

MAORI TRUST BOARDS: DECLARATION OF TRUST FOR CHARITABLE PURPOSES MADE UNDER SECTION 24B OF THE MAORI TRUST BOARDS ACT 1955 – INCOME TAX CONSEQUENCES

PUBLIC RULING - BR Pub 08/02

Note (not part of ruling): This ruling is essentially the same as Public Ruling BR Pub 01/07 which was published in *Tax Information Bulletin* Vol 13, No 7 (July 2001). BR Pub 01/07 was a reissue of BR Pub 97/8 which was published in *Tax Information Bulletin* Vol 9, No 8 (August 1997). This ruling has been updated to take into account the Charities Act 2005 and also applies the Income Tax Act 2007, which came into force on 1 April 2008. The changes between the provisions in the Income Tax Act 1994 and the Income Tax Act 2007 do not affect the conclusions previously reached. BR Pub 01/07 expired on 31 March 2006. BR Pub 08/02 applies for an indefinite period beginning on the first day of the 2008/09 income year.

This is a public ruling made under section 91D of the Tax Administration Act 1994.

Taxation Law

All legislative references are to the Income Tax Act 2007, unless otherwise stated.

This Ruling applies in respect of sections CW 41 and CW 42.

The Arrangement to which this Ruling applies

The arrangement is the derivation of income by a trust established by a Maori Trust Board pursuant to the execution of a declaration of trust, under section 24B(1) of the Maori Trust Boards Act 1955, declaring that it stands possessed of any of its property upon trust for charitable purposes.

How the Taxation Law applies to the Arrangement

When a Maori Trust Board executes a declaration of trust that it shall stand possessed of property for charitable purposes, under section 24B(1) of the Maori Trust Boards Act 1955, the income of such a trust is exempt from income tax under section CW 41 or section CW 42 if:

- all the purposes specified in the declaration of trust are purposes that are specified in section 24 or section 24A of the Maori Trust Boards Act 1955; and
- the Commissioner is satisfied that, with the exception of the charitable purpose requirement and the public benefit test, all other requirements of charitable status are met; and
- the declaration of trust has been submitted to and approved by the Commissioner, as required by section 24B(3) of the Maori Trust Boards Act 1955; and

- the trust is registered as a charitable entity under the Charities Act 2005, or has started the registration process before 1 July 2008 provided the trust is not notified by the Commissioner of Inland Revenue that the entity is not a tax charity as defined in the Act.

The period for which this Ruling applies

This Ruling will apply for an indefinite period beginning on the first day of the 2008/09 income year.

This Ruling is signed by me on the 31st day of July 2008.

Susan Price

Director, Public Rulings

COMMENTARY ON PUBLIC RULING BR Pub 08/02

This commentary is not a legally binding statement, but is intended to provide assistance in understanding and applying the conclusions reached in Public Ruling BR Pub 08/02 (“the Ruling”).

Overview

Sections CW 41 and CW 42 provide the following exemptions from income tax for income derived by a charitable trust.

- Under section CW 41, income derived by trustees in trust for charitable purposes or by any institution or society established and maintained exclusively for charitable purposes.
- Under section CW 42, income derived from a business carried on by trustees in trust for charitable purposes or by any institution or society established exclusively for charitable purposes.

Neither exemption is available if any person is able to influence the amount of any private pecuniary benefit from the trust. The exemption under section CW 42 applies only to the extent that the charitable purposes are carried out in New Zealand.

Under section 24B of the Maori Trust Boards Act 1955, a Maori Trust Board may declare that it holds property in trust for charitable purposes. The income of the trust can be applied only for those purposes set out in sections 24 and 24A of that Act and which are specified in the declaration of trust. Section 24B deems the income of such a trust to be income derived by trustees in trust for charitable purposes for the purposes of the Income Tax Act.

As of 1 July 2008, the Charities Act 2005 amends sections CW 41 and CW 42 limiting the application of these sections to trusts, societies or institutions that register as charitable entities. An entity, including a trust established by a Maori Trust Board pursuant to section 24B of the Maori Trust Boards Act, must be registered with the Charities Commission to be eligible to receive tax exemptions under section CW 41 or CW 42. Also included are trusts that have started the registration process before 1 July 2008, that intend to complete the process of preparing an application and have not been notified by the Commissioner that they are not a tax charity.

Legislation

Income Tax Act 2007

Sections CW 41 and CW 42 are as follows.

