

Lunchtime

WEBINAR SERIES

CHARITIES
SERVICES
Nga Ratonga Kaupapa Atawhai



CHARITIES AND NOT-FOR-PROFITS WHO CARRY OUT SOME OF THEIR PURPOSES OVERSEAS

WEBINAR 1: KNOW YOUR TAX OBLIGATIONS

The webinar will begin shortly.

- Make sure your computer's sound (volume) is un-muted ( icon)
- We recommend using headphones for better sound quality

LOGISTICS

Can you hear us?

- Make sure your computer's sound is un-muted. **Ignore** the  icon.
- Echoing or distortion? Try using headphones
- Sound cutting out intermittently? Check your internet connection and wait and see if it comes back
- Webinar is recorded – you will receive a link to the recording after the webinar
- Listen-only webinar. Click  icon to type questions. If your question doesn't get answered during the webinar, email us at charities.queries@ird.govt.nz
- Download the handout (click on  icon on right panel of screen)

INTRODUCTION



WELCOME

Four Inland Revenue staff will present the webinar on tax obligations today – Tania, Brandon, Annette and Stewart.

Here are the topics we will cover:

1. Recent public guidance for donee organisations
2. Overseas donee status
3. Charities, business income & purposes not limited to New Zealand
4. Student loan concessions for charities

DISCLAIMER

The content of this presentation is a guide only and cannot be relied upon or substituted for professional advice.

Nothing in this presentation is binding on Inland Revenue.

TOPIC 1: RECENT PUBLIC GUIDANCE FOR DONEE ORGANISATIONS

Tania Sauvao (Manager, Public Rulings)

IS 18/05 WHOLLY OR MAINLY APPLYING FUNDS⁶

- A donee organisation includes “a society, institution, association, organisation, or trust that is not carried on for the private pecuniary profit of an individual, and whose funds are applied wholly or mainly to charitable, benevolent, philanthropic, or cultural purposes within New Zealand”
- Section LD 3(2)(a) of the Income Tax Act 2007

MEANING OF MAIN TERMS

- “Funds” means money that is readily available (cash and cash equivalents)
- “Applied” means spent, invested, or set aside for future spending
- An affirmative act needed to apply the funds
- Funds applied must have a sufficient connection to specified purposes
- New Zealand means the islands of New Zealand

ADMINISTRATIVE SAFE HARBOUR

- “Wholly or mainly” means something considerably more than 50%.
- It is not clear exactly what this equates to in numerical terms.
- Inland Revenue will administer the provision by setting a safe harbour of “75% or more”.

CALCULATION METHOD

1. Use the Statement of Cash Flows or Statement of Receipts and Payments in the organisation's Financial Statements/Performance Report to find the organisation's "total funds".
2. Find the amount of the organisation's "funds applied to specified purposes within New Zealand".
3. Find the organisation's safe harbour percentage (step 2 amount \div step 1 amount).

STEP 2

Decide whether the money was spent, invested or set aside:

1. Entirely for specified purposes within NZ
2. Entirely for purposes other than specified purposes within NZ
3. For a combination of specified purposes within NZ and other purposes (apportion on a reasonable basis)

FLEXIBILITY PERMITTED

	Year -2 \$	Year -1 \$	Current year \$
Total funds	10,000.00	5,000.00	5,000.00
Funds applied to specified purposes within New Zealand	9,000.00	4,000.00	3,000.00
Percentage of total funds applied to specified purposes within New Zealand (safe harbour percentage)	90%	80%	60%
Cumulative total funds	10,000.00	15,000.00	20,000.00
Cumulative funds applied to specified purposes within New Zealand	9,000.00	13,000.00	16,000.00
Cumulative percentage of total funds applied to specified purposes within New Zealand (cumulative safe harbour percentage)	90%	87%	80%

QB 19/10 – ESTABLISHING & MAINTAINING A FUND

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- A donee organisation includes “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”
- Section LD 3(2)(c) of the Income Tax Act 2007

MEANING OF FUND AND ESTABLISHED

Fund:

- Purpose of provision suggests a fund in the sense of an actual stock of money or other assets set aside for the required purpose

Established:

- Best practice suggests a combination of book entries and a founding document setting out the terms for the establishment, operation and winding up of the fund

MEANING OF MAINTAINED AND EXCLUSIVELY¹⁴

- Maintained:
 - Maintaining the actual stock of money or other assets consistent with any book entries
 - Best practice suggests movements in the fund are specifically reported on
 - Fund's money used for the required purpose throughout its lifetime
- Exclusively:
 - Subordinate or incidental purposes can be ignored
- Example:
 - Matters that need to be considered

TOPIC 2: OVERSEAS DONEE STATUS

Brandon Sloan (Principal Policy Advisor)
Policy and Strategy

DISCLAIMER

- The material within is for illustrative purposes only and does not provide any assurance about the outcomes for charities seeking overseas donee status
- Decision-making power regarding overseas donee status is not an administrative matter for Inland Revenue
- Inland Revenue merely supports Ministerial decision-making on overseas donee status

WHAT IS OVERSEAS DONEE STATUS?

