s 9(2)(a)

From: Rachel Farrell s 9(2)(a)
Sent: Monday, 31 March 2025 2:34 pm
To: Policy Webmaster
Subject: Taxation and the not-for-profit sector

Kia ora

I send this submission in relation to the Taxation and the not-for-profit sector review.

I represent an entity formed for and with the objective of charitable purposes. Like many other Charities in New Zealand we provide services that in other countries are publicly available, in hospitals, schools, special education, prisons etc. However here in New Zealand our life changing service is only available through private entities. Most are private practise providers - we are the only charitable operator of services, catering to those who would otherwise not be able to afford services. Our services impact over 4,000 individuals each week and are proven to reduce strain on other medical and social services.

Firstly, I would like to state that for many of us working in the sector, a review of the Charities Act would be welcomed, so as to strengthen our sector and address some of the issues outlined in this review. Making sweeping changes to all charities, however, would prove detrimental for many, for the following reasons:

1. It should be seen that the Charity Sector is held to higher account in terms of reporting requirements than commercial entities. Indeed Charities Services reporting has been praised and used as an example globally. We already follow their rules and requirements, undergo annual audits (at cost - this has not been pro bono for many years) and all with an incredibly small administrative base. Adding additional requirements and standards would create an impossible workload (and prohibitive compliance cost) for many.
2. How will 'unrelated business income' be defined? We rely on the payment of fees for services to continue to operate, but these are heavily subsidised. Like 1,000s of other Charities in New Zealand we survive without direct Government support and require this revenue to operate. How will this unrelated income be defined to be implemented fairly?
3. We provide services that fill a huge whole in society - like us, many of the services through charities in New Zealand should be offered and funded by Government. And yet we have chosen to provide these for society, operating on limited budgets to ensure the best outcomes for those in need. We do this all on a small budget, reliant on fundraising, maximising efficiencies from our team, and all without government support. As such we see these tax concessions as a small way in which the government supports us, recognising the benefits we enable for society at large. If entities such as ours fail the costs to the Government would be more significant than those that can be raised through taxes.
4. We are an employer providing jobs - 4% of the workforce is employed by a charity. We offer a meaningful salaried career which is rare in the arts sector, and kept our whole workforce during covid, which was no mean feat! Operating a not for profit in the current economic climate is tough and there are many charities closing their doors. The addition of tax will be the nail in the coffin for many of us.
5. New Zealand shouts about its "simple tax system" and how it works. However if this is changed it nullifies the Government argument that GST can't be zero-rated on certain goods and services, as is done in other countries. This would be life-changing in a current cost of living crisis! How can it be possible to make these changes and not others that would prove to have so much greater an effect on wider society.

6. Should some of the policy be implemented, we support Tier 3 & 4 charities being excluded - the increased compliance costs cannot be borne by charities of our size.

Ngā mihi

Rachel Farrell
General Manager
E: s 9(2)(a)

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Nā Puoro, ko taurikura / Music transforms us

consumer.

31 March 2025

Taxation and the not-for-profit sector
C/- Deputy Commissioner, Policy
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SUBMISSION on 'Taxation and the not-for-profit sector' issues paper

1. Introduction

Thank you for the opportunity to make a submission on the Issues Paper: Taxation and the not-for-profit sector (the Issues Paper). This submission is from Consumer NZ, an independent, non-profit organisation dedicated to championing and empowering consumers in Aotearoa. Consumer NZ has a reputation for being fair, impartial and providing comprehensive consumer information and advice.

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2. Problem definition in the Issues Paper

The Issues Paper does not appear to contain a clear problem definition which makes offering clear solutions a challenge. The Paper notes both the desire to increase Crown revenue and to address the abuse of charitable status by entities engaging in commercial activities to supplement their income.

In seeking to address the abuse of charitable status, the IRD should consider the following matters:

- The size of the problem. This is currently absent from the Issues Paper.

- The compliance costs and administrative burden that moving from the status quo will place on charities seeking to carry out their mission and work for public benefit. Analysing costs and carrying out an apportionment process will be both costly and time-consuming and could result in a tax loss position anyway, which could worsen the tax revenue generation problem.
- Assessing whether the tax system and levers are the most appropriate mechanism for change. We support taking an evidence-based approach to minimising abuse of charitable status and suggest that approach is more appropriately undertaken by the Department of Internal Affairs as the lead agency on charities.
- The impact on financial sustainability for charities genuinely engaged in public good activities.
- The enhanced reporting requirements from 2024 for charities to declare and explain any accumulated funds and the reason they are holding reserves. It would be beneficial to allow a period to assess the results of this new requirement before making any decision on the Issues Paper.

If the problem to be addressed is primarily one of Crown revenue generation, we respectfully suggest there are better and less socially damaging alternatives to generating revenue than risking the potential of undermining charities engaged in public good activities.

3. Other general comments on the Issues Paper

New Zealand has a large charitable sector that provides significant and critical services to the public. Charities provide services from caring for children, running community events, teaching extra-curricular skills, coaching and providing sporting events, keeping organisations accountable, protecting the environment and advocating for citizens.

"Charities are often the final backstop - they look after those who for whatever reason cannot look after themselves… Charities hold a very important role in supporting and giving voice to the voiceless".[1]

The sector is already over-stretched and under resourced. Officials will no doubt receive many submissions stressing the point that, with some notable exceptions, the charitable sector in New Zealand is struggling financially. We agree and note that this consultation adds stress to an already stressed sector reeling from funding cuts, falling membership and an increasingly challenging donation landscape.

In other jurisdictions, many of the services provided by charities are funded or better supported by the Government. In the absence of this support, it is vital that the charitable

[1] https://www.linkedin.com/posts/impact-investing-network_the-report-activity-7295651668929454082-FRXN/?utm_source=share&utm_medium=member_desktop&rcm=ACoAAAUX2ZIBvCfS_1Z65jOj_V4u_gB0iCvurMA

sector in New Zealand remains financially viable, or the burden of providing these services will either fall to the Government, or not be provided, resulting in widespread social harm.

This includes consumer advocacy, the charitable purpose with which Consumer NZ is most familiar. To contextualise the preceding point, it is a source of immense surprise when Consumer NZ staff speak with counterparts overseas and discuss the fact that Consumer NZ receives no funding for its advocacy work from the New Zealand Government, even though the Government's own data shows that Consumer NZ is the most well-known, effective and trusted source of consumer information relied on by the New Zealand public[2].

Our work is one example of how the charitable sector in New Zealand provides immense value to society and our democracy. Given the diversity of the sector, that value can be difficult to quantify.

As a charity representing the public at large, much of the advocacy work Consumer NZ undertakes is a direct result of requests from Government agencies for input on policy work. This work benefits greatly from the input Consumer NZ provides on behalf of the New Zealand public, but, notwithstanding the significant demands for engagement and expert opinion, including market research data compiled at direct cost to Consumer NZ, no direct funding is made available by the New Zealand Government for this work.

We suspect expectations within Government agencies can be influenced by the resources the private sector is able to dedicate to its lobbying activities. Clearly, most charities will never possess the resources available to the tech, banking, energy, supermarket or aviation sectors, to name a few. There is a clear imbalance of power here that would be increased if charities engaged in advocacy work lost existing tax benefits.

The tax benefits afforded to charities providing genuine public benefit go some way to addressing the delta between the public need for their charitable activities and the cost to provide them. To be clear, in Consumer NZ's case, the tax benefits we receive do not cover anywhere near the cost of the services or value we provide the New Zealand public. While it is not in scope, this review could easily have considered whether further benefits could be applied to appropriate charities to address this imbalance, bearing in mind the pressure many charities are currently under and noting that if charities are forced to close, the burden for providing those services will fall to Government.

4. Answers to specific questions in the Issues Paper

We have provided responses to specific questions from the Issues Paper below.

[2] http://mbie.govt.nz/dmsdocument/28961-new-zealand-consumer-survey-2024-survey-findings-pdf

Q1. What are the most compelling reasons to tax, or not to tax, charity business income? Do the factors described in 2.13 and 2.14 warrant taxing charity business income?

In our submission, given the public good charities provide New Zealand society and the costs associated with providing those services, there is no compelling reason to tax charity business income. The factors outlined at 2.13 and 2.14 provide advantages to charitable entities that non-charitable entities do not and should not enjoy. As noted above, this helps (but does not completely) address the delta between what it costs to provide publicly beneficial services and what most charities are able to earn.

If there is an issue with registered charities carrying on business activities that do not align with or support their charitable purpose, that is a matter for ongoing monitoring by the Department of Internal Affairs. In our view, if the Issues Paper is primarily concerned with halting abuse of charitable status to gain a commercial advantage, the most logical starting point to address that abuse is the charitable status of the alleged abuser, rather than changes to the tax system that could have unintended consequences for charities operating within the spirit of the law.

One of the most compelling reasons not to tax charity business income is the additional administrative burden it will place on charities and the likelihood that, in carrying out an apportionment process of income and expenditure, the business arm will end up in a tax loss position and therefore not result in a payment anyway. Charities will just end up paying accountants to assist in this process and it won't result in the increased revenue that Government is seeking.

We note also that some charities invest in securities as part of their reserves policies. These reserves are crucial for many charities, including Consumer NZ, to weather the storms over time and help them through downtimes when other income sources are difficult to come by. Reserves help charities to keep paying employees and operating the organisation. If securities were taxable, it would reduce the ability to do this, perhaps leading to job losses or closures that could have been prevented.

Q2. If the tax exemption is removed for charity business income that is unrelated to charitable purposes, what would be the most significant practical implications?

As a starting point, business income that is unrelated to charitable purposes would need to be clearly defined. If the issue is addressing what is acceptable to be defined as a charity, this becomes something other than a tax question.

It would be useful for officials to provide information to assist submitters in understanding the extent to which charities are carrying out 'unrelated business activity'. While there are examples cited regularly in the media, beyond these high-profile examples the extent of the problem is not clear. As a result, it is unclear what the revenue upside would be from

removing the exemption and whether this would justify the administrative burden on all parties.

Depending on the definition of 'unrelated business activity' it is possible that some charities will have a mixture of activities. Splitting out what activity is unrelated to charitable purposes would be time consuming work, leading to compliance costs. For what could be a relatively small revenue yield for the Government, a charity could face further distraction from its charitable work or, in extreme cases, be forced to close.

Q3. If the tax exemption is removed for charity business income that is unrelated to charitable purposes, what criteria should be used to define an unrelated business?

Distinguishing between related and unrelated business activities is complex and would be difficult to implement in practice, particularly given the broad range of charities that exist in New Zealand and the diversity of the activities they undertake.

Many charities are struggling to survive and regularly post annual deficits even under the existing tax benefits. These charities rely on a diverse range of activities and their reserves to stay afloat. Revenue sources are often not guaranteed year to year, meaning ongoing viability is precarious. Under a broad definition of 'unrelated business' some activities charities engage in to diversify their income may appear similar to services also offered by non-charities (for example healthcare, disability or education services). While activities may be similar, the rationale for undertaking them is different. Commercial entities are focused on profit as an end goal. Most charitable entities are focused on delivering their charitable purpose, a fundamental pre-requisite for which is financial viability.

It is our submission that if an activity is clearly linked to supporting an entity to provide its charitable purpose, it shouldn't be taxed.

Q4. If the tax exemption is removed for charity business income that is unrelated to charitable purposes, what would be an appropriate threshold to continue to provide an exemption for small-scale business activities?

We consider $5m is too low. While the proposed change may only impact 1,300 charities, there is a significant difference between a charity operating at the lower end of Tier 2 and a charity with income over $15m. The proposal would have a significant impact on Tier 2 charities at the lower end and, if implemented, could force some charities in Tier 2 to stop operating. The criteria are also all based on expenses only. Many charities use unpaid volunteers to deliver against their charitable purpose whilst maintaining the required level of income/profitability.

If a threshold has to be applied, we suggest raising it to $15m to avoid this risk and considering whether basing this threshold on expenditure alone is the most appropriate mechanism.

Q10. What policy changes, if any, should be considered to reduce the impact of the Commissioner's updated view on NFPs, particularly smaller NFPs?

In our submission, subscriptions and levies should continue to be treated as non-taxable membership transactions. Subscriptions and levies are the life blood of many charities, and while some charities provide services to members in return for subscriptions, those subscriptions fund the broader charitable purposes of those charities, as well as the services provided.

Q13. If the compliance costs are reduced following the current review of FBT settings, what are the likely implications of removing or reducing the exemption for charities?

Consumer NZ takes the view that we cannot make informed comments on FBT settings until we have seen the outcome of the current review. It would be beneficial to see the proposed changes first and to allow comment on these changes before considering the removal or reduction of the exemption for charities.

However, we continue to agree with the original rationale for the FBT exemption, namely to support the charitable sector including enabling charities to offer more competitive salary packages at a lower cost, thereby increasing funds available for charitable purposes, and reducing compliance costs.

It can be extremely challenging to attract the right talent to roles in the charitable sector given the salaries on offer under the existing FBT settings. Any removal or reduction would amplify that problem.

Q15. What are your views on the donation tax credit (DTC) regulatory stewardship review findings and policy initiatives proposed? Do you have any other suggestions on how to improve the current donation tax concession rules?

As a charitable organisation that relies heavily on member donations, we outline on our website that if a person donates, they may be able to claim a tax credit for a donation of $5 or more.

Our view is that this adds to the incentives to make a donation, even if a person doesn't actually end up claiming the credit.

Any additional incentives to donate are important to charitable organisations. Every dollar counts.

ENDS

InterChurch Bureau

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31 March 2025

By email: public.consultation@ird.govt.nz

Dear Sir / Madam

Submission on "Taxation and the not-for-profit sector" – an officials' issues paper

We welcome the opportunity to comment on the policy proposals and issues discussed in *Taxation and the not-for-profit sector – an officials' issues paper* (**the Officials' Paper**). The paper sets out potential options that would reform the tax rules applicable to the charitable and not-for-profit sector in New Zealand. We have outlined our comments in the response below.

Who we are

InterChurch Bureau (**ICB**) is an ecumenical body which comprises all the Christian churches in New Zealand, all of which are registered charities. The churches, as part of our core Christian values, provide a wide variety of support to local communities, as well as the Pacific and other regions in partnership with the Ministry of Foreign Affairs and Trade. ICB facilitates engagement between churches on areas of common interest, particularly reforms that have a compliance focus or affect business operations.

Through the work of our churches, it is our belief that our body upholds all four pillars of charitable purpose in New Zealand. In addition to advancing religion, our work feeds into each of the other purposes by engaging in efforts to relieve poverty, advance education and other acts beneficial to the community.

Our submissions

Overall, ICB is fundamentally opposed to the idea that registered charities should have their business income taxed, provided the income is utilised for one of the charitable purposes set out by law. In addition, we are concerned about both the breadth and pace of the change contemplated in the Officials' Paper. We believe the timeframes presented are extremely challenging, and the issues need to be considered in greater detail.

If reforms are introduced in a manner consistent with the Officials' Paper, the unintended impact on vulnerable sectors of society could be significant. For this reason, we urge Officials and Government to listen carefully to the feedback and engage in substantive consultation to properly understand the role charities play in society before any policy is put into place.

We have set out specific submissions below:

It is crucial to ensure the Government does not unintentionally undermine the delivery of charitable activities

The paper points to the fiscal impact of the current tax exemption that applies to charities and appears to be focussed on ensuring that this Government support (via the tax exemption) is cost effective. We question whether the fiscal impact modelling has appropriately contemplated the benefits to society

provided by charities, and the risk that if income taxes are imposed that many charities will not be able to continue to provide their services. From what we have seen throughout the country, smaller rural communities in which government services are less accessible and less available would be disproportionately hit by these unintentional consequences.

Given the number of New Zealanders who rely on support provided by charities, it is crucial that any tax changes that impact the charitable sector are carefully considered. If they are not, there is a risk that the net effect of this proposal is to substitute increased government intervention and related deadweight inefficiencies to fulfil the demand, or as charities require additional government funding to continue to provide services. It is worth noting in this regard that charities have worked with numerous government departments in the past to lessen government burden and increase efficiency.

Defining **what "unrelated" business activity means is crucial**

If the focus of the proposals is fundamentally on "unrelated" business activity, appropriately defining this term will be of paramount importance. In our view, charities that have successfully registered within the existing regulations should not have to go through additional processes to prove they are undertaking charitable activities. In our view, charities that have successfully registered with Charities Servies in the period already have a duty to the public to ensure those funds are applied to appropriate causes.

The Officials' Paper already makes the point that the business activities are simply a form of funding for charities, in the same way that investment income is also funding. Consequently, it is difficult to see why the "related" or "unrelated" nature of any business should be determinative. In many cases, the charitable activities are not amendable to a business model, and so business activities would, by definition, be "unrelated". In many cases those business activities are supported by charitable endeavours: volunteer staffing, for example.

Tax obligation for unrelated business income should be on a prospective basis only

It is important that, if proposals are to progress in their current form, charities are not asked to unpick what aspects of already accumulated funds need to be taxed on the basis of being sourced from "unrelated business activity". We submit that in the interest of not imposing extensive compliance costs, already accumulated funds need to be ignored as there is no way to easily differentiate between related and unrelated activities from years gone by.

Using reporting tiers to limit the scope of the proposals may not be effective

The paper outlines a potential de minimis rule that would exempt certain charities based on the reporting tiers. We submit that such an approach may not be effective as the application to certain charities may be determined based on whether the charities report as a group or not.

For example, in our membership we have some churches that have individually registered as charities, and others that have registered as a group under one parent entity. The de minimis would therefore presumably pick up the former but not the latter even though they are in substance undertaking the same activities. Such an outcome appears unfair and incentivises charities to not group which only increases compliance costs (as each entity must seek registration and complete its reporting requirements with the Charities Services) without changing the nature of the charitable activity. In our case, doing so would be fundamentally different to the connectional doctrines our churches maintain.

Impacted charities will need time to comply which demonstrates more analysis of the proposals is required

We are fundamentally opposed to the reform mooted in the Officials' Paper. The proposals cannot be implemented in the timeframes imagined without significant risk to communities. We make the point below that if matters proceed, much more time and thought needs to go into the transition. We would not want these practical comments to be understood as a tacit compromise. That is not the suggestion: to the contrary, the need for consideration of the impact itself demonstrates the reforms should not proceed.

For many charities, the current law means that their interaction with Inland Revenue is limited, particularly where the compliance is undertaken by a single parent or umbrella entity. In our experience, there is a varying degree of experience and confidence in dealing with income tax matters across our many members. In addition, many do not have sufficient systems set up to capture the sorts of information that would be required if income taxes were to be imposed.

Furthermore, in our experience, income tax laws in New Zealand are complex, and a decision to limit the current income tax exemptions is not as simple as it first may seem. There are many flow-on considerations that will need to be worked through. As an example, it is unclear how the removal of the current FBT exemption would work in the context of a charity that continues to be exempt under the proposed de minimis, since FBT costs are typically deductible.

There is a risk that the proposals impose extensive compliance costs without raising significant revenue

As above, many charitable organisations, such as those affiliated with ICB, will be forced to undertake compliance processes which they have previously never had to complete. Such an imposition will undoubtedly raise compliance and administrative costs for charitable entities significantly. Set up, software and personnel costs would make up a fraction of the costs charitable entities would have to undertake. Hidden consequences such as hampering the ability of charities to recruit volunteers into important roles may also eventuate.

Raising costs in this manner for charities may lead to numerous unintended and undesirable consequences on the sector and society. As it stands, voluntary organisations already find it difficult to fill important roles within their entities. Increasing compliance costs will only cause further strain in this area and may detract from the ability of charities to adequately address the purposes they represent. That outcome should be viewed as undesirable for society and the government, who – as described earlier – may have to bear the cost of providing increased necessary services which charities currently undertake.

In addition, while the paper outlines that its described changes would drive an increase in government revenue, it is unclear whether this increase would be significant enough to outweigh the articulated potential downsides. In this respect, the paper's articulated possible flow-on effect of creating a preference for charities to invest in passive investments, may be especially relevant and cause the expected revenue from any overhaul of the taxation of charities to fall short of expectations.

Funds accumulation should not be seen as a negative or integrity concern

Charities are not in a position to raise funds in ways that businesses can. For example, charities cannot seek additional equity, access bank lending or list on a stock exchange. As a result, many charities must accumulate funds over time to finance the sorts of activities that businesses may simply finance

via new equity or bank loans. We note that within the paper itself, recognition that accumulation can occur for valid reasons. In our experience, such activities can include providing funds for new projects, capital asset maintenance, managing large payrolls (as a responsible employer), planning ahead for economic downturns (as typically donations markedly decrease when economic times are tough) and planning for natural disasters (which can exacerbate community need).

In any event, reported accumulated funds may be more of a reflection of accounting than actual cash deposits. The rules should not view the mere fact of fund accumulation as indicative of a problem that requires law reform.

Consideration needs to be given to how charities should treat inherited assets that cannot easily be transacted with

Many people leave their property in the hands of charities to inherit. The aim of these gifts is to enable charities to further their charitable purpose and attempt to increase their funding for the betterment of the community. Sometimes this property may be operated or leased with a view to fundraising for the principal charitable activity, particularly in cases where inherited assets cannot be sold or transacted with given the terms of the will or bequest.

It is unclear from the paper whether testamentary assets and income from such activities would be regarded as unrelated business income. Such an outcome may be contrary to desired policy objectives. Consequences such as these as an indirect result of any potential law changes should be worked through, with clarification and guidance provided in due course.

Removal of the FBT exemption would cause further harm to charities

The proposal surrounding the potential removal of the FBT exemption for charities would have a greatly negative impact on ICB and other charities that we do not believe has been foreseen by the proposals. For example, churches under the ICB provide some staff or employees with medical insurance, modest life insurance cover or access to a motor vehicle. Paying FBT rates on these items alone would detract significantly from our ability attract people to deliver services, particularly in smaller, rural-based churches, and simply redirects scarce funding to taxes, requiring these funds to be made up elsewhere

In many cases, the services and interventions made are of an emergency or immediate nature. Because of this, vehicles are usually, and by necessity, “on call” – available at all times for the interventions. It is not appropriate for Fringe Benefits tax to apply in these circumstances.

Moreover, in line with the above submissions, filing and calculating FBT returns is a complex process and one that would impose further compliance costs in addition to those already mentioned. We understand that the upcoming FBT paper may address some of these compliance cost issues and we intend to comment further once that item is released.

Support for honoraria proposal

We are in support of the proposals outlined in the paper to clarify the treatment of honoraria. From our experience, the outlined proposals in the paper would simplify the taxation of these payments in a manner that would mitigate issues that the small number of honoraria recipients face. The status quo of classifying honoraria payments as schedular payments has caused compliance issues for honoraria recipients, particularly in regard to ACC levies. Simplifying this process would reduce any further confusion and issues going forward.

Additional disclosure should not be required

Charities already provide a wealth of information to the Charities Services and should not be required to repeat these disclosures to Inland Revenue. Should reforms proceed, the Government should explore whether Inland Revenue can make better use of this existing data.

Charities already have an implicit accountability to the public – charities which are not effectively fulfilling their purposes are less likely to receive donations. In this respect, forcing charities to fulfill requirements in line with those applied to corporates fails to recognise the greater level of accountability already carried and potentially cuts across the purpose of the charity's regime and related regulatory oversight.

We would be happy to have a more detailed discussion with you on any matters raised in our submission. Please contact the writer on s 9(2)(a) in the first instance.

Yours faithfully

s 9(2)(a)

Chris Bethwaite
Chair of the InterChurch Bureau

Aoraki Foundation

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31 March 2025

Taxation and the not-for-profit sector
C/- Deputy Commissioner, Policy
Inland Revenue Department
PO Box 2198
Wellington 6140

Re: Inland Revenue Charities Taxation Review Submission

On behalf of the Aoraki Foundation, South Canterbury's community foundation, I am writing to express our strong support for the submission made by Community Foundations of Aotearoa New Zealand (CFANZ) regarding the Inland Revenue's review of taxation and the not-for-profit sector.

The Aoraki Foundation is deeply committed to fostering generosity and growing regional wealth to support South Canterbury's charitable initiatives and local communities. In alignment with CFANZ's submission, we wish to highlight the importance of ensuring that proposed changes do not inadvertently discourage philanthropy or impose additional administrative burdens on charitable organisations.

Taxation of social enterprise income or changes to frameworks affecting donor-controlled entities should avoid unintended consequences, particularly for community foundations. We emphasize the importance of retaining supportive tax policies that encourage philanthropy and enable the sector to thrive.

Submission Key Points

1. Supporting Philanthropy:
Philanthropy is the cornerstone of our work. Any changes that could deter individual or corporate giving would undermine our ability to fund essential community initiatives. Maintaining robust tax incentives for charitable donations, such as the 33.3% tax credit, is crucial to encouraging generosity and ensuring the financial sustainability of charities like ours.

In addition, we strongly advocate for a policy change allowing charities to claim imputation credits as tax credits. This change would have a profound impact on the financial sustainability of charitable organizations by enabling them to reclaim imputation credits from investments. Such a policy aligns with the spirit of New Zealand's imputation system and would encourage greater philanthropic investment and amplify the resources available to charities.

2. Avoiding Increased Administrative Burdens:
Community foundations operate with limited resources, and an increase in compliance or reporting requirements would divert valuable time and funds away from our core mission of serving our communities. Simplifying rather than complicating the regulatory framework will allow us to focus on delivering scaled impact to those who need it most.
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In addition to supporting the recommendations outlined in the CFANZ submission,

we would also encourage the Government to explore opportunities for enhancing philanthropy in New Zealand.

Specifically:

A Matched Giving Campaign: Partnering with community foundations and other organizations to deliver a government-backed matched giving program could significantly amplify the impact of donor generosity, as demonstrated in countries like the UK and Australia.

A National Bequest and Gift Campaign: Promoting a national campaign to raise awareness about the benefits of structured giving would help grow a culture of philanthropy and ensure long-term support for our communities.

The Aoraki Foundation and the wider network of community foundations across New Zealand are uniquely positioned to drive such initiatives, leveraging local knowledge and community trust to maximize their effectiveness.

We are grateful for the opportunity to advocate for a taxation framework that empowers the charitable sector rather than constrains it. We welcome any further dialogue on how philanthropy can be encouraged and sustained to benefit all New Zealanders.

Yours sincerely,

s 9(2)(a)

Richard Spackman
Chief Executive Aoraki Foundation

To:
Taxation and the not-for-profit sector
C/- Deputy Commissioner,
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PO Box 2198 Wellington 6140

From:
Community Foundations Aotearoa New Zealand
Arron Perriam
Executive Director

26 February 2025

RE: INLAND REVENUE CHARITIES TAXATION REVIEW SUBMISSION

Community Foundations Background

Community Foundations of Aotearoa New Zealand (CFANZ) is the national body representing 18 regional community foundations across Aotearoa NZ. Our members are not private foundations or corporate foundations, we are place based local community foundations building regional wealth across Aotearoa NZ, lead by local volunteer trustees, and for the sole charitable purposes to benefit local communities including funding local charities.

Collectively our community foundations hold investments in perpetuity of circa $300million and make grants of up to $20million annually to charities and growing.

Alongside our 18 community foundation members we have 12 regional community trusts, The Gift Trust, and other philanthropic foundations, who together are cornerstone funders for the NZ charities sector.

Our CFANZ community foundation network infrastructure is incredibly young in comparison to the community foundations contexts of North American and Australia, so any comparison, or taxation instrument alignment, needs to be treated with caution. Most community foundations in NZ are only a dozen years old, are growing steadily, employing just 60 staff across NZ, averaging just 2 FTE per community foundation, and governed by 150 volunteer board trustees. Our entire community foundation movement works extremely hard to grow regional wealth through capturing and growing local generosity and being the trusted custodians of donor bequests and endowment funds through to community.

Our charitable purposes are clear, our ability to grow philanthropic giving is second to none in NZ, our tax exemption is justified, and our value to community is immense. Any direct change to, or unintended consequential change to, our tax exemption, to our grant's distributions, or fringe benefit tax could seriously undermine years of future value to communities.

General Comment

The debate over taxing charity business, or often referred to as social enterprise, income involves weighing the potential benefits of fairness and IR tax revenue generation against the risks of undermining the charitable sector's ability to control its revenues to serve the public good. Each argument presents important considerations that policymakers must carefully analysed to strike a balance that supports both the charitable missions and the broader economy. Taxing business income of charities, will stifle innovation, further destabilise financial sustainability and lead to, we believe, many unintended consequences including being grossly detrimental to community wellbeing.

The charities sector plays a critical role in our NZ society, contributing to social wellbeing, community development, the arts, culture, recreation, the environment, and economic stability. It provides a crucial safety net for society and acts to address issues that the government is not easily able to address.

In short, charities run business practices to diversify and provide sustainable income streams to carry out their mission. The 'profits' from these income streams are reinvested back into their charitable purpose and so into NZ society. The "destination of income" approach works appropriately.

We believe that outliers running commercial businesses of significantly large scale – such as Sanitarium – could be managed by the regulator more specifically and not influence widespread tax policy changes that prove to be a blunt taxation instrument negatively impacting community foundations, or other charities. There has been little meaningful widespread early collaboration, or any clear problem definition shared with the charities sector on this matter to inform policy making. This is objectionable, shortsighted, and irresponsible in our view.

In Australia in 2010 as part of a previous inquiry, the Productivity Commission concluded that there are no competitive neutrality issues raised by the tax exemption in Australia[1].

That said, the two-sector sessions facilitated between Philanthropy NZ and IR were of value and appreciated. I specifically note the written response to my questions I received from the IR stating, *"I can confirm that the Issues Paper is not intended to capture community foundations. The donor-controlled charities chapter specifically targets what are referred to in other jurisdictions as private foundations (or private ancillary funds in Australia)". "Our goal is to align the treatment of private foundations with other countries, such as Australia and Canada, regarding allowable activities/investment restrictions and minimum distributions. We do not intend to align the treatment of community foundations with international counterparts.*

Accepting this at face value we are heartened there will be no change to the taxation framework applied to community foundations in NZ. However, we do make the following submission noting the following;

Submission Points

1. Discouragement of Philanthropy

Changes to taxation rules may discourage donations from individuals and businesses. Tax incentives for charitable giving are vital for encouraging philanthropy, which fuels the not-for-profit sector. If donors perceive that their contributions are less impactful due to increased taxation, they may choose to withhold support, resulting in a significant funding gap. Further, the negative narratives currently in play around charities and income streams are likely to affect the level of philanthropy flowing through to the charity sector.

2. Tax Systems Should Encourage Philanthropy

Retain the 33.3% tax credit on donations and make investment imputation credits available to the charity as a tax credit. This is a tax change which would encourage more philanthropy, thereby enhancing a charities financial sustainability, and maximizing their impact on society. Charities often rely on investment income to fund their work and allowing them to claim back imputation credits could significantly increase their available resources.

A tax policy shift on imputation credits is an example of a positive tax change yet it is not being discussed. By allowing a refund of imputation credits to charities where they would otherwise be lost (and so not in the spirit of New Zealand imputation system) the charity could allocate a greater portion of their funds toward their core missions, ultimately benefiting the communities they serve.

Enhancing the financial viability of charities through the refund of imputation credits encourages greater philanthropic investment. Donors are more likely to contribute to organisations that demonstrate fiscal

[1] https://www.pc.gov.au/inquiries/completed/not-for-profit/report

responsibility and sustainability. This not only supports existing charities but also fosters innovation and the growth of giving and new initiatives.

3. Impact on Service Delivery

The charities sector provides essential services to vulnerable populations. Changes in taxation could lead to reduced funding and resources for these organisations, jeopardising their ability to deliver critical services. This would adversely affect those who rely on these services, exacerbating social inequalities.

4. Increased Administrative Burden

Implementing a new taxation framework could increase the administrative workload for charitable organisations. Many organisations, including community foundations, operate with limited resources and staff. Additional compliance requirements become overweighted against their value and divert time and funds away from core mission, undermining their effectiveness and efficiency.

5. Economic Contributions

The charities sector is a significant contributor to the New Zealand economy, providing jobs and fostering community development. Altering taxation rules could lead to job losses within this sector, negatively impacting local economies. Supporting the charities sector benefits the broader economy through job creation and community engagement, bridging gaps where others will not or cannot.

6. Equity and Fairness

The charities sector operates on principles of equity and fairness, often serving marginalised communities. Changes in taxation that disproportionately affect these organisations could lead to greater disparities in access to services and support. It is crucial that any taxation policies reflect the values of inclusivity and equity that underpin the not-for-profit sector.

7. Fiscal Agency and Impact

Charities need to have fiscal agency to deliver scaled community impact. Changes to charitable tax framework including, the requirement for minimum capital distributions, or fringe benefit tax could weaken a charities balance sheet. Specifically applying a de minimis threshold on Tier 1 and 2 charities such as a large community foundation or The Salvation Army for example, could weaken the strength of a balance sheet which avails charities the ability to deliver scaled impact, or indeed partner with government e.g. for provision of capital for social housing development, buildings and people for provision of government contracted social services, or set aside funds for larger capital works within community.

Alternative Solutions

Rather than changing the taxation framework for charities, the government could consider growth alternatives, including;

a) Refunding imputation credits for philanthropic charities;
b) Government invests in growing philanthropy with a matched giving programme over an agreed time frame and to an agreed value. This has successfully been undertaken in the UK and with a similar initiative in Australia with a vision to doubling giving;
c) Providing better support and resources to charitable organisations, extend tenure of contracts, enhanced collaboration between sectors, and increased funding for social initiatives;
d) Support evidence-based bequest and giving campaigns to lift NZ's understanding of the opportunities and benefits of structured giving; these campaigns have been shown to be extremely effective internationally to enable a country's philanthropic culture to thrive.

Q7: Should New Zealand make a distinction between donor-controlled charities and other charitable organisations for tax purposes? If so, what criteria should define a donor-controlled charity? If not, why not?

There needs to be a clear definition of 'donor-controlled charities.' There could be a case for donor control charities to be assessed differently than those entities which are acting for the wider public good.

Within the context of community foundations, which are community based and led, and donor resourced, we don't believe that there should be any distinction. Donor funded and community informed philanthropy through a structured giving vehicle such as community foundations, is critical on growing giving and supporting other charities in the NFP sector and the work they undertake.

This distinction is essential to ensure that tax benefits are appropriately allocated to organisations like community foundations that genuinely serve public interests rather than fulfilling the preferences of individual donors.

Q8: Should investment restrictions be introduced for donor-controlled charities for tax purposes, to address the risk of tax abuse? If so, what restrictions would be appropriate? If not, why not?

Transactions between donor-controlled charities and their associates should be required to be on an arm's length basis.

Appropriate accountabilities which are already in place, may need strengthened including:

a) Mandatory transparency by way of disclosures, annual charitable returns, statement of service performance, statement of investment policy objectives (SIPO), and annual audits of financial statements already exist and are reported.

b) Governance oversight and accountability.

Q9: Should donor-controlled charities be required to make a minimum distribution each year? If so, what should the minimum distribution rate be and what exceptions, if any, should there be for the annual minimum distribution? If not, why not?

Our member community foundations are not donor-controlled. Community foundations are place-based and locally led community funders. Community foundations work with donors and community to create positive community impact.

If donor-controlled charities (family donors, key donors, or their associates) are avoiding tax liabilities, then yes, their charitable purpose and obligations could be fortified through a change in taxation treatment requiring minimum distributions or introducing restriction on type of investments and increasing transparency.

The existing law requires that all funds are ultimately applied for charitable purposes. The timing of distributions can be impacted by all sorts of factors. The governors of the charity, who should understand all these factors, should be left to make these decisions.

Conclusion

In conclusion, Community Foundations of Aotearoa NZ urges the IR to reconsider any proposed changes to the taxation framework for the charities sector in NZ, noting the potential for direct negative implications, or unintended consequences, for our 18 community foundations members. The potential negative consequences on service delivery, administrative burden, growing philanthropy, economic contributions, fiscal agency, and equity far outweigh any benefits that may arise from such tax changes. It is imperative that we support and strengthen community foundations and the charities sector to ensure it continues to thrive and serve our communities effectively.

Thank you for considering our submission.

Arron Perriam
s 9(2)(a)

Executive Director
Community Foundations of Aotearoa NZ,
Website
s 9(2)(a)

On behalf of 18 regional community foundations across NZ

1. Acorn Foundation
2. Advance Ashburton Community Foundation
3. Aoraki Foundation
4. Auckland Foundation
5. Christchurch Foundation
6. Clutha Foundation
7. Eastern Bay Community Foundation
8. Geyser Foundation
9. Hawkes Bay Foundation
10. Momentum Waikato
11. Nikau Foundation
12. Northland Community Foundation
13. Southland Foundation
14. Sunrise Foundation
15. Wakatipu Community Foundation
16. Taranaki Foundation
17. Te Awa Community Foundation
18. Top of the South Community Foundation

Arron also serves on the following charitable boards across NZ; Philanthropy New Zealand; The Salvation Army New Zealand, Fiji, Tonga, and Samoa; Mentoring Foundation of New Zealand; Kidsfirst Kindergartens South Island

31st March 2025

Taxation and the not-for-profit sector
C/- David Carrigan - Deputy Commissioner, Policy
Inland Revenue Department
Via email to: policy.webmaster@ird.govt.nz

Tēnā koe David,

Submission on: Taxation and the not-for-profit (NFP) sector

We are Specialty Trainees of New Zealand (STONZ), a union in Aotearoa New Zealand run by resident doctors, for resident doctors (RMOs).

Our understanding is that with this consultation, IRD is seeking to address tax integrity issues with entities operating as not-for-profits (NFP) when, in reality, their activities are not aligned with those of a true NFP (not-for-profit).

Our concern is that true NFP entities, such as ours, will be disadvantaged as an unintended consequence of potential changes.

We are a union representing and advocating for Resident Medical Officers (RMOs). We are funded by membership fees and have a small surplus/deficit at the end of each financial year usually based on our negotiation cycles and rely on our small surpluses to carry us through those years with higher costs. Our purpose is to support our member's employment throughout their training journey to become specialists.

As a society incorporated under the 2022 Act, the wording in our constitution confirms that at wind-up, any surplus funds must be donated to a similar organisation, rather than being able to be distributed to members confirming that we are not a 'mutual association'.

We believe that the current tax exemptions available to the NFP sector are intended to support organisations like ours to contribute in a meaningful way to the society of Aotearoa, New Zealand.

We believe taxing any surplus would add an unnecessary compliance burden to organisations like ours, whilst raising miniscule tax revenue for the country.

We respectfully ask that in considering how to tax organisations that are running as a business, rather than a true NFP, that genuine NFPs like ours are not disadvantaged.

Me mutu pea I konei. Ngā mihi nui. Nā
Specialty Trainees of New Zealand Inc

s 9(2)(a)

Dr Alastair Hercus
Treasurer

Kate Clapperton-Rees
Executive Director

SUBMISSION TO INLAND REVENUE:
Consultation on Taxation and the Not-for-Profit Sector

25 March 2025

Background:

Kerikeri Retirement Village is a charitable company which has 120 independent living units plus a 68-bed care facility. We opened in 1986 and have served our community for almost 40 years. We are a vital cog in our provincial community in the Far North of Aotearoa.

We are home to approximately 200 people and employ 140 staff.
We have 70 volunteers who support the village.
Our retirement village is home to approximately 140 people who purchase an Occupation Right Agreement to live in one of our units.
We have several contracts with Te Whatu Ora which support our elderly community:

- Aged Residential Care (21 Rest Home Beds, 30 Hospital Beds, 15 Dementia Beds)
- Managed Respite Contract (2 beds)
- Home & Community Support Services
- Community Day Programmes – Frail Elderly/Dementia

  - We currently have a waiting list of **100** for our Aged Residential Care facility, across all levels of care.
  - Our Care Facility runs at a loss and is subsidised by our Retirement Village.

The fact we are a charity is a significant reason for why people choose to live here.

Taxation:

We pay GST and apply three different percentages.

We are unable to claim GST on any retirement village elements or construction as this is classed as an exempt supply .

Profitability:

Funding is the number one challenge for our organisation. Government funding does not adequately fund the running costs of our care facility, which runs at an annual loss.

Our retirement village is profitable, largely because of annual valuation increases.

Other profitability from the retirement village subsidises the aged care facility. Without the cross subsidisation we would be unable to continue to keep this vital community facility open.

We have minimal funds under investment, all of which have arisen from donations or bequests.

Our View:

Whilst a review of the Charitable or 'For Purpose' sector is always welcome, a blanket taxation change is not prudent, nor necessarily effective. One size does not fit all. There are certainly many elements of our large charitable sector that needs reviewing, and some heads of the charities act are possibly no longer relevant.

The unintended consequences of such a change need to be analysed and reviewed.

- Consider fully what costs the Government would have to pick up due to the likely closure of a significant number of vital community services who are financially fragile and have precarious sustainability.
- An accurate analysis and understanding of the value to the GDP of volunteers and charitable organisations needs to be weighed against any potential tax take.
- Compliance could be too onerous for many and potentially too costly, further reducing the community services available.
- The paper overall does not appear to be evidence based, there has been no analysis of what funds are available. Nor has it assessed what will deliver the highest level of net benefit of the practical regulatory options available.
- Could the cost of the income tax administration and its ultimate impact actually outweigh the cost of the social good?

In Summary

Charities are extraordinarily efficient in their use of funds as there is so often never enough to go around. Further penalisation through non-related business income tax could mean the cessation of many charities.

If abuse of tax concessions is the primary issue, then resource the regulator sufficiently to investigate and ensure it can take appropriate action.

Thank you for taking your time to read our brief submission. We are happy to talk to the submission and elaborate on our statement should the opportunity arise.

Hilary Sumpter
Chief Executive | s 9(2)(a)

31 March 2025

Taxation and the not-for-profit sector
C/- Deputy Commissioner, Policy
Inland Revenue Department
PO Box 2198
Wellington 6140

Emailed to: policy.webmaster@ird.govt.nz

RE: MAS' submission on the "Taxation and the not-for-profit sector" consultation

Introduction

1. Thank you for the opportunity to submit on this consultation paper.

2. MAS opposes the proposed removal of the income tax exemption for the "unrelated" business income of registered charities because, in summary:
    a. The consultation paper does not sufficiently articulate the nature of the problem, or provide detail or analysis substantiating a problem that needs to be solved.
    b. The consultation paper does not quantify the costs of the current tax exemption, or quantify the benefits in terms of positive social impact from the capital deployed in the charitable sector towards charitable purposes.
    c. The proposed reallocation of capital from the charitable sector to the public sector via the proposed tax change is unfair, contrary to longstanding government policy, and would inhibit the private sector from contributing to positive social outcomes to the same extent it currently can.
    d. MAS would be significantly impacted by the change, and at risk of being unable to sustain its charitable purpose and remain registered as a charity. The communities that currently receive funding from MAS via the MAS Foundation would feel this change most acutely, as, without the income tax exemption, MAS would not be in a position to distribute that funding to those communities. Examples of impacted communities are in the appendix provided by the MAS Foundation and available on its website at https://foundation.mas.co.nz.

3. In addition to the substance of the paper, it is MAS's submission that:
    a. A consultation period of 5 weeks is insufficient for a significant change in longstanding government policy.
    b. Paragraph 1.5 of the consultation states that the paper "is part of a review to determine the effectiveness of certain tax concessions". We submit:
        i. If the paper is only a "part" of the review, there should be transparency and an opportunity to be consulted over the other parts of the review.

ii. The paper does not provide a sufficiently detailed analysis of the effectiveness of the current income tax exemption for charities. We would expect costs and benefits to be detailed and quantified.

c. A deduction for amounts distributed to charity is ineffective for charities operating businesses, as the amounts donated or distributed would not be taxable in any event because they are expenses/liabilities and therefore reduce the amount the business would otherwise have to pay tax on.

About MAS

4. MAS was established as a co-operative society in 1921 by a group of doctors to provide insurance to its members. MAS continues to operate as a mutual (MAS is owned by its customers, who are called "Members", rather than independent shareholders) and has since diversified its financial services offerings to Members to include general insurance (house, car contents), life and disability insurance, retirement savings, KiwiSaver, lending referral services and financial advice.

5. MAS has since expanded its membership from doctors to a broader professional market, including other health professionals (dentists, vets), accountants, engineers, lawyers, and their families. At the time of writing, MAS has over 50,000 Members in these professional communities.

6. MAS registered its trading companies as the MAS Charitable Group in 2019 after extensive consultation with its Members, with Inland Revenue, and with Charities Services. MAS was transparent with all stakeholders about its plans to enhance its social impact and improve the health of New Zealanders by establishing an independent philanthropic funder (MAS Foundation) to redirect funds that MAS would have otherwise paid as income tax to Inland Revenue in a targeted, high-impact way to community organisations.

7. MAS put this proposal to restructure as a charity to a vote of its Members, who voted overwhelmingly (88% in favour) in support of the change. Importantly, MAS Members voted to forego any right they had to a financial benefit from MAS so that the only place MAS could distribute its capital would be towards its charitable purpose via the MAS Foundation.

8. Since the MAS Foundation was established in 2019, MAS has distributed $12m to it, and MAS Foundation, in turn, has committed $8m of that in grants to 79 third-party organisations in the community. Those organisations would not have received that funding without MAS's income tax exemption as a registered charity.

9. MAS Charitable Group is a Tier 1 charity for regulatory reporting purposes. MAS transparently publishes amounts distributed to its charitable purpose in its publicly available Annual Reports. MAS's reasons for retaining certain accumulated assets are outlined in MAS's Annual Report and submissions to the Department of Internal Affairs on the 2019 Charities Act review and reported to Charities Services in annual returns following the recent changes to the Charities Act. Those reasons include regulatory requirements, including Reserve Bank of New Zealand solvency standards to ensure MAS retains sufficient capital to pay insurance claims, and investing in the business for Members to ensure sustainability of the business's ability to continue making profits to invest in MAS Foundation in the future.

10. MAS Foundation has provided a supplement to MAS's submission on this consultation to provide examples of the significant impact it has with the funding it provides to those community organisations. This positive social impact in the community would not be possible without MAS's income tax exemption as a registered charity. Further examples of MAS Foundation impact and operations are published on its website at https://foundation.mas.co.nz.

Submissions

11. MAS is a Member of Philanthropy NZ and submits in support of their submission. The submissions below are provided in addition to supporting that submission, and specific to MAS and MAS Foundation's circumstances.

12. The paper states at 2.15 that "The fiscal cost of not taxing charity business income… is significant and is likely to increase." There is no elaboration of how significant this cost is. We would expect detail and analysis of the amount of those costs to properly consider the case for change in the policy of exemption charity business income. We would also expect costs to be compared to benefits. Charities like MAS, which distribute capital towards their charitable purpose, would have an outsized beneficial social impact in the area of their charitable purpose that far outweighs the 'cost' to society of the income tax exemption.

13. We support the policy rationale for the longstanding business income tax exemption for charities. The rationale was formerly published in Treasury Annual Reports and stated that the government continues to support the exemption because it helps private sector organisations to achieve the government's social objectives. Private sector charities have a critical role to play in bringing about positive social outcomes. That impact is enhanced through the business income tax exemption for organisations like MAS because, without it, organisations like MAS would not be able to make that outsized positive social impact. We strongly believe that MAS Foundation's targeted spend has a higher dollar-for-dollar impact in the community than that dollar could if absorbed in the general tax base and spent by the government of the day.

14. In this regard, we think the proposed removal of the business income tax exemption is inherently unfair when good social outcomes are considered. The proposal seeks to reallocate capital from the charitable sector that contributes to good social outcomes to the public sector. The end consumer – Members of the communities we live and work in – will be worse off for the change.

15. In MAS's view, income tax on charities will also have downstream impacts to increase the price of services and cost of living. The tax would reduce the ability of charities to make positive social impact. Ultimately, this will mean Government will be required to provide or fund a greater level of social services than it does currently. As above, aside of government having to inherit this cost, we think it is less efficient for government to be providing or funding these social services.

16. If the tax exemption was removed for charities' unrelated business income, the possible practical implications would be:
    a. MAS would be prevented from being able to fund the MAS Foundation to the extent it currently does and thereby invest in good social outcomes for the communities MAS Foundation currently invests in.

b. MAS would need to consider whether it can continue giving effect to its charitable purpose of distributing funds to improve the health of New Zealanders, or otherwise maintain its registration as a charity.
c. MAS would incur estimated additional annual compliance costs of preparing income tax returns of $360k.

17. MAS would like the opportunity to submit on the detailed policy design issue of the definition of "unrelated business income" when drafting is available for review. The examples provided in the consultation paper seem directly targeted at operations like MAS's.

18. If changes are made, then MAS would submit that:
    a. There should be a sufficiently long transition period before changes take effect, for impacted stakeholders to take advice and consult with Inland Revenue and Charities Services about the changes.
    b. Changes should not have retroactive or retrospective effect. If organisations cannot sustain their charitable status because of changes to longstanding policy and legislation, then MAS submits they should not be subject to any tax liability for deregistering in relation to assets accumulated prior to registering as a charity or since becoming a charity. A deregistration tax on assets accumulated prior to becoming a charity would be taxed twice: once when the assets were subject to income tax on accumulation prior to the business becoming a charity, and once again on deregistration. From MAS's perspective, if MAS must deregister as a charity because of government changes in the income tax exemption, MAS should not be penalised because the key cause of the deregistration is a change in longstanding government policy and legislation, rather than being a voluntary business decision by MAS.

Next steps and contact details

19. Thank you again for the opportunity to submit on this consultation paper.

20. If you would like to ask any questions or discuss any aspect of this submission, please contact me at s 9(2)(a)

Yours sincerely,

Nick Mereu

Head of Legal & Compliance

mas foundation

Dr Julie Wharewera-Mika

& Mafi Funaki-Tahifote

March 2025

Our Impact – Improving Health & Wellbeing Inequity

mas

Improving Health & Wellbeing Inequity

Our grant-making approach is built on **trust-based relationships** that empower Māori, Pasifika and communities most impacted to lead solutions to their unique challenges. By supporting community-driven initiatives, we help address deeply entrenched systemic inequities in health, education, and wellbeing in culturally relevant ways.

This **partnership-driven model nurtures long-term, transformative change**, enabling communities to shape their own futures and create sustainable, impactful intergenerational outcomes.

- The following four case studies highlight how these collaborations are driving positive change and fulfilling community aspirations across Aotearoa.

mas foundation

1. Perinatal Anxiety & Depression Association (PADA) - Mental Wellbeing Initiative

PADA's initiative focuses on eliminating the stigma around perinatal mental health, especially for Māori and Pasifika families. By training educators with lived experience, they build a culturally relevant peer-support workforce that can help families navigate mental health challenges during the perinatal period.

- **Outcomes:**
  - Improved access to support: Increased access to culturally appropriate mental health support for families in need, leading to reduced perinatal anxiety and depression.
  - Stronger resilience in families: Whānau, especially mothers, are better supported, leading to improved mental health outcomes for both mothers and children.
  - Workforce expansion: The program addresses critical workforce gaps in midwifery and infant mental health sectors by training a capable and culturally competent peer-support workforce.

- **Impact:** Without financial resourcing and non-financial support , there would have been insufficient capacity and capability within the mental health and midwifery sectors to support these families effectively. The initiative has already shown early success in reducing stigma, empowering families to seek help, and improving mental health outcomes, particularly for mothers and children.

2. Toi Matarua - Rangatahi-led mental health and wellbeing programs

Toi Matarua empowers rangatahi (youth) to lead mental health and suicide prevention initiatives within their communities. Through their ‘Passion Projects,’ rangatahi create solutions grounded in their cultural context, strengthening leadership, resilience, and long-term community wellbeing.

- **Outcomes:**
  - Increased rangatahi leadership: Youth are empowered to lead initiatives that reflect their communities’ specific needs, increasing engagement and ownership in mental health solutions.
  - Improved mental health outcomes: Youth-led solutions provide targeted mental health support, contributing to reduced suicide rates and improved wellbeing among Māori youth.
  - Stronger community connections: Intergenerational projects like ‘Moko Boys’ strengthen bonds between rangatahi and kaumatua, nurturing mutual respect and support across generations.
  - Sustainable economic models: The development of initiatives such as composting businesses and rongoā Māori (traditional healing) creates sustainable economic opportunities for rangatahi, providing a pathway to employment and further education.
- **Impact:** Toi Matarua acknowledge the strength in the approach of MAS Foundation, enabling them to genuinely lead projects aligned to the needs of young people. Without funding, rangatahi would not have had the resources or support to lead their own mental health initiatives. This program has not only empowered youth to make a difference in their communities but also created sustainable, youth-driven models for mental health support that can be replicated in other communities.

3. Te Aho Tapu Trust - Mauri Tau me te Māramatanga (MTM) mindfulness & awareness program

The MTM program provides mindfulness practices grounded in te ao Māori (Māori worldview) to help whānau cope with stress and adversity. The program is designed to improve wellbeing, particularly in response to challenges and has the potential to be integrated into health and education systems for broader community access.

- **Outcomes:**
  - Increased resilience and coping skills: Whānau, especially Māori and Pasifika, report stronger resilience and improved mental health, with better coping strategies for stress.
  - Intergenerational support: The program supports stronger intergenerational relationships, empowering whānau to support one another in times of difficulty, improving community cohesion.
  - Wider access through systemic integration: By embedding the program within health and education sectors, it becomes more widely accessible to diverse communities across Aotearoa.
  - Incorporation of mātauranga Māori: The deeper integration of Māori cultural knowledge ensures that the program resonates with participants' cultural and spiritual needs, leading to greater engagement and effectiveness.
- **Impact:** Without this funding, the MTM program would not have been able to evolve into health and education systems (through the Ministry of Social Development (MSD), Oranga Tamariki (OT) and Health NZ contracts), limiting its ability to provide widespread, culturally relevant mental health support. This investment has enabled Te Aho Tapu Trust to create a sustainable, culturally grounded wellbeing program with long-term benefits for communities in need.

4. Brainwave Trust - Early childhood research and education programs

Brainwave Trust translates vital early childhood development research into accessible resources for Māori and Pasifika families. By co-designing educational wānanga (workshops) with community partners, the Trust ensures that families receive the best possible support during the critical first thousand days of a child's life.

- **Outcomes:**
  - Improved access to early childhood research: Māori and Pasifika families now have greater access to evidence-based knowledge on early childhood development, allowing them to better support their tamariki/tamaiki (children) during their formative years.
  - Strengthened governance and leadership: The Trust has enhanced its governance structure to better meet the needs of Māori and Pasifika communities, positioning itself for long-term impact.
  - Increased Pasifika capability: By developing a Pasifika-focused program co-designed with the community, Brainwave Trust has built the capacity to better serve Pasifika families, ensuring culturally relevant resources are available.
  - Sustainable funding and broader reach: The Trust is poised to attract further philanthropic funding, ensuring the sustainability of its programs and expanding their reach across Aotearoa.
- **Impact:** Without the funding, Māori and Pasifika families would have lacked access to the crucial research and resources necessary for supporting their children's early development. The funding has allowed Brainwave Trust to build a scalable model, ensuring that more families benefit from culturally appropriate and research-backed early childhood support.

Conclusion

- These initiatives are **making a profound impact** on the health and wellbeing of Māori, Pasifika and communities most in need, in Aotearoa.
- Through targeted investments, these initiatives address systemic inequities in mental health, early childhood development, and community leadership. The funding has enabled these programs to grow, **creating culturally relevant, sustainable solutions** that would not have been possible without such support.
- Each initiative is **driving long-term change**, empowering individuals and communities while fostering resilience and positive outcomes across generations.

mas foundation

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31 March 2025

Taxation and the not-for-profit sector
C/- Deputy Commissioner, Policy
Inland Revenue Department
PO Box 2198
Wellington 6140

By e-mail: policy.webmaster@ird.govt.nz

Dear Sir,

Taxation and the not-for-profit sector submission on Issues Paper

BDO New Zealand Ltd appreciates the opportunity to provide feedback on the above Issues Paper.

General Comments

Charities serve an important purpose in our community. In many cases they deliver valuable services to sections of the community that would otherwise arguably rely on the government to provide that support. This is the primary reason they are afforded income tax exemptions.

We consider the Charities Act 2005 provides sufficient mechanisms to deal with a number of the issues (pertaining to registered charities) that have been raised in the paper, i.e. registered charities that are not compliant. For those charities that are compliant, subjecting them to income tax on certain sources of income would likely reduce the benefits they were able to provide to the public. This in turn, would either reduce the wellbeing of society generally, or force the government to deliver additional services to compensate, which may not be as efficient as the current model. There does seem to be an element of punishing all as a result of the actions of a few, rather than simply using existing legislation to deal with those few.

Many charities suffer from unpredictable income levels year to year due to the nature of their revenue streams. There is an argument to say encouraging them to set up more sustainable commercial operations to generate funds would be better for the country as a whole, rather than penalise this approach. The source of funding should not be the determining factor, rather the use of those funds. There are comments around the level of accumulated funds held by some charities; however, the existing provisions requiring charities to report on their level of reserves do appear to provide some transparency on this issue (although perhaps not sanctions).

We also consider that the consultation process for these fundamental changes to the taxation of charities and NFPs is too rushed and badly timed. This Issues Paper was only issued on 24

February with the deadline for submissions being 31 March. This a short period of time, let alone at the time of year that (as you're aware) is one of the busiest for tax practitioners.

An Issues Paper is by its nature very general. It would be unfortunate if a discussion document setting out the actual proposed changes is not issued. We're concerned that, given the timing of the Government Budget, a discussion document may not be issued.

Specific questions for submitters

Chapter 2: Charities business income tax exemption

> **Q2. If the tax exemption is removed for charity business income that is unrelated to charitable purposes, what would be the most significant practical implications?**

Apart from the additional tax cost, there would be a significant increase in compliance costs for charities – both in terms of actual expenditure and employees/volunteers spending time on compliance rather than core charitable activities.

While we note the comment (para 2.21) on the need for clear legislation and associated guidance, there will always be cases that are not obvious (see below). Charities will need commit time and cost (likely including advisor fees) to determine their tax obligations.

We are not clear on the need to distinguish between passive and business income if the issue is that income is being accumulated rather than distributed. The resulting preference for passive income is noted in para 2.18 of the paper. It could be argued that passive income accumulation was more of a concern. An active business may well be generating other tax revenue (PAYE, GST etc) as well as other benefits such as providing employment. Specifically, charities often employ people that would otherwise find it difficult to secure employment. This is an example where determining whether the business activities directly related to charitable purposes may be difficult.

The Issues Paper notes a "second-order" imperfection (para 2.13 first bullet point) that charities may have an advantage over non-charitable trading entities due to having lower compliance costs. Firstly, we question whether that is in fact a problem. Secondly, the inference is that this is remedied by making charities incur more compliance – which does not seem a desirable outcome.

> **Q5. If the tax exemption is removed for charity business income that is unrelated to charitable purposes, do you agree that charity business income distributed for charitable purposes should remain tax exempt? If so, what is the most effective way to achieve this? If not, why not?**

If the concern is accumulation of untaxed income, then it makes sense to provide tax relief when the income is distributed for charitable purposes.

Prior to considering relief for distributions, there is the issue of what income has been distributed. If a charity has both passive and business income and these are being distinguished (see above), there needs to be rules on the order of distributions, e.g. are distributions treated as being made from business income first?

An issue with allowing a deduction for distributed amounts is that there may not be sufficient taxable income in the year of distribution to absorb the deduction. Possible solutions are a carry-back of deductions or a refund of a tax loss to the extent that tax has been paid previously.

Q6. If the exemption is removed for charity business income that is unrelated to charitable purposes, what policy settings or issues not already mentioned in this paper do you think should be considered.

Overall, our concern is that taxing undistributed amounts could lead to ill-considered decisions on distributing funds so as not to incur tax. This may also have a destabilising effect on a charity, e.g. produce cashflow pressures.

This may especially be the case towards year end. A possible solution may be allowing a period after year-end, e.g. 6 months, to allow distributions made in that time to be treated as being made in the previous tax year.

Chapter 3: Donor-controlled charities

Q7. Should New Zealand make a distinction between donor-controlled charities and other charitable organisations for tax purposes? If so, what criteria should define a donor-controlled charity? If not, why not?

Q8. Should investment restrictions be introduced for donor-controlled charities for tax purposes, to address the risk of tax abuse? If so, what restrictions would be appropriate? If not, why not?

The concerns raised in the paper in relation to donor-controlled charities appear to be adequately addressed by a) the existing anti-avoidances provisions, and b) the discussion on accumulated income in chapter 2 of the paper.

Therefore, we do not consider that the issues raised in the paper justify a need to distinguish donor-controlled charities and other charities.

Chapter 4: Integrity and simplification

Q10. What policy changes, if any, should be considered to reduce the impact of the Commissioner's updated view on NFPs, particularly smaller NFPs? For example:
- **increasing and/or redesigning the current $1,000 deduction to remove small scale NFPs from the tax system,**
- **modifying the income tax return filing requirements for NFPs, and**
- **modifying the resident withholding tax exemption rules for NFPs**

It is somewhat difficult to comment without seeing the full basis for the Commissioner's Operational Statement on mutual associations. It would represent a quite significant change in interpretation if the Commissioner now considered member subscriptions as taxable income.

The current legislation had already significantly reduced the scope of the common law principle of mutuality, for example treating all business transactions with members (apart from subscriptions) as taxable. If member subscriptions were going to be treated as taxable, then it would make sense to provide exclusions for smaller NPFs to balance the compliance costs against the additional tax generated.

The most obvious change is to increase the current $1,000 deduction. For example, to raise this to $20,000.

Notwithstanding the above, there are areas where the treatment of NFPs could be clarified. For example, the allocation of expenditure between taxable and non-taxable activities.

Q13. If the compliance costs are reduced following the review of FBT settings, what are the likely implications of removing or reducing the exemption for charities.

The feedback from our clients is that the main benefit of the current FBT exemption for charities is not the reduced compliance. It is the ability of charities to provide a renumeration package for employees closer to market rates. It therefore enables Charities to be in a better position to hire employees with the skills that they require. This is particularly important for charities as they often have a relatively low number of employees - especially in functions such as finance. It's therefore important for the charities to have employees with the necessary qualifications and expertise.

If you have any queries or would like to discuss in person, please contact us.

Your sincerely
BDO New Zealand Ltd

s 9(2)(a)

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TE KĀHUI RARAUNGA

SUBMISSION TO DEPUTY COMMISSIONER POLICY, INLAND REVENUE DEPARTMENT ON THE TAXATION AND THE NOT-FOR-PROFIT SECTOR

31 March 2025

SUBMITTER INFORMATION

Name: Te Kāhui Raraunga
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Contact: Rahui Papa (Chair)

INTRODUCTION

1. These submissions are made on behalf of the Data Iwi Leaders Group (the **Data ILG**).

2. The Data ILG is a group established by the National Iwi Chairs Forum in 2016. In 2019, Te Kāhui Raraunga Charitable Trust (**Te Kāhui Raraunga**) was established to lead action on behalf of the Data ILG.

3. The charitable purpose of Te Kāhui Raraunga is to enhance the social, cultural, environmental, and economic wellbeing of Māori people by enabling iwi, hapū, and whānau Māori to access, collect, and use Māori data. Te Kāhui Raraunga's mahi includes supporting innovation and research that advances the use of Māori data, educating Māori on the benefits of the collection of Māori data, and promoting and advancing opportunities for iwi, hapū, and whānau Māori to share knowledge and information in relation to their collection and use of Māori data.

4. The structure of our submissions is:

   (a) Background to the Data ILG and Māori data governance

   (b) Substantive concerns

   (c) Process concerns

   (d) Conclusion

BACKGROUND TO THE DATA ILG

Mana Ōrite Agreement

5. The Data ILG and Stats NZ entered into a Mana Ōrite agreement in October 2019 (**Mana Ōrite**). This agreement recognises the parties have equal explanatory power wherein they acknowledge each other's perspectives, knowledge systems, and world views as equally valid. The relationship established by this agreement requires the parties to act reasonably, honourably, and in good faith towards one another at all times.

6. Mana Ōrite sets whāinga (goals) for the parties to pursue, including:
   - Equitable outcomes for iwi and Māori across the public data ecosystem
   - Ensuring that data and statistics strategies and policies provide for the current and future data needs and aspirations of Māori
   - Embedding a te ao Māori lens in decisions
   - Opportunities for co-design of governance systems and datasets

Iwi / Māori data

7. Iwi / Māori data is any data that is for, from or about iwi / Māori or the places with which we have connections. This data includes data about people, language, culture, resources, environments, and/or knowledge systems.
8. Iwi / Māori data is a taonga. Iwi have always been data designers and collectors. Government has an ongoing role in collecting iwi data as part of the Te Tiriti relationship. Iwi and Māori governance of data held by the Crown requires the sharing of power over design, collection, storage and access to iwi data held by government. Protocols for co-governance must empower tino rangatiratanga. The Crown must invest in, enable and empower data for governance – that is, empower iwi to lead data design and collection so that iwi can achieve their aspirations and realise their tino rangatiratanga.
9. The above principles guide the mahi of the Data ILG and are directly relevant to the Trust and the Trust's activities.

OVERVIEW OF THE DATA ILG'S SUBMISSIONS ON THE BILL

Initial comments

10. Te Kāhui Raraunga is a unique organisation. The protection and governance of the Māori data is a core focus of the Trust with all its resources invested into the management of these resources for and on behalf of Māori. This work includes supporting whānau, hapū, and iwi with data management and governance.
11. Accordingly, it will be critical to ensure that changes do not inadvertently impact on the Trust structure given how the Data ILG has chosen to structure the Trust. We recommend the Trust and any charitable subsidiaries owned or controlled, directly or indirectly, by the Trust, retain any taxation exemptions.

Substantive Concerns

Taxation of "unrelated" business income

12. We consider the Issues Paper poorly defines the problem the Issues Paper is trying to address. There is no evidential basis cited for the various assertions made by Inland Revenue about the "cost" of the current regime or the scope of the issue. It is not clear what specific issues are sought to be addressed by the taxation of "unrelated" business income. It would seem the Issues Paper is aimed at (1) a perceived competitive advantage that charitable entities have over for-profit companies, and (2) raising revenue for the Government.
13. In our view, the proposals in the Issues Paper would do nothing whatsoever for the competitiveness of for-profit companies, nor will it raise any material revenue. If anything, the net impact of compliance costs for charities and to the Inland Revenue in administering a complex set of rules could far outweigh any "benefits". Considerable complexity will be created by attempting to draw a line where no such line exists. The charitable sector will be forced to spend time and money on professional advice to ensure it meets the requirements

in the Issues Paper. Funds otherwise destined for charitable purposes will be diverted to the private sector.

14. Charities in New Zealand are already subject to extensive (arguably world-leading) levels of transparency and oversight. The requirements of the Charities Act 2005 are strict. Registration is a requirement to access the business income tax exemption. As a registered charity, the funds must ultimately be destined for charitable purposes. It is unlawful for a charity to carry out purposes other than its stated charitable purposes. Furthermore, no one can, lawfully, privately profit from the charity's activities.

15. We do not consider there is anything unique about "business" activity (including any "unrelated" business activity, however this concept might be defined) which suggests that changing the tax rules is the appropriate solution for whatever the perceived problem is. To the extent a charitable business is inappropriately providing (unlawful) private pecuniary benefits to persons, then this could rightly be addressed by Charities Services and the threat of forfeiting charitable status. Tax law is not the appropriate mechanism for addressing this issue.

16. Assuming reforms are to proceed in some fashion, then we strongly recommend Māori charities, including Te Kāhui Raraunga, be excluded from the application of a new "unrelated business" test. As discussed above, there are many historical and social factors unique to the Māori context that warrant retaining the current, longstanding, exemption.

Scope of "donor-controlled charity" definition

17. In addition to the proposals above, the Issues Paper suggests additional taxation provisions may apply to "donor-controlled charities". Integrity concerns have been raised in this context. The report suggests such charities may be part of tax avoidance schemes and raise compliance concerns due to the control the donor and their associates may exercise over the use of charity funds.

18. It is suggested that in-scope "donor-controlled charities" may be subject to restrictions on investments and/or subject to minimum distribution rules.

19. No specific definition of "donor-controlled charity" is proposed, and this is a question raised for submitters to address. In principle, it is suggested a "donor-controlled charity" could include a donor, where the donor's family and/or their associates have some degree of control over the charity. It is suggested that the proportion of funds that the founder or their associates contribute to the charity could be one test – e.g. if more than 50% of the capital is contributed by a person or group of persons acting together (*emphasis added*).

