include trusts that have beneficiaries. Distributions of amounts that are not beneficiary income are exempt income under ss HC 20 and CW 53. Distributions of beneficiary income, where that income is exempt income of the charitable trust under s CW 41 or s CW 42, is exempt income of the beneficiary.
189. A settlor can be liable, as agent of the trustee, for the tax liabilities of the trustee where no trustee is resident in New Zealand. However, this rule does not apply to settlors of charitable trusts (s HC 29(4)). This rule ensures residents who make donations to charitable trusts that have non-resident trustees are not liable for any tax liabilities of the trust.
190. Charitable trusts are subject to the provisions of the Trusts Act 2019 that set out mandatory and default duties of the trustees. However, the one duty that will not affect trustees of Charitable Trusts is the requirement that trustees disclose basic trust information to beneficiaries (s 50(2) of the Trusts Act 2019).
191. For more information about the tax treatment of charitable trusts, see *Interpretation Statement IS 18/01: Taxation of trusts – income tax*.²⁹

Non-resident charities

Overview

192. To be eligible for registration by Charities Services, a non-resident charity must be either:
 - established in New Zealand; or
 - have a very strong connection to New Zealand.
193. To be registered with Charities Services, charities do not have to be incorporated. However, if a non-resident charity is incorporated, it must be incorporated under New Zealand law to be considered “established in New Zealand.” For example, a non-resident charity that is a company must be incorporated in New Zealand under the Companies Act 1993.

²⁹ Inland Revenue, *Interpretation Statement: IS 18/01 - Taxation of trusts - income tax* (June 2018), at 86–89 (publication).

194. If a non-resident charity is not incorporated under New Zealand law, it can be registered with Charities Services if it has a very strong connection to New Zealand. For more information about how Charities Services determines whether a “very strong connection to New Zealand” exists, see the Charities Services website.³⁰
195. Non-resident charities that cannot be registered by Charities Services may still apply to the Commissioner for an exemption from income tax on their non-business income as a “tax charity” (s CW 41(5)(c)). The organisation must fulfil the Commissioner’s required criteria as set out in the guidelines for being a non-resident tax charity.³¹

Guidelines for non-resident charities applying to be a tax charity

196. When making an application to the Commissioner to be recognised as a tax charity, under s CW 41(5)(c), the non-resident charity must:
- produce evidence of having been declined registration by Charities Services due to an insufficient connection to New Zealand; or
 - explain why it considers it would not be able to be registered with Charities Services.
197. A non-resident charity seeking to be recognised as a tax charity must satisfy the Commissioner that it:
- is not resident in New Zealand;
 - carries out all of its charitable purposes overseas;
 - is not carried on for and does not apply any funds towards the private profit of any individuals; and
 - is recognised as being charitable by one or more overseas charities regulators or tax authorities.
198. Applications to be recognised as a tax charity should include:
- the non-resident charity’s constitution, trust deed or other governing documents;
 - evidence of incorporation or legal registration in its (main) country of residence;
 - certification or a letter confirming it has charitable status or registration with one or more overseas charities regulators or tax authorities;

³⁰ Charities Services, [International charities and activities](#) (webpage).

³¹ Inland Revenue, [Tax exemptions for non-resident charities](#) | Ngā aweretanga tāke mō ngā kaupapa atawhai kainohotāwāhi (webpage).

- information about the work it does, which may include annual reports, brochures, articles, testimonials or relevant websites; and
 - evidence Charities Services declined registration because it had an insufficient connection to New Zealand or an explanation of why it believes it is not able to register with Charities Services.
199. If the Commissioner approves the non-resident charity as a tax charity, it may be eligible for the non-business (passive) income exemption under s CW 41. The non-resident charity will not be eligible for the business income exemption under s CW 42.
200. If a non-resident charity is not exempt from New Zealand tax under the provisions of s CW 41, it may be eligible for relief from taxation in New Zealand under a double tax agreement between New Zealand and the country of residence of the non-resident charity. For more information on double tax agreements generally, see the Inland Revenue website.³²
201. Application by a non-resident charity wishing to be recognised by the Commissioner as a tax charity should be sent, along with supporting information, to:
- Inland Revenue, PO Box 1147, Palmerston North Central, Palmerston North 4440; or
 - charities.queries@ird.govt.nz.

Tax implications of ceasing to be a tax charity or deregistration

202. A charity's tax obligations, including income tax, RWT-exemption, FBT-exclusion and donee organisation status may all be affected if the charity ceases to be a tax charity or is deregistered (see [210]–[221]). Additionally, a charity may be subject to a "deregistration tax" when it ceases to be a tax charity or is deregistered.
203. A charity is deregistered when it is removed from the register held by Charities Services (s 32 of the Charities Act). A charity ceases to be a tax charity when it no longer meets the requirements in the definition of tax charity in the ITA, see [23].
204. 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.

³² Inland Revenue, [Double tax agreements \(DTAs\)](#) | Ngā whakaetanga tāke taurua (DTA) (webpage).

Date from which tax obligations will apply

205. Where a charity ceases to be a tax charity, tax obligations will arise from the date that it ceases to qualify as a tax charity.
206. Where a charity is deregistered, when tax obligations arise depends on why the charity was deregistered (see Table 2)

Table 2: When tax obligations arise following deregulation

Situation triggering deregistration	Date tax obligations will apply
Voluntary deregistration (provided the charity does not come within any of following three situations)	From the date the charity voluntarily deregistered.
Failure to file annual returns with Charities Services as required (provided the charity has otherwise always kept to its rules held on the Charities Register)	From the date the charity is deregistered or all appeals are final or exhausted, whichever comes later.
Failure to keep to its rules held on the Charities Register (after an initial period of compliance)	From the date the charity stopped keeping to its rules (unless it is otherwise exempt).
Failure to keep to its rules held on the Charities Register from the time of registration	As if the charity were never a tax charity.

Income tax rates applicable after ceasing to be a tax charity or upon deregistration

207. If a charity is incorporated under the Incorporated Societies Act 2022 (or during that Act's transition period, under the Incorporated Societies Act 1908) or the Companies Act 1993, it is considered to be a company for income tax purposes. If it does not qualify for a tax exemption, its income is taxed at the company rate.
208. A charity that operates as a trust, including trusts incorporated under the Charitable Trusts Act 1957, that are not tax-exempt are liable for tax on the trustee's income. For more information, see the Inland Revenue website³³ and *Trusts and Estates Income Tax Rules* (IR288).³⁴
209. A charity that is not incorporated under a specific Act and is not entitled to a tax exemption is liable for income tax at the same rate as an individual taxpayer.

³³ Inland Revenue, [Trusts and tax residency](#) | Ngā rōpū kaitiaki me ngā kainoho tāke (website).

³⁴ Inland Revenue, [IR288 - Trusts and estates income tax rules](#) (March 2021) (publication).

However, it does not qualify for any of the tax credits individual taxpayers can claim.

Income tax on net assets of deregistered charity (“deregistration tax”)

210. A tax applies on the current market value of accumulated net assets of a deregistered charity if it does not dispose of or transfer its net assets for a charitable purpose within one year of deregistration. The value of the net assets retained is treated as income unless the deregistered charity qualifies for another tax exemption. The income tax on the value of net assets is commonly referred to as the “deregistration tax” (ss CV 17 and HR 12).
211. Deregistration tax applies unless a deregistered charity has within one year from its end date (the day of final decision, s HR 12(7)):
- re-registered as a charity; or
 - disposed of or transferred its net assets:
 - to a registered charity; or
 - for charitable purposes; or
 - as set out in its rules while it was on the Charities Register.
212. A deregistered charity that has not taken these actions needs to include the current market value of its net assets on deregistration in its income tax return (unless it is exempt under a provision other than s CW 41 or s CW 42).
213. The income tax return that must include the value of the deregistered charity’s net assets is the return for the period that includes the day one year after the end date.
214. For example, if a charity voluntarily deregisters on 1 November 2020 and keeps some assets, it needs to include the value of those assets in its 2022 income tax return. This is because 2 November 2021 (the day one year after the end date) is in the 2022 income year.