CW 41 Charities: non-business income

Exempt income

- (1) The following are exempt income:
 - (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) In this section and sections CW 42 and CW 43, **tax charity** means,—

(a) a trustee or trustees of a trust, a society, or an institution, registered as a charitable entity under the Charities Act 2005:

(b) a trustee or trustee of a trust, 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 or trustee of a trust, 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.

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—

- (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, to their own benefit or advantage, an amount derived from the business.

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)(b) 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 to their own benefit or advantage 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), 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)(b), 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 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)(b), 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)(b), the amount is trustee income.

Maori Trust Boards Act 1955

Section 24B of the Maori Trust Boards Act states:

24B. Trusts for charitable purposes

(1) Any Board may from time to time, in its discretion, execute under its seal a declaration of trust declaring that it shall stand possessed of any of its property, whether real or personal, upon trust for charitable purposes.

(2) Any income derived by the Board from any property to which the declaration relates shall be applied for such purposes referred to in section 24 or section 24A of this Act as may be specified in the declaration of trust; and, for the purposes of the Income Tax Act 2007, any such income shall be deemed to be income derived by trustees in trust for charitable purposes.

(3) No declaration of trust under this section shall have any force or effect unless it has been approved by the Commissioner of Inland Revenue.

Sections 24 and 24A specify the purposes for which a Maori Trust Board may apply money.

24. Functions of Board

(1) The functions of each Board shall be to administer its assets in accordance with the provisions of this Act for the general benefit of its beneficiaries, and, for that purpose, a Board may, in its discretion, provide money for the benefit or advancement in life of any specific beneficiary, or of any class or classes of beneficiaries.

(2) Without limiting the general provisions hereinbefore contained, it is hereby declared that each Board may, from time to time, subject to the provisions of this Act, apply money towards all or any of the following purposes:

(a) The promotion of health:

- (i) By installing or making grants or loans towards the cost of installing water supplies, sanitation works, and drainage in Maori settlements;
 - (ii) By promoting, carrying out, or subsidising housing schemes, or by making grants or loans for any such schemes; or
 - (iii) By providing, subsidising, or making grants for medical, nursing, or dental services:
- (b) The promotion of social and economic welfare:
- (i) By making grants or loans for the relief of indigence or distress;
 - (ii) By developing, subsidising, or making grants or loans for farming or other industries;
 - (iii) By making grants or loans towards the cost of the construction, establishment, management, maintenance, repair, or improvement of Maori meeting houses, halls, churches, and church halls, villages, maraes, or cemeteries;
 - (iv) By establishing, maintaining, and equipping hostels for the purpose of providing either permanent or temporary accommodation;
 - (v) By making grants or loans towards the establishment of recreational centres for the common use of any Maori community and for such other uses as the Board thinks fit;
 - (vi) By promoting, carrying out, or subsidising roading schemes, power schemes, or such other schemes as the Board thinks fit, or by making grants or loans for any such schemes; or
 - (vii) By purchasing, acquiring, holding, selling, disposing of, or otherwise turning to account shares in any body corporate that has as one of its principal objects the economic or social advancement of Maoris, or the development of land:
- (c) The promotion of education and vocational training:
- (i) By assisting in the establishment of schools, and in the equipping, managing, and conducting of schools; by making grants of money, equipment, or material to schools or other educational or training institutions; or by making grants to funds established or bodies formed for the promotion of the education of Maoris or for assisting Maoris to obtain training or practical experience necessary or desirable for any trade or occupation;
 - (ii) By providing scholarships, exhibitions, bursaries, or other methods of enabling individuals to secure the benefits of education or training, or by making grants to Education Boards or other educational bodies for scholarships, exhibitions, or bursaries;
 - (iii) By providing books, clothing, or other equipment for the holders of scholarships or other individuals, or by making grants for any such purpose; or by making grants generally for the purpose of assisting the parents or guardians of children to provide for their education or training for any employment or occupation;
 - (iv) By providing, maintaining, or contributing towards the cost of residential accommodation for children in relation to their education or training; or

(v) By the promotion of schemes to encourage the practice of Maori arts and crafts, the study of Maori lore and history, and the speaking of the Maori language:

(d) Such other or additional purposes as the Board from time to time determines.

(3) Nothing in this section shall be deemed to preclude any Board from applying money for the general benefit of a group or class of persons, notwithstanding that the group or class of persons includes persons other than beneficiaries; but no grant or loan shall be made to any individual for his exclusive benefit unless he is a beneficiary.

