

QUESTION WE'VE BEEN ASKED

QB 18/11**Income tax – state integrated schools and donation tax credits**

No payments to state integrated schools are compulsory except for attendance dues and optional goods and services that parents have agreed to purchase. Therefore, some payments made by parents to state integrated schools may qualify as gifts for donation tax credit purposes. School boards, proprietors and administrators need to understand which payments made by parents may qualify as gifts so the school can issue donation tax receipts.

Question

What payments by parents to state integrated schools are gifts for donation tax credit purposes?

Answer

Payments by parents to state integrated schools are gifts for donation tax credit purposes where the payment is voluntary and is a payment to:

- **the board of trustees to assist generally with funding its costs, including the cost of delivery of the school's curriculum; or**
- **the board of trustees or a qualifying proprietor for a specific purpose or project to benefit the school as a whole where no material benefit or advantage is obtained in return for making the payment; or**
- **the board of trustees to assist with the school's cost of delivering individual subjects or activities forming part of the school's curriculum and in which the student may participate regardless of whether any payment is made; or**
- **a qualifying proprietor to assist the proprietor with its cost of supporting the delivery of the school's curriculum with special character.**

Key provisions

Education Act 1989, s 3 and Part 33

Income Tax Act 2007, ss LD 1 to LD 3

Key terms

State integrated school: A previously private school that has been integrated into the state school system.

Proprietor: The proprietor owns (or leases) and maintains a state integrated school's land and buildings and is responsible for determining and maintaining the school's special character. A proprietor may qualify as a donee organisation if it is a not-for-profit organisation established for the charitable purpose of advancing education.

Special character: A particular or general religious or philosophical belief, as defined in a state integrated school's Deed of Integration with the Crown.

Attendance dues: Compulsory payments parents are required to pay to proprietors as a condition of their child's enrolment at the school. They are approved by the Minister of Education, and must be spent for specified purposes.

Explanation

Scope of this Question We've Been Asked

1. This Question We've Been Asked (QWBA) addresses payments parents make to boards of trustees and proprietors of state integrated schools. The word "parents" includes

guardians and caregivers of students who also make payments to state integrated schools.

2. This QWBA does not address:

- payments parents make to state non-integrated schools, partnership schools kura hourua or private schools in New Zealand. (State non-integrated schools and partnership schools kura hourua are addressed in QB 18/10 *Income tax – state schools and donation tax credits*);
- payments made for international students to attend state integrated schools;
- payments to entities (such as charitable trusts or parent-teacher associations) that are associated with a state integrated school but are separate entities from the school.

3. This QWBA refers to **the Ministry of Education’s Circular 2018/01 Payments by parents of students in schools** (Ministry of Education, 2018), which provides guidance on payments by parents of students in state schools and state integrated schools.

4. The examples from [59] illustrate how the donation tax credit rules apply for state integrated schools.

Also see:

Inland Revenue:

QB 16/05 Income tax – donee organisations and gifts

QB 18/10 Income tax – state schools and donation tax credits

BR Pub 18/06 Goods and services tax – Payments made by parents to state and state integrated schools

Ministry of Education:

Circular 2018/01 Payments by parents of students in schools

Education with a special character

5. State integrated schools provide education within the framework of a particular or general religious or philosophical belief (**referred to as the school’s “special character”**). A state integrated school establishes a partnership with the Crown by its Deed of Integration, which defines the special character of the school. The special character **shapes the school’s curriculum, enrolments, staffing processes and culture**. Types of special character include such things as denominational and non-denominational Christian religions, Judaism, Islam, or the Steiner or Montessori philosophies.

6. Part 33 of the Education Act 1989 sets out the rules for state integrated schools. (Previously, these rules were in the Private Schools Conditional Integration Act 1975, which was re-enacted as an amendment to the Education Act 1989 in May 2017). Section **414(1) of the Education Act 1989 defines “education with a special character” as:**

education within the framework of a particular or general religious or philosophical belief, and associated with observances or traditions appropriate to that belief

7. Like state schools, state integrated schools are governed by an elected board of trustees, but they differ from state schools in that they also have proprietors. Section 414 of the Education Act 1989 defines proprietor as:

the body corporate that—

- (a) has the primary responsibility for determining the special character of a school registered under section 35A and for supervising the maintenance of that special character; and
- (b) owns, holds in trust, or leases the land and buildings that constitute the premises of the private school or a State integrated school

8. The proprietor is a person or entity that provides and maintains the land and buildings and is responsible for determining and supporting the maintenance of **the school's special character**. The board of trustees of a state integrated school includes representatives of the proprietor.