When a charity will not be liable for deregistration tax

215. A deregistered charity is not liable to pay the deregistration tax if:
- the charity was involuntarily deregistered by Charities Services or the Charities Registration Board before 1 April 2015 (ss 31 and 32(a)–(e) of the Charities Act);
 - the charity was voluntarily deregistered before 14 April 2014;

- the charity was deregistered after 1 April 2019 and had net assets worth \$10,000 or less one year after its end date (s HR 12(2)(c)); or
- the deregistered charity was a company and was deregistered because its shares were disposed of and the disposal was for market value consideration (s HR 12(2)(b)).

Value of net assets

216. The value of the net assets of a deregistered charity is determined by the current market value of the total assets of the charity at its end date, less the current market value of the total liabilities of the charity on its end date (s HR 12(3)).

217. Market value refers in general terms to the price that an asset would be sold for in an arm's length transaction. This is usually determined from market-based evidence by appraisal. In two situations valuing assets and liabilities at market value is not required:

- Where certain assets (premises, plant, equipment and trading stock) have a prescribed valuation method in the deregistration rules. That value should be used for the purposes of the net assets calculation.
- If the deregistered charity has assets and liabilities not subject to the prescribed valuation method, and it valued these assets and liabilities at fair value to comply with Public Benefit Entity International Not-for-Profit Accounting Standard 17, then the fair value should be used for the purposes of the net asset calculation.

218. Not included in the value of net assets are (s HR 12(3)):

- assets disposed of or transferred for charitable purposes or in accordance with the charity's rules and within one year of the end date;
- assets received from the Crown to settle a Treaty of Waitangi claim;
- assets received from the Crown to settle a claim under the Maori Fisheries Act 2004;
- marae land and improvements as defined in Te Ture Whenua Māori Act 1993 | the Maori Land Act 1993;
- assets, other than money, that were gifted or bequeathed to the charity when it was exempt from income tax; and
- in some circumstances, assets that are shares in companies.

219. Large charities sometimes operate as part of a group, with charitable entities holding equity investments in other registered charities. If a parent entity and one or more members of a charitable group are deregistered at the same time,

the value of the parent's shares in the subsidiary is ignored for the purposes of calculating the parent's income under the deregistration tax rules (s HR 12(3)(d)).

220. The net assets include the value of depreciable property and financial arrangements held at the time of deregistration.
221. For examples of how to calculate net assets (including how to value depreciable property and financial arrangements), see *Charitable and Donee Organisations* (IR255).³⁵

Organisations that run businesses for charity and deregistration tax

222. An entity that is not a registered charity but derived exempt income under s CW 42 before 1 April 2020 and subsequently ceases to meet the requirements for exemption under s CW 42 (for example because it failed to register as a charity by 31 March 2020) is subject to the deregistration tax.

RWT-exempt status when a charity is deregistered

223. When a charity is deregistered, it will have RWT obligations unless it qualifies for a different exemption from RWT (s 32E(k) of the TAA). Examples of other RWT exemptions include where a charity is a community housing entity (s CW 42B), an amateur sports promoter (s CW 46), a body promoting scientific or industrial research (s CW 49) or a community trust (s CW 52).
224. The deregistered charity needs to notify its bank and anyone else that pays it interest or dividends that its RWT-exempt status has ended.
225. The deregistered charity's status is updated to "cancelled" on the RWT-exemption register the Commissioner maintains.

FBT-exclusion when a charity is deregistered

226. If the deregistered charity does not come within the definition of a charitable organisation (s YA 1), and it remains operating and provides fringe benefits to its employees, then it is liable for FBT (s CX 25).

³⁵ Inland Revenue, *IR255 - Charitable and donee organisations* (December 2021) at 37–39 (publication).

Donee organisation status when a charity is deregistered

227. When a registered charity is deregistered, it will not lose its donee organisation status, provided it has a philanthropic, benevolent or cultural purpose and it applies to the Commissioner to maintain donee status on this basis.
228. If it does not have one of these purposes and had only a charitable purpose, different rules apply. It will keep its donee status up to the date it is removed from the Charities Register or when all appeals of the decision to deregister are final or exhausted, whichever is the later.
229. A deregistered charity that had only charitable purposes will lose its eligibility to issue donation tax receipts, meaning that donors to the entity will not be able to claim tax credits or donation deductions for donations made to the entity during the period of deregistration (s LD 3). For more information, see Part 2 of this Operational Statement.

More information on consequences of deregistration

230. For further guidance about the consequences of deregistration, see:
- *Charitable and Donee Organisations* (IR255);³⁶
 - "New rules for deregistered charities";³⁷
 - "Tax on net assets of deregistered charities: Remedial amendment";³⁸ and
 - "Charities and donee organisations".³⁹

Administrative matters

231. Under the Inland Revenue Acts, charities are required to meet certain administrative tax requirements, for example, obtaining an IRD number (if required, as described below), keeping records, and self-assessing each year whether the charity meets the income tax exemption requirements and/or the requirements for other tax treatments.
232. An IRD number is required if the charity:

³⁶ Inland Revenue, *IR255 - Charitable and donee organisations* (December 2021) at 35–40.

³⁷ Inland Revenue, "*New Rules for Deregistered Charities*", *Tax Information Bulletin* Vol 26, No 7 (August 2014) at 65–69 (publication).

³⁸ Inland Revenue, "*Tax on Net Assets of Deregistered Charities: Remedial Amendments*", *Tax Information Bulletin* Vol 30, No 5 (June 2018) at 107–108 (publication).

³⁹ Inland Revenue, "*Charities and Donee Organisations*", *Tax Information Bulletin* Vol 31, No 4 (May 2019) at 132–137 (publication).

- has any non-exempt income;
 - is a registered charity (registered charities are automatically RWT exempt and the RWT-exemption register operates by IRD number rather than name);
 - has obligations for GST, PAYE, RWT, NRWT or FBT; or
 - is a donee organisation.
233. If a registered charity wishes to change its legal structure, it can do so by filling in an update details form and providing its new rules to Charities Services. The new entity can keep its existing Charities Services registration number. For more information about updating details, see the Charities Services website.⁴⁰ However, being a new legal entity, it must obtain a new IRD number.
234. Each tax charity must make a self-assessment each year on whether all of its income is exempt. The Commissioner can challenge a charity's decision about the availability of an income tax exemption through the Inland Revenue disputes process.
235. A tax charity must comply with usual GST, PAYE and FBT return filing requirements, if applicable.

Record-keeping requirements

236. Charities have information and reporting obligations under the Charities Act (if registered) and under reporting standards set by the External Reporting Board (XRB), the independent Crown entity responsible for developing and issuing accounting standards. Charities must also comply with the record-keeping requirements of the Inland Revenue Acts, including the usual record-keeping requirements under s 22 of the TAA if the charity is in business and under s 75 of the GST Act if the charity is GST registered. These sections require a taxpayer to keep business and GST records in New Zealand and in either English or te reo Māori.
237. Section 22 of the TAA requires a charity that carries on a business in New Zealand to keep sufficient business records to enable the Commissioner to ascertain whether tax is payable and if so, in what amount, and all other tax matters relating to that business. These records should be kept for a minimum of seven years, even if the charity ceases operating.
238. Section 75 of the GST Act requires generally that every person registered for GST must keep records, including books of account (whether contained in a manual, mechanical, or electronic format) recording receipts or payments or income or expenditure, and also includes vouchers, bank statements, invoices, tax invoices,

⁴⁰ Charities Services, [Update charity details](#) (webpage).

credit notes, debit notes, receipts and such other documents as are necessary to verify the entries in any such books of account.