24A. Additional grants and payments by Boards

Any Board may from time to time, in its discretion—

- (a) Make grants to the Maori Education Foundation established by the Maori Education Foundation Act 1961:
- (b) Make payments, not exceeding in the aggregate the sum of \$400 in any financial year, for any purposes not otherwise specifically authorised by this Act,—

whether or not any such grants or payments are of a direct or indirect benefit to the beneficiaries of the Board, or any of them.

Charities Act 2005

Section 13 of the Charities Act provides:

13. Essential requirements

- (1) An entity qualifies for registration as a charitable entity if,—
 - (a) in the case of the trustees of a trust, the trust is of a kind in relation to which an amount of income is derived by the trustees in trust for charitable purposes; and
 - (b) in the case of a society or an institution, the society or institution—
 - (i) is established and maintained exclusively for charitable purposes; and
 - (ii) is not carried on for the private pecuniary profit of any individual; and
 - (c) the entity has a name that complies with section 15; and
 - (d) all of the officers of the entity are qualified to be officers of a charitable entity under section 16.
- (2) The trustees of a trust must be treated as complying with subsection (1)(a) if,—
 - (a) in accordance with a ruling made under Part 5A of the Tax Administration Act 1994,—
 - (i) an amount of income derived by the trustees in trust is treated as having been derived by the trustees in trust for charitable purposes for the purposes of section CW 41 of the Income Tax Act 2007; or
 - (ii) income is treated as having been derived directly or indirectly from a business carried on by, or for, or for the benefit of the trustees in trust for

charitable purposes for the purposes of section CW 42 of the Income Tax Act 2007; or

(b) the income derived by the trustees is deemed to be income derived by trustees in trust for charitable purposes under section 24B of the Maori Trust Boards Act 1955.

(3) A society or an institution must be treated as complying with subsection (1)(b) if, in accordance with a ruling made under Part 5A of the Tax Administration Act 1994, that society or institution is treated as being a society or institution that is established and maintained exclusively for charitable purposes and not carried on for the private pecuniary profit of any individual for the purposes of section CW 41 or section CW 42 of the Income Tax Act 2007.

(4) Subsections (2) and (3) cease to apply in relation to an entity if—

(a) the period for which the ruling applies has expired; or

(b) the ruling has ceased to apply because of section 91G of the Tax Administration Act 1994; or

(c) the ruling has otherwise ceased to apply to the entity.

(5) Despite subsections (1) to (3), an entity does not qualify for registration as a charitable entity if—

(a) the entity is a designated terrorist entity as defined in section 4(1) of the Terrorism Suppression Act 2002; or

(b) the entity has been convicted of any offence under sections 6A to 13E of the Terrorism Suppression Act 2002.

Application of the legislation

Charitable purpose and public benefit tests

For a trust to be considered charitable for the purposes of the Income Tax Act, it must generally meet the common law requirements of charity. That is, a trust must be established for a “charitable purpose”, and must meet what is known as the “public benefit test”.

The term “charitable purpose” was defined in earlier Income Tax Acts as including:

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.

In 2003 the “charitable purpose” definition was extended by section OB 3B, which was inserted by section 76 of the Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 into the Income Tax Act 1994. Section OB 3B became section OB 3A in the Income Tax Act 2004. The Income Tax Act 2007 combined the “charitable purpose” definition with section OB 3A. Section YA 1 defines “charitable purpose” as including:

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 (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 not used for a purpose that is a charitable purpose other than under this paragraph.

The Court of Appeal noted in *Molloy v CIR* (1981) 5 NZTC 61,070; [1981] 1 NZLR 688 that the definition of charitable purpose in the Income Tax Act does not have the effect of enlarging or altering the ordinary, legal connotation of charity. This means that it is necessary to refer to general law to determine whether any specific taxpayer, or activity, is charitable. In *Commissioners of IT v Pemsel* [1891] AC 531, 583, Lord Macnaghten determined that all charitable purposes fall within four classes of charity (known as the “Pemsel Heads”), namely:

- the advancement of religion;
- the relief of poverty;
- the advancement of education; and
- any other matter beneficial to the community.

In addition to falling within one of the Pemsel Heads, with the exception of a trust for the relief of poverty, to be charitable in law a trust must be established for the benefit of the community or a sufficiently important class of the community, rather than for the benefit of private individuals. This requirement, which is in addition to the objects of the charity falling within one of the four heads listed above, is known as the public benefit test.

