

## QUESTION WE'VE BEEN ASKED

QB 19/10

Donations: What is required to establish and maintain a fund under s LD 3(2)(c) of the Income Tax Act 2007?

*A person donating money to a donee organisation can receive tax benefits. A donee organisation includes a fund established and maintained exclusively for providing money for specified purposes within New Zealand. This item considers what is required to establish and maintain such a fund so it qualifies as a "donee organisation".*

*The item complements the Commissioner's statement IS 18/05: Income tax: donee organisations – meaning of wholly or mainly applying funds to specified purposes within New Zealand.*

### Key provision

**Section LD 3(2)(c):** A donee organisation includes a fund established and maintained exclusively for the purpose of providing money for one or more specified purposes within New Zealand. The fund must be established and maintained by a non-profit entity.

### Key terms

**Donee organisation** means an entity or fund described in s LD 3(2) or listed in schedule 32 of the Income Tax Act 2007.

**New Zealand** does not include Niue, the Cook Islands, Tokelau or the Ross Dependency of Antarctica.

**Non-profit entity** is a society, institution, association, organisation or trust that is not carried on for the private pecuniary profit of any individual.

**Required purpose** means the provision of money for a s LD 3(2)(c) fund's **specified purposes** within New Zealand.

**Specified purposes** means charitable, benevolent, philanthropic, or cultural purposes.

### Key tax benefit

If a person makes a gift of money of \$5 or more to a donee organisation, they can receive a refundable tax credit or an income tax deduction.

## Question

What is required to establish and maintain a fund under s LD 3(2)(c) of the Income Tax Act 2007?

## Answer

In the Commissioner's view, a fund under s LD 3(2)(c) requires or involves the following:

- The fund must be established and maintained by a non-profit entity.
- The fund must comprise an actual stock of money or other assets set aside for the purpose of providing money for one or more specified purposes within New Zealand.
- A non-profit entity can set up such a fund by making book entries in its financial accounts but it must ensure the entries are supported by an actual stock of money or other assets and show that the fund has been set up on a "firm or permanent basis" for the required purpose. Best practice suggests a fund is established and maintained through a combination of book entries and a document setting out terms for the establishment, operation and winding up of the fund (either as part of the rules of the non-profit entity or as a stand-alone document).

- Maintaining the fund requires maintaining the actual stock of money or other assets consistent with any book entries, as the fund's actual stock of money or other assets at its establishment may change over time. Best practice suggests movements of the money or other assets in the fund are tracked and specifically reported on in the non-profit entity's financial accounts.
  - The fund's money must be used for, or used to provide money for, the required purpose. Whether money is used for the required purpose is determined by where the specified purposes are advanced (ie, within New Zealand) and not where the fund's money is spent. The fund's money may be used:
    - for purposes other than the required purpose, but only if those other purposes are subordinate or incidental to the required purpose and are not independent purposes;
    - by the non-profit entity to meet or reimburse costs it incurs specifically in administering the fund. This includes a contribution to meet a reasonable share of the non-profit entity's administration costs where such costs include the costs of administering the fund; or
    - by the non-profit entity to meet or reimburse costs it incurs furthering the entity's own purposes, provided these are exclusively specified purposes within New Zealand and are consistent with the purposes of the fund.
  - The fund must be maintained for the required purpose throughout its lifetime, including the disposal of the fund's money or other assets if wound up.
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## Explanation

### Introduction

1. This item is about **donee organisation** status under the Income Tax Act 2007 (the Act). Taxpayers who make gifts of money to an entity or fund with donee organisation status under the Act can generally get tax advantages. Subject to limits, the tax advantage for an individual is a refundable tax credit of one-third of their gifts of \$5 or more to donee organisations each year, under ss LD 1 and LD 2. Companies and Māori authorities making such gifts can get a deduction for the gift under ss DB 41 or DV 12.
2. Donee organisation status can apply to an entity or a fund. For example, a society, institution, association, organisation or trust that is not carried on for the private pecuniary profit of any individual (a **non-profit entity**) can be a donee organisation under s LD 3(2)(a) of the Act if the entity applies its funds "wholly or mainly" to charitable, benevolent, philanthropic or cultural purposes (**specified purposes**) within New Zealand. (For more details on qualifying under s LD 3(2)(a), see Interpretation Statement IS 18/05: *Income tax: donee organisations – meaning of wholly or mainly applying funds to specified purposes within New Zealand* (September 2018) (IS 18/05).)
3. A fund established and maintained by a non-profit entity can also have donee organisation status under s LD 3(2)(c) of the Act, provided the fund is established and maintained exclusively for the purpose of providing money for one or more specified purposes within New Zealand (the **required purpose**). It may be an option where a non-profit entity's situation is such that qualification for donee organisation status under s LD 3(2)(a) may not be possible. A fund held on trust could qualify for donee organisation status under either s LD 3(2)(a) or s LD 3(2)(c) (although, in the latter case, the fund has to be *exclusively* for specified purposes within New Zealand).