239. Charities should keep sufficient records to calculate any tax liability and/or to demonstrate eligibility for tax exemptions or concessions (s 32 of the TAA). Depending on the entity and its activities, this may include receipt and payment account books, bank statements, invoices (including GST tax invoices), receipts and wage records for employees and donation tax credit receipts.
240. Section 58 of the TAA provides that every gift-exempt body must, when notified by the Commissioner, furnish a return of its funds derived or received in any tax year and showing the source and application of those funds, together with such other particulars as the Commissioner may require.
241. A “gift-exempt body” is defined in s 3(1) of the TAA (for purposes of s 32 of the TAA) and means:
- (a) any society, institution, association, organisation, trust, or fund specifically named in Schedule 32 of the Income Tax Act 2007; or
 - (b) any other person who has RWT-exempt status following an application made under section 32E(2)(k) or (l) in relation to a tax year in which they have that status.
242. For further information on record keeping, see *Retention of Business Records in Electronic Formats, Application to Store Records Offshore and Keeping Records in Languages other than English or Te Reo Māori* (SPS 21/02).⁴¹

Alterations to a charity’s founding documents

243. In the past, the Commissioner suggested charities include clauses in their founding documents that restrict the alteration of certain clauses without prior approval from the Commissioner. The relevant clauses were those defining the charitable purposes or objects, relating to personal advantage, regarding rule changes and regarding winding up.
244. The Commissioner no longer gives prior approval to clause changes and recommends charities remove from their founding documents any such requirement for the Commissioner’s approval.
245. To facilitate this, the Commissioner suggests an amendment to a charity’s alterations clause to include, for example, “No addition to or alteration or removal from the rules shall be made if it detracts from the charitable nature of the organisation or allows private pecuniary benefits to any individual(s)”.

⁴¹ Inland Revenue, *Standard Practice Statement SPS 21/02 - Retention of business records in electronic formats, application to store records offshore and keeping records in languages other than English or te reo Māori* (May 2021) (publication).

246. Charities Services must be notified of any change to the rules of a registered charity within three months after the effective date of the change. In these cases, the charity must provide Charities Services with a copy of the amendment to its rules. Charities can also provide a copy of the minutes of the meeting (or other record of the decision) specifying the change and effective date of the change.
247. If a charity is incorporated (under the Charitable Trusts Act 1957, Incorporated Societies Act 2022 or Companies Act 1993), it may also have obligations to provide notice of changes to its rules to other authorities (for example, the Companies Office).

Binding ruling applications

248. An entity may apply to the Commissioner for a binding ruling (which includes private rulings and short-process rulings) under part 5A of the TAA. A private ruling is the Commissioner's interpretation of how a tax law applies to a particular arrangement, person or item of property. This can include, for example, a private ruling in relation to whether certain types of income derived are exempt from tax under s CW 41 and/or s CW 42 or in relation to the entity's status (for example, whether it is a non-profit body for the purposes of the GST Act).
249. If the entity receives a private or short-process ruling under part 5A of the TAA, the Charities Act requires that the entity be treated as having satisfied certain of the essential requirements for qualifying as a charitable entity under s 13(2)–(3) of the Charities Act (also referred to in this Operational Statement as a registered charity).
250. The Commissioner has recently entered into a memoranda of understanding with the Department of Internal Affairs to coordinate how their overlapping roles with respect charities will operate.⁴²
251. For more information about binding rulings, see the Inland Revenue website.⁴³

Other disclosure and reporting regimes

Charities that are foreign trusts for income tax purposes

252. New Zealand law considers that a trust is not an entity, but a description of an equitable obligation the law imposes on a person holding property to deal with that property in a certain way, namely, for the benefit of beneficiaries or a

⁴² Inland Revenue, Department of Internal Affairs (DIA) | Te Tari Taiwhenua (DIA): "[Supplying of information in respect of charitable entities](#)" (webpage).

⁴³ Inland Revenue, [What is a binding ruling?](#) (webpage).

charitable purpose. A “foreign trust” for income tax purposes is a trust established overseas or in New Zealand but where no settlor is resident in New Zealand at any time (s HC 11).

253. A foreign trust that is also a registered charity was exempt from the foreign trust disclosure rules until 31 March 2019. From 1 April 2019, however, a foreign trust that is also a registered charity is subject to the foreign trust disclosure rules that require disclosure of some information that is not collected under the Charities Act. This includes identifying particulars and contact details for settlors, trustees and beneficiaries (s 59B of the TAA).
254. Where the Commissioner becomes aware of potential money laundering or terrorism financing activity by a charity that is a foreign trust, the information disclosure rules in part C of schedule 7 of the TAA (disclosures to certain agencies for certain purposes) apply. The Commissioner is permitted to share information relating to the registration (or absence of registration) of a foreign trust with the Department of Internal Affairs and New Zealand Police.
255. For more information about foreign trusts see:
- Special report - Foreign Trust Disclosure Rules;⁴⁴
 - Tax Information Bulletin Article - “Foreign trust disclosure rules”;⁴⁵ and
 - Inland Revenue website - Foreign trusts with New Zealand resident trustees.⁴⁶

Charities and international financial reporting obligations

256. The United States Foreign Account Tax Compliance Act (FATCA) and the OECD initiated Common Reporting Standard (CRS) for automatic exchange of financial account information are financial reporting regimes introduced to combat and prevent tax evasion by persons that invest outside their jurisdiction of tax residence.
257. Part 11B of the TAA gives effect to and implements FATCA and the CRS in New Zealand law.
258. Charities may have obligations under one or both of FATCA and CRS. These obligations could apply because the charity is a New Zealand financial institution or because the charity holds an account with a New Zealand financial institution. The term “financial institution” includes obvious financial businesses such as

⁴⁴ Inland Revenue, special report from Policy and Strategy - *Foreign trust disclosure rules* (March 2017) (publication).

⁴⁵ Inland Revenue, “*Foreign Trust Disclosure Rules*”, *Tax Information Bulletin* Vol 29, No 4 (May 2017) at 24 (publication).

⁴⁶ Inland Revenue, *Foreign trusts with New Zealand resident trustees* | Ngā tarahiti o tāwāhi me ngā kaitaki kainoho o Aotearoa (webpage).

banks and insurers, but it can also include some trusts and other entities that handle investments. This definition is broad, so will include certain charities.

259. New Zealand and the United States have entered into a FATCA memorandum of understanding (FATCA MoU⁴⁷) that provides the following organisations are not financial institutions for FATCA purposes:

- organisations incorporated under the Charitable Trusts Act 1957;
- organisations registered under the Charities Act; and
- donee organisations as defined in the ITA.

260. Therefore, under the FATCA MoU, these types of entities do not have FATCA due diligence and reporting obligations. Instead, if they hold accounts with New Zealand financial institutions, they are required to respond to due diligence queries from those institutions about their FATCA status.

261. The CRS takes a different approach to that under FATCA and does not offer a similar exclusion from the definition of financial institution for certain charities and donee organisations. This means such entities need to consider whether they are financial institutions with CRS due diligence and reporting obligations (even if excluded from FATCA requirements).

262. For more information, see:

- *Automatic Exchange of Information* (IR1033);⁴⁸
- *Guidance on the Common Reporting Standard for Automatic Exchange of Information* (IR1048);⁴⁹
- *Foreign Account Tax Compliance Act (FATCA) – Trusts guidance notes* (IR1087);⁵⁰
- the Inland Revenue websites: Important FATCA documents⁵¹ and Automatic Exchange of Information and the Common Reporting Standard.⁵²

⁴⁷ Inland Revenue, *Memorandum of Understanding* (between the Government of New Zealand and Government of the United States of America to improve international tax compliance and to implement FATCA) (publication).

⁴⁸ Inland Revenue, *IR1033 – Business | Ngā Ūmanā - Automatic Exchange of Information* – Your obligations if you hold or control financial accounts (May 2018) (publication).

⁴⁹ Inland Revenue, *IR1048 - Guidance on the Common Reporting Standard for Automatic Exchange of Information* (July 2019) (publication).

⁵⁰ Inland Revenue, *IR1087 - Foreign Account Tax Compliance Act (FATCA) - Trust guidance notes* (October 2017) (publication).

⁵¹ Inland Revenue, *Important FATCA documents* | Ngā tuhinga FATCA hira (webpage).

⁵² Inland Revenue, *Automatic Exchange of Information and the Common Reporting Standard* | Te Whakawhitiwhiti Mōhiōhio Aunoa me te Paerewa Pūrongo Noa (webpage).

Appendix – Legislation

Income Tax Act 2007

CV 17 Non-exempt charities: taxation of tax-exempt accumulation

An amount of income of a person under section HR 12 (Non-exempt charities: treatment of tax-exempt accumulation) is income of the person for the income year that contains the day 1 year after the day of final decision.