State integrated school statutory environment

9. In New Zealand, students attending state integrated schools must be given free education on the same conditions as students enrolled at a state school (see s 441 of the Education Act 1989). Under the Education Act 1989, any reference to a state school includes any reference to a state integrated school (see s 414(2)).

10. Section 3 of the Education Act 1989 provides:

3 Right to free primary and secondary education

Except as provided in this Act, every person who is not an international student is entitled to free enrolment and free education at any State school or partnership school kura hourua during **the period beginning on the person's fifth birthday and ending on 1 January after the person's 19th birthday**.

11. International students are generally any students who are not New Zealand citizens or residents.
12. The Education Act 1989 does not define what free education means for state integrated schools. However, it involves the delivery of the national curriculum by schools. The Education Act 1989 establishes the overall framework for the delivery of education by state integrated schools, by publishing various curriculum statements, guidelines and national performance measures under s 60A of the Education Act 1989. The central component of that framework is the national curriculum, which comprises the New Zealand Curriculum and Te Marautanga o Aotearoa. The national curriculum sets out a common direction for teaching and learning in New Zealand schools.
13. The board of trustees of every state integrated school must develop a charter (or from 2019, a four-year strategic plan and an annual implementation plan) and a detailed curriculum for its school that align with the intent of the national curriculum, **the school's special character and the school community's values and expectations**. **The school's proprietor supervises and ensures the school's special character, as defined in its Deed of Integration, is reflected in the school's curriculum**. **The board of trustees is then required to implement its school's curriculum in accordance with the priorities set out in the National Education Goals, the National Administration Guidelines and the school's Deed of Integration**. Therefore, in the state integrated school context free education involves the delivery of the national curriculum with special character.

Ministry of Education guidance on fund raising by state integrated schools

14. According to *Circular 2018/01* all payments requested from parents by state integrated schools (whether requested by the board of trustees or the proprietor) must be voluntary, unless the payments are attendance dues payable to the proprietor or payments for the purchase of optional goods or services that the parent has agreed to purchase.
15. The Education Act 1989 provides limited guidance on the payments proprietors may request from parents and no guidance about the types of payments boards of trustees of state integrated schools may ask for from parents. However, it is implicit that state integrated **schools cannot charge for something that is part of a student's statutory**

entitlement to free education. The Ministry of Education confirms this in *Circular 2018/01*.

16. *Circular 2018/01* also explains that pressure must not be placed on parents to make donations. No payments sought from parents of students attending state integrated schools are compulsory except for attendance dues payable to the proprietors and charges for optional goods and services that parents have agreed to purchase. Schools cannot withhold education services, information or privileges from students if their parents choose not to make requested donations or to make only part of a requested donation.

Proprietors

17. Part 33 of the Education Act 1989 provides guidance for proprietors. Part 33 provides that the only payments proprietors of a state integrated school may require parents to **pay as a condition of a child's enrolment at the school are attendance dues (see s 447(1) of the Education Act 1989)**. The amount of attendance dues that proprietors may charge parents is approved by the Minister of Education, and the attendance dues must be applied for specific purposes.
18. Otherwise, proprietors are permitted to conduct fund-raising activities and request voluntary financial contributions from parents in accordance with s 451 of the Education Act 1989. The Appendix to *Circular 2018/01* explains (at pages 1 and 4):

Section 451 makes provision for proprietors to seek contributions (donations) for any purpose. Those contributions must be voluntary. Proprietors must make audited accounts of those contributions available on request to parents and other contributors.

...

Fundraising by Proprietors

Under Part 33 of the Act, Proprietors may fundraise. This means Proprietors of state-integrated schools may request donations. Parents cannot be compelled, however, to pay donations or to become involved in fundraising activities.