4. This item only concerns the donee organisation status of a fund under s LD 3(2)(c) of the Act (the **key provision**). The key provision applies to:
  - (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:
5. The key provision refers to certain purposes within New Zealand set out in another paragraph of the legislation: s LD 3(2)(a). These purposes are “charitable, benevolent, philanthropic, or cultural purposes” (ie, specified purposes).
6. This item considers the following terms used in the key provision:
  - Fund (see [12] to [20])
  - Established (see [21] to [25])
  - Maintained (see [26] to [28])
  - Exclusively (see [29] to [31]).
7. None of these terms are defined in the Act. Nor have their meanings been judicially considered in the context of s LD 3(2) or any corresponding predecessor provisions. Some of the terms have, however, been judicially considered in other contexts and jurisdictions as noted below. The relevance of these authorities must be considered in light of the context and purpose of the key provision.
8. The practical implications of the key terms are considered under the heading “what this means in practice” from [32]. These include:
  - how a non-profit entity can establish a fund that qualifies as a donee organisation under s LD 3(2)(c) (see [32] to [36]);
  - what the non-profit entity must do to maintain such a fund (see [37] to [43]); and
  - whether a donee organisation under s LD 3(2)(a) could establish:
    - a s LD 3(2)(c) fund (see [45] to [48]); or
    - an “overseas fund” (see [49] to [50]).
9. Following that, there is an example of the matters that should be considered when establishing and maintaining a s LD 3(2)(c) fund.
10. This item does not consider the following terms:
  - “charitable, benevolent, philanthropic, or cultural purposes”; and
  - “a society, institution, association, organisation or trust that is not carried on for the private pecuniary profit of an individual”.
11. This item also does not consider whether the establishment of a s LD 3(2)(c) fund is permitted under the governing documents or terms applicable to the relevant entity.

## Analysis

### **Fund**

12. The ordinary meaning of the term “fund” suggested by the *Concise Oxford English Dictionary* (12<sup>th</sup> ed, Oxford University Press, New York, 2011) is “a sum of money saved or made available for a particular purpose”.