CW 41 Charities: non-business income

Exempt income

- (1) The following are exempt income:
- (aa) an amount of income derived by a person who is removed from the register of charitable entities (the register) under the Charities Act 2005, if it is derived in the period starting with the day they are registered on the register and ending with the earlier of the following days:
 - (i) the day on which the person does not comply with the person's rules contained in the register:
 - (ii) the day of final decision:
 - (a) an amount of income derived by a trustee in trust for charitable purposes:
 - (b) an amount of income derived by a society or institution established and maintained exclusively for charitable purposes and not carried on for the private pecuniary profit of any individual.

Exclusion: trustees, society, or institution not registered

- (2) This section does not apply to an amount of income if, at the time that the amount of income is derived, the trustee or trustees of the trust, the society, or the institution is not, or are not, a tax charity.

Exclusion: business income

- (3) This section does not apply to an amount of income derived from a business carried on by, or for, or for the benefit of a trust, society, or institution of a kind referred to in subsection (1).

Exclusion: council-controlled organisation income

- (4) This section does not apply to an amount of income derived by—
- (a) a council-controlled organisation, other than a council-controlled organisation operating a hospital as a charitable activity:
 - (b) a local authority from a council-controlled organisation, other than from a council-controlled organisation operating a hospital as a charitable activity on behalf of the local authority.

Definition

- (5) Tax charity means,—
- (a) a trustee, a society, or an institution, registered as a charitable entity under the Charities Act 2005:
 - (b) a trustee, a society, or an institution (the entity), that—
 - (i) has started, before 1 July 2008, to take reasonable steps in the process of preparing an application for registering the entity as a charitable entity under the Charities Act 2005; and
 - (ii) intends to complete the process of preparing an application described in subparagraph (i); and

- (iii) has not been notified by the Commissioner that the entity is not a tax charity:
- (c) a trustee, a society, or an institution, that is or are non-resident and carrying out its or their charitable purposes outside New Zealand, and which is approved as a tax charity by the Commissioner in circumstances where registration as a charitable entity under the Charities Act 2005 is unavailable:
- (d) a person who is removed from the register, in the period starting with the day they are registered on the register and ending with the earlier of the following days:
 - (i) the day on which the person does not comply with the person's rules contained in the register:
 - (ii) the day of final decision.

CW 42 Charities: business income*Exempt income*

- (1) Income derived directly or indirectly from a business carried on by, or for, or for the benefit of a trust, society, or institution of a kind referred to in section CW 41(1) is exempt income if—
 - (aa) the entity carrying on the business is, at the time that the income is derived, registered as a charitable entity under the Charities Act 2005; and
 - (a) the trust, society, or institution carries out its charitable purposes in New Zealand; and
 - (b) the trustee or trustees of the trust, the society, or the institution is or are, at the time that the income is derived, a tax charity; and
 - (c) no person with some control over the business is able to direct or divert an amount derived from the business to the benefit or advantage of,—
 - (i) if subparagraph (ii) does not apply, a person other than the trust, society, or institution except for a purpose of the trust, society, or institution:
 - (ii) if a trust, society, or institution (the operating entity) is carrying on the business for or for the benefit of another trust, society, or institution (the controlling entity), a person other than the operating entity or the controlling entity except for a purpose of the operating entity or the controlling entity.

Subsections (3) to (8) expand on this subsection.

Exclusion

- (2) This section does not apply to an amount of income derived by—
 - (a) a council-controlled organisation, other than a council-controlled organisation operating a hospital as a charitable activity:
 - (b) a local authority from a council-controlled organisation, other than from a council-controlled organisation operating a hospital as a charitable activity on behalf of the local authority.

Carrying on a business: trustee

- (3) For the purposes of subsection (1), a trustee is treated as carrying on a business if—
 - (a) the trustee derives rents, fines, premiums, or other revenues from an asset of the trust; and
 - (b) the asset was disposed of to the trust by a person of a kind described in subsection (5)(b); and
 - (c) either—

- (i) the person retains or reserves an interest in the asset; or
- (ii) the asset will revert to the person.

Charitable purposes in New Zealand and overseas

- (4) For the purposes of subsection (1)(a), if the charitable purposes of the trust, society, or institution are not limited to New Zealand, income derived from the business in a tax year is apportioned reasonably between those purposes in New Zealand and those outside New Zealand. Only the part apportioned to the New Zealand purposes is exempt income.

Control over business

- (5) For the purposes of subsection (1)(c) and section CW 42B(2)(c) and (4) for an income year, a person is treated as having some control over the business, and as being able to direct or divert amounts from the business if, in the tax year,—
- (a) they are, in any way, whether directly or indirectly, able to determine, or materially influence the determination of,—
 - (i) the nature or extent of a relevant benefit or advantage; or
 - (ii) the circumstances in which a relevant benefit or advantage is, or is to be, given or received; and
 - (b) their ability to determine or influence the benefit or advantage arises because they are—
 - (i) a settlor or trustee of the trust by which the business is carried on; or
 - (ii) a shareholder or director of the company by which the business is carried on; or
 - (iii) a settlor or trustee of a trust that is a shareholder of the company by which the business is carried on; or
 - (iv) a person associated with a settlor, trustee, shareholder, or director referred to in any of subparagraphs (i) to (iii).

Control: settlor asset disposed of to trust

- (6) For the purposes of subsection (5) and section CW 42B(2)(c) and (4), a person is treated as a settlor of a trust, and as gaining a benefit or advantage in the carrying on of a business of the trust, if—
- (a) they have disposed of an asset to the trust, and the asset is used by the trust in the carrying on of the business; and
 - (b) they retain or reserve an interest in the asset, or the asset will revert to them.

No control

- (7) For the purposes of subsection (1)(c) and section CW 42B(2)(c) and (5), a person is not treated as having some control over the business merely because—
- (a) they provide professional services to the trust or company by which the business is carried on; and
 - (b) their ability to determine, or materially influence the determination of, the nature or extent of a relevant [sic] benefit or advantage arises because they—
 - (i) provide the services in the course of and as part of carrying on, as a business, a professional public practice; or
 - (ii) are a statutory trustee company; or
 - (iii) are Public Trust; or
 - (iv) are the Maori Trustee.

Benefit or advantage

- (8) For the purposes of subsection (1)(c) and section CW 42B(2)(c) and (6), a benefit or advantage to a person—
- (a) may or may not be something that is convertible into money:
 - (b) unless excluded under paragraph (d), includes deriving an amount that would be income of the person under 1 or more of the following provisions:
 - (i) section CA 1(2) (Amounts that are income):
 - (ii) sections CB 1 to CB 23 (which relate to income from business or trade-like activities):
 - (iii) section CB 32 (Property obtained by theft):
 - (iv) sections CC 1 (Land), CC 3 to CC 8 (which relate to income from financial instruments), and CC 9 (Royalties):
 - (v) section CD 1 (Dividend):
 - (vi) sections CE 1 (Amounts derived in connection with employment) and CE 8 (Attributed income from personal services):
 - (vii) section CF 1 (Benefits, pensions, compensation, and government grants):
 - (viii) section CG 3 (Bad debt repayment):
 - (ix) sections CQ 1 (Attributed controlled foreign company income) and CQ 4 (Foreign investment fund income):
 - (c) includes retaining or reserving an interest in an asset in the case described in subsection (3), if the person has disposed of the asset to the trust or the asset will revert to them:
 - (d) does not include earning interest on money lent, if the interest is payable at no more than the current commercial rate, given the nature and term of the loan.

Non-exempt business income

- (9) If an amount derived from the carrying on of a business by or for a trust is not exempt income because of a failure to comply with subsection (1)(c), the amount is trustee income.

CW 42B Community housing trusts and companies*Exempt income*

- (1) An amount of income derived by a community housing entity is exempt income.

Definition

- (2) In this section and section LD 3 (Meaning of charitable or other public benefit gift), community housing entity means a trustee or company (the entity) whose activities involve the provision of housing or housing assistance (the activities), and—
- (aa) the entity is a registered community housing provider under the Public and Community Housing Management Act 1992; and
 - (a) the activities are not carried on for the private pecuniary profit of any individual; and
 - (b) all profit is retained by the entity, or distributed or applied to—
 - (i) community housing entities that meet the requirements to derive exempt income under this section:
 - (ii) beneficiaries or clients of the entity:
 - (iii) tax charities:

- (iv) persons to whom distributions would be in accordance with charitable purposes; and
- (c) no person with some control over the activities is able to direct or divert an amount derived from the activities to the benefit or advantage of,—
 - (i) if subparagraph (ii) does not apply, a person other than the entity except for a purpose of the entity or a charitable purpose:
 - (ii) if the entity (the operating entity) is carrying on the activities for or for the benefit of a community housing entity or charity (the controlling entity), a person other than the operating entity or the controlling entity except for a purpose of the operating entity or the controlling entity or for a charitable purpose.