Boards of trustees

19. Boards of trustees of a state integrated school may ask parents for donations to assist with funding its costs, including the **cost of delivering the school's curriculum**. In this context the "school's curriculum" is the delivery of the education the board of trustees has agreed with the Ministry of Education to provide to its students and that aligns with the intent of the national curriculum, **the school's special character** and the school **community's values and expectations**.
20. The donations requested may be general donations (that is, donations for an unspecified purpose) or specified donations (that is, donations for a particular purpose such as library books or sports equipment). In *Circular 2018/01*, schools are advised that if a specified donation is requested for an activity **forming part of the delivery of the school's curriculum**, students cannot be excluded from participating in the activity if the parent chooses not to make the contribution or makes only part of the contribution.
21. Sometimes schools may offer for sale consumables, take-home items (such as items made in technology classes), stationery, clothing and activities that are not part of the delivery of the **school's curriculum**. Schools may charge for these optional consumables and activities, but students are not obliged to buy them. Any payment for these consumables or activities is not a donation.

Donation tax credit rules

22. Under the Income Tax Act 2007, a donation tax credit may be available for charitable or other public benefit gifts made by a parent to a state integrated school, if the requirements in ss LD 1 to LD 3 are met. The phrase "charitable or other public benefit gift" is defined in s LD 3(1) to mean a monetary gift of \$5 or more paid to a qualifying organisation (referred to as a donee organisation).
23. Since 2008, the boards of trustees of state integrated schools have been listed as donee organisations in s LD 3(2)(bb). Before 2008, state integrated schools qualified as donee organisations because the advancement of education is a charitable purpose and they otherwise met the requirements of s LD 3.
24. As the boards of trustees of state integrated schools are donee organisations a parent who makes a "gift" of money of \$5 or more to such a board may claim a donation tax credit of one third of the payment amount at the end of the relevant tax year, provided the parent meets the other requirements for claiming a donation tax credit. These requirements include the parent holding a donation tax receipt from the school. Inland Revenue processes all claims for donation tax credits, and, ultimately, it is the Commissioner who decides whether a parent is entitled to a tax credit for a payment made to a state integrated school on the basis that she is satisfied the parent has made a qualifying charitable or other public benefit gift to the school.
25. A donation made to a proprietor of a state integrated school will qualify for a donation tax credit only if the proprietor is a donee organisation. The proprietors of state integrated schools may qualify as donee organisations if they are not-for-profit organisations established for the charitable purpose of advancing education.

Charitable or other public benefit gifts

26. While the phrase "charitable or other public benefit gift" is defined in s LD 3(1), the term "gift" is not defined in the Income Tax Act. In the absence of a statutory definition of "gift, the Commissioner considers "gift" should be given its ordinary meaning. This is consistent with the Court of Appeal's decision in *Mills v Dowdall* [1983] NZLR 154. New Zealand case law on the ordinary meaning of "gift" is limited, so the Commissioner considers it appropriate to take guidance from overseas case law.
27. It is likely the New Zealand courts (like the Canadian courts before them) will follow the approach taken by the Australian courts on the ordinary meaning of "gift". Therefore, the Commissioner considers that, for the purposes of s LD 3(1) and state schools, a "gift" is a payment by a parent to a school of money of \$5 or more:
 - made voluntarily;
 - by way of benefaction; and
 - in return for which the parent receives no material benefit or advantage.
28. For a more general discussion on what is a gift see *QB 16/05 Income tax – donee organisations and gifts*.
29. When deciding whether a parent's payment to a state integrated school is a gift, the true nature of the payment is to be determined by considering the overall arrangements and transactions giving rise to the payment. The name or description given to a payment is not determinative of its nature.

Voluntary payment

30. As noted above, according to *Circular 2018/01* the only compulsory payments parents are required to make to state integrated schools are attendance dues payable to the proprietor and payments where the parents have agreed to purchase optional goods and services from the school. All other payments parents may be asked to make to state integrated schools are voluntary in the sense that the school cannot compel parents to make the payments. Parents can choose whether to make requested voluntary payments in full, in part, or not at all. However, just because these payments are “voluntary” does not mean they are automatically gifts for income tax purposes.
31. **To qualify as a gift, a parent’s payment to** the board of trustees or proprietor must be made voluntarily. For gifting purposes, this means that the payment is made willingly, freely by choice and for benevolent reasons. It also means that a **parent’s** payment must not be made under an arrangement (contractual or otherwise) where the payment is made in return for a material benefit or advantage. Similarly, a payment may not be voluntary where there is some agreement, understanding or expectation that the school or proprietor is to do or provide something in return for the payment. (The link between the payment and the material benefit is discussed from [41]).
32. The absence of a contract or a legal obligation on a parent to contribute to a school does not automatically mean payments are voluntary and, therefore, gifts. There may be circumstances where, even though a parent has no legal obligation to make a payment to a school, the payment still will not be a gift for donation tax credit purposes. For example, **where a student’s participation** in an activity is dependent on the **parent’s** payment.
33. Occasionally, pressure might be applied (by the school or by other parents) on a parent to make a contribution. This pressure can create a sense of moral obligation on the parent to contribute. While a payment may be voluntary even if it is made under a sense of moral obligation, in some circumstances the Commissioner considers pressure might also be evidence that a payment is being made under an arrangement between the school and the parent where the payment is being made in return for a material benefit or advantage. In those circumstances the payment will not be voluntary, so will not be a gift.