- A request by a charity for a law change
- Approval for overseas donee status is a policy decision for Ministers and Cabinet
- Legislation is used to implement the policy decision
- Approval gives the charity's donors an entitlement to tax benefits
 - Monetary donations to entitle individual taxpayers to a tax credit of $33\frac{1}{3}\%$ of the amount donated, capped to the level of the donor's taxable income
 - Companies and Māori authorities are eligible for a deduction for monetary donations, capped to the level of their net income

OVERSEAS DONEE STATUS IS NOT...

- A tax exemption
- Business income applied by charities to purposes outside New Zealand is subject to income tax

WHY DOES OVERSEAS DONEE STATUS EXIST?

- Tax laws limit tax benefits for donations to charities with purposes in New Zealand
- Overseas donee status is an exception for charities with specific humanitarian aid purposes that are carried on outside New Zealand

WHO CAN REQUEST OVERSEAS DONEE STATUS?

- A charity that is registered under the Charities Act 2005 (preferred)
- A charity that is resident in New Zealand
- A charity whose purposes are directed towards any of the following activities outside New Zealand:
 - The relief of poverty, hunger, sickness or the ravages of war or natural disaster
 - The economy of [developing countries](#)
 - Raising the educational standards of a developing country

POLICY INTENT OF OVERSEAS DONEE STATUS

- An extension of New Zealand's overseas aid programme and is delivered through the tax system in the form of tax benefits for donors
- Narrower scope than "charitable purpose" as overseas donee status has a strong humanitarian aid focus (for example, charities with religious purposes are excluded from consideration)
- It is a spending decision by Ministers

REQUESTING OVERSEAS DONEE STATUS

- Purposes of the registered charity should align with humanitarian purposes (see [Criteria](#))
- Officers and trustees of the charity should be familiar with the Government's expectations of charities seeking overseas donee status (see [Guidelines](#))
- Provide information to policywebmaster@ird.govt.nz (see [IR464](#))

PROCESS

- When a request is received Inland Revenue:
 - Reviews the information provided by the charity in support of its request
 - Reviews the rules of the charity
 - Reviews the charity's financial statements
 - Contacts the charity's representative (usually within a week of initial contact with the policywebmaster)

WHAT YOU CAN EXPECT

- Inland Revenue will typically make enquiries about
 - The charity's goals and long-term vision
 - The charity's in-country partners
 - The charity's governance, including internal policies and procedures (anti-money laundering, child protection, memoranda of understanding with charity's key stakeholders)
 - The charity's successes and lessons learnt
 - The charity's sources of funding and financial strength

WHAT ELSE CAN YOU EXPECT

- If Inland Revenue identifies any concerns or issues with the charity or its officers or trustees these communicated to the relevant parties directly
- Trustees/officers will be asked to give consent for Inland Revenue to carry out a Police vet
- The process is lengthy (multi-year including Parliament's law making process for charities that receive overseas donee status)

WHY IS THE PROCESS SO INVOLVED?

- Risk management
- Spending decision by Ministers
- Ministers want assurance that the charity is credible, transparent and accountable
- Ensure that tax relief afforded by overseas donee status is appropriately targeted and the potential for misuse of public monies is minimised

TOPIC 3: CHARITIES, BUSINESS INCOME & PURPOSES NOT LIMITED TO NEW ZEALAND

Annette Stenberg (Customer Compliance Specialist)

INCOME TAX EXEMPTION FOR CHARITIES - GENERAL CRITERIA

1. Registration with Charities Services - “Tax charity”
2. Annual income test – self assessed

INCOME TYPE?

Income or not (e.g. donations, assets not used in a business activity)?