13. The United Kingdom Court of Appeal decision in *Allchin v Coulthard* [1942] 2 All ER 39 is a commonly cited authority on the meaning of the term. In *Allchin v Coulthard*, Lord Greene considered “fund” had two meanings (at 44):
- The word “fund” may mean actual cash resources of a particular kind (e.g., money in a drawer or at a bank) or it may be a mere accountancy expression used to describe a particular category which a person uses in making up his accounts.
- ...
- A fund in the second sense is merely an accountancy category. It has a real existence in that sense, but not in the sense that a real payment can be made out of it as distinct from being debited to it.
14. In *Rapid Metal Developments (NZ) Ltd v Rusher* (1987) 2 PRNZ 85, McGechan J in the New Zealand High Court considered (at 93) dictionary definitions of “fund”, including the following definition in the *Shorter Oxford English Dictionary* (vol 1, p 817 (1972)):
3. Sources of supply; a permanent stock that can be drawn upon 4(a) sing. A stock or sum of money, esp. One set aside for a particular purpose (b) Pecuniary resources.
15. McGechan J considered that in *Allchin v Coulthard* Lord Greene’s second meaning of fund as an accountancy category extended the dictionary definition. McGechan J also considered that the applicable meaning, including whether Lord Greene’s extended meaning applied, depended on the context. McGechan J stated (at 93):
- The meaning of “fund” is not necessarily restricted to such dictionary sense of actual stock or sum of money set apart. It can be “a mere accountancy expression used to determine a particular category which a person uses in making up his accounts” *Allchin v Coulthard* [1942] 2 KB 228, 234, per Lord Greene MR.
- ...
- In short, to constitute an [*sic*] “fund” it is not necessary to set aside actual coin. An accountancy device will suffice. ... The word “fund” can vary in meaning according to context.
16. McGechan J considered that, under any meaning, the essential features of a fund are purpose and retention (at 94):
- The underlying feature of a “fund” so exemplified is that it is an aggregation of money or an accounting device directing money to a particular purpose, and that such money is still so held or still so allocated for that purpose. On this common usage approach, the essential features are purpose and retention.
17. Where the fund in question involves an actual stock of money or other assets, the assets of the fund need not be static, and the fund’s composition may be subject to additions, reductions or alterations (see *Case NT 96/409* [1998] AATA 895 at [35] and *Scottish Widows plc v Revenue and Customs Commissioners* [2012] 1 All ER 379 (SC) at [55]). This means, at any time, a fund under s LD 3(2)(c) may comprise not only money received from donations that qualified for tax advantages, but also other money and other assets donated or acquired.
18. An example where the context limits the meaning of the term fund to the first of Lord Greene’s meanings, in preference to his extended meaning of the term, is found in the New South Wales Court of Appeal decision in *Newcastle City Council v Caverstock Group Pty Ltd* [2008] NSWCA 249. Referring to *Allchin v Coulthard* (CA), the court decided that the word “fund” in the relevant context did not include a mere accounting entry (at [23] to [24]). See also, the Australian cases referred to in [23] below.
19. In the Commissioner’s view, the context of s LD 3(2)(c) and its purpose suggest a meaning of “fund” limited to that of the dictionary, in preference to Lord Greene’s extended meaning of the term. That is, a s LD 3(2)(c) fund must be an actual stock of money or other assets set aside for the required purpose. This includes, for example, a fund represented by a credit balance in a bank account.
20. The Commissioner considers the purpose of the legislation is to encourage giving in society and to relieve government of some of the burden of providing the goods and services to society that are delivered by entities and funds with donee organisation

status (see: IS 18/05 at [123] to [135]). This purpose suggests a fund in the sense of actual money or assets, comprising or including gifts of money to the fund, from which a real payment can be made to provide goods and services to society, rather than an accounting entry.

### **Established**

21. The *Concise Oxford English Dictionary* defines the ordinary meaning of “establish” as including to “set up on a firm or permanent basis” or to “initiate or bring about”.
22. Case law in the context of Australian legislation, which allows a deduction for amounts an employer “sets apart as or to a fund” for the benefit of employees, is considered helpful in the current context. This is because setting apart amounts as or to a fund seems analogous to what is required to “establish” a fund.
23. The Australian cases in this context suggest it may be possible to establish a fund by way of accounting entries, without the need for legal separation of the money or other assets of the fund (eg, into a trust). However, actual benefits secured in favour of the employees must exist (or, in the current context, an actual stock of money or other assets comprising the fund must exist). See, for example, *Winchcombe Carson v FCT* (NSW) (1938) 5 ATD 69 (NSWSC) (at 73–74), *Northern Timber and Hardware* (1960) 103 CLR 650 (HCA) (at 657) and *FCT v P Iori and Sons Pty Ltd* 87 ATC 4775 (FCAFC) (at 4789).
24. Case law also suggests that where a fund and its terms are evidenced by a written document (such as a deed of trust), the fund will not be “established” until there is an actual stock of money or other assets, despite the document being executed. See, for example, *Walstern Pty Ltd v FCT* [2003] FCA 1428 (FCA) (at [51]), *JD Mahoney v FCT* (1965) 13 ATD 519 (HCA) (at 525), *Lend Lease Corporation Ltd v FCT* (1990) 21 ATC 402 (FCA) (at 409) and *British Insulated & Helsby Cables v Atherton* [1926] AC 205 (PC) (at 214).
25. The Commissioner also considers that the approach adopted by the Court of Appeal and Supreme Court in *Re Greenpeace New Zealand Incorporated* ([2012] NZCA 533 (CA), [2014] NZSC 105 (SC)) applies in the context of s LD 3(2)(c). In these cases, an organisation was accepted as being capable of changing its rules to become “established” as a charity. This means that an existing fund that may not have been eligible for donee organisation status under s LD 3(2)(c) when first established, could become eligible when it could be shown that the fund was now established exclusively for the required purpose.