Definition: exception

- (3) Despite subsection (2), community housing entity does not include a trustee or company (the entity) if—
 - (a) more than 15% of the people who become beneficiaries or clients of the entity on a date that is or is after 14 April 2014 have, on that date, income or assets exceeding a value (the entry threshold) set out in schedule 34 (Community housing trusts and companies: income and assets of beneficiaries and clients) that is relevant to the beneficiary or client:
 - (b) the provision of housing or housing assistance to a beneficiary or client who has income and assets not exceeding the entry thresholds is substantially different from the provision of housing or housing assistance to a beneficiary or client who has income or assets exceeding an entry threshold.

Control over activities

- (4) For the purposes of subsection (2)(c), for an income year, a person is treated as having some control over the activities, and as being able to direct or divert amounts from the activities if, in the tax year, they are described in section CW 42(5)(a) and (b) and (6) (Charities: business income).

No control

- (5) For the purposes of subsection (2)(c), a person described in section CW 42(7)(a) and (b) is not treated as having some control merely because of the factors in section CW 42(7)(a) and (b).

Benefit or advantage

- (6) For the purposes of subsection (2)(c), a benefit or advantage to a person includes a benefit or advantage included under section CW 42(8).

CW 43 Charitable bequests

Exempt income

- (1) An amount of income derived by a deceased's executor or administrator is exempt income to the extent to which the requirements of subsections (2) and (3) are met, having regard to all relevant matters including—
 - (a) the terms of the deceased's will, including the rights of annuitants, legatees, and other beneficiaries; and
 - (b) the nature and extent of the debts and liabilities of, and other charges against, the estate and their likely effect on the income and assets available for distribution to the beneficiaries; and
 - (c) the shares and prospective shares of the beneficiaries in the income and assets of the estate.

Gift to charity

- (2) The first requirement is that the amount arises from or is attributable to assets of the estate that have been left to a trust, society, or institution of a kind referred to in section CW 41(1).

Exempt in hands of charity

- (3) The second requirement is that the amount, if derived by the trust, society, or institution or by a business carried on by, or for, or for the benefit of it, would be exempt income under section CW 41 or CW 42.

Timing of registration as charitable entity

- (4) An amount of income derived by a deceased's executor or administrator that is derived during the period beginning on the deceased's date of death and ending at the end of the income year that follows the income year in which the deceased died is not prevented from being exempt income under this section merely because the trustee or trustees of the trust, the society, or the institution is not, or are not, a tax charity.

Requirements of sections CW 41 and CW 42 disregarded

- (5) For the purposes of subsection (4), until the end of the income year that follows the income year in which the deceased died, the requirements of sections CW 41 and CW 42 for the trustee or trustees of the trust, the society, or the institution to be a tax charity must be disregarded when applying those sections for the purposes of this section.

Amounts derived after end of certain period

- (6) This section does not apply to an amount of income derived after the end of the income year that follows the income year in which the deceased died if, at the time that the amount of income is derived, the trustee or trustees of the trust, the society, or the institution is not, or are not, a tax charity.

CX 25 Benefits provided by charitable organisations*When not fringe benefit*

- (1) A charitable organisation that provides a benefit to an employee does not provide a fringe benefit except to the extent to which—
- (a) the employee receives the benefit mainly in connection with their employment; and
 - (b) the employment consists of the carrying on by the organisation of a business whose activity is outside its benevolent, charitable, cultural, or philanthropic purposes.

When employer provides charge facilities

- (2) Subsection (1) does not apply, and the benefit provided is a fringe benefit, if a charitable organisation provides a benefit to an employee by way of short-term charge facilities and the value of the benefit from the short-term charge facilities for the employee in a tax year is more than the lesser for the tax year of—
- (a) 5% of the employee's salary or wages;
 - (b) \$1,200.

Meaning of short-term charge facilities

- (3) For the purposes of the FBT rules, a short-term charge facility means an arrangement that—
- (a) enables an employee to obtain goods or services that have no connection with the employer or its operations by—
 - (i) buying or hiring the goods or services;
 - (ii) charging the cost of the goods or services to an account;

- (iii) providing consideration other than money for the goods or services; and
- (b) requires the employer to provide some or all of the payment or other consideration for the goods or services; and
- (c) is not a fringe benefit under section CX 10.

HR 12 Non-exempt charities: treatment of tax-exempt accumulations*Who this section applies to*

- (1) This section applies to—
 - (a) a person who—
 - (i) is registered on the register of charitable entities under the Charities Act 2005 for a period; and
 - (ii) derives exempt income under section CW 41 or CW 42 (which relate to charities) in the same period; and
 - (iii) is deregistered as a charitable entity on the end date:
 - (b) [Repealed]

When this section does not apply

- (2) This section does not apply if—
 - (a) the person is re-registered on the register of charitable entities within 1 year of the end date:
 - (b) the person's end date arises because they are a company and shares in them are disposed of, and the disposal is for market value consideration:
 - (c) the person would, but for this paragraph, have \$10,000 or less income under this section on their end date.

Treatment of income

- (3) The person has an amount of income derived on the day that is 1 year after the end date that is equal to the current market value, on the end date, of assets that the person has on the end date less the current market value, on the end date, of liabilities that the person has on the end date, but ignoring:
 - (a) assets that are disposed of or transferred within 1 year of the end date, together with any rights and obligations, to another person—
 - (i) for charitable purposes:
 - (ii) in accordance with the person's rules set out in the register of charitable entities immediately before the person's removal from the register:
 - (b) assets received from the Crown—
 - (i) to settle a Treaty of Waitangi claim:
 - (ii) in accordance with the Maori Fisheries Act 2004:
 - (c) assets that are not money and are gifted or bequeathed to the person when they met the requirements to derive exempt income under section CW 41 or CW 42:
 - (d) assets that are land set apart in a Maori reservation for the purposes of a marae or meeting place under Part 17 of the Te Ture Whenua Maori Act 1993:
 - (e) assets that are shares in companies, if this section applies to the companies and their end dates are the same as the person's end date.

Person's rules [Repealed]

- (4) [Repealed]

Negative amounts

- (5) For the purposes of the calculation in subsection (3), if the amount is negative, it is treated as zero.

References to assets and liabilities

- (6) In this section, references to assets and liabilities, as applicable,—
- (a) mean the assets and liabilities owned, controlled, or held, wholly or in part, immediately before the end date; and
 - (b) include—
 - (i) all assets of any kind; and
 - (ii) all liabilities, including debts, charges, duties, contracts, or other obligations, whether present, future, actual, contingent, payable, or to be observed or performed in New Zealand or elsewhere.

Definitions

- (7) In this section,—
- end date means, for a person, the day of final decision
- current market value means—
- (a) for an asset or liability for which section HR 11 gives a value for the purposes of this Act, that value:
 - (b) for an asset or liability for which section HR 11 does not give a value for the purposes of this Act,—
 - (i) the market value of the asset or liability; but
 - (ii) if the person uses the Public Benefit Entity International Not-for-Profit Accounting Standard 17 (the standard), the fair value of the asset or liability under the standard.

LD 3 Meaning of charitable or other public benefit gift*Meaning*

- (1) For the purposes of sections DB 41 and DV 12 (which relate to deductions for gifts of money), and 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 (the entity), if—
 - (i) the entity is described in subsection (2)(a), (ab), (b), (c), or (d), and the name of the entity is on the list published by the Commissioner under section 41A(14) to (16) of the Tax Administration Act 1994:
 - (ii) the entity is described in subsection (2)(ac), (bb), or (bc):
 - (iii) the name of the entity is listed in schedule 32 (Recipients of charitable or other public benefit gifts):
 - (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—
 - (i) a testamentary gift:
 - (ii) a gift made by forgiving some or all of a debt.