YES

NO



Not taxable in any case



a) Non-business income, or

b) Business income

NON-BUSINESS (PASSIVE) INCOME TAX EXEMPTION *

1. Income Type – commonly:

- i) Interest,
- ii) Dividends
- iii) Rent
- iv) Royalties

2. Exempt for both New Zealand or overseas charitable purposes

*Section CW 41 Income Tax Act 2007

BUSINESS INCOME TAX EXEMPTION*

1. What is Business income? General tax tests apply.
 - a) Nature of the activities, and
 - b) Intention of the charity

2. Charities' Business Income Exemption:
 - a) Business Income,
 - b) **Applied to charitable purposes in New Zealand,**
 - c) Control /no private benefit test.

3. 1 April 2020 change:

Business income derived **indirectly** from a business for a tax charity – entity carrying out business itself must be a registered charity.

*Section CW 42 Income Tax Act 2007

BUSINESS INCOME TAX EXEMPTION – OVERSEAS CHARITABLE PURPOSES*

1. 100% overseas charitable purposes – no business income tax exemption
2. Mixed NZ and overseas charitable purposes – partial exemption: **reasonable apportionment** of income between those purposes.
3. **Reasonable apportionment** - practical issues to consider:
 - a) Where? Charitable purpose versus where money spent
 - b) Advisable funds used in New Zealand and overseas are separately recorded within the accounting records
 - c) Allocation of expenses between exempt and taxable income e.g. overhead expenses – consider cost drivers.

*Section CW 42(4) Income Tax Act 2007

TOPIC 4: STUDENT LOAN CONCESSION FOR CHARITIES

Stewart Donaldson (Principal Policy Advisor)

WHAT IS THE CONCESSION?

- From 2006, a charity's volunteers that are student loans borrowers and who volunteer overseas (or work overseas for a token payment) can avoid being charged interest on their student loans for up to 24 months.
- The charity does not have to be registered under the Charities Act 2005.
- This concession only applies to certain overseas work.
- A charity that is established for religious purposes may still qualify.

HOW DOES YOUR CHARITY QUALIFY?

- Your charity can apply to Inland Revenue to be a listed charity under [section 27A of the Student Loan Scheme Act 2011](#).
- Inland Revenue has published a list of approved charities on its website. Today 89 charities are on that list.
- The volunteer must then ask the charitable organisation they are volunteering for to write a letter to us on their letterhead. Further guidance is on the IR website.

HOW DOES YOUR CHARITY QUALIFY?

When considering if a charity may be listed, the Commissioner looks at the following when approving a non-resident tax charity:

- the trust deed, constitution or other governing documents (provide these with any application),
- the standing and credibility as a charitable organisation,
- if it recognised as a charitable organisation with an overseas tax authority of Government charity regulator (provide evidence),
- if it is publicly accountable,
- the monitoring and evaluation processes it has in place,
- what the accounting and record keeping practices are.

WRAP-UP

Future webinars

- Webinar 2: Protecting your organisation from terrorism financing (Thursday 26 September 2019, 12.00pm-1.00pm)
- Webinar 3: How to detect and prevent fraud (Thursday 24 October 2019, 12.00pm-1.00pm)

Register for future webinars

- Visit the IR charities & not-for-profits news and updates website
<https://www.ird.govt.nz/roles/non-profits/news-and-updates-for-charities-and-non-profits>

If we didn't have time to answer your questions

- Email charities.queries@ird.govt.nz
- Phone 0800 377 774 Mon-Fri 8am to 8pm, Sat 9am to 1pm

TOPIC 2: OVERSEAS DONEE STATUS

SOURCES

- Guidelines for schedule 32 inclusion

<http://taxpolicy.ird.govt.nz/news/2009-12-09-guidelines-schedule-32-inclusion>

- IR464

<https://www.ird.govt.nz/tasks/apply-for-overseas-donee-status>

- List of developing countries

[https://www.oecd.org/dac/financing-sustainable-development/development-finance-standards/DAC List ODA Recipients2018to2020 flows En.pdf](https://www.oecd.org/dac/financing-sustainable-development/development-finance-standards/DAC_List_ODA_Recipients2018to2020_flows_En.pdf)

SOURCES

- Cabinet's approval criteria (CM 78/14/7) reproduced below

Basic criteria for adding an organisation to the list of approved "overseas" charities:

- i. the funds of the charity should be principally applied towards:
the relief of poverty, hunger, sickness or the ravages of war or natural disaster, or the economy of developing countries*
raising the educational standards of a developing country**
- ii. charities formed for the principal purpose of fostering or administering any religion, cult or political creed should not qualify*

**developing countries recognised by the United Nations*