The public benefit test has been endorsed and further developed by a large body of case law, including *Verge v Somerville* [1924] All ER 121, *Oppenheim v Tobacco Securities Trust Co Ltd* [1951] 1 All ER 31, *Davies v Perpetual Trustee Co (Ltd)* [1959] 2 All ER 128 and *New Zealand Society of Accountants v CIR* [1986] 1 NZLR 148.

It is noted that the amended definition of “charitable purpose” now allows the purpose of a trust to be charitable if the purpose would meet the public benefit requirement apart from the fact that the beneficiaries of the trust are related by blood. The trust, however, must still satisfy other requirements of a charitable trust.

Section 24B of the Maori Trust Boards Act

Section 24B of the Maori Trust Boards Act was inserted into that Act by section 3 of the Maori Trust Boards Amendment Act 1962. Section 24B permits the establishment of charitable trusts by Maori Trust Boards, and provides a concessionary tax treatment of the income of such trusts.

There are two possible interpretations of the meaning of section 24B of the Maori Trust Boards Act:

- The first interpretation is that a declaration can be made under section 24B(1) only if the purposes of the trust are exclusively “charitable” within the

common law meaning of the term. Although section 24B(2) requires that the income of the trust must be applied only for the purposes referred to in section 24 or section 24A, it follows from this approach that, as the trust must be also charitable, the income can be applied only for section 24 or section 24A purposes that are themselves charitable. Such income would, therefore, be exempt under the Income Tax Act.

- The second interpretation is that the income of a section 24B trust can be applied for *any* of the purposes referred to in section 24 or section 24A – whether those purposes are charitable under general law or not. This approach proceeds upon the basis that any income derived by the trust is *deemed* by section 24B(2), to the extent that it is applied for purposes specified in section 24 or section 24A, to be income derived in trust for charitable purposes for the purposes of the Income Tax Act, and therefore, exempt from income tax. This is irrespective of whether the purpose is a purpose that would generally be considered charitable in law.

The background papers relating to the introduction of section 24B, including *Hansard*, indicate that the new section was intended to remedy the concern, at the time, that trusts established by Maori Trust Boards were not considered charitable in terms of both the common law and the income tax legislation.

This view of the law was confirmed in *Arawa Maori Trust Board v Commissioner of Inland Revenue* (1961) 10 MCD 391. In that case Donne SM ruled that a trust established by the Arawa Maori Trust Board was not charitable for two reasons.

- Many of the purposes specified in section 24 of the Maori Trust Boards Act were not charitable purposes under the general law.
- The trust failed the public benefit test because it was for the benefit of a group of people determined by their bloodline or whakapapa. The Court determined that such a group of people did not satisfy the public benefit test.

Analysis

The Commissioner considers that the second interpretation, as set out above, and not the first interpretation, was what Parliament intended.

As has been noted, when section 24B was enacted, it was strongly argued, taking into account the decision in *Arawa*, that a trust that benefits a specific tribe or iwi, or the members of such a tribe or iwi, cannot be charitable at common law because it will not meet the requirements of the public benefit test. Therefore, it would be arguable that any trust established under section 24B could not be charitable, irrespective of the purposes for which it was established, because Maori Trust Boards are acknowledged by the Maori Trust Boards Act to be for the benefit of iwi and hapu determined on the basis of whakapapa.

This would give rise to a situation where, despite the enactment of section 24B, trusts established by Maori Trust Boards would possibly continue to be denied charitable status and the amendment would have no effective operation. Clearly, this cannot have been Parliament's intention.

Taking this into account, and after considering the available background documents, the Minister's statement (as recorded in *Hansard*) and the Commissioner's practice immediately following the enactment of section 24B, the Commissioner considers that the second interpretation is the correct view of the law.

Under the second interpretation, section 24B(1) allows a Maori Trust Board to declare that it holds property in trust for charitable purposes and authorises the Trust Board to settle some of the Trust Board's assets to a charitable trust.

Section 24B(2) has two limbs. The first limb states:

Any income derived by the Board from any property to which the declaration relates shall be applied for such purposes referred to in section 24 or section 24A of this Act as may be specified in the declaration of trust;

The Commissioner considers that this limb limits the purposes for which the income of a charitable trust can be applied to those purposes that are referred to in sections 24 and 24A. The purposes for which the income is to be applied must be specified in the declaration of trust.