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 that is constituted under subpart 5 of Part 3 of the Education and Training Act 2020 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).

Exception for certain entities

- (3) Despite subsection (2)(a), (b), (c), and (d), a society, institution, association, organisation, trust, or fund is not a relevant entity for the purposes of subsection (1) if the society, institution, association, organisation, trust, or fund,—
 - (a) is not a tax charity, because it is not registered as a charitable entity under the Charities Act 2005; and
 - (b) in the opinion of the Commissioner, is eligible to be registered as a charitable entity under that Act.

Defined in this Act: charitable or other public benefit gift, charitable purpose, community housing entity, New Zealand, pay, tax charity, tertiary

RE 29 Establishing whether persons have RWT-exempt status

- (1) This section applies for the purposes of section RE 5(2) to set out the ways for person A to establish—
 - (a) whether person B is a person who has RWT-exempt status; and
 - (b) that the status has not ended.
- (2) Person A may establish that—
 - (a) they have made a search of the electronic register that the Commissioner provides on which the details of persons with RWT-exempt status are listed; or
 - (b) they have taken reasonable steps to confirm that person B is a person listed in section 32E(2) (a) to (h) of the Tax Administration Act 1994; or
 - (c) except in relation to a person listed in section 32E(2)(k) or (l) of that Act or to whom the Commissioner has provided RWT-exempt status under

section 32I of that Act, they have been given person B's tax file number and have been notified that person B has RWT-exempt status.

YA 1 Definitions

In this Act, unless context requires otherwise, -

business—

- (a) includes any profession, trade, or undertaking carried on for profit:
- (b) includes the activities of—
 - (i) a statutory producer board:
 - (ii) an airport operator:
- (c) is further defined in section DD 11 (Some definitions) for the purposes of subpart DD (Entertainment expenditure)

charitable or other public benefit gift is defined in section LD3 (Meaning of charitable or other public benefit gift)

charitable organisation—

- (a) means, for a quarter or an income year, an association, fund, institution, organisation, society, or trust to which section LD 3(2) (Meaning of charitable or other public benefit gift) or schedule 32 (Recipients of charitable or other public benefit gifts) applies—
 - (i) in the quarter; or
 - (ii) in the income year, if fringe benefit tax is payable on an income year basis under section RD 60 (Close company option); and
- (ab) includes a person who has been removed from the register of charitable entities (the register) under the Charities Act 2005, but only for the period starting on the day the person is registered on the register and ending on the earlier of the last day of the following periods:
 - (i) the quarter, or income year if section RD 60 (Close company option) applies, in which the person does not comply with their rules contained in the register:
 - (ii) the quarter, or income year if section RD 60 applies, in which the day of final decision falls; and
- (b) does not include a local authority, a public authority, or a university

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, and—

- (a) the purpose of a trust, society, or institution is charitable under this Act if the purpose would meet the public benefit requirement apart from the fact that the beneficiaries of the trust, or the members of the society or institution, are related by blood:
- (b) a marae has a charitable purpose if—
 - (i) the physical structure of the marae is situated on land that is a Maori reservation referred to in Te Ture Whenua Maori Act 1993 (the Maori Land Act 1993); and
 - (ii) the funds of the marae are not used for a purpose other than the administration and maintenance of the land and of the physical structure of the marae, or are used for a purpose that is a charitable purpose

council-controlled organisation—

- (a) means—
 - (i) an organisation that is a council-controlled trading organisation as defined in section 6 of the Local Government Act 2002, and is not a company:

- (ii) a company that is a council-controlled organisation, under paragraph (a)(i) of the definition of council-controlled organisation in section 6(1) of the Local Government Act 2002:
 - (iii) an organisation that is a council-controlled organisation, under paragraph (b) of the definition of council-controlled organisation in section 6(1) of the Local Government Act 2002, and that has, in an organisation of a kind described in subparagraph (i) or (ii), control of at least 50% of the votes at any meeting of the members or the controlling body of the organisation, or the right to appoint at least 50% of the directors, managers, or trustees of the organisation (however the positions are described):
 - (iv) an organisation that would be a council-controlled organisation of a kind described in paragraph (a) or (b) or (c) if it did not have an exemption granted under section 6(4)(i) of the Local Government Act 2002:
 - (iv) the New Zealand Local Government Association Incorporated:
 - (v) a company or organisation, as defined in section 6(2) of the Local Government Act 2002, that is subject to the control, directly or indirectly, of the New Zealand Local Government Association Incorporated:
 - (vi) New Zealand Local Government Insurance Corporation and any subsidiaries it has:
 - (viii) Watercare Services Limited and any subsidiaries it has: but
- (b) does not include Auckland Transport (as established by section 38 of the Local Government (Auckland Council) Act 2009) or Auckland Regional Holdings (as established by section 18 of the Local Government (Auckland) Amendment Act 2004 or the New Zealand Local Government Funding Agency Limited

donee organisation means an entity described in section LD 3(2) (Meaning of charitable or other public benefit gift) or listed in schedule 32 (Recipients of charitable or other public benefit gifts)

Inland Revenue Acts means the Acts listed in the schedule of the Tax Administration Act 1994

input tax—

- (a) is defined in section 3A of the Goods and Services Tax Act 1985; and
- (b) includes, for a supply, GST levied on goods entered for home consumption under the Customs and Excise Act 2018

tax charity is defined in section CW 41(5)

Tax Administration Act 1994

3 Interpretation

- (1) In this Act, unless the context otherwise requires, -

gift-exempt body, in sections 18K, 32, and 58, means—

- (a) any society, institution, association, organisation, trust, or fund specifically named in Schedule 32 of the Income Tax Act 2007; or
- (b) any other person who has RWT-exempt status following an application made under section 32E(2)(k) or (l) in relation to a tax year in which they have that status

32 Records of specified charitable, benevolent, philanthropic, or cultural bodies

- (1) All gift-exempt bodies must keep in New Zealand sufficient records in the English language to enable the Commissioner to determine both the sources of donations made to them and the application, within New Zealand or within a country or territory outside New Zealand, of their funds.

- (2) Despite subsection (1), on application by a gift-exempt body, the Commissioner may notify the body that they are authorised to keep the records in a language other than English.

32E Applications for RWT-exempt status

- (1A) A person who is registered as a charitable trust under the Charities Act 2005 is treated as having RWT-exempt status for the duration of the registration.
- (1) A person listed in subsection (2) may apply to the Commissioner for RWT-exempt status.
- (2) The persons are—
- (a) a registered bank:
 - (b) a building society:
 - (c) the Public Trust or a company that would be a member of the same wholly-owned group of companies as the Public Trust, if it were a company for the purposes of this Act:
 - (d) the Māori Trustee:
 - (e) a statutory trustee company:
 - (eb) a portfolio investment entity:
 - (ec) the trustee of the Niue International Trust Fund:
 - (ed) the trustee of the Tokelau International Trust Fund:
 - (f) a person whose main business is—
 - (i) borrowing money or accepting deposits, or receiving credit or selling a credit instrument; and
 - (ii) lending money or granting credit, or buying or discounting a credit instrument:
 - (g) a person that is—
 - (i) a nominee company subject to practice rules made by the Council of the New Zealand Law Society under section 96 of the Lawyers and Conveyancers Act 2006 and operated by a barrister and solicitor or an incorporated law firm; or
 - (ii) a broker's nominee company to which the Securities Act (Contributory Mortgage) Regulations 1988 apply:
 - (h) a practitioner within the meaning of the Lawyers and Conveyancers Act 2006 or incorporated firm within the meaning of that Act in relation to the operation of their trust account which is an account maintained under section 112 of that Act:
 - (i) a person—
 - (i) who has met their obligation to file a return of income under the Inland Revenue Acts within the time allowed; and
 - (ii) whose annual gross income for the tax year for which they last filed a return of income is more than \$2,000,000:
 - (j) a person in an accounting year who reasonably believes their annual gross income for the tax year that corresponds to the next accounting year will be more than \$2,000,000:
 - (k) a person who derives in a tax year an amount that is exempt income under sections CW 38(2), CW 38B(2), CW 39(2), CW 40 to CW 52, and CW 64 of the Income Tax Act 2007 in relation to their activities in the capacity in which they derive the exempt income:
 - (kb) a board that is constituted under subpart 5 of Part 3 of the Education and Training Act 2020 and is not carried on for the private pecuniary profit of any individual:

- (kc) a tertiary education institution that is established under subpart 3 of Part 4 of the Education and Training Act 2020 and is not carried on for the private pecuniary profit of any individual:
 - (kd) a tertiary education subsidiary that derives exempt income under section CW 55BA of the Income Tax Act 2007:
 - (l) a person to whom section DV 8 of the Income Tax Act 2007 applies and who would, but for that section, have net income of an amount less than the amount set out in the section for their most recently ended accounting year.
- (3) The person must apply to the Commissioner, and the application must—
 - (a) state the basis of exemption under subsection (2); and
 - (b) include a declaration by the person or an officer authorised by them that they come within the basis of exemption.
 - (4) The person must provide further information in relation to the application as the Commissioner requires.