Benefaction

34. The requirement that a gift is made voluntarily is connected with the concept of benefaction and the belief that gifts usually proceed from a “detached and disinterested generosity”. Benefaction is the idea that a gift is made to provide an advantage to or to do good for the recipient. Benefaction is an important element of a gift in its ordinary sense; when it is absent there can be no gift (*Leary v FCT* (1980) 32 ALR 221).
35. In the context of contributions made by parents to the board or proprietor of a state integrated school, benefaction is the idea that the **parent’s payment** will provide an advantage to or do good for the school in some way. For example, a voluntary contribution to the proprietor to assist with the cost of building a new music studio for the school will assist the school.

Material benefit in return

36. **A parent’s voluntary payment to** the board of trustees or proprietors of a state integrated school will not be a gift if it is made under an arrangement where the parent expects a material benefit or advantage in return for making the payment. It is sufficient that an

understanding or expectation (clear or implicit) exists between the parent and the school that the payment is being made in return for a material benefit or advantage.

37. In *Case M128* (1990) 12 NZTC 2,825 Judge Barber held that payments by a parent for the cost of a field trip for his son to Mount Aspiring was not a gift because the payment gave the student the right to participate in the trip, and was not for the common good of the school. He similarly found that other school charges were not gifts as they all conferred rights on the student, such as the right to attend camp, the right to use and own stationery and the right to own a manual.
38. The Commissioner considers a **parent's** payment to the board of trustees or proprietor of a state integrated school will **not be a "gift" where:**
 - the parent's **payment is** made in return for a material benefit or advantage; or
 - the school is placed under an obligation to do or provide something in return for the parent making the payment.
39. A material benefit or advantage does not need to come directly from the school and does not need to be received directly by the parent who made the payment (for example, the student may receive the benefit) so long as under the arrangement the material benefit or advantage is in return for the parent making the payment.
40. **A benefit or advantage will be considered "material" if it is of substance and can be valued or owned or both.** (Sometimes these benefits are referred to as pecuniary or proprietary benefits.) A benefit or advantage will not be material if it is intangible and cannot be valued or owned. Non-material benefits or advantages include such things as public acknowledgement (for example, when a **parent's** name is printed in a school newsletter to acknowledge their gift). This is different from a material benefit such as **where a parent's business is advertised in the school's newsletter in return for the parent making the payment.**

Sufficient link between payment and benefit or advantage

41. Importantly, not every material benefit or advantage will necessarily disqualify a voluntary payment to the board of trustees or proprietor of a state integrated school from being a gift. Sometimes a voluntary payment may be a gift even if the parent obtains a material benefit or advantage. This happens when the connection between the payment and the benefit is weak (for example, where a benefit will be obtained by the giver regardless of whether the gift is made). In this example, although a benefit is received, the payment cannot be said to be made **in return for** the benefit, as the benefit will be obtained anyway. The extent and strength of any link between the **parent's payment and a benefit or advantage can be an important factor in determining** whether a payment is a gift.
42. This point is illustrated by two Australian Board of Review decisions concerning payments made to two different ambulance services: *Case D55* 72 ATC 339 and *Case F40* 74 ATC 223. In *Case D55* the board held payments to an ambulance service were gifts, while in *Case F40* the same board considered payments to a different ambulance service were not gifts.
43. In *Case D55* the giver made payroll-giving-type payments to a free ambulance service operating in his home district. The payments were not made under a contract between the giver and the ambulance service. The giver was already entitled to a free service from the ambulance service and there was no evidence of any representation that by making the payments he would receive any material benefit or **quid pro quo** in return.