### **Maintained**

26. In s LD 3(2)(c), the term “maintained” bears its ordinary meaning suggested by, for example, the *Concise Oxford English Dictionary* definition of “maintain”, which is to “cause or enable (a condition or state of affairs) to continue”. This suggests that a fund established exclusively for the required purpose must continue to exist for that purpose. This would be shown by considering the use or uses to which the fund’s money or other assets are put. Maintaining the fund also suggests maintaining on an ongoing basis the existence of the actual stock of money or other assets, consistent with any book entries recording the fund’s continued existence.
27. Accordingly, the Commissioner considers it appropriate, in the context of whether a s LD 3(2)(c) fund is being maintained for the required purpose, to consider the use or uses made of the fund’s money or other assets. In this context, whether the money is used for the required purpose is determined by where the specified purposes are advanced (ie, within New Zealand) and not where the fund’s money is spent (see: IS 18/05 at [218] – [223]). **New Zealand** in this context does not include Niue, the Cook Islands, Tokelau or the Ross Dependency of Antarctica.



28. Also, in the Commissioner's view, the need to maintain the fund for the required purpose applies at all times throughout the lifetime of the fund and in the event of the fund's cessation. In the latter case, this means that if the fund was wound up, the fund's money and other assets would need to be used for the required purpose. This could include the money and assets being passed to, or used to establish, another fund under s LD 3(2)(c).

### **Exclusively**

29. In s LD 3(2)(c), the term "exclusively" bears its ordinary meaning suggested by, for example, the *Concise Oxford English Dictionary* of "limited to a specific thing or group" or "excluding or not admitting other things".
30. This would mean the required purpose (ie, providing money for one or more specified purposes within New Zealand) must be the sole purpose of the fund.
31. However, case law in the context of whether an organisation is exclusively charitable suggests that purposes other than the required purpose could be ignored if they are subordinate or incidental to the required purpose and are not independent purposes of the fund. See, for example, *The Incorporated Council of Law Reporting for England and Wales v Attorney-General* [1971] 3 All ER 1029 (CA) (at 1047), *CIR v New Zealand Council of Law Reporting* (1981) 5 NZTC 61,053 (CA) (at 61,057) and *Latimer v CIR* (2004) 1 NZTR 14-003 (PC) (at [36]). See also, s 5(3) of the Charities Act 2005 (Meaning of charitable purpose and effect of ancillary non-charitable purpose).

### **What this means in practice**

#### **Establishing a fund**

32. A non-profit entity looking to establish and maintain a fund that qualifies as a donee organisation under the key provision must be able to show that the fund meets the requirements of an actual stock of money or other assets set aside on a firm and permanent basis for the required purpose. The establishment and maintenance of the fund also needs to be within the purposes and powers of the non-profit entity.
33. As a general matter, establishing a fund does not necessarily require written documentation. However, it is unlikely that the Commissioner would be satisfied that a fund meets the requirements of the key provision in the absence of written documentation.
34. The Commissioner also considers that it is preferable for there to be more than just book entries to support the establishment of the fund. The Commissioner's view is that best practice would be to have, in addition to book entries, a founding document setting out terms for the establishment, operation and winding up of the fund, to show that the specific requirements of the key provision are met. This could be in the form of changes to the non-profit entity's own founding or governing documents, or a separate document or documents detailing the terms of the establishment, operation and winding up of the fund. The documents would help satisfy the Commissioner that the fund's establishment and intended operation meet the key provision's requirements (see the example below). This practice may also give greater confidence to the fund's potential donors and help reduce the possibility that they will have to demonstrate their donation is eligible for tax benefits.
35. From 1 April 2020, the Commissioner must be satisfied that the requirements of the key provision are met by the fund for it to be included on the list of donee organisations published by the Commissioner under s 41A of the Tax Administration Act 1994. From that date, the fund's name must be on this list for it to qualify as a donee organisation under the key provision. The onus will be on the entity to ensure that it satisfies the requirements of the key provision in order to obtain and maintain its listing.