32K Failing to meet basis of exemption

- (1) This section applies when a person who has RWT-exempt status no longer meets the requirements on which their exemption is based.
- (2) If the person becomes aware that they no longer meet the requirements, they must notify the Commissioner within a period of 5 days after the day on which they become aware.
- (3) The Commissioner may ask the person to provide the full name and last known address of all persons to whom they have advised their RWT-exempt status for the purposes of obtaining an exemption from withholding the amount of tax from a payment of resident passive income. The person must respond to the Commissioner's request within 5 days.

58 Returns of specified charitable, benevolent, philanthropic, or cultural bodies

Every gift-exempt body must, when notified by the Commissioner, furnish a return of its funds derived or received in any tax year and showing the source and application of those funds, together with such other particulars as may be required by the Commissioner.

59BA Annual return for trusts

- (1) A trustee of a trust who derives assessable income for a tax year must file a return for the tax year of all income derived in the corresponding income year by the trustee as trustee of the trust.
- (2) A trustee who is required to file a return for a tax year under subsection (1) and does not meet the requirements of subsection (3) must make the return in the form prescribed by the Commissioner and include, unless otherwise required by the Commissioner,—
 - (a) a statement of profit or loss and a statement of financial position:
 - (b) the amount, and nature, of each settlement that—
 - (i) is not the provision to the trustee, at less than market value, of minor services incidental to the activities of the trust; and
 - (ii) is made on the trust in the income year:
 - (c) the name, date of birth, jurisdiction of tax residence, and tax file number and taxpayer identification number, of each settlor who makes a settlement on the trust in the income year or whose details have not previously been supplied to the Commissioner:
 - (d) for each distribution made by the trustee of the trust in the income year,—
 - (i) the amount of the distribution:

- (ii) the name, date of birth, jurisdiction of tax residence, and tax file number and taxpayer identification number, of the beneficiary who receives the distribution:
 - (e) the name, date of birth, jurisdiction of tax residence, and tax file number and taxpayer identification number, of each person having a power under the trust to appoint or dismiss a trustee, to add or remove a beneficiary, or to amend the trust deed:
 - (f) the other information required by the Commissioner.
- (3) A trustee of a trust who is required to file a return for a tax year under subsection (1) is not required to file a return in the form required by subsection (2) if—
 - (a) the trustee is excluded from the requirement to make a return by section 43B (which relates to non-active trusts):
 - (b) the trustee is required to make a return by section 59D (which relates to foreign trusts):
 - (c) the trustees of the trust are incorporated as a board under the Charitable Trusts Act 1957:
 - (d) the trust is a charitable trust registered under the Charities Act 2005:
 - (e) the trustee is eligible under section HF 2 of the Income Tax Act 2007 to choose under section HF 11 of that Act to become a Maori authority:
 - (f) the trust is a widely-held superannuation fund, as defined in section YA 1 of the Income Tax Act 2007:
 - (g) the trust is an employee share scheme that is an exempt ESS, as defined in section YA 1 of the Income Tax Act 2007:
 - (h) the trustee is a debt funding special purpose vehicle, as defined in section YA 1 of the Income Tax Act 2007:
 - (i) the trustee is a lines trust established under the Energy Companies Act 1992.
- (4) If the trustee of a trust is a non-resident, a settlor of the trust who is a New Zealand resident is responsible for ensuring the performance of the obligations imposed on the trustee by this section.
- (5) The Commissioner may vary the requirements set out in subsection (2) for a trustee or class of trustees.
- (6) A variation under subsection (5) is secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements).

Charities Act 2005

4 Interpretation

- (1) In this Act, unless the context otherwise requires,—

...

charitable entity means a society, an institution, or the trustees of a trust that is or are registered as a charitable entity under this Act

5 Meaning of charitable purpose and effect of ancillary non-charitable purpose

- (1) In this Act, unless the context otherwise requires, 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.
- (2) However,—

- (a) the purpose of a trust, society, or institution is a charitable purpose under this Act if the purpose would satisfy the public benefit requirement apart from the fact that the beneficiaries of the trust, or the members of the society or institution, are related by blood; and
 - (b) a marae has a charitable purpose if the physical structure of the marae is situated on land that is a Maori reservation referred to in Te Ture Whenua Maori Act 1993 (Maori Land Act 1993) and the funds of the marae are not used for a purpose other than—
 - (i) the administration and maintenance of the land and of the physical structure of the marae:
 - (ii) a purpose that is a charitable purpose other than under this paragraph.
- (2A) The promotion of amateur sport may be a charitable purpose if it is the means by which a charitable purpose referred to in subsection (1) is pursued.
- (3) To avoid doubt, if the purposes of a trust, society, or an institution include a non-charitable purpose (for example, advocacy) that is merely ancillary to a charitable purpose of the trust, society, or institution, the presence of that non-charitable purpose does not prevent the trustees of the trust, the society, or the institution from qualifying for registration as a charitable entity.
- (4) For the purposes of subsection (3), a non-charitable purpose is ancillary to a charitable purpose of the trust, society, or institution if the non-charitable purpose is—
- (a) ancillary, secondary, subordinate, or incidental to a charitable purpose of the trust, society, or institution; and
 - (b) not an independent purpose of the trust, society, or institution.

References

Legislative references

Charitable Trusts Act 1957

Charities Act 2005, ss 3, 4, 5, 6, 8, 10, 13, 30, 31, 32

Companies Act 1993

Foreign Account Tax Compliance Act (US, 2010)

Goods and Services Tax Act 1985, s 2(1) ("non-profit body"), 2A(1)(f)–(h), 6(3), 14(1), 19A(1(a)(iii), 19D(2B) 20(3K), 20(3KB), 51(5), 75, 88

Income Tax Act 2007, ss CV 17, CW 41, CW 42, CW 43, CW 42B, CW 43, CW 44, CW 46, CW 49, CW 52, CW 53, CX 10, CX 25, DV 8, HC 11, HC 13, HC 20, HC 29(4), HR 12, LD 3, RE 29, YA 1 ("business", "charitable organisation", "New Zealand", "tax charity", "trust rules), schedule 32

Incorporated Societies Act 1908

Incorporated Societies Act 2022

Local Government Act 2002, s 6(1)

Maori Fisheries Act 2004

Maori Trust Boards Act 1955, s 24B

Official Information Act 1982

Privacy Act 1993

Student Loan Scheme Act 2011

Tax Administration Act 1994, ss 3 ("gift-exempt body"), 22, 32, 32E(k), 32K(2), 58, 59B, 59BA, part 5A, part 11B, schedule 1, schedule 7

Te Ture Whenua Maori Act 1993 | Maori Land Act 1993, s 245

Trusts Act 2019, s 50(2)

Case references

A-G v Family First NZ [2022] NZSC 80

Buckley & Young Ltd v CIR (1978) 3 NZTC 61,271 (CA)

Calder Construction Co Ltd v CIR [1963] NZLR 921 (SC)

Christchurch Press Co Ltd v CIR (1994) 16 NZTC 11,124 (HC)

CIR v Dick [2002] 2 NZLR 560 (HC)

Greenpeace of NZ Inc, Re [2014] NZSC 105, [2015] 1 NZLR 169

Grieve v CIR [1984] 6 NZTC 61,682 (CA)