Given these factors, and even though the giver was entitled to free ambulance services, the board concluded that the payments were gifts. This was because the payments were made voluntarily by the giver, not in return for the ambulance services and the payments were for what the giver considered to be a good cause. A sufficient link did not exist between the benefits to the giver and the payments to prevent the payments from being gifts.

44. In *Case F40* the ambulance service operated under different rules. A person who made a payment to the ambulance centre was entitled to receive a free treatment and transport **service within the area for one year and would be eligible to be elected to the centre's committee and to vote in elections for the committee.** The board held a contract existed between the centre and the payer under which the centre had an obligation to provide free services to the payer in return for the payment. If the payment had not been made, the payer would not have been entitled to free services. A strong dependency existed between the payment and the free services, so the payment was not a gift. Unlike in *Case D55* the payer was not entitled to the benefit of free ambulance services regardless of whether the payment was made.
45. In New Zealand, the statutory right to free education means that students attending **state integrated schools are statutorily entitled to the delivery of the school's curriculum** with special character regardless of whether their parents make donations (in full, in part or not at all) to assist with the cost of the delivery of that curriculum, or even if no parents make donations. The Commissioner considers that, generally, **a student's statutory right to free education with special character will mean a sufficient link does not exist between a parent's voluntary payment to assist a state integrated school and any benefit obtained by the student in return.** This is because the school is obliged to deliver **the school's curriculum** with special character to the student regardless of whether the **parent's** payment is made, so the payment is being made to benefit the school rather than being made in return for the education.
46. *Case J76* (1987) 9 NZTC 1,451 provides some support for the view that a state integrated **school student's statutory right to free education** generally means a sufficient **link does not exist between a parent's voluntary payment to assist the school and any benefit obtained by the student.** *Case J76* concerned a claim by the objector, a parish priest, that payments he made to ensure that disadvantaged children obtained appropriate schooling were gifts and he should be entitled to a rebate under s 56A(2) of the Income Tax Act 1976.
47. Judge Keane found there was no doubt that the payments were made out of charity. But he found no suggestion that the schools would have educated the children if the priest had not made the payments. Therefore, the payments placed the schools under a contractual duty to educate the **children. The priest's payments were not gifts. Judge Keane's decision suggests that if the schools had had an existing obligation to educate the children, then the priest's payments might have been gifts because they would have been made to fund the schools' charitable purposes (that is, the advancement of education).** Instead, in the absence of the schools having any pre-existing obligations, **the payments were held to be made in return for the schools' educational services.**
48. The strength of any link between a payment and a benefit or advantage can usually be determined by considering **all** the circumstances surrounding the gift, including, in the case of state integrated **schools, a student's statutory right to free education** with special character. However, the stronger the connection between **a parent's** payment and any material benefit or advantage obtained in return, the less likely it is that the payment will qualify as a gift. It is also important to remember that gifts ordinarily proceed from an

intention on the part of the giver to provide an advantage to or to do good for the recipient (that is, the school).

Gifting in the state integrated school environment

General donations

49. Boards of trustees of state integrated schools may ask parents for donations to assist generally with its costs, including the cost of delivering the **school's curriculum**. Similarly, proprietors may request contributions from parents to assist with the cost of supporting the delivery of the **school's curriculum** with special character. Where the donations requested by the board of trustees are general donations (that is, donations for an unspecified purpose), the school may issue a donation tax receipt, providing the payments are made voluntarily by the parents to benefit the school. Similarly, where proprietors request contributions to assist with the cost of supporting the delivery of the **school's curriculum** with special character, the Commissioner considers those contributions are gifts. If the proprietor is a donee organisation it may issue a donation tax receipt, providing the payments are made voluntarily by the parents to benefit the school.
50. The benefit parents and students get from making general donations to assist a school with its costs, including the cost of delivering its curriculum with special character will not prevent the parents' payments from being gifts. This is because students attending a state integrated school have a statutory right to free education with special character. Therefore, parents of students attending a state integrated school can expect their children to receive an education with special character regardless of whether the parent makes any general donations. As a result, the Commissioner considers an insufficient link exists between a **parent's** general donation and any benefit obtained, so the **parent's** payment is not made in return for the benefit.