As previously noted, many of the purposes referred to in sections 24 and 24A may not be charitable purposes under common law. In addition, any trust established by a Maori Trust Board is allowed to apply its income only for the benefit of the Trust Board's beneficiaries, which are restricted, by the Maori Trust Boards Act, to the members of specified iwi. Such a requirement could mean that a trust would fail the public benefit test applied under the common law (although it is noted that due to the amended definition of "charitable purpose" as discussed above, since 2003 this would no longer be the case for the purposes of the tax Acts).

However, the second limb of section 24B(2) *deems* the income of the trust to be "income derived by trustees in trust for charitable purposes". The second limb states:

and, for the purposes of the Income Tax Act 2007, any such income shall be deemed to be income derived by trustees in trust for charitable purposes.

Therefore, the effect of this section is to deem the income of the trust, even though it is established for purposes that may not be charitable in general law, to be "income derived by trustees in trust for charitable purposes" for the purposes of the Income Tax Act. This means that the requirements of sections CW 41 and CW 42, to the extent that those sections apply only to "income derived by trustees in trust for charitable purposes", have been satisfied. It is, therefore, not necessary for such a trust to satisfy the common law requirements of "charitable purpose" and the "public benefit test".

It should be noted that section 24B(2) of the Maori Trust Boards Act only modifies the requirements of the Income Tax Act. It does not apply for any other purposes.

Therefore, whatever may be the position of such a trust under common law and irrespective of whether the public benefit test would be met in other contexts, the Commissioner is satisfied that under this provision Parliament intended for a trust established under section 24B to be treated as a charitable trust for income tax purposes. The income of such a trust is, therefore, treated as having been derived for charitable purposes and as such is exempt from income tax under section CW 41 or CW 42.

Nevertheless, before that exemption can be applied, the requirements of section 24B(3) must be satisfied. That section requires a declaration of trust under section 24B(1) to be approved by the Commissioner before it will take effect. The Commissioner must still be satisfied that the constituting documents of the trust meet the legal requirements of a charitable trust. (In addition, from 1 July 2008 the trust must be registered with the Charities Commission, or the trust must have started the registration process before 1 July 2008 intending to complete it and have not been notified by the Commissioner that the trust is not a tax charity.)

Approval of charitable trust

As outlined above, section 24B(2) of the Maori Trust Boards Act modifies the general law requirements of a trust established under section 24B(1) to the extent that the trust is not required to satisfy the meaning of “charitable purpose” in section YA 1. However, before such a trust will be approved by the Commissioner under section 24B(3), the trust must still meet the other criteria of a charitable trust.

For example, the Commissioner must also be satisfied that the declaration of trust provides that:

- the charitable activities are restricted to New Zealand (if the trust is claiming exemption under section CW 42);
- the rules of the trust cannot be changed in order to allow the income of the trust to be applied to purposes that are not specified in section 24 or section 24A of the Maori Trust Boards Act, or to otherwise affect the charitable nature of the trust;
- no person is able to derive a personal pecuniary profit from the trust;
- trustees are unable to materially influence their remuneration;
- professional services provided by trustees to the trust are provided at commercial rates and that conflicts of interest are avoided; and
- upon winding up, any remaining trust assets must be applied for charitable purposes.

This is not an exhaustive list of all matters that the Commissioner will consider when deciding whether a trust is charitable. (In addition, some of these requirements may be satisfied by compliance with the terms of the Maori Trust Boards Act.)

When a section 24B trust has previously obtained the Commissioner’s approval, as required by section 24B(3) of the Maori Trust Boards Act, that approval will continue to apply and the trust is not required to apply annually for assessment of the liability to income tax. The approval given by the Commissioner under section 24B(3) will not be revoked, however, the trust must continue to apply its income for the purposes specified in the declaration in order to rely on the exemption.

Charities Act 2005

The Charities Act established the Charities Commission to set up and manage the Charities Register. The Charities Commission began receiving registrations from 1 February 2007. While registration is voluntary and non-registration does not mean that the entity is not charitable, there will be benefits to registration. One of the benefits of the registration process is that the charity will be entitled to exemptions from income tax under section CW 41 or CW 42. However, once registered, charities will still need to assess for themselves whether they continue to meet the requirements of the tax legislation to obtain a tax exemption. For further information see Operational Statement OS 06/02 *Interaction of tax and charities rules, covering tax exemption and donee status*.

The Charities Act amended sections CW 41 and CW 42 on 1 July 2008 so that only those charities that are registered or have begun the registration process with the Charities Commission are eligible for tax exempt status. For any entity wanting to continue receiving its current tax exemption or to begin to receive the tax benefits after 1 July 2008, that entity must have registered or have started the registration process with the Charities Commission by that date intending to complete it and have not been notified by the Commissioner that it is not a tax charity. This includes a trust established by a Maori Trust Board under section 24B of the Maori Trust Boards Act.