20. We are concerned that such definition could potentially (and inadvertently) capture Māori Trust Boards, PSGE trusts, or their subsidiary charitable arms, and other similar collective Māori charitable entities. We consider it is extremely important that such entities are clearly defined to be outside the scope of the "donor-controlled charity" proposals in the Issues Paper.

21. Whilst the ILG may arguably be viewed as a group of persons acting together in the establishment of the Trust, we consider this structure should be outside the scope of the

targeted proposals. The Government should be very clear any such proposal does not apply to Māori charitable entities, such as the Trust.

22. In addition to the head entity itself (e.g., the Trust), it will be critical to ensure the definition does not apply to any charitable subsidiary entities the Trust may establish in the future.

23. Assuming it is accepted the Trust Board should not be in-scope of the "donor-controlled charity" provisions, it should follow that any subsidiaries the Trust chooses to establish to conduct different charitable activities should not fall within the definition of "donor-controlled charities".

Process Concerns

Lack of direct consultation with the Trust

24. As you can see in the background information above, the Crown and the Trust Board have entered a Mana Ōrite Agreement that guides how the Crown and the Trust Board will work together, including a requirement the parties will act reasonably, honourably, and in good faith towards one another at all times.

25. The Trust considers the Issues Paper is a national issue of mutual interest to the Crown and the Trust that directly relates to, and purports to impact on, the Crown and the Trust's ability to give effect to the whāinga in the Mana Ōrite Agreement.

26. By failing to proactively engage with the Trust in the development of the Issues Paper, the Trust is of the view the Crown has not acted consistently with the parties' shared commitment to act reasonably, honourably, and in good faith towards one another at all times.

27. The Trust wishes to record its expectation that it will be directly (and more proactively) engaged with, either by Inland Revenue or Ministers of the Crown, should the proposals set out in this Issues Paper continue to progress.

Timeframes for response

28. The consultation period for the Issues Paper opened on 24 February 2025 and closes on 31 March 2025. In our view, the timeframes for response have been very short (just over a month) and have not been widely consulted on. The lack of consultation is of particular concern to the Trust given the potential significant implications of the proposals on its organisational group structure and other Māori entities across the country.

29. By failing to proactively engage with the Trust in the development of the Issues Paper, the Trust is of the view the Crown has not acted consistently with the parties' shared commitment to act reasonably, honourably, and in good faith towards one another at all times.

30. This proactive engagement includes ensuring the parties have clear and agreed processes and opportunities for regular engagement and are provided with sufficient information and time to respond.

31. If, following this consultation process, a Bill is introduced into the House of Representatives, the Trust wishes to record its expectation the Bill will undergo a select committee process it can participate in.

Lack of engagement with te iwi Māori and Māori generally as Treaty partner

32. Engagement is demonstrative of the Crown's ability to act reasonably and in good faith by working together with te iwi Māori and Māori generally as Treaty partners. To illustrate this, the courts have made the following observations in respect of the duty to consult arising from the principle of partnership:[1]

- Partnership may require consultation on "truly major issues" in order for the Crown to make informed decisions.
- In some cases, partnership may require more than consultation and consultation by itself may be insufficient "without allowing the view of Māori to influence decision-making".
- Partnership may involve engagement and co-design with Māori groups in developing policy options.
- A duty of consultation may arise from a promise or established practice of consultation (such as, for example, the shared commitments made between the Crown and the Trust in the Mana Ōrite Agreement).

33. The Trust's view is the Crown has an obligation under Te Tiriti o Waitangi to understand the impact of any proposed policy changes for Māori and to consider how any negative or unintended effects might be mitigated. In light of the significant lack of engagement with the Trust and Māori generally, it is clear the Crown has not acted consistently with this obligation. Notably, the word 'Māori' appears only once in the Issues Paper. Accordingly, the Trust considers the specific impacts on Māori charities need to be well understood before any proposal or consultation paper is put forward for public consultation.

34. Moreover, the Trust notes that Māori comprise a sizeable proportion of the charities sector and have unique drivers and features that require specialist engagement. As evidenced by the Trust's own unique history, Māori charities are often established with a wider scope than other charities to address the needs of the particular Māori community being supported.

35. Furthermore, the Trust wishes to draw Inland Revenue's particular attention to the policy principles of cost-effectiveness and equity. Māori charities are incurring significant legal costs to enable them to participate in this reform process and are not being treated equitably because they are not impacted in the same ways that other charities are.

36. The Trust strongly urges Inland Revenue to undertake targeted engagement with Māori in an appropriate manner before proceeding with further policy development.

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[1] Kevin Hille, Carwyn Jones and Damen Ward *Treaty Law: Principles of the Treaty of Waitangi in Law and Practice* (Thomson Reuters, Wellington, 2023) at pages 78 to 80.

CONCLUSION

37. The Data ILG has several concerns about the Issues Paper shared as part of this proposal and more targeted engagement with Māori entities are required to reflect the nature and extent of the Crown's obligations under Te Tiriti, its Settlement Agreements, and the Mana Ōrite Agreement.

38. The Data ILG is available to provide further detail on the matters outlined in this submission either to the Select Committee or to officials supporting or advising the Select Committee.

s 9(2)(a)

From: s 9(2)(a)
Sent: Monday, 31 March 2025 2:49 pm
To: Policy Webmaster
Subject: Taxation and the not-for-profit sector

External Email CAUTION: Please take CARE when opening any links or attachments.

I am requesting that my personal details will not be disclosed publicly or on any documents accessible to the public and other government agencies for privacy purposes.

MAJOR POINTS OF MY SUBMISSION:
OUR TITHES AND OFFERING FROM OUR INCOME HAS BEEN TAXED FROM WHAT HAS BEEN DEDUCTED FROM OUR WEEKLY WAGES.
AS A CHARITABLE ORGANISATION, WE ARE HELPING THE GOVERNMENT TO PRODUCE: LAW ABIDING CITIZENS BY FURTHERING THE FAITH THAT TEACHES RIGHTEOUSNESS, SUPPORTING LAW AND ORDER OF EVERY COMMUNITIES.
THE CHILDREN ARE BEING TRAINED TO DO THE SAME TO BE A GOOD EXAMPLE OF GOOD BEHAVIOUR AT SCHOOL, AT HOME, COMMUNITIES.
CHARITABLE ORGANISATIONS (CHURCHES) DISCOURAGES USE OF DRUGS, ALCOHOL, GAMBLING, CHURCH TEACHES MEMBERS NOT TO BE A BURDEN TO THE GOVERNMENT BY RELYING ON BENEFITS.
THE CHURCH TEACHES TO BE PRODUCTIVE LIKE WHAT THE BIBLE TEACHES ON: 1 THESSALONIANS 4:11And that ye study to be quiet, and to do your own business, and to work with your own hands, as we commanded you; That ye may walk honestly toward them that are without, and that ye may have lack of nothing.

RECOMMENDATION:
IRD TO CATEGORISE THE CHARITABLE ORGANISATIONS THAT ARE NOT CONTRIBUTING TO ANY IMPROVEMENT OF THE PEOPLE IN THE SOCIETY, REMOVE THEM OR TAX THEM.
IF THOSE CHARITABLE ORGANISATIONS ARE NOT HELPING THE COMMUNITY, TOWN OR THE NATION TO PRODUCE GOOD ABIDING CITIZEN THEN, CHANGE THEIR CATEGORY.
RE-EVALUATE THE POLICY AND REVIEW THE CATEGORIES OF THE REGISTERED CHARITABLE ORGANISATION.
TAX THOSE WHO ARE EARNING HUGE AMOUNT LIKE A BUSINESS AND USING THE CHARITABLE ORGANISATION FOR THEIR OWN PURPOSE AND NOT RETURNING ANYTHING TO THE COMMUNITY, CITY OR NATION.
Sent from my iPhone

HERITAGE NEW ZEALAND
POUHERE TAONGA

31 March 2025

Submission on Taxation and the not-for-profit sector

To the Inland Revenue Te Tari Taake

c/-Deputy Commissioner, Policy
Inland Revenue Department
PO Box 2198
WELLINGTON 6140
Email: policy.webmaster@ird.govt.nz

Name of submitter: Heritage New Zealand Pouhere Taonga

Tēnā koe,

Submission

1. Heritage New Zealand Pouhere Taonga is an autonomous Crown entity with responsibilities under the Heritage New Zealand Pouhere Taonga Act 2014 (HNZPT Act) to identify, protect, preserve and conserve the historical and cultural heritage of New Zealand.[1]

2. Our mission is to ensure that our bicultural history is understood by New Zealanders and all peoples. Our vision is expressed in the whakatauākī: Tairangahia a tua whakarere; Tātakihia ngā reanga o āmuri ake nei - Honouring the past; Inspiring the future.

3. We have read the Issues Paper from the perspective of the many heritage groups that are registered charities, including the New Zealand Archaeological Association, Historic Places Aotearoa, Historic Places Wellington, Southern Heritage Trust, DOCOMOMO New Zealand, and the many historical societies throughout Aotearoa New Zealand.

4. However, in the time available, we have not been able to consult these groups and the views in this submission should therefore be read as those of Heritage New Zealand Pouhere Taonga.

Our approach to the Issues Paper

5. Primarily our submission relates to Questions 3, 4 and 14 of the Issues Paper. As the lead national agency, we wish to ensure that community efforts to recognise and conserve heritage places is encouraged, respected and effective.

General comment

6. We are concerned that the paper does not capture the benefits of recognising the public good value of volunteer professional effort. The framing of tax concessions as a cost that ultimately falls on the taxpayer (paragraph 1.4), is not balanced by recognising the *benefit* to the taxpayer of investment in activities that fulfil social and cultural needs – such as the need to conserve our heritage for present and future generations.

Question 3: ***If the tax exemption is removed for charity business income that is unrelated to charitable purposes, what criteria should be used to define an unrelated business?***

[1] Heritage New Zealand Pouhere Taonga Act 2014 (HNZPT Act), s 3.

7. An ‘unrelated business’ should be defined as a business that produces profits that are not funneled back to the achievement of the charitable purpose for which the founding entity was set up. The ‘funneling back’ should be demonstrable in the income provided being fully utilised to meet the running costs of the founding entity.

Question 4: ***If the tax exemption is removed for charity business income that is unrelated to charitable purposes, what would be an appropriate threshold to continue to provide an exemption for small-scale business activities?***

8. We understand that business income is not defined in the Charities Act 2005 but may include trading activities intended to generate a surplus, disposal of income earnings assets and donations or investment activity.

9. Heritage organisations with charitable status have relatively low levels of income and generally fall well within the Tier 4 level (under $140,000) or in Tier 3 ($140,000 - $5m) reporting tiers.

10. If taxation is introduced, we strongly urge a de minimis threshold that continues to provide a tax exemption for Tier 3 and Tier 4 charities. More work is also needed to define what the term ‘business activities’ means in this context.

11. The factors set out in 2.13 and 2.14 of the paper, itemising the perceived advantages of the income tax system for charitable trading entities, do not apply to small community-based heritage organisations with little or no trading activity.

Question 14: ***What are your views on extending the Fire and Emergency New Zealand (FENZ) simplification as an option for all not-for-profits (NFPs)? Do you have any other suggestions on how to reduce tax compliance costs for volunteers?***

12. We support lowering tax-related compliance costs for volunteers. We do not have experience of the FENZ simplification but would be supportive of its extension to volunteers in the heritage sector if, as the Issues Paper implies, it genuinely reduces their tax burden.

Conclusion

13. Changes to charitable business income tax exemptions may jeopardise philanthropic work and income generation for heritage conservation and promotion.

14. If taxation is introduced on the business activities of charities, it must not apply to heritage agencies given the public good nature of the activities in which they are engaged, the very small amounts of money involved, and the additional compliance costs.

Ngā mihi, nā

s 9(2)(a)

Andrew Coleman
Chief Executive, Policy, Strategy and Corporate Services
Heritage New Zealand Pouhere Taonga

Cc Leauanae Laulu Mac Leauanae, Secretary for Culture and Heritage and Chief Executive, Manatū Taonga Ministry for Culture and Heritage

Submitter:
Marlborough-Nelson Marine Radio Association Incorporated

Charities Register Number:
CC37560

Date of Incorporation:
12 July 1961

NZBN:
9429042757061

Contact person:
Stephen Riley (Secretary/Treasurer)

Introduction
Introduction 1.4
Every tax concession also has a "benefit", that is, it increases the charity's resources to undertake the stated charitable purpose.

Tax Simplification
Volunteers 4.33
Any simplification and reduction in compliance costs, especially relating to volunteers, would be appreciated.

Publicly available information regarding the FENZ simplification is limited. No first or second-tier staff at IRD were familiar with the scheme.

If the proposal that volunteers are considered to be receiving salary or wages means they are then entitled to receive holiday pay and sick leave, then the cost to this charity would be excessive and prohibitive. A volunteer who usually offers one day a week of service could be entitled to 10 days paid sick leave and four days of holiday pay per year, the equivalent of over a quarter of the year for no contribution to the charitable purpose.

These entitlements, based on 8% holiday pay and 10 days sick leave, would be higher than the current compliance costs such as ACC levies and would be incurred by the charity.

Alternatively, if the proposal is to include ACC levies in the tax deducted (but with no holiday or sick pay entitlements) then this would be beneficial to both charity and volunteer in that:

- compliance would be simplified,
- the charity will not be seen in a negative light when the volunteer receives an invoice from ACC for their volunteering, and
- the volunteer will not be required to make a payment to ACC.

The Association's preference would be the second option, or to retain the status quo.

Ngāti Kahungunu Ki Tāmaki-nui-a-Rua
171 – 173 High Street | PO BOX 97 Dannevirke 4930
06 374 9224 | s 9(2)(a)

Taxation and the not-for-profit sector
C/- Deputy Commissioner, Policy
Inland Revenue Department
PO Box 2198
Wellington 6140

31 March 2025

Tēnā koe Deputy Commissioner

INLAND REVENUE CONSULTATION ON TAXATION AND THE NOT-FOR-PROFIT SECTOR

Ngāti Kahungunu ki Tāmaki-nui-a-Rua Trust (the "Taiwhenua Trust") is writing to submit on the recent Officials' Issues paper; taxation and the not-for-profit sector (the "Issues Paper"). This is an issue of direct relevance to the Taiwhenua Trust as an iwi organisation and charitable trust operating in New Zealand, and it is in this context that our submission is made.

This submission provides responses to questions raised in the Issues Paper and provides examples on the practical implications for the Taiwhenua Trust in the case that charitable reform as proposed is made.

Background

Historical Context

Ngāti Kahungunu originates from the Tākitimu waka, which sailed from Haiwaiki led by Tamatea Arikinui.

Ngāti Kahungunu has the third largest Iwi by population (95,751 at 2023 census). Geographically, Ngāti Kahungunu has the second largest tribal rohe in the country, from the Wharerata ranges in the Wairoa district extending to south Wairarapa. The coastal boundaries are Paritu in the north to Turakirae in the south.

Ngāti Kahungunu is a thriving tribe made up of six Taiwhenua (Regional offices within the tribal area), four Taurahere (offices outside the tribal area), 87 marae and approximately 400+ hapū.

Ngāti Kahungunu ki Tāmaki-nui-a-Rua Trust is the Taiwhenua representing and encompassing the Tāmaki-nui-a-Rua district, with it offices located in Dannevirke.

Charitable Objectives of the Taiwhenua Trust

The Taiwhenua Trust's kaupapa is focused on enhancing the hauora of Ngāti Kahungunu and uplifting its community through a diverse range of holistic services.

Guided by the values of manaakitanga, kotahitanga, and whanaungatanga, its mahi spans health, education, rangatahi development, kaitiakitanga, and more. Each service is designed to support whānau, empower individuals, and nurture a thriving iwi that honours the legacy of tīpuna while shaping a vibrant future for the next generations.

The Taiwhenua Trust obtained charitable status in 2024 and acknowledge that whilst the charitable status brings tax benefits, it assumes the corresponding obligation to carry out our charitable activities in a transparent way. The aim of our charitable activities is to support and represent our people and our communities.

Ngāti Kahungunu Ki Tāmaki-nui-a-Rua
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06 374 9224 | s 9(2)(a)

Operation of the Trust

The Taiwhenua Trust has the following sources of income/business activities:

- Grants received from government entities;
- Café and school lunch operations for the benefit of the community;
- Commercial and residential rental properties (including some property development);
- GP practice;
- FMCG product development and sales
- Distributions from representative entities holding assets arising from Māori Fisheries settlement and Treaty of Waitangi settlement processes.

Specific Responses to Questions in the Issues Paper

Q1. What are the most compelling reasons to tax, or not to tax, charity business income? Do the factors described in 2.13 and 2.14 warrant taxing charity business income?

Q2. If the tax exemption is removed for charity business income that is unrelated to charitable purposes, what would be the most significant practical implications?

The Taiwhenua Trust submits that Officials should not proceed with any changes set out in the consultation document to the taxation rules applying to business activities carried on by iwi / Māori charities.

There are several reasons to not tax charitable business income relating to iwi / Māori charities, which include practical implications as set out below:

1. *Decreasing the funds available for reinvestment into charities, therefore impacting the ability to support those most vulnerable.*

As set out above, we operate to represent the people of Ngāti Kahungunu and promote and support iwi development, which is funded through charitable business income.

Any tax imposed on this income would reduce the funds we have available to achieve our purpose and meet the needs of our iwi in Tāmaki-nui-a-Rua both today, and in the future. More importantly, it would restrict our ability to support those that need it most.

Increased taxation on operating profits would also reduce the funds available for charities to reinvest. As a charitable Māori entity, it is vital to the Taiwhenua Trust that we do not overdistribute our charitable income today and constrain our ability to provide for future generations of our iwi. Any tax imposed would negatively affect our ability to successfully provide for those most vulnerable for generations to come.

A higher income tax liability decreases the proportion of funds we have available to use for charitable purposes. This directly affects our ability to fund essential programmes and support for our iwi and communities, and ultimately achieve our purpose.

2. *Restrict economic growth within Tāmaki-nui-a-Rua*

The focal point of economic activity for the Taiwhenua Trust is substantially within the regional economy of Tamaki Nui-ā-Rua. The activities of the Taiwhenua Trust would be significantly impacted by a tax on charitable business income. This would, in turn, impact on job opportunities and education for our iwi members in this region.

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We are aware of the concentration risk that exists by operating exclusively in one geographical region, however Inland Revenue must consider the economic consequences the taxation changes in the Issues Paper would impose. Re-investment in the region, job opportunities and sustained economic growth in our region of Tāmaki-nui-a-Rua would be put at risk.

3. Impact on investment activities

As a significant economic influence in Tāmaki-nui-a-Rua, any changes would lead to broader economic downturn in our communities, affecting our Iwi and those most vulnerable. This does not align with the government's economic growth agenda.

4. Absence of evidence of competitive advantage / any benefit from taxing business income

The Tax Working Group has found, and the Issues Paper notes, that there is no evidence to suggest that the business income tax exemption that charitable businesses currently have creates a competitive advantage relative to other, for-profit businesses. The Taiwhenua Trust agrees with these findings and submits that there is therefore little reason for any of the changes set out.

We further submit that if the government were to collect tax revenue through taxing the not-for-profit sector as set out in the Issues Paper, Iwi would have limited say in where these funds are redistributed. Under the current landscape, Iwi determine where funds are distributed, allowing for best possible outcomes to address and meet the needs of their communities. This would place an additional obligation on the government and decrease the benefit to Iwi, and hence seems unnecessary.

5. Increased complexity for charitable businesses with multiple streams of income.

The Issues Paper discusses creating distinctions between charity business income related and unrelated to charitable purpose. Any change to include unrelated charitable business income as taxable creates complexity and uncertainty. This is especially true for Māori entities such as the Taiwhenua Trust, where multiple streams of income are collected, some of which will be non-charitable.

This would also increase compliance costs for the Taiwhenua Trust, as accounts and tax positions would need to be prepared in a more complex manner to separate related charitable business income from unrelated charitable business income. With the additional compliance burden in cases such as this, any changes would hinder our ability to support and uplift our Iwi and communities.

In response to 2.13 and 2.14 discussed in the Issues Paper, we would like to provide the following comments:

- In terms of tax compliance costs, charitable businesses face a similar burden to non-charitable businesses in relation to employer and indirect taxes. Whilst they do not face the same income tax compliance obligations, they must ensure they are acting in line with the Charities Act. This compliance cost would be equal to, if not greater, than the income tax compliance cost faced by non-charitable businesses. Hence, we do not believe that charitable entities such as the Taiwhenua Trust have any sort of competitive advantage over non-charitable entities in terms of compliance costs. By introducing an income tax compliance requirement for charitable business activities, the total compliance cost for charities would then outweigh the cost for non-charitable business entities.

- We do not agree that the non-refundability of losses for taxable businesses creates any disadvantage for non-charitable entities. If anything, a charitable business is at a greater disadvantage when in a loss position, as they still face an obligation and duty to distribute funds to support those most vulnerable. This is an undesirable position for the charities themselves, communities and the government, as it means this obligation will be placed into their hands.

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- The intergenerational purpose of Māori entities to provide for future generations of Iwi means that the Taiwhenua Trust must balance the accumulation and distribution of income.. In order to meet our purpose of supporting the development of our Iwi, we must accumulate a portion of our funds to ensure that future generations can be supported by the Taiwhenua Trust.

In summary, we consider that the removal of the tax exemption for charitable business income would:

- Result in economic growth slowing down due to the reduction in regional economic activity. This will result in the opposite effect to the intended economic growth agenda of the Crown.
- Result in the removal of funds from the not-for-profit sector and their ability to be utilised for charitable purposes, resulting in a significant impact on the ability to meet the needs of the most vulnerable and result in greater pressure on governmental entities to address these needs.
- Result in an increase in compliance costs as charitable organisations already have significant Charities Act compliance obligations and associated costs.

Q3. If the tax exemption is removed for charity business income that is unrelated to charitable purposes, what criteria should be used to define an unrelated business?

The Taiwhenua Trust submits that the criteria for unrelated business income should be:

- The nature of the activities carried on is in line with the nature of the business;
- The business activity does not involve carrying out a charitable purpose;
- It only applies to active business income and does not apply to passive income e.g. interest, dividends, rents, royalties etc.

We would like to emphasise that in the context of iwi Māori businesses, businesses that may not appear to be related to a charitable purpose, would usually have a wider charitable purpose. For example, our business activities of providing school lunches, operating a cafe and general practitioner medical services are all linked to ensuring that the needs of our people and community are being met, including through access to healthcare, education and work development, consistent with our charitable purposes.

Q4. If the tax exemption is removed for charity business income that is unrelated to charitable purposes, what would be an appropriate threshold to continue to provide an exemption for small-scale business activities?

We recommend a threshold of $1,000,000 of revenue as appropriate for smaller scale businesses.

Q5. If the tax exemption is removed for charity business income that is unrelated to charitable purposes, do you agree that charity business income distributed for charitable purposes should remain tax exempt? If so, what is the most effective way to achieve this? If not, why not?

We again emphasise that we disagree with the removal of the tax exemption for charity business income. Should this be the outcome of the consultation document, charity business income distributed for charitable purposes should remain tax exempt.

Further consultation should occur on the process adopted to exempt income applied for charitable purposes. Given the inter-generational view adopted by iwi-based charities, they should be allowed the ability to retain profits within a safe harbour limit without the imposition of tax. Widely held charities should also be able to re-invest their funds into charitable trading business when a valid distribution has been made and a decision to re-invest is made and implemented on normal arm's length terms.

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Q6. If the tax exemption is removed for charity business income that is unrelated to charitable purposes, what policy settings or issues not already mentioned in this paper do you think should be considered?

The removal of the tax exemption for charity business income would be a significant change to the charitable sector and tax system as a whole. Therefore, sufficient time and consideration should be spent weighing up consequences. Due to the short turn around period for this submission, we put forward the following points:

- The ability to restructure out of the Charities Act – a transition should be provided to support affected entities in restructuring out of the Charities Act. This will allow these entities to minimise compliance costs, similar to that used in the Treaty Settlement Post Settlement Governance Entity Template adopted by the Crown and iwi.

- Grandfather existing charitable reserves – existing reserves and profits of charitable trading entities should retain their tax-free status.

We emphasise again that in the context of iwi Māori businesses, very little occurs from a commercial point of view without having a wider, charitable purpose. We also submit that the activities carried out by the business to date should not be impacted by the changes in the Issues Paper.

Donor-controlled charities

Q7. Should New Zealand make a distinction between donor-controlled charities and other charitable organisations for tax purposes? If so, what criteria should define a donor-controlled charity? If not, why not?

We submit that New Zealand should make a distinction between donor-controlled charities and other charitable organisations, to increase integrity and simplicity in the system.

Charitable entities established, controlled, or associated (including beneficially) with entities established to support receive and manage assets arising from a settlement (including under the Treaty of Waitangi) and that represent a wide class of inter-generational beneficiaries should not be treated as a donor-controlled charity.

Integrity and simplification

Q13. If the compliance costs are reduced following the current review of FBT settings, what are the likely implications of removing or reducing the exemption for charities?

The removal of the FBT exemption will increase compliance costs for charitable entities. This will in turn result in increased operating costs, meaning less funds will be available to distribute for charitable purposes.

Conclusion

The changes set out in the Issues paper will place significant risk on the Taiwhenua Trust. Our operational capacity, and our ability to support our iwi through a range of initiatives will all be impacted as discussed. We urge the Inland Revenue to consider these potential impacts to enable us, and other charitable Māori entities to continue supporting iwi and ensure future generations can thrive.

Ngā mihi

s 9(2)(a)

Stacey Hape | General Manager | Ngāti Kahungunu ki Tāmaki-nui-a-Rua

Submission to:
Deputy Commissioner, Policy
Inland Revenue Department

On: Taxation and the not-for-profit sector

By email: policy.webmaster@ird.govt.nz

28 March 2025

Submission from Advocacy Answers New Zealand
Contact: info@advocacyanswers.nz

Summary of main points

Advocacy Answers New Zealand are opposed to the proposed changes outlined in the IRD paper *Taxation and the not-for-profit sector.*

This submission is structured into the following sections:

- **Summary of main points**
- **About the sector**
- **Further response to the paper**
    - **A solution trying to find a problem**
    - **Serious unintended consequences**
    - **Solutions**
- **About us**

Our main points of opposition are:

- Charities play a vital role, delivering a range of essential services to significantly improve New Zealanders' wellbeing across critical areas including but not limited to: health, education, youth wellbeing, unemployment, justice, re-offending prevention, mental health and housing. Publicly-funded services are under immense pressure in these areas. Introducing taxation will add extra operational costs and inhibit the ability of many charities to deliver services directly to the community. This could seriously impact the wellbeing of all New Zealanders and exacerbate the disparity between rich and poor.
- Charities are already in a vulnerable position due to a constricted fundraising environment. Many have had funding cut by the Government over the last 12-18 months. Introducing complicated taxation will further hinder-charities' ability to undertake their important work.
- Securing funding from a range of sources is critical for charities to deliver their services. They work hard to diversify their income to become more sustainable. If some of these sources are to be declared 'unrelated business activities' and taxed, it may significantly impact their ability to raise revenue and increase reliance on traditional fundraising methods such as donations and philanthropy.
- It is unclear what activity will be defined as 'unrelated business activities' and how this will impact a charities ability to generate revenue. This has not been evidenced or communicated.
- Appropriately, legislation is already in place via the Charities Act to penalise organisations not operating within their purpose. There is no need to introduce additional taxation rules through IRD using a 'broad brush' approach.
- The consultation process has been limited without intention to engage with the for-purpose sector.

About the sector

Charities have a vital role to play in New Zealand society and deliver essential services to benefit the most vulnerable in our community. As a nation we rely heavily upon the vital and often invisible work of the for-purpose sector however, the contribution of charities is largely not understood or valued.

Charities are at risk with these proposed changes. Their ability to bring in revenue in innovative new ways to increase sustainability, may be severely limited or no longer viable. This may force them to constrict revenue raising activities and invest any reserves. It is unclear what the parameters of 'unrelated business activities' will be and what will constitute 'passive income'.

Many organisations in the for-purpose sector are already financially vulnerable and some essential organisations are on the brink of collapse. In a number of cases this is due to government funding suddenly being cut or reduced, which has resulted in significant extra pressure being placed on other funding sources, including grant funding.

The sector is:

- Delivering significant social benefit across numerous areas of society.
- Reinvesting their 'profit' for social benefit.
- Already heavily regulated.
- Misunderstood and undervalued.

Charities are struggling to meet compliance issues that can be costly and onerous. For example, the requirement for financial auditors to assure service reporting.

The sector has been forced on the backfoot to produce a response in the absence of information, time or any attempt at genuine consultation. It is unclear what national community consultation was undertaken to inform the IRD document.

Further response to the paper

The IRD paper *Taxation and the not-for-profit sector* refers to perceived abuse by charities of their tax status to gain business advantage.

It has been stated that objectives include; simplifying tax rules, reducing compliance costs and addressing integrity risks.

We don't believe this approach will achieve or address these objectives but will instead add further complexity and compliance factors. Concerningly, the proposed changes have not been circulated with any attempts to consult and engage with the for-purpose sector by relevant Minister(s).

The proposed changes have been positioned as a revenue issue, being led on by IRD. If charities are undertaking activities that do not relate to their purpose this can be addressed through the Charities Act.

A solution trying to find a problem

We also would like to comment on the difficulty gaining information about what is being proposed and why. The 'consultation' was limited to one month, with little regard for the timing. Many charities are at the end of the tax year which is an extremely busy time for most organisations. The 'consultation has not demonstrated good faith in terms of genuine broad engagement nationally with those who have deep sector knowledge.

This 'issue has been socialised unhelpfully in the media with an associated flavour of the charity sector being seen as somewhat underhand. This is neither fair nor true in the majority of cases.

There is little understanding of which organisations will be impacted by these changes, what the proposed taxation will entail and what the benefits will be of taxing charities in this way. It is unclear who would be responsible for defining and ruling what are deemed unrelated business activities.

There is a rigorous process in place to become a registered charity. Charities have considerable regulatory, legislative and reporting requirements that are vastly more comprehensive than establishing a business. These frameworks and safeguards are more than adequate to deal with issues.

Charities are by their nature transparent as they seek to deliver and describe their impact in ways that will provide ongoing sustainable funding. They are also required to report financially and on their social impact via the XRB Statement of Service Performance reporting standards.

Serious unintended consequences

We foresee risk of the following potential unintended consequences:

- Undermining public trust in the charity sector.
- People may be less likely to take on charity roles both in a voluntary and paid capacity.
- Reducing funds for organisations to deliver their services.
- Reducing grant funding if philanthropic funders get further taxed. This may well result in less charitable giving.
- Serious limitations on the ability of charities to become sustainable and diversify their income streams. This would also result in stifling innovation.
- Removal of the Fringe Benefit Tax exemption leading to the ability of charities to offer salaries that will attract staff.
- Additional compliance costs to manage accounting functions for fringe benefits.
- Increased compliance time and escalating costs for charities trying to define if the business activity is 'related' or not.
- The need for Government to fund services that charities currently provide as they cease to operate. There may also be the expectation that philanthropic funders should be covering the shortfall. This neither achievable nor realistic.
- The impact for all New Zealanders, including the most vulnerable our society, who will be farther marginalised and disadvantaged due to reduced community services.

Solutions

Rather than further disadvantaging the for-purpose sector the Government should be working to engage with it, provide funding, and build understanding of the immense value it adds to New Zealand society. Solutions could include:

- Using the Charities Act to manage the small number of organisations that have issues of integrity, rather than using a broad taxation brush via IRD.
- Properly resourcing Charity Services respond to integrity issues for individual organisations that should be investigated.

About us

Advocacy Answers New Zealand is an agency founded in 2018 to work with organisations to develop and implement practical solutions that strengthen the community. Pru Etcheverry (ONZM) and Georgie Hackett established Advocacy Answers New Zealand to share their knowledge of building successful, sustainable not-for-profits. We believe that Government, businesses and for-purpose organisations have the ability to solve complex social issues if they work together strategically and creatively to drive change.

We have over 30 years extensive combined experience working in CEO, senior management roles and governance in not-for-profits and businesses. Additionally, we have ongoing governance and voluntary roles in the sector. We have a deep understanding of the challenges and pressures that charities face. This experience makes us uniquely placed to deliver practical, implementable solutions.

We have established an endowment fund, created and delivered some of New Zealand's largest fundraising events including Shave for a Cure, the Firefighter Sky Tower Stair Challenge and the Corporate Sky Tower Stair Challenge as well as a range of other diversified fundraising initiatives for our clients.

We have also established long-term charity partnerships with large New Zealand businesses including Auckland Airport, Bell Gully, Bridgestone, Farmers, Fidelity Life, Holden, SkyCity, PwC and Suzuki. We use this experience to help organisations develop enduring mutually beneficial community and business partnerships that can be measured and reported on.

We work with charities to diversify their income and identify new revenue streams in practical achievable ways they can resource. This leads to improved sustainability.

We are deeply concerned by these proposed changes.

On behalf of Advocacy Answers New Zealand Limited.

Pru Etcheverry, ONZM

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Georgie Hackett

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Taxation and the not-for-profit sector

Submission by Ronald McDonald House Charities New Zealand

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Introduction

Ronald McDonald House Charities New Zealand (RMHC NZ) appreciates the opportunity to comment on the 'Taxation and not-for-profit' issues paper (issues paper). RMHC NZ was set up as a Charity 35 years ago and provides a vital means for ensuring families can access crucial and life-saving health services for their children. Many of the changes scoped within the issues paper, could have a significant and detrimental impact on our financial model and our ability to support those families.

RMHC NZ has a fundamental role to play in supporting New Zealand's public health system and contributes to the governments goals within our education, social services and justice sectors. At a very basic level, RMHC NZ provides accommodation for families that need to travel away from their home to receive specialist medical treatment. In reality, we offer much more. Some key facts and figures are provided below:

- In 2024, RMHC NZ provided 4,420 families with over 43,000 nights of accommodation at its facilities throughout New Zealand.
- RMHC NZ also provides families with food, education, phyco-social support and connections with broader social services.
- Our latest Impact Report shows that RMHC NZ delivered almost $52 million in measurable good to NZ society in 2023. For every $1 invested in RMHC NZ, we provide a Social Return on Investment of $5.50.
- Our service ensures that children are able to access crucial health services and that families are given the support they need to maintain a family unit during this time of need.
- The importance of the family in the care of hospitalized children has long been recognized (Gooding et al., 2011; Johnson, 2000; Kuo et al., 2012) and the family experience in assessment of health care quality is also now well understood (Anhang Price et al., 2014; Co et al., 2011; Giordano et al., 2010; Isaac et al., 2010).
- The National Children's Hospital describes RMHC NZ as providing "a vital means of ensuring families are close to the hospital and maintaining the family system during episodes of care".

RMHC NZ is concerned that any changes to the current charity tax exemptions will have a negative impact on our ability to deliver these vital services.

Chapter 2: Charities business tax exemption	
Q.1 What are the most compelling reasons to tax, or not to tax, charity business income? *Do the factors described in 2.13 and 2.14 warrant taxing charity business income?*	<u>Why charities should not be taxed</u> There are compelling reasons not to tax charity business income that is being appropriately used for charitable services. At the heart of it, tax exemptions for charities allow those charities to deliver key services across Aotearoa. Many of those services would otherwise need to be delivered by government, often at a much higher cost. RMHC NZ has a fundamental role to play in supporting New Zealand's public health system and contributes to the governments goals within our education, social services and justice sectors. At a very basic level, RMHC NZ provides accommodation for families that need to travel away from their home for their child to receive hospital care. In reality, we offer much more. <u>Why charities business income should not be taxed</u> Charities should be encouraged to increase financial sustainability through innovation, to enable them to deliver their charitable services. RMHC NZ provides accommodation to families when they need to travel to care for their children in hospital. RMHC NZ also offers lease facilities to health adjacent services, which support partnering hospitals. This business income is invested directly back into operating costs to support our charitable purpose. When RMHC NZ opened its doors in 1989, the population of New Zealand was only 3.3 million. It now stands at more than 5.2 million, and those numbers continue to grow every day. Bigger cities also mean more social complexity. In recent years, we've been supporting an increasing number of vulnerable families. Without us here to provide accommodation, there is a risk that children wouldn't be brought in for crucial treatment or medical support. The reality is that many families can't even afford the cost of local travel, let alone accommodation. RMHC NZ has had to dip into reserve funding many times in recent years to meet the ongoing and growing demand. We have had to look at other funding models to ensure we can continue to deliver our core service to families in need. The business income we achieve through leasing some of our

	facilities helps to keep our services afloat. Without that income source, the impact could be huge: • Without the accommodation we provide, we are at risk of children not having basic access to the timely hospital care they need or their appropriate care plan completed. This would have a detrimental impact on their health and costly impacts on our health system. • We are seeing more families, with higher social needs. Many have told us that without RMHC NZ, those families would be sleeping in cars while their child was receiving medical treatment. This is due to the emergency nature of treatment, and the high costs of temporary accommodation close to hospitals. • Many people within our front-line health services see RMHC NZ as crucial to the health system across NZ. The National Children's Hospital (Starship) describes RMHC NZ as providing "a vital means of ensuring families are close to the hospital". • Without the services provided by RMHC NZ (or a reduction in those services), would require the government to look at how it provides those vital services. <u>Views on the 'competitive advantage'</u> RMHC NZ believes that the 'competitive advantage' argument presented in the issues paper (2.13 and 2.14) does not warrant taxing charity business income. We need to consider the broader picture. Charities face many challenges that are not typically faced by for-profit organisations (putting charities at a disadvantage): • Charities like RMHC NZ have widely variable revenue streams, which often make it difficult to plan and deliver a service over time. • Charities typically struggle to scale up with increasing need, due to the inability to access capital (because of variable funding). RMHC NZ has been struggling with the growing demand in its service due to increasing population and social complexity, but it is inherently difficult to raise the capital needed to meet this need. • Debt funding is also uncommon for charities due to the governance and risk profiles of charities. • Charities are held to a much higher level of reporting requirements and public transparency.

	Charities need to be able to diversify their revenue to help offset these issues and grow financial stability. The ability to earn business income provides a steady funding stream to help support the charitable purpose.
Q.2 If the tax exemption is removed for charity business income that is unrelated to charitable purposes, what would be the most significant practical implications?	A removal of this current business tax exemption (if it applied to RMHC NZ) would have a significant impact on delivery of the service we provide. RMHC NZ provides accommodation to families when they need to travel to care for their children in hospital. RMHC NZ also offer lease facilities to health adjacent services, which support partnering hospitals. The business income earnt is invested directly back into operating costs to support our charitable purpose. Without that income source, the impact could be significant: • Without the accommodation we provide, we are at risk of children not having basic access to the timely hospital care they need or their appropriate care plan completed. This would have a detrimental impact on their health and costly impacts on our health system. • We are seeing more families, with higher social needs. Many have told us that without RMHC NZ, those families would be sleeping in cars while their child was receiving medical treatment. This is due to the emergency nature of treatment, and the costs of temporary accommodation close to hospitals. • Many people within our front-line health services see RMHC NZ as crucial to the health system across NZ. The National Children's Hospital (Starship) describes RMHC NZ as providing "a vital means of ensuring families are close to the hospital". • Without RMHC NZ, the government would need to look at how it provides this vital service. Any changes to tax exemption status (even if we fell outside the definition), would also have ramifications for RMHC NZ. RMHC NZ operates on a tight budget and any increase in compliance costs, would also directly impact on the funding we have available to provide these services. We are also concerned about the increase in competition between charities, if innovative options for business revenue were limited.

	At a very practical level, a reduction in funding for charities would likely lead to an increase in need for government funding to backfill those services.
Q.3 If the tax exemption is removed for charity business income that is unrelated to charitable purposes, what criteria should be used to define an unrelated business?	RMHC NZ recommends that any new definition adopted would need to be very carefully thought through and modelled, to ensure that any related business is still included. It would also need to be simple to reduce compliance costs. In RMHC NZ's case, we provide accommodation to families when they need to travel for hospital-based care for their children. RMHC NZ also offer lease facilities to health adjacent services which support partnering hospitals with all profits invested into operating costs to serve more families. The income earnt here invested directly back into services we provide. We would need to maintain these lease arrangements, to continue to deliver our core service.
Q.4 If the tax exemption is removed for charity business income that is unrelated to charitable purposes, what would be an appropriate threshold to continue to provide an exemption for small-scale business activities?	RMHC NZ currently falls within Reporting Tier 2. We are also aware of many important charitable services that fall within Tier 1. We would be concerned with any changes that would make it harder for RMHC NZ and others to continue to our charitable work or increased compliance costs to enable us to do so. As discussed above, RMHC NZ provides accommodation to families when they need to travel to care for their children in hospital. RMHC NZ also offer lease facilities to health adjacent services that support partnering hospitals, with all profits invested into operating costs to serve more families. We would need to maintain these lease arrangements, to continue to deliver our core service.
Q.5 If the tax exemption is removed for charity business income that is unrelated to charitable purposes, do you agree that charity business income distributed for charitable purposes should remain tax exempt? If so, what is the most effective way to achieve this? If not, why not?	RMHC NZ is concerned about any blanket proposals to remove tax exemption for business income. We are concerned that it might reduce funding for important charitable services. We believe that changes could also lead to more competition between charities, which will in turn put more pressure on all charities. If however, there is a government decision to remove the tax on unrelated charity business income, RMHC NZ agrees that charity business income distributed for charitable purposes should at the very minimum remain tax exempt.

	Any changes to this tax exemption system would need to be simple and clear. We would also like to note that such a system would increase compliance costs therefore reducing the overall amount able to be applied to charitable purposes. This cost should be quantified and carefully considered before any changes are made.
Q.6 If the tax exemption is removed for charity business income that is unrelated to charitable purposes, what policy settings or issues not already mentioned in this paper do you think should be considered?	Any changes to the current tax exemption system will increase compliance cost for both government and charities, reducing funds available for charitable purposes. This cost should be quantified and carefully considered before any changes are made. There is not a level playing field in regards to reporting requirements between not/for-profit businesses. Charities have to currently meet a higher level of public transparency than for-profit businesses. Failure to address this issue would result in charities being at an unfair competitive disadvantage with for-profit businesses.
Chapter 3: Donor controlled charities	
Q.7 Should New Zealand make a distinction between donor-controlled charities and other charitable organisations for tax purposes? If so, what criteria should define a donor-controlled charity? If not, why not?	No comment
Q.8. Should investment restrictions be introduced for donor-controlled charities for tax purposes, to address the risk of tax abuse? If so, what restrictions would be appropriate? If not, why not?	No comment
Q.9 Should donor-controlled charities be required to make a minimum distribution each year? If so, what should the minimum distribution rate be and what exceptions, if any, should there be for the annual minimum	No comment

distribution? If not, why not?	
Chapter 4: Integrity and simplification	
Q.10 What policy changes, if any, should be considered to reduce the impact of the Commissioner's updated view on NFPs, particularly smaller NFPs? For example: *• increasing and/or redesigning the current $1,000 deduction to remove small scale NFPs from the tax system,* *• modifying the income tax return filing requirements for NFPs, and* *• modifying the resident withholding tax exemption rules for NFPs.*	No comment
Q.11 What are the implications of removing the current tax concessions for friendly societies and credit unions?	No comment
Q.12 What are the likely implications if the following exemptions are removed or significantly reduced: *• local and regional promotional body income tax exemption,* *• herd improvement bodies income tax exemption,* *• veterinary service body income tax exemption,* *• bodies promoting scientific or industrial research income tax exemption,* *and* *• non-resident charity tax exemption?*	No comment
Q.13 If the compliance costs are reduced following the current	No comment

review of FBT settings, what are the likely implications of removing or reducing the exemption for charities?	
Q.14 What are your views on extending the FENZ simplification as an option for all NFPs? Do you have any other suggestions on how to reduce tax compliance costs for volunteers?	No comment
Q.15 What are your views on the DTC regulatory stewardship review findings and policy initiatives proposed? Do you have any other suggestions on how to improve the current donation tax concession rules?	No comment.

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Summary

In summary, RMHC NZ is concerned about any blanket proposals to remove tax exemption for business income. We are concerned that it might reduce funding for important charitable services. We believe that changes could also lead to more competition between charities, which will in turn put more pressure on all charities. It would also likely increase overall compliance costs. All of these impacts would reduce funding available for charitable purposes. This would in turn put more pressure on government to backfill the gap in those services.

If however, there is a government decision to remove the tax on unrelated charity business income, RMHC NZ agrees that charity business income distributed for charitable purposes should at the very minimum remain tax exempt. RMHC NZ provides accommodation to families when they need to travel to care for their children in hospital. RMHC NZ also offers lease facilities to health adjacent services that support partnering hospitals, with all profits invested into operating costs to serve more families. We would need to maintain these lease arrangements, to continue to deliver our core service.

Final comments

Thank you for your consideration of this submission. We are happy for officials from Inland Revenue to contact us to discuss the points raised, if required.

Ngā mihi nui,

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Wayne Howett
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Ronald McDonald House Charities
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Keiran Andersen
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31 March 2025

Taxation and the not-for-profit sector
c/- Deputy Cpommissioner, Policy
Inland Revenue Department
PO Box 2198
WELLINGTON 6140

BY EMAIL: policy.webmaster@ird.govt.nz

Dear David

Taxation and the Not-for-profit Sector

Below is our submission on the officials' Issues Paper "Taxation and the not-for-profit sector" of February 2025 (The Issues Paper). We would welcome the opportunity to discuss any aspects with officials.

Executive Summary

The issues Paper seems to have broad scope (the charitable and NFP sector) with potentially significant and adverse implications for the most part on this broadly scoped sector. That broad scope does not, however, seem to be reflected in the Issues Paper's depth of analysis - the detail of what is being considered, the rationale and the policy framework being used. This may have limited our ability to submit in as useful way as we would desire. We assume this reflects the need to draft the Issues Paper in a rushed manner thereby limiting its depth.

The focus of the Issues Paper appears on its face to be revenue raising. However, in the main we consider the major suggestions not likely to raise material additional tax revenue but impose complexity and compliance costs. Further, this likely results in sub-optimal investment to the detriment of the resources available for the important activities of this sector as well as the overall economy. The charitable/NPF sector now manages a material level of New Zealand investment and the apparent lack of emphasis on impacts on that investment is a weakness of

the Issues Paper. The government's growth strategy is reliant on increased investment being optimally used. Tax policies that discourage optimal investment would undercut that strategy. In our submission we highlight the potential adverse impact on investment of Issues Paper suggestions.

With respect to the various proposals our views are:

- No justification has been provided for taxing the **unrelated business income of charities** and an attempt to do so would raise a multitude of practical problems. We do not believe this will raise any material revenue, rather it will raise compliance costs and complexity.
- Concerns with **donor controlled charities** seem to be concerns that they are not in practice carrying on charitable work. Any response to such concerns seems better to be managed by the Charities Commission (rather than through Inland Revenue applying the legal rules as to what qualifies for the charitable tax exemption).
- We have little comment on the **donor tax credit review.**
- With respect to the **NFP sector,** we submit that, while a complex area, Inland Revenue's past policy on taxing the sector has worked well for many years without undue issues arising and that policy should be confirmed with legislative amendments to allow that if law changes are necessary.
- No sufficient case is made in the Issues Paper for removal or restriction of the **tax exemption for friendly societies and credit unions and the other entities** mentioned in the Issues Paper.
- The **charitable FBT exemption** seems a policy choice for the government.
- We have limited comment on the section of the Issues Paper covering **volunteers.** Our comment is that existing tax exemptions for honoraria should be retained and possibly expanded.

Charity business income tax exemption

The Issues Paper correctly concludes that the charitable business tax exemption does not provide such businesses with a competitive advantage, or any other material economic advantage, over non-charitable businesses. An orthodox economic analysis identifies features of a tax system that lowers overall welfare by providing tax advantages to investments or activities that are otherwise less efficient than competitors. It is not plausible that the reduced compliance costs for charitable businesses resulting from them not having to comply with all income tax rules lowers overall welfare.

Given this, and that the charitable exemption in general seems supported by the government as a way to meet social objectives, the only basis for restricting or removing the chartable business exemption would seem to be to increase government revenue. That does seem to be rationale advanced in paragraph 2.15.

We submit, however, that any removal or restriction of the charitable business exemption, while retaining the overall charitable exemption, would be structured around so that, at least after a period of time, any extra revenue would not be a material amount.

The experience with legislative attempts to impose tax on the commercial undertakings of local authorities (Council Controlled Organisations - CCOs) has been problematic and the same is likely to apply to any attempt to tax a charitable business. In an attempt to manage tax structuring, all income derived by a local authority from a CCO is taxable except dividends and rates. This means interest and management charges etc. that are deductible to the CCO are taxable in the hands of a local authority. In addition, a local authority is not allowed a deduction for charitable donations. While this might limit structuring to reduce the level of tax on local authority commercial undertakings, there are still structural opportunities where a taxable entity (the CCO) is owned/controlled by a tax exempt entity (the local authority). We understand this is reflected in the level of tax collected from local authority trading.

Moreover, it would seem a strange rule that resulted in a charity being taxed on interest derived from a business it owned/controlled while being exempt from tax on similar interest paid by any other entity. It would be even stranger if a charity taxable on such business income could not receive a deduction for gifts to another charity. However, clearly if there is no such prohibition this would be an easy way of removing any tax liability from a charitable business especially if the charitable business itself qualified for the deduction.

This type of issue is noted in the Issues Paper. Paragraph 2.34 says: "There may need to be anti-avoidance rules to ensure amounts distributed by the business are not immediately re-invested by the charity back into the business". Designing and administering such rules would be fraught. Such rules could also hinder the optimal investments of charities by discouraging re-investment in profitable enterprises.

There are a number of other complex technical issues that would need to be considered if tax were applied to charitable business income. Some of these are noted in our answers below to specific questions posed by the Issues Paper.

The end result of any attempt to legislate for charitable businesses to be liable for tax therefore seems likely to be:

- Complex and detailed rules.
- No material additional tax revenue
- High compliance costs on charities especially for tax structuring advice that would reduce the funds available to fund the community good that charities provide society
- Distortions in the investment decisions of the charitable sector with sub-optimal investment decisions driven by tax planning.

Q1. What are the most compelling reasons to tax, or not to tax, charity business income? Do the factors described in 2.13 and 2.14 warrant taxing charity business income?

As noted above, the factors described in 2.13 and 2.14 correctly rebut some of the arguments advanced for taxing charitable business income. The only plausible reason for imposing tax seems to be to increase government revenue but, as also noted above, any such change seems unlikely to meet a revenue objective. We would be left just with the costs of such a measure – increased complexity and compliance costs as well as investment distortions.

Q2. If the tax exemption is removed for charity business income that is unrelated to charitable purposes, what would be the most significant practical implications?

Apart from trying to come up with a reasoned rationale for removing the charitable business exemption for "unrelated business" but not "related business" the main issue would seem to be defining these terms in a workable way.

An example is that of the Pet Welfare Centre provided in Inland Revenue's Interpretation Statement IS 24/08 "Charities – Business income exemption" of September 2024. This is a charity that provides shelter to lost and abandoned animals, and also promotes animal welfare through a healthy diet. It runs an opportunity shop selling furniture and clothing to raise funds. The Interpretation Statement concludes that this is a business because it is run for profit. Presumably this is unrelated to its charitable activities. It also manufactures and sells dog treats. This is said to be not a business if the price for dog treats aims just to cover costs. However, if it seeks a surplus from the manufacture and sale of dog treats, that would be a business. This might or might not be considered related to the charitable purpose. These seem very difficult boundary issues. For example if management within the charity decides for any unrelated business (however defined) to change its policy from cost recovery to profit motive (or vice versa), then this would seem to change the tax outcomes. We cannot see how this is workable. Only of necessity and reluctantly should tax rules draw such boundaries. Normally this indicates problems with the underlying policy.

In addition, it seems likely that taxing unrelated business income would result in sub-optimal investments by charities. They would have a tax incentive to invest in areas considered "related" even if pre-tax returns to society and the charity would be higher for investments in unrelated businesses. That would reduce the income charities have to invest in social infrastructure and the efficiency of New Zealand investment generally.

Q3. If the tax exemption is removed for charity business income that is unrelated to charitable purposes, what criteria should be used to define an unrelated business?

We assume a distinction is being considered between unrelated business (taxed)and related business (exempt) because a charity's related business may be inextricably linked to its charitable activity. An example is the opportunity shop run by a charity that has relief of poverty as an objective. However, we cannot see how the distinction can be drawn in a workable way that would make sense when applied in the real world. For example, a charity having improved public health as an objective could presumably justify any food business as related.

Q4. If the tax exemption is removed for charity business income that is unrelated to charitable purposes, what would be an appropriate threshold to continue to provide an exemption for small-scale business activities?

We cannot identify any particular threshold that would be appropriate in all circumstances. A particular problem in this sector is that local operations can be branches of a head or regional office or a separate entity. Unlike the company sector, the definition of what is a body of persons and thus a separate taxpayer can be unclear in the charity/NFP sector. Any threshold would seem to encourage local organisations to

establish multiple business entities under whatever threshold is set. That is likely to reduce the administrative efficiency of the overall charity, again reducing the levels of contribution the charity can make to social wellbeing.

Thresholds would also act as a disincentive for the charity to expand its business activity over the threshold. That would be to the detriment of the charity and society if expansion is the optimal use of the charitable funds.

There is also the practical issue of thresholds. If the threshold is breached, is it only the marginal income over the threshold that becomes taxable or is it all the entity's business income? If all income is taxable if the threshold is breached (the simplest option) then the marginal tax rate on income just over the threshold would be huge.

Q5. If the tax exemption is removed for charity business income that is unrelated to charitable purposes, do you agree that charity business income distributed for charitable purposes should remain tax exempt? If so, what is the most effective way to achieve this? If not, why not?

Presumably a taxable charitable business would qualify for the charitable deduction under section DB 41 of the Income Tax Act 2007 (the Act). As discussed above, it would be a strange rule that a normal business could take advantage of this deduction but a charitable business could not even if gifting to the same charitable entity.

That said, as also noted above, if a charitable business could deduct charitable donations, it is likely that his would be taken advantage of to negate the effect of tax. This would leave the measure collecting little revenue but at the cost of a significant increase in compliance costs. The charity could then reinvest its donated funds into the business. If this were prohibited, or labelled tax avoidance (as suggested in the Issues Paper), that would likely lead to charitable businesses being starved of equity capital thereby reducing economic efficiency.

Q6. If the tax exemption is removed for charity business income that is unrelated to charitable purposes, what policy settings or issues not already mentioned in this paper do you think should be considered?

A number of other issues would no doubt arise with any proposal to tax charity business income that is unrelated to charitable purposes.

The Issues Paper notes the need to define what is a business and refers to Inland Revenue's Interpretation Statement IS 24/08 as to what constitutes a business. We agree that this sets out a reasonable summary of the relevant case law, albeit that case law is largely about whether an activity is a hobby (losses not deductible) or a business (losses deductible). The distinction between business income and investment income seems problematic if this definition is applied to determine a liability for tax.

The issue is illustrated by charities that hold leased property or equity investments. Could income (rentals/dividends) and any property revenue gains be taxable as business income or would this always be non-business investment income?

"Business" is defined in section YA 1 of the Act as "any undertaken carried on for a profit". This has been interpreted in *Grieve* and *Stockwell*. Case law suggests, as well as an intention to make a profit, that the activity be carried on in an organised and coherent way. As IS 24/08 puts it, what might otherwise be investment income becomes business income if investments are managed in a continuous and systematic way. The Interpretation Statement does conclude that compliance by trustees with the prudent person test in section 30 of the Trustee Act 2019 would not necessarily make income business income. However, where substantial funds are involved that would seem challenging.

It would seem odd to impose a tax penalty on charities who invest funds in a continuous, systematic, organised and coherent manner by making the returns taxable as business income whereas they would likely be exempt as investment income if not so well managed.

Now, as a practical matter, whether an activity is a business or not seldom is critical (except where the assertion is that the activity is a hobby thus denying deductions for losses). The introduction of the business concept in this context as a determinative test of whether any income is taxable seems likely to be problematic.

A charity that holds one commercial property for leasing would not likely be considered as deriving "business income" and thus, under the suggestion, not be taxable. However, if there were a number of properties, and those properties were managed in an organised and coherent way, then it would seem at least arguable the income becomes business income and taxable. The same could be argued to apply to an equity portfolio.

This would seem to go well beyond what the Issues Paper envisages as "charitable business income". It would also potentially encourage, for tax purposes, charities to manage their investments in a disorganised and incoherent way. Again, this would lower the investment returns derived by charities (with no tax revenue collected) and result in sub-optimal economic investments.

A new definition of "business" could be enacted more relevant to its use in charity tax law. However, the definitional problems of distinguishing between investment and business income seems impossible to avoid. Consideration could be given to defining non-business charitable income as income from land, debt and equities as per the PIE rules. We note, however, there is some recent questioning of how those rules should be interpreted.

Donor-controlled charities

The issues Paper seems to raise concerns that some donor-controlled charities may be receiving the benefits of the income tax exemption for charities but contributing little to New Zealand in terms of actual social contributions. Instead, it seems to be argued, such entities are controlled by donors for their own benefit or the benefit of their family. We have no experience of such activity. Therefore, our comments are limited.

Our main response, from a general public policy perspective, is that if an entity is not in practice making the social contribution to society that it received charitable registration to pursue, then this should be managed by the regulator – the Charities Commission. Removing the tax exemption in such cases seems too blunt an instrument in such cases and Inland Revenue does not seem to be the appropriate regulator with the necessary skills to investigate and reach conclusions on such matters.

Where there are concerns with the operations of the entity, some flexibility and guidance might rectify the situation and, if so, that would be a better social result rather than a tax audit and loss of tax exemption. The Charities Commission semes better place to provide flexibility and guidance. If there are issues with Inland Revenue being unable to raise concerns with the Commission because of restrictions on the use of Inland Revenue information, those legislative restraints might be relaxed in this instance.

Subject to these general comments, our answers to the

> *Q8. Should investment restrictions be introduced for donor-controlled charities for tax purposes, to address the risk of tax abuse? If so, what restrictions would be appropriate? If not, why not?*
>
> > As a general proposition, a charity's dealings should be with third parties or if with related parties (including the donor) at arm's length prices – that is market prices. We are reluctant to support greater investment restrictions without detailed analysis given the potential for such restrictions to result in sub-optimal investments by the regulated entity.
>
> *Q9. Should donor-controlled charities be required to make a minimum distribution each year? If so, what should the minimum distribution rate be and what exceptions, if any, should there be for the annual minimum distribution? If not, why not?*
>
> > The issue here seems to be in essence whether the charity is in practice making the social contribution to society that it received charitable registration to pursue. Every charity is different in its own way. The legitimacy of charitable status might reasonably be questioned if a charity to assist the poor has over many years never used any funds to provide such assistance. It may be more reasonable for a charity not to distribute if it is building its funds so as to be in a position to meet a future natural disaster arising say from climate change. Our comments that the Charities Commission seems better placed than Inland Revenue in reaching a view on such matters seems to apply.
> >
> > We note that in the international examples given by the Issues Paper of distributional requirements, the minimum is set on the basis of net assets. This makes some sense. Even though assets can be hard to value, income is even more difficult. Would it be taxable income or accounting income? There would be many cases where the use of taxable income would seem clearly inappropriate – FDR income. Equally accounting income would sometimes be inappropriate – it would not seem reasonable to require the distribution of an asset revaluation

We note that any distribution requirement is likely to be problematic in practice in some cases. The examples of 5% or 3.5% of net assets would be a high barrier given the New Zealand 10 Year Government bond rate is currently 4.7%. The policy position would be that in the absence of risk-taking, charities subject to this distributional requirement would be expected to be run down over the medium term. A high level of abuse should be provided to justify this. The only Issues Paper examples possibly justifying some distributional requirement is where a donor controls the charitable funds and any return is accrued over many years. A rule requiring donor controlled funds to result in the charity being paid a market return over a reasonable period would seem to address this if it is in reality of concern.

Not for Profit entities

The NFP sector is diverse. It includes small unincorporated clubs and entities such as a neighbourhood grocery collective that pools funds to purchase vegetables at a market. However, it also includes some substantial enterprises. What is meant by "not for profit" can be unclear. Many entities make a surplus over expenses but are still considered "not for profit" on the basis that no person invests in the entity for monetary gain. However, the annual surplus may be substantial if the entity is building up assets.

There is no statutory code governing the taxation of NFPs. Case law (what is income under ordinary concepts) applies and specific statutory rules may apply depending on the circumstances. Specific rules include:

- Income tax exemptions such as those for local and regional promotion bodies (CW 40), charities (CW 41 and CW 42), community housing trusts and companies (CW 42B), friendly societies (CW 44), promoters of amateur games and sports (CW 46), racing clubs (CW 47), promoters of scientific or industrial research (C W 49), veterinary service bodies (CW 50), and herd improvement bodies (CW 51). A common requirement of these exemptions is that the activities are not carried on for the profit of a member or that no business is carried on beyond the membership (friendly societies). Presumably this is to ensure only NFPs access the exemptions.
- The mutual legislative rules (CB 33, CB 34, DV 19 and HE1-5). These rules apply to mutual transactions meaning, we understand (based on the clearer wording of the 1976 Act): trading stock transactions, the supply of services, and the borrowing and lending of money with members. This results in an effective tax exemption to the extent surpluses on transactions are rebated to members.
- Mutuality case law for income and expenses that are not "mutual transactions". This holds that where a person transacts with him or herself there is no gain or income recognised by law – it is not income under ordinary concepts income and is not taxable subject to any specific legislative override. This has been extended to dealings with an entity one is a member of – this is treated as a dealings with oneself. It has further been extended to dealings with a class of members and the entity they are members of. This means there is no necessity for the benefits to a member to equate exactly with any

payments to the entity. As Australian case law has established, a contribution to a common fund for a common purpose does not give rise to income by the holder of the common fund under ordinary concepts (Bohemians Club 1918, Fletcher 1972, Coleambally 2004). There need not be a direct relationship between member contributions and benefits but a "reasonable relationship" contemplated. This is overridden by the mutual legislative rules above, but only with respect to "mutual transactions (as defined).

- The specific deduction in DV 8 that allows a deduction for up to $1,000 to a NFP provided it "has a constitution that prohibits a distribution of property in any form to a member, proprietor or shareholder".

These various rules can overlap and be difficult to apply in practice to more complex fact situations. What is a "reasonable relationship" between member contributions and benefits?

The policy scheme seems to be:

- For a simple NFP pursuing the common objective of its members, no taxable income arises from the funding provided by members even if funds are used to acquire assets. Those assets are in fact or in substance property of the persons funding them. Income from third parties (interest/investment income, advertising revenue, hire of buildings etc) is taxable as income. Such income would be taxable if derived directly by the member so should be taxable to the NFP.
  This is subject to the DV 8 deduction. Presumably this is to prevent minor amounts of third party income resulting in the entity needing to file tax returns. The requirement that no funds then be able to be distributed to members seems to be to prevent members from accessing tax-free what is in essence income that would have been taxable if derived directly by each member. However, it seems an odd restriction especially given the low threshold and the ability to transfer property to other entity members.
- For a more complex, more commercial, NFP that is engaging in transactions involving trading stock or services or financial intermediation, the mutual legislative rules apply. These provide the effect of exemption but only to the extent that any trading surplus is returned to members as a rebate. Rebates are income if derived by a business member and this reverses any deduction allowed for the cost of the goods or services.
- NFPs that provide community benefits, rather than benefits to members generally, qualify for one of the specific tax exemptions.

This seems on the face of it a reasonable policy setting. It is nevertheless problematic at times in practice given the wide scope and diversity of the NFP sector.

Inland Revenue historically has responded in a sensible way. Its policy (set out in TIB 4:8 (April 1993) page 7), but dating back to Technical Rulings (and therefore, if not the dawn of time, then the dawn of income tax), states:

> Our policy is that clubs and societies are not assessable on member transactions, or on non-member transactions that meet certain criteria. These criteria are that:
>
> a) the transactions are conducted on premises under the control of the particular non-profit organisation; and

b) the non-member transactions are indistinguishable from member transactions; and

c) the relevant activities are conducted substantially for the enjoyment and participation of members.

In practice this policy is limited to non-members who are bona fide guests, members of other clubs enjoying reciprocal rights, and potential members being introduced to the facilities.

The policy recognises the practical problems of differentiating between member and non-member transactions. It also reflects previous advice to non-profit organisations that Inland Revenue would not seek to tax transactions within the circle of membership, such as bar takings.

Examples of the type of transactions to which the policy applies are bar and kitchen takings, raffles and other fundraising conducted primarily with members, and proceeds from gaming machines after allowing for gaming machine duty. Generally, these transactions meet the criteria listed above.

The policy does not extend to transactions with non-members that can clearly be distinguished. Examples of these include rental of facilities and interest income.

With respect to bodies corporate that are property owning NFPs incorporated under the Unit Titles Act 2010, Inland Revenue has issued a specific interpretation applicable to them (TIB 6:4 – October 1994 – page 6). This applies the above approach to these entities. It states:

> "Levies which are paid in return for general services for the mutual benefit of members are not member transactions under [the mutual legislative rules] . These amounts are covered by the common law principle of mutuality [mutuality case law], and are not assessable. "

A similar conclusion is reached by Inland Revenue with respect to the less familiar residential property owning companies.

This seems to reflect the policy intent as described above even though legislative authority might be argued to be dubious in part. It has nevertheless worked well in practice for many years. We are not aware of it causing any substantial problems.

Chapter 4 of the Issues Paper now seems to suggest significant changes to the NFP rules set out above. This is under the heading "Integrity and simplification". However, it is unclear what the integrity issues of apparent concern are (except items that have long been held not to be income are not being taxed as income). It is not clear from the Issues Paper what exactly is being proposed to address the unidentified "integrity concerns".

It seems it is proposed that receipts that have long been held as not being income (and thus not taxable) as reflected in Inland Revenue's past policy on taxing NFPs, will in future be taxed so that NFPs with such receipts will be required to file tax returns even if all dealings are within the circle of membership. That is certainly not simplification as the Issues Paper claims.

In particular it is suggested that member subscriptions (long regarded as not taxable) will become taxable when such subscriptions are viewed as "business income or income under ordinary concepts". This is confusing given the long-standing case law that subscriptions are not income under ordinary concepts and thus not business income or income of any sort.

Reading between the lines of the Issues Paper, it seems Inland Revenue has reached the technical view that its past policy is not consistent with the legislation. There seem to be 2 grounds for reaching that view:

- The mutual legislative rules might be viewed as requiring bar takings and the like to be treated as mutual transactions. In that case the takings should be included as income (with a deduction for rebates).
- A NFP would not be a mutual entity, and the mutuality case law would not apply, if the property of the NFP could be distributed to persons other than members including on winding up or dissolution. If that is the case, all receipts would be income.

Mutual legislation rules overrule mutuality

Read literally, the mutual legislative rules might arguably be hard to reconcile with not treating bar takings as mutual transactions taxable under the mutual legislative rules. However, we submit those rules were targeted at more commercial entities especially where goods purchased could give rise to deducible expenditure – not social-type activities or non-commercial activities such as social bars and the local vegetable collective. As past Inland Revenue policy made clear, the rules need to be practical and workable. There seems little point in forcing NFPs to offset receipts with expenses/lower prices/rebates and then obtain capital from higher subscriptions for bar access. There would be no additional revenue but much higher costs imposed on NFPs.

In any case a total disruption of workable rules seems hardly justified by redrawing them in a vain attempt to raise revenue from social activities, vegetable collectives and the like.

Mutuality requires the NFP property to always only be distributable to members

The proposition seems to be advanced that if an NFP does not restrict the distribution of its property at all times to members, it is disqualified from being regarded as a mutual. If that is the case, transactions with members would be income if of an income character (mutuality aside). The main circumstance when the NFP's property might be distributed to persons other than members is on winding-up or dissolution. It is common for NFPs with material property assets not to allow its property to be distributed to members. That may be because of concerns that new members might then acquire the NFP's property that has been funded over time by past members. It is thus normal for property to be distributable only to similar entities. Under the proposition that would disallow the NFP from treating any surplus from member transactions (used to acquire assets for the benefit of members) as not taxable under the mutuality principle.

