Inland Revenue
Te Tari Taake

TECHNICAL DECISION SUMMARY > PRIVATE RULING

WHAKARĀPOPOTO WHAKATAU HANGARAU > WHAKATAUNGA TŪMATAITI

Transfer of property between charitable trusts

Decision date | Rā o te Whakatau: 12 November 2024

Issue date | Rā Tuku: 7 August 2025

TDS 25/20

Subjects | Kaupapa

This item summarises a private ruling about whether the market value of properties and chattels transferred between charitable trusts is taxable when the transferors deregister as charitable entities.

Taxation laws | Ture tāke

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

Summary of facts | Whakarāpopoto o Meka

1. Charity B was set up as a charitable trust under the Charitable Trusts Act 1957.
2. Charity B was to be registered with Charities Services as a charitable entity under the Charities Act 2005 and qualified as a tax charity under s CW 41(5).
3. Charity B was set up to consolidate the ownership of facilities and related chattels (the Facilities) that resided in several charitable trusts incorporated under the Charitable Trusts Act 1957 and registered with Charities Services (the Large Charities).
4. The purpose of consolidating the Facilities' ownership into Charity B was to simplify administration and accounting for the Large Charities and several unincorporated associations (UAs) that were also registered as charitable entities under the Charities Act 2005 (the Small Charities). This simplification would be achieved by eliminating the administration and accounting required for the UAs and concentrating that work in a single entity with the appropriate skilled resource available.
5. The Large Charities were to transfer all Facilities to Charity B. Following the transfer, the Large Charities would adopt new rules to operate as unincorporated associations (New UAs). After the transfer, the remaining net assets (including funds) the Large Charities held would be donated to the New UAs.
6. Both the Large Charities and Small Charities would be removed from the Charities Register.

Issues | Take

7. The main issues considered in the ruling were whether:

- the exception in s HR 12(3)(a) applied so that the individual Large Charities did not derive income under s HR 12, for the purposes of s CV 17, on the transfer of the Facilities to Charity B;
- donations, bequests or gifts received by UAs not registered as charitable entities under the Charities Act 2005 were taxable income; and
- the donation of funds held by the Large Charities to their members organised as New UAs for use in their charitable activities in accordance with their rules gave rise to taxable income for the donee or donor.

Decisions | Whakatau

8. The Tax Counsel Office concluded the following:

- The Large Charites do not have income under s HR 12(3) for:
  - the Facilities, if they were transferred to Charity B before or within 1 year of the Large Charity's end date; and
  - their remaining net assets (including funds), if the:
    - remaining assets were transferred to the New UAs before the Large Charity's end date; or
    - Facilities were transferred to Charity B before the Large Charity's end date with the effect that the Large Charity's net assets on the end date were $10,000 or less.
- Donations, bequests or gifts the UAs received are not income under s CA 1(2), s CB 1, s CB 3 or s CO 1 derived by the:
  - Small Charities once they have been removed from the register of charitable entities under the Charities Act 2005; and
  - New UAs.
- The funds the Large Charities transferred to the New UAs for use in the New UAs' charitable activities in accordance with their rules did not give rise to income for the New UAs under s CA 1(2), s CB 1 or s CB 3.

Reasons for decisions | Pūnga o ngā whakatau

Issue 1 | Take tuatahi: Whether the exception in s HR 12(3)(a) applies

9. Broadly, s HR 12 applies in certain circumstances to a deregistered charity that derived exempt income under s CW 41 or s CW 42 (which relate to charities) while it was registered and held net assets with a market value of more than $10,000 on its end date as defined in s HR 12(7).

10. Where s HR 12 applies, the charity (on the facts of the Arrangement) is deemed to have derived an amount of income on the day that is 1 year after the date it was deregistered from the charities register. The amount of deemed income is equal to the market value of the net assets the charity held on the day it was deregistered from the charities register, ignoring the assets disposed of or transferred with any rights and obligations to an applicable tax charity within 1 year of being deregistered.

11. The Tax Counsel Office concluded that a Large Charity has income under s HR 12(3) only if it has:

- assets on its end date that are valued (net of liabilities) at more than $10,000; and
- not disposed of or transferred those assets within 1 year of its end date to an applicable tax charity or a New Zealand–resident person, other than a natural person, that derived exempt income under any of ss CW 38 to CW 52, CW 55BA, and CW 64.

12. For this purpose:

- Charity B was a tax charity for the purposes of s HR 12(3)(a)(i);
- the donation of assets (including funds) by the Large Charites to the New UAs was a valid transfer of assets to the New UAs; and
- although the New UAs' activities would continue to be charitable in nature, they were not tax charities for the purposes of s HR 12(3)(a)(i) and neither are they persons that derive the kinds of exempt income to which s HR 12(3)(a)(ii) applies.

13. The proposed steps in the Arrangement aimed to result in the Large Charities transferring the Facilities to Charity B and the remaining assets (including the funds) to the New UAs, before their end date. If this eventuated, the Large Charities would not have the Facilities or remaining assets on their end date. Therefore, the Large Charities would have no income under s HR 12(3) for the Facilities or remaining assets. This is

because the safe harbour in s HR 12(2)(c) applies (so that s HR 12 does not apply) because the Large Charity's net assets on the end date are $10,000 or less.

14. Alternatively, if it turned out that a Large Charity with net assets of more than $10,000 on its end date had been removed from the Charities Register before it had transferred the Facilities (to Charity B) or remaining assets (including the funds) to the New UAs, that Large Charity would, under s HR 12(3):

- not have income for the Facilities, if the Facilities were transferred to the Charity B within 1 year of the end date (in which case the Facilities could be ignored in formulating the income under s HR 12(3) in accordance with s HR 12(3)(a)(i)); and
- have income for the remaining assets net of liabilities, as it would not be able to ignore the remaining assets when formulating that income as the New UAs would not be tax charities for the purpose of s HR 12(3)(a)(i) or persons to which s HR 12(3)(a)(ii) would apply.