36. Also from 1 April 2020, a donee organisation (including a fund under s LD 3(2)(c)), must be registered as a charitable entity under the Charities Act 2005 if, in the opinion of the Commissioner, it is eligible to register. Guidance on the application of these additional requirements applying from 1 April 2020 is to be published separately.

### ***Maintaining a fund***

37. Once established, the fund must be maintained for the required purpose. Adequate record keeping on an ongoing basis must show any changes in the composition of the fund and how the fund's money or other assets have been used for the required purpose. As the money or other assets of the fund at its establishment may change over time, maintaining the fund requires maintaining the actual stock of money or other assets comprising the fund, consistent with book entries showing movements of the fund's money and other assets. A suggested approach would be for the movements in the fund to be specifically reported on in financial accounts of the non-profit entity by showing the balance of the fund brought forward from the prior year, donations and other additions to the fund, expenditure and transfers out of the fund, any other gains or losses and the closing fund balance.
38. The records kept may include accounting entries in the financial accounts of the non-profit entity. However, it may be preferable to keep the fund, and in particular the fund's money, separate from the non-profit entity's other money and assets, for instance, by having a separate bank account for the fund. This would make it easier to show that there is an actual stock of money and show that the purposes of the fund have been maintained over time (by seeing how the money in the account has been used).
39. It would also be preferable for donors to clearly indicate they are intending to make a donation to the fund, to avoid any doubt over whether the donation is to the fund or to the non-profit entity (if the circumstances are such that doubt could arise).
40. As to the uses of the money in the fund, the fund must be used for, or used to provide money for, the required purpose. This would include providing money to the non-profit entity that maintains the fund provided this is exclusively for the advancement of specified purposes within New Zealand and consistent with the fund's purposes.
41. The Commissioner is also aware of the following questions that have been raised about the use of the fund's money:
- Can the non-profit entity use the fund's money to meet or reimburse costs it incurs specifically relating to administering the fund?
  - Can the non-profit entity make a charge against the fund's money to reimburse it for a reasonable share of the non-profit entity's administration costs, where such costs include the costs of administering the fund?
  - Can the fund's money be used to meet any other costs incurred by the non-profit entity?
42. The Commissioner considers that the fund's money can be used to meet or reimburse costs specifically relating to administering the fund. The Commissioner also considers that the fund's money can be used to meet a charge for a share of administration costs incurred by the non-profit entity apportioned to the fund on a reasonable basis where those costs include the costs of administering the fund. In all cases, the Commissioner considers these uses of the fund's money would not jeopardise the fund's donee organisation status. In the Commissioner's view, the use of the fund's money for such administration costs advances, or is subordinate or incidental to advancing, the required purpose.

43. Use of the fund's money to meet any other costs incurred by the non-profit entity may advance the required purpose, but only if the fund's terms permit this and the costs advance purposes that are exclusively specified purposes within New Zealand and consistent with the fund's purposes. Care would be needed if the non-profit entity's purposes included purposes other than specified purposes within New Zealand. This is because using the fund's money to contribute to the non-profit entity's costs could mean the fund's money advances a purpose or purposes *other* than the required purpose. This would be contrary to the key provision's requirement for the fund to be "exclusively" for the required purpose and the donee organisation status of the fund would be jeopardised. For more information on when money is considered to be applied to specified purposes within New Zealand (including apportionment issues) see IS 18/05 at [245] to [280] and examples on 51 – 56.

### Issues concerning s LD 3(2)(a) donee organisations operating a fund

44. The Commissioner is also aware of two issues concerning funds and donee organisations under s LD 3(2)(a). The issues are whether such donee organisations could establish and maintain:
- a fund under s LD 3(2)(c); or
  - a fund specifically for purposes outside of New Zealand (an "overseas fund").