This proposition seems to be based on the Australian 2004 case Coleambally. The Federal Court of Australia held that levies of an irrigation co-operative to be applied to a sinking fund to finance future irrigation upgrading were taxable income of the co-operative and not protected from tax by the mutuality principle. That was solely because, on winding up, the co-operative's

rules prohibited any co-operative property being distributed to members. It was held this meant the funds could not be viewed as a common fund of members as required for mutuality to apply.

The judgment seemed to rely on the Australian case law emphasis of mutuality requiring any fund to be a common fund of members as a class. It is not clear that the New Zealand courts would follow Coleambally given that it did not seem to be disputed that the funds contributed by members was always going to be used to pursue the common purpose of members – the promotion of agricultural irrigation. In any case the judgment, even if it was the natural outcome of a line of case law, makes no policy sense. The judgment accepted that mutuality would have applied if the co-operative property could only be distributed to members even though the members receiving such distributions would likely in most cases be different from those members who contributed the funds.

As a result, the interpretation adopted in Coleambally was legislatively over-ruled by what is now section 59.35 of the Australian Income Tax Assessment Act 1997. This reads:

> "An amount of ordinary income of an entity is not assessable income and not exempt income if
>
> (a) The amount would be a mutual receipt, but for:
> (1) the entity's constituent document preventing the entity from making any distribution whether in money, property or otherwise, to its members."

As above, restricting the mutuality only to entities where the net assets can be distributed to members makes no policy sense. The purpose of the Issues Paper should be to arrive at the best policy position. If there is a concern such a clause restricts the application of mutuality, then this should be legislatively corrected. If officials have a contrary view and believe this outcome makes policy sense, then this should be outlined by officials.

The apparent Issues Paper proposal

The Issues Paper seems to propose that:

- Following Coleambally, any NFP that allows its property to be distributed to non-members should not be treated as a mutual so that otherwise mutual receipts (including, it seems, levies or subscriptions seen as providing members with benefits) would be taxable income of the NFP. As above, we do not think this makes any policy sense.
- A NFP that remains treated as a mutual will be taxed on member and non-member transactions under the mutual legislative rules if the transactions involve trading stock or the provision of services. This is without any of the practical caveats reflected in Inland Revenue's past policy position.
- The issues for NFPs this will raise might be dealt with by increasing the $1,000 NFP deduction allowed under DV 8.

This would not be a practical or sensible policy setting. It would impose high compliance costs on the community or voluntary sector. It would be unworkable in many cases – as the past Inland Revenue policy noted. Very little additional revenue would result.

The apparent response of increasing the amount deductible under DV 8 would not manage the problems that would arise. That would not cover the many NFP entities that do not have a constitution that prohibits property distribution to members, as required for DV 8 to apply as currently worded. It is noted that if Coleambally is adopted, all NFPs qualifying for a DV 8 deduction would be disqualified from mutuality treatment. In any case, if levies and subscriptions were taxed because they are viewed as providing member benefits, then a very high DV 8 allowable deduction would be necessary meaning that for some NFPs significant sums that should be taxed (investment income from third parties) would be made in effect tax-free for members. For example, a large body corporate could build up material levels of reserves to undertake deferred maintenance (i.e. painting the building). It is illogical that this should be addressed by having a de minimis rule.

The Solution

We submit that the best solution would be for Inland Revenue to re-confirm its past policy in this area. It is sensible and practical. It has worked for many years without to our knowledge significant problems. There may be issues where mutual NFPs have over-allocated expenses to overly offset investment and other third party investment income. If that is true, it is an audit issue Inland Revenue should address. Consideration should still be given to increasing the DV deduction limit and removing the requirement for a prohibition of property distributions to members.

If Inland Revenue is unable to come to this result under current legislation, the legislation needs to be amended to enable it to do so. Coleambally would then need to be over-ruled as in Australia. Workable mutual legislative rules reflecting the practical approach of Inland Revenue's past policy may not be easy to draft. Possibly it will require providing he Commissioner with a determination making power as to how and what should be regarded as a non-taxable mutual transaction and what should be taxed.

Based on the above, we address the specific question raised by the Issues Paper.

> *Q10. What policy changes, if any, should be considered to reduce the impact of the Commissioner's updated view on NFPs, particularly smaller NFPs? For example:*
>
> - *increasing and/or redesigning the current $1,000 deduction to remove small scale NFPs from the tax system,*
> - *modifying the income tax return filing requirements for NFPs, and*
> - *modifying the resident withholding tax exemption rules for NFPs.*
>
> The Commissioner should confirm his past policy in this area. The suggested increase in the DV 8 deduction would not mitigate the problems that would arise from redrawing the NFP rules along the lines raised in the Issues Paper.

Friendly societies and credit unions

> *Q11. What are the implications of removing the current tax concessions for friendly societies and credit unions?*

What the Issues Paper terms "tax concessions for friendly societies and credit unions" are in our view merely a statutory exemption for what are in essence mutual entities. The exemption is provided because the mutual legislative rules (providing the outcome of no tax through rebate deductions) are not appropriate for these bodies.

No justification is given by the Issues Paper for removal of the exemption except the comment that they would seem inconsistent with the approach of the Issues Paper to NFPs generally. As above, we do not agree with the approach the Issues Paper adopts for NFPs.

The taxation of credit unions specifically has been subject to Discussion Papers and reviews a number of times since 1988. As far as we are aware the last was in 2000 (The Tax Status of Credit Unions). This does not seem to have resulted in any material change to the tax rules. The reason, presumably, being that the rules do not need to be changed.

Removing the exemption would generate high compliance costs and uncertainty with no material revenue gain post these entities re-structuring to get the appropriate tax outcome exemption provides.

Other income tax exemptions canvassed by the Issues Paper

Q12. What are the likely implications if the following exemptions are removed or significantly reduced:

- *local and regional promotional body income tax exemption,*
- *herd improvement bodies income tax exemption,*
- *veterinary service body income tax exemption,*
- *bodies promoting scientific or industrial research income tax exemption, and*
- *non-resident charity tax exemption?*

Apart from the non-resident charities, these entities seem to be in essence NFP mutuals. They may not qualify as mutuals because they benefit the community more generally rather than members more specifically. If they would qualify as mutuals, they may not be able to operate in practice under the mutual legislative rules designed for more commercial organisations providing rebates to members. This does not justify removing the exemption.

For example, some of the bodies mentioned above can receive large amounts of "income" (including government grants and industry contributions) to undertake a research initiative. There is no policy logic to tax the build up of these reserves when over time they will be expended on the research initiative.

We have no practical experience with non-resident charities and do not comment.

Charitable FBT exemption

Q13. If the compliance costs are reduced following the current review of FBT settings, what are the likely implications of removing or reducing the exemption for charities?

Reducing the compliance costs of FBT generally seems to have little relationship to the charitable FBT exemption. Our understanding is that this exemption is not a compliance cost reduction measure but instead a recognition by the government that the charitable sector is generally short of funds and its employees lowly paid relative to market. The assumptions seem to be that often charitable workers are on below market remuneration, and FBT impost on them is borne by the charitable employer. These seem reasonable assumptions where the employee is on below market remuneration. To the extent that is the case, the charitable FBT exemption can be seen as a further subsidy to charities for the social and community support they provide. Whether the FBT exemption is justified on this basis seems to be a policy decision for the government.

Volunteers

Q14. What are your views on extending the FENZ simplification as an option for all NFPs? Do you have any other suggestions on how to reduce tax compliance costs for volunteers?

We have experience in seeking a determination under section RD 8(3), concerning honoraria paid to volunteers that are exempt income under section CW 62B,

This section provides "if a volunteer, in undertaking a voluntary activity, derives an amount that is a reimbursement payment to cover actual expenses incurred by them, the amount is exempt income of the volunteer."

The Inland Revenue web page also provides that school trustees fees are exempt up to a threshold ($55 per member per meeting or $75 for the chair).

Any changes should not prohibit or restrict the ability for reimbursement payments to remain tax free.

As a simplification, there could be a statutory exemption for all honorarium paid up to the above levels.

Beyond that, having such excess being subject to schedular payments seems the preferred method given the reporting requirements and flow on implications for such amounts being subject to PAYE. We are not close enough to understand how such amounts interface with Kiwisaver, ACC levies, holiday pay etc if deemed to be subject to PAYE.

Donation tax credit

Q15. What are your views on the DTC regulatory stewardship review findings and policy initiatives proposed? Do you have any other suggestions on how to improve the current donation tax concession rules?

The policy-related recommendations were:

- *delink DTCs from income tax to allow for more real-time payments, for example when DTCs are refunded before year-end and closer to the time a donation is made,*
- *allow Inland Revenue to collect data from donee organisations to pre-fill DTC claims and streamline the DTC claiming process, and*
- *introduce a three-month grace period so donee status is retained if a deregistered charity is re-registered within three months.*

Allowing DTCs to be submitted at any time has improved the processing of DTCs. De-linking DTC processing from income tax would seem to offer further improvements as suggested. Inland Revenue should work closely with any third party providers in developing IT solutions rather than feel compelled to build systems itself. That might relieve some of the IT constraints mentioned in the review and produce a better outcome.

Conclusion

We hope the above submission is useful. We would welcome the opportunity to discuss any aspects with officials.

Yours faithfully

s 9(2)(a)

Robin Oliver MNZM
Director
s 9(2)(a)

Mike Shaw FCA
Director

Sumeet Bhanot
Whakaata Māori
s 9(2)(a)

30 o Māehe 2025

David Carrigan
Deputy Commissioner of Inland Revenue, Policy
Inland Revenue
By email to: policy.webmaster@ird.govt.nz

Submission on the Taxation and the not-for-profit sector consultation

Tēnā koe David

i roto i ngā tini āhuatanga o te wā. Tēnā hoki tātau i ō tātau mate. Haere atu rā e ngā mate ki te kāpunipunitanga o Rēhua. Ko rātau ki a rātau ki te pō. Ko tātau ki a tātau i te ao hurihuri nei. Tihei mauriora!

Whakaata Māori welcomes the opportunity to respond to the Officials' Issues Paper titled *Taxation and the Not-for-Profit Sector* (the Consultation Document).

We request that our submission not be published in full. Should the Commissioner determine it must be published, we request that specific information related to our retained earnings and social value reporting be withheld under section 9(2)(b)(ii) of the Official Information Act 1982.

Executive Summary

- Whakaata Māori strongly opposes the removal of the charitable business income tax exemption.
- All business income we derive is directly and wholly used to advance our charitable purpose – the revitalisation and promotion of te reo Māori and tikanga Māori.
- The proposed changes would significantly impair our operations, reduce social impact, and place additional financial and administrative burden on an already constrained organisation.
- Any reform must be consistent with Te Tiriti o Waitangi and Te Ture mō te Reo Māori 2016.

Background

Te reo Māori is central to the identity of Aotearoa New Zealand – a living language that connects us to our past and shapes our future. Whakaata Māori exists to ensure that te reo Māori and tikanga Māori are not only preserved but lived every day, across generations and communities.

We do this by producing and broadcasting content that normalises te reo Māori in daily life – through news, entertainment, tamariki shows, live events, and digital storytelling. We are more than a broadcaster. We are a platform for Māori voices, Māori stories, and Māori futures.

Our direction is guided by *Te Huapae o te Rangi*, our outcomes framework that helps us define, measure, and pursue the long-term impact of our work. We are anchored by *Puna Ariki*, our strategic narrative, grounded in mātauranga Māori and kōrero tuku iho, which shapes how we act, relate, and lead. Together, these provide the blueprint for our mission: *Kia mauriora te reo* – to ensure the Māori language is alive and thriving.

This work has been affirmed by those who have long championed te reo Māori. Sir Tīmoti Kāretu has emphasised the responsibility of broadcasters:

"Ka noho ko koutou ngā pouaka whakaata, ngā kaipāpāho, ngā kaipānui i te reo hei tauira ki te iwi, hei tauira ki te hunga e ako ana."

And the late Dr Huirangi Waikerepuru, a pioneer of the Māori language movement, once said:

"Broadcasting is, perhaps, the most powerful medium of communication that we have, and therefore it is important that Māori language be used as widely as possible across it."

Their words still guide us. As viewing habits shift and more people engage online, Māori media must remain agile – ensuring te reo Māori remains visible, accessible, and heard in homes, schools, workplaces, and whānau throughout Aotearoa.

Key submission

The tax exemption for charitable business income is fit for purpose and should remain in its current form.

If introduced, the changes proposed to the charity business tax exemption in the Consultation Document will significantly impair Whakaata Māori's ability to maintain its charitable activities at current levels and will erode our ability to promote and revitalise te reo Māori and tikanga Māori in the future.

Our submissions on questions that are of particular relevance to our operations, and on the consultation process generally, are set out below. We frame our response in light of the legal and Treaty context that underpins our work.

Legal and Treaty Obligations

The Crown has an obligation under Te Tiriti o Waitangi to actively protect te reo Māori as a taonga. This duty is further affirmed in our legislation and in *Te Ture mō te Reo Māori 2016*, which mandates the Crown to promote the use of te reo Māori in partnership with Māori.

Whakaata Māori plays a central role in the Crown's fulfilment of these responsibilities. Any changes that reduce our capacity to perform this function risk undermining the Crown's Treaty obligations.

Response to Consultation Questions

Question 1. What are the most compelling reasons to tax, or not to tax, charity business income? Do the factors described in 2.13 and 2.14 warrant taxing charity business income?

Whakaata Māori strongly opposes the taxation of business income used for charitable purposes. Our organisation exists to promote the revitalisation and normalisation of te reo Māori and tikanga Māori – a purpose that aligns with the Crown's Treaty obligations and addresses critical public policy objectives. All business income generated by Whakaata Māori is applied directly and exclusively to this charitable mission. None of it is distributed to private individuals or shareholders.

Our current model reduces the cost to the Crown of fulfilling its own statutory and moral responsibilities under *Te Ture mō te Reo Māori 2016* and Te Tiriti o Waitangi to te reo Māori. In this sense, our business income does not confer any competitive advantage over private enterprise. Rather, it supports the provision of public good services that are underpinned by indigenous knowledge and cultural frameworks.

In 2024, Whakaata Māori generated over $114 million in social value. A recent independent Social Return on Investment (SROI) report concluded that every $1 invested in Whakaata Māori yields at least $2 in measurable social impact. This value is returned to whānau, communities, and Aotearoa more broadly – through cultural identity, educational benefit, community cohesion, language transmission, and wellbeing. Taxing this income would compromise the scale and sustainability of this impact.

If our business income were to be taxed, it would result in a material reduction in the services we can provide, increase reliance on government grants, and risk undoing decades of progress in Māori language revitalisation.

Question 2. If the tax exemption is removed for charity business income that is unrelated to charitable purposes, what would be the most significant practical implications?

Removing the tax exemption for charitable business income would have immediate and long-term negative consequences for Whakaata Māori. The most direct impact would be financial – reducing the funds available for delivery of te reo Māori content, tamariki programming, Māori-led storytelling, and community initiatives. This would result in fewer resources to support intergenerational language transmission and the normalisation of te reo Māori in everyday life.

Operationally, we would face significant compliance costs associated with managing tax obligations, potentially requiring structural changes to isolate 'business' from 'charitable' activity – a false dichotomy in the context of our kaupapa. Our operations are not split into distinct commercial and charitable arms. Our kaihoe (staff) work fluidly across kaupapa-driven activities that generate revenue but are inseparable from our charitable purpose.

We also risk losing critical flexibility in our financial planning. The ability to retain earnings to manage risk, necessary working capital, support innovation, reinvesting on charitable purpose, or respond to changing media environments would be constrained if the retained income were to be taxed.

The burden created by these changes would not be proportionate to the perceived policy benefit. In fact, it would lead to greater inefficiency and underutilisation of the unique contribution Whakaata Māori makes to the public good.

Question 3. If the tax exemption is removed for charity business income that is unrelated to charitable purposes, what criteria should be used to define an unrelated business?

We support a definition of "unrelated business" that is limited to a business whose profits are not wholly used for charitable purposes, either immediately or in the future. It is only profits that are returned to shareholders that should not be subject to the charity business income tax exemption.

In the case of Whakaata Māori, all revenue-generating activities – whether linear broadcasting, digital media, events, or licensing – are integral to our core purpose of

revitalising te reo Māori and tikanga Māori. Every dollar earned is used to deliver our charitable mission, often through publicly mandated obligations.

A broader or less specific definition of "unrelated business" could unintentionally capture income streams that are tied to our charitable work. The impact of such interpretation on Whakaata Māori could be significant, resulting in additional compliance and tax costs. We note that even if ultimately some or all our income was subject to tax with a matching deduction made available to us, this would still result in additional administration and compliance time and costs.

This would create compliance ambiguity and increase risk for charities delivering public value through culturally embedded models. The definition must be carefully tailored to ensure it does not penalise organisations whose income generation is functionally and philosophically inseparable from their charitable purpose.

Question 5. If the tax exemption is removed for charity business income that is unrelated to charitable purposes, do you agree that charity business income distributed for charitable purposes should remain tax exempt? If so, what is the most effective way to achieve this? If not, why not?

Yes. Where a charitable organisation distributes or utilises income (or intends to utilise the income at the time or in the future) to further its charitable purpose – whether internally or externally – that income should remain tax-exempt. This ensures that funding decisions are driven by impact and community need, rather than distorted by tax considerations.

If this exemption were removed, it could inadvertently discourage strategic investments in collaborative initiatives, long-term planning, or scaled service delivery. For example, Whakaata Māori may co-invest in kaupapa Māori content with other Māori organisations. The current exemption allows such collaboration to occur freely. Removing it could fragment delivery, reduce effectiveness, and slow innovation.

Question 6. If the tax exemption is removed for charity business income that is unrelated to charitable purposes, what policy settings or issues not already mentioned in this paper do you think should be considered?

Charities like Whakaata Māori, where all business income is applied exclusively to charitable purposes (either immediately or earmarked for the future), should be explicitly excluded from tax and additional compliance requirements.

Applying uniform tax rules to all charities regardless of structure, scale, or purpose creates unfair outcomes and reduces the sector's overall effectiveness. A one-size-fits-all model will have disproportionate impact on Māori charities and kaupapa Māori organisations that operate with limited resources and high cultural expectations.

In our case, requiring artificial separation of charitable and business functions would be inefficient and culturally inappropriate. Our approach is relational, not transactional. Our content and services are kaupapa Māori in design, delivery, and outcome. Our funding and business income are utilised for charitable purposes.

The Government should also consider policy settings that encourage rather than penalise innovation, partnership, and reinvestment of earnings for public benefit. Greater flexibility, not more constraint, is needed to support impact-led models of service delivery that align with Treaty obligations and future-focused language revitalisation.

We would welcome the opportunity to engage further on these matters and share how our experience and approach could inform more culturally intelligent and fit-for-purpose policy design.

Kāti ake i konei. Ka waiho mā te whakataukī nei ō mātau whakaaro e whakairo:

"He reo e korokī ana i te ao – a language that resonates throughout the world."

s 9(2)(a)

Nā Sumeet Bhanot
Kaiurungi Ahumoni | Director of Finance
Whakaata Māori
Mobile: s 9(2)(a)

Taxation and the not-for-profit sector
C/- Deputy Commissioner, Policy
Inland Revenue Department
PO Box 2198
Wellington 6140

Yes officials from IRD can contact me to discuss the points raised.

The only information that should be withheld on the grounds of privacy is my contact information (email and phone number for submissions from individuals).

My submission is brief. The only item that does not respond directly to the questions posed is to suggest redefining "**charitable purpose"**. See Q2. I have therefore not included a summary.

Submission from private individual:

Bridget Robson
s 9(2)(a)

Chapter 2: Charities business income tax exemption

Q1. What are the most compelling reasons to tax, or not to tax, charity business income? Do the factors described in 2.13 and 2.14 warrant taxing charity business income?

Yes the factors described in 2.13 and 2.14 warrant taxing charity business income.

Charity business income should be taxed if the charity is competing with taxed providers to provide a good or service for which there is no obvious charitable element. They should particularly be taxed where there is scope to increase "charity" holdings in a segmented way. i.e. where similar discrete taxed businesses operate.
The three that immediately spring to mind are Early Childhood Education businesses, veterinary services and plant nurseries. If "charitable" foundations are in these fields, their un-taxed status means they can unfairly compete to add more businesses to their portfolio by outbidding their taxed competition to buy new businesses,

Q2. If the tax exemption is removed for charity business income that is unrelated to charitable purposes, what would be the most significant practical implications?

If a blanket rule was made that applied to all CBI that was from a different sphere from where it was spent, it would throw a lot of babies out with the dirty bathwater, thus some further sub-categories need to be defined, to avoid that outcome.

charity business income from op shops to support a genuine ***charitable purpose*** is very different from [charity] business income from ECE which is then being used to fund enterprises with political motivations, such as The Platform – which does not appear to fall within the definition of a "matter beneficial to the community", given the angry and inaccurate rants that is specialises in.

Definition clarification and definition revision would be helpful.
As can be seen from the recent activities of those associated with Destiny Church, *the advancement of religion* can be at significant odds with being *beneficial to the community*.
I.e. there is a within-definition disagreement, in which one arm of the definition can be met, but at the expense of the other arm.
The original definition possibly had a Hippocratic element to it – first do no harm, or it relied on the golden rule = do unto others as you would have done to you. Either way, Destiny or various others with charitable status, are foisting or forcing their beliefs onto others in a way that is not beneficial to the community.

Revise the definition to make religion a subset of "beneficial to the community" rather than being a purpose of its own.
Suggest the definition is revised to read:
Charitable purpose includes every charitable purpose, ~~whether it~~ that relates to the relief of poverty, the advancement of education ~~or religion~~, or any other matter beneficial to the wider community.

Q3. If the tax exemption is removed for charity business income that is unrelated to charitable purposes, what criteria should be used to define an unrelated business?

One in which the benefits go to something/someone that does not benefit the [wider] community. The test could be the reasonable person test.

Q4. If the tax exemption is removed for charity business income that is unrelated to charitable purposes, what would be an appropriate threshold to continue to provide an exemption for small-scale business activities?

I still think the test should be on purpose link and final disbursement rather than on $ value, however Tier 3 has a pretty broad span.
For those who want to game their status, a $5m threshold is probably still attractive. I'd recommend redefining the Tier 3 threshold so that tier 2 is $33-$2m and Tier 3 is $2m-$140K

Q5. If the tax exemption is removed for charity business income that is unrelated to charitable purposes, do you agree that charity business income distributed for charitable purposes should remain tax exempt? If so, what is the most effective way to achieve this? If not, why not?

It must meet conditions to remain tax exempt:
1. Timing of distributions
2. Properly meeting the definition of "charitable purposes" for distributions (through the use of criteria and/or reasonable person test)

Q6. If the tax exemption is removed for charity business income that is unrelated to charitable purposes, what policy settings or issues not already mentioned in this paper do you think should be considered?

No comment

Chapter 3: Donor-controlled charities

Q7. Should New Zealand make a distinction between donor-controlled charities and other charitable organisations for tax purposes? If so, what criteria should define a donor-controlled charity? If not, why not?

Yes a distinction should be made, because of the reasons you've cited in 3.6 = circular arrangements, significant lags, and beneficial trades.
Use the definitions that Canada and Australia have used.

Q8. Should investment restrictions be introduced for donor-controlled charities for tax purposes, to address the risk of tax abuse? If so, what restrictions would be appropriate? If not, why not?

Yes investment restrictions be introduced for donor-controlled charities for tax purposes, to address the risk of tax abuse. Arm's length governance and distribution, at minimum. Coupled with clear definition of what the foundation's activities must do to meet the status of "charitable purpose (new definition that is not contradictory)

Q9. Should donor-controlled charities be required to make a minimum distribution each year? If so, what should the minimum distribution rate be and what exceptions, if any, should there be for the annual minimum distribution? If not, why not?

Yes they should be required to make minimum distribution rate (as is indicated in 3.18). The three examples cited provide a good guide.

Chapter 4: Integrity and simplification

Q10. What policy changes, if any, should be considered to reduce the impact of the Commissioner's updated view on NFPs, particularly smaller NFPs? For example:

- increasing and/or redesigning the current $1,000 deduction to remove small scale NFPs from the tax system,
- modifying the income tax return filing requirements for NFPs, and
- modifying the resident withholding tax exemption rules for NFPs.

No comment

Q11. What are the implications of removing the current tax concessions for friendly societies and credit unions?

No comment

Income tax exemptions

Q12. What are the likely implications if exemptions are removed or significantly reduced for:

- veterinary service body income tax exemption,

  This is being seriously gamed in the South island in particular. Not sure whether the issues identified in 4.20 are exacerbated by a religious organisation with tax exempt status, or its an either/either situation playing out. Either way it creates unfair competition for a normal taxed veterinary practice to be in the market to buy another practice.
- non-resident charity tax exemption?

  Agree with 4.24

FBT exemption

Q13. If the compliance costs are reduced following the current review of FBT settings, what are the likely implications of removing or reducing the exemption for charities?

No comment

Tax simplification

Q14. What are your views on extending the FENZ simplification as an option for all NFPs? Do you have any other suggestions on how to reduce tax compliance costs for volunteers?

No comment

Q15. What are your views on the DTC regulatory stewardship review findings and policy initiatives proposed? Do you have any other suggestions on how to improve the current donation tax concession rules?

No comment

TŪWHARETOA
MĀORI TRUST BOARD

31 March 2025

Taxation and the not-for-profit sector
C/- Deputy Commissioner, Policy
Inland Revenue Department

By email: policy.webmaster@ird.govt.nz

Tēnā koutou katoa

***TAXATION AND THE NOT-FOR-PROFIT SECTOR* – SUBMISSION FROM TŪWHARETOA MĀORI TRUST BOARD**

Introduction

1. This submission is provided by the Tūwharetoa Māori Trust Board (the **Trust Board**) in respect of Inland Revenue's officials' issues paper dated 24 February 2025 entitled *Taxation and the not-for-profit sector* (the **Issues Paper**).

2. The Trust Board was constituted by section 16 of the Māori Land Amendment and Māori Land Claims Adjustment Act 1926 for the benefit of the members of Ngāti Tūwharetoa and their descendants, and continues in existence by section 10 of the Māori Trust Boards Act 1955 (the **Māori Trust Boards Act**).

3. The Trust Board understands that the proposals as set out in the Issues Paper do not apply to the Trust Board, notwithstanding its status as a registered charity. This is because the Trust Board has made a declaration, pursuant to section 24B of the Māori Trust Boards Act that, in effect, deems the income it earns exempt from income tax. This legislative arrangement sits outside of the Charities Act 2005 regime. This was last confirmed in Public Ruling – BR Pub 08/02,[1] which states that when a Māori Trust Board executes a declaration of trust under section 24B(1) of the Māori Trust Boards Act, "the income of such a trust is exempt from income tax under section CW 41 or section CW 42 if:

    (a) all the purposes specified in the declaration of trust are purposes that are specified in section 24 or section 24A of the Māori Trust Boards Act; and

    (b) 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

[1] Public Ruling – BR Pub 08/02 – Maori Trust Boards: Declaration of Trust for Charitable Purposes made under section 24B of the Maori Trust Boards Act 1955 – Income Tax Consequences. The ruling states that it applies for an indefinite period beginning on the first day of the 2008/09 income year. No public rulings have issued on this matter since, meaning it is still in force.

(c) the declaration of trust has been submitted to and approved by the Commissioner, as required by section 24B(3) of the Māori Trust Boards Act; and

(d) the trust is registered as a charitable entity under the Charities Act 2005.

4. The Trust Board has met the above requirements.

5. Nonetheless, the Trust Board is concerned about the potential unintended consequences of the Issues Paper proposals on:

(a) the Trust Board, given the Issues Paper includes no analysis of the impact of the proposals on Māori Trust Boards; and

(b) its related subsidiary and Treaty settlement entities, and for Ngāti Tūwharetoa marae that have charitable status, given the Issues Paper also includes no analysis of the impact of the proposals on iwi and hapū and Māori charitable entities more generally.

6. The Issues Paper proposals potentially affecting the Trust Board, its related subsidiary and settlement entities, and Ngāti Tūwharetoa marae, are:

(a) the imposition of income tax on unrelated business income for charities; and

(b) donor-controlled charities.

7. If the proposals are progressed, the Trust Board seeks:

(a) confirmation that the section 24B Māori Trust Boards Act exemption is not affected;

(b) a specific exemption for Māori entities and trusts (including, but not limited to, Māori trust boards, post-settlement governance entities, Māori land trusts, Māori incorporations and their associated charitable entities) given the unique history and circumstances of those entities.

8. The Trust Board's submission is structured in the order as follows:

(a) Section 1 (*Background*);

(b) Section 2 (*Tuwharetoa Māori Trust Board Group*);

(c) Section 3 (*Implications for the Group*);

(d) Section 4 (*General remarks on the proposals*);

(e) Section 5 (*Process Concerns*).

Section 1: Background

9. Ngāti Tūwharetoa are the descendants of Tūwharetoa, Ngātoroirangi, Tia and other tūpuna who have occupied the Taupō area continuously since the arrival of the Te Arawa waka. Ngāti Tūwharetoa are linked by whakapapa to our lands and our taonga. This connection establishes our mana whenua, kaitiakitanga and rangatiratanga, including our right to establish and maintain a meaningful and sustainable relationship between hapū, whānau and our taonga.

Ngāti Tūwharetoa are the original customary owners and kaitiaki of all the lands and resources within our rohe. A map of the traditional rohe of Ngāti Tūwharetoa is attached as Appendix A.

10. The following Ngāti Tūwharetoa pepehā describes the relationship between Ngāti Tūwharetoa and our taonga – that being the maunga, Tongariro, the lake, Taupō and their Paramount Chief, te Heuheu:

Ko Tongariro te maunga	Tongariro is the sacred mountain
Ko Taupō te moana	Taupō is the lake
Ko Tūwharetoa te iwi	Tūwharetoa is the tribe
Ko te Heuheu te tangata	Te Heuheu is the man

11. The Trust Board was constituted by section 16 of the Maori Land Amendment and Maori Land Claims Adjustment Act 1926 (**1926 Act**) following negotiations between the Crown and Ngāti Tūwharetoa relating to the fishery in Lake Taupō. The Trust Board continued in existence pursuant to the Māori Purposes Act 1931 and was subsequently deemed to be constituted as a Māori trust board pursuant to the Māori Trust Boards Act. The Trust Board remains subject to the Māori Trust Boards Act to this day. The beneficiaries of the Trust Board are "the members of the Tūwharetoa tribe" and "their descendants".[2]

12. The 1926 Act, and a later Proclamation made on 7 October 1926, declared the bed of Lake Taupō, the beds of various rivers and streams flowing into Lake Taupō, and the bed of the Waikato River from Lake Taupō to and including Huka Falls (collectively known as **the beds of Taupō Waters**) the property of the Crown.

13. Ngāti Tūwharetoa maintained that the vesting in the Crown of title to the beds of Taupō Waters was not intended to be part of the 1926 agreement regarding access to the fishery and sought the return of such title to the iwi.

1992 and 2007 Deeds with the Crown in respect of the beds of Taupō Waters

14. In 1992 the Trust Board and the Crown entered into a deed (**1992 Deed**) in which it was agreed that the ownership of the beds of Taupō Waters would be vested in the Trust Board on trust for Ngāti Tūwharetoa and for the common use and benefit of the people of New Zealand.

15. The beds of Taupō Waters were vested in the Trust Board by the Māori Land Court as Māori freehold land under Te Ture Whenua Māori Act 1993. The Taupō Waters Trust was established by the Trust Board in 1999 to administer the beds of Taupō Waters in fulfilment of the trust's responsibilities established under the 1992 Deed. The Trust Board continues to be the sole trustee of the Taupō Waters Trust.

16. The 1992 Deed was replaced by a further deed between the Trust Board and the Crown in 2007 (**2007 Deed**). The 2007 Deed maintained and incorporated the key agreements from the 1992 Deed but recorded additional agreements between the parties in respect of the Taupō Waters. Of relevance, in settlement of certain issues and in payment for access to Taupō Waters by the people of New Zealand, clause 2.6 of the 2007 Deed confirms that:

> 2.6.1 The Crown will make, in settlement of past and current annuity and other financial issues (including payment for access to Taupō Waters by the people of New Zealand) arising under the 1992 Deed and section 10 of the

[2] Section 16, 1926 Act.

Maori Trust Boards Act 1955 and in lieu of payments currently provided in that section:

(a) an annual payment of $1.5 million to the Board, commencing from 1 July 2006; and

(b) a capital sum payment of $9.865 million to the Board.

2.6.2 The parties agree that any payment under clause 2.6 by the Crown to the Board is not intended to be or give rise to:

(a) a taxable supply for GST purposes; and

(b) assessable income for income tax purposes; or

(c) a dutiable gift for gift duty purposes.

If a payment is chargeable with GST, the Crown must, in addition to any other payment pay the Board the amount of GST payable in respect of the payment. If a payment is assessed for income tax or gift duty the Crown agrees to pay, on demand in writing, an such assessment.

17. The appropriation of the annual payment is confirmed by section 10 of the Māori Trust Boards Act, and section 41A of that Act confirms that the payments are not to be treated as income for the purposes of the Income Tax Act 2007 or any other legislation.

Ngāti Tūwharetoa, Raukawa, and Te Arawa River Iwi Waikato River Act 2010

18. In 2010 the Ngāti Tūwharetoa, Raukawa, and Te Arawa River Iwi Waikato River Act 2010 (**Upper Waikato River Act**) was passed into law and established the co-governance and co-management arrangements for the Waikato River.

19. The Trust Board acts as a post-settlement governance entity (**PSGE**) in this role, representing the interests of the members of Ngāti Tūwharetoa and their descendants, including the Waikato River hapū of Ngāti Tūwharetoa, under that legislation.

20. The overarching purpose of the Upper Waikato River Act is to restore and protect the health and wellbeing of the Waikato River for present and future generations. The 2010 Deed in relation to Co-Governance and Co-Management Arrangements between the Crown and Ngāti Tūwharetoa for the Waikato River is unique, in that it also extends certain of those arrangements to the beds and waters of Taupō Waters.

21. The Trust Board is committed to maintaining and enhancing the health and wellbeing of the Waikato River and Taupō Waters, and enabling Ngāti Tūwharetoa to achieve our social, cultural, environmental, and economic aspirations.

22. Use of charitable structures was anticipated through the Upper Waikato River Act. The Waikato River Clean-Up Trust is identified as a trust for charitable purposes in clause 3 of Schedule 3 of the Upper Waikato River Act, and the settlement legislation provisions have adopted the strict rules and reporting requirements that apply to registered charities.

Trust Board activities

23. The Trust Board does not have a deed of trust, nor does it have traditional purposes. Rather it is a creature of statute, and its purposes are contained in the Māori Trust Boards Act.[3]

24. In order to give effect to the Trust Board's commitments to Taupō Waters, including the Waikato River, the Trust Board has four key pou, or focus areas, which guide our mahi and the areas in which we invest:

> **Pou Taiao: We are kaitiaki of our moana and awa**
>
> For generations Ngāti Tūwharetoa have held and maintained mana whenua within the Taupō catchment. This intrinsic relationship, alongside our ownership rights, weaves the whāriki by which we are kaitiaki over Taupō Moana and Awa.
>
> **Pou Tikanga: Ngāti Tūwharetoa live as Tūwharetoa**
>
> Our marae are sustainable and resilient, and we are nurturing the use of our reo and mātauranga.
>
> **Pou Tangata: Ngāti Tūwharetoa are educated, healthy and connected**
>
> We are successful in life. We are healthy and active, and maintain strong relationships with our whānau, hapū and iwi.
>
> **Pou Atawhai: We successfully manage our assets for the benefit of the generations**
>
> The organisation is supported by sound policies and robust governance and operating procedures.

25. As confirmed by the High Court,[4] the Trust Board has the right under the 2007 Deed to require commercial users to obtain from the Trust Board rights to occupy or use Taupō Waters for commercial activities, and to charge such users for the same.

26. Since its establishment, the Trust Board has grown into a large and complex entity, with a total net asset base of approximately $107 million. At its core, the Trust Board applies an intergenerational approach to investment. One of the unique characteristics of the Trust Board's operating model is that its economic development aspirations are inextricably linked with its commitment to act for the benefit of the members of Ngāti Tūwharetoa and their descendants.

27. In summary, the Trust Board is unique in comparison to other charitable Māori entities. It is both a trust for charitable purposes pursuant to separate charitable legislative arrangements under the Māori Trust Boards Act, and a PSGE under the Upper Waikato River Act.

Section 2: Tūwharetoa Māori Trust Board Group

28. The Trust Board represents the collective interests of the many hapū, whānau and individuals comprised of Ngāti Tūwharetoa. A list of the entities owned and/or controlled by the Trust Board (the **Group**) is included in Appendix B. Entities within the Group also hold interests in other investment vehicles and funds which provide distributions back to the Group.

[3] Section 24(2), Māori Trust Boards Act 1955.
[4] *Tūwharetoa Māori Trust Board v Taupō Waters Collective Ltd* [2021] NZHC 1871.

29. As per the requirement in Public Ruling – BR Pub 08/02 in respect of section 24B of the Māori Trust Boards Act, the Trust Board is a registered charity (registered in April 2008).

30. A number of entities within the Group are also registered charities. This includes:

    (a) Taupō Waters Trust (registered in June 2014), which, as noted above, owns and administers the beds of Taupō Waters pursuant to the 2007 Deed with the Crown; and

    (b) Taupō Moana Group Holdings Limited (**Taupō Moana Group Holdings**) (registered in January 2015), which is the parent entity for the Trust Board's wholly-owned commercial arm.

31. Clause 4(e) of the Trust Order of the Taupō Waters Trust states that the revenue derived by the Trust must be applied for distribution to or for such charitable purposes within New Zealand as are lawful for Māori trust boards pursuant to the Māori Trust Boards Act.

32. The key purpose of the Group's commercial and investment activities is to ensure the Group entities together generate sufficient surplus funds to enable the Trust Board to support, by way of distribution, the social, cultural, environmental and economic goals and aspirations of Ngāti Tūwharetoa. This includes maintaining and enhancing the health and wellbeing of Taupō Waters, including the Waikato River, pursuant to its Treaty settlement commitments.

33. For completeness, as noted above, in addition to the profits generated pursuant to its commercial activities, the Trust Board receives an annual $1.5 million payment from the Crown.

34. Our investments make a significant contribution to the economic, social, cultural and environmental well-being of our Ngāti Tūwharetoa iwi members and their rohe, and the broader regional and national economy; particularly in the context of the importance of Lake Taupō and the Waikato River, including to Aotearoa's tourism economy, for security of the nation's energy supply, and as a source of drinking water.

35. The protection of the bed and waters of Taupō Waters, including the Waikato River, is a core focus of the Trust Board, with a significant amount of resources (including funds and in-kind services) invested into the management of these natural resources. This work includes supporting hapū with taiao (environmental) projects, monitoring our wai and supporting riparian marae with matters relating to the protection and restoration of the Waikato River and its natural ecosystems.

36. As a recent example, we refer to the risk of incursion of corbicula fluminea or otherwise referred to as 'gold clams' (an invasive freshwater clam species) into Waikato waterways. Gold clams can clog water-based infrastructure like electric generation plants, irrigation systems, and water treatment plants. They also pose a threat to native species because the clams consume large amounts of plankton. The potential of this invasive species spreading to Taupō Waters (we understand it is yet to be found in the Upper Waikato River), led to an extensive surveillance and testing response by the Trust Board across our catchment, which has supported containment efforts.

37. In addition to our environmental work, the Trust Board provides considerable distributions towards the cultural, social and economic development of our Ngāti Tūwharetoa beneficiaries. This includes:

(a) distributing $753,600 for education grants and scholarships to a total of 1,822 recipients for early childhood and kohanga reo, secondary school NCEA, special needs, and tertiary education in the 2024 financial year;

(b) in conjunction with the Tūwharetoa Settlement Trust and the Ngāti Tūwharetoa Fisheries Charitable Trust, distributing $402,447.87 for kaumātua medical grants in the 2024 financial year, in order to assist our pakeke with meeting the costs of healthcare;

(c) distributing almost $300,000 in the 2024 financial year to support marae, hapū and iwi events and activities, including: Xero subscriptions for 10 marae, marae fishing licences and boat ramp permits, the Tamariki Hii Ika programme (a kaupapa that provides free season fishing licences to our tamariki who are 18 years of age and under), and supporting Tūwharetoa Kapa Haka Rōpū (Te Kura o Hirangi, Tongariro Area School, Te Kura o Ngapuke) to attend secondary kapa haka regional competitions;

(d) together with the Tūwharetoa Settlement Trust, distributing $185,000 as part of the Marae Capital Grant in the 2024 financial year, in order to assist marae with capital projects; and

(e) paying $428,979 towards marae insurance premiums costs in the 2024 financial year.

38. In the last two financial years alone, the Trust Board distributed an aggregate total of $2.1 million for 2024 and $1.7 million for 2023 towards our charitable purposes.

39. In addition to direct financial distributions, the Group provides significant benefits to the local economy. For example:

(a) The Group is a key employer in the Taupō region. Taupō Moana Group Holdings is now one of the largest employers in the local tourism market with around 50 employees during peak times. Taupō Moana Group Holdings continues to focus on developing opportunities for Ngāti Tūwharetoa descendants and iwi Māori katoa, and upskilling rangatahi Māori (Māori youth) into leadership roles (including through the provision of a cadet programme).

(b) The Trust Board, through a partnership with other Ngāti Tūwharetoa landowning trusts and related entities, recently completed the development of He Whare Hono ō Tūwharetoa, the new civic administration building of the Taupō District Council and Trust Board premises. This project contributed significantly to the local economy through its engagement of local contractors and suppliers.

Section 3: Implications of the proposals on the Group and exemption

40. The first and major implication for the Trust Board is that its tax exemption pursuant to the Māori Trust Board Act's regime is inadvertently affected by these proposals. The Trust Board appreciates that the regime is standalone and will remain intact unless expressly amended (which we understand there is no intention to do). However, the requirement under section 24B of the Māori Trust Boards Act that the Trust Board be a registered charity under the Charities Act 2005 risks it being inadvertently assumed as captured by the proposals by those administering the proposals. The burden will then fall to the Trust Board to engage to explain its distinct status. That redirection of resources away from its core purposes is inappropriate and unnecessary.

41. For the broader Trust Board Group, a number of entities are registered charities and some of these entities undertake commercial and investment activities, the purpose of which is to ensure the Trust Board can distribute funds in accordance with its purposes. The proposals in the Issues Paper, particularly the proposal to introduce a new tax on unrelated business income of charities:

    (a) will undermine the extent to which the Group can generate funds for the Trust Board's charitable distributions; and

    (b) does not work from a practical perspective for the Trust Board, given its purposes are set out in the Māori Trust Boards Act, the 1992 and 2007 Deeds and the Upper Waikato River Act, rather than a trust deed outlining the Trust's purposes as per the orthodox approach to charities registered under the Charities Act 2005.

42. Acknowledging the need to make administrative processes clearer, as noted above, the Trust Board is exempt from these proposals, and it is important to ensure this treatment extends to the Trust Board's charitable subsidiaries. The legal structure is intended to silo different business ventures into separate legal entities for asset protection, lending and security, governance and operational reasons. Joint ventures with third parties are undertaken via limited partnerships, to ensure appropriate "flow-through" tax treatment of profits to the Group's charitable limited partner, Taupō Moana Group Holdings.

43. Accordingly, it will be critical to ensure that changes do not inadvertently impact on the Trust Board's subsidiaries. We recommend an exemption is applied to the charitable subsidiaries owned or controlled, directly or indirectly, by the Trust Board.

44. To ensure our Treaty settlement is upheld, and not inadvertently undermined by these proposals, the approach in the Upper Waikato River Act to the Waikato River Clean-Up Trust must be maintained as the settlement intended.

45. Finally, but critically, we seek an express exemption for marae that are registered as charitable entities, to support our Ngāti Tūwharetoa marae. While we appreciate they may be (unintendedly) excluded on the basis of the size, given the proposals currently contemplate application to Tier 1 and Tier 2 charities only, as the last bastions of Māori culture and whose roles are intimately intertwined with Treaty settlements, it is our view their charitable activities should be plainly and expressly exempted.

Section 4: General remarks on the proposals

46. Having outlined the reasons above for an exemption for the Trust Board and its subsidiary and related entities, we make the following general remarks on the proposals to further assist officials.

Taxation of "unrelated" business income

47. We consider the problem definition in the Issues Paper to be poorly defined. There is no evidential basis cited for the various assertions made by Inland Revenue. It is not clear what specific issues are sought to be addressed by the taxation of "unrelated" business income. It would seem this specific proposal is aimed at a perceived competitive advantage over for-profit companies and/or raising revenue for the Government.

48. In our view this proposal would do nothing for the competitiveness of for-profit companies, nor will it raise any material revenue. If anything, the net impact of compliance costs for

charities and to Inland Revenue in administering a complex set of rules could far outweigh any "benefits". This is particularly the case for Māori charitable entities. Considerable complexity will be created by attempting to draw a line where no such line exists. Māori charities will be forced to spend time and money on professional advice to address such matters. Accordingly, we consider that this will risk funds otherwise destined for charitable purposes, including for settlement purposes, being inappropriately diverted.

49. Charities in New Zealand are already subject to extensive (arguably world-leading) levels of transparency and oversight. The requirements of the Charities Act 2005 are strict. Registration is a requirement to access the business income tax exemption. As a registered charity, the funds must ultimately be destined for charitable purposes. It is unlawful for a charity to be carried out other than for its stated charitable purposes. No one can, lawfully, privately profit from the charity's activities.

50. We do not consider there is anything unique about "business" activity (including any "unrelated" business activity, however this concept might be defined) which suggests that changing the tax rules is the appropriate solution for whatever the perceived problem is. To the extent that a charitable business is inappropriately providing (unlawful) private pecuniary benefits to persons, this could rightly be addressed by Charities Services and the risk of forfeiting charitable status. Ultimately, we do not consider tax law to be the right tool for the job.

Scope of "donor-controlled charity" definition

51. In addition to the above proposals, the Issues Paper suggests additional taxation provisions may apply to "donor-controlled charities". We understand that integrity concerns have been raised in this context. It is considered that such charities may be part of tax avoidance schemes and raise compliance concerns due to the control the donor and their associates may exercise over the use of charity funds.

52. It is suggested that in-scope "donor-controlled charities" may be subject to restrictions on investments and/or subject to minimum distribution rules.

53. We note that no specific definition of "donor-controlled charity" is proposed. Rather, this is a question raised for submitters. In principle, it is suggested this could include where a donor, the donor's family and/or their associates have some degree of control over the charity. It is suggested that the proportion of funds that the founder or their associates contribute to the charity could be one test – e.g. if more than 50% of the capital is contributed by a person or **group of persons acting together** (*emphasis added*).

54. We are concerned that such a definition could potentially (and inadvertently) capture Māori charities or their subsidiary charitable arms, and other similar collective Māori charitable entities. In our view, it is extremely important that such entities are clearly defined to be outside the scope of the "donor-controlled charity" proposals.

55. Whilst the Ngāti Tūwharetoa people may arguably be viewed as a group of persons acting together in the establishment of the Trust Board (and/or its predecessor), we consider that we are exempt from this definition. As determined in the Court of Appeal decision in *Latimer v Commissioner of Inland Revenue* [2002] 3 NZLR 195, generally a charitable trust in New Zealand will fail the public benefit test if the class of beneficiaries are linked by "a blood tie", but iwi claims represent the one exception. The Government should be very clear that any such proposal does not apply to Māori charitable entities, such as the Trust Board.

56. In addition to the parent entity itself (e.g., the Trust Board), it will be critical to ensure that the definition does not apply to any of its charitable subsidiary entities. Taking the Trust Board's wholly-owned subsidiaries as an example, the criteria discussed above would appear, on its face, to apply to the subsidiaries. That is, because the Trust Board will be the principal donor/founder of the subsidiaries, it will have contributed more than 50% of the capital to the subsidiary, and it will have "control" over the subsidiary.

57. Assuming it is accepted that the Trust Board should not be in-scope of the "donor-controlled charity" provisions, it should follow that any subsidiaries in which it chooses to establish to conduct different charitable activities should also not be considered "donor-controlled charities".

Section 5: Process Concerns

Lack of direct consultation with the Trust Board

58. On 31 May 2010, the Crown and the Trust Board entered into a Deed in relation to co-governance and co-management of the Waikato River, in recognition of the Trust Board's ownership of the Taupō Waters and the related interests of Ngāti Tūwharetoa in the Waikato River and its catchment (the **2010 Deed**). The 2010 Deed provides for the Trust Board and the Crown to develop and enter into accords to reflect a co-management arrangement.

59. On 2 July 2019, the Crown and the Trust Board entered into an accord in respect of the co-management arrangement (the **Accord**). The Accord provides for:

    (a) the ongoing relationship between the Crown and the Trust Board, particularly regarding the Trust Board's ownership of Taupō Waters and its interests in the Waikato River;

    (b) the ongoing relationship between the Trust Board and the Crown as parties to the 2007 Deed, the 2010 Deed, and their related statutory and regulatory frameworks; and

    (c) the shared commitment between the Trust Board and the Crown to respect and care for the resources comprising the Taupō Waters, the Waikato River and their catchments for present and future generations.

60. Under the Accord, the Crown and the Trust Board have agreed to identify and engage proactively on issues of mutual interest and importance. The parties have agreed to notify each other of relevant issues on an annual basis. The Accord provides for a number of mechanisms for proactive engagement between the Crown and the Trust Board, including the Chief Executives' Forum and the Ministerial Forum, both of which occur on an annual basis.

61. The Trust Board considers that the Issues Paper is a national issue of mutual interest to the Crown and the Trust Board that directly relates to, and purports to impact on, the Trust Board's ability to maintain and enhance the health and wellbeing of Taupō Waters, and, more broadly, enable Ngāti Tūwharetoa to achieve our social, cultural, environmental, and economic aspirations.

62. By failing to proactively engage with the Trust Board in the development of the Issues Paper, the Trust Board is of the view that the Crown has not acted consistently with the parties' shared commitment to consultation under the Accord by:

(a) ensuring that the other is consulted as soon as reasonably practicable after identifying or determining the proposal or issue to be consulted on;

(b) providing the other party with sufficient information and time to respond, including the preparation and making of informed submissions in relation to any of the matters that are subject to the consultation;

(c) approaching the consultation with an open mind and genuinely considering any views and/or concerns and/or submissions of the other party in relation to any of the matters that are subject to the consultation;

(d) reporting back to the other party, either in writing or in person, on any decisions, and the reasons for them; and

(e) meeting, when requested by either party, to discuss options to resolve concerns.

63. The Trust Board wishes to record its expectation that it will be directly (and more proactively) engaged with, either by Inland Revenue or Ministers of the Crown, should the proposals set out in this Issues Paper be advanced.

Timeframes for response

64. The consultation period for the Issues Paper opened on 24 February 2025 and closes on 31 March 2025. In our view, the timeframes for response have been very short (just over a month) and have not been widely consulted on. This is of particular concern to the Trust Board given the potential significant implications of the proposals on its organisational group structure and other Māori entities across the country.

65. As above, the Crown and the Trust Board have agreed to maintain effective and efficient communication with one another under the Accord. In particular, this includes ensuring that the parties have clear and agreed processes and opportunities for regular engagement and are provided with sufficient information and time to respond.

66. If, following this consultation process, a Bill is introduced into the House of Representatives, the Trust Board wishes to record its expectation that the Bill will undergo a select committee process that it can participate in.

Lack of engagement with te iwi Māori and Māori generally as Treaty partner

67. Engagement is demonstrative of the Crown's ability to act reasonably and in good faith by working together with te iwi Māori and Māori generally as Treaty partners. To illustrate this, the courts have made the following observations in respect of the duty to consult arising from the principle of partnership:[5]

(a) partnership may require consultation on "truly major issues" in order for the Crown to make informed decisions;

(b) in some cases, partnership may require more than consultation and consultation by itself may be insufficient "without allowing the view of Māori to influence decision-making";

[5] Kevin Hille, Carwyn Jones and Damen Ward *Treaty Law: Principles of the Treaty of Waitangi in Law and Practice* (Thomson Reuters, Wellington, 2023) at pages 78 to 80.

(c) partnership may involve engagement and co-design with Māori groups in developing policy options; and

(d) a duty of consultation may arise from a promise or established practice of consultation (such as, for example, the shared commitments made between the Crown and the Trust Board under the Accord).

68. The Trust Board's view is that the Crown has an obligation under Te Tiriti o Waitangi to understand the impact of any proposed policy changes for Māori and to consider how any negative or unintended effects might be mitigated. In light of the significant lack of engagement with the Trust Board and Māori generally, it is clear that the Crown has not acted consistently with this obligation. Notably, the word 'Māori' appears only once in the Issues Paper. Accordingly, the Trust Board considers that the specific impacts on Māori charities need to be well understood before any proposal or consultation paper is put forward for public consultation.

69. Moreover, the Trust Board notes that Māori comprise a sizeable proportion of the charities sector and have unique drivers and features that require specialist engagement. As evidenced by the Trust Board's own unique history, Māori charities are often established with a wider scope than other charities to address the needs of the particular Māori community being supported. In our view, this is particularly true for iwi and hapū organisations, whose purpose is to hold, manage and administer assets for the benefit of the members of the iwi or hapū they represent.

70. Furthermore, the Trust Board wishes to draw Inland Revenue's particular attention to the policy principles of cost-effectiveness and equity. Māori charities are incurring significant legal costs to enable them to participate in this reform process and are not being treated equitably because they are not impacted in the same ways that other charities are.

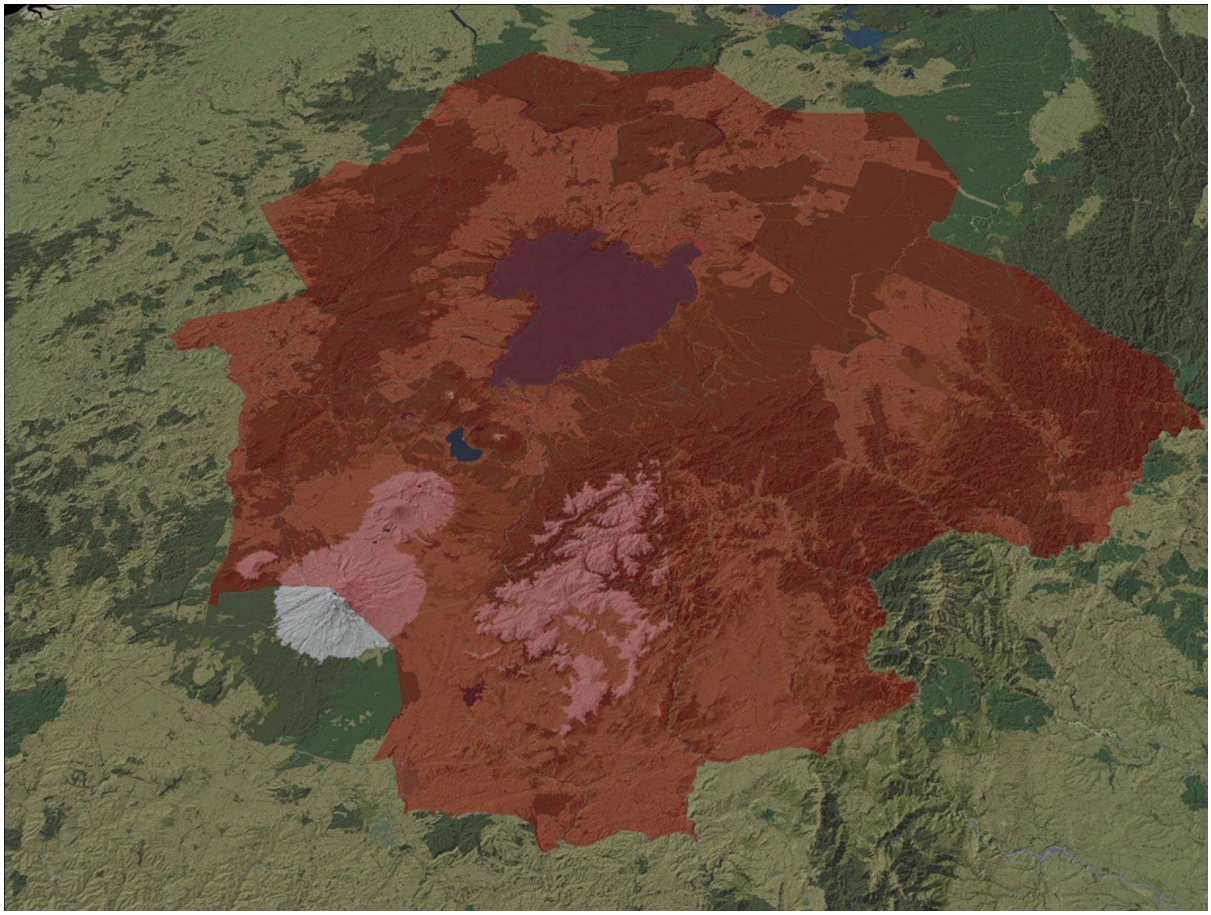
71. The Trust Board strongly urges Inland Revenue to undertake targeted engagement with Māori in an appropriate manner before proceeding with further policy development.

Nākiu iti nei, nā

s 9(2)(a)

Rakeipoho Taiaroa
Chief Executive Officer

Appendix A: Ngāti Tūwharetoa Rohe



Appendix B: Tūwharetoa Māori Trust Board Group

1. The Group is currently comprised of various entities, including:

   (a) the following Trust Board controlled entities:

      (i) Taupō Waters Trust, which, as mentioned above, owns the land comprising the Taupō Waters;

      (ii) Taupō Moana Group Holdings Limited, the wholly-owned commercial arm of the Trust Board;

      (iii) Hole in One TMGH Limited;

      (iv) Tuwharetoa FM Charitable Trust; and

   (b) other entities in respect of which the Group is invested, including:

      (i) TMGH CJO Parasail Limited Partnership; and

      (ii) TMGH Jolly Limited Partnership.

2. The Trust Board is a registered charity, having CC Registration Number CC22722.

3. The following entities within the Group are registered charities:

#	Entity	CC Registration Number
1.	Taupō Waters Trust	CC51225
2.	Taupō Moana Group Holdings Limited	CC57726 or CC51562
3.	Hole in One TMGH Limited	CC51562
4.	Tuwharetoa FM Charitable Trust	CC31246

31 March 2025

Consultation on Taxation and the not-for-profit sector

We are pleased to provide comment to the Inland Revenue Department on Taxation and the not-for-profit sector.

Te Rito Maioha is an Incorporated Society of members committed to high quality early education for every child. Established in 1963, we are an influential leader in shaping today's early childhood sector through advocacy, policy, and delivering tertiary education qualifications and professional development programmes for current and future early childhood and primary education teachers.

Our bicultural kaupapa, te reo Māori me ōna tikanga, is embedded throughout everything we do and teach. We are committed to ensuring the success of our Pacific nation students across the motu by growing authentic relationships that embrace students' whānau and communities across our programmes.

Through our membership we advocate for early childhood education services and the kaiako who provide education to thousands of infants, toddlers, tamariki and young people. Our members are drawn from a diverse range of community-based, privately-owned, kindergarten and homebased early childhood education services and teachers.

Te Rito Maioha is a registered Private Training Establishment (PTE) with the highest rating for a tertiary provider in Aotearoa New Zealand. We are accredited and approved by the New Zealand Qualifications Authority (NZQA) to deliver a range of early childhood and primary school undergraduate, graduate, and postgraduate qualifications (levels 5-9), including specialist kaiako education, both nationally and internationally.

The organisation has delivered teacher education since 1980 and is governed by a Council made up of elected and appointed members, led by a National President and supported by a National Kaumātua. Our national office is in Wellington and our teaching staff are employed at 11 regional education centres|takiwā ako throughout Aotearoa New Zealand.

We are committed to achieving high-quality teaching and learning by:

- increasing teachers'|kaiako knowledge of Te Tiriti o Waitangi and Aotearoa New Zealand's dual cultural heritage;
- providing access to blended delivery through online and face-to-face, with practical real-life exposure and experiences through undergraduate, graduate, and postgraduate tertiary education programmes leading to recognised and approved qualifications;
- promoting quality teaching and leadership through ongoing professional learning and development programmes;
- providing advocacy and a range of unique resources and services to our early childhood education members;
- collaborating with New Zealand and international partnerships to strengthen research and teacher education.

General Comments

We strongly advocate for a tax and regulatory environment that enables charities to continue delivering social and public good. Tax settings should support, rather than hinder, their ability to

serve their communities effectively, ensuring that these organisations remain sustainable and continue to contribute to the broader public interest.

Many early childhood centres are registered charities and as such are potentially impacted by the changes being consulted on. Tax concessions for charities have enabled many small early childhood centres to remain in business as they receive minimal income in the form of grants or donations.

Charity business income tax exemption

The policy framework of accumulation assumes that all charities are in the position to accumulate surpluses for many years. Many smaller charities are not in this position, and in the ECE sector, income is fully spent for the ECE service's charitable purpose each year. ECE is publicly funded by the government to deliver education in the early years. That funding is utilised to deliver the services to the community as per the licensing agreement with the Ministry of Education.

In the ECE sector, tax exemptions do not tend to drive predatory pricing and because many ECE services do not accumulate large surpluses, they do not have investment income to rely on.

Question 1: What are the most compelling reasons to tax, or not to tax, charity business income?

We are concerned that taxing charity business income will lead to higher compliance costs for charities who will need to define what is "related" and what is "unrelated" business activity. In addition, if "unrelated" income is taxed, what is to stop additional future changes to tax "related" business income?

Where a charity operates a business (rather than owning it), which is the case for many ECE services, their charitable purpose is generally related to "the provision of early childhood services and education and care". An ECE service's income is generally a mix of government funding, parent fees and parent donations.

Taxing charitable business income impedes the ability of charitable organisations to deliver for the greater good of society by:

- reducing any accumulated surpluses as these are reduced by the tax component; and
- diverting resources into complex or burdensome compliance costs.

The tax cost and compliance burden may in some cases mean that it may no longer be viable for some charities to continue.

Question 2: If the tax exemption is removed for charity business income that is unrelated to charitable purposes, what would be the most significant practical implications?

Defining what is "unrelated" will be difficult.

Parent fee and donation income may or may not be counted as paying for an "unrelated" business activity depending on what the fees and donations are for.

Is serving food to the children attending related to the charitable purpose of "education and care"? Is charging a fee for being above the minimum required teacher:child ratio a "related" or "unrelated" activity? Is requesting a donation to cover the cost of sunscreen which is applied to children receiving the education and care related or not?

For ECE services determining what income is unrelated to the charity's purpose will be complicated and could require professional taxation services that small charities (ECE services) cannot afford or may not be able to access.

Question 3: If the tax exemption is removed for charity business income that is unrelated to charitable purposes, what criteria should be used to define an unrelated business?

Determining criteria will be extremely complicated and difficult. The Inland Revenue Department will need to provide clear guidance documents with example from multiple industries. What about passive income such as interest on bank deposits? Would this income be "unrelated"?

Question 4: If the tax exemption is removed for charity business income that is unrelated to charitable purposes, what would be an appropriate threshold to continue to provide an exemption for small-scale business activities?

We feel it would be appropriate to continue to provide an exemption for smaller charities. We agree that the definition of "small scale" should be in line with current financial reporting standard thresholds. The current not-for-profit FRS tiers 3 and 4 would seem appropriate to continue to be exempt from taxation of their business income.

Question 5: If the tax exemption is removed for charity business income that is unrelated to charitable purposes, do you agree that charity business income distributed for charitable purposes should remain tax exempt? If so, what is the most effective way to achieve this? If not, why not?

In relation to the ECE sector, charity business income is "distributed" by meeting the costs of running the ECE service which is the charity's purpose. We believe that charity business income used in this way should remain tax exempt. As mentioned above it will be difficult to achieve this as defining what is in or out is not an easy task.

Question 6: If the tax exemption is removed for charity business income that is unrelated to charitable purposes, what policy settings or issues not already mentioned in this paper do you think should be considered?

The biggest issue would be the complexity that is added to the not-for-profit and charity sector. Compliance costs would no doubt increase as charities determine what income is taxable or not, reducing funds available for charitable purposes and costs for IRD to provide guidance and make determinations would also increase.

Integrity and simplification

Integrity and simplification measures should aim to support, rather than restrict, the activities of legitimate not-for-profit entities, ensuring that compliance obligations remain proportional to their size and function.

Question 13: If the compliance costs are reduced following the current review of FBT settings, what are the likely implications of removing or reducing the exemption for charities?

In the ECE sector, many centres provide discounted enrolment fees for the children of their employees. If charities were required to pay FBT this would add to their compliance costs and may deter some from offering this benefit because of the complexity or because offering the benefit becomes uneconomic when subject to FBT.

Question 14: What are your views on extending the FENZ tax simplification as an option for all NFPs? Do you have any other suggestions on how to reduce tax compliance costs for volunteers?

We support any initiative that reduces tax compliance burdens for organisations supported by volunteers. Introducing a clear, minimal threshold below which volunteer reimbursements are automatically tax-exempt could encourage volunteer participation without excessive paperwork.

Question 15: What are your views on the DTC regulatory stewardship review findings and policy initiatives proposed?

In the education sector, both schools and early childhood (ECE) services provide parents with receipts for donations made so they can claim back a portion of these donations made each year.

While we agree with the first recommendation to delink DTCs from income tax to allow refunds to occur closer to when the donation payment is made, this could lead to additional work for some charities.

Currently ECE services and schools issue donation receipts once a year in line with the 31 March tax year, rather than at the end of their own financial year or calendar year, or after each donation payment. If parents didn't need to wait until the end of the tax year to claim a portion of their donation(s), there could be demand for donation receipts to be issued at the time of each payment.

While it seems sensible to allow IRD to collect data from donee organisations to pre-fill DTC claims and streamline the claiming process, we note that this will require new systems to be set up which will have costs for both IRD and the done organisations.

Summary

In summary, with any tax changes compliance costs must be considered, as increasing regulatory and tax obligations can be fiscally challenging for many charities. Any new measures should not create undue financial or administrative burdens that could limit their effectiveness.

Make submission to policy.webmaster@ird.govt.nz

Key contact for Te Rito Maioha Early Childhood New Zealand:

Kathy Wolfe, Chief Executive

s 9(2)(a)

From: Marieann s 9(2)(a)
Sent: Monday, 31 March 2025 3:02 pm
To: Policy Webmaster
Subject: Taxation and the not-for-profit sector

I submit that organizations such as the Brethren church should pay tax on business profits. In Motueka, church members have set up their own supermarket exclusively for members' use. A great initiative to avoid the supermarket duopoly but I believe that wealthy church groups should have to pay tax and not hide behind the charity label to avoid it. In my opinion, the exclusive brethren are a business cooperative and like Destiny "church" should not receive favourable tax advantages. Both groups look after their own unlike traditional churches who are more likely to extend charitable actions to those who need it.

Thank you
Marieann Keenan

31 March 2025

Tēnā koe,

CHRISTCHURCH ARCHAEOLOGY PROJECT SUBMISSION ON THE INLAND REVENUE CONSULTATION ON TAXATION AND THE NOT-FOR-PROFIT SECTOR

Christchurch Archaeology Project (CAP) welcomes this opportunity to to provide feedback on the Inland Revenue's taxation and the not-for-profit sector policy, and commends Inland Revenue on the work that has gone this policy. We also applaud the objectives of simplifying tax rules, reducing compliance costs, and addressing integrity risks.

Christchurch Archaeology Project

CAP is a not-for-profit organisation established to save, share and research Ōtautahi Christchurch's archaeological heritage. We are a small and relatively new not-for-profit, having been established in 2022. We have already been successful in obtaining a number of grants, but much of the work we do is undertaken on a voluntary basis, including the day-to-day operations of the organisation.

Our submission

Aotearoa has more charities (and not-for-profit organisations) per head of population than many of our international peers. This demonstrates the strong level of societal ownership of charities. They have been supported by successive governments by taxation concessions because all their resources are required to go towards their charitable purpose and private pecuniary gain is not allowed. In recognition of their broad public benefit/impact (and absence of private ownership), charities have been granted a 0% marginal tax rate on income received or surpluses generated, similar to other public benefit entities such as local government.