An entity will qualify for registration as a charitable entity if the essential requirements of section 13(1) of the Charities Act are met.

- The entity is established and maintained exclusively for charitable purposes.
- The entity is not for the private profit of any individual or group.
- The entity has a name that complies with the Charities Act.
- All the officers of the entity are qualified to be officers.

As discussed above, no declaration of trust shall have any force or effect unless it has been approved by the Commissioner under section 24B(3) of the Maori Trust Boards Act. Section 13(2)(b) of the Charities Act will treat such trusts as complying with the section 13(1)(a) requirement. Provided the trust can satisfy the other registration criteria, it will be registered with the Charities Commission. The trust will then be eligible for tax exemption under section CW 41 or section CW 42. However, continued tax exemption in respect of the income of the trust is dependent on the trust continuing to satisfy the other requirements of the Charities Act, including filing annual returns.

Where a Maori Trust Board has been dissolved

Some Maori Trust Boards have been dissolved (for example in the previous ruling it was mentioned that the Ngai Tahu Trust Board was dissolved by the Te Runanga o Ngai Tahu Act 1996). It was noted in the previous ruling that:

notwithstanding the fact that the Trust Board has been dissolved and no longer exists, section 30(1)(c) provides that any income derived from property that was subject to the original declaration, to the extent that it is applied for the purposes specified in the declaration, shall be treated for tax purposes as being derived in trust for charitable purposes. This means that the income of the trust created under section 24B of the Maori Trust Boards Act will continue to be exempt for tax purposes.

Since the public ruling was last issued other runanga have been created. As indicated, this ruling relates only to trusts established under section 24B of the Maori Trust Boards Act. However, where a section 24B trust ceases to exist, the treatment of the income needs to be considered in the context of the Charities Act. Therefore, like any charitable entity, a runanga will need to register with the Charities Commission (or have started the registration process before 1 July 2008 intending to complete it and have not been notified it is not a tax charity) to continue to receive tax exemption status.

Period of Ruling

This ruling commences on the first day of the 2008/09 income year. The previous ruling expired on 31 March 2006. Given the terms of section 91C of the Tax Administration Act 1994, it is not possible to issue a ruling in respect of the Income Tax Act 2004 for the period beginning 1 April 2006 to the end of the 2007/08 income year. However, the Commissioner is of the view that the same principles and conclusions as set out in this ruling apply in respect of any income derived during this period from any property the subject of a declaration of trust under section 24B of the Maori Trust Boards Act.

Examples

Example 1

A Maori Trust Board executes a declaration of trust under section 24B of the Maori Trust Boards Act. The declaration provides that the trust will hold certain assets upon trust for charitable purposes. The declaration specifies that the income of the trust will be applied by making grants to reimburse any dental costs incurred by any of the beneficiaries, being members of the iwi.

The declaration is submitted to the Commissioner who is satisfied that the purpose for which the trust's income will be applied is a purpose specified in section 24 of the Maori Trust Boards Act (section 24(2)(a)(iii): "The promotion of health ... by providing, subsidising, or making grants for medical, nursing, or dental services") and that there are adequate provisions in the trust deed to prevent the trust's income and assets from being used for other purposes.

The Commissioner will, therefore, approve the declaration under section 24B(3). The income of the trust will be eligible for exemption from income tax under section CW 41 or CW 42 if the trust is also registered with the Charities Commission. Provided the Maori Trust Board continues to apply its income for the purposes specified in its declaration of trust, being in compliance with the requirements in section 24 and section 24A of the Maori Trust Boards Act, the Income Tax Act and the Charities Act, the trust will be eligible to obtain a tax exemption under section CW 41 or CW 42.

Example 2

A Maori Trust Board makes a declaration under section 24B for the same purpose as described in Example 1. The Commissioner is satisfied that the purpose for which the trust's income is to be applied is a purpose that is specified in either section 24 or section 24A of the Maori Trust Boards Act.

However, it is found that the declaration does not prohibit the trustees from materially influencing the amount of remuneration that they receive. The declaration also does not provide for the disbursement of assets, upon winding up, to other charitable entities or purposes.

The Commissioner will, therefore, decline approval until such time as the declaration is amended in such a manner to satisfy the Commissioner's requirements.