Voluntary payments for specific purposes or projects

51. Sometimes parents are asked to assist schools with funding special projects for a school (for example, to assist with developing a computer lab or for books for the school library). Gifts for specific purposes or projects may not always be a contribution towards **the cost of delivering the school's curriculum**, so they can be different from general school donations in that regard. However, the fact a school seeks donations for a specific **project will not, in itself, prevent the payment being a gift. In the Commissioner's view**, a payment made for a specific purpose or project will be a gift so long as it has the attributes of a gift.
52. Further, the fact the parent or their child may be among those who ultimately benefit from a project may not disqualify the payment from being a gift, if the payment is not made in return for the relevant benefit or advantage.
53. However, it is acknowledged that when schools request contributions for specific purposes rather than as general donations, this could give rise to circumstances where a **parent's payment is sufficiently** linked to a relevant benefit or advantage for the payment to be viewed as made **in return for** the benefit or advantage. The stronger the **connection between a parent's payment and any material benefit or advantage obtained** in return, the more likely it is that the payment will not qualify as a gift. This is particularly so where the school requests a payment for a specific purpose that benefits an individual student or a narrow group of students rather than the school as a whole.
54. Therefore, a gift made for a specific purpose may qualify for a donation tax credit even where **it is not a contribution towards the cost of delivering the school's curriculum**. The

fact the parent or their child may be among those who ultimately benefit from a project may not disqualify the payment from being a gift. However, where the benefit obtained is more direct and more closely linked to the payment, there may be circumstances that mean the payment is not a gift for donation tax credit purposes.

55. Proprietors may request building contributions to assist with the cost of upgrading and maintaining the **school's** buildings and facilities, providing infrastructure and preserving the special heritage of the school. Contributions may be set aside for long-term capital developments. **In the Commissioner's view**, generally, contributions to proprietors to assist with funding building costs will be gifts. It is unlikely a sufficient link exists **between any benefit obtained by the student and the parent's donation**. This is because, usually, school buildings will be enjoyed by the wider school community as a whole and over many generations. This makes it hard to identify a sufficient link between a **parent's payment and any benefit** or advantage obtained by their child.

Voluntary payments for individual subjects or activities

56. Where a parent makes a voluntary contribution towards the **school's** cost of delivering an individual subject or activity **forming part of the school's curriculum with special** character, that payment will be a gift only if it can be clearly established that the student has a right to participate in the subject or activity regardless of whether their parent makes all or part of the requested payment. If a student has a right to participate in the subject or activity regardless of whether their parent makes a requested payment to the **school, then in the Commissioner's view the voluntary payment is made to advantage the** school and is not made in return for participation.

Payments for non-curriculum activities

57. Where a parent makes a voluntary contribution to the board or proprietor of a state integrated school to assist with the cost of delivering an activity or thing that does not **form part of the school's curriculum, that payment will be a gift only if, in fact**, it is voluntary, it is to do good for the school, and a sufficient link does not exist between the payment and the activity or the thing for the payment to be viewed as made in return for the relevant benefit. The statutory right to free education does not apply in those circumstances to weaken the link between the payment and the benefit.
58. Therefore, in many cases payments for **a student's** right to participate in non-curriculum activities will not be gifts. This is because those payments are made **for** the right to participate in the activities, or for the thing.

Examples

59. The following examples explain the application of the donation tax credit rules for state integrated schools. The examples are consistent with the guidance in *Circular 2018/01*. None of the students in the examples are international students.

Example 1: Annual donation to the board of trustees

60. Along with the first newsletter for the school year, Charlotte receives a printed statement from her son's state integrated primary school showing a request for an annual donation of \$350 to assist the board of trustees with its general operating costs for the year. Charlotte **wants to help her son's school but on top of having to buy a new** school uniform she cannot afford the full requested amount so she pays \$200. This is a gift for donation tax credit purposes, so the school issues Charlotte with a donation tax receipt for \$200.
61. **Charlotte's** payment will be a gift for donation tax credit purposes, whether she chooses to pay:
- \$350 as requested; or
 - less than \$350; or
 - more than \$350.

Example 2: Books for the library

62. Thomas has two children, Dermot and Bill, at the local church state integrated primary school. The school is trying to improve literacy throughout the school and has asked families if they would like to donate towards the school purchasing books for the school library. Thomas thinks it is a great idea. He particularly likes the idea that the books will be an enduring benefit for the whole school to enjoy. Thomas happily donates \$50 to the school for books.
63. This is a gift for donation tax credit purposes, so the school can issue Thomas with a donation tax receipt. The fact the gift is for a specific purpose (to purchase books) does not prevent the payment being a gift. Also, the fact Dermot and Bill may benefit from the gift also does not prevent the payment being a gift because a sufficient link does not exist between the payment by Thomas and the benefit his children may obtain by being able to borrow books from the library.