NZ Co-operative Dairy Co Ltd v CIR (1988) 10 NZTC 5,215 (HC)

Other references

Automatic Exchange of Information – Your obligations if you hold or control financial accounts (Inland Revenue, IR1033, May 2018) (publication). www.ird.govt.nz/-/media/project/ir/home/documents/forms-and-guides/ir1000---ir1099/ir1033/ir1033-2018.pdf

Automatic Exchange of Information and the Common Reporting Standard (Inland Revenue, IR1048, July 2019) (webpage). www.ird.govt.nz/international-tax/exchange-of-information/crs/aeoi-and-crs

Charitable and Donee Organisations (Inland Revenue, IR255, December 2021) (publication). <https://www.ird.govt.nz/employing-staff/paying-staff/fringe-benefit-tax/fringe-benefit-tax-for-charities>

Charities | Ngā kaupapa atawhai (Inland Revenue, webpage). www.ird.govt.nz/roles/charities

“Charities and donee organisations”, (Inland Revenue, *Tax Information Bulletin* Vol 31, No 4 (May 2019) at 132 - 133) (publication). www.taxtechnical.ird.govt.nz/en/tib/volume-31---2019/tib-vol31-no4

Charities Business Exemption: Business carried on in partnership. (Inland Revenue, Questions we’ve been asked, QB 21/03, May 2021) (publication). www.taxtechnical.ird.govt.nz/questions-we-ve-been-asked/2021/qb-21-03

Charitable organisations and the student loan scheme | Ngā whakahaere kaupapa atawhai me te kaupapa pūtea taurewa ākonga (Inland Revenue, webpage). www.ird.govt.nz/roles/charities/charitable-organisations-and-the-student-loan-scheme

Charities Services, www.charities.govt.nz (webpage).

Charities Services, International charities and activities (webpage). www.charities.govt.nz/ready-to-register/need-to-know-to-register/charitable-purpose/international-charities-and-activities/

Charities Services, Search the register (webpage). <https://register.charities.govt.nz/CharitiesRegister/Search>

Charities Services, Update charity details (webpage). www.charities.govt.nz/im-a-registered-charity/update-charity-details/#Changing-your-legal-entity-type

Double tax agreements (DTAs) | Ngā whakaaetanga tāke taurua (DTA) (Inland Revenue, webpage). www.ird.govt.nz/international-tax/double-tax-agreements

Exchange of Information (Inland Revenue, webpage). www.ird.govt.nz/international-tax/exchange-of-information

Foreign Account Tax Compliance Act (FATCA) - Trusts guidance notes (Inland Revenue, IR1087, October 2017) (publication). www.ird.govt.nz/international-tax/exchange-of-information/fatca/important-documents

Foreign Trust Disclosure Rules (Inland Revenue, special report of Policy and Strategy, March 2017) (publication). <https://taxpolicy.ird.govt.nz/publications/2017/2017-sr-foreign-trusts>

"Foreign trust disclosure rules", (Inland Revenue, *Tax Information Bulletin* Vol 29, No 4 (May 2017) at 24) (publication). www.taxtechnical.ird.govt.nz/en/tib/volume-29---2017/tib-vol29-no4

Foreign trusts with New Zealand resident trustees | Ngā tarahiti o tāwāhi me ngā kaitaki kainoho o Aotearoa (Inland Revenue, webpage). www.ird.govt.nz/international-tax/foreign-trusts-nz-resident-trustees

Fringe Benefit Tax: Charitable and other donee organisations and fringe benefit tax (Inland Revenue, Public Ruling BR Pub 22/06, May 2022) (publication). <https://www.taxtechnical.ird.govt.nz/rulings/public/2022/br-pub-22-06>

GST: Unconditional gifts (Inland Revenue, Interpretation Statement IS 20/09, December 2020) (publication). www.taxtechnical.ird.govt.nz/interpretation-statements/is-20-09

"GST and assets sold by non-profit bodies" (Inland Revenue, *Tax Information Bulletin* Vol 31, No 4 (May 2019) at 101) (publication). www.taxtechnical.ird.govt.nz/en/tib/volume-31---2019/tib-vol31-no4

GST Guide: Working with GST (Inland Revenue, IR375, April 2022) (publication). <https://www.ird.govt.nz/-/media/project/ir/home/documents/forms-and-guides/ir300---ir399/ir375/ir375-2022.pdf?modified=20220329010527&modified=20220329010527>

Important FATCA documents | Ngā tuhinga FATCA hira (Inland Revenue, webpage). www.ird.govt.nz/international-tax/exchange-of-information/fatca/important-documents

Income tax and GST for not-for-profits | Te tāke moni whiwhi me te tāke hokohoko mō ngā whakahaere kore moni hua (Inland Revenue, webpage). www.ird.govt.nz/income-tax/income-tax-for-businesses-and-organisations/income-tax-and-gst-for-not-for-profits

Interpretation Statement: IS 18/01 - Taxation of trusts – income tax (Inland Revenue, June 2018) (publication). www.taxtechnical.ird.govt.nz/en/interpretation-statements/is-1801-taxation-of-trusts-income-tax

Memorandum of Understanding (between the Government of New Zealand and Government of the United States of America to improve international tax compliance and to implement FATCA) (Inland Revenue) (publication). www.ird.govt.nz/-/media/project/ir/home/documents/international/fatca-documents/memorandum-of-understanding.pdf

"New rules for deregistered charities", (Inland Revenue, *Tax Information Bulletin* Vol 26, No 7 (August 2014) at 65) (publication). www.taxtechnical.ird.govt.nz/en/tib/volume-26---2014/tib-vol26-no7

NRWT - Payer's guide (Inland Revenue, IR291, September 2020) (publication). www.ird.govt.nz/income-tax/withholding-taxes/non-resident-withholding-tax-nrwt

Payments and Gifts in the Māori Community (Inland Revenue, IR278, December 2015) (publication). www.ird.govt.nz/income-tax/income-tax-for-businesses-and-organisations/types-of-business-income/donations-koha

Resident withholding tax exemption register | Te rēhita aweretanga tāke kaiponu kainoho-tāwāhi (Inland Revenue, webpage). www.ird.govt.nz/income-tax/withholding-taxes/resident-withholding-tax-rwt/resident-withholding-tax-exemption-register

Resident withholding tax (RWT) on dividends - payer's guide (Inland Revenue, IR284, September 2020) (publication). www.ird.govt.nz/-/media/project/ir/home/documents/forms-and-guides/ir200---ir299/ir284/ir284-2020.pdf

Resident withholding tax on interest (RWT) - payer's guide (Inland Revenue, IR283, June 2020) (publication). www.ird.govt.nz/-/media/project/ir/home/documents/forms-and-guides/ir200---ir299/ir283/ir283-2020.pdf

Resident withholding tax (RWT) | Te tāke kaiponu kainoho (Inland Revenue, webpage). www.ird.govt.nz/income-tax/withholding-taxes/resident-withholding-tax-rwt

Retention of business records in electronic formats, application to store Records offshore and keeping records in languages other than English or te reo Māori (Inland Revenue, Standard Practice Statement SPS 21/02, May 2021) (publication). www.taxtechnical.ird.govt.nz/standard-practice-statements/general/sps-21-02

"Supplying of information in respect of charitable entities" (Inland Revenue, webpage). www.ird.govt.nz/about-us/information-sharing/mous/dia

Tax exemptions for non-resident charities | Ngā aweretanga tāke mō ngā kaupapa atawhai kainoho-tāwāhi (Inland Revenue, webpage). www.ird.govt.nz/roles/charities/tax-exemptions-for-non-resident-charities

"Tax on net assets of deregistered charities: Remedial amendment" (Inland Revenue, *Tax Information Bulletin* Vol 30, No 5 (June 2018) at 107) (publication). www.taxtechnical.ird.govt.nz/en/tib/volume-30---2018/tib-vol30-no5

Trusts and Estates Income Tax Rules (Inland Revenue, IR288, March 2021). www.ird.govt.nz/roles/trusts-and-estates/trusts-and-tax-residency

What is a binding ruling? (Inland Revenue) (webpage). www.taxtechnical.ird.govt.nz/apply-for/apply-for-a-ruling/what-is-a-binding-ruling#Binding_ruling