Issue 2 | Take tuarua: Whether donations, bequests or gifts UAs receive are taxable income

Income under ordinary concepts

15. The Tax Counsel Office concluded that gifts received by the UAs as unregistered charities does not constitute income under s CA 1(2), even if they might expect to receive those gifts regularly, recurrently or periodically.

16. This is because gifts are generally a non-taxable capital receipt unless a specific provision in part C makes them taxable (for example, s CB 1 might apply if the UAs were considered to be carrying on a business that generated the gift). Even so, gifts the UAs received, although not as of right, may still be their income under ordinary concepts if the UAs expected to receive them and it was reasonable to presume they depended on the gifts for their operating costs. However, the Tax Counsel Office considered this to be unlikely. In addition, the UAs were unlikely to depend on those receipts because the UAs could adjust the intensity with which they supported their charitable objects and, therefore, their expenses in line with the amount of gifts received.

17. Also, the gifts were arguably insufficiently connected to the UAs' charitable activities so they could not be considered to be gains from carrying on an organised activity. Those gifts are given voluntarily, non-contractual and likely to be non-refundable. Also, although gifts might be expected, they are given freely and without compulsion, and the UAs do not solicit them.

18. Additionally, donors do not derive a material benefit from providing the gifts; instead, their benefit is incidental, being the satisfaction derived from supporting the UAs' charitable objects. This suggests donors do not provide gifts in response to a service they receive from the UAs.

19. Finally, any benefit a donor receives from participating in the charitable activities the UA provides is received by the donor as a member of the UA and not personally or directly as an individual.

20. Overall, the Tax Counsel Office concluded that the UAs receive those gifts as a capital receipt and not income.

Amounts derived from business and profit-making undertaking or scheme

21. The Tax Counsel Office considered the UAs do not have income under s CB 1 because they do not carry on a business with regard to their charitable activities.

22. Whether a person is in business involves a two-fold inquiry, first into the nature of the activities carried on and second into the person's intention in carrying on those activities. If the person is to be in business, the person must carry on their activities with the intention to make a pecuniary profit.

23. The Tax Counsel Office acknowledged that the UAs arguably carry on activities that are supported by gifts with the dual intention of making a surplus and pursuing charitable objects. However, the UAs do not depend on the gifts to meet their operating costs. The office considered, based on the case law it reviewed, that where an activity is undertaken with different intentions (equating purpose with intention), the courts will look to the dominant intention. The office considered that the dominant intention was not to make a surplus on gifts received over expenditure. The UAs' activities were more significantly carried on in pursuit of their charitable objects but not with the dominant intention to make a profit. The office accepted that voluntary and unsolicited donations would be received and accepted by the UAs and fully reinvested in pursuit of their charitable objects where they would be used to meet the costs of providing the charitable activities so the UAs could continue in existence. However, that was not the reason for determining s CB 1 did not apply. The office considered the UAs did not have a dominant profit-making purpose or intention.

24. The gifts would also be capital receipts for the purpose of the exclusion in s CB 1(2).

25. Therefore, the Tax Counsel Office concluded the charitable activities the UAs carried on did not amount to a business.

26. This conclusion that the UAs did not have a dominant intention or purpose of making a pecuniary profit from their charitable activities also disposed of the question under s CB 3. There was no dominant profit-making intention or purpose in carrying on their activities.

27. In addition, the gifts were arguably unconnected to the charitable activities to be carried on by the UAs.

Income from voluntary activities

28. Under s CO 1, an amount a person derives in undertaking a voluntary activity is income of the person. Section CO 1 is overridden by s CW 62B.

29. The UAs are "persons", and the gifts received are an "amount". Their pursuit of their charitable objects is a "voluntary activity". However, the Tax Counsel Office concluded the gifts are not derived as a result of undertaking the UAs' charitable activities.

30. This conclusion is because the gifts the UAs receive are freely given (that is, donors make them voluntarily). Also, the gifting is motivated by the satisfaction the donor gains from supporting a UA's charitable objects. Those gifts are not received as a result of some act, exertion or commitment the UA makes in undertaking its charitable activities, which it continues to undertake as much as possible whether a person makes a gift or not.

31. Consequently, the causal connection required by s CO 1 between the derivation of the gifts by the UAs and their undertaking of their voluntary (charitable) activities is not satisfied.

32. Therefore, s CO 1 does not apply to include the gifts received by the UAs in their income after they have been removed from the Charities Register.

Issue 3 | Take tuatoru: Donation of funds held by the Large Charities to members organised as New UAs

33. The Tax Counsel Office concluded that the New UAs did not have income for their receipt of the funds under s CA 1(2). This conclusion was because the:

- transfer of the funds by the deregistered Large Charities is charitable (and non-contractual) and a true one-off payment;
- New UAs are carrying on the same charitable activities as the deregistered Large Charites, and the deregistered Large Charities donate the funds to the New UAs as an accumulated capital fund used exclusively for that purpose; and

- New UAs do not depend on the funds in the sense that they can curtail their charitable activities and related expenses to match the amount of funding they have.

34. Additionally, the New UAs do not have income under s CB 1 or s CB 3. This is because each New UA, according to its rules, does not have a dominant intention or purpose to make a profit (as required by ss CB 1 and CB 3) from its exclusively charitable activities.