### ***Whether a donee organisation under s LD 3(2)(a) could establish a s LD 3(2)(c) fund***

45. An entity that is a donee organisation under s LD 3(2)(a) could establish a fund under s LD 3(2)(c) if it wished to do so (subject to the terms of its founding or governing documents). The entity would need to weigh the benefits of doing so against the possibility that establishing the fund may detract from the entity's ability to qualify as a donee organisation under s LD 3(2)(a).
46. If the s LD 3(2)(c) fund is not legally separated from the funds of the s LD 3(2)(a) donee organisation, the fund still belongs to that donee organisation. This means the fund would still be counted when determining whether the donee organisation applies its funds "wholly or mainly" to specified purposes within New Zealand, as required by s LD 3(2)(a). In relation to meeting the latter requirement, in IS 18/05 the Commissioner has confirmed that a "safe harbour" of 75% or more will be applied, so that an entity will generally be accepted as meeting the "wholly or mainly" requirement if that safe harbour threshold is met. Creating a s LD 3(2)(c) fund would not alter how the "wholly or mainly" requirement and safe harbour applies to the s LD 3(2)(a) donee organisation.
47. If the s LD 3(2)(c) fund is legally separated from the funds of the s LD 3(2)(a) donee organisation (eg, the fund is a separate trust fund), the fund would not be counted as part of the donee organisation's funds under s LD 3(2)(a). However, this may then make it difficult for the s LD 3(2)(a) donee organisation to meet the "wholly or mainly" requirement and the safe harbour threshold.
48. In some circumstances, it may be beneficial for an entity that is currently a s LD 3(2)(a) donee organisation to establish a fund under s LD 3(2)(c) so that the entity does not need to maintain its current donee organisation status. For example, if the entity has non-donation income, it could then apply all or any of this income to overseas purposes, while accepting donations to a s LD 3(2)(c) fund established and maintained exclusively for specified purposes within New Zealand. Depending on the relative amounts of the income streams, this may allow the entity to apply more funds to overseas purposes than it could otherwise have done if all of its funds were subject to the "wholly or mainly" requirement under s LD 3(2)(a). Another outcome would be that the entity is relieved of the need to maintain its compliance with that requirement.



***Whether a donee organisation under LD 3(2)(a) could establish an “overseas fund”?***

49. The converse situation to that just discussed is where a donee organisation under s LD 3(2)(a) establishes a separate bank account as an “overseas fund”. That is, the s LD 3(2)(a) donee organisation establishes a fund for purposes *other* than the required purpose. As with the previous situation, unless the money comprising the overseas fund is legally separated from the funds of the donee organisation the money in the overseas fund stays that of the donee organisation. As a result, establishing the overseas fund would not alter the extent to which the donee organisation applies funds to specified purposes within New Zealand. In other words, the organisation’s ability to meet the 75% or more “safe harbour” set out in IS 18/05 would be unaltered by setting up the separate overseas fund. This is because the funds in the overseas fund’s bank account would still count as funds belonging to the donee organisation when it comes to working out under s LD 3(2)(a) how much of the organisation’s funds have been applied to specified purposes within New Zealand.
50. If the s LD 3(2)(a) donee organisation’s overseas focus has become such that it can no longer meet the “wholly or mainly” requirement of s LD 3(2)(a), it may wish to consider whether it can seek listing in sch 32 of the Act as an “overseas donee organisation”. For more information on sch 32 listing see: IS 18/05 at [112].

## Example

*The following example is included to help explain the application of the law. It gives an indication of the matters that need to be considered when establishing and maintaining a s LD 3(2)(c) fund.*

XYZ Inc is a charity registered under the Charities Act 2005 whose rules let it pursue its charitable purposes within New Zealand and overseas. The Board of XYZ Inc, which governs the charity and is entitled to exercise the charity's powers, decides to set up a fund to pursue its charitable objects within New Zealand. The Board intends for the fund to have donee organisation status under s LD 3(2)(c) of the Income Tax Act 2007.

The Board resolves to change XYZ Inc's rules (subject to member approval if required under the rules) to provide for the establishment of the fund and set the rules by which the fund is to be maintained.