Charities are usually highly efficient deliverers of services. They are close to their communities and, due to constrained resources, are commonly forced by necessity to be incredibly efficient. As such, they are generally much more cost-effective service providers than direct government service provision. Not only are charities highly efficient organisations, they also often rely extensively on volunteers to carry out work, and on private donations. If charities are not providing their services and addressing societal needs, the result will generally become increasingly loud calls to the government to address the issues that charities used to. This has direct cost implications for the government, and the total of this is likely to be more than their support of the charitable sector via tax concessions.

Due to the very wide variety of charities and not-for-profits in Aotearoa, care needs to be taken to carefully consider the implications of changes. If the issue is concern over entities abusing their tax concessions, then the first step should always be to understand clearly the size of the issue – how many entities are abusing the tax concessions and what is the dollar value of this? Secondly, is this an issue that requires a blanket approach over the whole sector, or is it better addressed via a targeted approach towards those entities suspected to be abusing the concessions?

The ability to run a business is one of the few options open to a charity or not-for-profit to develop both a sustainable income and one that they can control. Many charities currently operating businesses are not accounting for their true input costs. If they are required to pay tax, they will be entitled to claim all available input expenses, as for-profit businesses do. This is likely to dramatically reduce the business profit of a charity and hence also any taxation revenue.

Recommendations

We recommend that a cost-benefit analysis of the proposals is undertaken. It should focus on the following:

1. How bad are the issues identified (re charities/not-for-profits abusing the current system)?
2. What are the compliance cost impacts of the proposed changes?
3. How much revenue will be gained by the government compared to how many additional services the government will need to fund if charities are less sustainable?

The following questions should also be investigated:

1. Is the government likely to fill the unmet social need if there are is less ability for charities to do so?
2. Will the proposed changes simply result in other structures or approaches to the issues?

With thanks for the opportunity to comment on this policy.

Ngā mihi,

s 9(2)(a)

Katharine Watson
Director
Christchurch Archaeology Project

Implications of Taxation and the Not-for-Profit Sector IRD Review

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Background:

New Zealand Land Search and Rescue Inc. (Land Search and Rescue) is a charitable organisation dedicated to providing essential search and rescue services across New Zealand. As a volunteer-based entity established in 1994, Land Search and Rescue New Zealand is a dedicated incorporated society providing specialist search and rescue services across diverse environments, including suburban, urban, wilderness, and rural areas.

From regional and forest parks to shorelines and caves, our highly trained volunteers offer their expertise 24/7, free of charge, to anyone who needs it.

Coordinated through the New Zealand Police and the Rescue Coordination Centre, our 33,00 unpaid professionals stand ready to respond at any time, ensuring that help is always available when it's needed most.

Submission

In response to the questions posed in the issues paper, the following draft submission outlines Land Search and Rescue's position:

Chapter 2: Charities Business Income Tax Exemption

Q1. What are the most compelling reasons to tax, or not to tax, charity business income?

Charity business income should not be taxed if it directly supports the charity's mission. For LandSAR Training, income from training external entities contributes to the overall preparedness and effectiveness of search and rescue operations, aligning with LandSAR's charitable purposes.

Q2. If the tax exemption is removed for charity business income that is unrelated to charitable purposes, what would be the most significant practical implications?

Removing this exemption would significantly increase operational costs for LandSAR Training, potentially leading to higher training fees and reduced access to our services for external entities, ultimately impacting public safety and preparedness.

Q3. If the tax exemption is removed for charity business income that is unrelated to charitable purposes, what criteria should be used to define an unrelated business?

Criteria should include whether the income directly supports the charitable mission and whether it is reinvested into activities that further charitable purposes. For LandSAR Training, training fees fund essential search and rescue operations, making them aligned with our mission.

Q4. If the tax exemption is removed for charity business income that is unrelated to charitable purposes, what would be an appropriate threshold to continue to provide an exemption for small-scale business activities?

A de minimis threshold for exemption determined by reporting Tiers would not have a direct relationship to the value of unrelated business activity. This could lead to inequity between charities.

Q5. If the tax exemption is removed for charity business income that is unrelated to charitable purposes, do you agree that charity business income distributed for charitable purposes should remain tax exempt? If so, what is the most effective way to achieve this? If not, why not?

Yes, income distributed for charitable purposes should remain tax exempt. This can be achieved by allowing deductions for distributions made to parent charities, ensuring that funds are used effectively for public benefit.

Q6. If the tax exemption is removed for charity business income that is unrelated to charitable purposes, what policy settings or issues not already mentioned in this paper do you think should be considered?

Consider the administrative burden on charities and the potential impact on their ability to fulfil their missions. Providing clear guidance and support for compliance will be essential.

Chapter 3: Donor-Controlled Charities

Q7. Should New Zealand make a distinction between donor-controlled charities and other charitable organisations for tax purposes? If so, what criteria should define a donor-controlled charity? If not, why not?

Yes, criteria should include a significant proportion of funding or control by the donor or their associates. This distinction helps address potential tax avoidance while ensuring genuine charitable activities are supported.

Q8. Should investment restrictions be introduced for donor-controlled charities for tax purposes, to address the risk of tax abuse? If so, what restrictions would be appropriate? If not, why not?

Yes, investment restrictions should ensure transactions are at arm's length and prevent circular arrangements that do not benefit the public. Restrictions should be clear and enforceable.

Q9. Should donor-controlled charities be required to make a minimum distribution each year? If so, what should the minimum distribution rate be and what exceptions, if any, should there be for the annual minimum distribution? If not, why not?

Yes, a minimum distribution rate similar to international precedents (e.g., 5% of net assets) would ensure timely public benefit. Exceptions could include provisions for accumulating funds for specific long-term projects.

Chapter 4: Integrity and Simplification

Q10. What policy changes, if any, should be considered to reduce the impact of the Commissioner's updated view on NFPs, particularly smaller NFPs?

Increase the $1,000 deduction threshold to remove small-scale NFPs from the tax system, simplifying compliance and reducing administrative burdens.

Q11. What are the implications of removing the current tax concessions for friendly societies and credit unions?

Removing these concessions could increase financial pressure on these entities, potentially reducing their ability to provide community benefits and support.

Q12. What are the likely implications if the following exemptions are removed or significantly reduced:

- Local and regional promotional body income tax exemption: Increased costs for entities promoting local development, potentially reducing their effectiveness.
- Herd improvement bodies income tax exemption: Financial strain on bodies promoting agricultural advancements, possibly affecting rural communities.
- Veterinary service body income tax exemption: Higher costs for veterinary services, impacting animal health and welfare.

- Bodies promoting scientific or industrial research income tax exemption: Reduced funding for research, potentially slowing innovation and development.
- Non-resident charity tax exemption: Limited impact on LandSAR, but could affect international charitable collaborations.

Q13. If the compliance costs are reduced following the current review of FBT settings, what are the likely implications of removing or reducing the exemption for charities?

Removal of the FBT exemption could increase costs for charitable organisations, reducing available funds for charitable activities and potentially affecting employee remuneration strategies.

Q14. What are your views on extending the FENZ simplification as an option for all NFPs? Do you have any other suggestions on how to reduce tax compliance costs for volunteers?

Extending the FENZ simplification would reduce compliance costs and administrative burdens for volunteers, making it easier for them to contribute their time and skills to NFPs.

Q15. What are your views on the DTC regulatory stewardship review findings and policy initiatives proposed? Do you have any other suggestions on how to improve the current donation tax concession rules?

The proposed initiatives to delink DTCs from income tax and streamline the claiming process are positive steps. Further simplification and increased awareness could enhance donor participation and support for charities.

Conclusion

The proposed changes outlined in the issues paper present significant implications for LandSAR and LandSAR Training. It is crucial to engage in the consultation process to ensure that the unique needs and contributions of our organisation are considered in the final policy decisions. The draft submission provides a comprehensive response to the questions posed in the issues paper and highlights the importance of maintaining supportive tax policies for the NFP sector.

Please review the draft submission and provide any additional feedback or suggestions for improvement.

Aged Care Association
NEW ZEALAND

Aged Care Association submission to Inland Revenue's issues paper on 'Taxation and the not-for-profit sector'

March 2025

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About the Aged Care Association

This submission is from the Aged Care Association (ACA), the peak body for the aged residential care (ARC) sector in New Zealand.

New Zealand has over 670 aged residential care facilities, with more than 40,000 beds and 35,000 residents. In comparison, Te Whatu Ora oversees 10,748 public hospital beds.

Our members provide rest home, hospital, dementia, psychogeriatric, respite, and palliative care and care for around 700 younger people with disabilities.

Sixty six percent of beds are run by religious institutions, charitable trusts, family-owned, not-for-profits, and privately owned facilities. Most of the remaining beds are operated by listed companies (34 percent), with less than 1 percent provided by Te Whatu Ora.

Residents may be

- very frail and clinically unstable,
- well but disabled and have very high care needs,
- cognitively impaired or with mental health issues, with some requiring a secure environment,
- receiving end of life care.

Funding for aged residential care is a mix of means-tested user-pays and government subsidy.

Aged residential care providers are contracted by Te Whatu Ora to provide care services at a rate that is set annually.

We thank Vicki Ammundsen of Vicki Ammundsen Trust Law Limited for her advice and support in drafting this submission."

The Association welcomes the opportunity to be contacted by Inland Revenue for further discussion.

Context

1. The aged residential care sector (ARC) is a core pillar in New Zealand's health system, providing shelter and care services to those with ageing related health issues who are assessed as needing care.
2. New Zealand has over 670 aged residential care facilities, with more than 40,000 beds and 35,000 residents. In comparison, Te Whatu Ora | Health NZ oversees 10,748 public hospital beds.
3. The aged residential care (ARC) sector provides care at four core levels - rest home, hospital, dementia, psychogeriatric and respite care for those above 65 years of age, and care for around 700 younger people with disabilities.
4. People 65 years and older are assessed by Te Whatu Ora | Health NZ's Needs Assessment and Service Coordination (NASC) service and allocated to one of four ARC care categories. The NASC assessor typically uses interRAI assessment tool to assess the person's current abilities, resources, goals and needs before advising a care plan and the type of support services a person may require, of which admission into ARC is one of the support services advised.
5. Multiple reports over the last decade have continued to draw attention to the reality that the daily (24-hour care) rates paid by Te Whatu Ora | Health NZ are manifestly insufficient to support the maintenance and refurbishment of older beds or the building of additional capacity for the recognised and documented number of New Zealanders who will need this care.
6. The Aged Care Association (ACA) is the peak body for ARC in New Zealand, representing over 90% of the sector via its membership.
7. Sixty six percent of the facilities we represent are owned and operated by religious institutions, charitable trusts, family-owned, not-for-profits, and privately owned facilities. The remaining facilities are operated by listed companies (34 percent of our membership). Across the sector of ARC provision, Te Whatu Ora | Health NZ provides less than 1 percent of the available residential care capacity.
8. We have drawn upon the submissions by Sue Barker of Charities Law Reform and Business NZ in drafting this submission.

Key points of submission

9. This submission is from the ACA and its members, representing a significant portion of the ARC sector in Aotearoa New Zealand. Our members are deeply committed to providing high-quality care and support to older people, with **one in five member facilities operating as not for profit**. We appreciate the opportunity to provide feedback on the Inland Revenue issues paper on taxation and the not-for-profit sector, dated 24 February 2025.

10. The ACA and its members recognise the importance of a fair and effective tax system. We also believe it is crucial that the tax treatment of the not-for-profit sector, and in particular charitable aged care providers, appropriately reflects the significant contribution this sector makes to the well-being of New Zealanders and the broader society.
11. We have carefully reviewed the issues paper and have significant concerns regarding a number of the proposals. We believe that some of these proposals are **based on underlying assumptions that do not accurately reflect the realities of the charitable aged care sector** and could have far-reaching and unintended negative consequences for our members, the people they care for, and the wider community.
12. This submission will address key areas of concern raised in the issues paper, drawing on the principles of charities law and the unique operational environment of aged care providers operating as not-for-profits. We will also highlight alternative approaches that we believe would be more appropriate and effective.
13. This submission reflects the perspectives of three key parts of our sector:
    a. **The Association itself:** As a not-for-profit industry body, which currently represents over 90% of the aged residential care sector in the country through its membership.
    b. **The Association's education trust arm:** A registered charity focused on training and education within the aged care sector. Since 2018, the ACA Education Trust has played a critical role in providing professional development and knowledge-sharing to the ARC workforce (including care workers, registered nurses and facility managers), who often find limited training opportunities that are specific to the aged residential care sector.
    c. **Association's members:** ACA's membership is made up of a cross-section of aged care facilities, which includes small to large, rural and urban, publicly listed and charitable providers. Approximately 20.4 percent of our membership are facilities that are registered not-for-profits and charities delivering essential aged care services.

Charity business income

14. We note that the issues paper raises concerns about potential competitive advantages gained by charities through tax exemptions and the accumulation of funds. However, it is crucial to acknowledge the fundamental principles underpinning the tax exemptions afforded to charities. **These exemptions are not intended to provide an unfair advantage but rather to recognise the public benefit provided by charitable organisations** and to support their ability to further their charitable purposes.
15. The charitable sector, including aged care providers, contributes significantly to social capital, social cohesion, and societal trust. This contribution extends far beyond the direct services provided and strengthens the fabric of our society. As noted by Sue Barker Charities Law, the **charitable sector also plays a role as risk takers in the provision of basic social services**, often innovating and addressing needs that the public sector cannot readily meet.

16. The independence of charities is also a critical aspect to protect. Just as Inland Revenue does not dictate how businesses should operate, it is equally important that legal and policy settings do not unduly direct charities in how they further their charitable purposes.
17. The Association is concerned that some of the proposed changes appear to be based on evidence of a problem within a very specific set of charities. But the proposals stand to affect the wider sector, including the aged care sector. The Issues Paper, while inviting feedback, creates uncertainty for our members who are dedicated to providing essential care services.
18. We strongly believe that some of the points of consideration suggested in the paper would create challenges and problems for the wider sector. It is our firm belief that **strengthening compliance of the existing rules should sufficiently address existing issues** within the charity sector without having to introduce new changes and uncertainty.

Accumulation of Funds

19. The issues paper expresses concern about the accumulation of funds by charities.
20. However, it is important to note that for several charitable organisations, accumulated funds are important to ensure the sustenance of their service delivery.
21. For charitable aged care providers, the ability to accumulate funds is often **essential for long-term sustainability and the continued provision of high-quality care**. The aged care sector is characterised by:
    a. **Significant capital expenditure:** Building and maintaining aged care facilities requires substantial upfront and ongoing investment. Accumulating funds allows providers to plan for future capital projects, upgrades, and the replacement of aging infrastructure.
    b. **Long-term planning:** Providing care for an aging population necessitates a long-term perspective. Charities need to be able to accumulate funds to ensure their financial viability and ability to meet future needs.
    c. **Volatile profitability:** The aged care sector can be subject to fluctuations in funding, wage increases, occupancy rates, and operating costs. Retaining capital provides a buffer against these uncertainties and ensures the continuity of care.
    d. **Social enterprise models:** Many charitable aged care providers operate with a social enterprise model, where surpluses are reinvested to further their charitable purposes. Restrictions on accumulation would directly impede this model and their ability to grow and adapt.
22. Accumulated funds have been critical for the charities in aged residential care, particularly as the government's funding have been notably low to meet the actual cost of operations.[1]
23. The ARC sector has also shared their frustrations with inability to access bank loans for refurbishments and other capital investments, due to this poor funding and, often, loss-making nature of their operations.[2]

[1] Sapere (2024). A review of aged care funding and service models
[2] Ansell Strategic (2023). New Zealand Aged Residential Care Financial Performance Study – Summary of Findings

24. Accumulated funds have helped them navigate such an uncertain financial ecosystem while ensuring that critical services remain available for our kaumatua. We would like to draw these realities to the attention of Inland Revenue so that they are aware about the different ways in which accumulated business income is used in the ARC sector and ensure that an updated policy does not hinder these efforts.
25. We, therefore, strongly disagree with the underlying assumption in the issues paper that charities do not further charitable purpose until they distribute funding. **Accumulating funds for legitimate future charitable activities is itself a responsible exercise of fiduciary duty**, allowing charities to strategically plan and maximise their long-term impact. Trustees have a duty to act in the best interests of their charitable purposes, which may well involve the prudent retention of capital.
26. The suggestion that the default setting for charities should be distribution **fails to recognise the diverse nature and long-term objectives of many charities**, including those in the aged care sector with intergenerational goals.
27. Rather than imposing arbitrary rules on accumulation, a better approach would be to **rely on the existing fiduciary duties of charity trustees**, the **transparency provided by the charities register** and the role of Charities Services, Ngā Ratonga Kaupapa Atawhai, which we respectfully submit is better and more properly placed to monitor charities. Tax charities are already required to provide comprehensive information about their income and expenditure, which is publicly available. This allows for scrutiny by stakeholders, including donors and the public. If there are concerns about a particular charity unduly hoarding funds, these can be addressed through questioning by Charities Services, informed by the information on the register.
28. Inland Revenue itself acknowledged in its 2001 discussion document that removing the business income tax exemption "might not be necessary if accumulations were monitored". The comprehensive information now available on the charities register provides the basis for such monitoring.

Business Income Tax Exemption

29. The issues paper appears to be reconsidering the business income tax exemption for charities.
30. Most importantly, if the tax exemption for unrelated business income is to be reviewed, it is crucial that the definition of "unrelated business" is narrowly and clearly defined. **Activities undertaken to directly fund and support charitable purpose should not be deemed "unrelated business," even if they generate some revenue to offset costs.** Clear guidance and consultation with the sector will be essential to avoid ambiguity and unintended consequences. The alternative is to dramatically skew options for generating business income on an entirely unprincipled basis that would essentially amount to Inland Revenue dictating how charities operate.
31. The case of *Commissioner of Taxation of Australia v Word Investments Ltd* highlights the complexities of defining "charitable institution" in the context of business activities. The

Australian High Court recognised that a business run by a charity to raise funds for its charitable purposes could still be considered a charitable institution.

32. We note that Inland Revenue's interpretation statement IS 24/08, which comments on the business income exemption. While we understand the need for clarity, we believe that any changes to the current exemption must **carefully consider the operational realities of charitable aged care providers**, where additional income outside of providing care services mentioned in ARRC, is inherently linked to their charitable purpose.
33. Concerns about unfair competitive advantage are not well-founded. As the 1995 Australian Industry Commission report found, the income tax exemption does not necessarily provide charities with a competitive advantage in terms of either pricing or expansion. Charitable aged care providers often operate in a complex funding environment, with government contracts that may only partially cover the cost of providing services.
34. Taxing the business income of charities may **further exacerbate the financial pressures** faced by the charitable sector and **undermine their ability to provide much-needed housing and care** for older people.
35. For many charitable aged care providers, income generated from providing additional services (which may be considered a business activity) is integral to their ability to fund their charitable purposes. Any move to tax this income would reduce the resources available for direct care and support for older people.
36. The ARC sector has been historically underfunded, with various government reviews attesting to the same. A recent study had noted a decrease in financial performance of 83% between 2017 and 2023, with no signs of improvement, with at least 44% of care homes in NZ making a loss.
37. Adding premium charges (additional charges for a room that has features that are NOT required under the Age Related Residential Care Agreement (ARRC)), have been a standard practice followed by nearly 95 percent of all facilities to help bridge the funding gap between government funding and the actual cost of care.[3]
38. However, it is worth noting that only 63 percent of individually owned charitable care facilities charged accommodation supplements or premium charges in 2023.[4] This ensures the availability of standard rooms which are affordable for the subsidized residents in care.
39. Additional income, which could be seen as 'unrelated business income' depending on how it gets defined, could include premium charges, income from operation of cafes, op-shops, retirement or rental villages, and other activities have been a vital source of funds for the providers to keeping the ARC facilities running. **Many of our members have attested to how critical these business incomes have been for cross subsidising the cost of care in ARC**.
40. An ideal outcome would be to have the government adequately funding the cost of care and operations for ARC. But in its absence, business incomes are critical sources of funds for the sector to serve its charitable purpose.

[3] Aged Care Association. Aged residential care sector profile 2024
[4] Aged Care Association. Aged residential care sector profile 2024

Practical implications if the tax exemption is removed for charity business income

41. Speaking for the aged residential care sector specifically, we believe that if tax exemption is removed, it would create an additional financial burden on the not for profit providers.
42. Taxing charity business income could compel facilities to increase their premium rates, which would further widen inequity in access to ARC. It would also reduce access to supplementary funds to help sustain the quality of care they deliver in the ARC facilities, or their ability to reinvest for renovation and improvements.
43. This could also increase the facilities' dependency on increased government funding to sustain their operations. In the absence of this, we could potentially see more closure of beds, which would cripple New Zealand's healthcare system.

Taxation on member subscription

44. The Association is deeply concerned about the potential implications of the view presented in the paper that trading and other normally taxable transactions with members, including some subscriptions, are taxable income. This would represent a significant shift in the tax treatment of membership subscriptions for many not-for-profit organisations like the Association, where member subscriptions primarily cover operating costs, and could negatively impact their financial sustainability and their ability to represent and support their members.
45. For the Association, taxation on member subscription would compel us to increase membership rates to mitigate any loss in operating costs. This in turn could affect the ability of our members, over 60 percent of which are small and medium providers, to continue with their membership.
46. We strongly oppose the proposition and believe that taxing subscription income would impose additional financial strain on the ARC sector, and limit our ability to adequately represent a cross-section of the sector. It would also affect our capacity to invest in advocacy, research, training, and engagement, all of which have been critical to supporting the sector.

Minimum Distribution Requirements

47. The proposal to impose minimum distribution requirements on charities is a significant concern for the ACA and its members. This option was **strongly opposed by stakeholders** during the review of the Charities Act, as noted by the Department of Internal Affairs (DIA).
48. Imposing mandatory distribution requirements would be **inflexible** and **fail to recognise the careful planning and long-term objectives** of charitable aged care providers. It could:
    a. **Damage perpetual funds** by requiring the distribution of more funds than are available in a given year.
    b. **Adversely impact efforts to support the long-term prosperity** and sustainability of aged care organisations.
    c. **Fail to account for the specific capital needs and cyclical nature** of the aged care sector.

d. **Be arbitrary** and not reflect the diverse operational models and strategic goals of different aged care charities.

49. Defining an appropriate baseline for minimum distribution, such as a percentage of net assets, is also problematic. "Net assets" may not be an accurate indicator for various reasons, and an arbitrary percentage could be **short-sighted** and too high, particularly in a low-interest rate environment.
50. The experience of other jurisdictions with minimum distribution requirements, such as Canada, highlights the complexities and potential negative consequences of such regimes. The Ontario Law Reform Commission noted that there are other ways to ensure that charitable resources are devoted to charitable purposes, such as **enforcing fiduciary duties**.
51. We believe that **New Zealand should learn from the experiences of other jurisdictions** and avoid imposing restrictive measures that could harm the charitable aged care sector.

Donor-Controlled Charities

52. The issues paper also focuses on "donor-controlled" charities, raising concerns about potential tax avoidance. While we acknowledge the need to address any genuine instances of abuse, we believe that **existing provisions in the Income Tax Act 2007**, such as section CW 42(1)(c) and (5)-(8), which can remove the business income tax exemption if a controlling person can direct funds to their benefit, already provide safeguards.
53. Furthermore, the **rigorous registration process for charities**, including Charities Services' strict approach to conflicts of interest, acts as an initial filter against potential abuse.
54. Any new measures targeting donor-controlled charities should be **carefully targeted and proportionate**, ensuring they do not inadvertently penalise legitimate charitable activities within the aged care sector that may involve donor contributions and governance.

Refundability of Imputation Credits

55. New Zealand charities have long advocated for the refundability of imputation credits. The current non-refundability **discourages investment by charities in New Zealand companies**.
56. Australia has allowed the refunding of surplus imputation credits to charities since 2000, creating an inconsistency between the two countries.
57. Making imputation credits refundable would **remove a significant barrier to investment** by New Zealand charities, including aged care providers, and provide additional funds that could be directed towards their charitable purposes. Despite Inland Revenue raising concerns about fiscal cost, there has been no analysis comparing this cost with the associated benefits.

Fringe Benefit Tax (FBT)

58. The issues paper again raises the possibility of removing the FBT exclusion for charitable organisations. This exclusion recognises the **unique circumstances of the charitable sector** and the challenges charities face in attracting and retaining staff, often with limited resources.

59. Removing the FBT exclusion would **increase the operating costs** for charitable aged care providers, potentially impacting their ability to deliver services and retain valued staff.
60. Concerns that the FBT exemption provides an unfair competitive advantage appear overstated and appear to overlook the significant difficulties charities have in attracting and retaining staff and has inference that staff employed by charities should accept lower pay due to the employer's charitable status.
61. We support the need to modernise FBT and reduce compliance costs, as highlighted in Inland Revenue's regulatory stewardship review. However, we believe that the **current exclusion for charitable organisations should be retained** due to the vital role they play and the financial constraints they often face.

Volunteers

62 We support the issues paper's proposal to treat honoraria payments for volunteers as salary and wages to reduce compliance costs. Volunteers are the backbone of many charitable aged care organisations, and any measures to simplify tax compliance for them are welcome.

63 We also note the previous consideration of introducing a tax rebate or grant for individuals who donate their time to charities. Such initiatives could further **recognise the vital contribution of volunteers** to the aged care sector and encourage more people to give their time.

Consultation Process

64. We have significant concerns about the **abbreviated consultation period** for this issues paper, particularly given the breadth and potential impact of its proposals. The fact that the consultation period ends on 31 March, coinciding with the financial year-end for many charities, further limits the ability of the sector to provide comprehensive feedback.
65. We urge Inland Revenue to ensure that the consultation process is **genuine and allows for meaningful engagement** with the charitable sector. The Generic Tax Policy Process (GTPP), which emphasises early and informed consultation, should be properly followed.

Conclusion and Recommendations

66. The ACA and its members believe that the issues paper raises important questions but that several of its underlying assumptions and proposed solutions **do not adequately consider the unique operating environment and fundamental principles of the charitable aged care sector**.
67. We are deeply concerned that some of the proposals, such as restricting the accumulation of funds and removing the business income tax exemption, could **significantly undermine the financial sustainability of charitable aged care providers** and ultimately **negatively impact the care and support available to older people in New Zealand**.
68. **We strongly recommend that Inland Revenue:**

a. **Retain the current business income tax exemption for registered charities**, recognising the integral role that income-generating activities play in funding charitable purposes in the aged care sector.
b. **Not proceed with the proposal to impose mandatory minimum distribution requirements on charities**, as this would be inflexible, potentially harm long-term planning, and fail to recognise the diverse needs of the sector. Instead, rely on existing fiduciary duties and the transparency of the charities register.
c. **Retain the FBT exclusion for charitable organisations**, acknowledging the financial constraints faced by the sector in attracting and retaining staff.
d. **Support measures to simplify tax compliance for volunteers**.
e. **Undertake a more thorough and genuinely consultative process** regarding any potential changes to the taxation of the not-for-profit sector, ensuring adequate time for feedback and proper consideration of the diverse perspectives within the sector.
f. **Consider the potential benefits of refunding imputation credits to charities**, which would remove a disincentive for investment and provide additional resources for charitable activities.
g. **Ensure that any measures targeting "donor-controlled" charities are carefully targeted and proportionate**, avoiding unintended negative consequences for legitimate charitable activities.

69. If an updated policy regime makes it tougher for a not-for-profit or charity to operate, we could potentially end up losing thousands of services run by these charities which has helped reduce pressure on the public system for decades.
70. The aged care sector, and especially its not-for-profit members, are effectively subsiding the provision of health care in New Zealand. 8000 of the 35000 beds in ARC in the country are run by not-for-profit organisations.
71. If the Government does change the rules for not for profits and charities, the real cost of providing care would become a lot more apparent with crippling consequences for the health systems in the country. There is no doubt the any increase of in the tax burden on already struggling not for profit providers will shift the cost of care for our elders onto the public hospital system – at cost of at least $1700 per day.
72. Private providers of aged care that top-up government funding with retirement village revenue are already leaving the market. If these changes force kaupapa-driven not-for-profits from the sector it will be a disaster.
73. We believe that a collaborative approach, based on a clear understanding of the charitable sector and its vital contributions, is essential to developing fair and effective tax policies. The ACA and its members are willing to engage further with Inland Revenue to discuss these issues in more detail.

Aged Care Association
NEW ZEALAND

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22 April 2025

Attention: Inland Revenue Department

Kia ora,

I am writing on behalf of the Aged Care Association, to clarify certain points in our submission dated March 2025 "Aged Care Association's Submission to Inland Revenue's issues paper on 'Taxation and the not-for-profit sector'".

As noted in paragraph seven of our submission, 66% of residential care beds delivered by our members are provided by religious institutions, charitable trusts, family-owned, not-for-profits, and privately owned facilities.

We wish to clarify that in paragraph nine of our submission where we have articulated that "this submission is from the ACA and its members" this should have read "this submission is from the ACA and those of our members affected by this suggested change".

We also draw attention to paragraph 13 of our submission which articulates that there are multiple perspectives reflected in the submission. We acknowledge a perspective that was not included in the submission and wish to clarify that approximately 34% of the remaining care beds in New Zealander are provided by listed companies. We have been made aware that some of these members may have a differing view regarding taxation on what might be considered profit-making enterprises even if any surplus might be reinvested into further charity work or provision.

Thank you for your consideration.

Ngā mihi,

s 9(2)(a)

Hon. Tracey Martin,
Chief Executive, Aged Care Association New Zealand
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Taxation and the Not-For-Profit Sector Consultation.
Submission from the WELLfed NZ Trust

WELLfed is a community organisation based in Cannons Creek, Porirua which has been providing vocational training within the community for over eight years.
Our mission is “nourishing communities through food and connections”.
Our core service is cooking classes, but we also provide for the other needs of our learners; supporting them to attend other activities such as achieving a driving licence,completing first aid, gardening, diabetes education courses, parenting courses and developing CVs.

Many of our learners are not connected to other agencies and face significant barriers to social services, education and employment. We refer many learners to extra social services including social workers,counselling, housing, and work related training. This comprehensive approach helps learners address challenges they may be facing and ensures they have the best possible chance of making successful changes to their lives and the lives of those around them.

In September 2022, we took over management of the garden which is part of our Council owned premises in Cannons Creek. We have introduced a learning hub for local school children to visit our site and learn how to nurture and grow our community garden, while also teaching them about fresh produce and teamwork.

We have 21 paid staff (FTE 11) of whom over half are graduates of the WELLfed programme.

We have approximately fifty active volunteers who support the growth of WELLfed, including as garden volunteers, tutors, childcare support, HR, finance and governance.

Our funders are individuals, philanthropic trusts, government departments and business sponsors.

In our eight years of operation we have:
- Run 999 cooking classes (27,161 learner hours)
- Rescued 31,658kgs of food
- Benefited from 25,691 volunteer hours
- Provided food for 114,138 people
- Donated 12,387 items of kitchen equipment
- Donated 11,878 pantry items

Our response to the consultation document is as follows:

General
Charities are essential to a well functioning society but because of their nature and focus they are frequently financially fragile. Revenue driven decisions are in danger of causing possibly unintended consequences causing further damage to this essential but fragile sector

If charities did not exist there would be increased pressure on the government to provide and fund the services charities currently provide. By supporting charities with some tax exemptions as well as ensuring public trust by way of appropriate regulation, governments can achieve greater value financially as well as addressing the relevant social issues.

If the proposed changes were to become law this would discourage innovative thinking and the potential for self sufficiency of charities.

Many charities (like WELLfed) know the communities they service well. They are led by the community and provide locally led services that are tailored to the needs of their most vulnerable people. There is no guarantee that any tax generated from these new provisions would benefit these vulnerable communities.

The Charities Act 2005 was amended in 2023 following a comprehensive review of the Act. The Issues Paper proposes significant changes to the charities regime that should have been raised during the review.

A well resourced and independent Charities Commission should be the appropriate vehicle to ensure accountability to the general public for any public funding or exemptions granted to charities.

Charity Business Income Tax Exemption

WELLfed does not currently have any business income that would apply to this possible change of policy but, like all charities, our funding sources are never secure so we may need in the future, to explore revenue generation activity to sustain our operations during economic downturns. We believe that the public good provided by our service is significant and we should not be penalised by seeking diverse funding streams whether they are connected to our charitable purpose or not.

If this proposal was to gain some traction there must at the very least be a de-minimis limit for tier 3 and 4 charities or a numerical percentage limit of total income.

Donor Controlled Charities
This does not apply to WELLfed but we would support:

- donor controlled charities having to distribute a percentage of their income to charitable purposes to bring us in line with other countries and
- restrictions of related party transactions to close the current loop hole.

Integrity and Simplification

FBT - WELLfed doesn't currently offer its employees cash-like benefits over and above salary, so this is not currently relevant but it may become applicable in future if we decided to offer health insurance, use of company car for personal use, etc. and could affect our ability to attract skilled staff. Also added tax complexity for volunteer honoraria could discourage future community participation.

Donations Tax Credit regime - Additional administration burden may be put on WELLfed if IRD chose to collect donation information directly from businesses so that they can populate DTC claims and pay out donation credits more regularly than once per year.

We could support:

- more regular payouts of DTC's but only if they were limited to quarterly collection of data - this would require us to collect additional information from our donors including IRD #s, full names and addresses etc. which would be an added administration burden
- a move to a system where individuals commit to paying $x or a % of income from their salaries on a monthly/annual basis. A tax allowance is then given monthly or at the end of the year based on what donation receipts are uploaded to the IRD portal.

Dame Diana Crossan
Chair
WELLfed

Kim Murray
Chief Executive
WELLfed

NEW ZEALAND MUSIC COMMISSION TE REO REKA O AOTEAROA
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31 March 2025

Submission regarding the issues paper Taxation and the not-for- profit sector

I am the Chief Executive at the New Zealand Music Commission. The Music Commission's purpose and intent is to support the growth of the New Zealand music industry – culturally, economically and globally. Our role includes programmes and initiatives to support New Zealand music within the domestic context, including in schools and providing business development and upskilling opportunities. The Music Commission is the lead agency supporting the export of New Zealand music and is primarily funded by the New Zealand government.

We appreciate the opportunity to provide feedback on the ***Taxation and the not-for-profit sector*** issues paper.

The New Zealand music ecosystem includes charities that deliver services, facilities and support which are not provided by any commercial or state entity. The work of these charities assists to fill the gaps where government investment is not adequate, or practical, to meet the needs of underserved parts of our sector, or where there is not a commercial imperative to underwrite the activity.

Many of the music charities across the music community in Aotearoa rely on charity business income to remain viable and achieve their charitable outcomes.

The purpose of charity business income for most, if not all, music charities in New Zealand is to raise funds for achieving their charitable outcomes. Fundraising for music charities is an integrated model, with a mix of charitable giving, philanthropic donations and income generated through services and products to provide the financial wherewithal and sustainability needed to fulfil their charitable purpose.

From selling branded tote bags to hiring out premises, many charities derive income that could be construed as outside '***income earned in the course of carrying out their charitable purposes'.*** However, to diminish these income streams their charitable outcomes would be minimised. Furthermore, for charities fortunate enough to have built up financial reserves, the bank deposit interest accumulated can be an important part of their fiscal viability.

These charities generate income through these purposes to minimise their reliance on charitable donations and public funding. The activities and outcomes of music charities moves the burden from taxpayers for providing services to the charitable environment.

The "destination of income" approach currently used within the Inland Revenue framework supports music charities to raise funds to achieve their outcomes.

We understand the value of investigating whether taxation should be applied to charity business income, but are concerned about wider implications across the viability of music charities as a result of changes to the taxation framework. The **Policy Framework *Competitive advantage*** section of the issues paper outlines a range of concerns, but these

are only relevant for a small number of charitable entities. The issues paper states that of 11,700 charities that reported business income in 2024, only 11% generated over $5million – 1,300 charities fall into Tier 1 or Tier 2 reporting. Changes from the status quo to address concerns could affect all, particularly with the sector specific and nuanced fundraising and income generating structures that exist across the entire charitable system in New Zealand.

Additionally, the costs related to loss of exemption status is not just the taxation for these integrated models. The accounting and legal costs would be an additional financial burden. The compliance costs associated with a tax obligation would even further minimise the ability of charities to undertake the important work they deliver for the music community.

Most practically, if tax exemption is removed for charity business income, music charities would have less resources to undertake their important work for our national music community, contributing to a vibrant music scene for all across Aotearoa.

Please do not hesitate to contact me directly if you require further information –
s 9(2)(a)

Noho ora mai,

s 9(2)(a)

Cath Andersen, Chief Executive
NZ Music Commission
Te Reo Reka O Aotearoa

Submission
Taxation and the not-for-profit sector

Charity business income tax exemption

If there is to be a removal of the tax exemption for certain types of business income, which I don't support, there needs to be a clear definition for "unrelated business activities". In paragraph 2.3 it refers to tax-exempt business activities that directly relate to charitable purposes such as a charity school or charity hospital. Then the example is given of business activities that are unrelated to charitable purposes such as a dairy farm or food and beverage manufacturer. However, I think that some (not all) food and beverage businesses could be just as related to charitable purpose as a school or hospital. What you eat and drink is directly related to your state of health. I would think that eating healthy food and a plant-based diet, and the preparation and promotion of such, could be very related to charitable purpose, so it will be important to give guidance around this. There are many studies that show longer life expectancy and better health outcomes from healthy eating, so food is very much something related to the charitable purpose of better health outcomes for people.

Q1 The question as to whether charities should be taxed or not comes back to what value you place on the work of charities. I value their work and therefore I have no issue with them having tax free status whether they are running a business, or investing, or whatever form they earn their income. The whole non-taxing of charities is about supporting the good work of charities, so that support shouldn't be conditional on the way a charity chooses to earn its income.

Q2 I don't think you can really say that some business income is related to charitable purpose and some it not. All income earned by a charity is for charitable purposes, so to single out a specific type of income is not fair. By trying to single out a particular form of earning income and creating a tax disadvantage it will only complicate the tax system and create other less simple ways of earning income for charities. Trying to define "unrelated" is also a huge problem because I think that would be very case specific.

Q3 There should be no criteria, because the charity should be able to earn its income through all lawful means. However, in practice many charities will not invest in certain activities because they don't align with their philosophy – eg no investment into nicotine, alcohol, and unethical businesses.

Q4 I don't think the tax exemption should be removed – why would the government change the rules in the first place, and if it does, why disadvantage successful charities who tend to be the larger ones? It would be better to read the service performance report (which is currently part of the charity reports) to assess the value of the tax exemption, and if there is not much to report from the charity then consider if it is appropriate for them to retain charitable status rather than target some successful charities and curtail their work. It seems to me that the current situation of looking to

remove some tax exemptions is politically driven rather than actually referencing the good that is being done.

Q5 Yes, I agree that all income that is distributed for charitable purposes should remain tax free. This means that if the current tax exemption is removed, then any income (previously retained) that is distributed in a year after the year in which it was earned, should still be tax free. So this means keeping a record of tax paid (much like the ICA account) and this tax would be refundable (unlike imputation credits) in future to the extent that income is distributed. However, this is a messy and complicated system, and the tax generated would really need to be provisioned (not very usable) because at some point in time it will all have to be refunded because everything owned by a charity eventually has to end up being distributed to charity. On balance therefore it is better to not remove the tax exemption and just leave things as they are. I really don't see the problem with charities being able to retain income tax free. What is the problem with charities accumulating income in order to do larger charitable projects anyway? Again, it comes back to the value you place on the work of charities – in most cases I think charities to a better job of delivering positive outcomes because they are more passionate and driven than a government agency has ever been or ever likely to be.

Q6 As above – more laws/rules just complicates things and creates work-arounds that it is impossible to imagine all of the options at the outset. Trying to make rules to plug all possible work-arounds would be just creating a complexity that is absolutely unnecessary if you value the work of charities.

Donor Controlled Charities

Q7 There should be no distinction between donor-controlled charities and other charitable organisations. However, with reference to the examples raised in 3.6 I would comment as follows:

- Where related party transactions exist they should be disclosed and always be done on arm-length terms or more favourable to the charity. I see no problem with a charity loaning funds back to a related company, so long as the loan is properly secured (as any arms-length loan would be), and a market interest rate (or higher) is paid to the charity.
- Where a donor-controlled charity accumulates most or all of its funds there needs to be an explanation on how they plan to use their accumulated funds (as per 3.4 this is already required from 2024 year onwards) and if the explanation is not satisfactory then their charitable status can be reviewed, but if there is a valid reason then that is OK (perhaps they are thinking big and saving for a significant investment – eg build a school or a hospital or something).
- If donor-controlled charities buy assets from related parties for more than market value this is not OK. As in bullet point 1, all related party transactions should be required to be at market value or more favourable to the charity – if not, then charitable status is in jeopardy.

- Acquiring of goods or services from related parties needs to be at market rate and all such arrangements should be disclosed in the related party notes to the accounts.

It is better to allow donor-controlled charities, and related party transactions but monitor the related party disclosures to check that these are being done at market rates, rather than disallowing such transactions. In my experience as a chartered accountant I observe that people who have been successful in business often use their wisdom, wealth, and experience to do something charitable in their area of expertise. To disallow this type of thing would be a big loss to charities. Why should they not do what they do well for a good cause?

Q8 There should be no investment restrictions, but instead come down hard on those who abuse the system (those doing transactions that are not market (arms-length), or, not more favourable to the charity). Why penalise those who are doing a good thing for the country because a few abuse it? – deal with the abuse rather than stop those who are using their particular skill for a good cause.

Q9 Donor-controlled charities should not be required to make a minimum distribution each year. Below are my comments in relation to the points raised in 3.17 – 3.19

- Good things take time and saving. How would you ever get schools, hospitals, social housing, etc. if you can't save/accumulate?
- A requirement for doner controlled charities to distribute a % of market value of their assets is not viable. What if the assets have been held for many years (real estate in particular) that is currently worth hugely more than the charity would ever be able to afford in the current market? – they would be forced to sell assets to meet distribution requirements because there is no cashflow to support the distribution requirements. What if 'distribution' is 'non-cash' in nature – eg the use of an asset (real estate)? – eg. church facility used for op shop, food provision, refugee support, English as second language courses, etc where charges for the services provided are very low, but the market value of the asset being used is quite high.
- Even if the charity is not a holder of real estate but has a portfolio of shares, bonds etc. a requirement in relation to distributions as a % of market value would not be viable. Because charities manage funds for the benefit of others, the trustees need to be very prudent and generally take a lesser risk profile than an average investor. I am a trustee for a number of charitable trusts and our returns are sometimes less than the 5% suggested so then the requirement would be a greater distribution than the charities net income, meaning the capital base would be eroded. On the contrary charities need to be able to grow their capital base (at the very least to the extent of inflation) otherwise they will be going backwards in their ability to carry out their charitable work going forward.
- I don't think that there should be a minimum distribution rate, but **if** there is, it needs to be linked to net income (like income tax is) rather than market value. In the same way that wealth tax is not viable because there is no cashflow to make

it work, likewise for charities, distributions would need to be linked to net income because then there is cashflow to support the requirement.

- Also, sometimes it is outside of the charities control in relation to the % distribution. One of the charities I am involved with distributes funds/grants to people/organisations/other charities, that apply for funding and are carrying out charitable causes that align with the purposes of the grant giving trust. The funds are generally approved but not released until a report is supplied showing the actual receipts and outcomes of the project being funded. Sometimes projects are approved, but for reasons outside the control of the grant providing trust, the project doesn't proceed so the funds are not distributed. In this case the trustees approve every year to grant all of the income of the trust, but invariably some projects don't proceed so there ends up being some net income retained but it is not possible to predict how much, if any, will end up being retained.
- So, in 3.18 the reference to 5% in Australia – I think think 5% is too high in times of low interest rates (but possibly OK currently). If they are only getting a 5% return on investment then that is distributing all income. As pointed out above, and for the reasons given above I am not in favour of this.
- Likewise the Canada example would not work if the charity has assets but no cashflow to support cash distributions, and how do you define property not directly used in charitable activity?
- US – would need to know what the definition of non-charitable use assets is. For example, if a charity owns a commercial building (tenanted by unrelated commercial businesses) and the net rents are used for charitable purposes is the asset a non-charitable use asset? I would say that even though the property is being tenanted by for-profit tenants, because the net rents are used for charity then the property is a charitable use asset, but this would need to be clarified.
- 3.19 refers to being able to 'bank' excess distributions – lots of extra book-keeping that could be avoid by having no minimum distribution rule but if there is to be a minimum distribution rule then this definitely needs to be factored in.

So, my conclusion to Q9 is that no minimum distribution rate is best, but if there is to be one then it needs to be linked to income, not market value of assets. It would be much more preferable to read the reports of charities to find out if they have a good reason for accumulating of funds, and if not, then just deal with those ones rather than make extra work for everyone.

Integrity and Simplification

Q10 – No Comment

Q11 – No Comment

Q12 – No Comment

Q13 – I think **if** the FBT rules and settings are reviewed (and that is really important – it needs to be simplified first) then it will be better to remove the exemption for charities, making life simpler for everyone, and employees are treated the same whether working for charities or not.

Q14 Yes, I think that extending the FENZ simplification as an option for all NFPs is a good option.

Q15 Some of the recommendations from the review as outlined in 4.36 are good, but not all.

- The first recommendation is good but interesting because if real-time donation rebates are done, how do you know if someone has donated more than their income?
- Second recommendation is not workable for charities. This would mean that charities would need to collect donor IRD numbers in order to report the donation information to IRD. Charities should not have to collect this information from donors and not be required to carry out this additional admin work of reporting to IRD. If donors want their rebate then they should claim it themselves.
- Recommendation three is a good recommendation.

On balance I think that the current DTC system is working OK and there is not enough reason to make any changes now. If donors are not claiming their rebates then that is their business – maybe they can't be bothered and are happy to let the government keep that bit extra that they could otherwise have claimed back. Those who want their rebate can claim it.

Thank you for the opportunity to share my thoughts on these matters.

capital accounting associates ltd

Monday, March 31, 2025

Policy.webmaster@ird.govt.nz

Taxation and the not-for-profit sector

I set out my brief submissions in relation to the consultation document.

In summary, I submit that this consideration is misguided as the vast majority of charities are undertaking a worthwhile role assisting the community and plugging the gaps. This relieves the Government of a multiple of the money "foregone" in tax or given in donation rebates. That is real value for money, and this has not been properly recognised.

Taxing charities would leave them with less income and correspondingly less money to spend, with the result that:-
Either the Government would need to spend much more,
Or more likely mean that unfulfilled community needs increase further than they are at present.

If there are charities that are breaching the tax rules there are already adequate provisions to deal with any tax evasion or avoidance.

Penalising the majority for the sake of a few is not justifiable and counterproductive.

No further tax complexity is needed when IRD already has adequate tools available, and the Tax Acts are already over complex.

Answers to Disucssion questions.

1. The sector is valuable and is encouraged and assisted in what it does by tax exemption on income and tax rebates and deductions on donations.
2. The exemption is based on what the charity's purposes are and not on how it gains its income. That should continue. If it receives its income by running a business, owning rental properties, farming or having an investment fund that is up to charity. It should have no bearing whatever on whether the income is taxed.
   Income would go down, and the charity's ability to function according to its purposes would decrease correspondingly. Who picks up the shortfall?
3. It should not be removed. Any attempt to define "unrelated business" would be fraught with difficulties and end up being arbitrary.
4. No threshold should be necessary. No further complexities are needed.
5. The question does not arise as all income has to be used for the charity's purposes in line with its rules.
6. Yes, the territorial issue causes real tax complexities. This is another warning that a change should not be made.
7. No. The same rules apply and should apply. Each charity needs to operate accosting to its rules and the Income Tax Act.

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8. No. I have never seen any tax abuse in my decades in practice but if there is any, IRD already have the necessary tools to deal with this.
9. The question should be why? Not why not?
   I have seen charities deliberately accumulate income for a large purpose, or to build up sufficient capital to become self-sustaining. This is entirely proper. A requirement to make minimum distributions would be counter-productive – comparable with Excess Reatention tax in relation to retained earnings in companies. Everyone was pleased when that was gone.
10. An increase of the existing $1,000 minimum to $2000 for all NFPs to minimise compliance cost is warranted.
    There should similarly be no tax return filing requirement.
    An RWT exemption should apply.
    These should be automatic and not require separate application for each.
11. No comment.
12. No comment.
13. FBT should not apply to charities. If any exemption is removed, then salary packages will need to increase and the charity or the community will be worse off.
14. The FENZ model is worthy of serious consideration provided that this does change their legal status under employment law.
    Honoraria are usually no more than a token and often do not cover the persons costs. Consideration should be given to allowing amounts up to a maximum threshold of say $1,000 to be exempt.
    Above that, the payer should be liable for any ACC costs that arise rather than the recipient.

I am available to discuss if needed.

Capital Accounting Associates Limited

s 9(2)(a)

Tony Richardson
Director

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31 March 2025

Taxation and the not-for-profit sector
c/- Deputy Commissioner, Policy
Inland Revenue Department
PO Box 2198
Wellington 6140

By email: policy.webmaster@ird.govt.nz

Tēnā koe

Re: Taxation and the not-for-profit sector: submission by New Zealand National Committee for UNICEF Trust Board

Introduction

1. The New Zealand National Committee for UNICEF Trust Board (T/a UNICEF Aotearoa) is a registered charitable trust.

2. UNICEF Aotearoa is one of 33 UNICEF National Committees around the world, raising funds for UNICEF's emergency and development work serving children everywhere. In New Zealand, we lift children's voices, advocate for policy changes and stand up for children across the country.

3. UNICEF Aotearoa appreciates the opportunity to provide feedback on the Officials' Issues Paper on "Taxation and the not-for-profit sector" (**the Paper)**.

Chapter 2: CHARITY BUSINESS INCOME TAX EXEMPTION – QUESTIONS 1 TO 6

4. In response to questions 1 to 6 of the Paper, UNICEF Aotearoa recommends that the current broad tax exemption for charity business income is retained. Due to the tight timeframe for submissions, UNICEF Aotearoa would welcome the opportunity to engage further with Inland Revenue on this topic.

Chapter 3: DONOR-CONTROLLED CHARITIES – QUESTIONS 7 TO 9

5. UNICEF Aotearoa recognises the complexities of donor-controlled charities and the need to balance donor influence with the integrity of charitable purposes. UNICEF Aotearoa understands Inland Revenue's concerns around compliance and tax avoidance enablement, whilst itself not being a donor-controlled charity.

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for every child
mō ngā tamariki katoa

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6. UNICEF Aotearoa proposes that there should be clear guidelines to define donor influence while preserving charities' operational autonomy. Regulations should focus on preventing private benefits rather than limiting legitimate donor engagement. In any regulation-setting process for this area, distinctions should be made between genuine donor involvement and situations where charitable purposes are compromised. This will help maintain public trust in the charitable sector while allowing donor-controlled charities to continue contributing positively to the community.

7. UNICEF Aotearoa considers that there should be a distinction between donor-controlled charities and other charitable organisations.

Chapter 4: INTEGRITY AND SIMPLIFICATION – QUESTIONS 10 TO 15

Question 13

8. In response to question 13, UNICEF Aotearoa recommends that the FBT exemption for charities is retained.

9. If this exemption were removed, there would be additional compliance costs for charities. Also, there could be a negative impact on staff retention and financial resources, which would in turn reduce the sector's capacity to deliver services.

Question 14

10. In general, UNICEF Aotearoa would support the lowering of tax-related compliance costs for volunteers with the extension of the FENZ simplification for payments to volunteers. However, any learnings from this e.g. were there any unintended consequences arising from the process should be communicated to the sector before changes are made. If the FENZ process is extended sector-wide, UNICEF Aotearoa suggests that clear guidelines are communicated differentiating volunteers and employees.

Question 15

11. In response to question 15, UNICEF Aotearoa welcomes changes that would encourage donors to claim their donation tax credits (DTCs). The flow-on effect from this would be for charities to encourage donors to return their tax credits to the charity sector, increasing service delivery.

12. Delinking DTCs from income tax would allow for more real-time payments.

13. Acost-benefit analysis in relation to setting up a system for Inland Revenue to collect data from donee organisations to pre-fill DTC claims should include factoring in the additional costs that would be incurred by the donee organisation to administrate the system, including staff costs to follow-up Inland Revenue queries on specific donor tax credit submissions. UNICEF Aotearoa also suggests that Inland Revenue takes into consideration security/privacy issues if a data collection system is designed.

CONCLUSION

14. UNICEF Aotearoa supports the objectives of "simplifying tax rules, reducing compliance costs and addressing integrity risks". However, through attaining these objectives, any changes

should support and enhance the contributions that organisations make in the not-for-profit sector.

15. UNICEF Aotearoa considers that the tight timeframe for submissions on the Paper does not allow for sufficient collaboration or engagement to occur. UNICEF Aotearoa would welcome the opportunity to engage further with Inland Revenue on the issues in the paper.

16. If you have any questions or would like to discuss UNICEF Aotearoa's submission in more detail, please contact the writer.

Ngā mihi

s 9(2)(a)

Michelle Sharp
Chief Executive Officer

31 March 2025

Inland Revenue Department

Submission to Inland Revenue on Proposed Taxation Changes for Charities

To Whom It May Concern,

On behalf of Enrich Group, we are writing to express our strong concerns regarding the proposed changes to the taxation of charities, not-for-profits, and voluntary organisations in New Zealand.

Position on Tax Reform

Enrich Group does not support the proposed tax reforms as they are currently outlined. These changes present significant challenges for charities like ours, which rely heavily on the tax exemptions available to continue delivering essential services to communities across New Zealand. The proposed reforms would directly impact our ability to fund these services and, in turn, put the most vulnerable members of our communities at greater risk.

Impact on Charities and Community Services

Charities like ours rely on a mix of funding sources, including income from activities that may be marginally related to our charitable purposes. The proposed tax reforms would restrict the ability of charities to generate revenue from these activities, which we fear could put many organisations, including Enrich Group, in a financially precarious position. The risk of additional tax liabilities would force us to either scale back or reduce the services we provide, which could lead to closures and more pressure on the wider community sector.

The government's aim to ensure that charities focus on their charitable purposes is valid, but these reforms could unintentionally hinder our ability to raise funds. By limiting tax exemptions for activities that are indirectly related to our core mission, charities like ours will face greater financial strain, making it even harder to deliver vital services to those who depend on us.

Concerns About Consultation and Community Engagement

We are also concerned about the limited consultation process that has been undertaken in relation to these changes. Many charities, particularly smaller ones, have not had adequate opportunities to provide input. In particular, the voices of grassroots organisations, which are the backbone of many communities, have been overlooked. It is essential that the government fully consults with the charity sector, especially organisations like Enrich Group, that are deeply embedded within their communities and directly serve people in need.

The consultation process should go beyond meetings with large umbrella organisations or sector groups. We encourage Inland Revenue to engage directly with local charities and community

organisations to better understand the impact these changes could have on them.

Ambiguity and Compliance Costs

One of the greatest concerns is the lack of clarity around what constitutes “related” versus “unrelated” activities. Without clear definitions and guidelines, charities will be left with uncertainty about how to categorise their income, which could lead to costly mistakes. The proposed changes will likely require additional resources to manage, and many charities, particularly smaller ones, simply do not have the capacity to meet these new compliance demands.

Given that charities often operate on limited budgets, any additional compliance burden is a significant concern. These resources are better used directly serving the community rather than dealing with complicated tax classifications.

Recommendations

Considering these concerns, Enrich Group makes the following recommendations:

1. Maintain Tax Exemptions for Charities: We strongly recommend that the current tax exemption framework for charities be retained. Tax exemptions are critical for charities like ours to continue providing services to the community. These changes should not create additional financial strain for organisations that are already working within tight budgets.
2. Provide Clear Definitions and Guidance: Inland Revenue should provide clear, practical guidance on what is considered “related” versus “unrelated” activities. Case studies and examples would help charities like ours understand how to comply with these changes and minimise confusion and uncertainty.
3. Simplify Compliance for Smaller Charities: Given the limited resources many charities have, we urge Inland Revenue to simplify the reporting requirements for smaller organisations. Charities should not have to divert significant resources away from their core work to navigate complex tax regulations.
4. Engage More Widely with the Charity Sector: We encourage Inland Revenue to engage directly with a wider range of charities, particularly smaller, grassroots organisations, to better understand the real-world impact of these changes. Governance bodies in the sector, such as Enrich Group, should be included in the dialogue to ensure that any tax reforms align with the realities faced by organisations on the ground.

Conclusion

Enrich Group does not support the proposed tax reforms and believes they could harm the charity sector, particularly organisations like ours that are already operating with limited resources. We urge Inland Revenue to reconsider these proposed changes and work with the charity sector to develop a tax framework that supports charities and allows them to continue their work without being burdened by unnecessary compliance costs.

We appreciate the opportunity to provide feedback and look forward to further engagement on this matter.

Sincerely,

s 9(2)(a)

Rebecca Baldwin
Executive Lead – Finance and Business
Enrich Group

Elizabeth Knox HOME + HOSPITAL
CARING COMMUNITY

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31 March 2025

Taxation and the not-for-profit sector
C/-Deputy Commissioner, Policy
Inland Revenue Department
PO Box 2198
Wellington 6140
Email: policy.webmaster@ird.govt.nz

Subject: Submission on the IRD's issues paper on taxation and the not-for-profit sector

Introduction
This submission is on behalf of Knox Home Trust, trading as Elizabeth Knox Home & Hospital ('Knox'), a registered charitable trust dedicated to providing high-quality aged care services in Auckland.

We appreciate the opportunity to respond to the Inland Revenue Department's (IRD) issues paper on taxation and the not-for-profit sector dated 24 February 2025. While we recognise the need for a fair and transparent tax system, we urge careful consideration of the unique financial challenges faced by charitable aged care providers. Any changes to the current tax exemption policies must not undermine our ability to continue serving vulnerable elderly and disabled individuals.

About Elizabeth Knox Home & Hospital
For over 115 years, Knox has upheld Elizabeth Knox's founding purpose to provide care for "poor people suffering from incurable diseases." Today we provide; compassionate rest home, hospital, respite, and palliative care to over 300 elders and younger adults with physical disabilities. Many of our residents come from disadvantaged backgrounds, with the majority fully subsidised by the government due to financial hardship. Currently, 86% of our residents require hospital-level care, necessitating round-the-clock support. Every year, up to 100 elderly or injured individuals rely on our residential services to recover and regain independence. Many other providers are exiting this type of care due to increasing costs.

We employ over 300 staff, including Care Partners, Registered Nurses, Doctors, allied health professionals, and essential personnel, all committed to providing a safe, nurturing environment for our residents.

Our organisation is governed by a dedicated Board of **volunteer** Trustees who have provided prudent financial and strategic stewardship, ensuring Knox remains a reputable and sustainable provider of aged care. Any profit generated is reinvested into Knox, and as discussed below that has allowed Knox to undertake a very significant and largely self-funded capital investment programme without reliance on government funding or external debt.

KEY CONCERNS

1. Removing the Tax Exemption for Unrelated Business Income
Funding Crisis in Aged Care

New Zealand's aged care sector is financially fragile and faces severe financial challenges due to chronic government underfunding. The current funding model, over 30 years old, has failed to keep pace with rising costs. Successive governments have neglected to develop a sustainable funding solution, leading to the closure of many long standing and reputable charitable aged care providers, examples include: the Mercy Parklands and Caughey Preston Rest Homes in Auckland. The loss of over 1,000 aged care beds in recent years exacerbates hospital bed shortages and puts further strain on New Zealand's public healthcare system.

To remain financially viable, aged care providers must have the flexibility to be creative and diversify their revenue derived from business activities that, in some cases, are unrelated to their charitable purpose. Many charitable aged care providers have branched out to operating retirement villages or providing rental housing to offset losses in their care business. Knox is registered as a retirement village and is also considering becoming a community housing provider to ensure our long-term financial sustainability, subject to remaining consistent with the charitable purpose described in the Knox trust deed.

Restricting the ability of charitable aged care providers to generate revenue would increase compliance costs and amount to government interference, undermining our ability to fulfil our charitable purpose. It could force more providers to close, worsening the shortage of aged care beds nationwide.

Knox exemplifies how the current tax exemption settings and charitable framework, when coupled with responsible financial management and strategic governance, create positive outcomes for the community over the long-term. While many aged care providers have been forced to scale back or shut down due to chronic underfunding, Knox has defied this trend by expanding its capacity and services. Any changes to these tax settings could increase compliance costs and severely impact long-term operations, limiting the ability to invest in essential infrastructure and sustain vital services. The IRD must consider the potential risks and unintended consequences before altering a framework that has enabled providers like Knox to thrive and serve their communities effectively.

Threat to Investment Income and Financial Stability

Many charitable aged care providers, including Knox, rely on investment income to fund essential services and infrastructure. While this income may not be directly derived from care provision, it serves as a crucial financial buffer against funding uncertainty and rising operational costs. Taxing investment income would significantly weaken our financial sustainability, making it harder to maintain reserves for facility upgrades, staffing, and emergency needs. The impact of taxing investment income would see Knox reducing the level, quality and quantity of care provided.

Recommendation

Knox urges the IRD to **retain** the existing tax exemption for unrelated business income, recognising the essential role of this exemption in offsetting funding shortfalls and ensuring the sector's financial viability.

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2. Accumulation of Funds – Minimum Distribution Rule

Capital investment is essential in the aged care sector

Aged care providers must continuously invest in their facilities to both maintain current outputs and meet the evolving needs of older people. However, capital investment requires long-term financial stability, which is dependent on being able to accumulate funds, which can be achieved under the current tax exempted settings. Knox is a prime example of how these settings have enabled responsible and sustainable reinvestment into infrastructure.

While other providers in the sector have been forced to downsize or close due to financial constraints, Knox has continued to grow. Last year's opening of a new building, adding 64 new beds, is a testament to this approach. This expansion would not have been possible without the ability to set aside and accumulate reserves over an extended period to adequately fund the construction of this purpose designed care facility.

Over the past 16 years, Knox has completed an extensive $50 million redevelopment programme, refurbishing existing buildings and constructing four new purpose designed care facilities, increasing our capacity to care for 190 additional residents.

Further redevelopment is required to our site over the next two decades as we plan to replace our remaining single-level homes with multi-level buildings to maximise space efficiency and increase capacity. Additionally, we have acquired neighbouring properties to support future expansion. Given the scale and complexity of these projects, an inflexible minimum distribution rule would severely hinder our ability to plan and undertake these capital projects and directly reduce aged care capacity in New Zealand.

Financial Reserves Ensure Business Continuity

In a sector plagued by inadequate government funding, maintaining financial reserves is critical. During the COVID-19 pandemic, our reserves enabled us to cover soaring clinical costs, procure essential supplies, and employ extra staff to manage outbreaks. Without these funds, we could not have protected our workforce and continued to provide the requisite level of care to our residents.

Recommendation

A **one-size-fits-all** minimum distribution requirement is unsuitable and inappropriate for aged care providers with long-term capital commitments. Instead, continued reliance on Trustees' fiduciary duty, coupled with the existing transparent financial reporting requirements mandated by the Charities Register, should remain the preferred mechanism for ensuring accountability. We note that the Department of internal Affairs Charity Services has recently introduced additional disclosure requirements on charities to explain their reasons for any significant accumulation which further strengthen public transparency around charities that accumulate funds.

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3. Retaining the Fringe Benefit Tax (FBT) Exemption for Charities
Impact on Workforce Attraction and Retention
New Zealand's aged care sector already struggles with significant pay disparities between nurses in aged care and those employed by Health New Zealand (Te Whatu Ora) or in the for-profit sector. This pay gap makes it extremely difficult for charitable aged care providers to attract and retain the numbers of qualified nursing staff required. The current FBT exemption enables charities like Knox to compete with the for-profit sector and reduces our compliance cost, both of which increases funds available for our charitable purpose. Removing the FBT exemption would further limit our ability to offer competitive employment packages, reducing our capacity to recruit and retain essential healthcare workers and increase our compliance costs.

Recommendation
Knox urges the IRD to **retain** the existing FBT exemption for charitable aged care providers to prevent exacerbating workforce shortages and financial strain.

CONCLUSION
Knox does not exist to generate, accumulate and distribute funds for any private pecuniary gain. All of Knox's income, from any source (investments, operations, or bequests) is either reinvested into or spent on perpetuating our charitable purpose; being the provision of high quality aged care for some our community's most vulnerable individuals. By doing so we both compliment and relieve pressure on New Zealand's public healthcare system. However, our ability to do so is heavily dependent on **retaining** tax exemptions that allow us to remain financially viable. We urge the IRD to:

1) Maintain the existing tax exemption for unrelated business income to support financial sustainability.
2) Allow charities to accumulate funds for long-term capital investments and financial stability.
3) Retain the existing FBT exemption to ensure aged care providers can continue attracting and retaining essential staff.

We welcome further discussion on these matters and look forward to working collaboratively to ensure tax policies support, rather than hinder, the vital work of charitable aged care providers.

Yours faithfully,

s 9(2)(a)

Fionnagh Dougan
Chief Executive Officer

s 9(2)(a)

Chair, Knox Home Trust

ctat
CHRISTCHURCH TRANSITIONAL ARCHITECTURE TRUST

31 March 2025

Taxation and the not-for-profit sector
C/- Deputy Commissioner, Policy
Inland Revenue Department
PO Box 2198
Wellington 6140

policy.webmaster@ird.govt.nz

Re: Submission on Proposed Changes to Charity Tax Settings

Dear Inland Revenue,

On behalf of the Christchurch Transitional Architecture Trust (t/a Te Pūtahi Centre for Architecture and City Making), we submit our feedback on the proposed changes to the taxation of charities, not-for-profits, and voluntary organisations in Aotearoa New Zealand.

Encouraging Sustainable Income Streams
The proposed tax changes risk undermining the ability of charities and not-for-profits to become self-sustaining. We share the belief that charities should move from reliance on donations to seeking innovative, sustainable income streams. However, the removal of tax exemptions for unrelated business income, as proposed, could make it harder for organisations like ours to maintain financial independence. If charities are no longer able to generate income from activities outside their core charitable mission, they will be left with fewer resources to support their work. This will result in reduced services for our communities, potential job losses, and an even greater strain on the charitable sector that already faces significant challenges.

The Danger of Eroding Charitable Tax Exemptions
As pointed out in recent public discussions, taxing charities on their business income is a step that could open "Pandora's box." If tax is applied to unrelated business income, it might not stop there. There is concern that future tax reforms could extend to other forms of income, such as related business income or passive income from investments, which would further exacerbate the financial pressures on charities. The current tax exemption for charities' business income is not a loophole but a vital recognition of the societal benefits charities provide. Eroding this tax position, even in small ways, will reduce the resources available to charities, affecting their ability to support important causes such as community building, the arts, education, and more.

Clarity on Taxable Income and Definitions
The consultation raises serious concerns about the lack of clarity regarding what constitutes "related" versus "unrelated" business activities. Without clear definitions, charities are left in the dark about what income may be subject to tax. This ambiguity creates unnecessary confusion and could lead to increased compliance costs. We request that Inland Revenue provide more detailed case studies and financial information to help clarify the impact of these tax changes, particularly on smaller charities, including those with annual revenues up to $2 million.

Christchurch Transitional Architecture Trust – t/a Te Pūtahi Centre for Architecture and City Making
Registered Charity: CC48916
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ctat
CHRISTCHURCH TRANSITIONAL ARCHITECTURE TRUST

Impact on Charities' Role in Society
Charities are a cornerstone of a well-functioning society, delivering vital services that benefit all of us. They often make do with minimal resources and are more efficient than government-run programs, which could face higher costs if charities were forced to reduce or close services due to reduced income. The unique and vital role that charities play must be acknowledged. Rather than discouraging innovation, the government should encourage charitable organisations to find new, sustainable ways to fund their important work.

Recommendations
Christchurch Transitional Architecture Trust makes the following recommendations:

1. **Engage Directly with the Community Sector:** The community sector must be consulted meaningfully and directly. Those in governance roles within charities, like ourselves, are the key to ensuring that these tax changes align with the practical realities of charity operations.