Example 3: School stationery pack

64. At the beginning of the school year, **Julie's daughter Aroha's** school, a state integrated primary school, offers parents the choice of purchasing a stationery pack from the school or taking a stationery list and purchasing the stationery from a local store. Julie chooses to purchase a stationery pack from the school for Aroha.
65. Julie can voluntarily choose to purchase the pack from the school, so the payment for the pack is not a gift to the school. It is a payment made in return for a stationery pack. The school does not issue Julie with a donation tax receipt.

Example 4: NCEA level 2 biology contribution

66. Cameron is in year 12 at his state integrated college and has chosen to study National Certificate of Educational Achievement (NCEA) level 2 biology. The college has requested the following voluntary payments from **Cameron's** parents in respect of his biology subject selection:
- \$20 to assist the college with the cost of the biology field trip to mud flats (attendance is a compulsory part of the course requirements for the internal achievement standard); and
 - \$30 for a biology work book (optional but recommended).
67. Cameron's parents agree to purchase the workbook and make the requested payment to the college to assist with the cost of the field trip.
68. The school administrator issues a donation tax receipt to **Cameron's** parents for \$20. The college provides Cameron with a biology workbook. The voluntary payment towards the **college's** field trip is a gift, but the \$30 payment for the optional workbook is not a gift.
69. The reason the contribution to assist the school with the cost of the field trip is a gift is because a sufficient link does not exist between the payment and the benefit obtained by Cameron. Under the Education Act 1989, Cameron is entitled to free education. The field trip is part of the delivery of the college's curriculum. Cameron can attend even if his parents choose not to make any or part of the requested payment. The field trip will go ahead regardless of whether Cameron's parents or any of his **classmate's parents** make the payment. Payments by the parents are not made in return for the biology field trip.

Example 5: High-performance sports coach

70. Krish is a member of his state integrated **secondary school's premier hockey team** which plays in the Tuesday night inter-college competition. His coach has organised for the team to have a skills training session with a high-performance coach. All team members are expected to attend the session, and parents have been asked to contribute \$80 each towards the cost of the session. Even though the training session does not form part of the delivery of the school's curriculum with special character, the school office has helped by adding the requested amount to each team member's school account.
71. The parents' payments are in return for the training session. This payment is not a gift so the school does not issue a donation tax receipt.

Example 6: Special character contribution

72. **Edward's** state integrated school undertakes to provide students with a Christian education. The school's proprietor (a donee organisation) asks each family for an annual \$100 voluntary contribution towards the cost of chaplaincy services, religious education and pastoral support.
73. Because the voluntary payment relates to the delivery of the school's curriculum with special character, as defined in the school's Deed of Integration, the payment is a gift for donation tax credit purposes, so the proprietor can issue Edward's parents with a donation tax receipt for \$100. This is on the basis that Edward is statutorily entitled to an education with special character regardless of whether his parents choose to make the payment or even if no parents make the payment.

74. The school also asks for a \$25 voluntary contribution towards the cost of providing a religious education workbook. This workbook is compulsory and comprises part of the delivery of the **school's** curriculum. Edward will receive the workbook regardless of whether his parents make the voluntary contribution. The workbook stays at school and is not taken home.
75. The contribution towards the cost of the workbook is a donation, so the school can issue a donation tax receipt. If the workbook had been optional and not part of the delivery of the curriculum, then the school could have charged **Edward's** parents for the cost of the workbook if they agreed to purchase it.

References

Legislative references

Education Act 1989, ss 3, 60A, Part 33, ss 414, 441, 447(1), 451

Income Tax Act 2007, ss LD 1 to LD 3

Income Tax Act 1976, s 56A(2)

Private Schools Conditional Integration Act 1975

Case J76 (1987) 9 NZTC 1,451

Case M128 (1990) 12 NZTC 2,825

Leary v FCT (1980) 32 ALR 221

Mills v Dowdall [1983] NZLR 154 (CA)

Case references

Case D55 72 ATC 339 (Australian Board of Review)

Case F40 74 ATC 223 (Australian Board of Review)

Other references

Ministry of Education, *Circular 2018/01 Payments by parents of students in schools*