The changes to the rules cover the following matters:

### *Establishment of the fund*

- A fund (the "NZ Purposes Fund") is to be established and maintained exclusively for providing money for charitable purposes within New Zealand that fall within XYZ Inc's charitable purposes.
- For donors to the NZ Purposes Fund to get tax benefits under the Income Tax Act 2007 and its amendments, the fund must be established and maintained exclusively for charitable purposes within New Zealand.
- From 1 April 2020, the name of the fund must appear on the list published by the Commissioner of Inland Revenue under s 41A of the Tax Administration Act 1994 so donors to the fund can continue to receive tax benefits. The Board must take all reasonable measures to make sure the name of the fund appears and remains on the list.
- The Board will make sure the fund is established and maintained by arranging a separate bank account for the fund (called the "NZ Purpose Fund Account") and making sure that:
  - all donations to the fund, and any other moneys intended for the fund are deposited to the NZ Purposes Fund Account;
  - all moneys in the NZ Purposes Fund Account are applied exclusively to advancing XYZ Inc's charitable purposes within New Zealand; and
  - no moneys in the NZ Purposes Fund Account are transferred or withdrawn and deposited to any other bank accounts used by XYZ Inc, unless such money's are to be used by XYZ Inc to advance charitable purposes within New Zealand consistent with the purposes of the NZ Purposes Fund.

### *Maintaining the fund – record keeping, reporting and issuing of receipts*

- The Board will make sure that adequate records are kept on the setting up and operation of the fund. These will show the date, amount and source of all donations and other moneys deposited to the NZ Purposes Fund Account and the date, amount, nature and purpose of all debits and withdrawals from the NZ Purposes Fund Account. Records will also be kept of the basis for, and calculation of, any contribution charged against the NZ Purposes Fund Account to meet a reasonable share of XYZ Inc's administration costs where such costs include the costs of administering the fund.
- Movements of the money or other assets in the fund are to be tracked and specifically reported on in XYZ Inc's financial accounts.

- The Board will make sure that where gifts of money of \$5 or more are deposited to the NZ Purposes Fund Account, the donors are given a receipt that:
  - has XYZ Inc's official stamp or letterhead;
  - is signed by an authorised person;
  - bears the words "Donation";
  - has the donor's full name;
  - includes the date and amount of the donation;
  - includes the relevant IRD number and/or Charities Registration number (preferably both);
  - has an endorsement that the donation is "Exclusively for XYZ Inc's NZ Purposes Fund Account".
- Where any donation has been received partly for the NZ Purposes Fund and partly for other purposes, the Board will make sure that the donation is deposited accordingly, that separate receipts are issued and that the receipt for the NZ Purposes Fund Account meets the above requirements.
- Where a receipt for the NZ Purposes Fund Account is re-issued as a replacement, it must be clearly marked "copy" or "replacement".

#### *Closure of the fund*

- The Board will make sure that if the NZ Purposes Fund Account is closed, all money in the account at closure will be transferred to another account or accounts established and maintained under the same rules as set out for the NZ Purposes Fund Account.
- Alternatively, if the NZ Purposes Fund Account is closed and its money is not transferred to any other such account, the funds must be applied in their entirety for charitable purposes within New Zealand.

#### *Changes affecting the tax status of the fund*

- The rules concerning the establishment and maintenance of the fund cannot be altered or removed in a manner that would adversely affect the availability of tax benefits to donors under the Income Tax Act 2007. Nor can the operation of the NZ Purposes Fund Account (or any replacement account or accounts) change without the Board obtaining assurance that the alteration, removal or change does not affect the status of the fund under the Income Tax Act 2007 and the availability of tax benefits to donors.
- If there is any change that adversely affects the status of the fund under the Income Tax Act 2007 and the availability of tax benefits to donors, the Board will make sure:
  - the Commissioner of Inland Revenue is notified of the change; and
  - XYZ Inc stops giving receipts to donors to the NZ Purposes Fund Account.

## References

### Subject references

Donee organisation  
established  
exclusively  
fund  
maintained

### Legislative references

Charities Act 2005: s 5(3)  
Income Tax Act 2007: ss DB 41, DV 12, LD 1,  
LD 2, LD 3(2)(a), LD 3(2)(c), sch 32  
Tax Administration Act 1994: s 41A

### Other references

*Concise Oxford English Dictionary* (12<sup>th</sup> ed,  
Oxford University Press, New York, 2011)  
*Shorter Oxford English Dictionary* (vol 1, p 817,  
1972)  
Interpretation Statement IS 18/05: *Income  
Tax: donee organisations – meaning of wholly  
or mainly applying funds to specified  
purposes within New Zealand* (September  
2018)

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