2. **Provide Clear Case Studies and Financial Information:** We urge Inland Revenue to provide detailed case studies and financial models, demonstrating the impact of the tax changes, particularly on Tier 3 and Tier 4 charities. Many of these organisations, including ours, rely on diverse revenue streams to continue their operations and lack significant reserves.

3. **Clarify the Impact of the Charity Business Income Tax Exemption Changes:** We strongly recommend that the government provide more detailed information on how the removal of tax exemptions for unrelated business income will affect charities, especially those that rely on multiple income sources to fund their charitable work. This clarity will allow charities to better prepare for any potential financial strain.

4. **Adopt a Values-Based Approach to Consultation:** We encourage the government to adopt a values-based approach to consultation, following frameworks such as the Community Governance Aotearoa's Good Governance Code. This will ensure that the consultation process is inclusive, transparent, and led by the needs of the community sector.

In conclusion, we urge Inland Revenue and the government to consider the long-term impact of these tax changes on charities. Taxing unrelated business income would disproportionally harm charities that are already working hard to support communities with limited resources. We ask that Inland Revenue work with the charitable sector to ensure that these changes do not stifle innovation or limit the resources that charities need to continue their essential work.

Thank you for considering our feedback. We look forward to further engagement on this critical issue.

Ngā mihi,

s 9(2)(a)

Vanessa Coxhead
Co-chair
Christchurch Transitional Architecture Trust

Christchurch Transitional Architecture Trust – t/a Te Pūtahi Centre for Architecture and City Making
Registered Charity: CC48916
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Submission on: Inland Revenue Department (IRD) consultation on Taxation and the not-for-profit sector

To: Inland Revenue Department (IRD), policy.webmaster@ird.govt.nz.

Introduction

1. NZEI Te Riu Roa is the professional organisation and union that represents the interests and issues of its 50,000 members. Our members are employed as teachers and leaders in the early childhood education (ECE) and primary sectors (including Kura Kaupapa Māori and Wharekura), support staff in the early childhood, primary, intermediate, and secondary education sectors, school advisers employed by universities, and Learning Support staff employed by the Ministry of Education.

2. The main objective of NZEI Te Riu Roa is to advance the cause of quality public education generally while upholding and maintaining the just claims of its members individually and collectively. NZEI Te Riu Roa is a democratic, values-led, Te Tiriti o Waitangi-based organisation. This means that in all areas of work mokopuna Māori are considered first. We call this Mōku te Ao.

3. NZEI Te Riu Roa is one of the largest unions and professional bodies in Aotearoa and has a long history of playing a positive role in the education sector and on wider social issues affecting our members and the tamariki and whānau they serve.

4. NZEI Te Riu Roa recognises that under Te Tiriti o Waitangi we have an obligation to advocate for a system that recognises and uplifts Māori people and their identity. We believe that a system based on Rangatiratanga centres children with rights to control their own aspirations and destiny and would work for all children through values of mutual benefit to society.

General

5. NZEI Te Riu Roa appreciates the opportunity to contribute to this consultation process and strongly supports the development of fair and progressive taxation settings in Aotearoa New

Zealand. We see the present consultation as part of what will need to be a much wider consideration of the function of charities in New Zealand society.

6. NZEI Te Riu Roa supports the submissions made by the New Zealand Council of Trade Unions (CTU) and the New Zealand Nurses Organisation.

7. This submission responds specifically to three parts of the consultation document. First, chapter two concerning the question of charity business income tax exemption. Second, chapter three concerning donor controlled charities. And finally, chapter four concerning the principle of mutuality and the taxation of not-for-profit entities that are mutual associations, such as unions.

8. NZEI Te Riu Roa support the review of tax exemptions for unrelated business activities of charities outlined in chapter two of the consultation document, and the consideration of establishing a distinction between donor-controlled charities/private foundations, and other charities in chapter three, and seeks to provide examples from the education sector.

9. We have concerns, however, with the implications arising in chapter four of the consultation document from the Commissioner's draft operational statement concerning the treatment of subscriptions – such as union membership subscriptions – as taxable. We believe this contradicts the long-standing interpretation that the principle of mutuality should apply to unions and similar membership organisations for income tax purposes.

Charity business income tax exemption and donor-controlled charities

10. NZEI Te Riu Roa supports the consideration of the unrelated business activities of charities (chapter two) and donor controlled charities (chapter three). Following the recommendations of the Tax Working Group, we see such consideration as part of a wider consideration of whether the broader policy settings for charities encourage appropriate levels of distribution.

11. We further encourage the Department to consider the recommendation of the Tax Working Group concerning a distinction between privately controlled foundations and other charitable organisations, and to consider removing concessions for privately controlled foundations or trusts that do not have arm's-length governance or distribution policies.

s 18(c)(i)

12. We have concerns in particular that the owners of early childhood education provider s 18(c)(i) are using current settings to avoid taxation while directing business revenue toward substantial personal gain through the repayment of related party loans and property associated income, all while retaining operational and governance control of the organisation.

13. s 18(c)(i)

s 18(c)(i)

14. s 18(c)(i)

15. s 18(c)(i)

16. s 18(c)(i)

17. s 18(c)(i)

18. NZEI Te Riu Roa see this as a clear example of a charity deriving significant income from unrelated business activity with a subsequent disproportional distribution to activities to the benefit of charitable purpose.

19. s 18(c)(i)

20. Concerning question 9 in the consultation document, 'Should donor-controlled charities be required to make a minimum distribution each year?', our position is that yes, and that this should be set at a high percentage of a charity's net income. This would help to prevent organisations using charitable status as a way to avoid tax while directing revenue to the private benefit of a related party, as with thes 18(c)(i) example above where only a small percentage of income is distributed for charitable purposes.

s s 18(c)(i)

21. s 18(c)(i)

22. Our concerns are reflected in the Tax Working Group background paper 'Charities and the not-for-profit sector', which notes that:

> Private foundations and their equivalents are not required to have arms' length boards and settlors are able to benefit from their foundations investing funds into businesses the settlors' control, or that are controlled by their associates. The extent of accumulation can be extremely high in some of these foundations, with minimal distribution for public benefit. There are integrity and fairness risks associated with private foundations; these may affect public perceptions of the tax system and thereby undermine social capital.[4]

23. Further, the consultation document notes 'the broad principle, adopted by many countries, that only accumulated business income should be subject to income tax', reflecting the Tax Working Group's question over 'whether the broader policy settings for charities encourage appropriate levels of distribution'.

24. In the case of s 18(c)(i) such charitable distribution is marginal. The main function and outcome of this unrelated business activity is the enrichment of the owners of the charitable foundations 18(c)(i)

Potential taxation of union membership subscriptions

25. Chapter four of the consultation document covers the Commissioner's draft operational statement concerning not for profit organisations and the treatment of subscriptions.

26. The draft view suggests that most not-for-profits do not qualify for mutual treatment due to constitutional prohibitions on the distribution of surplus funds to members. This interpretation could undermine the mutuality principle that has historically supported the tax-exempt status of many not-for-profits. This shift is unjust and disregards the unique nature of these organisations.

27. The revised interpretation would subject subscription income to taxation, leading to income tax on any annual net surplus. This change could impose a substantial financial burden on not-for-profits, many of which operate on tight budgets and rely heavily on member subscriptions to fund their activities. This is unacceptable and would severely hinder their ability to serve their communities.

[4] Tax Working Group Secretariat, *Charities and the not-for-profit sector: Background Paper for Session 13 of the Tax Working Group*, September 2018, p.6. https://taxworkinggroup.govt.nz/sites/default/files/2018-09/twg-bg-3996875-charities-and-the-not-for-profit-sector.pdf

28. The proposed taxation of membership subscriptions contradicts long-standing principles of tax law in New Zealand and risks undermining the financial sustainability of membership organisations.

29. NZEI Te Riu Roa agree with the CTU's observation that the IRD's consideration of the tax treatment of subscriptions and/or member trading income does not make clear which organisations are likely to be impacted by such a change.

30. NZEI TE Riu Roa strongly opposes the inclusion of unions in such a regime. Unions exist for the collective benefit of members and their communities and contribute to the wider democratic and civil society predominantly through their role in industrial relations.

31. Union membership subscriptions are not revenue in a commercial sense, but a means for members to pool resources for shared objectives. Taxing membership subscriptions would suggest that these fees are profit-driven transactions, rather than collective contributions to a common cause. Unions do not distribute profits; all funds are reinvested in services that advance members' objectives and, ultimately, those of their communities.

32. The not-for-profit sector works in spaces of community and social service provision that would otherwise need to be fully funded by government. We are concerned that the present consultation could lead to changes that undermine the services provided by not-for-profit organisations and lead to a loss of those services, or to the government having to either increase funding to compensate or step in to directly provide the services themselves.

33. Mutual associations should not be taxed on contributions made by their members for the collective social benefit. Taxing subscriptions in this context would be akin to taxing members for trading with themselves.

Further considerations

Compliance Costs

34. Smaller not-for-profits, which are currently outside the tax net, would face increased compliance costs. These organisations often lack the resources and expertise to navigate complex tax regulations, potentially diverting funds away from their core missions.

Implications for Incorporated Societies

35. The 2022 Act requires surplus assets to be given to another not-for-profit upon winding up, unlike the 1908 Act, which allowed more flexibility. This change, combined with the revised tax interpretation, could create additional challenges for incorporated societies, particularly in terms of asset management and distribution. This is an unfair imposition that complicates their operations unnecessarily.

36. A prohibition on surplus distribution should not negate mutuality. A constitution that requires that surplus funds must be allocated to a similar not-for-profit reflects the shared objectives of members with respect to any surplus. The constitutional provisions ensure the

mutually agreed approach is carried out, resulting in continued alignment with the mutuality principle. Recent amendments to the Incorporated Societies Act 2022 reinforce this.

37. If the present interpretation is applied, it could invalidate mutuality treatment for virtually all incorporated societies (unless specific exemptions applied) due to restrictions in the Act regarding distributions on windup. This would in our view be an unjust outcome, give the role that membership organisations – and particularly unions – play in society.

Recommendations

38. NZEI Te Riu Roa supports the CTU's recommendation of no additional action through chapter four of this Officials Paper until significant consultation and research is delivered with the not-for-profit sector. A clear case for change needs to be established, and a clear cost/benefit proposal needs to be laid out.

39. Further, it is recommended that the existing approach is retained, recognising membership subscriptions as non-taxable under the common law principle of mutuality and that the criteria for mutual treatment be reevaluated to better reflect the unique nature of not-for-profits. This could involve changing the law to recognise not-for-profits in terms of their objectives and operations.

Conclusion

40. The not-for-profit sector needs support to thrive and contribute positively to our wider communities. We urge Inland Revenue to carefully consider the potential impacts of the revised interpretation on not-for-profit organisations. Taxing membership activities will generate very little revenue and add unnecessary compliance burden which is detrimental to thousands of small not-for-profit organisations.

41. Thank you for considering our submission.

s 9(2)(a)

Stephanie Mills

Korīmako Tangiata | National Secretary

March 2025

31 March 2025

Taxation and the not-for-profit sector
C/Deputy Commissioner, Policy
Inland Revenue Department
Wellington
By email: policy.webmaster@ird.govt.nz

Re: Taxation and the not-for-profit sector

Tēnā koe,

Thank you for the opportunity to provide our feedback on the *Taxation and the not-for-profit sector consultation* and to share how this may affect charities such as the New Zealand Society of Anaesthetists.

Who we are

The New Zealand Society of Anaesthetists (NZSA) (CC38066) is a professional medical society representing Anaesthetists and Specialist Pain Medicine Physicians (SPMP) in Aotearoa New Zealand throughout their careers from trainee to retired. We serve our membership through advocacy, community connection and educational opportunities that aim to improve the anaesthetic care of patients and promote high-quality perioperative care in New Zealand.

Our membership and charitable services include strengthening national communities of anaesthetists through clinical sub-specialty and special interest networks, financial support towards programmes that enable safe data collection, review and research into safer anaesthesia practices, facilitating and promoting anaesthesia educational events for continued learning, scholarships and prizes to encourage research in New Zealand, and building networks within Aotearoa's health community and its political leaders to help shape our health system to ensure safe anaesthesia and high-quality care for patients.

Brief Summary

Removing tax concessions for charity business income will reduce funding available to carry out our charitable purpose through the services we provide and our ability to be financially sustainable. This would create a gap in what is provided for our specialist healthcare professionals to evolve their practise and develop better care and health outcomes for their patients.

Whilst we support exemptions to protect income spent on charitable work and thresholds that will exclude small-to-medium sized charities like us, there is a significant risk that these will create a complicated system and increase compliance costs and resourcing requirements for both the charities and IRD.

Consultation questions – Chapter 2, Charities business income tax exemptions.

Question 1: What are the most compelling reasons to tax, or not to tax, charity business income?

The most compelling reasons not to tax charity business income include:

- Continuing to incentivise charities to provide services for their communities that would otherwise not be provided. For the NZSA, this would include:
    - Working with health organisations and governance to develop safe, high-quality anaesthesia and perioperative care for patients.
    - Supporting initiatives that safely collect data with a focus on analysis and research to improve anaesthesia care specifically for the Australasian population.
    - Facilitating continued learning within the New Zealand context through events and meetings.
    - Facilitating communities of practice via national special interest and sub-specialty networks of anaesthetists that encourage the sharing of information and the development of best practice for patients.
    - Support for trainee specialists to build our future health workforce.
- Encourage the pursuit of reliable income to ensure financial sustainability and improve and increase the services we can provide.
- Give charities the ability to accumulate funds to invest in more significant activities that align with our purpose.

Question 2: If the tax exemption is removed for charity business income that is unrelated to charitable purposes, what would be the most significant practical implications?

Defining what is 'unrelated to charitable purpose'. It will be difficult and could lead to a complex and unclear system that requires higher compliance costs, which further reduce funding and resources available to provide our charitable work. It will also limit the options available for charities to seek sustainable sources of income.

Question 3: If the tax exemption is removed for charity business income that is unrelated to charitable purposes, what criteria should be used to define unrelated business?

This should exclude any activity directly connected to the charitable purpose or area. For example, for the NZSA - selling leaflets that provide key safety information towards informed patient consent and improved health literacy.

However, as outlined in our answer to question 2, there is a significant risk that this will be a difficult definition to navigate, leading to increased compliance costs for both the IRD and the charities.

Question 4: If the tax exemption is removed for charity business income that is unrelated to charitable purposes, what would be an appropriate threshold to continue to provide an exemption for small-scale business activities?

We support the suggestion to exclude Tier 3 and 4 charities. This will mitigate some of the concerns shared above - the noticeable impact that paying income tax will have on the small-to-medium sized charities and the services we can provide for our members.

Question 5: If the tax exemption is removed for charity business income that is unrelated to charitable purposes, do you agree that charity business income distributed for charitable purposes should remain tax exempt?

We agree that charity business income distributed for charitable purposes should remain exempt. This is in line with the purpose for which tax exemptions are currently applied.

However, this exclusion would also require more resources from both the charities and the IRD to meet compliance. Resources that smaller charities will not have, therefore impacting the funding and resources available for their charitable work.

If the intention of exempting business income distributed for charitable purposes were to reduce asset accumulation and encourage spending within a certain timeframe, it would become difficult for charities to be self-sufficient or invest in quality but more expensive services that may take time to accumulate funding for. It risks poor quality, inefficient spending.

Question 6 What policy settings or issues not already mentioned in this paper should be considered?

The increased compliance costs, both for the charities and the IRD. As well as the flow-on effect from a reduction in services provided by charities, which will create gaps in what is available or shift the burden to government organisations to provide, with increased costs to meet market rates.

Conclusion

Continuing to provide tax concessions for charities like the NZSA will allow them to continue to provide services that benefit our community, which would otherwise not be available for our specialist healthcare professionals. Significantly limiting their options or ability to grow and improve their practise and develop better care and health outcomes for their patients.

It will also encourage charities to remain financially sustainable and seek reliable income to further the services they provide.

Any changes to these concessions should exclude the small-to-medium sized charities that would be most significantly impacted by income tax. They will need to be clear and require limited compliance costs so as not to inadvertently disadvantage the charities they intend to assist by excluding.

The NZSA is happy to discuss any of the points raised if required.

Thank you for the opportunity to provide our feedback.

Ngā mihi,

s 9(2)(a)

Kylie McQuellin
CEO, New Zealand Society of Anaesthetists

CATHOLIC DIOCESE OF CHRISTCHURCH
TE TAKIWĀ Ō TE PĪHOPA

Catholic Diocese of Hamilton

Catholic Diocese of Auckland
Te Taumata o te Hahi Katorika

Catholic Archdiocese of Wellington

Catholic Diocese of Dunedin
Te Hāhi Katorika o Otepoti

DIOCESE OF PALMERSTON NORTH

31st March 2025

To Inland Revenue,

On behalf of the six Catholic Dioceses of New Zealand. Please receive feedback on the proposed changes to the taxation for the Charitable sector.

1. Executive Summary

1.1 Don't burn down the orchard for the sake of a few bad apples. Charities do great work. If there are charities that are effectively businesses dressed up as charities, then target them with a scalpel, rather than hitting the whole sector with a hatchet. It is a rigorous process to become accepted as a registered charity. This provides a safeguard for ensuring that charities operate within an agreed framework and there are appropriate checks and balances to ensure they are remaining charitable. It may be that those regulatory checks and balances need an adjustment to address the very small percentage of situations where things go wrong, if this is indeed the main concern. This would be a better focus than concentrating on taxing charities. This should go hand in hand with allocating enough funding to allow Charities Services to have a dual role – first in its regulatory function and second, to be even more active in promoting the sector in positive ways and educating people about how they should operate as charities.

1.2 Charity and not compliance. The charitable sector has laboured, like many other parts of the economy, under growing compliance burdens. We urge the IRD to recognise the significant compliance costs that charities are currently carrying and to carve out as much of these burdens for Tier 3 and 4 charities. We affirm accountability and transparency, but simplicity must be a policy goal. We want our charity sector to be innovative, self-reliant, and able to fully focus on positive impact NOT burdened by compliance costs and spending their limited funds on tax consultants.

1.3 Cost vs Benefit. The consultation paper places significant emphasis on the "cost" of the charities tax concession, highlighting the potential reduction in government revenue. However, it is crucial to balance this perspective by considering the extensive and diverse

benefits that charities offer to the broader community. A decrease in services provided by the charitable and educational sectors, due to excessive compliance requirements and unaffordability, could ultimately impose an even greater cost burden on taxpayers.

1.4 Most charities are busy delivering on their charitable purpose. As a generalisation, they are usually 'heads down' trying to use their limited resources in the most efficient and effective way to create the biggest impact. Unlike large for-profit corporate interests, they do not generally have the capacity to closely monitor and strategically lobby on matters that may impact their sector. Charities do not generally choose to apply their limited resources to funding co-ordinated sector advocacy groups. As a result, the potential for unintended adverse consequences of rushed legislation or regulation changes in the charitable sector is perhaps greater.

A less consultative approach might be faster, but we suggest it would be a fast track to complexity, cost, for unintended consequences. New Zealand's tax system when compared with many of its overseas counterparts is often considered elegant in its simplicity, and hence, and importantly, its efficiency.

2. About us

2.1 This submission is provided on behalf of all six Catholic Dioceses (or regions) that make up the Catholic Church of Aotearoa New Zealand. The community we are proud to work with seeks to fulfil the mission of the church by living out our faith, advancing religion, promoting education, and relieving poverty. This mahi and ministry serves the needs of both our faith-based community and the broader population through various welfare, social, and educational initiatives.

2.3 The Catholic Church has been woven into the social fabric of Aotearoa New Zealand since the 1830s and today there are about 450,000 Catholics growing in faith across 200 parishes, 185 primary schools, 49 Colleges and dozens of other charitable works. We provided social services to the community across the motu supporting more than 10,000 people last year with advocacy, social services, and housing. We also distributed to smaller charitable agencies to a value of $2,334,341.

2.4 The Tax Working Group provided a summary in February 2019 of the positive role charities play: "Charities and non-profit organisations make important contributions to the wellbeing of New Zealand. The activities of these organisations enhance the social, human and natural capital of New Zealand. In turn, the Government supports the work of charities by offering tax exemptions for charity income and tax benefits for donations to charities."

2.5 Our society, our environment, our culture and our health as a nation is better for all that charities do. The Christian faith-based sector continues to grow in both size and impact, with registered Christian charities contributing an estimated $7.3b to the NZ economy each year (2% of total GDP). 65,109 volunteers provided 13,426,400 hours of their time in 2023 (the equivalent of approximately 6,500 full time staff) alongside 11,989 staff *(Faith in Action Report, the State of Christian Charities in Aotearoa New Zealand August 2024).*

Specific Submission Points

3. Charity Business Income Tax Exemption (Chapter 2 – Questions 1-6)

3.1 We do not support the proposal to tax charity business income unrelated to charitable purposes. We see the definition and demarcation of what is considered "unrelated" business income to be highly problematic. It is likely to lead to considerable compliance cost for charities and much greater clarity is needed before proceeding down this path. It may also have unintended consequences such as charities not running businesses anymore which were providing much needed services to communities and switching to passive income.

3.2 Business income can be seen to fall into two main types; passive or active: The most common form of passive investment for those charities fortunate enough to have funds to invest would be an investment by a charity into financial products such as bonds, equities and term deposits via a fund managing entity. Depending on how the investments are undertaken, charities investing in shares may be disadvantaged by not being able to get the benefit of tax paid dividends as they have no income tax to offset it against.

3.3 Active investment in contrast is direct investments in establishing or purchasing and then running a business directly. Oddly, attitudes towards active investment appear much more contentious and largely appear to be fuelled by an argument of threats to competition by for-profit competitors. From a policy and principle basis and the market risk of providing a commercial product or service, we are perplexed as to the different attitudes towards passive and active business income.

3.4 An unintended consequence of taxing business income may be to force our charities into closing their op shops, their hall-hire 'businesses', and switching to passive investments. This will remove some well needed services to the community.

3.5 Financial Reporting Standards largely unsuitable for many charities: The surpluses a number of charities report do not reflect the true position of the charity. For example all the donations and grants are required to be reported through the Income Statement when received while assets (such as building a new school) are capitalised and only written off over many years. Charities largely obtain assets for the ongoing benefit of the community they serve, while a business largely obtains assets to generate profits.

3.6 Running businesses at a loss if all costs are considered: Just because our parishes may show profits in running their op shops, small businesses and incidental rental properties, this does not represent the real financial picture as most goods are donated and volunteers run these businesses for no financial compensation. These profits directly help the charities to achieve their charitable activities. Charities do not exist with the core focus of income generation and profit seeking that commercial entities do. However, a charity cannot exist and be effective unless it has a sustainable income source or sources. While they do not exist for profit, all charities need sustainable income sources to operate.

3.7 Social investment rather than tax: At a philosophical level it is important to remember that tax is imposed on individuals or companies by reference to their private gain. This is different to a charity which is set up to benefit a class of people who need help – that is, for public

benefit. So, there is no 'lost' tax as funds that flow to a charity from business must ultimately go towards the public benefit rather than increasing an individual's wealth. In that sense it is not a 'concession' granted, because there is no personal gain, which is normally what tax is focussed on. If there are occasional issues with this, it is about the levers to ensure the rules are followed rather than moving to tax business income of charitable entities.

3.8 *De minimis exemption:* If a tax exemption is removed, we recommend further consultation guidelines to define "unrelated business activity" to avoid unintended consequences, a de minimis exemption for small-scale activities (e.g., Tier 3 and Tier 4 charities), and a transition period to allow charities time to adjust.

4 . Donor-Controlled Charities (Chapter 3 – Questions 7-9)

4.1 We do not operate any donor-controlled charities but support the creation of a reasonable minimum distribution requirement and ensuring transparency without penalising genuine generosity of donors.

4.2 As previously stated, we believe that if there are charities that are using the charity tax exemptions for the profit of their donor, then target them with a scalpel, rather than hitting the whole sector with a hatchet.

4.3 The examples below given in the IRD briefing should be identified as being subject to tax if they are clearly a tax avoidance scheme.

- Circular arrangements, when the donor gifts money to a charity they control, claim a donation tax credit or gift deduction, and the charity immediately invests the money back into businesses controlled by the donor or their associates. While the investment may earn a market rate return, typically the investment income is accrued, and no cash is actually paid to the charity for many years.
- In donor-controlled charities there can be a significant lag between the time of tax concessions for the donor and the charity, and the time of the ultimate public benefit. This occurs when the donor-controlled charity accumulates most or all its funds and makes no or very minimal charitable distributions.
- Arrangements when donor-controlled charities purchase assets from the donor or their associates at prices exceeding what would normally be paid by unrelated parties.
- Arrangements when donor-controlled charities regularly acquire goods or services from the donor or their associates, on terms that would not normally exist between unrelated parties.

4.4 We support that transactions between donor-controlled charities and their associates are required to be on arm's length terms or prohibited outright. This would limit the ability for donors to transfer value out of the charity through non-arm's length transactions or circular arrangements. Instead, or in conjunction with, we also support that anti-avoidance provisions are introduced for the specific arrangements involving transactions with associated persons.

4.5 We also support that donor-controlled charities be required to make a minimum distribution each year. Threshold from overseas models could be used to ensure that the distribution is used to further the charitable purpose of the donor-controlled charity.

5. Tax Simplification and Integrity Measures (Chapter 4 – Questions 10-12)

5.1 Not-for-profits (NFPs) are generally subject to income tax under the broad-base, low-rate policy framework. There are three exceptions:

- NFPs that qualify for a specific income tax exemption (such as the exemption for registered charities or the exemption for bodies promoting amateur games and sport),
- NFPs that have net income of no more than $1,000, provided their constitution prohibits them from distributing property to members (this concession is intended to reduce compliance costs for small NFPs), and
- NFPs that are permitted by their constitutions to make distributions to members can reduce their taxable income to the extent they distribute profits on member transactions back to members as a rebate. This tax concession provides a similar result to what would otherwise be provided under the common law mutuality principle.

5.2 In line with our aim to reduce compliance costs for charities and the not for profit sector, we support:

- Raising the $1,000 tax exemption threshold for NFPs.
- Simplifying the income tax return filing requirements for small NFPs.
- Reviewing the resident withholding tax exemption to ensure charities can retain funds for public benefit.

6. Fringe Benefit Tax Exemptions (Question 13)

6.1 Removal of the Fringe Benefit Tax (FBT) exemption will have an impact on our workforce and the cost of doing our work. This exemption has been used to attract and retain people in difficult roles. For example, a prison chaplain in a rural and remote area might be provided a car to enable them to travel to the prison for essential spiritual and rehabilitative work. The removal of the FBT exemption will create a new cost on the use of that vehicle and further undermine the financial sustainability of this undervalued but essential service.

6.2 The current FBT rules already require charities to distinguish between related and unrelated business activities. In addition, Inland Revenue released a 2024 interpretation statement that provides guidance on when charities are carrying on a business.

6.3 We are in favour of keeping the current rules and continue to exempt benefits provided to employees while they're carrying out the organisation's charitable activities. For example, if our priests use the parish's car while doing charitable work, there should not be any FBT due on any incidental private benefit they receive. It can be argued that our priests are always carrying out their charitable activities given the vocational nature of this service.

7. Impact on Volunteers and Donation Tax Credits (Questions 14 and 15)

7.1 We support reforms to simplify tax compliance for volunteers, particularly the removal of the honoraria tax treatment for honoraria of less than $1,000 a year per volunteer.

7.2 Honoraria are treated as schedular payments for tax purposes. This means several compliance cost issues arise, such as requiring volunteers to account for ACC levies.

Simplifications were introduced from 1 April 2019 for volunteers for Fire and Emergency New Zealand (FENZ). This means volunteers are treated as receiving salary or wages, which can reduce tax compliance costs for volunteers.

7.3 We do not support the changes made to FENZ to be extended to all charities as this would increase our compliance costs with potentially thousands of volunteers suddenly having to be included in payroll systems. Our payroll system cost is based on the number of employees and adding all volunteers receiving honoraria would be cost prohibitive and a burden on the administrator in charge of a small payroll. The un-intended consequence of the change in the law would be to remove all the small "thank you" honorarium given to volunteers to recognise a portion of the personal costs they incur. This may also increase the compliance burden for these volunteers to keep track of their expenses such as mileage so these honoraria would become expense reimbursements rather than wages and salaries subject to PAYE and ACC.

7.4 We support changes that make donation tax credits more accessible and real-time to encourage giving. We are aware that a number of our donors never claim the tax credits as the system is complex and some donors do not know how to file their donation credit request into myIR. We support a promotion of the payroll giving system which is simple to understand. Our current payroll provider has a number of charities in their system that staff are able to choose while getting an immediate donation credit through their PAYE and their donation is passed on to the charity. The IRD should be working with all payroll providers to offer and promote such services.

8. Conclusion and Recommendations

8.1 We appreciate the opportunity to contribute to this consultation. While we acknowledge the need for fair tax policies, we urge the Government to carefully consider the potential unintended consequences for charities and their ability to serve communities.

8.2 Our current charities law and regulation is very sound. If there is a failure allowing rogue charities to abuse this, then the issue is probably more one of resourcing the existing regulator, or prioritisation of effort with their limited resources.

8.3 Supporting community entities to be successful, which includes policy settings to assist ensuring their financial sustainability, is a cost-effective solution for any Government. While the charity sector is without the financial resources and lobbying power of for-profit organisations, charities touch a huge proportion of the New Zealand public. This is an economically significant sector when one considers number of entities, number of people employed, number of people who volunteer, number of people and issues served, and the funds that flow through the sector for charitable purposes. Support for charities should not be underestimated nor the potential political distraction that an aggrieved public outcry may generate.

We are happy to discuss this submission further and provide additional input if needed and officials from Inland Revenue are welcome to contact us to discuss the points raised.

s 9(2)(a)

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31 March 2025

Submission on Taxation and the not-for-profit (NFP) sector

About the Submitter

1. Founded by David Farrar and Jordan Williams in 2013, the *Taxpayers' Union*'s mission is Lower Taxes, Less Waste, More Accountability.

2. We enjoy the support of some 200,000 registered members and supporters, making us the most popular campaign group championing fiscal conservatism and transparency. We are funded by our thousands of donors and approximately two percent of our income is from membership dues and donations from private industry.

3. We are a lobby group not a think tank. Our grassroots advocacy model is based on international taxpayer-group counterparts, particularly in the United Kingdom and Canada, and similar to campaign organisations on the left, such as Australia's *Get Up*, New Zealand's *ActionStation,* and *Greenpeace*.

4. The Union is a member of the *World Taxpayers Associations* – a coalition of taxpayer advocacy groups representing millions of taxpayers across more than 60 countries.

5. Nothing in this submission is confidential and we would welcome the opportunity to discuss this submission with you further.

Executive Summary

6. On the basis of what we understand, the *Taxpayers' Union* does not support the Commissioner's updated view of the mutual association rules and what is currently likely to be incorporated in a draft operational statement. The potential impact on incorporated societies, like the *Taxpayers' Union* and other NFP's is so significant that nothing short of invoking a full generic tax policy process (GTPP) will suffice to sort this issue out.

7. The analysis in the Officials' Issues Paper (the paper) is far too deficient for us to be even sure of exactly what is being proposed for the NFP sector. Changing the Commissioner's view and then the

way Inland Revenue will apply the rules is not the only solution. Holding fast to existing policy and practise and amending legislation to fit is also a viable option. Essentially, the policy that is wanted should be confirmed first and legislation that fits the policy enacted.

8. The paper states at paragraph 4.7 that *the updated view in the current draft operational statement is consistent with the policy intention of the mutual association rules.* There is no explanation in the paper to support this assertion and so we are left in the dark as to how and why Inland Revenue's thinking has evolved. The Commissioner cannot finalise his operational statement until this issue has been properly discussed with interested parties, as the GTPP envisages.

9. We have concerns with the targeting of certain income tax and fringe benefit tax exemptions. Whilst we accept that specific exemptions can introduce distortions, we ask how material are they? These exemptions provide social and scientific benefits and it does not seem reasonable to reduce these in the pursuit of immaterial tax purity.

10. We support the taxation of charity-owned commercial businesses. There is no reason why the business arms of charities should be treated any differently to any other business. Business donations to charities are tax deductible and the effective tax treatment remains the same if all profits are donated to the charity in the same tax year. The current law provides a tax advantage to charity-owned businesses, but it also provides a competitive advantage. We do not understand Inland Revenue's dismissal of the competitive advantage argument.

11. We support the tax simplification proposals for volunteers and donation tax credits. It is hoped that these might encourage more volunteer work if the tax treatment of honoraria is simplified and encourage more donations if the tax credit is automatically applied.

Charity Business Income Tax Exemption

12. The *Taxpayers' Union* considers that the commercial business operations of registered charities should be subject to income tax in the same way as all other commercial businesses. When the business remits funds to the charity, it should then be able to obtain a tax credit for the donation in the same way as all other businesses. If it donates all of its profits in the same tax-year they were earned the tax treatment will be the same as it currently is.

13. We agree that the current arrangements, whereby the business operations of charities are exempt from income tax, provide a tax advantage to those businesses. However, we disagree with the assertion that this does not confer a competitive advantage. Any business with a lower cost structure than all of its competitors has a competitive advantage over all of them. Inland Revenue's reasoning here takes no account of real world behaviour. Real businesses (and charities) make investment decisions for a variety of reasons such as having social goals and/or remaining in a business environment they are familiar with and thus reducing perceived risk.

14. What matters to a business is after-tax cashflows. A business that does not pay tax has greater after-tax cashflows than its competitors, all else being equal. As well as conferring a tax advantage, this confers a competitive advantage because its after-tax cost structure is lower. The more successful a charity owned business is, the more of its profits can be distributed for charitable purposes.

15. Inland Revenue may be distracted by the thinking of the *Tax Working Group* who curiously reframed competition concerns as "more about the extent to which charities are distributing or applying the surpluses from their activities for the benefit of the charitable purpose. If a charitable business regularly distributes its funds to its head charity, or provides services connected with its charitable

purposes, it will not accumulate capital faster than a taxpaying business."[1] Whilst this is true, we cannot see how this relates to competition concerns.

16. The *Taxpayers' Union* recommends that the Government tax charitable businesses, subject to a suitable de minimis threshold, and allow businesses to receive a tax credit for any donations to charitable causes. It matters not if a charitable business retains earnings for future investment in the business. If in the future a portion of retained earnings are distributed for charitable purposes, such distributions should receive tax credits for the business. Such credits should be available to all businesses who donate to charitable causes. We recognise that this will increase the compliance costs for businesses associated with charities, but consider that levelling the playing field amongst competitors to be more important.

Not-for-profit and friendly society member transactions

17. The NFP sector is diverse. It includes small unincorporated clubs and entities such as a neighbourhood grocery collective that pools funds to purchase vegetables at a market, social clubs and incorporated societies like the *Taxpayers' Union*. However, it also includes some substantial enterprises. What is meant by 'not for profit' can be unclear. Many entities make a surplus over expenses but are still considered 'not for profit' on the basis that no person invests in the entity for monetary gain. However, the annual surplus may be substantial if the entity is building up assets.

18. For example, the *Taxpayers' Union* may accumulate funds to mount a policy campaign and may record a surplus at the end of the financial year that is rapidly drawn down early in the next financial year. Is Inland Revenue proposing to tax the surplus that only exists because of a timing difference between the date a tax liability is calculated and the date that the surplus is depleted?

19. The paper's problem definition is vague and what is being proposed is unclear. We have little idea of what the practical impact might be on incorporated societies like ourselves or similar organisational forms if Inland Revenue proceeds with the proposal. Inland Revenue's main concern appears to stem from a view that previous guidance on the mutual association rules did not correctly apply the law. An updated operational statement has been drafted and is to be finalised pending the outcome of this consultation.

20. The proposition seems to be that if a NFP does not restrict the distribution of its property at all times to members, it is disqualified from being regarded as a mutual. If that is the case, transactions with members that have the character of income, would be treated as income under the proposal, mutuality aside. The main circumstance when the NFP's property might be distributed to persons other than members is on winding-up or dissolution. It is common for NFPs with material property assets not to allow its property to be distributed to members and instead to be distributable only to similar entities. Under the proposal, that would require the NFP to treat any surplus from member transactions (used to acquire assets for the benefit of members) as taxable under the mutuality principle.

21. Restricting mutuality to entities where the net assets can only be distributed to members makes no policy sense. The purpose of the paper should be to arrive at the best policy position. If there is a concern such a clause restricts the application of mutuality, then this should be legislatively corrected. If Inland Revenue has a contrary view, and believe this outcome makes policy sense, then their reasoning should have been presented in the paper and not left to submitters to 'guess' what they are thinking.

[1] Future of Tax: Final Report Volume 1: Recommendations – Tax Working Group, 21 February 2019, paragraph 39, page 103.

22. The proposal, as far as we can understand it, would not be a practical or sensible policy setting. It would impose high compliance costs on the community or voluntary sector. It would be unworkable in many cases – as the past Inland Revenue policy noted. Very little additional revenue would result.

23. The apparent response of increasing the amount deductible under DV 8 would not manage the problems that would arise. That would not cover the many NFP entities that do not have a constitution that prohibits property distribution to members, as required for DV 8 to apply as currently worded. All NFP qualifying for a DV 8 deduction would be disqualified from mutuality treatment. In any case if levies and subscriptions were taxed because they are viewed as providing member benefits, then a very high DV 8 allowable deduction would be necessary meaning that for some NFPs significant sums that should be taxed (investment income from third parties) would be made in effect tax-free for members. For example, a large body corporate could build up material levels of reserves to undertake deferred maintenance (eg. painting the building). It is illogical that this should be addressed by having a de minimis rule.

24. Before changes are made here, Inland Revenue needs to clearly specify the problem and solutions by:

- Setting out the believed inconsistencies between the current policies and the legislation;
- Identifying the policy changes that are believed to be required to comply with the legislation;
- Confirming the desired policy; and
- Specifying the legislative changes that are believed to be required to comply with the desired policy.

25. In short, only a full application of the generic tax policy process will be sufficient to identify any actual inconsistencies and the most appropriate way forward.

The Solution

26. We submit that the best solution would be for Inland Revenue to re-confirm its past policy in this area. It is sensible and practical. It has worked for many years without to our knowledge significant problems. There may be issues where mutual NFPs have over-allocated expenses to overly offset investment and other third party investment income. If that is true, it is an audit issue that Inland Revenue should address. Consideration should be given to increasing the DV 8 deduction limit and removing the requirement for a prohibition of property distributions to members in order to qualify for the DV 8 deduction.

27. If Inland Revenue is unable to come to this conclusion under current legislation, the legislation needs to be amended to enable it to do so. Workable mutual legislative rules reflecting the practical approach of Inland Revenue's past policy may not be easy to draft. Possibly it will require providing the Commissioner with a determination making power as to how and what should be regarded as a non-taxable mutual transaction and what should be taxed.

Commissioner's Updated View on NFPs

28. Q10. What policy changes, if any, should be considered to reduce the impact of the Commissioner's updated view on NFPs, particularly smaller NFPs? For example:

- increasing and/or redesigning the current $1,000 deduction to remove small scale NFPs from the tax system,

- modifying the income tax return filing requirements for NFPs, and
- modifying the resident withholding tax exemption rules for NFPs.

29. The Commissioner should confirm his past policy in this area. The suggested increase in the DV 8 deduction would not mitigate the problems that would arise from redrawing the NFP rules along the lines raised in the paper.

Friendly societies and credit unions

30. Q11. What are the implications of removing the current tax concessions for friendly societies and credit unions?

- What the paper terms 'tax concessions for friendly societies and credit unions' are in our view merely a statutory exemption for what are in essence mutual entities. The exemption is provided because the mutual legislative rules (providing the outcome of no tax through rebate deductions) are not appropriate for these bodies.
- No justification is given by Inland Revenue for removal of the exemption except the comment that they would seem inconsistent with the approach of the Issues Paper to NFPs generally. As above, we do not agree with the approach the Issues Paper adopts for NFPs.
- The taxation of credit unions specifically has been subject to discussion papers and reviews a number of times since 1988. As far as we are aware the last was in 2000 (The Tax Status of Credit Unions). This does not seem to have resulted in any material change to the tax rules. The reason, presumably, being that the rules do not need to be changed.
- Removing the exemption would generate high compliance costs and uncertainty with no material revenue gain post these entities restructuring to get the appropriate tax outcome exemption provides.

Income Tax Exemptions

Other income tax exemptions canvassed by the Issues Paper

31. Q12. What are the likely implications if the following exemptions are removed or significantly reduced:

- local and regional promotional body income tax exemption,
- • herd improvement bodies income tax exemption,
- • veterinary service body income tax exemption,
- • bodies promoting scientific or industrial research income tax exemption, and
- • non-resident charity tax exemption?

32. Apart from the non-resident charities, these entities seem to be in essence NFP mutuals. They may not qualify as mutuals because they benefit the community more generally rather than members more specifically. If they would qualify as mutuals, they may not be able to operate in practice under the mutual legislative rules designed for more commercial organisations providing rebates to members. This does not justify removing the exemption.

33. For example, some of the bodies mentioned above can receive large amounts of "income" (including government grants and industry contributions) to undertake a research initiative. There is no policy logic to tax the build-up of these reserves when over time they will be expended on the research initiative.

34. The *Taxpayers' Union* is concerned about the materiality of the issue and whether or not these exemptions are being increasingly used. We are concerned about Inland Revenue pursuing immaterial purity at the expense of social and scientific benefits.

Fringe Benefit Tax

35. The *Taxpayers' Union* understands the issues raised in the paper, but is concerned if enough work has been performed to establish the materiality of any distortions to the labour market. If the distortions are not significant, we would not want to see a policy and legislative change that raised costs in the charity sector for no material gain. Doing so would be akin to 'throwing the baby out with the bathwater.'

36. We ask Inland Revenue to think very deeply and carefully before changing existing policies, regardless of the outcome of the review of FBT rules.

Tax Simplification

Volunteers

37. The *Taxpayers' Union* supports extending the FENZ simplification as an option for all NFPs as this will reduce the tax compliance costs for volunteers who may be receiving honoraria.

Donation Tax Concessions

38. The finding that only one in five people make full use of the donation tax credits that are available to them is very surprising. Therefore, the *Taxpayers' Union* supports efforts to make it easier and quicker for people donating to charities to receive the tax concession for doing so.

Concluding Comments

39. The *Taxpayers' Union* supports the removal of the tax-free status of charitable businesses that are operating to make a profit and which can subsequently be used to grow the business and/or be used for charitable purposes. The business should receive a tax credit for any business profits or retained earnings distributed for charitable purposes. The application of this policy should be subject to de minimis rules to exclude operations owned or controlled by charities that make immaterial profits.

40. We have significant concerns with Inland Revenue targeting certain income tax and fringe benefit tax exemptions. No tax system is perfect and taxes, by their very nature, distort economic decision-making. We agree that tax concessions promoting certain economic sectors over others introduce undesirable investment distortions. However, it is not clear that the examples provided in the paper create material distortions. What is clear is that the activities listed provide social and scientific benefits. Inland Revenue needs to do a lot more work to justify its pursuit of tax purity in these areas.

41. The *Taxpayers' Union* supports the tax simplification proposals in the paper. Reducing compliance costs for volunteers and making it quicker and easier for charitable donors to claim tax credits for their donations are laudable goals.

42. We do not support the direction, as far as we can understand it, that Inland Revenue is taking in the NFP sector. Taxing NFP operations on any surplus is contradictory to existing policy. Inland Revenue appears to think the policy has to change, given its new interpretation of what the legislation requires. This is potentially so significant for the sector that a full generic tax policy process must be undertaken so that we can all understand exactly how Inland Revenue is thinking about this. Policy and legislative changes must be presented and debated. The analysis and discussion in the Issues Paper is simply too deficient for Inland Revenue to proceed any further until a GTPP is undertaken on this issue.

Yours sincerely
New Zealand Taxpayers' Union Inc.

s 9(2)(a)

Ray Deacon
Economist
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31 March 2025

NEW ZEALAND NURSES ORGANISATION
TŌPŪTANGA TAPUHI
KAITIAKI O AOTEAROA

Inland Revenue Department (IRD)
By email: policy.webmaster@ird.govt.nz

Submission on: Taxation and the not-for-profit sector

Introduction

1. The New Zealand Nurses Organisation (NZNO) submits this response to Inland Revenue's (IR) Issues Paper on Taxation and the not-for-profit (NFP) sector, specifically addressing the draft operational statement concerning taxation of membership subscriptions (p. 18).

2. NZNO, as the largest union for nurses and other healthcare occupations, represents over 60,000 members and provides advocacy, professional development, and industrial representation. NZNO is concerned with the implications of the Commissioner's draft operational statement, given the long-standing approach that the principle of mutuality applies to unions and similar membership organisations for income tax purposes.

3. The proposed taxation of membership subscriptions contradicts long-standing principles of tax law in New Zealand and risks undermining the financial sustainability of membership organisations. This paper sets out the key objections, the impact of the proposed taxation, and recommendations.

Key Objections

4. Paragraphs 4.4 to 4.8 of the Issues Paper asserts that most NFPs do not qualify for mutual treatment as their constitutions prohibit surplus distributions, including upon winding up.

5. NZNO maintains that:

   5.1. The principle of mutuality should remain valid for most NFP membership organisations, as members fund the organisation collectively for their shared benefit.

   5.2. A prohibition on surplus distribution on wind-up should not negate mutuality. A constitution that requires that surplus funds must be allocated to a similar NFP reflects the shared objectives of members with respect to any surplus. The constitutional provisions ensure the mutually agreed approach is carried out, resulting in continued alignment with the mutuality principle. Recent amendments to the Incorporated Societies Act 2022 ("the Act") reinforce this.

   5.3. If IR's interpretation is applied, it could invalidate mutuality treatment for virtually all incorporated societies (unless specific exemptions applied) due to restrictions in the Act regarding distributions on windup. This would in our view be an unjust outcome, given the role that membership organisations – and particularly Unions – play in society.

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The Role of Unions and the Principle of Mutuality

6. Unions exist for the collective benefit of their members. NZNO, as the largest union for nurses and other healthcare occupations, represents over 60,000 members and provides advocacy, professional development, and industrial representation. Membership fees are not revenue in a commercial sense, but a means for members to pool resources for shared objectives.

7. Taxing membership subscriptions would suggest that these fees are profit-driven transactions, rather than collective contributions to a common cause. Unions do not distribute profits; all funds are reinvested in services that advance members' professional, workplace, and economic interests.

8. The final IR position on this matter should take into account the nature of union membership, and focus on the core principle that mutual associations should not be taxed on contributions made by their members for their collective benefit. Taxing subscriptions in this context would be akin to taxing members for trading with themselves.

Impact of the proposed taxation

9. *Significant Financial Burden*
   Applying tax to membership subscriptions risks imposing an unsustainable financial burden on unions and other NFPs. This taxation would erode the resources available for bargaining, advocacy, legal support, and campaigns, ultimately weakening unions' ability to protect workers' rights and improve workplace conditions.

10. *Deterrent to Long-Term Planning*
    Unions accumulate reserves to fund future projects, including legal cases, industrial disputes, and advocacy efforts. The proposed taxation would incentivise short-term spending to avoid tax liabilities, undermining financial stability and long-term strategic planning.

11. *Erosion of Worker Power*
    Unions play a crucial role in civil society which is recognised globally by seeking to bring balance to the power relationship between workers and employers. Unlike employers, which have flexibility in choosing their legal form, unions are constrained by statutory requirements requiring the use of an Incorporated Society. Imposing taxation on their primary source of income exacerbates power imbalances and directly weakens collective bargaining efforts.

12. *Increased Compliance Costs*
    Under Section 6A(2)(c) of the Tax Administration Act 1994, The Commissioner is required to have regard to "the compliance costs incurred by persons" in undertaking their activities. This change in tax treatment would greatly impact organisations' compliance costs. The paper does not contain an assessment of the potential costs of administration to these changes within the Issues Paper, nor is there any cost/benefit analysis to determine if the compliance costs would outweigh the financial benefits.

Conclusion and Recommendation

13. NZNO submits that, if the current operational assertion regarding the principle of mutuality is finalised, then law change is required. The current draft position would mean the principle does not apply to unions and similar NFPs, and this is not a sensible conclusion to reach. In our view the proposed taxation of membership subscriptions disregards the historical and legal context of incorporated societies and unfairly penalises unions and other NFPs.

14. NZNO urges IR to:

    14.1. Retain the existing approach, recognising membership subscriptions as non-taxable under the common law principle of mutuality – either through reconsideration of the breadth of the current principle, or by legislative amendment if required; and

    14.2. Provide explicit confirmation that membership organisations operating for the collective benefit of their members, are not subject to taxation on member subscriptions.

15. The existing framework effectively differentiates between commercial entities and NFPs. No compelling policy rationale has been provided to justify this fundamental shift. NZNO strongly recommends maintaining the current taxation treatment of membership subscriptions to preserve the financial viability and core functions of unions and other NFP organisations.

16. For completeness we note that it is accepted by NZNO that membership organisations should pay tax on other (non-subscription) member and non-member transactions.

s 9(2)(a)

Paul Goulter
CEO
New Zealand Nurses Organisation Tōpūtanga Tapuhi Kaitiaki o Aotearoa

Submission: Tax-Free Status of Veterinary Clubs in New Zealand

Submission by Matthew Airey

31st March 2025

To: policy.webmaster@ird.govt.nz

All my working life has been in the New Zealand agriculture sector, with the final 20 years working as an employee and then shareholder of a large privately owned veterinary business.

My role within the business as a non-veterinarian was focused on sales, purchasing of products and training of our rural sales and vet teams to add value to our farming client's business.

One of our main competitors is the Animal Health Centre Waikato Incorporated (Anexa), who over the years have used tax free income to purchase privately owned tax paying vet business to grow from their Morrinsville base to now having 11 branches.

My absolute passion was to add value by working with our farming clients by providing the appropriate products and service and make a profit in the process.

It became increasingly frustrating as Anexa grew their footprint for our team as Anexa would base their "sales pitch" to gain business by cutting the price on the product or service that we were already delivering to our clients. Our clients would question that we were making "big" profits not understanding that we had to pay tax on our profit whereas the Vet Club gets to keep all the money from the sales and hence be able to undercut our price.

This would lead to our business reducing margins and hence the ability to invest in many things like staff training, new technology, education, remuneration, equipment, supporting the community to name a few.

I am connected to many privately vet businesses throughout New Zealand and they all have the same issues when competing against vet club, vet clubs destroy value by competing on price and that ultimately is destroying value for our farming clients and New Zealand's ability to remain completive in the agricultural sector.

The New Zealand agriculture sector has many challenges ahead and without a strong, robust, and profitable veterinary industry many of these challengers will not be met.

Plenty of income for the clubs is derived from non-member companion animal customers which is completely out of line as to why the tax-free status was initially set up. The tax-free status was to post-World War two facilitate international veterinary surgeons to relocate to rural areas of New Zealand to provide services to the farming industry to grow the New Zealand agriculture sector. The need for this law long expired.

It has been questioned how our trading partners view this tax-free status of veterinary products and services to many New Zealand farmers when those farmers are represented in trade agreements as non-subsidized, it could indeed jeopardize trade agreements.

Most veterinary clubs are governed by their farmer members who are only interested in a “better deal” which is ironical as it the very farmer members that will ultimately loose out if this well outdated taxation inequality is not ended.

At the age of 61 I decided to sell my shares in the veterinary business and pursue other business investments after becoming disillusioned with the industry and successive governments not addressing the unfair and divisive tax status issues confronting our veterinary industry.

s 9(2)(a)

From: Brian Hadley s 9(2)(a)
Sent: Monday, 31 March 2025 3:37 pm
To: Policy Webmaster
Subject: Taxation and the not-for-profit sector

Donation Tax Concessions
We want these Donation Tax Concessions retained
With the rising cost of postage we have introduced an annual receipt for our regular monthly supporting donors so that the receipt is sent out only at the completion of the 31 March year.
Otherwise we provide a tax receipt for each individual donation which is emailed or posted at that time.
People do contact us on a regular basis when they have misplaced their receipt and tell us they are preparing their claim for the donation tax concession.
We are a relatively small charity with limited staff and time. Our Vega System does not provide for nor do we maintain IRD numbers for our donors and we do have nor can we afford any additional time to spend to allow Inland Revenue to collect data from our donee organisation to pre-fill DTC claims to streamline the DTC claiming process.
In these tight economic times we have struggled with a number of set-backs to retain donors and we are concerned that this additional requirement will result in a loss of donor support. Set-backs that have affected us quite badly recently have been the Trading banks discontinuing cheques and Spark discontinuing the 0900 donation lines.
Donors, especially our older long term supporters, previously found it simple to send a cheque or use the Spark 0900 donation line which put a debit on their phone account and when these simple options were discontinued we lost a lot of donor support because not all wanted credit cards or had a computer to do internet banking.

Fringe Benefit Tax
We want these Fringe Benefit Concessions retained
We struggle to supply a regular in person contact with our members. Muscular Dystrophy is a rare and degenerating disease where those people who are affected their physical condition deteriorates and our members struggle with transport and health issues. Using motor vehicles we try to make regular contact with as many of our members as possible to assist in establishing the best outcomes for their issues whether it is housing, health, transport or their equipment and carer needs. Our staff work using their home as a base in most instances and so any change to the FBT rules would adversely affect us economically. Also we have limited accounting and finance resources to maintain FBT returns to IRD etc.

Taxation Exemption on Interest and Dividends
We need to see this retained. We need to provide employment security for our staff. In a lot of ways we have no control over our financial support from donors. Therefore through the economic cycle when in the highs we may receive more income from donors than our expenses but we have to save this as in the lows of the economic cycle our income from donors may be less than our expenses. The tax exemption on interest and dividends helps us to be able ride these economic highs and lows and retain our experienced staff to enable us to continue our work to provide the essential support that our member community needs and relies upon.

Brian Hadley
Accountant & Business Manager
Muscular Dystrophy Association of New Zealand
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s 9(2)(a)

From: Alan Bruce s 9(2)(a)
Sent: Monday, 31 March 2025 3:40 pm
To: Alex Skinner
Cc: Policy Webmaster
Subject: Re: Taxation and the not-for-profit sector

Excellent !

Alan for TTF
s 9(2)(a)

On Mon, 31 Mar 2025 at 1:57 PM, Alex Skinner <s 9(2)(a) wrote:

> Thank you for the opportunity to respond to your consultation document 'Taxation and the not-for-profit sector'.
>
> I am responding on behalf of **The Tait Foundation.**
>
> **Background to The Tait Foundation (TTF)**
>
> TTF is a charity established by Sir Angus Tait with a clear purpose (extracted from trust deed):
>
> *Devote or apply the same both capital and income to or for any educational purposes in New Zealand which are charitable…to grant financial assistance towards the organisation, establishment or advancement in New Zealand, of any universities, schools, education centres or like organisations of purely educational and charitable nature including the funding of scholarships in New Zealand*
>
> Our educational focus is on Science, Technology, Engineering and Mathematics (STEM).
>
> The Trust has a diversified asset base which consists of a long term loan, commercial property and a portfolio of investments. The trust does not undertake any business activities other than investing with the goal of generating income for donations - we do not trade and do not compete with non tax paying entities.
>
> In recent years TTF has made donations in excess of $1m a year.
>
> **Response to the consultation document**

We are responding to the questions which are most relevant to TTF and only from a TTF perspective. We feel that you are considering a blanket solution to the charity sector to try and deal with some very specific perceived issues.

Q1. What are the most compelling reasons to tax, or not to tax, charity business income? Do the factors described in 2.13 and 2.14 warrant taxing charity business income?

TTF's income is derived from financial assets and commercial property. If this income is deemed business income then there will be a significant tax cost to the trust which will only reduce the impact TTF can make for our charitable purpose. We are not deriving income in competition to other parties and therefore do not enjoy any competitive advantage - we have nothing to compete for. The distinction between related and unrelated income to charitable purpose seems very confusing and would be contentious to apply for TTF. For example, we do not directly invest in organisations that are educational in nature, but we invest in financial assets to gain a return to then apply for charitable purpose. We would still see this as related income.

So for TTF the most compelling reasons not to tax charity business income are:

- we are not competing with anyone and therefore our non-taxed status does not result in a competitive advantage
- there would be difficulty in applying the concept of related and unrelated business income. There will be significant compliance costs trying to support our position
- If the regime was in place there would be increased compliance costs to determine how to allocate costs between taxable and non taxable activities

Q2. If the tax exemption is removed for charity business income that is unrelated to charitable purposes, what would be the most significant practical implications?

As identified above, the most significant practical implication is defining what is unrelated business income

Q3 - If the tax exemption is removed for charity business income that is unrelated to charitable purposes, what criteria should be used to define an unrelated business?

If the whole premise is that charities with business income have a competitive advantage over non-charitable entities then the test should be on the nature of the income received by the charity. If the income/profit is taxed at source eg. through dividends through a normal corporate entity then there is no competitive advantage for the charity. This would help support investments in shares as part of a portfolio approach.

Alex Skinner
Trustee and Chair - The Tait Foundation

VETERINARY
PROFESSIONAL
INSURANCE
SOCIETY (INC)

31 March 2025

Deputy Commissioner, Policy
Inland Review Department
PO Box 2198
Wellington 6140

Policy.webmaster@ird.govt.nz

Dear Deputy Commissioner, Policy,

Submission for the Veterinary Professional Insurance Society (VPIS) to retain its income tax exemption under CW50 Veterinary services bodies of the Income Tax Act 2007

Veterinary Professional Insurance Society (VPIS) is currently exempt from income tax under Section CW 50 Veterinary services bodies of the Income Tax Act 2007. We make this submission in support of retaining our income-tax exempt status, due to our essential role in supporting the veterinary profession and the public good.

As a specialised not-for-profit insurance provider, VPIS provides tailored liability coverage, risk management guidance, education, and pastoral support to the veterinary sector, all of which contribute to the efficiency and sustainability of veterinary services in New Zealand.

Enhancing the Efficiency of the Veterinary Profession

VPIS plays a critical role in ensuring the veterinary profession operates smoothly by providing insurance solutions and claims support specifically designed for veterinary practitioners. Standard commercial insurers do not offer the same level of industry-specific expertise, leaving veterinarians vulnerable to gaps in coverage, increased costs, and wellbeing issues such as isolation and loss of confidence. Our risk management advice and claims support services help veterinarians navigate complex legal, professional and personal challenges, ensuring they can continue their work with confidence and improve outcomes.

Supporting Public Outcomes

Veterinary professionals are essential to public health, food safety, and animal welfare. By safeguarding veterinarians against financial and legal risks, VPIS helps ensure the continuity and quality of veterinary care across the country – and beyond. Our role indirectly benefits the wider public by protecting the professionals who maintain animal health, prevent disease outbreaks, and ensure the safety of food-producing animals, for example in managing residues in export products so market access isn't compromised.

Promoting Veterinary Wellbeing

Veterinary professionals face unique stressors, including high workloads, emotional strain, and financial pressures. VPIS not only provides professional indemnity insurance but also offers education and pastoral care to support their mental and financial wellbeing. By reducing uncertainty and providing a trusted safety net, we help maintain a resilient veterinary workforce, which is critical for the industry's sustainability.

Acknowledging the Review's Intent While Highlighting Existing Compliance Costs

We acknowledge and appreciate that the intent of this tax review is to improve fairness and reduce any unintended advantages in the tax system. However, as a licensed insurer, VPIS is already subject to significant regulatory and compliance obligations. These obligations impose substantial costs on our operations, including financial reporting, solvency requirements, governance standards, and prudential oversight. Unlike other entities that may be benefiting from tax exemptions without equivalent regulatory burdens, VPIS operates within a highly controlled and costly compliance environment.

Consequences of Losing Income Tax Exemption

If VPIS were to lose its income-tax exempt status, the resulting increase in compliance costs would have significant consequences:

- **Higher Insurance Costs:** Without the exemption, VPIS would need to pass on additional costs to its members, making essential coverage less affordable for veterinarians and driving up the cost of veterinary care to the public.
- **Reduced Capacity for Support Services:** Increased financial pressure could force us to scale back our risk management, education, and pastoral care programs, which are vital for the profession.
- **Threat to Long-Term Viability:** If compliance costs rise to an unsustainable level, VPIS's future viability could be jeopardised, leaving veterinarians without a specialised insurance provider and potentially forcing them into more expensive, less suitable commercial insurance options.

Conclusion

The income-tax exemption granted to VPIS enables us to fulfil our mission of supporting the efficiency of the veterinary profession, safeguarding public interests, and promoting the wellbeing of veterinarians. Removing this exemption would not only increase costs for the profession but could also impact the overall quality and availability of veterinary care in New Zealand.

We appreciate the purpose of this review and the effort to ensure a fair and balanced tax system. However, given our existing high compliance costs as a licensed insurer and the essential role we play in supporting the veterinary profession and the public good, we respectfully urge Inland Revenue to maintain our income-tax exempt status.

We welcome the opportunity to discuss this submission further and provide any additional information as required.

Yours sincerely,

s 9(2)(a)

Alpha Woolrich
Chief Executive Officer
Veterinary Professional Insurance Society

s 9(2)(a)

Mark Gilmour
VPIS Board Chair
Veterinary Professional Insurance Society

Burnett Foundation Aotearoa

31 March 2025

Inland Revenue
policy.webmaster@ird.govt.nz

IRD - Taxation and the not-for-profit sector Consultation

Burnett Foundation Aotearoa is a registered New Zealand charity (Tier 2) and non-government organisation providing HIV and STI prevention, support for people living with HIV, and supporting great sexual health for rainbow and takatāpui communities. We are funded through contracts with Te Whatu Ora and independent fundraising.

Our work over the last 40 years includes health promotion, condom distribution, testing, counselling and support, research, policy, and information services. Burnett Foundation Aotearoa advocates for healthy public policy and environments that support people living with HIV and rainbow and takatāpui communities.

Burnett Foundation Aotearoa provides services and support for our communities that are not currently met by the Government. As a small organisation, we are efficient and adaptable at meeting the needs of our communities. This approach has seen a significant reduction in levels of locally transmitted HIV. Locally acquired cases have fallen by 56% per capita since the epidemic's peak in 2016, and Burnett Foundation has increased testing per capita by 51% over the same period. Every $1 invested in Burnett Foundation Aotearoa has seen $5.05 saved for the New Zealand public in diagnoses avoided.[1]. Most recently we have responded to the emergence of local mpox cases, providing leadership and expertise to the Ministry of Health and Pharmac, and education and support to our communities to control local outbreaks.

Here are our responses to the relevant consultation questions.

Q1. What are the most compelling reasons to tax, or not to tax, charity business income? Do the factors described in 2.13 and 2.14 warrant taxing charity business income?

We **do not** support the proposal to tax charity business income unrelated to charitable purposes.

Taxing charity business income will add another layer of uncertainty and compliance costs to our organisation in determining what activities are taxed and not. This burden could take away from our core public health mission and activities. Increased taxation will also act as a deterrent to innovation and seeking sustainable income streams outside of government contracts and fundraising, which can fluctuate. It is also not clear why business income—and not passive income forms such as investments—have been identified by IRD.

For example, while Burnett Foundation does have a core contract with Te Whatu Ora, which enables our HIV and STI health promotion and testing among at-risk populations, we are also striving through our independent fundraising and other income sources to address unmet health needs more broadly in our communities. This falls outside of our government contract, and has required us to innovate to find other funding sources and ways to fund this work.

[1] The lifetime cost of HIV has been calculated by PWC for Burnett Foundation Aotearoa, December 2024. Every $1 invested with Burnett Foundation saves $3.30 in direct health-related treatment costs. This increases to $5.05 when indirect costs (including life expectancy & quality of life) are taken into account.

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Q2. If the tax exemption is removed for charity business income that is unrelated to charitable purposes, what would be the most significant practical implications?

There will need to be clear and fair definitions and guidelines on what is "related" and "unrelated" income to ensure there is not a restrictive compliance burden. Charities in New Zealand are incredibly diverse and provide a range of support and services, and it might not always be clear what is unrelated business income.

Clear guidance on rental income will be needed. Currently, rental income that a charity derives from one property is likely not to be considered business income and is exempt from tax. For Burnett Foundation, owning the building that houses the head office and health services provides certainty and safety for clients who use our services. It also supports the sustainability of the organisation and means that areas of the building not in use can be rented out to like-minded organisations. For us, this is further supporting and enabling the community and sector as we offer lower rent than these organisations would be paying elsewhere, and it enables Burnett Foundation to invest this money in broader charity work not funded by our government contract. Any changes to the definition of unrelated business income will need to take into account how charities are currently ensuring their sustainability and survival.

Q3. If the tax exemption is removed for charity business income that is unrelated to charitable purposes, what criteria should be used to define an unrelated business?
We do not have specific feedback on what criteria should be used to define unrelated business. Any definition will need to be fair and clearly explained.

Q4. If the tax exemption is removed for charity business income that is unrelated to charitable purposes, what would be an appropriate threshold to continue to provide an exemption for small-scale business activities?
We support the exemption of Tier 3 and 4 charities. We also note that the range of revenue for Tier 2 charities is between $5 million and $33 million, which is a large variance.

Burnett Foundation is a Tier 2 charity, with a total revenue of $7,883,767 in 2024. The impact on the sustainability of our organisation from removing the tax exemption for charity business income is likely to be greater than a charity with a sustainable revenue of over $10 or $20 million per annum. It will be important to consider the impact on different types of charities.

Q5. If the tax exemption is removed for charity business income that is unrelated to charitable purposes, do you agree that charity business income distributed for charitable purposes should remain tax exempt? If so, what is the most effective way to achieve this? If not, why not?
Yes, charity business income distributed for charitable purposes should remain tax-exempt to encourage continued investment in charitable services and ongoing sustainability. Burnett Foundation Aotearoa provides services and support for our communities that are not currently met by the Government. As a small community-led organisation, we have proven to be efficient and adaptable at meeting the needs of our communities and can innovate quickly. As a peer-led organisation, we also have specific expertise in understanding our communities and risk populations and their needs, which could not be achieved through the government. Modelling by Price Waterhouse Coopers has identified that $175 million has been saved in lifetime costs to New Zealand over 8 years, compared to if HIV acquisition rates had remained at peak 2016 levels.

It is also important to consider the impact on charitable giving from non-charity businesses and whether any tax changes will reduce the amount they donate.

Q6. If the tax exemption is removed for charity business income that is unrelated to charitable purposes, what policy settings or issues not already mentioned in this paper do you think should be considered?
The following issues should be considered:

- **Compliance cost:** Removing the tax exemption is likely to increase the compliance cost for both IRD and charities, reducing funds available for charitable purposes. Charities already meet a high level of accountability and public transparency through the Charities Commission reporting process. This puts charities at an unfair competitive disadvantage with for-profit businesses, who do not receive the same scrutiny. As a Tier 2 registered charity, we currently provide audited accounts as part of the Charities Commission annual reporting standards, and these are publicly available. Reporting includes both financial and non-financial information to tell the story of our organisation and the activities undertaken each year to achieve our mission and purpose. We also provide annual updates to Te Whatu Ora on our public health contract and communicate our impact to the communities we serve.
- T**he labour cost of volunteers will also need to be considered**. Burnett Foundation is supported nationally by our volunteers, who provide meaningful mahi and connection to our community. This labour cost, alongside other pro-bono labour and advice, is a significant input expense and there would be an expectation that this true cost will be able to be claimed against any income tax return, like for-profit businesses. IRD would need to determine the appropriate fair labour costs.
- **Education and support.** To ensure a fair transition, there will need to be education and support for charities to apply the new rules.
- **A transition period will also need to be included** to allow charities time to adjust to any changes to their tax-free status.

Q13. If the compliance costs are reduced following the current review of FBT settings, what are the likely implications of removing or reducing the exemption for charities?
As a health service provider, removing or reducing the FBT exemption may impact our ability to compete for specialised roles with the for-profit and public health sectors. It may also increase compliance costs in accounting for any fringe benefits that may still be provided.

Q14. What are your views on extending the FENZ simplification as an option for all NFPs? Do you have any other suggestions on how to reduce tax compliance costs for volunteers?

We support the FENZ simplification to reduce tax compliance costs for volunteers.

Q15. What are your views on the DTC regulatory stewardship review findings and policy initiatives proposed? Do you have any other suggestions on how to improve the current donation tax concession rules?

We support changes that make donation tax credits more accessible to encourage charitable giving.

Burnett Foundation currently provide a tax receipt at the time of donation. An exception is for people who are part of our regular giving programme who receive a yearly donation tax receipt. There would be some system and administrative changes that would need to be made to ensure more frequent tax receipts for those who are part of the regular giving programme. We recommend that there is a transition period for charities to implement any changes.

Thank you for the opportunity to respond to this consultation on taxation and the not-for-profit sector. If you have any questions, please contact Brooke Hollingshead, Head of Policy, Advocacy and Science, on 09 303 3124 or at s 9(2)(a)

Ngā mihi,

s 9(2)(a)

Alex Anderson, Interim General Manager
Burnett Foundation Aotearoa

CHA
Community Housing Aotearoa
Ngā Wharerau o Aotearoa

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Wellington
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Ph 04 385 8722
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31 March 2025

Taxation and the not-for-profit sector
C/- Deputy Commissioner, Policy
Inland Revenue Department
policy.webmaster@ird.govt.nz

RE: 'Taxation and the not-for-profit sector' consultation paper

Who we are

1. Community Housing Aotearoa (CHA) is an Incorporated Society and a peak body for the community housing sector. To achieve our Vision of 'all New Zealanders well-housed', we have a strategic focus on supporting a responsive housing system underpinned by Te Tiriti o Waitangi and the Right to a Decent Home. We are also mindful of the broader institutional and regulatory context within which our members and other community organisations operate.
2. Our member organisations provide homes for nearly 30,000 people nationally across 26,000 homes and our partner members include developers, consultants and local councils. Community Housing Organisations are primarily registered Charities or not for dividend entities that develop, own and/or manage social and affordable housing stock, with a variety of tenure offerings.
3. CHA is a proud Tangata Tiriti organisation and works closely with national Māori housing advocate Te Matapihi, that represents iwi-based and Māori community housing organisations.

Key submission points

The taxation of charity business income should not progress any further

4. The consultation document provides no evidence of an unfair competitive advantage for charitable trading entities. The consultation document references a 'cost' to Government for the lack of taxation on Charity business income but is silent on the significant benefits provided from the income derived supporting charitable purposes. Charities already face

significant regulatory and public disclosure requirements. Any revenue derived from taxation is unlikely to equal the signification additional costs imposed on and reduction in services provided by Charities.

5. The very short time given to respond to the complex issues raised in the document is a concern. As an Incorporated Society, seeking input from our members is core to our ability to represent their common interests. Our ability to fully engage has been limited by the timing allowed for this consultation.

Responses to Consultation Questions

1. We do not believe there is any compelling reason to tax charity business income in New Zealand. For our members who are Charities providing affordable housing, potentially all their income from providing below market rate homes could be subject to tax. The practical implications from taxing charity business income are an increase in their compliance costs and less revenue to carry out their charitable purposes. The proposed taxation ignores the fact that all charity income must be used in support of their purposes, whether from business activities or other sources.

   Housing costs in New Zealand are amongst the least affordable in the OECD and further taxing this charitable activity would result in fewer homes affordable to low-income households. A likely consequence is a further rise in homelessness and higher costs shifted onto Government. We expect a similar result of reduced services resulting in higher costs to Government across a range of other charitable activities.

   The imperfections noted in 2.13 and 2.14 do not warrant taxing Charity business income. Affordable housing providers are currently disadvantaged compared to for-profit housing developers in their ability to raise equity required to develop new homes. They face the same land and building costs whilst receiving lower revenues from the affordable homes they operate. The analysis in the document ignores the benefits provided by Charities which we believe are significantly higher than any potential tax revenue.

2. The practical implications from taxing charity business income that is unrelated to charitable purposes is also likely to be significant. Apart from the difficulty of defining related and unrelated business income, this also ignores the fact that all Charity income must be deployed in support of their purposes, whether from unrelated business activities or other sources.

   If it were adopted, we see the potential for significant compliance costs to differentiate related and unrelated business income. For example, if an affordable housing provider develops a subdivision and sells a portion of the homes at market rates to subsidise the affordable homes, how would this be categorised? What if they provide tenancy management

services for a local council with a few homes rented at market rates based on the council's policies? What if a provider leases from a private landlord, delivering tenancy and property management services in exchange for a fee, but subleases these homes at below market rents to lower income families? If the provider operates an op-shop selling goods including recycled building materials amongst other items, how would related and unrelated articles be confirmed with certainty?

3. The examples in 2 above demonstrate the difficulty of establishing workable criteria to define unrelated business income. This is further confirmed in 2.21-2.24 and the fact that an interpretation statement was necessary for the more limited FBT rules. The difficulty of establishing criteria across the range of charitable organisations and activities will result in increased compliance costs, greater uncertainty and fewer services provided. Some small Charities may no longer be viable.
4. As stated above, we do not support removing the tax exemption for Charity business income, whether related or unrelated to charitable purposes. Should Government choose to proceed with taxing unrelated business income we agree with exemptions for Tier 3 and Tier 4 Charities. We also support a full exemption for other Tiers if the unrelated business income is below 25% of the organisation's income from all sources.
5. All charitable income, from every source, must be used to advance the charitable purpose of the organisation. Charities providing affordable housing need to accumulate millions of dollars to undertake even a modest sized development. Adding complicated rules about the timing of distributions and transfers to a parent entity will drive up compliance costs and reduce the amount available for charitable purposes. Providing relief for charity business income distributed for charitable purposes highlights the folly of the taxation proposal in the first place.
6. We urge caution when considering overseas examples of limited partnerships. As noted above, the development of affordable homes is capital intensive and limited partnerships are sometimes used by Charities to develop affordable homes. Structures which vest the ownership in a Charity ensuring the on-going retention of affordable homes should not be penalised. The delivery of mixed income developments reliant upon a portion of market sale homes to subsidise below market homes should also not be penalised.
7. No comment.
8. No comment.
9. No comment.
10. The current $1,000 deduction for small scale NPFs seems out of date. Revising the level to align with Tier 4 reporting requirements seems to be a reasonable starting point.
11. No comment.

12. No comment.
13. We oppose removing the FTB exemption regardless of potential reductions in compliance costs. Some of our members provide vehicles for employees to carry out their duties, including letting properties, responding to maintenance requests and property inspections. Removing the exemption will increase their costs and impact on the ability to provide affordable homes.
14. Expanding the FENZ simplification seems reasonable, so long as FENZ has found this beneficial and that there are not unintended consequences.
15. We support the policy-related recommendations to make it easier to apply for Donation Tax Credits.

Ngā mihi

s 9(2)(a)

Paul Gilberd, CEO, Community Housing Aotearoa – Ngā Wharerau o Aotearoa

31 March 2025

policy.webmaster@ird.govt.nz

Regarding: Consultation Paper on Taxing Charities and Not-for-Profits - Question 12

Dear IRD Policy Team,

This submission addresses Question 12 of the consultation paper regarding the potential removal or significant reduction of income tax exemptions, specifically concerning the local and regional promotional body income tax exemption (CW40 in the Income Tax Act).

We strongly believe that the income tax exemption for Business Associations should remain. Our reasons are as follows:

- **Community and economic development:** Business Associations play a crucial role in fostering local economic development. They invest significantly in activities that benefit the wider community, such as:
    - Promoting local businesses and attracting investment.
    - Enhancing the attractiveness of the area through beautification projects.
    - Improving public amenities.
    - Enhancing security and safety through initiatives like CCTV and security patrols.
- **Reinvestment in community safety:** Funds that would otherwise be directed towards income tax are reinvested directly into community safety measures, including CCTV systems and security personnel. These investments create a safer environment for businesses and others in the community such as residents, students and visitors, and are a vital service that would be significantly reduced if the exemption was removed.
- **Maintaining local services:** Removal of the exemption would severely limit the ability of Business Associations to provide essential services to their members and the community. This would negatively impact local economies and reduce the overall quality of life.

- **Distinct role from charities:** While some entities may apply for this exemption when unable to register as charities, Business Associations serve a distinct purpose focused on local economic development and business support, which is different from the core functions of charities.
- **Impact on small businesses:** Many small businesses rely on the activities of Business Associations. The proposed change would place a greater burden on these small businesses, negatively impacting their financial stability and growth potential.

In conclusion, the removal of the income tax exemption for Business Associations would have detrimental effects on local economies and community safety. We urge the IRD to maintain this exemption to ensure the continued support of these vital organisations.

Thank you for considering our submission.

Viv Beck
Chief Executive
Heart of the City

Address for Contact:
s 9(2)(a)

31 March 2025

Taxation and the not-for-profit sector
C/- Deputy Commissioner, Policy
Inland Revenue Department
PO Box 2198
Wellington 6140

Email: policy.webmaster@ird.govt.nz

Dear Sir/Madam

Re: Taxation and the Not-for-Profit Sector

The Employers and Manufacturers Association (EMA) is almost certainly New Zealand's largest business association with our 7,000 plus members employing at least 20% of the country's workforce.

We are an industry good organisation that will celebrate its 140th anniversary in 2026 and have always existed for the benefit and improvement of our members and the by default the greater good for New Zealand business.

That is achieved through our advocacy for the business community and through our ER, consulting, H&S, legal, adviceline, learning and membership services all designed to help businesses improve their compliance with multiple New Zealand employment laws, make their workplaces safer and improve the productivity of their workers while reducing or minimising compliance and business costs.

Most importantly for this submission we also number more than two hundred charities, not-for-profits, and associations in our membership base.

Our services are offered to them at special member rates to consider their low revenues and status, a position we would almost surely revisit if our compliance and tax costs changed for the worse.

Inland Revenue's revised position is a major surprise to associations although it has been flagged for some business-oriented charities for some time.

The current tax treatment of mutual associations has been in place for a long time and if Inland Revenue now takes a differing view an amendment should be made to reinstate membership subscriptions as non-taxable income.

International jurisdictions also recognise the value of tax-exempt status for not-for-profit business associations reflecting their economic and social benefits to members and society in general.

It also seems odd that there would be different tax treatments for different types of not-for-profit organisations with sports clubs etc continuing to be tax-exempt. Clubs and associations reinvest in their services or communities rather than generating profits.

It should also be noted that many in the associations sector and facing long, slow downturns in membership – therefore revenues – and struggle to generate revenues that cover costs.

Most rely on events, such as sector conferences, or specific sector training qualifications or education programmes to make ends meet.

While the consultation paper has a focus on charities most incorporated societies exist to support industries, professions, and communities in ways that directly align with charitable objectives.

Our view is that the review of tax exemptions should protect mutual organisations and professional associations that reinvest all revenue into member services and public-benefit activities.

Compliance costs are also an issue as increasing regulatory and tax obligations are challenging for many charities and incorporated societies.

As noted above many incorporated societies have multiple revenue streams. The proposal to tax member subscriptions would impose a new measure that will add to financial and time burdens of compliance.

The most likely outcome being that Associations will change their internal systems to apply all costs against running the membership but then having the time and possible financial cost of separating all those transactions from other revenue streams and their associated costs.

For those organisations carrying out industrial and scientific and regional development activities for significant public good, we believe the emption should remain especially as they are not-for-profit basis.

Finally, the proposal to no longer allow the accumulation of funds for could cause hardship for associations that often build reserves to cope for the difficult years when member companies are struggling and review their memberships – dropping those memberships.

There are also groups who engage in long term funding projects for buildings, community and sports centres, churches etc who would be significantly disadvantaged by such an interpretation.

Regards

Alan McDonald

EMA Head of Advocacy, Strategy and Finance

s 9(2)(a)

Paul Conder, C.M.Inst.D., C.A., B.Com.,
s 9(2)(a)
Email: s 9(2)(a) Phone: +64 s 9(2)(a)

31 Poutū-te-rangi | March 2025

The Commissioner
Inland Revenue
Submitted via email/website

Tēnā koe | Dear Commssioner

Submission: Taxation and the not-for-profit sector

Thank you for the opportunity to comment on the Officials Paper entitled: "Taxation and the not-for-profit sector".

This submission is made by myself and my wife Ruth Conder. As a family we are involved in charitable work through our association with the Salvation Army and we make both regular and irregular donations to various recognised charities.

We support Aotearoa having a broad tax base and simplified compliance systems. We suggest there is much to be gained from ensuring businesses pay a fair proportion of tax and that we as a country need stronger rules to avoid corporates shifting profit offshore though excessive supplier, licencing or management fees.

In the case of changes to the not-for-profit sector, we advise a cautious approach to making changes to the current regime to avoid any unintended consequences to the ability of true charities to deliver social benefit to kiwis.

Aotearoa New Zealand already has a welfare system that supports many businesses that pay below a living wage through things like the working for families regime. Many of these are the same businesses that complain about the playing field of charities.

Reducing charity income by taxing business units within those charities will put further burden on taxpayers to support families, where this support is currently subsidised by the charities or the broader NFP sector.

For example, taxing the Salvation Army or Seventh Day Adventists business units could significantly reduce their charitable reach, requiring the gap to be made up by Te Kāwanatanga o Aotearoa and ultimately taxpayers.

We suggest that taxing charities in this way would be the Inland Revenue taking a tax pure approach at the expense of the wide social wellbeing outcomes of government. It would in all likelihood penalise the most vulnerable kiwis through reduced charitable services.

In summary we:

- Do not support changes to the current core charity regime that would see for-profit business units of charities taxed.
- Do support stronger rules on donor-controlled charities and foundations.
- Do not support clubs and other member based associations being taxed if their long-term purpose is not to make a profit.

- If the FBT system were simplified then we would support all employees ultimately being treated similarly.
- However, we do suggest a grandparenting of existing FBT exemptions for current employment contracts at the time of announcment.
- We strongly support continuation and improvements to the donation tax concessions and believe these should be more widely promoted by IRD.
- We do not support charities collecting individual information to support IRD systems. This would add to the compliance burdens and risks of charities around privacy of this information.

Attached is our responses to the specific questions.

If you have any questions please do not hesitate to contact us on s 9(2)(a) Paul) or s 9(2)(a)

Nāku noa, na | Yours sincerely

s 9(2)(a)

Paul Conder

Responses to specific questions

Chapter 2: Charities business income tax exemption

Q1. What are the most compelling reasons to tax, or not to tax, charity business income? Do the factors described in 2.13 and 2.14 warrant taxing charity business income?

No.

The most compelling reasons not to tax charitable entities remain the overall social wellbeing of kiwis. Taxing charities means less funding will be available to deliver social good and this burden ultimately falls to the taxpayer in other forms.

While some arguments do exist to tax business units of charities these are well outweighed by the arguments not to.

Many charities already provide very high proportions of any business income to their target beneficiaries.

Q2. If the tax exemption is removed for charity business income that is unrelated to charitable purposes, what would be the most significant practical implications?

This would see a social burden fall on the taxpayer as charities adjust the level of support they can provide.

Q3. If the tax exemption is removed for charity business income that is unrelated to charitable purposes, what criteria should be used to define an unrelated business?

It should not be removed.

If it is, the definition needs to be broad and reflect who benefits from the charity and alignment to the business unit. For example, people buying donated goods in the Salvation Army family stores have a high alignment with the beneficiaries of their social services programmes run from the funds raised.

Q4. If the tax exemption is removed for charity business income that is unrelated to charitable purposes, what would be an appropriate threshold to continue to provide an exemption for small-scale business activities?

It should not be removed.

If it is, then at least $100,000 preferably $5m.

Q5. If the tax exemption is removed for charity business income that is unrelated to charitable purposes, do you agree that charity business income distributed for charitable purposes should remain tax exempt? If so, what is the most effective way to achieve this? If not, why not?

Yes – either via the DTC or operated in a way like the imputation tax credit regime.

Q6. If the tax exemption is removed for charity business income that is unrelated to charitable purposes, what policy settings or issues not already mentioned in this paper do you think should be considered?

The DTC should be strengthened to ensure all donations between the for-profit unit and the primary charity are credited as these will be made from tax paid retained earnings (alternatively this could operate like the current imputation credit regime).

Chapter 3: Donor-controlled charities

Q7. Should New Zealand make a distinction between donor-controlled charities and other charitable organisations for tax purposes? If so, what criteria should define a donor-controlled charity? If not, why not?

Yes

The definition could include elements of

1. **the primary purpose and the time this purpose is to be fulfilled**
2. **the level of control exercised by the original donors or their relatives and employees (including effective control)**
3. **the nature and type of beneficiaries (e.g. whether the Aotearoa public benefit or limited to particular groups)**

Q8. Should investment restrictions be introduced for donor-controlled charities for tax purposes, to address the risk of tax abuse? If so, what restrictions would be appropriate? If not, why not?

Yes – similar to Australia or Canada

Q9. Should donor-controlled charities be required to make a minimum distribution each year? If so, what should the minimum distribution rate be and what exceptions, if any, should there be for the annual minimum distribution? If not, why not?

Yes – at least 5-8% (actuarily this still allows a long-term sustainable approach) with some exemption allowed via application to the Commissioner IRD. The Commissioner could also make a blanket exemption for all such donor controlled charities (e.g. during a financial crisis like 2008).

Chapter 4: Integrity and simplification

Q10. What policy changes, if any, should be considered to reduce the impact of the Commissioners updated view on NFPs, particularly smaller NFPs? For example:

- increasing and/or redesigning the current $1,000 deduction to remove small scale NFPs from the tax system,
- modifying the income tax return filing requirements for NFPs, and
- modifying the resident withholding tax exemption rules for NFPs.

We support a simplified regime where membership fees and subscriptions are revenue (not capital).

We support simplified income tax return filing for all small entities including NFPs and small businesses. This could include lifting the NFP deduction limits to reflect inflation.

We support the continuation of the charitable status of NFPs where there is no intent to make a profit long-term and no provision to wind up the NFP with benefit to members.

Some allowance needs to be made for reasonable profits that allow reinvestment into the assets of the NFPs.

Where the NFPs primary purpose is either a business or the personal benefit of their members/donors then we support the removal of the charitable exemption.

For those NFPs whose primary purpose is charitable to the general public then the exemption should continue under chapter two above.

Q11. What are the implications of removing the current tax concessions for friendly societies and credit unions?

We support the removal of the exemption for friendly societies and credit unions where their primary purpose is either a business or the personal benefit of their members.

For those whose primary purpose is charitable to non-members then the charitable exemption should continue under chapter two above.

Income tax exemptions

Q12. What are the likely implications if the following exemptions are removed or significantly reduced:

- local and regional promotional body income tax exemption,
- herd improvement bodies income tax exemption,
- veterinary service body income tax exemption,
- bodies promoting scientific or industrial research income tax exemption, and
- non-resident charity tax exemption?

We do support the continuation of the scientific or industrial research exemption but not that many such organisations receive an interest in commercial activities from successful research and the exemption should not be extendable to these enterprises.

We are neutral on the remainder.

FBT exemption

Q13. If the compliance costs are reduced following the current review of FBT settings, what are the likely implications of removing or reducing the exemption for charities?

Ultimately, if IRD continues to simplify the FBT system, and to tax true benefits only, then we would support the exemption being removed and all employees being treated the same.

We do suggest that the existing FBT exemption for charities be grand parented for the existing term of an employment contract at the time this change is made to avoid penalising NFPs or charities.

Tax simplification

Q14. What are your views on extending the FENZ simplification as an option for all NFPs? Do you have any other suggestions on how to reduce tax compliance costs for volunteers?

Why the scheduler and PAYE systems are not combined remains a mystery to us. We support continued simplification of these two systems.

Q15. What are your views on the DTC regulatory stewardship review findings and policy initiatives proposed? Do you have any other suggestions on how to improve the current donation tax concession rules?

We support the DTC continuing and being promoted further by Inland Revenue.

The majority of our one off donations are made early in a tax year so decoupling the credit from income would be excellent as it can take up to 18 months to get a credit. All monies we receive via the DTC are donated when the credit is received.

We do not support the IRD being able to collect information from donee organisations as this puts a significant burden on those organisations in collecting and storing the information securely. There are result cyber and privacy risks that would requirement system upgrades and management.

We support either the three month grace period for charities and donors or all status changes taking effect at the start of a tax year (1 April).

In the event that for profit charitable business units became taxable, then the donations would need to be supported by the DTC to ensure a reduced impact on charities.

New Zealand Law Society
Te Kāhui Ture o Aotearoa

31 March 2025

Deputy Commissioner, Policy
Inland Revenue

By email: policy.webmaster@ird.govt.nz

Tēnā koe,

Officials' Issues Paper: Taxation and the Not-For-Profit Sector

Introduction

1. The New Zealand Law Society Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to comment on Inland Revenue (**IR**) officials' issues paper: Taxation and the Not-for-Profit-Sector (the **Issues Paper**).

2. This submission has been prepared with input from the Law Society's Tax Law Committee.

Charities Business Income Tax Exemption (Ch 2)

Question 1: What are the most compelling reasons to tax, or not to tax, charity business income? Do the factors described in 2.13 and 2.14 warrant taxing charity business income?

3. In the Law Society's view, and as explained in more detail below:

   (a) Competitive advantage is not a compelling reason to tax business income derived by charities.

   (b) The fundamental issue is not whether business income derived by charities is taxed, but rather whether the Government remains satisfied it is appropriate to support charities through tax concessions. This would require a first principles review of the Charities Act 2005 (**Charities Act**) and the definition of "charitable purposes".

   (c) The factors described at 2.13 and 2.14 of the Issues Paper are not wholly accurate.

Competitive advantage is not a compelling reason to tax charity business income

4. The reason most commonly advanced for taxing business income derived by charities is that an income tax exemption provides charities with a competitive advantage over taxpaying businesses. It is suggested this advantage allows charities to engage in predatory pricing, and to accumulate more funds so they can expand more quickly than taxpaying businesses.

5. However, this theory that an income tax exemption for charity business income provides a competitive advantage has been considered and rejected on several occasions in both Australia and New Zealand.

Fundamental issue is whether it is appropriate to support charities through tax concessions

6. The proposal to tax charity business income overlooks the key reason why there are income tax exemptions for charities in the first place, which is to support charities to advance their publicly beneficial charitable purposes by removing income tax compliance and tax costs for charities. The Law Society submits that the fundamental issue is not how a charity raises funds for its charitable purposes, and whether business income derived by charities should be taxed, but rather whether the Government remains satisfied it is appropriate to support charities through tax concessions.

7. Addressing that question would require a first principles review of the Charities Act and the definition of "charitable purposes", which the Law Society submits is now long overdue. It would require review of the nature of the purposes which the Government accepts are charitable purposes, and consideration of the value to the Government of supporting charities.

8. To that end, the Law Society notes that charities provide services that are of public benefit to New Zealand and New Zealanders which, if not provided by those charities, would need to be provided by the Government, potentially less efficiently and at a greater cost, or otherwise would not be provided either at all or to the same level, to New Zealand's detriment. Further systems impacts are noted throughout this submission.

Factors described in 2.13 and 2.14 of the Issues Paper

9. While charities do not face compliance costs associated with income tax obligations, they do in relation to other taxes (including GST) and in relation to maintenance of their registration as charities. In particular, charities are required to prepare financial statements and file annual returns with Charities Services. There is arguably no advantage in charities not being required to submit income tax returns, when they face similar compliance costs to maintain their status as registered charities. Indeed, if charities were to become subject to income tax on business income, they would be disadvantaged relative to taxpaying businesses, as they would face compliance costs associated with meeting their tax obligations along with compliance costs associated with maintaining registration as a charity.

10. The Law Society agrees that any perceived advantage in charities being able to accumulate funds more quickly (and, therefore, avoid costs associated with raising external capital) is offset by the fact that charities cannot raise equity capital, and so are more reliant on income generated from their own activities, including carrying on businesses, to fund their operations and growth.

Question 2: If the tax exemption is removed for charity business income that is unrelated to charitable purposes, what would be the most significant practical implications?

11. If the income tax exemption for business income derived by charities is removed for "unrelated" business income, charities may cease carrying on such business as a means of raising funds for their charitable purposes. Instead, they may raise funds in other ways, including "related" business activities, fundraising, passive investment, and soliciting donations and bequests. It is therefore possible (even likely) that removing the business income exemption for charities' "unrelated" business income will not result in any significant

increase in tax revenue. It may adversely impact on productivity and wellbeing in the community through reducing employment and volunteering opportunities.

12. If charities continue to carry on businesses, whether because the business activity directly furthers charitable purposes or to raise funds to further charitable purposes (or both), then taxing "unrelated" business income would reduce the funds available to apply to those charitable purposes. Further, funds that would otherwise be available to be applied to charitable purposes would need to be spent on meeting the increased compliance obligations associated with taxing charities' "unrelated" business income, including:

    - determining whether the charity is carrying on a "business" and, if so, which activities constitute a "business";
    - assessing whether any business activities are "related" or "unrelated";
    - calculating the charity's taxable income, including the apportionment calculations which would be required to identify the extent to which expenditure and loss relates to the "unrelated" business for tax deductibility purposes, and also determining the extent to which such income has been distributed or applied for charitable purposes (as discussed later);
    - preparing and filing income tax returns; and
    - if applicable, maintaining a memorandum or similar account recording credits for tax paid, for which a refund could be claimed when funds are subsequently distributed or applied for charitable purposes (as discussed later).

13. Further practical implications may arise in relation to charities having to transition from being exempt to taxable in relation to their "unrelated" business income, including:

    - identifying, and determining charities' initial cost base for, assets wholly or partly used in any "unrelated" business activities; and
    - restructuring charities' operations (for example, separating business, or "unrelated" business, activities from other activities by shifting the business activities to a standalone entity), which may be done in order to deal with some of the practical implications noted above and to shift "unrelated" business activities out of charitable trust structures that would be taxed at 39% in relation to any trustee income.

14. As noted above, any additional tax revenue received by taxing the "unrelated" business income of charities would presumably be offset (if not outweighed) by the need for increased Government funding to meet social needs currently met by charities and/or by the adverse effects of those social needs no longer being met (or met to the same level). Consideration should be given to these practical implications, including whether Government can meet those needs better and more efficiently than the charitable sector.

Question 3: If the tax exemption is removed for charity business income that is unrelated to charitable purposes, what criteria should be used to define an unrelated business?

15. The Law Society notes that no income derived by a charity is "unrelated to charitable purposes". The very nature of a charitable organisation is that it is established for charitable

purposes and, accordingly, all of its activities, fundraising or otherwise, are limited by the overarching requirement that they further the charity's charitable purposes. As noted in relation to our comments on Question 1, focusing on the means by which charities raise funds to advance their charitable purposes obfuscates the real issue, which is the effectiveness of the charitable sector in advancing publicly beneficial charitable purposes.

16. If, however, the proposal to tax "unrelated business income" proceeds, the Law Society submits that "unrelated business" should be defined to *exclude*:

    - businesses which directly or indirectly contribute to furthering the charity's charitable purposes;
    - businesses which do not face competition, so the issue of perceived competitive advantage (including the ability to accumulate funds for growth more quickly) does not arise; and
    - businesses where all or most of the competition is other charities.

17. Each of those categories of business that should be excluded from "unrelated business" is discussed briefly below.

    Businesses which directly or indirectly contribute to furthering charitable purposes

18. The Issues Paper helpfully confirms that businesses (or at least business-like activities) which directly further charitable purposes, such as charity schools and charity hospitals, are not the target of the review and would be treated as "related", not "unrelated", businesses.

19. Many charities also carry on business activities that, by their nature or because of the manner in which they are carried on, indirectly further their charitable purposes. For example, some charities run training facilities as businesses to increase the supply of skilled workers to further their charitable purposes. If charities were disincentivised from carrying on such businesses, this would hamper charities' ability to further their charitable purposes. Accordingly, the Law Society submits that businesses which directly or indirectly relate to carrying out charitable purposes should be excluded from the definition of "unrelated business".

20. In other words, "unrelated business" should be limited to business activities undertaken solely to generate profit to be distributed or applied to furthering charitable purposes, where the business itself (taking into account the nature of the business and the manner in which it is carried on) does not directly or indirectly contribute to furthering charitable purposes.

    Businesses which do not face competition

21. The apparent driver for considering the removal of the income tax exemption for charities' "unrelated" business income is to remove the competitive advantage that charities allegedly enjoy over taxpaying entities. As noted above, the competitive advantage argument for taxing charities' business income is not well-founded and has been considered and rejected previously in Australia and New Zealand.

22. That alleged competitive advantage would not in any event arise in relation to charities' investment activities, as a charity is not competing with taxpaying businesses by investing

funds. As such, the Law Society submits that a business of investing should be excluded from any "unrelated businesses" that are subject to income tax.

23. The Law Society notes that many charities hold significant investments to generate income to support their charitable purposes. To manage these investments prudently (in accordance with applicable fiduciary obligations, including in the case of charitable trusts the obligations imposed on trustees under section 30 of the Trusts Act 2019), a certain level of activity, including changes in investments, is required.

24. Repealing the business income exemption for charities' "unrelated" business income would introduce boundary issues around whether investment activity carried on by charities (and, in particular, larger charities) constitutes a business of investing. The boundary between passive investment activities and a business of investing is a question of fact and degree, and repealing the income tax exemption for charities' "unrelated" business income would result in funds that could otherwise be applied for charitable purposes being used to pay for advice on whether the charity is carrying on a business of investing. It would also introduce an element of business risk, as IR may not agree with a charity's view on whether it is carrying on a business of investing.

25. Taxing income arising from a business of investment carried on by charities could unfairly disadvantage large charities that hold significant funds, and which require active management. It may also result in such charities having to consider changing their investment strategy, for example to invest their funds in a non-diversified portfolio or even a single investment, on account of the differing income tax treatment of business versus non-business investment activities, while at the same time complying with their duty to invest prudently. Further, incentivising charities to invest in a non-diversified portfolio may increase risk and/or lower investment returns, resulting in charities having less funds to further their charitable purposes.

Businesses where all or most of the competition is other charities

26. The Law Society submits that the definition of "unrelated business" should exclude businesses where all or most competitors are other charities. As an apparent driver for the repeal of the charity business income exemption is the perceived competitive advantage that charities enjoy, there is no need to repeal the income tax exemption for businesses where all or most competitors are other charities. For example, some large charities operate "op shops" (which are typically managed by paid employees, but also rely on volunteers) to generate funds to support their charitable purposes. There is no good policy reason for taxing such income, and doing so would result in a reduction of funds that could then be applied to those charities' charitable purposes.

27. Charity fundraisers such as fundraising dinners, auctions, and lotteries/raffles, which in some cases might be viewed as businesses (or at least business-like activities) but really only involve a charity "competing" with other charities and the like for the public's philanthropic support, should similarly be excluded from the definition of "unrelated business".

Question 4: If the tax exemption is removed for charity business income that is unrelated to charitable purposes, what would be an appropriate threshold to continue to provide an exemption for small-scale business activities?

28. As noted above, there would be significant practical implications for charities if the tax exemption for charities' "unrelated" business income were to be removed, including transitional and ongoing compliance issues and costs. The Law Society submits that if the tax exemption for charities' "unrelated" business income were to be removed, those practical implications should be taken into account and would warrant a reasonably high threshold for taxing "unrelated" business income, so that only larger charities with substantial "unrelated" business activities would be required to deal with those practical implications.

29. Any such threshold should also be clear and simple for charities to apply, as in the case of the Issues Paper's suggested exclusion of Tier 3 and 4 charities under the Charities Act. That exclusion would not, however, be sufficient by itself, as there may be Tier 1 and 2 charities that do not have substantial "unrelated" business activities and should also be excluded.

Question 5: If the tax exemption is removed for charity business income that is unrelated to charitable purposes, do you agree that charity business income distributed for charitable purposes should remain tax exempt? If so, what is the most effective way to achieve this? If not, why not?

30. The Law Society submits there is no sound basis to disincentivise the accumulation of funds in charities. Charities operate under considerable restrictions, which:

    - limit their activities to those that further their charitable purposes;
    - require that all funds be applied to further those charitable purposes; and
    - prohibit the application of funds for the private pecuniary profit of any person.

    As such, all of a charity's business income, whether distributed or retained, is held or applied for its charitable purposes, and should be exempt from income tax.

31. If, notwithstanding the above, the proposal to tax charities' "unrelated" business income proceeds, the Law Society submits that such business income should remain exempt from income tax where it is distributed *or applied* for charitable purposes. The requirement that funds be "distributed" for charitable purposes presupposes that the business is carried on by a separate entity to the entity that directly advances the charitable purposes. That is not always the case.

32. If a charity carries on an "unrelated" business activity and also other activities that further the charity's charitable purposes, then there will be no "distribution" of funds, as such. Rather, any "unrelated" business income may be applied directly to further charitable purposes by the entity which carries on the business. The Law Society submits that "unrelated" business income which is applied in this way should continue to be exempt from income tax. This outcome could be achieved by allowing a deduction equal to the amount of income applied to charitable purposes.

33. The Law Society further submits that "unrelated" business income is applied for charitable purposes, and so should be exempt from income tax, where it is "earmarked" for a specific

charitable use, and where is it held for future use for a charitable purpose which is not specifically identified. For example, if a charity is raising funds to build new premises (e.g. a charity hospital), and accumulating unrelated business income for this purpose, these funds are applied for the charitable purpose by being set aside to be spent at some future date on a charitable purpose. This is consistent with the definition of "applied" in IS 18/05.[1] Similarly, funds held for an unspecified future use for a charitable purpose are "applied" to the charitable purpose, under the definition of "applied" used in IS 18/05.

34. The Law Society also notes it is prudent for charities to retain funds so they are protected from unexpected liabilities, downturns in business etc, so they can continue to further their charitable purposes on an enduring basis. A tax system that encourages a charity to spend and/or distribute all of its unrelated business income rather than retaining funds when it would be prudent to do so, risks encouraging an irresponsible approach and increases the risk of charities ceasing to exist.

35. If the income tax exemption for charities' "unrelated" business income is repealed, in addition to allowing a deduction for funds distributed or applied for charitable purposes in an income year, a mechanism would be needed to address situations where taxed business income is distributed or applied for charitable purposes in a subsequent income year. This may be achieved, for example, by a memorandum account with refundable credits which can be claimed in an income year when the funds are distributed or applied for a charitable purpose.

Question 6: If the tax exemption is removed for charity business income that is unrelated to charitable purposes, what policy settings or issues not already mentioned in this paper do you think should be considered?

36. The Issues Paper refers, but only in a footnote, to the non-refundability of imputation credits for charities. The non-refundability of imputation credits for charities means that their investments in domestic equity (in taxable companies) are effectively taxed, at the 28% company tax rate. This impacts on charities' investment decisions, disincentivising domestic equity investments.

37. The Law Society submits that making imputation credits refundable for charities, equivalent to the existing treatment of Māori authority credits which are refundable to charities that receive Māori authority distributions with such credits attached, should be considered. Taxable companies would then more likely be considered as an option for charities' involvement in "unrelated" businesses to support their charitable purposes.

Donor-Controlled Charities (Ch 3)

Question 7: Should New Zealand make a distinction between donor-controlled charities and other charitable organisations for tax purposes? If so, what criteria should define a donor-controlled charity? If not, why not?

38. The Law Society submits that a distinction between "donor-controlled charities" and other charities may not be warranted, because:

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1 Inland Revenue (2018), IS 18/05 'Income tax — donee organisations — meaning of wholly or mainly applying funds to specified purposes within New Zealand'.

- the existing New Zealand legal regime for registered charities, including the legislative and common law duties imposed on charities and their boards and officers, and provisions relating to registration, reporting, monitoring, investigations, exchange of information, and the initiation of proceedings and other actions in respect of charities under the Charities Act, the Charitable Trusts Act 1957 and revenue legislation, is already comprehensive and robust, and applies equally to donor-controlled charities;

- amongst other things, that existing legal regime for registered charities includes considerable oversight by Charities Services under the Charities Act, upon registration and on an ongoing basis (including receipt of annual reports including financial statements and related party disclosures), and also specific "control restrictions" (targeted at settlors/donors, trustees, shareholders, and directors of charities, and their associates) that must be met for any of a charities' business income to be tax-exempt;

- the types of examples of potentially inappropriate related party transactions and misapplication or non-application of charity funds noted at 3.6 of the Issues Paper are not exclusive or specific to donor-controlled charities, and the existing legal regime for registered charities already covers such examples and enables relevant authorities, and in particular Charities Services and IR, to investigate and if appropriate take action in relation to all of those examples; and

- as discussed below in response to Questions 8 and 9, there are also issues with the types of potential requirements for donor-controlled charities raised in the Issues Paper.

39. The Law Society also understands that although some overseas jurisdictions have implemented requirements specifically for donor-controlled charities, they have done so in circumstances where such charities have not already been subject to any regime equivalent to the existing New Zealand legal regime for registered charities.

Question 8: Should investment restrictions be introduced for donor-controlled charities for tax purposes, to address the risk of tax abuse? If so, what restrictions would be appropriate? If not, why not?

40. For the reasons noted above, the Law Society considers prescriptive restrictions on investments and other transactions or arrangements for donor-controlled charities may not be warranted. A charity and its board and officers are already legally required to ensure investments and other transactions are prudent and in the best interests of the charity and its charitable purposes, and are not entered into on non-arm's length terms (unless such terms favour the charity and its charitable purposes), and to identify and appropriately manage conflicts and related party transactions.

41. The Law Society also notes that prescriptive restrictions on investments and other transactions or arrangements, for donor-controlled charities or any other charities, may run the risk of precluding transactions or arrangements that are in the best interests of a charity and its charitable purposes. For example, prohibiting or restricting related party transactions may inappropriately affect a charity's ability to enter into related party transactions on non-arm's length terms *favouring* the charity (which are common).

Question 9: Should donor-controlled charities be required to make a minimum distribution each year? If so, what should the minimum distribution rate be and what exceptions, if any, should there be for the annual minimum distribution? If not, why not?

42. The Law Society does not agree donor-controlled charities should be required to distribute a minimum percentage of their assets each year to charitable purposes, to continue to be eligible for the tax concessions available to charities generally. As noted in our comments on Question 5 above, we do not consider there is a sound basis on which to disincentivise the accumulation of funds by charities, given they may accumulate funds for a number of genuine reasons, are required to apply all funds in furtherance of their charitable purposes, and are prohibited from applying funds for the private pecuniary profit of any person.

43. Charities registered under the Charities Act are already subject to considerable oversight by Charities Services, and larger charities are required to justify why they have retained funds in their annual returns. The Law Society expects that Charities Services will investigate charities (including but not limited to donor-controlled charities) that provide unsatisfactory responses to questions in annual returns concerning the accumulation of funds, which could ultimately lead to the charity being deregistered (so ceasing to be a "tax charity" for income tax purposes). The spectre of the so-called deregistration tax in section HR 12 of the Income Tax Act 2007 (**ITA**) is also effective in ensuring that charities comply with their obligations under the Charities Act.

44. Imposing minimum distribution requirements on charities also runs the risk of such requirements becoming a target rather than a minimum (disincentivising higher distributions by charities) or being set too high (requiring charities to make unsustainable distributions).

45. If, notwithstanding the above, donor-controlled charities are subjected to minimum distribution requirements each year, the Law Society submits that the minimum distribution rate should be a percentage of the charity's income (before distributing or applying its income to charitable purposes), and not a percentage of the value of the charity's assets.

46. Requiring charities to distribute a minimum percentage of the value of their assets each year could result in charities adopting risky investment practices (which could lead to a significant loss of funds), particularly when interest rates are low, so that they would have sufficient income to meet the minimum distribution percentage. While in theory some charities could apply capital to supplement income to meet the minimum distribution percentage, the capital of many charities is tied up in capital assets that cannot easily be liquidated (e.g. buildings), and the rules of some charities prevent them from distributing capital.

Integrity and Simplification (Ch 4)

Question 10: What policy changes, if any, should be considered to reduce the impact of the Commissioner's updated view on NFPs, particularly smaller NFPs? For example, increasing and/or redesigning the current $1,000 deduction to remove small scale NFPs from the tax system.

47. The Law Society does not agree with IR's updated view on the application of the common law mutuality principle to not-for-profit entities (**NFPs**), as outlined in the Issues Paper with

reference to IR's unreleased draft operational statement on mutuality and mutual associations.

48. The Law Society understands that IR's updated view is premised on the wording of section CB 33 of the ITA, which provides that an amount derived by a mutual association that would be income but for the mutual character of that receipt is deemed to be income of the mutual association. IR's previous view was that the common law mutuality principle still applied to NFPs, as the statutory regime relating to mutual associations (originally in section 199 of the Income Tax Act 1976, and subsequently subpart HF of the Income Tax Act 1994) was necessarily restricted to mutual associations which were able, under their rules, to make distributions to members.[2]

49. The Law Society agrees with IR's previous view on the application of the common law mutuality principle and considers that the rewrite of the ITA (and, in particular, the adoption of the gross global basis of taxation) has obscured the fact that the statutory regime for the taxation of mutual associations was never intended to apply to NFPs.

50. That said, the Law Society acknowledges that in *Coleambally Irrigation Co-operative Ltd v C of T*,[3] Hill J held that sinking fund levy contributions paid by members to a co-operative were taxable, even though they appeared to be of a mutual nature, because the co-operative's rules prohibited the distribution of any surplus or share capital to members (other than the nominal value of shares) on winding up, so there was no 'complete identity' between the contributors and the participants.

51. To overcome this problem (i.e. the need for a 'complete identity' between a mutual association and its members) for the common law mutuality principle to apply, the Law Society considers that a specific income tax exemption should be enacted, along the lines of the income tax exemption that currently applies to friendly societies (including credit unions) in section CW 44 of the ITA, which would apply to NFPs (as defined) generally, and for the avoidance of doubt would override sections CB 33 and CB 34 of the ITA. If the taxation of NFPs was addressed in this manner, it would no longer be necessary to retain the specific exemption for friendly societies (including credit unions) in section CW 44 of the ITA.

52. In terms of the $1,000 tax deduction for NFPs in section DV 8 of the ITA, the Law Society surmises that when the original $500 income tax exemption was enacted in 1972, Parliament intended the income tax exemption would apply alongside the common law mutuality principle, so that NFPs would be exempt from filing income tax returns unless their investment income, when combined with any business income derived outside their circle of membership, exceeded the $500 threshold. The Law Society notes the $500 income tax exemption was increased to $1,000 in 1979 but has not been increased since. If the income tax exemption (now an income tax deduction) was increased in line with inflation since 1979, then the income tax deduction should be reset to somewhere between $6,500

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2 The Law Society notes that the Incorporated Societies Act 2022 does not permit incorporated societies to make distributions to members, including on winding up. See definition of 'not for profit entity' in section 5(3) of the Incorporated Societies Act.

3 [2004] FCA 2.

and $7,000.[4] The Law Society suggests the income tax exemption be increased to at least $5,000, so it will not be necessary to increase that limit again for a number of years.

53. The Law Society notes that even if a specific income tax exemption exempting NFPs on amounts received from mutual transactions is enacted, small NFPs that do not carry on transactions outside their circle of membership but derive a modest amount of investment income will still be required to file income tax returns, even though the maximum deduction permitted under section DV 8 of the ITA will mean that that the NFP will not be required to pay income tax. The Law Society suggests it may be worth IR considering whether, where an NFP's income (after excluding transactions of a mutual character) is less than the revised maximum deduction under section DV 8 of the ITA, the NFP should not be required to file an income tax return. This would minimise compliance costs both for NFPs and Inland Revenue, and while we acknowledge it would also mean IR has limited data for the purposes of monitoring, it would likely reflect the current state of affairs: the Law Society understands many small NFPs do not currently file income tax returns under the mistaken belief they are not currently required to file income tax returns.

Question 11: What are the implications of removing the current tax concessions for friendly societies and credit unions?

54. As noted above, if the taxation of NFPs was addressed in the manner suggested in the Law Society's answer to Question 10, then it would no longer be necessary to retain the specific exemption for friendly societies (including credit unions) in section CW 44 of the ITA.

Question 12: What are the likely implications if the following exemptions are removed or significantly reduced: local or regional promotional body income tax exemption; herd improvement bodies income tax exemption; veterinary service body income tax exemption; bodies promoting scientific or industrial research income tax exemption; and non-resident charity tax exemption?

Exemptions other than the non-resident charity tax exemption

55. In relation to the local or regional promotion body, herd improvement body, veterinary service body and scientific or industrial research body income tax exemptions, the Law Society notes that these exemptions and also other exemptions (such as the amateur sport promoter and community housing entity exemptions) apply to entities that:

- may not be charitable in a strict charity law sense or for Charities Act registration purposes (in some cases, on account of the particular approach taken by Charity Services and the Charities Registration Board to charitable status); but
- may nonetheless, like charities, be viewed as furthering purposes, in accordance with the relevant exemption's terms and on a not-for-private-profit basis, that deliver services and outcomes that are of public benefit to New Zealand and New Zealanders.

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4 The Reserve Bank of New Zealand's Inflation Calculator, suggests that $1000 in Q1 of 1979 would now be worth (at Q4 of 2024) $7,590.73, based on general CPI inflation. Accessed via https://www.rbnz.govt.nz/monetary-policy/about-monetary-policy/inflation-calculator, as at 31 March 2025. The range specified at para 52 reflects that the figure changes marginally depending on which quarter of 1979 is selected. For Q4, the cost would today be $6,661.87.

56. For example, the Law Society understands that the local or regional promotion body exemption is currently applied to various not-for-profit entities that are focused on enabling economic development and/or improving infrastructure and facilities/amenities for the benefit of the public in cities and districts throughout New Zealand.

57. If the concern with such exemptions is that eligible entities are not subject to any registration, reporting and monitoring regime equivalent to the Charities Act regime for registered charities (unless they are registered charities as well), then that concern could be addressed by requiring eligible entities to comply with such a regime, rather than by removing the exemptions.

58. If the concern with such exemptions is whether the purposes furthered by entities eligible for the exemptions continue to warrant support by way of tax concessions, then this should be reviewed on an exemption-by-exemption basis. Any such review should take into account the extent to which such entities provide services that are of public benefit to New Zealand and New Zealanders which, if not provided by those entities, would need to be provided by the Government, potentially less efficiently and at a greater cost, or otherwise would not be provided at all or to the same level, to New Zealand's detriment.

59. The Law Society also notes that if any of the exemptions were to be removed, the practical implications for entities that currently apply the exemptions. in terms of transitioning from being exempt to taxable, would also need to be considered. In many if not most cases, such entities will have been structured as not-for-private-profit entities with entrenched purposes and restrictions on the use of their funds to be eligible for the exemptions.

Non-resident charity exemption

60. In relation to the non-resident charity tax exemption, the Law Society notes that the distinct treatment of non-resident charities that further their charitable purposes overseas, which requires such charities to obtain IR approval of "tax charity" status for their New Zealand source non-business income to be tax-exempt rather than register under the Charities Act, has arisen because of a narrow, territorial interpretation of the Charities Act.

61. An option that would address this would be to amend the Charities Act to provide for such charities to become registered under, and comply with, the Charities Act for their New Zealand source non-business income to be tax-exempt (just as various other New Zealand legislation, including the Companies Act 1993 and revenue legislation, provides for non-resident entities to register with New Zealand authorities).

62. The Law Society also notes that the types of non-resident charities using the current exemption may include, for example, non-resident 'parent' or 'sibling' charities receiving service or royalty payments from New Zealand registered charities that contribute to the cost of services and programmes made available to the New Zealand charities, and non-resident charities that receive non-business investment income from New Zealand to support worthy overseas causes.

63. While some of those non-resident charities might qualify for full or partial relief from New Zealand tax under an applicable tax treaty, it would seem appropriate to continue to have a registration, reporting and monitoring option, with IR or under the Charities Act, for such charities to be eligible for exemption from New Zealand tax under domestic law.

64. The Law Society also notes the potential impact of IR's current published interpretation of section CO 1 of the ITA in IS 23/11,[5] that gifts to a charity may be "income" of the charity, in this context. Based on that interpretation of section CO 1, even donations from New Zealand received by non-resident charities may be viewed as assessable income under the ITA if no exemption is available.

65. That interpretation of section CO 1 is, however, controversial, and in the Law Society's view incorrect (in particular, because section CO 1 was introduced with section CW 62B of the ITA to deal with individuals receiving honoraria and other payments for volunteer work, not to deem amounts such as donations received by charities to be income).

Question 13: If the compliance costs are reduced following the current review of FBT settings, what are the likely implications of removing or reducing the exemption for charities?

66. The Law Society notes first that it is very difficult for submitters to comment on the relevance or implications of a current FBT review of which one of the aims is to reduce compliance costs when nothing more is disclosed about the details of that review.

67. In any event, as noted in the Issues Paper, the FBT exemption for charities and other donee organisations is not merely about reducing FBT compliance costs for those organisations. The FBT exemption also effectively supports eligible organisations in relation to attracting and retaining employees, by lowering the cost to the organisation of offering remuneration that includes fringe benefits. An eligible organisation may also be able to deliver some fringe benefits (e.g., the organisation's own services, or benefits sponsored by third parties) without directly drawing on the organisation's financial resources.

68. The availability and scope of the FBT exemption is also limited. It does not apply at all to government/statutory organisations (i.e., local authorities, public authorities, universities), there is an exclusion from the exemption for benefits provided to "unrelated" business employees, and FBT-exempt "short-term charge facility" benefits are capped at a very low level (the lesser of $1,200 or 5% of salary/wages for the year).

69. The implications of removing or somehow further "reducing" the FBT exemption may include reduction of an organisation's resources available for other aspects of its services (because of the effective increase in the cost of maintaining the value of employees' remuneration), or an organisation offering remuneration of less value to employees (affecting the organisation's ability to attract and retain employees), or a combination of both of those effects.

70. The Law Society submits that the key issue in relation to this limited FBT exemption, as in the case of other tax concessions, is whether the purposes furthered by organisations eligible for the exemption continue to warrant such support, taking into account the scope and limitations of the exemption and whether such organisations' provision of services that are of public benefit to New Zealand and New Zealanders outweigh the costs of continuing the limited exemption.

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5 Inland Revenue (2023), IS 23/11 'Income tax: Income – when gifts are assessable income'.

Question 14: What are your views on extending the FENZ simplification as an option for all NFPs? Do you have any other suggestions on how to reduce tax compliance costs for volunteers?

71. The Law Society agrees taxable payments (such as honoraria) made to volunteers should be treated as wages and salary, to reduce compliance costs and so volunteers are not required to account for ACC levies on the receipt of such payments.

72. The Law Society recommends consideration be given to exempting honoraria payments (which will need to be defined) from income tax, provided the honoraria payments do not exceed a set amount each year (both in terms of the amount received by each volunteer, and the total amount paid by the NFP to volunteers for that income year). The current FBT exemption limits that apply to unclassified benefits could be used as a guide for setting the applicable limits.

Question 15: What are your views on the DTC regulatory stewardship review findings and policy initiatives proposed? Do you have any other suggestions on how to improve the current donation tax concession rules?

73. The Law Society welcomes IR's confirmed immediate and medium-term plans to implement and address certain recommendations from the stewardship review that would enhance the DTC regime's role in incentivising donations to charities and other donee organisations.

74. The Law Society strongly recommends, however, that IR should separately consult with charities/donee organisations and other stakeholders outside of the Issues Paper consultation process, to give stakeholders an opportunity to fully consider and provide feedback to IR on the details of the redacted stewardship review findings and recommendations and on IR's response to the review.

75. Feedback to the Law Society indicates that, during the short time available to consider and submit on the wide range of issues covered in the Issues Paper, many organisations interested in the enhancement of the DTC regime have been too focused on other aspects of the Issues Paper to be able to properly focus on this final aspect of the paper.

Further comment

76. Should you wish to discuss any aspect of this feedback, please contact Aimee Bryant, Manager Law Reform and Advocacy (s 9(2)(a)

Nāku noa, nā

s 9(2)(a)

David Campbell
Vice President

Taxation and the Not-for-Profit Sector

Submission of Tax Justice Aotearoa on the Inland Revenue Discussion Paper - March 2025

Taxation and the Not-for-Profit Sector

Submission of Tax Justice Aotearoa on the Inland Revenue Discussion Paper - March 2025

1. Preamble

1.1 Tax Justice Aotearoa (TJA) is a non-governmental organisation committed to progressive tax reform. We believe our tax system can be a powerful tool for a flourishing country, where every person enjoys the best health possible, lives in a warm and safe home, and has opportunities to learn, grow and participate in community life in ways that are fulfilling for them.

1.2 We represent the growing number of people talking about greater transparency, equality and fairness in national and global tax systems, to build societies where every person lives a dignified life. Founded in August 2018, we provide analysis, ideas and information contributing to an informed dialogue about how tax builds societies where all people flourish.

1.3 We are associated with the Tax Justice Network and the Global Alliance for Tax Justice.

1.4 We welcome the opportunity to submit on the officials' issues paper: Taxation and the Not-for-Profit Sector. Responses to the specific questions in the consultation document are set out in the appendix to this submission.

2. General submissions

2.1 TJA is concerned about the context within which this consultation is taking place and how this may influence the outcome of the consultation. Since its formation in late 2023 the Government has made decisions that have left it in a fiscally constrained situation, leaving us with the impression that they are searching for a way to plug their deficit, rather than take a dispassionate look at how the not-for-profit sector should be taxed. Recent comments by the Finance Minister have only added to this impression.

2.2 It is important to approach the consultation on the basis of whether the taxation of not-for-profits is currently reasonable or whether there is room for improving the consistency and integrity of tax policy for this sector. To focus on revenue raising is the wrong approach and may lead to outcomes that could significantly undermine the sector. It is also worth asking, in areas such as donor controlled charities, whether IR is doing enough to tackle abuse or avoidance by enforcing the existing legislative provisions.

2.3 We are also aware that there are some high profile examples that have drawn criticism in the media recently. The real question with these examples is whether they should be charities in the first place. The correct instrument for addressing whether these organisations should pay tax is surely the Charities Act administered by Charity Services, rather than looking for solutions in the tax system.

2.4 The consultation document does not adequately identify the nature of the problem nor the scale. Neither does it provide any evidence to support the analysis - for example there is nothing to indicate what extra revenue might be earned from any of these changes. The paper does not provide any indication of the current fiscal cost of the exemptions. For example, para 2.15 describes the fiscal cost of not taxing unrelated charity business income as "significant and is likely to increase." This bald statement should be backed up. Given the context in which the Government is urgently looking for other sources of revenue it is essential that the revenue generating potential of these changes are quantified – not to mention the impact on the income of the not-for-profits who may be subject to tax in the future.

2.5 We are concerned that the consultation could lead to changes that would undermine the services provided to vulnerable New Zealanders by not-for-profit organisations. This could lead to a loss of those services or to the government having to either increase funding to compensate or step in to directly provide the services themselves. Currently not-for-profits do important work to support many struggling New Zealanders to live dignified and fulfilling lives. The government should proceed with extreme caution to avoid directly harming the most vulnerable people in our communities.

2.6 The changes being floated in the consultation document will likely impact smaller organisations more than larger entities, which may be able to structure their income to avoid or minimise the tax payable. For all not-for-profits there will likely be an increase in administration and compliance costs that would also take money away from services provided.

2.7 We are also concerned by the potential to weaken the mutuality principle for membership driven organisations. While we address this in more detail in response to questions 10 and 11 in the consultation document, we would make the general point that making membership subscriptions subject to tax could have a significantly detrimental impact on the finances of membership organisations. It is likely that these organisations would have to pass the costs on to their members, which may lead to a reduction in members and a consequential reduction in the effectiveness of the organisations (and this may be the real intention behind these changes). As a small membership organisation ourselves, we also have a direct concern about this.

2.8 Passing costs onto members in membership driven organisations, or to customers in charity run op shops and other commercial operations, may well have an inflationary impact. At a time where the public is rightly concerned about the cost of living the

potential impact of the changes on inflation should be addressed in the consultation paper.

3. Conclusion

3.1 In conclusion, we would suggest that Inland Revenue and the Government should proceed with extreme caution before making any changes to the tax regime for not-for-profits. We have been presented with an inadequate consultation paper and an inadequate time for meaningful consultation - five weeks to absorb and consider a very important and wide-ranging, yet at times vague issues paper. The timing (near tax year end) is also poor and feeds into the narrative that the Government may already be banking on a revenue boost from this review in Budget 2025. We would urge them and the Department to slow the process down and be more careful and cautious about change in this area.

Appendix

Discussion questions

Chapter 2: Charities business income tax exemption

Q1. What are the most compelling reasons to tax, or not to tax, charity business income? Do the factors described in 2.13 and 2.14 warrant taxing charity business income?	Transparency and equal treatment for all trading entities. The lower compliance cost argument seems thin as any charity would want to ensure it was not crossing any boundaries. Do not regard the issues of non-refundability of losses and capital raising as significant factors.
Q2. If the tax exemption is removed for charity business income that is unrelated to charitable purposes, what would be the most significant practical implications?	Difficult to say but practical effects would only emerge over time. We are concerned that it could lead to changes that would undermine the services provided to vulnerable New Zealanders by not-for-profit organisations.
Q3. If the tax exemption is removed for charity business income that is unrelated to charitable purposes, what criteria should be used to define an unrelated business?	Suggest anything beyond the three examples cited in para 2.24are a good start.
Q4. If the tax exemption is removed for charity business income that is unrelated to charitable purposes, what would be an appropriate threshold to continue to provide an exemption for small-scale business activities?	Suggest this is aligned with the thresholds for Tier 3 and Tier 4 charities shown in Table 1
Q5. If the tax exemption is removed for charity business income that is unrelated to charitable purposes, do you agree that charity business income distributed for charitable purposes should remain tax exempt? If so, what is the most effective way to achieve this? If not, why not?	Agree that charity business income distributed for charitable purposes should remain tax exempt if distributed within three years and NOT to a related charity. A transition rule would allow accumulated earnings to remain tax exempt if distributed within, say, five years
Q6. If the tax exemption is removed for charity business income that is unrelated to charitable purposes, what policy settings or	No comment

issues not already mentioned in this paper do you think should be considered?	

Chapter 3: Donor-controlled charities

Q7. Should New Zealand make a distinction between donor-controlled charities and other charitable organisations for tax purposes? If so, what criteria should define a donor-controlled charity? If not, why not?	Yes, suggest a donor-controlled charity is one where a group of five or fewer persons either represent a majority of a charity's board or governing body or have, within the meaning of "settlor" for the purposes of the Income Tax Act 2007 settled funds of more than $1 million.
Q8. Should investment restrictions be introduced for donor-controlled charities for tax purposes, to address the risk of tax abuse? If so, what restrictions would be appropriate? If not, why not?	Yes, particularly relating to acquiring interests where a donor (as defined above) has a 10% or more interest. Restrictions should also take into consideration the ability to control activities through donor loans. In relation to this and Question 7 we would also expect Inland Revenue to be applying the current provisions of section CW 42(1)(c) which must be met in order to qualify for the existing exemption.
Q9. Should donor-controlled charities be required to make a minimum distribution each year? If so, what should the minimum distribution rate be and what exceptions, if any, should there be for the annual minimum distribution? If not, why not?	Yes. Suggest this should be a high percentage of charity's net income, at least 50%.

Chapter 4: Integrity and simplification

Q10. What policy changes, if any, should be considered to reduce the impact of the	These proposals are highly significant for a large number of NFPs and should

Commissioner's updated view on NFPs, particularly smaller NFPs? For example: • increasing and/or redesigning the current $1,000 deduction to remove small scale NFPs from the tax system • modifying the income tax return filing requirements for NFPs, and • modifying the resident withholding tax exemption rules for NFPs.	be addressed separately. There is little rationale given for these changes and to be asked to submit on them in the absence of a draft operational statement seems inappropriate.
Q11. What are the implications of removing the current tax concessions for friendly societies and credit unions?	

Income tax exemptions

Q12. What are the likely implications if the following exemptions are removed or significantly reduced: • local and regional promotional body income tax exemption, • herd improvement bodies income tax exemption, • veterinary service body income tax exemption, • bodies promoting scientific or industrial research income tax exemption, and • non-resident charity tax exemption?	Not likely to be significant

FBT exemption

Q13. If the compliance costs are reduced following the current review of FBT settings what are the likely implications of removing or reducing the exemption for charities?	Without understanding the outcome of the current FBT review commenting at this point would be too early, but we can assume that removing or reducing FBT exemption for charities will result in an increase in their staffing costs.

Tax simplification

Q14. What are your views on extending the FENZ simplification as an option for all NFPs? Do you have any other suggestions on how to reduce tax compliance costs for volunteers?	Not unreasonable suggestion but an alternative could be to revise the ACC rules and remove Honoria from scope.
Q15. What are your views on the DTC regulatory stewardship review findings and policy initiatives proposed? Do you have any other suggestions on how to improve the current donation tax concession rules?	Agree with the three policy related recommendations outlined in paragraph 4.36. More advertising should be done to advise taxpayers of the donation tax credit regime.

31 March 2025

policy.webmaster@ird.govt.nz

Dear IRD Policy Team,

Regarding: Consultation Paper on Taxing Charities and Not-for-Profits - Question 12

This submission addresses Question 12 of the consultation paper regarding the potential removal or significant reduction of income tax exemptions, specifically concerning the local and regional promotional body income tax exemption (CW40 in the Income Tax Act).

We strongly believe that the income tax exemption for Business Associations should remain. Our reasons are as follows:

1. **Community and economic development:** Business Associations play a crucial role in fostering local economic development. They invest significantly in activities that benefit the wider community, such as:
    a. Promoting local businesses and attracting investment.
    b. Enhancing the attractiveness of the area through beautification projects.
    c. Improving public amenities.
    d. Enhancing security and safety through initiatives like CCTV and security patrols.
2. **Reinvestment in community safety:** As highlighted by our auditor, funds that would otherwise be directed towards income tax are reinvested directly into community safety measures, including CCTV systems and security personnel. These investments create a safer environment for both businesses and residents and are a vital service that would be significantly reduced if the exemption was removed.
3. **Maintaining local services:** Removal of the exemption would severely limit the ability of Business Associations to provide essential services to their members and the community. This would negatively impact local economies and reduce the overall quality of life.
4. **Distinct role from charities:** While some entities may apply for this exemption when unable to register as charities, Business Associations serve a distinct purpose focused on local economic development and business support, which is different from the core functions of charities.
5. **Impact on small businesses:** Many small businesses rely on the activities of Business Associations. The proposed change would place a greater burden on these small businesses, negatively impacting their financial stability and growth potential.

In conclusion, the removal of the income tax exemption for Business Associations would have detrimental effects on local economies and community safety. We urge the IRD to maintain this exemption to ensure the continued support of these vital organisations.

Thank you for considering our submission.

Sincerely,

s 9(2)(a)

Cynthia Crosse
Manager
manager@avondale.net.nz

Avondale Business Association
PO Box 19730
Avondale
Auckland 1746

Mb s 9(2)(a)

s 9(2)(a)

From: Felicity Clearwater s 9(2)(a)
Sent: Monday, 31 March 2025 3:51 pm
To: Policy Webmaster
Subject: Taxation and the not-for- profit sector

Hi

In respect of the charity business exemption change:

Has the committee considered what the actual extra cost to New Zealand will be? Both the “gain” to the government in savings vs the “cost" to the charities not only in the extra tax but also in increased administrative costs, plus the “cost” to the government of picking up the additional social services that charities will stop being able to provide if their ability to generate funds is taken away from them or will the people in our nation just be left worse off as a result of the government not being able to pick up the unmet social needs? I have yet to see any cost benefit analysis which would allow the government to make educated and rational changes.

I understand that this bill appears to ensure there are less “loopholes” to be exploited but should instead of changing the rules for 99% of charities should the government just specifically target the 1% to ensure they are prosecuted for this exploitation instead?

How does this actually move us towards the goal of a simple tax system?

Why would the government look to target those who are providing great benefit to the nation and often with not a lot of money and who have gone out of their way to not rely on handouts but rather to generate income streams to allow them to provide more benefits?

How is “unrelated to charitable purposes” to be defined? By way of income being received into a charity it can only be used for charitable purposes which would therefore in my opinion make it all “related to a charitable purpose”.

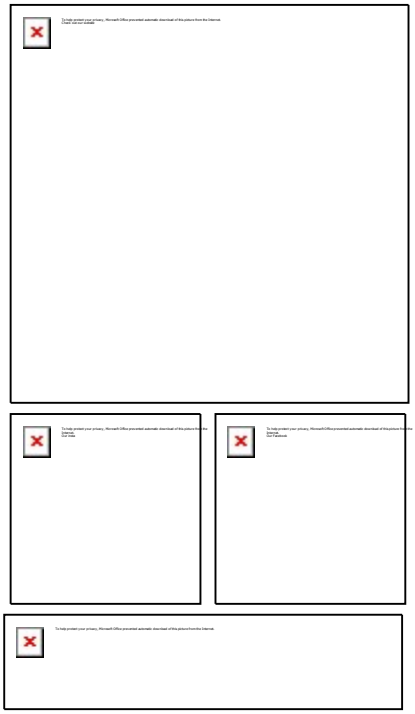
Are there any planned thresholds for when this becomes taxable? Eg is the sausage sizzle to help get youth to a camp then going to be considered taxable income? At which point do you draw the line?

FBT Q13 The likely implications is increased compliance costs to be able to meet the tax requirements and potentially increase the non compliance. It will also reduce the ability for charities to entice quality staff to join as they generally have less cash available to offer as salary.

Regarding DTC Q15 The findings are disappointing but not unbelievable. I agree more needs to be done to educate the public on their ability to claim the donations rebates as this seems to have become the responsibility of the charities.

Thanks

Felicity Clearwater
Finance Manager
Phone: s 9(2)(a)



BUILDING + CONSTRUCTION TRAINING FUND

INFO@BCTF.ORG.NZ
PO BOX 409,
TAURANGA 3144

31 March 2025

Deputy Commissioner, Policy
Inland Revenue Department
PO Box 2198
WELLINGTON 6140
Sent via email: policy.webmaster@ird.govt.nz

Dear Sir

Re: Taxation and the not-for-profit sector

As a building and construction sector body that represents 17 industry membership associations, the Building and Construction Training Fund (BCTF) has concerns about the ideas/discussion points outlined in Inland Revenue's '*Taxation and the not-for-profit sector*' officials' issues paper.

While we acknowledge the merits of addressing the issue of tax advantages enjoyed by charities that are conducting commercial profit-focused business that may be unrelated to their charitable purpose, we are concerned that the broad changes put forward in the paper would have adverse outcomes.

Of particular concern is the proposal to tax subscription income of not-for-profits, which would undermine the sustainability of some smaller industry associations who rely on subscription income to cover operational costs and provide support to their members. The loss of operating revenue from a new requirement to pay tax on member subscriptions could be the death knell for some smaller industry associations, resulting in a commensurate loss to our sector, and to New Zealand of the public good they deliver.

Similarly, the introduction of taxation on surpluses, or new rules around timeframes for distribution of reserves, would further undermine the long term sustainability of many industry and trade associations.

It is important to remember that industry associations and bodies, such as ourselves and those we represent, are focused on delivering for our members by offering best practice guidance/advice, research, professional development and other support (e.g. around mental health and wellbeing in the sector with the highest suicide rate in the country), not on profit-making for private commercial gain.

While the consultation focuses on charities, it's important to recognise incorporated societies governed by the Incorporated Societies Act 2022. These organisations support industries, professions, and communities in ways closely aligned with charitable goals. Though not always classed as charities, their strong governance and contributions are essential to New Zealand's economic resilience and social well-being.

In our view, recognition of the benefits the not-for-profit sector delivers that help to reduce costs to government (such as the role our associations play in driving productivity and preventing harm in our sector) is a better starting point than a focus on the fiscal cost of not taxing the not-for-profit sector. It would help to sharpen Government's focus on the real policy issue of ensuring any commercial exploitation of existing regulatory and tax settings.

BUILDING + CONSTRUCTION TRAINING FUND

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PO BOX 409,
TAURANGA 3144

Thank you for the opportunity to provide feedback, and we welcome any further opportunities to contribute to ensure robust tax policy-making that avoids unintended adverse consequences.

Yours sincerely

s 9(2)(a)

Brian Dillon
Chief Executive

Kia ora Inland Revenue (via email on 31 March 2025),

On behalf of The Community Constellation, we submit our feedback on the proposed changes outlined in the consultation document 'Taxation and the not-for-profit sector'. We welcome the consultation opportunity.

This feedback includes analysis of feedback received from a sector-wide survey conducted to assess the potential impact of proposed changes to the taxation of charities and tangata whenua, community, and voluntary organisations. The survey garnered 113 responses, predominantly from registered charities (76%) and incorporated societies (10%), with the majority (76%) being Tier 3 or 4 organisations (under NZD $5 million annual expenditure). Most respondents (77%) took the option to send their individual survey response data directly to IRD through the survey.

The Community Constellation are committed to working together to deliver a community-powered Aotearoa that gives effect to Te Tiriti, and include the following 14 organisations:

- Ara Taiohi
- Community Waikato
- Home and Community Health Association
- Hui E! Community Aotearoa
- Inclusive Aotearoa Collective Tāhono
- Inspiring Communities
- LEAD Centre for Not for Profit Governance & Leadership
- New Zealand Council of Christian Social Services
- NZ Navigator Trust
- Platform Trust
- REAP Aotearoa
- SociaLink
- Te Pai Ora Social Service Providers Aotearoa
- Volunteering New Zealand.

General comments

1. The announcement of potential changes to tax, prior to any engagement with the sector, and without a clear problem definition beyond revenue-raising, has caused **concern in our networks**. This comes at a time when a cut to the corporate tax rate

is being floated and the tangata whenua, community and voluntary sector is **facing both unprecedented demand and significant funding cuts**.

2. Our sector is incredibly diverse (and 90% entirely voluntary), and it is **vital not to create unintended negative consequences** that will increase reliance on government grants and philanthropy, impact the capacity of our sector to deliver for whānau, and put pressure on the government to fill the gaps.
3. These concerns were raised in an email from Hui E! to Ministers Watts and Upston on 20 December 2024. Minister Watts replied on 28 February **assuring** us that, "It's important we make sure the settings are right and fit-for-purpose. No decisions have been made and **all feedback will be considered**."
4. IRD already have insights about the challenges faced by our sector, including the **need to ensure sustainability and capacity to deliver for communities**:

   "Funding is essential to the survival and growth of Not-for-profits and Charities. Without funds they cannot provide or extend services, facilitate participation or promote their cause. Sourcing funds, however, is their biggest challenge. Not-for-profits and Charities are looking at ways to optimise funding sources and diversify income. The fundraising environment and the way people support causes is changing. The nature of incentivising giving needs to adapt accordingly." (IRD Not-for-profits and Charities Landscape, 2020).

5. We note that this is an issues paper outlining potential areas for change and not a consultation on specific proposals. If this is to proceed then we **expect to see wide consultation**. These are technical issues, and even with explanations in the survey to support organisations to be able to engage in the consultation, many expressed how challenging this was. It is essential that any policy or legislative proposals demonstrate a deep understanding of our diverse sector and their potential impacts.
6. The consultation document is silent on how these proposed areas of change would **impact iwi and Māori organisations**. It is critical that you make this clear in any proposals before decisions are made, and that you consult on them fully.
7. **The current taxation model is outcomes focused.** This ensures that Charities undertaking business activities can only do so to further their charitable purposes. Any proposals to change this framework will undermine Charities' ability to serve communities, innovate and ensure capacity and sustainability in their operations. Those entering contractual arrangements with government agencies are often required to go through an accreditation process, including an assessment of financial viability and sustainability.

8. The introduction of **tax for 'unrelated' charitable businesses** is unclear in its definition, unworkable in its application, and **would result in a reduction in community services and supports.** It is also at odds with the advice the community sector is getting from elsewhere. For example, DIA's community-led development programme offers multiyear grants to place-based groups. The risks inherent in short term funding are recognised and agency advice includes suggesting charities develop models of social enterprise in order to be sustainable longer term.
9. **Provisions already exist to deal with charities acting illegally** or undermining the integrity of the sector which sits within Charities Services. The most effective way to deal with any abuse of resources within the charitable sector is to ensure that the regulator is working effectively and resourced to do so. All registered charities are required to ensure our activities are in line with our charitable purposes, have annual public reporting accountabilities and cannot produce profits for individuals.
10. The **tax threshold** of $1000 has not been increased for more than 45 years[1], and an **increase would reduce the administrative burden** for very small organisations.
11. We **support the Government's intention to grow philanthropic and individual giving.** We encourage exploration of how tax incentives could enable such growth. We encourage you to engage with Philanthropy New Zealand and the Fundraising Institute of New Zealand for advice on this.

Survey findings:

A. Taxing unrelated charity business

Fifty per cent of survey respondents oppose taxing charity business activities entirely, with a further 26% agreeing that charities should be taxed on income unrelated to their charitable purposes, if this excludes fundraising activities.

The predominant concerns raised are:

- **Negative impact on core charitable functions:** The predominant fear is that taxing business activities will drain resources and ultimately *reduce* the capacity of charities to fulfil their missions.
- **Disproportionate burden:** The compliance costs, complexity, and potential for double taxation create a sense that the burden is too high for the potential benefits.

[1] Using the RBNZ inflation calculator, this would be equivalent to at least $6500 today.

- **Undermining sustainability and innovation:** Charities have found sustainable ways to fund themselves in order to remain viable. Taxing business income could stifle the development of sustainable funding models for charities.

The arguments *for* taxation tend to assume a degree of abuse. All registered charities are required to ensure our activities are in line with our charitable purposes, have public reporting accountabilities and cannot produce profits for individuals.

Those who identified they would be directly impacted shared the following concerns:

1. **Reduced Funding for Charitable Activities & Services:**
    a. *"Reduced funding available for our charitable purpose."*
    b. *"Net income will reduce dramatically, which will mean we cannot provide as many services to those in need. We will have to seek even more donations from the public - during a cost of living crisis when the average person is struggling to make ends meet."*
    c. *"Depending on what is considered as 'unrelated charitable business' earning revenue as a landlord could be unrelated and therefore taxed, meaning a significant drop in the funds we have available to distribute"*
    d. *"Charities need flexibility to make their own decisions about how to further their charitable purposes, including through income generating activities. Placing restriction will stifle innovation and reduce ability to develop other funding generating models."*
2. **Impaired Financial Sustainability & Innovation:**
    a. *"We are considering undertaking business activities in order to increase our financial resilience and less reliance on govt funding. This will impact on our confidence to proceed."*
    b. *"We are currently looking to acquire a traditional 'for-profit' business to help diversify our income stream. Although this activity will be unrelated to our core purpose, the profit we hope to draw from this business will provide no personal benefit and be 100% focused towards the mission and purpose of our charitable entity."*
3. **Increased Complexity & Compliance Burdens:**
    a. *"Add huge complexity to our accounting workload and ultimately reduce our funding. Both are bad news."*

    b. *"We have a small amount of business income. It is difficult at present to understand if it would be caught within definition of unrelated business income. If it were to be taxed, that would have both a cash cost and compliance cost for our charity, thus reducing funds available for our charitable purpose."*
4. **Negative Impact on Employment & Volunteerism:**
    a. *"Unemployment and the project closing"*
5. **Undermining Social Value & Community Ownership:**
    a. *"Destroys community owned business. Business becomes the sole province of individuals, companies and corporates whilst charities will need to rely on grants, donations and fundraising. Not a level playing field."*
    b. *"We run a social supermarket… If we were taxed on the social supermarket, it would inhibit our ability to help those in desperate, immediate need."*

Related vs unrelated charity business:

When asked about whether charities can **distinguish between related and unrelated business income**, most found this difficult:

1. Difficult to Distinguish / Lack of Clarity (Most Common View):

- **Core Argument:** Respondents struggle to understand what IRD will consider "related" vs. "unrelated." The lack of clear definitions makes it impossible to reliably categorise income.
- **Impact:** Creates uncertainty, anxiety about compliance, and a perception of potential unfairness. Charities fear being penalised for misinterpreting complex rules.
- **Examples:**
    - "I think I would need more information on what is related or not. Any income we get goes straight back into supporting our work therefore it seems related."
    - "Not really. Are biscuits from the Girl Guides related to what they do… We need a clearer definition of what IRD consider related and unrelated mean."

    - "Impossible. Both words need defining as they incorporate many possible levels of proximity."

2. "Everything is Related" (Significant Minority):

- **Core Argument:** Because ALL income-generating activities ultimately support the charity's mission, they should be considered related. The primary purpose is charitable, regardless of the specific activity. The money goes back into charity to further its charitable purposes.
- **Impact:** These respondents view the distinction as artificial and unnecessary. They believe that taxing any income used for charitable purposes is inherently unfair.
- **Examples:**
    - "All ways of making money for a charity are related to their purpose as without funds the charity cannot fulfil its purpose."
    - "From our charity perspective, any activity that results in financial gain and that gain does not go back or support the charitable purpose is 'unrelated'." (Implies that if it *does* support the purpose, it's related).
    - "No, everything we do to raise money is for advancing the purposes of our charity. I would not know how to determine what is related or unrelated."

3. Clear Distinction Possible (Smaller Group):

- **Core Argument:** These charities believe they can readily identify related vs. unrelated activities, often because their scope is narrow, or they have a clear understanding of what directly furthers their mission.
- **Impact:** These organisations are generally less concerned about the changes, but still highlight the potential for increased compliance work.
- **Examples:**
    - "Yes, we have a very narrow scope and everything we do is related to our mission."
    - "Yes, it is very easy to see the difference"

Examples of charity businesses:

When presented with the following examples, **most respondents classed every one of these charity businesses as related**:

- Op shop owned and run by a charity (73% related, 17% unsure, 10% unrelated)

- A religious charity renting out rooms for events (58% related, 27% unsure, 15% unrelated)
- Public sales of native trees by an environmental charity (88% related, 7% unsure, 5% unrelated)
- Consultancy services of a capability-building charity (61% related, 25% unsure, 14% unrelated)
- Cafe run by a disability charity that trains and employs disabled people (89% related, 7% unsure, 4% unrelated).

Minimum threshold:

Views were split on how any minimum threshold should be determined (32% agreed that any threshold should be based on the amount of business income, 26% agreed that this should only apply to tier 1 charities, 18% were unsure and 17% selected other – most stating that this was not a question to answer given they did not agree in introducing such a tax) and only 7% thought there should be no threshold. Forty-six per cent agreed that if the income is distributed for charitable purposes, there should be no minimum time for this to be distributed in order to remain tax exempt.

B. Impacts on Māori

The IRD **consultation document does not mention iwi or Māori organisations at all**. This is a large oversight given the likely breath of impact of these proposals on iwi and Māori organisations and crown obligations under Te Tiriti o Waitangi. We would expect to see analysis presented in the consultation document of the likely size of these impacts, particularly for charitable businesses. Any development of these areas for change will require specific iwi and Māori consultation, including any impacts on post-settlement entities.

Only 5% of respondents identified themselves as part of an iwi and/or kaupapa Māori organisation or rōpū. These respondents raised concerns that the tax changes will disproportionately harm marae, kaupapa Māori organisations, and other Māori-led initiatives, which are already operating with limited resources and facing numerous challenges. Examples included:

- "It would have a huge impact on our marae."
- "Most organisations are marae or Māori Reservation - every cent counts for our organisations. All funds are injected back into marae infrastructure and upkeep."

- "The lack of specific analysis on the impacts of these tax proposals on iwi, kaupapa Māori organisations, and rōpū is deeply concerning, as it fails to acknowledge the systemic racism that has historically disadvantaged Māori and the disproportionate impact these changes could have."

C. Other proposed changes

For those in the sector who are not registered charities, there is currently a **$1000 threshold** to remove small scale voluntary and community groups from the tax system. Only 5% of respondents did not agree with the proposal to increase this threshold (29% to $50k, 21% to $10k and 14% to $5k).

Feedback regarding the proposal to **introduce tax on certain tax-exempt groups** included a strong preference for maintaining the tax-exempt status of community-focused groups. The main concerns revolve around the potential negative impact on their services, the burden of compliance, and the need for a clear and targeted approach that considers the specific activities and benefits provided by each organisation. There is also a sense that more information and transparency are needed to ensure a fair and informed debate on this issue.

When asked if **investment restrictions be introduced for donor-controlled charities** for tax purposes, to address the risk of tax abuse, 37% of respondents said yes, 19% said no and 31% did not know. Only 16% of respondents agreed that fringe benefit tax should apply to charities.

When asked about **honoraria**, only 15% of respondents were happy with the status quo (up to volunteers to ensure tax compliance), 18% favoured the organisation treating the payment as income for tax purposes (as FENZ do) and 46% favoured exemption from tax and ACC levies for these payments.

When asked about increasing the **uptake of tax credits on donations**, almost half of respondents (46%) supported real-time tax credits (rather than waiting until year end) and a third (31%) supported providing data to IRD so tax returns could be pre-filled.

Museums Aotearoa

31 March 2025
Inland Revenue

Submission: Taxation and the not-for-profit sector

Introducing Museums Aotearoa

Museums Aotearoa is the professional membership organisation for museums and those who work in or have an interest in museums and the museum sector. The 'museum sector' includes museums, public art galleries, historical societies, science centres and historic places open to the public. Museums Aotearoa members include these institutions and people who work within them and individuals connected or associated with the arts, culture and heritage sector in New Zealand. The museum sector comprises 417 institutions throughout New Zealand.

Museums Aotearoa seeks to promote excellence in museums and galleries and support the ongoing development of a vibrant, creative and relevant sector.

Public museums and galleries:

- care for and provide access to and education about New Zealand's culture and heritage for current and future generations. Our members hold our national collections of visual arts, decorative arts, documentary history, military objects and collections, social history, technology, transport, natural history, taonga Māori, archaeology and ethnology. Much of our museum and gallery activity takes place in heritage buildings, in locations dictated by historic significance and locations; and
- make essential contributions to education, tourism, social cohesion and our sense of nationhood.
- are founded on a presumption of collective public good and that their sustenance and work results in largely intangible, cross-generational public benefit

We make this submission on behalf of our members.

Our response

Museums Aotearoa strongly opposes the proposed taxation of revenue-generating activities directly related to our charitable purposes. Our submission argues that:

1. Museum and gallery revenue-generating activities are intrinsically linked to our core charitable mission

2. Museums and galleries provide critical cultural preservation services with minimal direct government support
3. The proposed tax changes would significantly undermine the financial sustainability of the museum and gallery sector
4. The consultation paper assumes wealth is generated and held; this is not the case with museums and galleries

Context of Museum and Gallery Operations

Museums and galleries in New Zealand operate in a challenging financial environment, with:

- Minimal direct government funding and pressure for this to reduce
- Increasing costs of preserving national heritage and taonga and maintaining buildings and facilities
- Unsustainable increases in insurance costs
- Necessity to generate revenue through on-site operations to sustain core cultural services

We protect our country's culture, heritage, art, science collections and stories on behalf of the New Zealand public. We perform these functions now without any direct ongoing funding from central government (aside from Te Papa and some funds from Creative NZ, if applicable).

It is appalling the Government is now proposing to treat our sector in the same way as a religious institution operating a wealthy dairy farm or running a manufacturing business unrelated to its core public-good purpose. These proposed changes will result in significant impacts to a sector delivering a public good when the changes should be targeted directly at the problem it aims to fix.

Further, we argue additional tax benefits should be given to the sector, by way of donations of art and objects able to attract a tax benefit to the donor, just as cash donations are. Tax deductibility of donations of collections and non-cash cultural gifts is available in overseas jurisdictions such as Canada, the United States and Australia. This is recognition of the cross-generational public benefit of developing museum and gallery collections, building cultural assets at relatively little cost to government.

Revenue Streams Directly Related to Charitable Purpose

Our revenue-generating activities are not "unrelated" business income, but integral to our mission:

- **Event and Space Rentals**: Enable community engagement and provide financial sustainability
- **Museum and Gallery Retail Operations**: Extend educational experiences and support core cultural activities
- **Cafe and Hospitality**: Create visitor experiences that enhance cultural value and understanding
- **On-site Workshops and Programmes**: Generate income while delivering educational value
- **Special Touring Exhibitions**: Additional offers which extend and enrich locally available content and which require ticket revenue to contribute to financial viability

These activities should not be defined as unrelated activities to the charitable purpose.

Accumulated funds

In the museum and gallery sector, accumulated funds may exist for several reasons:

- To support endowments and scholarships in perpetuity
- To accumulate to purchase creative works, supporting artists and ensuring important works remain in public ownership
- Many museums and galleries are housed in heritage buildings which require periodic large maintenance and upgrade projects, expenditure on which is uneven over several years necessitating asset renewal reserves
- Some bequests stipulate the accumulation of funds to ensure long-term, multi-year benefits are afforded to the recipient museum or gallery

These funds will lose their charitable purpose and utility if they are forced to be distributed.

Fringe Benefit Tax (FBT)

With a workforce of over 3,300 employees and 11,000 volunteers, it is important museums and galleries remain exempt from FBT. We need to enable staff and volunteers to be supported in doing their charitable work. We cannot afford to pay FBT when one of our educators takes a car home for the evening after a school visit, as just one example.

Proposed Approach

We urge the Inland Revenue Department to:

- Recognise the unique operational context of cultural institutions

- Distinguish between genuine charitable organisations and potential tax abuse
- Develop targeted regulations focusing on particular charitable activities with specific problematic cases (ie it seems religious charities' businesses are IRD's main concern), rather than applying a blanket approach
- Recognise the charitable sector already has a high level of compliance, auditing and transparency already applied to it

Financial Impact Assessment

Proposed tax changes would:

- Reduce funds available for cultural preservation
- Increase compliance costs
- Potentially force museums and galleries to reduce educational and community programmes
- Shift more financial burden onto already stretched cultural institutions which will ultimately increase the demand on local and central government funding

Recommendation

Maintain the current tax-exempt status for museums and galleries, with a clear definition that revenue-generating activities directly supporting the charitable purpose remain tax-free.

Conclusion

Museums and galleries are guardians of New Zealand's cultural heritage, operating with minimal government support. The proposed tax changes risk undermining our ability to preserve, educate, and serve our communities.

Nāku, nā

s 9(2)(a)

Adele Fitzpatrick
Chief Executive
Museums Aotearoa Te Tari o Ngā Whare Taonga o Te Motu
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From: epeople@xtra.co.nz
Sent: Monday, 31 March 2025 3:56 pm
To: Policy Webmaster
Subject: Taxation for the Not for Profit Sector

Good afternoon

I submit from a perspective of involvement in the CVS for in excess of 50 years in a multitude of roles in varied size & shapes of organisations.
My experience highlights what seems to be at the core of the issue - **the shape & size of this sector.**

In my time of involvement, the sector has changed immeasurably. Amongst other factors, the sector has become one of the fastest growing employers across the world.
By taking a 'one solution fits all' approach to solve a perceived problem of a few organisations (not paying tax) will cause a massive upheaval across NZ society.

My submission is before moving forward IRD/Government needs to do some major work of understanding the sector & its role in contemporary society today.

For example the definition of charities was 16th Century notion, very much a colonial point of view far from our diverse multicultural society.

NZ is prolific in the number of community organisations, clubs, Incorporated Societies & Charities and by first understanding the full scope of how these groups operate, will enable fair & equitable treatment of taxation. Add to this the prolific growth in maori organisations as maori seek better models of self-determination.

Several reviews over the years have taken place but none in my view (have been involved in some) have taken a holistic approach across the entire sector you are addressing.

Happy to discuss my thoughts in more detail as policy develops

Roger Tweedy
Connector/ Kaiarahi
Enterprising People
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Wellington & Wairarapa

VICKI AMMUNDSEN
TRUST LAW

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31 March 2025

Inland Revenue
By e-mail: policy.webmaster@ird.govt.nz

RE: Taxation and the not-for-profit sector

1. Thank you for the opportunity to make submission regarding the matters set out in the Officials' Issues Paper "Taxation and the not-for-profit sector" (the Paper).

Charities business income tax exemption

2. As noted in the Paper at 2.3 "It is the unrelated business activities that are the focus of this review."

3. The above statement presupposed that charities are required to only conduct business activities that are aligned (from Inland Revenue's perspective) with a particular charitable purpose.

4. While not all charities are structured as charitable trusts, it is very important to appreciate that where the structure adopted is a trust, the charity's trustee(s) must comply with the Trusts Act 2019. The default duty in section 30 of the Trusts Act specifies that unless the terms of a trust specify otherwise:

   "When exercising any power to invest trust property, a trustee must exercise the care and skill that a prudent person of business would exercise in managing the affairs of others, having regard, in particular,—

   (a) to any special knowledge or experience that the trustee has or that the trustee holds out as having; and
   (b) if the person acts as a trustee in the course of a business or profession, to any special knowledge or experience that it is reasonable to expect of a person acting in the course of that kind of business or profession."

5. If the investment options available to a charity are limited to aligned activities, it is difficult, if not impossible, to see how trustees can meet the duties imposed by section 30 of the Trusts Act. While this may be able to be addressed by variation, this presupposes a power of variation or sufficient funds for an application to the High Court.

6. In our view the conduct of any charitable entity (regardless of the structure adopted) should be supervised by the Board that has the functions, duties, and powers relating to the registration and deregistration of charitable entities in accordance with the Charities Act 2005.

Donor controlled charities

7. It is accepted that some charities may not be operated in line with their charitable purposes. However, the Paper does not in our view, make a sufficient business case to warrant the development of "donor controlled charities" as a subset of registered charities that are subject to more stringent rules and restrictions.

8. That said, if there is a case to be made, this should be made by the Board in light of the enhanced disclosure obligations medium and large charities will be subject to moving forward, should the need arise.

9. Separately, where any registered charity is not acting within its stated purposes, it is open to the Board to de-register the charity. There is an existing legal frame-work contained in the Charites Act for this purpose.

10. We do not support the imposition of a statutory minimum annual distribution as this presupposes that there will always be an appropriate purpose that can properly benefit. The following example is illustrative.

    Example

    A charitable trust that has received funds gifted for the sole purpose of building facilities to carry out the charity's purposes. The terms of the gift require that all interest income from the gift must be retained on the same terms. To date the trustees do not have sufficient funds to purchase land where the facility can be constructed. In the event a statutory minimum distribution was imposed the trustees would be in the invidious position of either acting in breach of trust; returning the gift (if able to do so) or seeking court directions (at a cost to the charity) that may not be granted.

Integrity and simplification

11. With one caveat, we support steps to reduce any tax compliance burden that falls on small not-for-profits (NFPs).

12. The caveat referred to above is as to whether some small NFPs should be encouraged to amalgamate (where appropriate or permissible) in the interest of more cost-effective operations.

Further assistance

13. We are happy to speak to our submissions if that would be helpful.

Yours Faithfully
VICKI AMMUNDSEN TRUST LAW LIMITED

s 9(2)(a)

Vicki Ammundsen
Director
E-mail: s 9(2)(a)
MN:1121

NEW ZEALAND FOOD NETWORK

David Carrigan
Deputy Commissioner, Policy
Inland Revenue Department, Te Tari Taake
PO Box 2198
Wellington 6140

Gavin Findlay
Chief Executive Officer
New Zealand Food Network
PO Box 112248
Penrose, Auckland 1642

Re: Taxation and the not-for-profit sector submission

31 March 2025

Kia ora Deputy Commissioner Carrigan,

Below please find New Zealand Food Network's submission in response to a selection of the discussion questions raised in the officials' issues paper on the topic of Taxation and the not-for-profit sector. As a government-funded NFP, we have a particular interest in this topic and hope you value our input on behalf of the food security sector.

Q1. What are the most compelling reasons to tax, or not to tax, charity business income? Do the factors described in 2.13 and 2.14 warrant taxing charity business income?

Charities exist to fill in the gaps that government or the private sector can't or won't fill. Charities are essential to maintain a well-functioning society. The amount of funds collected versus compliance costs (actual and opportunity costs) will not meet the Social Return on Investment. Perhaps the focus should be on current tax compliance and enforcement in both the charitable and private sectors to help to improve social outcomes.

Q2. If the tax exemption is removed for charity business income that is unrelated to charitable purposes, what would be the most significant practical implications?

Our view is the focus should be on funding charitable innovation and social entrepreneurship that supports communities' needs. Tax exemptions disincentivise and undermine current and future efforts that charities provide in the form of needed services and products. For NZ Food Network, that would be collecting, procuring and rescuing food for distribution across the country to the communities that need it most as a part of the overall food security and food rescue sectors.

Q3. If the tax exemption is removed for charity business income that is unrelated to charitable purposes, what criteria should be used to define an unrelated business.

This is very difficult to define. But if it went ahead – Tier 1.

Q4. If the tax exemption is removed for charity business income that is unrelated to charitable purposes, what would be an appropriate threshold to continue to provide an exemption for small-scale business activities?

Tier 1 charities and their size of the organisation's cash generating revenue and equity reserves.

Q5. If the tax exemption is removed for charity business income that is unrelated to charitable purposes, do you agree that charity business income distributed for charitable purposes should remain tax exempt? If so, what is the most effective way to achieve this? If not, why not?

Agree. If tax exemptions were removed from unrelated income for charity purposes, distributions made from this income should remain tax exempt. Like many other policies, tax credits could be a method to be applied to the to the business tax return.

Q6. If the tax exemption is removed for charity business income that is unrelated to charitable purposes, what policy settings or issues not already mentioned in this paper do you think should be considered?

Provide exemptions for social services charities to ensure that essential support services remain adequately funded. (Define what are essential services) Allow environmental charities to use profits from unrelated business activities for conservation/environmental efforts without incurring additional taxes.

Q7. Should New Zealand make a distinction between donor-controlled charities and other charitable organisations for tax purposes? If so, what criteria should define a donor-controlled charity? If not, why not?

Yes. Look at controlling trustees and how the founding capital and funds were introduced. When reviewing controlling stakes and percentages – what does control look like. 51% may still not be a controlling stake.

Q8. Should investment restrictions be introduced for donor-controlled charities for tax purposes, to address the risk of tax abuse? If so, what restrictions would be appropriate? If not, why not?

As from the Tax Working Group in 2019, controlled foundations' tax approach was usually loose. Tightening up the processes would decrease the risk of tax advantage/abuse and influence of other agendas. Restrict and manage the risk by independent trustee appointments and have policy-driven transactional caps.

Q9. Should donor-controlled charities be required to make a minimum distribution each year? If so, what should the minimum distribution rate be and what exceptions, if any, should there be for the annual minimum distribution? If not, why not?

A distribution policy should be based on annual surpluses, reserves and charitable purposes. No minimum requirements are required if there is a robust policy. An example of an exception would be deficits or cashflow reasons.

Q10. What policy changes, if any, should be considered to reduce the impact of the Commissioner's updated view on NFPs, particularly smaller NFPs? For example: • increasing and/or redesigning the current $1,000 deduction to remove small scale NFPs from the tax system, • modifying the income tax return filing requirements for NFPs, and • modifying the resident withholding tax exemption rules for NFPs.

Leave

Q11. What are the implications of removing the current tax concessions for friendly societies and credit unions?

Removing tax concessions for friendly societies and credit unions in New Zealand may lead to higher costs for members, reduced community support, and a potential decrease in the competitiveness and viability of these member-focused organizations.

Thank you for the opportunity to provide feedback on this topic.

Sincerely,

s 9(2)(a)

Gavin Findlay
CEO

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26 March, 2025

Inland Revenue Department
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Consultation on Taxation and the not-for profit sector

Thank-you for the opportunity to provide a submission on this.

About Montessori Aotearoa New Zealand

Established in 1983, Montessori Aotearoa New Zealand has consistently been at the forefront of education. Our membership boasts a diverse spectrum, including community-based and privately-owned early learning services, private, state, and state-integrated primary and high schools, along with individual and organisational members. Each member shares a resolute commitment to providing and championing high-quality Montessori education for all tamariki/rangatahi.

Montessori Aotearoa is dedicated to supporting the community in delivering exemplary Montessori programs that nurture the holistic development of all tamariki/rangatahi (0-18 years). The organisation stands as a beacon of educational excellence, committed to the principles of Montessori education and dedicated to the comprehensive development of all tamariki and rangatahi. This mission is actively pursued through a set of key initiatives:

Foundational Principles: Montessori Aotearoa is unwavering in our commitment to upholding the fundamental principles of partnership, good faith, and mutual trust implicit in Te Tiriti o Waitangi.
Promotion of Vision: Montessori Aotearoa actively champions the mission, vision, and guiding principles of the Association.
Representation: Montessori Aotearoa is the voice for the interests of Montessori early childhood, primary, and secondary schools in the wider education sector in Aotearoa New Zealand advocating to drive education policy and practices to effect changes that support and empower us to deliver quality education rather than impeding it.
Collaboration: Montessori Aotearoa actively collaborates with other organisations involved in education in Aotearoa New Zealand.
International Presence: Montessori Aotearoa serves as a representative for the Association on the global stage.
Community Support: Montessori Aotearoa actively encourages and supports all individuals, groups, and members interested in Montessori.

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Information Dissemination: Montessori Aotearoa provides comprehensive information about Montessori education to families and whānau in Aotearoa New Zealand.
Professional Growth: Montessori Aotearoa provides frequent opportunities for Montessori kaiako to engage in professional learning and collaborative dialogue.

Submission

In NZ there are many small charities. Amongst others these include early childhood centres, Montessori Parent Primary Trusts and Montessori Aotearoa NZ itself. With the current tax concessions for charities this has allowed many small charities to remain in business with many having minimal forms of grants, membership or donations. All of these charities will be affected by the changes which are being consulted on. Many will not remain viable. Many do not accumulate large surpluses and therefore will not have investment income to rely on.

Question one: What are the most compelling reasons to tax, or not to tax, charity business income?
The most compelling reason not to tax is that this will lead to higher compliance costs for charities who need to define what is 'related' and what is 'unrelated' business activity.

Question 2: If the tax exemption is removed for charity business income that is unrelated to charitable purposes, what would be the most significant practical implications?
For ECE services, determining what income is unrelated to the charity's purpose will be complicated and could require professional taxation services that small charities cannot afford or may not be able to access.

Question 3: If the tax exemption is removed for charity business income that is unrelated to charitable purposes, what criteria should be used to define an unrelated business?
The Inland Revenue Department will need to provide very clear guidance documents with examples to assist small charities as determining criteria will be extremely complicated and difficult.

Question 4: If the tax exemption is removed for charity business income that is unrelated to charitable purposes, what would be an appropriate threshold to continue to provide an exemption for small scale business activities?
The not-for-profit FRS tiers 3 and 4 would seem appropriate to continue to be exempt from taxation of their business income.

Question 5: If the tax exemption is removed for charity business income that is unrelated to charitable purposes, do you agree that charity business income distributed for charitable

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purposes should remain tax exempt? If so, what is the most effective way to achieve this? If, what not?

In relation to small charities (FRS tiers 3 and 4), charity business income is 'distributed' by meeting the costs of running the services - which is the charity purpose. Charity business income used in this way should remain exempt.

Question 6: If the tax exemption is removed for charity business income that is unrelated to charitable purposes, what policy settings or issues not already mentioned in this paper do you think should be considered?

This would create compliance costs as charities determine what income is taxable or not, reducing funds available for charitable purposes. It would also create additional costs for the IRD to provide suitable guidance to small charities in particular.

Ngā mihi nui,
s 9(2)(a)

Cathy Wilson
Chief Executive / Kaiwhakahaere Matua

National Council of Women of New Zealand
Te Kaunihera Wahine o Aotearoa

GENDER EQUAL NZ
MAKING EQUALITY REALITY

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C/o PSA
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Attn: NCWNZ

31 March 2025

S25.09

Submission to the IRD on Taxation and the not-for-profit sector

Introduction

1. The National Council of Women of New Zealand, Te Kaunihera Wāhine o Aotearoa (NCWNZ) is an umbrella group representing around 60 affiliated organisations and 300 individual members. Collectively our reach is over 200,000 with many of our membership organisations representing all genders. NCWNZ has 13 branches across the country.
2. NCWNZ's vision is a gender equal New Zealand and research shows we will be better off socially and economically if we are gender equal. Through research, discussion and action, NCWNZ in partnership with others, seeks to realise its vision of gender equality because it is a basic human right.
3. This submission has been prepared by the NCWNZ Board and the Parliamentary Watch Committee drawing on NCWNZ policy and previous related submissions.

Summary

4. NCWNZ is concerned over the proposals to change the taxation concessions for the not-for-profit sector. We question whether the ideas explored in the Officials' issues paper will achieve the reported economic gains, and whether they will actually simplify tax obligations and minimise compliance costs for charities.
5. For many charities changes to taxation policy settings and tax exemptions will put them at greater risk of financial unsustainability, with the knock-on effect being fewer services available for those most vulnerable in communities.
6. We strongly urge that before making major structural changes to the tax settings for charities, the potential implications and unintended consequences are fully acknowledged and comprehensively analysed.

7. Our voice is as an advocate for the charitable sector and its important role in society, and as a registered charity with first-hand experience of fulfilling compliance requirements. Our members set Policy 4.7.2.12: That NCWNZ urge the Government to continue the tax exempt status of bodies that provide services of a charitable nature to the community. 1988.

Context

8. The IRD Officials' issues paper outlines the Government's tax and social policy work programme, and includes reviewing elements of charities and NFPs. The reason given for the review:

> 2.15 The fiscal cost of not taxing charity business income unrelated to charitable purposes, particularly income that is accumulated, is significant and is likely to increase. Tax concessions for unrelated charity businesses reduce government revenue, and therefore shift the tax burden to other taxpayers.[1]

9. NCWNZ questions whether the theory underpinning this rationale is sound and whether sufficient analysis has been carried out to provide evidence for this viewpoint. Alternatively, NCWNZ sees the tax exemption for charities as a macro-level investment which strengthens the charitable sector, and a strong charitable sector is a key element of the current coalition government's social investment approach as well as a key element for our democratic system. As one commentator puts it:[2]

> *A strong charitable sector is itself a public good*. A thriving nonprofit sector acts as a counter to government power in a variety of ways. It minimises the activities undertaken by government, provides an avenue for non-governmental voices to be heard on vital issues, and minimises government growth. The charitable sector also encourages altruism, and fosters a communitarian ethos, both of which reduce the need for taxation. Under this view, *the sector itself is the benefit-producing act, and there is no need to justify funding each specific good or services within the sector*. Instead, the sector should be thought of in the same manner as national defense or a working market. *If, on the whole, the current structure is necessary to sustain the sector, then the fact that individual activities might not be justifiably subsidised when viewed in isolation is tolerable. Overbreadth might be the price we pay for having a sector to act as a counterweight to government.*

10. We believe the value provided by the not-for-profit sector is not fully appreciated in the Officials' issues paper. The Government itself has recognised that "complex social and environmental challenges cannot be solved by Government alone", and that "it is now even more vital to increase social enterprise activity".[3]

11. NCWNZ asks whether the concern identified by the Government's tax and social policy work programme could instead be addressed through greater adherence to the rigorous

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[1] Inland Revenue Department *Officials' issues paper, Taxation and the not-for-profit sector,* issued 24 February 2025: taxation-and-the-not-for-profit-sector.pdf
[2] Miranda Perry Fleischer "Subsidising charity liberally" in Matthew Harding (ed) *Research Handbook on Not-for-profit law,* (Edward Elgar 2018) 418 at 433 (emphasis added).
[3] The Impact Initiative, A roadmap for impact, April 2021, p6: https://www.theimpactinitiative.org.nz/publications/roadmap-for-impact.

registration and reporting process for registered charities that is already in place and without the need for additional and administratively burdensome regulation.

Charitable sector context

12. The charitable sector addresses issues arising in communities, touching on all aspects of our society, including health, education, poverty reduction, social housing, protecting the environment, combating climate change, and many others.

13. Charities Services maintains the Charities Register, which contains information about the approximately 27,000 registered charities that operate under the rules of the Charities Act 2005. More than 100,000 people work in the sector full-time, representing approximately 4% of the New Zealand workforce,[4] with an additional approximately 90,000 people working part-time.[5] In addition, many charities have no paid staff.[6] New Zealand charities are supported by more than 170,000 volunteers who contribute some 1.4 million hours of volunteering every week.[7]

14. The organisation 'Not for Profit Resource' reports that the significant challenges charities and non-profit organisations in New Zealand are facing in 2025 include:

    - funding constraints with reduced funding from traditional sources and an increased demand for services.
    - staffing and volunteer challenges - 'There's a growing recognition that relying solely on passion for the cause ("aroha") is insufficient to sustain the workforce.'
    - Operational challenges with increased administrative burdens, including annual reapplications for grants and contracts.[8]

15. NCWNZ survives year-to-year on member subscriptions, community donations and fundraising, grants, and over 10,000 volunteer hours predominantly from women volunteers. Any earnings through sales of products or events are for the direct purpose of NCWNZ, not for the benefit of any individual. Government support is limited despite the significant benefits that NCWNZ provides to society. NCWNZ is not alone in this situation. There are many other small charities in New Zealand that have similar stories, of living on the edge of financial sustainability and relying on volunteer labour to provide social services that contribute to social cohesion and well-being.

Key Concerns

[4] Charities Services | Ngā Ratonga Kaupapa Atawhai *Charities Services Annual Review 2023/2024* at 12. Note that 100,000 is a drop from the 145,000 reported in 2021: see Charities Services Ngā Ratonga Kaupapa Atawhai 2020/2021 Annual Review at 19.
[5] Te Tari Taiwhenua Internal Affairs *Modernising the Charities Act 2005: Discussion Document* Feb 2019 at 9.
[6] Te Tari Taiwhenua Internal Affairs *Modernising the Charities Act 2005: Discussion Document* Feb 2019 at 9.
[7] Charities Services | Ngā Ratonga Kaupapa Atawhai *Charities Services Annual Review 2023/2024* at 21.
[8] Not for Profit Resource, 2025 - A New Year, 12 January 2025. 2025- A New Year – Not for Profit Resource

International obligations

16. Charities and civil society organisations work alongside the Government to meet international obligations. The purpose of a registered charity will likely align with one or more of the 19 Sustainable Development Goals (SDGs).[9]

17. NCWNZ encourages Governments to uphold the Convention for the Elimination of all Forms of Discrimination against Women (CEDAW).[10] We note one recommendation from CEDAW's Concluding Observations on the ninth periodic report of New Zealand[11] that specifically mentions the role of civil society on gender-based violence against women:

> 21 (d) Allocate adequate human, technical and financial resources for the provision of victims' support services and ensure the effective participation of civil society, victims' representatives and social workers in decision-making on the delivery of protection, social and rehabilitative services..

18. Removing charitable tax exemptions undermines one source of financial revenue for civil society involved in delivery of such services and therefore contravenes the CEDAW Committee's recommendation.

Legal duties and compliance

19. NCWNZ wishes to stress that charities have legal duties under a range of legislation, including the Charities Act 2005. This regulates compliance with the financial reporting rules and applies to all registered charities, without exception. New Zealand registered charities are also required to include their constituting document, and any amendments, on the charities register.[12] NCWNZ questions whether there is a need for further regulation or whether increased compliance with existing legislation is the better option, especially noting that significant regulation changes such as removing the tax exemption can have equity effects where smaller charities are disadvantaged.

20. NCWNZ has experienced first-hand the damaging effects of changes to Charities regulations that were not carefully thought through before being implemented. In 2012 NCWNZ was de-registered as a charity because the government banned 'political advocacy' as a charitable purpose and NCWNZ was deemed to be such an organisation. We argued - successfully - that promoting the voice of women to policy makers across

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[9] United Nations. Department of Economic and Social Affairs. Sustainable Development. 2015. The 17 Goals. https://sdgs.un.org/goals

[10] United Nations. 1979. Convention on the Elimination of All Forms of Discrimination against Women New York, 18 December 1979. https://www.ohchr.org/en/instruments-echanisms/instruments/conventionelimination-all-forms-discrimination-against-women

[11] CEDAW, Advanced unedited version, 29th October 2024. Committee on the Elimination of Discrimination against Women. 2024. Concluding observations on the ninth periodic report of New Zealand. CEDAW/C/NZL/CO/9. tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2FC%2FNZL%2FCO%2F9&Lang=en

[12] Charities Services | Ngā Ratonga Kaupapa Atawhai, Charities' obligations under the law. Charities Services | Charities' obligations under the law

the political spectrum was an essential democratic, non-partisan and apolitical service. However, the court process was arduous and time-consuming. This was followed by a second court case - again successful - that argued that we should not have to pay the exorbitant tax bill that IRD presented us, because we should never have been de-registered in the first place. The lengthy and expensive process drained the energies of our voluntary organisation, significantly reduced our financial resources,and impacted on our ability to continue our important core work.

21. Our statement in the submission on the 2022 Charities Act Amendment Bill 161-9 on the appeals process, remains relevant to this submission on taxation:

> We believe it is essential that there is a simpler, less punitive, financial reporting system for smaller charities, especially smaller charities that are heavily reliant on volunteers to carry out their work. A simpler financial reporting system would reduce the compliance burden on charitable organisations and enable them to focus on their charitable activities.[13]

Independence and advocacy

22. Charities' independence underpins their advocacy work, which is critical in ensuring the voices of all in society are considered in public policy debates. Any additional financial pressure on charities could put this important role of holding the government to account in jeopardy.

23. NCWNZ has been working towards true gender equality in Aotearoa New Zealand. We have led and supported many initiatives that have benefited all New Zealanders and their communities. We actively raise national consciousness about gender equality in twenty-first century Aotearoa New Zealand. This includes making 20-30 written submissions on Government policy per annum, many supported by oral submissions to Select Committees.

Conclusions

24. NCWNZ has been part of the strong culture of volunteering in New Zealand for close to 130 years, and as a registered charity since 2009. The not-for-profit sector is essential in supporting social cohesion, advocating for and working towards equality for those facing the most disadvantage in society.

25. There is insufficient evidence that the proposed changes to taxation settings for the not-for-profit sector will realise sufficient economic returns to New Zealand to outweigh the value of services responding to community needs.

26. For charities the lack of clarity of what will constitute unrelated charity business income is worrying, as is what the compliance obligations will be. We urge that time is taken to fully analyse and consider the implications of the proposed changes, or better still, have

[13] National Council of Women NZ, 2022, S22.21_Charities_Amdt_Bill.pdf

a wider conversation with the charitable and not-for-profit sector about the best solutions to issues facing the sector.

27. NCWNZ is making this submission on the premise that this is a genuine consultation and that no decisions have already been made by the government on these matters.

s 9(2)(a)

Suzanne Manning
NCWNZ Board

Julie Thomas
NCWNZ Parliamentary Watch Committee

I am not utterly opposed to taxing business income if it is completely unrelated to the charities purpose. But many charities are operated by untrained, non professional volunteers and the compliance costs could be too great.

However even business that seem unrelated to the charitable purpose may well fit within the charitable purposes of the organisation, it may be a front door for relating to the community, it may be essential fundraising to allow the charitable purpose to be undertaken, and as with many church op shops provides an essential service in the community (recycling, cheap shopping, and friendly place to regularly visit, opportunity to serve the community in a socially supportive environment).
Many of the charity shops I know of could not continue without a friendly lease agreement, and volunteer staff. Taxation would close them and that would be a huge loss.

The reasons suggested for taxing charitable business are not compelling.
I definitely think that if tax exemption is removed at all then Tier 2 tier 3 and tier 4 reporting charities operating a business should still be exempt

And yes I would like to see funds given to a charitable purpose tax exempt as in effect my donations are. I do not know who to achieve tis but we need charities. Without charities a lot that is needed in my community would not happen.

The important issues for me are to protect the social value of charities. Op shops are the business I am most familiar with but there are undoubtedly many others: charity hospitals for example. In op shops there is a connection between different sectors of the community, an opportunity for service and social connection, an opportunity to make some difference to the amount of waste and the cost of waste on councils and the earth.

If any tax rules are altered go very carefully and watch out for unintended consequences.

Submission on Taxation and the Non-profit Sector IRD Paper – Impact on Lifestyle Trust (operating as Interactionz) and subsidiaries

31 March 2025

Introduction

Interactionz is a registered charity committed to working with individuals, organisations and businesses to envision the future they want and find their pathway forward. We engage in a mix of charitable activities and income-generating initiatives, alongside receiving partial government funding.

Interactionz is a community builder focused on intergenerational change and equity. We recognise that not all people have the same opportunities to access and be included in their communities. We work to ensure individuals, especially those with disabilities, can fully participate in decisions affecting their lives. Strong communities benefit everyone.

We appreciate the opportunity to provide feedback on the IRD paper released on 24 February 2025. While we support a fair and effective tax system, we have concerns about proposed changes that may impact our ability to deliver services and achieve our charitable objectives.

Background – Lifestyle Trust operating as Interactionz

Lifestyle Trust (operating as Interactionz) is a charitable entity under the Charities Act 2005. We have been operating for over 50 years, supporting disabled people to participate in their communities. We hold long-standing contracts with the Ministry of Health and Ministry of Social Development. Both provide contributory funding which does not fully cover operating costs, leaving us to fund the shortfall from other sources. Income-generating activities are essential.

Any tax changes must consider the unique situation and structure of organisations like ours.

To support our work and reduce reliance on donations and grants, we have developed income-generating initiatives, including learning and development programmes, visual communication services, and returns from invested reserves (which were created from the sale of our original and no longer fit for purpose property). These activities help sustain our charitable purpose but also create tax complexities.

Key Concerns Regarding Proposed Changes

1. **Taxation of Income-Generating Activities**
   We are concerned about the impact of stricter taxation rules on income-generating activities. Currently, tax exemptions apply when activities align with a charity's purpose and revenue is reinvested into charitable work. Tightening these rules could create financial strain.

- **Impact on Sustainability:** Heavier taxation could reduce funds available for charitable activities, limiting our ability to deliver essential services.
- **Challenges with Mixed-Use Revenue:** Differentiating taxable and exempt revenue could create administrative burdens and additional costs. Like most charities, we operate with lean administrative infrastructure and if our income is reduced further we will have even less resource available.

2. **Government Funding Contracts and the Taxation Implications**
   Our government funding is partial, requiring income from other sources to cover costs. We are able to generate a small amount of income from philanthropic grants but competition for grants is high and criteria do not always align with our needs. We have worked hard to develop our own income-generating activities, based on sharing our learning and planning skills with other organisations and businesses. The income we generate is modest, but essential in covering our funding shortfall. The proposed changes may increase compliance costs and complicate the balance between government funding and income generation.

   - **Impact on Government Contracting:** If funding is tied to taxable activities, we may lose access to exemptions, potentially reducing funding or restricting its use.

3. **Fringe Benefit Tax (FBT) for Non-Profit Organisations**
   Applying FBT to charities would impose financial and administrative burdens. We provide staff benefits, such as gifts or transport, as part of remuneration. We have worked hard, over a long period of time, to transition our services to clients in the communities where they live. This means our staff need access to vehicles. Introducing FBT on these could negatively impact our operations.

   - **Impact on Operational Costs:** Increased costs of employee benefits may force reductions in services or operational expenses.
   - **Increased Compliance Burden:** Administering FBT would require additional accounting resources, and time spent tracking and reporting employee benefits, diverting funds from core charitable work.
   - **Disincentive to Offer Staff Benefits:** For many non-profits, offering non-cash benefits is an important tool to attract and retain staff, particularly in competitive job markets. FBT could discourage us from offering benefits, affecting staff morale and retention.

4. **Clarity and Compliance Burden**
   Stricter rules for mixed-purpose activities could lead to higher compliance costs. Charities operate with limited resources, and additional administrative burdens could hinder service delivery.

   - **Increased Costs:** More legal and accounting expertise may be required, especially for smaller charities.
   - **Uncertainty in Tax Treatment:** A lack of clear guidelines could force charities to scale down or restructure activities.

Recommendations

Considering the concerns outlined above, we respectfully offer the following recommendations to the IRD regarding the proposed taxation changes:

1. **Provide Clarity on Income-Generating Activities:** Clear guidelines should distinguish between charitable and income-generating activities to ensure compliance without undue burden.
2. **Ensure Proportional Taxation for Mixed Activities:** Tax frameworks should consider the level of commercial activity, ensuring charities are not penalised for fundraising that supports charitable activities.
3. **Streamline Compliance Requirements:** Simplified reporting systems should be developed, particularly for smaller charities.
4. **Consider Exemptions for Hybrid Activities:** Charities that combine charitable work with income generation should retain tax exemptions for activities that directly support their purpose/mission.
5. **Review FBT Application for Charities:** Exemptions should be maintained or expanded, recognising that non-cash benefits play a key role in staff retention and motivation.

Conclusion

We appreciate the opportunity to provide feedback on the IRD paper concerning taxation and the non-profit sector. While we support a fair tax system, we urge the government to consider the challenges faced by charities relying on both charitable activities and income generation. A balanced approach, that recognises the unique structure of these organisations, will ensure we can continue delivering essential services and fulfil our vision, purpose/mission.

Thank you for your time and consideration.

Ngaa mihi nui

s 9(2)(a)

Jennifer Calley
Chief Executive
Lifestyle Trust
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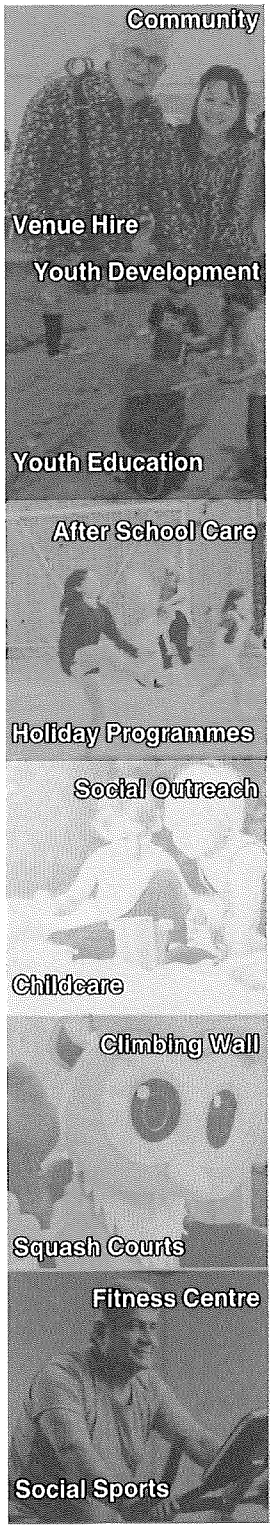

David Carrigan
Deputy Commissioner, Policy
Inland Revenue Department
PO Box 1298
Wellington 6140

via email: policy.webmaster@ird.govt.nz

Dear David,

Taxation and the Not-for-profit Sector

Please find attached our feedback to the questions raised in the Official's Issue Paper issued on 25th February 2025. As will become clear, we strongly oppose the many of the proposed changes, as we believe they will result in bad outcomes for New Zealand as a country.

Best Regards,
Joanne Dusterhoft
CEO Taranaki Y
s 9(2)(a)

Taranaki

we build strong kids, strong families, strong community
me whakahangaia e matou, i nga tamariki, i nga whanau, i nga hapori e

Feedback on the Questions Raised

Overview

The Taranaki YMCA is part of the National Council of YMCA's of New Zealand Inc is the national body representing the YMCA Associations across New Zealand.

Regionally we deliver a diverse range of offerings including fitness & recreation centres, gyms, childcare services, youth development, social services, tertiary education. We have been operating in Taranaki for over 90 years, supporting communities across the country.

Collectively our national turnover is around $60 million per annum and $3.7 million in Taranaki Y per annum, and we would very much feature as a charity whose business activities could be portrayed as not being related to our charitable purpose, and as such we feel compelled to respond to the items being raised in the paper.

We share the opinion of the National Council of YMCA's in New Zealand as submitted to your office on the 21st March 2025, namely:

1. The changed being raised seem to be based on misinformed views of their being some $2 billion dollars of untaxed earnings from NFP's that could be contributing to the tax take.

   What seems to have been overlooked is that without the opportunity to raise capital via shareholders, NFP's seek funds for capital projects via revenue streams such as grants, donations and other channels which then appear as revenue in their P&L statements. However, with capital expenditure not appearing in their P&L's, their surpluses become overstated, often for years at a time when the capital accumulation is taking place. This distorts the underlying trading operations of the charity, which is all that really should be taxed if there is to be any tax on profits. In reality most charities day-to-day operations are breakeven or loss making.

   If the CAPEX related revenues were removed from the revenue streams of charities we are very confident you would find that $2 billion of surpluses would disappear, and that there is no 'gold' for the IRD to be targetting in the NFP sector that would justify the bureaucracy and compliance costs being contemplated in this paper.

   In addition, these funds can often sit in their Balance Sheets for years as funds are built up over time to start a project such as a new building, falsely creating an impression of wealth.

   And while it may not be the intention of the changes, it still needs to be said that it would be disasterous for the sector to be taxed on 'surpluses' created by CAPEX related revenues. With CAPEX revenue streams tightly tagged to projects, any tax to be paid would have to come out of other operating funds, which would not be able to cope with the scale of tax being incurred. This would be the death of those projects or indeed the charities themselves.

2. It is very important to remember that the sector is already contributing to the tax take via a myriad of other taxes – in particular GST, PAYE, fuel exercise taxes etc, and that any impression that the sector is fully 'tax-exempt' is completely false!

3. If there are genuine concerns of a few fully commercial entities masquerading as charities, then the simpler and more direct approach would be to have Charities Services revoke their charitable status. Problem solved, without tipping up the worlds of the other 29,000 charities!

4. The Government in New Zealand is very fortunate to have a huge number of charitable organisations doing its job for them, often with volunteer labour! If those charities did not exist, the burden of providing these services to the community would fall back directly and fully on the taxpayer.

   It is in its own best interests for the Government to ensure that the NFP sector thrives, so and it should be doing everything it can to support the sector. Adding additional taxes to the NFP sector is going in the opposite direction!

5. In an environment with reduced Government support and more intense competition for existing sources of funding such as gaming trusts, community trusts, sponsorships and donations, it is more important than ever that charities find other ways to generate income to support their causes. Having commerical operations to generate that revenue should be seen as a good thing and actively encouraged, not being portayed as borderline illegal

6. The litigation that would occur in determining and challenging what constitutes an 'unrelated' business activity will be a major distraction and cost drain on charities and the crown. Ironically it will be those who are allegedly 'abusing the system' that will have more resources to invest in that and are more likely to win their arguments. Once again, the rich will get richer and the poor will stay poor.

   A simple example of this is our own activities in providing early childhood and after school care services. In many places we are competing with commercial operators, but does that make it a business, when our focus is on providing it as a community service, in many cases with the support of WINZ and MSD? There could be arguments both ways and it is ultimately a subjective judgement. The NFP sector does not need that level of uncertainty and having to spend money on lawyers to debate this in courtrooms, when our energies and funds are needed on the frontline.

Charity Business Income Tax Exemption

Q1: What are the most compelling reasons to tax, or not tax charity business income?

- There are no compelling reasons to tax charity business income. The alleged $2 billion of profits from NFP's is hugely overstating the real level of profitability as it is overstated by including CAPEX funding with no corresponding expenditure. As such, there is no 'pot of gold' for IRD to be targeting, as this CAPEX related income would have to be removed from any calculation of taxable profit, or the impact on the sector would be catastrophic.

- There are several key reasons to not <u>further</u> tax charities, such as:
    - The sector already pays significant taxes – via GST, PAYE, Fuel Excise Duty etc.
    - If more taxes are added that end up reducing charity business activity then the Government will lose out on these existing taxes.
    - It is in its own best interests for the Government to ensure that the NFP sector thrives, so and it should be doing everything it can to support the sector to be innovative and seek sustainable income streams beyond having its hand out for donations. Adding additional taxes and compliance costs to the NFP sector is going in the opposite direction.
    - Charities having commerical operations to generate that revenue to support their charitable work should be seen as a good thing and actively encouraged.
    - Only the lawyers will benefit from these proposals, and the charities being targeted will have the best lawyers and be most likely to escape the 'net'.
    - A the simpler and more direct approach to the alleged problem would be to have Charities Services revoke their charitable status of those commercial businesses masquerading as charities.

Do factors in 2.13 and 2.14 warrant taxing charity business income?

- No, these are spurious arguments. Charities already have compliance costs for all their other tax obligations, and do not operate in an ecosystem where having a nominal 'rate of return' better than the next business has any relevance. Being able to raise capital from investors is a luxury that charities don't have – and should never be portrayed as a 'benefit', and the vast majority of charities have very low levels of retained earnings.

Q2: If the tax exemption is removed for charity business income that is unrelated to charitable purposes, what would be the most significant practical implications?

- Firstly determining what was 'unrelated' and making sure that is fair and consistent, when every charity will be unique in some aspect.
- Secondly, having to add the complexity into keeping accounting records to distinguish whatever is deemed to be an 'unrelated' business from the rest of the activities. It is wrong to assume that such businesses will be run in a manner that is easily segregated, such as via a subsidiary company with its own bank accounts, staff and systems etc, and many will be just part of the overall entity's operations. As such the allocation of overheads to the 'unrelated' business will be subjective and open to debate, and there will be a clear incentive to minimise the profits of that business.
- Loss of income (through whatever extra tax is paid), impacting the viablity of the charity.
- If charities fail, or reduce services as a result, that the Government then has to pick up the slack.
- Any curtailing of business activities as a result of the additional taxes will reduce the tax take for other taxes paid by the charity (GST, PAYE, Fuel Excise etc).

Q3: If the tax exemption is removed for charity business income that is unrelated to charitable purposes, what criteria should be used to define an unrelated purpose?

- This is a primary reason why the idea should not proceed!
- Charities are so variable in their nature and scope that it would require a unique analysis for each entity, which is a massive compliance exercise in its own right to put

onto the sector. 'Guidance' by its nature can only ever be that, which will require legal interpretation and debate to get final decisions. It will be so important for many charities that it will be taken to the courts to decide, clogging up the legal system and transferring vital income from charities and the crown to lawyers pockets.

- The treatment of passive (e.g. investment) income also needs to be clarified – if it is going to be considered 'unrelated' that massive negative implications for the sector.
- Common sense would suggeste that any business venture being run by a charity creating revenue for the charity by definition is not creating wealth for the benefit of any private individual/entity, so there should be no need for a definition around what is 'unrelated' or not, as it is all related!
- If there is doubt about the charitable status of the organisation, then address this directly, not via this approach.

Q4: If the tax exemption is removed for charity business income that is unrelated to charitable purposes, what would be an appropriate threshold to continue to provide an exemption for small-scale business activities?

- As above, we believe that this is the wrong approach and no additional taxes should be added to any charities, regardless of size.
- Again, if there are concerns about the abuse of the charitable status by a very small number of organisations, then the simpler and more direct approach would be to have Charities Services revoke their charitable status, and leave everyone else alone.
- Just by reducing the number of charities being targeted by IRD does not reduce the severity of the impact on those remaining in the spotlight. Harm is still being done to the NFP sector, and by targeting the bigger players it will mean the harm is significant!

Q5: If the tax exemption is removed for charity business income that is unrelated to charitable purposes, do you agree that charity business income distributed for charitable purposes should remain tax exempt?

- Absolutely!

If so, what is the most effective way to achieve this? If not, why not?

- By defining **all** business income for a charity as being used for charitable purposes and side-stepping the issue! There is nothing wrong with a charity re-investing in its own business activities, as it will be to generate more income in future for the charity, and this should not be penalised.

Q6: If the tax exemption is removed for charity business income that is unrelated to charitable purposes, what policy settings or issues not already mentioned in this paper do you think should be considered?

- For the IRD to gain a greater understanding of what proportion of charity profits are not actually 'real' profits, i.e. being created by the anomaly of CAPEX related revenue appearing in charities P&L's but not the corresponding expenditure.
- For IRD to gain a greater understanding of how charities actually run their business activities – i.e. that they are not all nice 'neat' subsidiaries, and therefore would therefore incur extra accounting and compliance costs in practice to differentiate profits from those that are deemed 'unrelated' from the rest of the business.

- For IRD to assess the level of litigation that would occur in determining and challenging what constitutes an 'unrelated' business activity – which will be a major distraction and cost drain on charities and the crown.
- To consider the loss of tax revenue from GST, PAYE and other sources of tax as a result of charities curtailing business activity as a result of additional taxes being imposed.
- Step back and consider the Law of Unintended Consequences, and what the impact will be back on Government if charity activity is reduced, forcing the crown to pick up the slack.
- In the same vein, consider the value to the Government of having a NFP sector that is self-sufficient for funding, and whether in fact more should be done to encourage charities to develop businesses to fund their activities (e.g. tax incentives).
- In general, to relook at what the ultimate objective really is, and re-assess if using the blunt tool of the tax regime is even the right way to achieve this.

Donor Controlled Charities

The Y movement does not have any donor controlled charities so we have not responded to questions 7-9

NFP and friendly society member transactions and related matters

Q10: What policy changes, if any, should be considered to reduce the impact of the Commissioner's updated views on NFP's, particularly smaller NFP's?

- Policy changes should not allow the Commissioner's updated views to change the status quo, where NFP's do not pay tax on profits from member transactions or subscriptions.
- For many NFP's the levies charged on their members are the lifeblood of the organisation, and are already being taxed (via GST). Adding an additional tax burden is not appropriate, and will un-necessarily impact the viability of the NFP and its members.
- It will be inordinarily difficult to have to determine what the 'profit' is on levies & other member transaction versus other revenue streams, and this compliance burden should not be placed on charities.

Q11: What are the implications of removing current tax concessions for friendly societies and credit unions?

As we are neither a friendly society or a credit union we cannot comment on this topic.

Income Tax Exemptions

The Y movement is not a local or regional promotional body, herd improvement body, a body promoting scientific & industrial research, a veterinary service body or a non-resident charity, so we have not responded to Q12.

FBT Exemption

Q13: If compliance costs are reduced following the current review of FBT settings, what are the likely implications of removing or reducing the exemption for charities?

- Charities are not in a position to absorb any additional compliance costs and because they do not currently incur any in relation to FBT, any costs will be a signficant increase.
- However, the compliance costs are a red herring, as the real issue is that (genuine) charities are not in a position to be paying any FBT, on top of their existing tax burden as it will materially impact their viability.
- Many charities receive contra support from donors/ businesses – for example through providing the free use of vehicles for day-to-day operations that at times may result in some personal use for the driver. There is no revenue stream to pay the FBT for this contra support, so to avoid this significant liability there will be unintended consequences of not being able to accept this contra support in the first place and having to work in a less cost-effective way.
- There is clear evidence through independent surveys that the NFP sector is unable to pay their employees as much as the 'for profit' sector. As such, there is a genuine need to 'level the playing field' in any way possible to attract the necessary standard of talent to the sector.

The reasons being put forward for the review, in themselves are not a justification for making any change to the FBT exemption, in that:

- The labour market is already distorted by NFP's being unable to match 'for profit' remuneration levels. What is being proposed only worsens this distortion.
- Levelling the playing field via the tax system is arguably a very efficient way of addressing the issue.
- The IRD argument of 'weak efficiency' seems to be just a smokescreen for wanting additional tax revenue, rather than any matter of improving integrity and simplification.
- If there is a lack of co-herence in the current exemption, then this is up to IRD to fix their own problem. That cannot be used as a justification to remove the exemption!
- As above, if there are no compliance costs currently, any costs are a material increase, regardless of whether they are lower than they might have been before. Therefore the concerns of compliance costs are just as valid.

Tax Simplification - Volunteers

Q14: What are your views on extending the FENZ simplication as an option for all NFP's.

- Anything that assist with reducing the compliance burden on NFP volunteers is a good thing. However the applicability of the FENZ simplification in other NFP environments would have to be looked at in more detail before assuming it was a 'one size fits all' solution.

Do you have any other suggestions on how to reduce tax compliance costs for volunteers

- Make any payments, such an honoria fully tax exempt.

Tax Simplification – Donation Tax Concessions

Q15: What are your views on the DTC regulatory stewardship review findings and the policy initiatives proposed?

- These make good sense. A major hurdle at the moment is linking it to the annual tax return cycle, as it is hard to hang on to receipts for up to 12 months, so many potential donations are never claimed for.

Do you have any other suggestions on how to improve the current donation tax concession rules?

- Perhaps increase the lower threshold from $5 to reduce the quantum of claims to deal with.
- Provide an online claiming system.

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31 March 2025

Submission to: Deputy Commissioner, Policy Inland Revenue Department

On: Taxation and the not-for-profit sector

By email: policy.webmaster@ird.govt.nz

1. Introduction

1.1 This submission is from the Charity Law Association of Australia and New Zealand (CLAANZ).

1.2 We are happy to be contacted to discuss the points raised in our submission.

2. About CLAANZ

2.1 CLAANZ is a charitable company incorporated in Australia and registered as a charity with the Australian Charities and Not-for-profits Commission (ACNC).

2.2 CLAANZ's purposes are to advance the education of its members and the public in charity law and to improve the administration of charities by contributing to the development of reform and improvement of charity law in both Australia and New Zealand.

2.3 CLAANZ was originally established as the Australian Charity Law Association in 2009 in response to the emerging need for quality, accountable, charity-related legal services in Australia. The Association changed its name on 27 August 2015 to better reflect the engagement, since our establishment, of Australian and New Zealand colleagues in addressing legal issues in the charity and NFP sector in both countries.

2.4 As a representative body for lawyers who support the charitable sector in Australia and New Zealand, we have had the opportunity to review a number of submissions from charities and representative organisations with regard to the Inland Revenue issues paper.

2.5 We set out summary comments in this submission flowing from our review of various submissions on the issues paper and our interactions with various charities and representative bodies.

3. Our Comments

3.1 A rushed consultation process is not a proper foundation for changes to the taxation of charities, particularly changes with such wide-reaching implications as have been proposed in the issues paper.

3.2 The present taxation review process in respect of charities appears to be taking place within the limited lens of a revenue focus that fails to properly account for the enormous economic and social benefits that charities bring.

3.3 Charities provide services that would otherwise need to be provided by the government in the absence of funding for charitable activities. Reliance on the charitable sector avoids the need for a centralised system of oversight over community response to the many and varied social, economic, religious and environmental needs that exists within a pluralistic society. Charities are often able to provide better and more targeted programs and services than what is possible via central government. The government has a stated commitment to working with the charitable sector and community groups to improve social service delivery.

Unrelated Business Income

3.4 The best evidence that we have seen indicates that imposing income tax on unrelated business income of charities would not be a major source of revenue but would negatively impact many charities including by increasing compliance costs for charities and

therefore reducing the net funds that are available for the pursuit of their charitable purposes and the resulting public benefit.

3.5 Imposing income tax on unrelated business income of charities runs counter to the present government's stated priority of reducing regulatory burdens to unlock economic growth. Complexity and confusion are common features in international jurisdictions that tax the unrelated business income of charities. The government should not underestimate the difficulty of legislatively identifying what constitutes unrelated income and what constitutes business/commercial income of charities.

3.6 Many of the stated concerns about unrelated business activities also apply to related business activities and to investment activities. Imposing income tax on unrelated business income of charities will likely not capture a significant number of high-profile charities that appear to be the focus of the government's concern, as their business income is in many cases related to their charitable purposes.

3.7 Imposing income tax on unrelated business income of charities is the wrong tool for policing charity decision making and will likely disincentivise charities from pursuing a legitimate source of income for the purposes of funding their charitable objectives. There are existing legal mechanisms for challenging the decision making of charities where the government believes that any charities are failing to pursue their charitable purposes in a legitimate manner.

3.8 Charities make an enormous and often unseen contribution to the economy and the social fabric of New Zealand. New Zealand presently operates from a "destination of funds" approach which is neutral on the methods that charities use to generate funds for the pursuit of their charitable purposes. Many charities operate with very limited resources. Reliance on donations and volunteers exposes charities to significant risks to their ongoing viability during seasons of economic downturn. Business income is a legitimate means of supplementing other forms of income in the furtherance of a charity's purposes. In many cases, responsible financial management of a charity would include seeking alternative revenue sources to diversify the income of a charity and strengthen its financial position. This should be encouraged, rather than disincentivised.

3.9 The proposals canvassed in the issues paper would act as an unnecessary blanket barrier to much-needed charitable work at a time when the charitable sector is already struggling with increasing costs, increasing demand for services yet diminishing revenue streams. Any issues with specific charities can be more than adequately addressed using existing tools. There is no compelling basis to impose such unnecessary complexity on the charitable sector.

Donor-Controlled Charities

3.10 In our members' experience, donor established charities are structured around the donors providing free or at below cost support to a charity and it would be only a few outliers where there may be legitimate concerns around donor control that may lead to misdirection of funds. There are existing mechanisms for dealing with such concerns.

3.11 We suggest dealing with any specific examples of apparent misuse of charitable status that are known to the Inland Revenue on a case by case basis using the existing tools that are available for the enforcement of the fiduciary and other statutory obligations of charities and their officers rather than introducing significant structure changes that affect all such charities.

3.12 The issues paper does not mention the important fiduciary duties to which the officers of all registered charities (trustees, directors, etc) are subject: it is very unlikely that a charity could purchase assets from a related party at non-market prices without its

officers breaching a fiduciary duty. Similarly, a charity could not invest money in a business controlled by one of its officers unless to do so was in the best interests of the charity in furtherance of its charitable purposes: every decision made by every registered charity must be made in good faith in the best interests of the charity in furtherance of its stated charitable purposes. Acting in breach of fiduciary duty is "unlawful", and therefore already constitutes "serious wrongdoing", as that term is defined in the Charities Act, as discussed above.

3.13 One factor that is more relevant for donor-controlled charities is the potential non-economic benefit of the perpetuation of the donor's own worldview through the activities of the donor-controlled charity. There is nothing inherently improper with this, but it may merit consideration of mandating requirements for decision-making involvement by individuals who are independent of the controlling donors. In Australia, the ACNC regulates this, requiring reporting of related party transactions but does not prohibit such transactions per se.

Accumulation and minimum distribution

3.14 The issues paper appears to assert false assumptions that a charity which accumulates funds is not applying them for the benefit of its charitable purposes and that charities can only further charitable purposes by distributing their funds. Accumulation of funds may well be an appropriate long-term strategy in many cases to advance a charity's purposes. Accumulations are also legitimate ways of providing for a charity's legitimately accruing liabilities (for example, for personnel) and for sustained funding for longer term project and activities (for example, overseas development projects can span over many years in striving towards positive generational outcomes).

3.15 Most countries do not impose minimum distribution requirements, but rather require disclosure of financial information, including as to surpluses, and rely on public scrutiny to ensure funds are applied in pursuit of charitable purposes in a timely manner. New Zealand already has a comprehensive set of transparency and accountability requirements for charities.

3.16 Imposing minimum distribution requirements will further increase financial reporting complexity for charities.

3.17 Minimum distribution requirements should not be imposed without a clear normative basis for such requirements that properly accounts for the current generation's obligations to past and future generations, and the individual circumstances and objectives of each charity.

Ngā mihi nui
Charity Law Association
of Australia and New Zealand
Per

s 9(2)(a)

Kris Morrison
Director

Email: s 9(2)(a)

Submission: Taxation And The NFP Sector

31st March 2025

Business North Harbour Incorporated

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31st March 2025

Taxation and the not-for-profit sector
C/- Deputy Commissioner, Policy
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Introduction

Business North Harbour (BNH), representing the North Harbour Business Improvement District, is a significant commercial and industrial Business Improvement District (BID), representing over 4,500 commercial property owners and businesses within the North Harbour area of Auckland. Collectively they employ around 37,000 Auckland residents and ratepayers.

BNH represents and works with a wide range of businesses comprising of a mix of sole traders, Small Medium Enterprises (SME), through to multi-national organisations, representing sectors such as ICT, business services, specialist manufacturing, light – medium warehousing, logistics, retail and hospitality.

Our Feedback:

Is in response to question 12 of the Discussion Questions, Chapter 2: Charities Business Income Tax Exemption.
Income Tax Exemptions

- *local and regional promotional body income tax exemption*

Our feedback is regarding the potential removal or significant reduction of income tax exemptions, specifically concerning the local and regional promotional body income tax exemption (CW40 in the Income Tax Act).

BNH strongly believes that the income tax exemption for Business Associations should remain in place for the following reasons:

- **Community and Economic Development:** Business Associations play a crucial role in fostering local economic development. They invest significantly in activities that benefit the wider community, such as:
    - Promoting local businesses, attracting investment and providing B-2-B opportunities to support business and economic development.
    - Providing security patrols and other initiatives such as CCTV to reduce crime and anti-social behaviour and improve the safety of the local business community, their employees and their customers.
    - Enhancing the amenity of the area to attract new businesses and provide a welcoming environment for customers, attracting people into the local area.
    - Improving public amenities to the benefit of the wider community.
    - Providing sustainability programmes such as food waste collections and pallet recycling to support local and national sustainability targets.
- **Reinvestment In Community Safety:** Funds that would otherwise be directed towards income tax are reinvested directly into community safety measures, including CCTV systems and security personnel. These investments create a safer environment for both businesses and residents and are a vital service that would be significantly reduced if the exemption was removed, thus adversely affecting our local communities and the local economies.

- **Maintaining Local Programmes and Services:** Removal of the exemption would severely limit the ability of Business Associations to provide essential programmes and services to their members and the community as a whole. This would negatively impact our local businesses and the local economy, reducing the overall quality of life for everyone involved in the local community.

- **Business Associations Are Very Different To Charities:** Whilst some entities may apply for this exemption because they have been unable to register as a charity, Business Associations serve a distinct purpose focused on local economic development and business support, which is completely different from the core functions of charities.

- **Impact On Small Businesses:** Many small businesses rely on the activities and support of their local Business Association for their survival. The proposed change would place a greater burden on these small businesses if programmes, services and business support was reduced. Many small businesses are constantly struggling to survive and any reduction in the services already outlined would negatively impact their financial stability and any potential for growth.

BNH concludes that the removal of the income tax exemption for Business Associations would have a number of detrimental effects on their local economies and community safety and amenity. We urge the IRD to maintain this exemption to ensure that these local, community-based and community-serving organisations, who are critical to the success of the local business community and the development of the wider community, are able to continue with their level of support for their local business communities and the wider community for the benefit of all concerned.

Should there be any questions or other matters arising from this Submission, we would be pleased to respond to these.

Yours sincerely,

s 9(2)(a)

Kevin O'Leary
General Manager

SPECTRUM
FOUNDATION
Ahākoa ko wai te tangata, ahākoa nō hea

31 March 2024

Taxation and the not-for-profit sector
C/- Deputy Commissioner, Policy
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PO Box 2198
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Sent via email to: policy.webmaster@ird.govt.nz

Response to Taxation and the not-for-profit sector

Spectrum Foundation is submitting on the issues paper of 24th February 2025 titled *Taxation and the not-for-profit sector*. Spectrum Foundation is a registered charity and a member of Philanthropy New Zealand. We support the general points made in the submission from Philanthropy New Zealand and have additional points that relate specifically to our organisation. These are outlined below.

Executive Summary

Spectrum Foundation does not agree with the proposal regarding the charity business income tax exemption. Charitable organisations provide essential services to the most vulnerable members of society. Removal of the tax exemption would increase compliance costs and detract funds away from charitable purposes. Should charitable work be disincentivised, the Government would need to intervene, making a strong case for continued tax exemption.

Spectrum Foundation does not agree with the proposals regarding donor-controlled charities. Charitable organisations such as the Spectrum Group require the freedom to manage the flow of resources between entities to support its charitable purposes. The proposed changes would likely result in further unnecessary compliance costs, impacting the organisation's ability to continue philanthropic funding. In the interests of efficacy and efficiency Spectrum Foundation does not agree with imposing minimum distribution rules. Unintended consequences of this decision would include reduced participation in philanthropy and even ineffective funding decisions.

If the proposal proceeds, it will be important to ensure that any reforms are not rushed and are appropriately targeted so as not to have a broader impact than intended. It will be necessary to consider all the potential implications of the proposals, which are likely to be both significant and complex. For example, the concept of "unrelated business" income will need to be clearly defined, and appropriate carve-outs will be needed. It is also important to recognise that accumulation can occur for many good reasons, and charities should be able to accumulate funds for charitable use in later years.

Should the proposals for donor-controlled charities proceed, careful consideration will need to be given to the definition of a "donor-controlled" charity to prevent overreach. The imposition of any new rules for "associated persons" transactions of donor-controlled charities will also need to be well thought through. In addition, we do not believe that organisations should be expected to make a minimum annual distribution. Restricting the use of charities' funds could hinder their ability to carry out charitable purposes.

Introduction to Spectrum Group

Spectrum Group delivers support across the disability sector of New Zealand. We directly support over 1,700 disabled people and whānau, provide accessible homes to 722 disabled people, and support the wider disability community through philanthropic funding. Spectrum Group carries out this work through three charitable entities – Spectrum Foundation, Spectrum Care Limited and Homes of Choice Limited.

Spectrum Foundation is a disabled-led philanthropic funder. It funds organisations and initiatives that address unmet need in the disability community of Aotearoa.

Spectrum Care is wholly owned by Spectrum Foundation, and it is contracted by the government to provide disability support services. It supports disabled people and whānau through a range of support services such as supported accommodation, supported independent living and respite care.

Homes of Choice is a registered Community Housing Provider (CHP) and is also wholly owned by Spectrum Foundation. It provides accessible and affordable housing options for disabled people and works to ensure its properties meet the needs of its tenants and supports their independence.

All three entities work collaboratively to realise the Group Vision of 'an Aotearoa in which all disabled people have equal opportunity to live good lives. The three entities also apply a set of shared Values to this work: Equity (We treat everyone fairly), Dignity (We honour and respect each other), Ambition (We dream big) and Sustainability (We do what's best).

The three entities that make up the Spectrum Group work together to address unmet need in the disabled community of Aotearoa. Each organisation operates in a different but related way and has different financial risks and requirements. Spectrum Care requires significant working capital to carry out its operations, which includes 24/7 staffing provided by over 1,200 frontline Community Support Workers. Homes of Choice has a portfolio of more than 210 properties, with a significant development pipeline to address significant unmet need in accessible social housing for disabled New Zealanders. Currently only 4% of New Zealand's housing stock is accessible, yet 17% of New Zealanders identify as disabled. Spectrum Foundation is reliant on Shared Services and capital charge remittances provided by Spectrum Care and Homes of Choice which are then distributed into the disabled community through its philanthropic activities to meet unmet need.

The proposal regarding the charity business income tax exemption should not proceed.

The Spectrum Group's main source of income now and since inception has been funding through disability support contracts with government to provide services to disabled people that the government would otherwise be unable to deliver. Disability support contracts are often at a lower rate than other government support contracts and have not kept pace with increases in costs over time. In some cases, the services delivered operate at a considerable deficit. As a disability support provider, Spectrum Care therefore operates on slim margins and achieves only modest surpluses. Homes of Choice has built up its housing stock over time, requiring significant capital investment, with inconsistently available returns. Despite this, we can provide funding support to the disabled community through prudent financial management over the past 30 years.

Our entities, like all registered charities, are facing significant and increasing compliance costs. Each entity in the Spectrum Group is required to provide annual audited accounts and there are increasing reporting requirements for each entity's annual activities and impact. This reporting comes at a material cost. In addition, as a charitable group we face rigorous public scrutiny of our costs, expenses and activities. Removing tax exemption would increase the cost of compliance for our Group and this would likely have unintended negative consequences for the people we serve.

The philanthropic funding provided by Spectrum Foundation is guided by people with lived experience of disability. Being led by and of the community we serve means our funding is targeted, nimble and efficient. As a result, the Foundation has distributed over $2M directly to the community in a little over two years. We also work closely with other philanthropic funders to identify the most effective initiatives for support and to have the most benefit to the community we serve. This means we learn quickly about best practice and innovative approaches, increasing our ability to have impact.

Our areas of focus – health, housing, education, employment and self-determination – are linked to rights outlined in the United Nations Convention on the Rights of Persons with Disabilities. Yet, there is still significant unmet need in the disabled community around these rights. Without Spectrum Group and other charitable philanthropic entities funding into these gaps, they would continue to persist in the same manner and need to be answered by government.

We appreciate that, in the case of charitable organisations, any profits from business activities are used to benefit the cause. However, like all organisations, charities must have sufficient funds available for investment in projects such as IT infrastructure (to keep private and sensitive information safe from cybercrime), risk management and legislative compliance, and to maintain stability long into the future – for example Spectrum Care is often relied on to provide support for a person's entire life.

If a resourceful charity has established an entity with surpluses to support itself, it should not be taxed for doing this. The need in the community will continue, so the result of increased tax on these entities will be a greater requirement for funding from government and from the public for the charity to have the same impact. If the charitable tax exemption was removed for any of the Spectrum Group entities, it would be more difficult for each organisation's work to continue. Spectrum Foundation would struggle to provide philanthropic funding. This could offset any additional tax intake as the government would need to fund the gaps left behind. For Spectrum Care, removing the tax exemption would make it more difficult for the organisation to offer the same level of support to the same number of people. For Homes of Choice, removing the tax exemption would make it more difficult for the organisation to continue developing accessible properties to meet the current significant shortfall.

Spectrum Foundation therefore opposes the proposal to tax the business income of charities. Charitable organisations like ours provide essential services to the most vulnerable members of society. Should such work be disincentivised, the government would need to intervene, making a strong case for continued tax exemption.

The issues paper lacks a clear 'problem statement', making it challenging to understand the intention behind the proposal. However, it is noted that existing mechanisms are already available if there are concerns about specific entities.

The indicative timeframe for the review and subsequent changes concerns us, as it does not seem to allow for a careful and considered approach necessary to avoid unintended negative social and environmental consequences. Further, the current economic climate has already imposed significant additional challenges on the charitable sector.

Careful thought will be required should the charity business income tax exemption proposal proceed.

Should the proposal regarding the charity business income tax exemption proceed, it will be important to ensure that reforms are not rushed and are carefully thought through. It will be necessary to consider all the potential implications of the proposal, which are likely to be both significant and complex. Any reforms will need to be appropriately targeted such that any changes do not have a broader impact than intended.

It will be essential to clearly define the concept of “unrelated business” income to help prevent overreach in the proposal. Activities such as those carried out by the Spectrum Group should not be considered “unrelated business” income, as they are all well-aligned and intertwined with the Group’s charitable purpose.

Paragraph 2.24 of the issues paper notes that in countries where unrelated business income is taxed, certain unrelated commercial activities remain tax exempt. We agree that it will be necessary to consider “carveouts” from unrelated business income. In particular, any activities funded by the government should be carved out of “unrelated business” income. Such activities should not be viewed in the same way as other commercial activities. CHPs should also be carved out from any taxation of unrelated business income. Activities undertaken by CHPs are not akin to normal commercial activities and should not be treated as such.

As demonstrated by the comments made above, accumulation can occur for good reason. Additional rules will be necessary to enable charities to accumulate funds for charitable use in later years (as recognised at paragraph 2.35 of the issues paper). It is also important that charities are not required to carry out the task of tracking the use of accumulated funds in detail over an extended period, which would be a challenging and costly exercise.

Requirements of donor-controlled charities

Should any proposals relating to donor-controlled charities proceed, careful consideration will need to be given to the definition of a “donor-controlled” charity. Charitable structures such as that of Spectrum Group, where profits from the operating companies flow up to the Spectrum Foundation to support charitable purposes, should be clearly carved out from being considered a donor-controlled charity.

Further, charitable groups such as the Spectrum Group need to have the flexibility to move funds around within the Group in support of charitable purposes. The nature of the Spectrum Group’s structure means that the charities within the Group rely on using each other’s services, and it is necessary to carry out transactions within the Group, to enable it to carry out its charitable purpose. Imposing an arms-length standard akin to transfer pricing for “associated persons” transactions within a charitable group with the same or similar charitable purposes would not be appropriate. Such an outcome would result in potentially significant unnecessary compliance costs and detract funds away from charitable purposes.

When considering the concept of association for charitable entities, it will also be necessary to reflect the exception from the associated persons rules applicable to charitable organisations contained in section YB 16 of the Income Tax Act 2007.

We also do not believe that organisations should be expected to make a minimum annual distribution. We expect that our Group, with lived experience of disability within governance and backed by decades of experience, performs activities supporting disabled people more efficiently than the government. Spectrum Foundation invests a portion of accumulated funds to generate returns to ensure sustainability and longevity for our philanthropic activities. Restricting our use of these funds would harm our model and hinder our ability to support disabled people and their whanau in the future.

In addition, unintended consequences of this suggestion could include ineffective funding decisions and funders unable to support long-term systemic change through larger projects less often. We agree with and refer to Philanthropy New Zealand’s response to this question, that it will also likely reduce participation in philanthropy.

Regarding FBT settings [Q13. If the compliance costs are reduced following the current review of FBT settings, what are the likely implications of removing or reducing the exemption for charities?]

Consideration of changes to the FBT settings for charities should be delayed until the current review of the FBT regime is complete. It is hard to comment on the likely implications of removing or reducing the FBT exemption for charities until there is a clearer picture as to how FBT compliance costs may be reduced as part of the FBT review. There are also further issues which will need to be thought through, such as adjusting the FBT rate to reflect the fact that income tax exempt charities will not receive a deduction for the cost of the FBT.

s 9(2)(a)

Fenella Humphreys
Director of Philanthropy and Impact

Taxation and the not-for-profit sector
C/- Deputy Commissioner, Policy
Inland Revenue Department
PO Box 2198
Wellington 6140

Dear Sir/Madam

Thank you for the opportunity to provide a submission in relation to the Official Issues Paper on taxation and the not-for-profit sector released on 24 February 2025 ("OIP").

New Zealand, along with many other countries has, for many years, provided taxation concessions in relation to the activities of charities and other organisations involved in the not-for-profit sector. These concessions reflect the concept of social capital and public benefit and are predicated on principles established under common law.

While the concept of charitable purpose has remained, how charities operate and raise funds for their purpose has evolved. There is a general expectation in the community that charities will explore a range of activities to fund their purpose.

Further, while the term "charitable purpose" includes established heads of charity, any assessment of whether an institution is operating for a charitable purpose necessarily requires a close examination of the purpose of the institution and how it aligns with the heads of charity.

Our submission considers only the relevant questions raised in Chapter 2 of the OIP and does not seek to explore the questions raised in Chapters 3 and 4 which focus predominantly on doner-controlled charities and smaller not-for-profit entities.

Should you have any questions in relation to any part of our submission we would be pleased to discuss these with you and/or to meet in person to discuss this submission.

Yours sincerely

s 9(2)(a)

Michael Barton
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Submission in respect of the Official Issues Paper - Taxation and the not-for-profit sector issued 24 February 2025 ("OIP")

New Zealand Health Association Ltd (trading as Sanitarium)

We would like to thank the Inland Revenue of New Zealand for the opportunity to make a submission in relation to the OIP. New Zealand Health Association Ltd, trading as Sanitarium Health Food Company ("NZHA or "Sanitarium") has a long history supporting the health and well-being of New Zealand families. At Sanitarium, we believe every person deserves the choice to live a healthier life. Since 1901, we've operated to improve the health of generations of New Zealanders. Because when every person can access the good food and quality health information that they need to eat and live well, life becomes better for all of society.

Background

The Seventh-day Adventist Church ("Adventist Church" or "the Church") was formally organised in 1863. It is a Christian denomination that accepts the Bible as its only creed and holds key beliefs as taught in the Bible. Included in the Church's fundamental beliefs is the Biblical teaching that as God's creation, we have both a moral and spiritual obligation to care for and nurture our physical, mental and spiritual health. The Adventist Church *"...accepts its responsibility to make Christ known to the world and believes this includes a moral obligation to preserve human dignity by obtaining optimal levels of physical, mental and spiritual health. In addition to ministering to those who are ill, this responsibility extends to the prevention of disease through effective health education and leadership in promoting abundant health"*. [1] This is the basis of the "health message" of the Adventist Church.

In responding to this obligation, on October 21, 1896, the Church Executive Committee of the South Pacific region resolved that *"...in the opinion of this committee, the time has come when we should take steps towards the establishment of the Health Foods ...business and that we ask officers of the Union Conference to gather information, regarding the business by correspondence with Dr. Kellogg and otherwise"*

In 1897, before the Church was organised as it is today, the Australasian Medical Missionary Organising Committee ("MMOC") was formed. The MMOC's purpose was to be "advisory, educational and charitable". One of its responsibilities was to take the oversight of the health message and other charitable work of the Church. At the first meeting of the MMOC, the committee determined that one of its most pressing tasks

[1] Seventh-day Adventist Church Manual p.114

was the establishment of bakeries and agencies for the sale of various lines of healthy foods.

On 5 October 1898 the first President and Chairman of "Sanitarium Health Food Co." was elected and the organisation which is now known across Australia and New Zealand as Sanitarium was born with the purpose of taking the health message of the Church to the people of Australia and New Zealand.

On 23 March 1886 the first Seventh-day Adventist Church in New Zealand was established in Kaeo. The Adventist Church is a Christian organisation that now has over 22m members world-wide with churches, schools, hospitals, health food production and disaster relief activities right across the globe. The Adventist Church's purpose in New Zealand is to inspire hope and wholeness of life in our communities incorporating whole person health including spiritual, mental and physical.

The Adventist Church in New Zealand, is guided by three key objectives as follows.

- *Spiritual Guidance and Worship*: To provide regular worship gatherings and religious training that nurtures spiritual growth and community support.
- *Community Engagement and Development*: To engage in initiatives that address community needs through community health, community development, and child and youth development.
- *Education and Nurture*: To offer Christian education based on Adventist Church values and special character that fosters a culture of positive growth

NZHA is wholly owned by New Zealand Conference Association ("NZCA"), part of the Adventist Church in New Zealand. NZCA was created by Trust Deed on 10 September 1986 and was incorporated under the Charitable Trusts Act 1957 to carry out the charitable purposes of the Church within New Zealand assisting in the proclamation of the gospel through its health ministry.

The Church believes in a health food ministry which recognises the interdependence of spiritual and physical wellbeing, and the mission of NZHA is to aid and forward the work of the Church in teaching the gospel, in particular (within the framework of the policies and principles of the Church), by assisting those who teach the gospel and the community in general in avoiding illnesses caused by a violation of health principles. This distinctive health food ministry involves:

(a) nutrition and related health education whereby the basic laws of healthful living are better understood and accepted as being essential in preserving health and vitality;

(b) preparation and distribution of nutritious foods from readily available raw materials or otherwise which are palatable, nourishing and economical.

Clause 2.2.1 of the Constitution of NZHA is very specific around its purpose. It provides that:

"The Company has been incorporated by NZCA exclusively for charitable purposes within New Zealand to:

a. exercise, carry out and assume, as the case may be, those activities, duties, liabilities, responsibilities, powers, rights and entitlements of the Health Food Department of the Church in New Zealand as allocated to it from time to time by the NZCA; and
b. operate in accordance with the beliefs and policies of the Church and in particular as stated in SPD Working Policy (but not so as to be inconsistent with clause 2.2); and
c. teach all people the everlasting gospel of our Lord and Saviour Jesus Christ and the Commandments of God; and
d. complement the health education program of the Church; and
e. produce foods which are in harmony with the dietary beliefs and principles of the Church; and
f. ensure that (subject to paragraph (d)) through continuing research the range and quality of such foods meets the needs of the consumer; and
g. co-operate with other agencies of the Church in the promulgation of the health and health food messages of the Church; and
h. take the initiative in educating and encouraging the general consumer toward a better way of health and in particular through better knowledge in nutrition and the use of good food; and
i. manage the affairs of the Company as a not-for-profit charitable organisation on a sound and efficient financial basis; and
j. apply all profits not reinvested in the Company and the surplus assets on liquidation or to transfer such profits and assets to another person to be used for, the charitable purposes specified in this clause 2.2; and
k. Carry on religious charitable and educational work in New Zealand.
l. do all such things as are incidental or conducive to the attainment of such of the charitable objects and purposes described in clauses (a) to (l);
such as are charitable at law."

Through Sanitarium , 473 million serves of healthy food were provided to Kiwis in 2024. In addition, we supported the community directly through the donation of 9.5 million serves of healthy food in 2024. In addition to this we were involved with a wide range of related charitable and nutritional education activities designed to support healthy community choices. The donation of healthy food has progressively increased year on

year. Sanitarium plans to continue with supporting the community in line with the our formal community support programs and charitable status.

We are dedicated to continuously improving our services and providing an environment that fosters personal growth including spiritual growth, community connection, and sharing of God's message of love. Through the collective efforts of our dedicated staff, volunteers, and supporters, we strive to make a lasting positive impact in the lives of individuals and contribute to the betterment of society. Together, we seek to inspire hope and wholeness of life in our communities.

NZHA is registered with the New Zealand Charities Services and carries on business activity in pursuit of its stated charitable purpose and objectives. NZHA annually distributes, in accordance with its ongoing charitable purpose and retention needs, an amount to NZCA.

This background is important in understanding the charitable purpose and public benefit of Sanitarium.

Response to Questions for submitters

Our submission considers only the relevant questions raised in Chapter 2 of the OIP and does not seek to explore the questions raised in Chapters 3 and 4 which focus predominantly on doner-controlled charities and smaller not-for-profit entities.

Q1.	*What are the most compelling reasons to tax, or not to tax, charity business income?* *Do the factors described in 2.13 and 2.14 warrant taxing charity business income?*

The concessionary taxation treatment of charities in many countries that have adopted an English legal and judicial framework has its foundation in the Charitable Uses Act, 1601. This is often referred to as the Statute of Elizabeth. Lord Macnaghten in the 1891 House of Lords decision in *Commissioners for Special Purposes of the Income Tax v Pemsel* ("Pemsel Case") at 583 distilled the preamble of the Charitable Uses Act into what are referred to as the four "heads of charity". He stated that:

"'Charity' in its legal sense comprises four principal divisions: trusts for the relief of poverty; trusts for the advancement of education; trusts for the advancement of religion; and trusts for other purposes beneficial to the community, not falling under any of the preceding"[i2]

[2] Commissioners for Special Purposes of the Income Tax v Pemsel [1891] AC 531 (HL) at 583

Charities law in both New Zealand and Australia is built on the foundations of the Statute of Elizabeth and has continued to be shaped by judicial precedent.

The New Zealand Charities Act 2005 sets out the meaning of charitable purpose and reflects the heads of charity referenced above including the advancement of religion and any other matter beneficial to the community. Notably, to satisfy the definition of charitable purpose in New Zealand, the purpose of the institution must also provide a public benefit.

The requirement to deliver a public benefit, or the concept of building social capital, is important in ensuring the integrity of providing taxation and other concessions to charities. In such cases, the tax concessions are appropriately justified by reference to the relief, cost and administrative, they provide government in providing the public benefit services that are being provided by charities.

The concept of public benefit, while not defined, has been considered by the courts and includes an assessment of whether the purpose provides a benefit to the community and whether the class of beneficiaries of the purpose is sufficiently wide to constitute the public. In our view, the concept of public benefit can include either or both an immediate public benefit (such as you might see in the relief of poverty through food programs) and an investment in social capital (which may have a more enduring public benefit). Under New Zealand law the first three heads of charity including the advancement of religion are generally taken to meet the public benefit test unless the contrary is demonstrated. [3]

A government in partnership with the public is more effective and efficient in achieving charitable purposes. The reasons for this include:

- A reliance on taxation revenue alone to fund charitable purposes in a manner consistent with the existing framework will necessitate significant tax increases which will be borne by all taxpayers;
- Removal of tax exemptions on business activities of charities will almost certainly limit the contribution such organisations are either willing or capable of making for the public benefit. This will necessitate either a reduction of charitable activity or an expectation that such activity ought to be undertaken by government thereby demanding additional government investment;
- Intervention which reduces the incentives for non-government to contribute towards charitable purposes has the potential to create an expectation of the role of government while creating an environment where individuals and organisations abdicate their sense of community involvement and contribution;
- Social and public good is difficult to define and measure and can only be assessed in its absence and in most cases many years later. For example, increased sickness and wellbeing may only be identified many years after health

[3] Re Family First New Zealand (2015) 4 NZTR 25-014

and well-being investment is reduced by which time a generational opportunity has passed; and

- Many charitable activities do not lend themselves to being delivered by government as efficiently as they may be delivered by private organisations.

This clearly demonstrates a need for continued partnership with government in relation to the delivery of charitable activities.

The OIP raises the question of business income of charities and the reasons why such income should or should not be subject to tax.

In particular, the distinction is drawn between related and unrelated business income. Further, paragraph 2.3 of the OIP seems to prematurely conclude, before any analysis, that food and beverage manufacturing is unrelated to the charitable purposes of a registered charity. We do not agree with this conclusion for the reasons outlined later in this submission.

Under current law in New Zealand business income of charities is exempt from income tax where the entity meets certain requirements such as: being registered as a charity; carrying out its charitable purpose in New Zealand; and specified rules in relation to control and beneficial interest.

In our view, the business income of charities should remain exempt from income tax for the following reasons:

- Whether business income is related to the charitable purpose must be determined by the use of funds in pursuit of the purpose rather than the nature of the activity. This is referred to as the "use of funds" basis. This can be distinguished from a school where fees may be charged for the provision of education. In such a case the fee income from students has a direct nexus with the charitable pursuit in the advancement of education and is applied for this benefit. This is referred to as the "receipt of funds" basis. If tax exemption was limited to only charities on the "receipt of funds" basis there would be less incentive for many charities to raise funds to pursue their objectives. It would have little impact on charities that operate large scale businesses where revenue is derived in exchange for the provision of goods or services directly connected with the charitable pursuit. However, charities that do not receive income directly from their pursuit of charity would be adversely impacted notwithstanding they may apply all funds to pursue their charitable objective.

  Accordingly, all business income of charities should be regarded as "related" where it can be established that the income was "used" to pursue an organisation's charitable objectives.

To ensure a consistent approach in relation to charities, the use by the charity of any business income ought to be primary in assessing whether the business income is related to the charitable purpose.

- Consistent with the view above, the ability of an organisation to undertake its charitable purpose should not be impacted by the source of funds to achieve this purpose. Funds may be sourced through donations, volunteer contribution, services and products in kind, government and corporate sponsorship, and business activities. The source of these funds should have no relevance on the tax status of the organisation. As discussed above, tax status should be determined by reference to the purpose of the organisation, how it applies its funds and whether it provides a public benefit as opposed to how it derives funds.

  To further illustrate, a small charity may undertake bake sales and attend farmers markets to raise funds for its charitable purpose. The small scale of activity will necessarily mean that limited funds are able to be applied for the purpose of the organisation. Notwithstanding this, it ought to be reasonably easy to conclude that the funds are "directly" related to the pursuit of the charitable purpose as the funds are as a matter of fact applied or "used" for this purpose.

  A much larger organisation will have a more significant ability to pursue its purpose and in course will generate significantly more income. In generating this income, it will typically need to achieve scale, leverage sound business practice apply capital in the establishment of infrastructure and ongoing investment in the business.

  It would be incorrect to suggest that the business income of the larger organisation was unrelated simply due to the scale of activities and the need to invest ongoing capital in the growth of the business while the income of the smaller business is directly related to its charitable purpose.

  The business income of charities should not be taxed if such income is applied for charitable purposes or otherwise invested to deliver business income which is applied for charitable purposes.

- Taxing business income of charities will reduce the funds available to deliver in accordance with the charitable purpose of the organisation.

  This will mean that charities will be unable to deliver the existing level of activities and will necessitate the government funding activities or reduced activities the impact of which may not be identified for some years by which it will be too late to resolve.

- Taxing business income will reduce the ability of charities to invest in future growth which will not only limit services but will limit their ability to invest capital to provide ongoing support to future generations.
- Taxing business income will create an added layer of regulatory compliance and costs for charities which will further diminish their ability to deliver against their charitable purpose.
- Most charities have limited funds and a choice in terms of where they apply those funds. Taxing the business income of charities which would otherwise become available for charitable activities would reduce the impact a charity could have in supporting the New Zealand community. It would not be unreasonable for the management of a charity to redirect activity into countries where the charitable impact will be greatest. An unintended consequence could result in charities withdrawing from New Zealand.
- Charities contribute to the community not only through the provision of funds, goods and services but also in building social capital. In other words, charities can contribute to society through creating community bonds and shared values, bridging shared value and a sense of community across groups and creating lasting values and common understanding that improves the wellbeing and social outcomes of the broader community. As social capital is built from the community up, it is difficult for governments to create similar social capital. This social capital underpins good societal values and reduces the cost of social services for governments, including but not limited to reduced healthcare cost, reduced mental health costs, reduced costs of food security, reduced costs of law and order to name a few. We would respectfully reflect the OIP paper does not adequately canvas social capital and cost aspects. Charities fill this gap, and it is well recognised that the charitable sector provides social services more cost and administratively efficiently than the government sector and often will fill gaps in government services that are either unable to be delivered by government or are valuable but not an immediate priority of government. This is because charities are working at the community level, often with committed volunteers, below market wages, under a constrained cost environment and with significant cost/benefit oversight.

  If business income of charities is taxed, an increased obligation to build social capital will fall on the government which, for the reasons noted above, will be less effective and more costly. Further, if charities withdraw then gaps will emerge in services and support and social capital will become more fragmented and less cohesive.

- While it might be argued that smaller charities ought to be taxed more concessionally than large organisations which often derive significant business income, this fails to recognise that larger organisations will typically deliver more

significantly to the community and will be better able to invest both in infrastructure and people to deliver in accordance with their charitable purpose.

- Charities deriving business income will apply funds in pursuit of their purpose either immediately, in the future, or in further capital investment. It is incorrect to conclude that a tax exemption (thereby reducing general government revenue) on such business income is a cost borne by taxpayers. All charities provide a social benefit, and this is mandated by achieving registration under the Charities Act 2005. The reduced government revenue through concessional tax treatment is more than offset by the additional expenditure required of government to deliver this social benefit. In other words, an assessment of the cost of a tax concession is meaningless unless it is undertaken in the context of the social benefit.

Paragraphs 2.13 and 2.14 of the OIP reference second-order imperfections in the income tax system that need to be considered.

We would make the following points:

- We do not agree that charitable organisations have an advantage over non charitable organisations in relation to compliance costs. While charitable organisations do not need to incur costs associated with income tax compliance, they are required to meet other regulatory requirements that incur a compliance cost that non charitable organisations don't incur. These include annual reporting to Charities Services through financial statements and service performance reports including mission and purpose. While charity reporting will likely be less onerous for smaller charities, so too would be tax compliance. In this regard, we do not accept that the cost of doing business is lower for charities.
- It is stated in the OIP that the non-refundability of losses for taxable businesses can result in a disadvantage for such businesses relative to tax-exempt businesses resulting in a higher relative rate of return for non-tax paying businesses over time when there has been a loss in one year.

  We do not accept this conclusion. A non-taxed charity and a taxed business which incurs the same income and expenditure will incur the same loss. A non-taxed charity is not compensated or reimbursed for any loss. In that sense, a loss is a loss. The taxed business can typically utilise the loss in a future year against taxable income thereby obtaining value for the loss. In this respect taxed entities obtain value from tax losses against future tax and a non-taxed entity obtains no such value but pays no future tax. Therefore, if both a taxed entity and a non-taxed entity incurred a loss in year 1 and a tax profit in year 2 of the same amount, neither would pay tax and the treatment of the tax loss is identical, from both a timing and cash flow perspective.

- Charities typically find raising capital and debt funding more complex and expensive than other companies. The reasons for this include a reluctance to lend to charitable organisations given the lack of member ownership interests and a lack of financial sophistication, particularly in smaller charities. Further, as charities are unable to deliver a return in the way "for profit" entities are, their access to capital markets and ability to raise capital is limited. Accordingly, we agree retained earnings are the preferred form of capital applied by charities. Should charities be taxed on business income, lower retained profits would necessitate more expensive debt funding to deliver and invest in respect of charitable activities. This would place charities at a significant disadvantage to other companies.
- Paragraph 2.14 references an ability of a charity to achieve an advantage by accumulating tax free profits for future expansion. It cannot be assumed that tax free profits will be accumulated for expansion, nor can it be assumed that greater access to equity markets by taxed entities means they will be able to expand more rapidly than non-taxed entities. Ultimately the question of investment and expansion depends on numerous factors and cannot be determined by reference to tax status.

  In any case, we would also observe that reference should not be made to the accumulation of base profits as providing any theoretical advantage, which we do not accept. Rather accumulation focus should be limited only to the value of what might otherwise be the tax payable component of net profits and even then only to the scenario of assuming that benefit, i.e the equivalent tax component of profits, is not distributed to another charity or otherwise applied for charitable purposes. For example, assuming a taxable entity and a charity both derive income of $1m with costs of $200k and a net surplus of $800k. The taxable entity will pay tax of 28% on $800k ($224k) leaving a retained surplus of $576k for future investment and capital growth. Any theoretical advantage of tax exempt status is therefore limited to the tax otherwise payable of $224k and not to the base profits of $800k. In any case this advantage is only theoretical where a charity uses the tax benefit ($224k in this example) for charitable purposes. Any restrictions on accumulation of base profits would place charities at a significant competitive disadvantage.

Q2.	If the tax exemption is removed for charity business income that is unrelated to charitable purposes, what would be the most significant practical implications?

A significant challenge exists in determining whether business income is related to a charitable purpose. A more relevant assessment is to determine whether business income less costs in deriving such income are in fact applied or "used" for a charitable purpose. This was discussed above. The source of funds is problematic for the reasons detailed above and summarised below:

- Charities will typically receive income from donations/contributions and other business activities. These business activities will vary in complexity and scale. In our view, this should not detract from the fact that the purpose of the business activity is to enable the charity to raise funds to undertake its charitable purpose.
- Larger charitable organisations will typically have more significant business pursuits. For example, a church may run a single op-shop which both supports the community and delivers business income. Larger charities may operate a network of op-shops with a more sophisticated business focus. Both the church and the larger charity in this case are using the funds to deliver in accordance with their charitable purpose.
- A charity that invests in passive income producing assets will derive business income from those assets. Larger charities will have a more sophisticated investment process and potentially employ staff to assess investments and manage the portfolio. Paragraph 2.18 of the OIP infers that passively holding the investment is not regarded as a business activity and a charity that invests passively may not be taxable. Once again, this adversely impacts the larger charities and those that manage a portfolio to increase the income which is available to be applied for charitable purposes. We do not think it is appropriate to distinguish between passive and actively traded portfolios.
- If the test as to whether business income is unrelated to the charities purposes is predicated on a "receipt of funds" basis, only those charities that directly receive income from delivery of the charitable support they provide will derive related business income. All charities that carry out a business activity to raise funds to deliver the charitable purposes will be in receipt of unrelated business income. We do not believe this ought to be the intent of the provisions. As noted above, we believe the more practical approach, better aligned with the legal principles upon which the tax concessions are based, is to assess whether the funds are used in a charitable pursuit.

We have outlined in the background the history of NZHA together with its charitable purpose. In summary, NZHA is owned for the benefit of the Adventist Church in New Zealand. In addition to spiritual guidance and worship, the Adventist Church has a purpose of education and promotion of whole person health. What is referred to as the "Health Message" is a key platform for the church and a key element of our spiritual beliefs. This is rooted in the understanding that our physical bodies are a temple of our

creator God, and we have a moral responsibility to promote and engage in healthful living. NZHA and Sanitarium was established for this principal purpose.

In the case of NZHA, all business income is related to our charitable purpose, being the advancement of religion. This is both on a "use of funds" and a "receipt of funds" basis. However, we acknowledge, as discussed above, a significant number of charities may not derive business income related to their charitable purpose, yet they will apply their business income in pursuit of their charitable purpose. For this reason, we would support the introduction of a primary and secondary test in determining whether business income is related to a charitable purpose. The primary test would focus on whether the charity receives funds from either voluntary contributions, or a related business. No tax would be payable in respect of these amounts. If there is a residual amount that is not exempt under the primary test, we would propose a secondary "use of funds" test be applied. In other words, if what would otherwise be a tax advantage is used or otherwise applied for the charitable purposes of the organisation, then no tax ought to be payable. This approach would ensure that related business income is exempt from tax while also ensuring charities that used what might be regarded as a tax advantage for their charitable purpose should remain exempt from tax. This is also likely to present a more streamlined approach and reduce the complexity in assessing whether the business income is related to a charitable purpose.

Q3.	If the tax exemption is removed for charity business income that is unrelated to charitable purposes, what criteria should be used to define an unrelated business?

Paragraphs 2.20 to 2.24 assume a "receipt of funds" basis. That is, in assessing whether a charity has unrelated business income an assessment of the nature of the funds derived must be made. The most appropriate approach would be to have a primary and secondary test, with the secondary test focused on the use of funds as discussed above.

If the assessment is based only on the nature of the income derived, without reference to its use, then only a limited number of charities are likely to qualify for tax exemption. As noted above, the larger charities do derive more income from more sophisticated sources and also deliver a more significant level of charitable pursuits.

Any definition of unrelated business income must allow for a range of charitable core purposes, allow for income that has a direct relationship with that core purpose and ensure an alignment between the core purpose and the expenditure in pursuit of the core purpose. Otherwise, there will be a significant impact on the NZ charity sector resulting

in a reduction of non-government support. It may also be seen as a discriminatory application of policy.

Assuming the IRD is committed to introducing an unrelated business income test on a receipt of funds basis, we would recommend defining "related business income" as follows:

- Income derived directly from providing goods or services where the provision of such goods and services is directly related to the charitable purpose of the charity;
- Income derived from activities (including the sale of goods or services) where such activities are promoted for and relate to the raising funds for the benefit of the charity; and
- Income derived from the sale of goods or services where profits are applied for the benefit of another charity or are otherwise ancillary to a charity.

The term "unrelated business income of a charity" could be defined as "business income of a charity that is not related business income".

Having regard to the charitable purposes of NZHA, we are strongly of the view that the business income derived by NZHA is related to its charitable purpose.

Q4.	If the tax exemption is removed for charity business income that is unrelated to charitable purposes, what would be an appropriate threshold to continue to provide an exemption for small-scale business activities?

We do not agree that the size of activities (either monetarily or significance) ought to be the determining factor in applying a tax exemption. The better approach is an analysis of the nature of activities and whether the funds are used in pursuit of a charitable purpose ought to be the relevant threshold.

Q5.	If the tax exemption is removed for charity business income that is unrelated to charitable purposes, do you agree that charity business income distributed for charitable purposes should remain tax exempt? If so, what is the most effective way to achieve this? If not, why not?

We agree that where unrelated business income of charities is not tax exempt a secondary test should apply that will exempt business income where it is used to pursue charitable purposes.

There are two key issues emerging from this question that require further consideration.

The first issue is the meaning of the phrase "…business income distributed for charitable purpose…". A charity can either apply its income for a charitable purpose or distribute its income to another organisation to be applied for that organisation's charitable purpose. We believe there should be no difference in treatment whether funds are used or distributed for charitable purposes.

Secondly, the reference to the distribution of business income implies that a tax exemption may apply only to the extent of such distribution. This ignores the fact that charities will incur costs in deriving the business income. Any meaningful application of a use of funds approach must have regard to the costs of deriving the income.

Even assuming the test is applied to a distribution or use on a net of cost basis, a charity will be disadvantaged compared to a commercial "for profit" organisation. This is illustrated as follows:

Assume a taxable entity and a charity both derive income of $1m with costs of $200k and a net surplus of $800k. The taxable entity will pay tax of 28% on $800k ($224k) leaving a retained surplus of $576k for future investment and capital growth. If tax exemption is determined by the extent of a charity's distribution of its net business income of $800k then it will pay no tax provided the full $800k is distributed in the year it is derived. This leaves no surplus for future capital investment and growth. In our view this is an unworkable outcome.

The better and most sensible approach would be to allow the charity a tax exemption to the extent that a hypothetical tax payable based on the income and expenditure of the charity is distributed or otherwise used in charitable pursuits in the year following the year in which the calculation is based. In other words, using the numbers in the preceding paragraph, the charity would be required to calculate a "hypothetical" tax payable each year using the corporate tax rate. This would be $224k in the above example (28% x $800k). Provided the charity applied all the $224k hypothetical tax payable in pursuit of its charitable purpose in the year after the surplus is derived it would pay no actual tax. If it chose to distribute or apply only 50% of the hypothetical tax in pursuit of its charitable purposes then it would remain exempt for the relevant year on only 50% of the surplus.

An approach as outlined above would ensure charities are not disadvantaged in their ability to invest in capital and future growth by requiring all their income to be distributed or applied in a particular year. Further, introducing, say, a one-year time delay provides an appropriate amount of time for charities to determine their hypothetical tax and ensure this amount is distributed or applied in pursuit of their charitable purposes.

Paragraph 2.34 references the potential for a deduction to be available for distributions (donations or dividends) paid to a parent charity of a charity. Under current rules taxpayers are generally entitled to a deduction for donations to certain charities.

However, to facilitate growth and investment needs of charities and not place them at a severe disadvantage to taxpaying organisations, it would be important to exempt charities from tax on unrelated business income where the hypothetical tax amount is otherwise distributed to a parent charity of a charity. The OIP raises what is identified as a circumstance requiring an anti-avoidance rule where a parent charity capitalises a subsidiary charity with funds distributed by the subsidiary. This is not unlike a taxable subsidiary distributing a dividend to its parent which then reinvests in further equity in the subsidiary. In the absence of being able to reinvest funds in a charity subsidiary, the charity will be constrained in growth and its ability to pursue its charitable purpose placing it at a significant disadvantage.

Q6.	If the tax exemption is removed for charity business income that is unrelated to charitable purposes, what policy settings or issues not already mentioned in this paper do you think should be considered?

Should unrelated business income become taxable it will be necessary to carefully consider the transition mechanism to ensure that tax exempt amounts of prior years are not subject to tax. Should they become taxable on any transition this is regarded as punitive in that it effectively introduces a capital gains tax on charities while other taxable entities are not subject to capital gains tax. There are several circumstances where this could arise including:

- Sale of assets acquired prior to the change in tax basis;
- Sale of whole or part of a business where the value of the business increased between commencement and sale. ;
- Depreciation and decline in value of assets acquired prior to the change in tax basis;
- Trading stock valuations and obsolescence
- Treatment of accrued expenses, accrued income and prepayments; and
- Other timing differences.

Consideration would need to be given to those de-minimum cases. If unrelated business income was less than, say, 10% of total income (or some other monetary value) it would be likely that the costs to administer the regime both from an IRD and a charity perspective would outweigh any perceived public benefit. If the majority of income is unrelated business income and it was decided to tax the charity as a taxable entity it should not be expected that the charity should remain required to register with Charities Services NZ and required to comply with the either the additional regulatory and reporting framework associated with this or be require to operate predominantly in New Zealand as is currently the case.

If unrelated business income is distributed to another charity such that it becomes a donation or charitable contribution, the income should not retain its status as unrelated business income on the basis that the impact of this ought to have been dealt with in relation to the deriving charity.

Should charities become taxable on unrelated business income, and subject to how this might be implemented, consideration will need to be given to the treatment of tax losses and their ability to be carried forward and utilised against future taxable income.

There will be interactions with other legislative obligations including the Companies Act 1993 together with its solvency requirements. Creating a potential tax liability will impact solvency and without guarantors may cause charities to breach this test and create a liability on directors of such charities. Should the proposed change to tax unrelated business income be enacted it is likely to lead to many charities being unable to satisfy other regulatory commitments resulting in closure or wind down of activities.

Hello,

My name is Jeff Myles, and I work for The Salvation Army at the Hamilton City Corps Centre. I have been in this role for 10 years. I'm writing to share my thoughts on the proposed tax changes affecting charities and not-for-profits.

My role is within the national property team based out of Hamilton, and my responsibilities revolve around the asset management and project management of Salvation Army properties. These range from residential houses, Church buildings and Retail stores. This is an operational role that helps to ensure our properties are safe and fit for purpose. The commercial properties are usually multi use with various activities functioning from the properties. The overarching purpose of these buildings is to enable the front-line staff to work within the community and care for vulnerable people in the range of services that the Salvation Army provide.

Funding is always tight to get building maintenance and or building improvements done within budgets. We are conscious of costs and always look for best value for money from the contractors we use. I took a significant pay cut when I joined the Salvation Army (TSA) as I valued the difference that TSA makes in the community and valued being a contributor to this worthy organisation.

If the Government starts taxing the income that The Salvation Army receive or making the admin more difficult, it will greatly affect the capacity of TSA to do the necessary work within communities across New Zealand.

Please keep these kinds of charities tax-free where the money is clearly being used for good. The Salvation Army is not about profit — but about helping community one person or whanau at a time.

I'm happy to talk more if needed.

s 9(2)(a)

Regards
Jeff Myles
Property Project Manager
s 9(2)(a)

Consultation on Charity Tax Settings

31 March 2025

Purpose

This submission responds to the New Zealand Government's consultation on the taxation of charities and not-for-profit organisations. Sport Waitākere aims to highlight the potential impacts of proposed tax changes on charities that generate income through business activities and provide recommendations to ensure fair and sustainable policy outcomes.

Background

Sport Waitākere is a community-focused organisation dedicated to improving well-being through sport and physical activity in West Auckland. Like many charities, we rely on a combination of grants, donations, and income from business activities such as facility hire and program delivery. This self-generated revenue allows us to continue delivering essential services that benefit communities, especially in areas where government support is limited.

In addition to our own work, we support a wide range of community organisations and sports clubs that rely heavily on volunteers. These groups play a crucial role in fostering participation, social cohesion, and well-being, often operating with minimal financial resources. Any financial strain placed on Sport Waitākere will also impact the support we provide to these organisations, potentially reducing their ability to continue delivering vital services.

Sport has the ability to change lives and empower people from the playground to the podium.

Our purpose is to enable healthy and active lives in our community. We do this through providing programmes, workshops, activations, mentoring, resources, events and support at low to no cost to our community.

We work alongside schools, clubs, coaches, volunteers and community groups to improve the quality and accessibility of sport and physical activity with the generous support of funders and partners.

www.sportwaitakere.org.nz

For more information about this submission, please contact:

David George

s 9(2)(a)

Why Taxation of Charities' Business Income is Important

The discussion around taxing charities' business income stems from the perception that some organisations may be using their tax-exempt status unfairly. However, most charities operate with high levels of transparency and reinvest all business income into their charitable purposes. Any policy changes must carefully consider the balance between ensuring tax fairness and maintaining financial sustainability in the sector.

Subject Point: Impact on Community Services

- Taxing charities' business income would reduce funding for essential community programs, leading to fewer participation opportunities and limiting access to sport and recreation.
- Increased compliance costs would place an administrative burden on charities, diverting resources away from direct service delivery.
- Many charities operate under tight financial constraints—new tax obligations could force some organisations to cut services or close altogether.
- Sport Waitākere provides crucial support to community organisations and sports clubs, many of which rely almost entirely on volunteers. If our capacity to provide funding, training, and resources is reduced, it will have a direct effect on the grassroots level, making it harder for these groups to function effectively.
- Volunteering is a cornerstone of community sports and recreation. Any financial burden placed on the sector will make it more difficult to attract and retain volunteers, undermining the sustainability of local clubs and community groups.

Subject Point: Alternative Approaches to Address Concerns

- Strengthen existing regulatory oversight rather than introducing blanket tax measures.
- Encourage transparency and accountability within the current framework, ensuring that charities reinvest their income appropriately.

- Adopt a proportionate approach, considering the size and nature of charitable organisations to avoid unnecessary financial burdens on smaller charities.
- Recognise that charities are not subject to Fringe Benefit Tax (FBT), which helps them compete with for-profit businesses when they cannot offer the same salary levels. Any changes should consider the importance of this exemption.
- Acknowledge the contribution of volunteers and the unpaid labour that keeps the charity sector running. Policies should avoid unintended consequences that could reduce volunteer participation by increasing financial and administrative burdens on organisations.

Conclusion

Sport Waitākere urges the government to carefully assess the potential consequences of taxing charities' business income. The proposed changes risk reducing community services, increasing compliance costs, and undermining the financial sustainability of charities. In particular, the impact on volunteer-driven sports clubs and for purpose community organisations could be severe, leading to a decline in participation and community engagement. Instead of broad taxation measures, the government should focus on targeted regulatory improvements that maintain transparency while protecting the vital role charities play in our society.

We appreciate the opportunity to contribute to this consultation and look forward to continued engagement on this issue.

Feedback to Inland Revenue Department: Opposition to the Taxation of Charitable Organisations

Introduction We are the National Directors of a small tier-3 faith-based Charitable Trust dedicated to transforming the lives and communities of the neediest people from Asia and the Arab world. We believe that people encounter Jesus Christ through the holistic service of our field-workers. 50% of our field-workers are based In New Zealand serving migrants and refugees, helping them integrate socially and learn English. While the Government provides similar services, gaps remain that we and other volunteer agencies help fill.

We strongly oppose the proposal to tax the business income of charities, as it would severely impact our ability to continue serving vulnerable communities. Our work is partially funded by trusts that run businesses, and the loss of these funds would constrain our ability to meet community needs. We submit that this proposed taxation is unnecessary, counterproductive, and inconsistent with the fundamental purpose of charities in our New Zealand.

1. Charitable Business Income Is Essential for Public Benefit The funds we receive from charitable businesses allow us to continue our work rather than the burden lying with the Government and its tax-payers. These businesses do not exist to generate private profit but to reinvest their earnings into charitable purposes. If their income is taxed, they will have fewer funds to distribute, directly harming charities like ours that rely on these contributions to cover administrative and operational costs.

Furthermore, many small charities do not have extensive donor networks and depend on alternative income sources to sustain their work. Taxing this income would create financial strain, forcing many charities to cut services or close operations, ultimately reducing support available to migrants, refugees, and other vulnerable groups.

2. No Clear Justification for Taxation The Government has not provided sufficient evidence that charities operating businesses are abusing their tax-exempt status. Charitable businesses operate under existing legal frameworks, ensuring that their profits are directed toward their charitable mission. Unlike for-profit businesses, these entities do not exist to enrich shareholders or private individuals. The assumption that charitable businesses gain an unfair competitive advantage is flawed, as they function under strict charitable regulations and reinvest surpluses into public benefit.

International comparisons show that most developed nations recognize the importance of tax exemptions for charities. Countries such as the United Kingdom, Canada, and Australia maintain similar exemptions to support charitable work. If New Zealand moves forward with this proposal, it risks becoming an outlier and discouraging philanthropic investment.

3. Harmful Impact on Migrant and Refugee Communities Our work directly supports migrants and refugees in New Zealand by helping them integrate, learn English, and build community connections. These are essential services that contribute to social cohesion and economic productivity. Without sufficient funding, we would be forced to

scale back the work of our field-workers, leaving many in need without adequate support.

The government alone cannot meet the growing demand for social services. Charitable organizations complement public services by addressing gaps and providing culturally and religiously sensitive support. Taxing the very income that sustains these programs would be counterproductive and ultimately harm those most in need.

Conclusion The taxation of charitable business income would undermine the very purpose of charities, reducing their ability to serve the public good. For faith-based and community-driven organizations like ours, this policy would lead to financial strain, decreased services, and an increased reliance on government funding. We urge the Government to abandon this proposal and instead strengthen the existing charitable framework to ensure that charities can continue delivering critical services to New Zealand communities.

We appreciate the opportunity to provide this submission and strongly advocate for the protection of charitable tax exemptions to ensure the ongoing sustainability of the not-for-profit sector.

Graham and Cynthia Hulse
s 9(2)(a)
Mobile: s 9(2)(a)
31st March 2025

Consultation on Charity Tax Settings

31/03/2025

Purpose

This submission responds to the New Zealand Government's consultation on the taxation of charities and not-for-profit organisations. Healthy Families Waitākere (HFW) aims to highlight the potential impacts of proposed tax changes on community-focused for purpose organisations and the wider public health sector, and to advocate for policies that ensure sustainable and effective community well-being initiatives.

About Healthy Families Waitākere

A healthier Aotearoa starts in the places where we spend our time. In healthier environments children learn better, workplaces are more productive, people are healthier and happier, and communities thrive.

Led by Sport Waitākere, Healthy Families Waitākere works alongside community to think differently about the underlying causes of poor health and identify the changes we can make together - in our schools, workplaces, sports clubs, marae, and other environments that will support making the healthy choice, the easy choice.

The initiative has an explicit focus on improving Māori health and reducing inequity for groups at increased risk of preventable chronic diseases.

For more information about this submission, please contact:

www.healthyfamilieswaitakere.org.nz

Background

Healthy Families Waitākere is part of a nationwide initiative that seeks to improve health and well-being through systems change. We work collaboratively with local government, iwi, businesses, and community organisations to address the root causes of preventable chronic disease. Our approach is grounded in equity and sustainability, supporting grassroots organisations that promote physical activity, food security, and healthier environments.

Many of the organisations we work with rely on a mix of funding sources, including grants, donations, and business income generated to sustain their operations. Proposed tax changes could threaten the financial viability of these organisations, reducing their ability to provide critical health and well-being services to communities in West Auckland and beyond.

Why Taxation of Charities' Business Income is Important

The consultation raises concerns about fairness and potential tax avoidance by charities engaging in commercial activities. However, these concerns do not reflect the reality for most charities, which reinvest business income directly into community initiatives. Applying corporate tax rules to the not-for-profit sector risks undermining the very organisations that deliver essential health and well-being services, particularly in under-resourced communities.

Subject Point: Impact on Public Health and Community Well-Being

- Taxing charities' business income could reduce funding for preventative health programs, limiting access to initiatives that address obesity, diabetes, mental health, and physical inactivity.
- Increased compliance costs would place additional strain on for purpose organisations already struggling with limited administrative resources, forcing them to divert funds away from frontline services.
- Many small for purpose and community health organisations operate with minimal reserves—new tax obligations could push some into closure, reducing community resilience and self-determination.
- Volunteer-led initiatives, such as community food programs and sports clubs, could be at risk if financial pressures increase on the charities that support them.
- Government investment in public health is already insufficient—if charities are taxed and forced to reduce services, the burden will likely fall back on the public sector, increasing long-term costs.

Subject Point: Alternative Approaches to Address Concerns

- Improve existing regulatory frameworks rather than introducing blanket taxation, ensuring that charities remain accountable while maintaining financial sustainability.

- Recognise that charities are already highly transparent in their financial reporting, with strict compliance requirements under the Charities Act.
- Consider the long-term social and economic benefits of maintaining a thriving not-for-profit sector, which reduces reliance on public health services.
- Recognise the role of volunteers and unpaid labour in the charity sector. Policies should avoid increasing administrative burdens that could reduce volunteer engagement.
- Maintain the Fringe Benefit Tax (FBT) exemption for charities, which allows them to attract and retain skilled staff despite not being able to offer competitive salaries compared to the private sector.

Conclusion

Healthy Families Waitākere urges the government to carefully consider the unintended consequences of taxing charities' business income. The proposed changes could lead to a reduction in essential public health programs, increased financial pressure on community-led initiatives, and ultimately higher long-term costs for the government as more people require state-funded health interventions.

Rather than imposing broad taxation measures, the government should focus on refining existing regulations and ensuring targeted approaches that address specific concerns without compromising the sustainability of the not-for-profit sector.

We appreciate the opportunity to contribute to this consultation and welcome further discussions on how to best support the long-term viability of community-driven health and well-being initiatives.

Submission on Taxation and the Not-for-Profit Sector March 2025

1. Introduction

1.1. This submission is from The Tindall Foundation in response to the Department of Inland Revenue's recent issues paper, *Taxation and the Not-for-Profit Sector* ("the Paper").

2. The Tindall Foundation

2.1. Founded in 1995 by Sir Stephen and Lady Margaret Tindall, The Tindall Foundation ("TTF") is a private philanthropic family foundation working throughout Aotearoa New Zealand. Our aim is to help build a stronger, sustainable and more equitable nation so that families, communities and our environment thrive now and in the future.

2.2. Our work is driven by a belief that all Kiwis should have the chance to achieve their full potential and contribute to a healthy, strong society. TTF recognises the strength of whānau/families and communities and the importance of our natural environment. We also recognise the importance of the charity sector, contributing to organisations and community groups through donations, social loans and social investments, as well as in non-financial ways.

2.3. Between 1995 and 2024 The Tindall Foundation donated over $232 million to help communities across Aotearoa New Zealand, and we have invested more than $20m in the form of social loans and impact investments.

2.4. While TTF is a registered charitable trust and therefore apparently tax-exempt, TTF is a tax-paying entity. Since inception, we have also paid over $158m in prepaid tax on imputed dividends for which we are unable to claim imputation credits.

In response to the Paper, we would like to emphasise the following key points:

3. Overall Purpose of the Paper

3.1. It is not clear to us what specific problem the paper's proposals aim to address. In our assessment, taxation is not an appropriate solution for the issues identified. These concerns could be better resolved through regulatory measures and a stricter application of existing rules around charities.

3.2. Some of the definitions in the paper are unclear. There is a failure to distinguish between charitable **activity** and charitable **purpose** which leads to confusion when considering some of the points made in the paper.

4. Charitable Businesses

4.1. All charities of any size are businesses to some extent. They engage in a range of 'commercial' activities – i.e. employ staff, provide operations, market their services, serve customers/clients, and raise revenue through a variety of channels. While their purpose is charitable rather than creating value for shareholders, their operations must maintain their existence and create ongoing value for their stakeholders. That requires a mix of social and 'commercial' focus.

4.2. It seems inconsistent that the focus of the IRD paper is on the revenue generated by only *some* of the business operations of charitable organisations. Revenue raised from Government contracts (tendered for in much the same way as the private sector companies), and revenue from passive income (such as from investments) is not the subject of the paper. Instead, it is only the revenue raised via trading operations that is in question.

4.3. As with previous reviews of tax and charities in New Zealand, TTF does not agree that the tax-exempt status of charitable businesses/social enterprises results in anti-competitive behaviour or gives those businesses an unfair competitive advantage.

4.4. The 2018 Tax Working Group (TWG) recognised that charities may use businesses for a variety of reasons - to maximise returns for further charitable purposes or, provide goods and services at less than commercial margins to meet identified community needs. It commented that a trading operation owned by a charity has a profit-maximising objective in order to grow the funds used to support its charitable purpose. This means the trading operation faces the same incentives as a commercial entity when it comes to setting its prices and accumulating capital, and its tax-exempt status will not lead to it undercutting its rivals.

4.5. The Tax Working Group referenced the conclusion of their Australian equivalent, the Henry review, that because of the public benefits arising from not-for-profit activities, this was not a serious issue that warranted any policy change.

5. Related and Unrelated Businesses

5.1. The current issues paper fails to understand how many charities operate in practice, the multiple needs they are trying to meet and the multiple sources of revenue they may seek to generate from revenue-raising to serving the needs of a range of clients/customers.

5.2. The paper raises the question of revenue-generating enterprises which are related to a charity's purpose versus enterprises run by a charity which appear unrelated. This creates an artificial distinction due to the paper confusing charitable **activity** with charitable **purpose**. For example, a charitable organisation may purchase and run a 'commercial' operation (e.g. a launderette) to generate revenue to contribute to the costs of operating a service for which it has no other revenue stream. All profits from the launderette operation go towards funding the organisation's charitable work. While the activity may not in itself be a charitable **activity**, it is serving a charitable **purpose**. The issues paper suggests that the specific revenue-generating part of the organisation's funding would be subject to tax.

5.3. Confusion is likely to result with regard to which components of a charity's revenue is taxable and which isn't. Take the example of a cafe which has been established to replace a soup kitchen. It serves a small range of food at low cost to people who may be homeless or in other social need. To increase its revenue base, it also offers a blackboard menu at regular cafe prices to the general public who are not in social need and hires out its premises for corporate events at a cost. It therefore has three revenue streams:

- low-cost meals for 'social' customers,
- serving the public, and
- revenue from hiring its premises.

5.4. For the 'social' customers, serving food is a charitable activity and would therefore not be taxed. However, for other customers, the activities of providing meals and hiring its premises **may** be charitable because the revenue from the general public and premises hire helps subsidise the cost of meals for 'social' customers. Because the cafe is a mix of charitable and 'commercial' activity, it is not clear under the proposed taxation regime whether those 'commercial' revenue streams would or would not be subject to tax. Working out whether and

which revenue to tax and which revenue not to tax would create unnecessary complexity, confusion and cost.

5.5. The consequence of taxing revenue from charitable businesses is likely to have negative consequences for charities' ability to maintain service delivery to clients. It is highly likely that it will result in loss and closure of services. That in turn will lead to increased demand on Government services (which due to the absence of volunteer labour component are usually provided at higher cost), and greater hardship and distress on people living in vulnerable situations, their whanau/families and their communities. The cost to Government in picking up the revenue gap and increased demand is likely to outweigh the benefits of any tax revenue received. Further, adding complexity to the tax system is likely to require a larger staff team at IRD, thereby creating even more additional costs for the Government.

5.6. As well as closing services, taxing charitable businesses will simply incentivise charities to move their revenue-generating operations into more passive and tax-free investments. Again, this will not result in any increased revenue for the Crown, nor does taxing all charitable businesses capture those charitable entities that are currently egregiously pushing the boundaries of taxation policy or charities' law.

5.7. Charity Services has a key role to play. Part of its focus should be to 'follow the money'. Where there is circularity of revenue by a charity for private pecuniary gain, the charitable status of that entity should be reviewed. As with all Registered Charities, all income and assets acquired from whatever source must be ultimately applied to the fulfilment of its charitable purposes. In the absence of any private gain, there should be no issue.

6. Donor-led Funds

6.1. Accumulation of Funds

6.1.1. TTF is a donor-led fund. It distributes funds to a wide variety of social and environmental groups each year. We receive dividends from a variety of sources which we accumulate and invest in order to future-proof our ability to make donations and provide some certainty about our funding to the community. Therefore, accumulation of funds is essential to what we do. All profits from our investments go back into the

Foundation's funds and are available over time for donations to the community.

6.2. Minimum Distribution

6.2.1. TTF is supportive to some extent of a minimum distribution being required of donor-led funds.

6.2.2. That needs to be within a balanced approach, taking into account the broad range of entities and reasons for accumulating funds for future use. Equally, charitable entities operate over a wide range of timeframes. For example, we would not want to see Māori entities who need to accumulate over long, intergenerational time horizons being penalised.

6.2.3. Arriving at the correct minimum level of distribution requires care. Some entities will not survive in the long term if the distribution level is set too high. Some work has been done on this in previous years by the philanthropic sector. We recommend further close consultation with the charitable sector on this specific issue before any level of distribution is agreed.

6.3. Imputation Credits

6.3.1. Over the past 25 years, despite being a tax-exempt charitable trust, TTF has also paid over $158M in prepaid tax through its inability to claim imputation credits on dividends received from NZ-owned businesses.

6.3.2. Our inability to access the imputation credits on income from dividends from investments in NZ companies, principally from The Warehouse Group, in which we are a shareholder, is an impediment to our giving. We are currently unable to claim those imputation credits due to our otherwise tax-free status.

6.3.3. Respectfully, we would ask for a review of the current policy limiting that ability. Doing so releases more funds into the community and brings NZ into line with other jurisdictions (e.g. Australia) where imputation/franking credits may be claimed under certain circumstances.

6.4. Related Parties

6.4.1. TTF is aware that there is concern at the behaviour of some donor-led entities moving funds in ways that appear to benefit related parties. TTF believes that a regulatory approach to this issue is more appropriate than dealing with it through taxation. It seems to involve only a relatively small number of entities. A taxation approach to this issue captures too many innocent parties and creates unnecessary costs.

6.4.2. TTF believes existing policy and regulation concerning related parties covers this issue.

6.4.3. That would be further strengthened in the case of charities by requiring charitable entities - including donor-controlled charities - to have clear statements in their Deeds about related party and arm's length transactions.

7. Impact on Philanthropy

7.1. The resulting loss of revenue for charities operating charitable businesses cannot be filled by philanthropy. Most philanthropic funders currently experience significantly more demand for their funds than the funds available, with no capacity to increase their level of giving in any meaningful way.

7.2. A further impact is the high likelihood that fewer family and other philanthropic trusts and foundations will be established.

7.3. Most donors wish for a simple regulatory environment which facilitates generosity and giving simply. The philanthropic sector has seen significant regulatory and compliance requirements over the past few years. Further complexity is highly likely to have a negative impact on the desire of potential new donors to establish philanthropic funds.

7.4. Reducing incentives for private donors to be generous seems in direct conflict with the current Government’s stated desire to attract private donors as partners and investors providing funds alongside Government for social and environmental outcomes.

8. Fringe Benefit Tax

8.1. TTF is supportive of charities remaining exempt from Fringe Benefit Tax.

8.2. The exemption assists charities to attract and retain staff, especially given the significant gap in salaries between staff in the charity sector and those employed in either the Government or private sectors.

9. Summary

9.1. As a funder of the charitable sector for nearly 30 years, TTF recognises the essential role that civil society in the form of charities plays in NZ. Funders' contributions should be celebrated.

9.2. The government cannot provide all support services in NZ. In fact, it never has. It has always relied on charities to partner in support of people in difficult and vulnerable situations.

9.3. In recent years, the charitable sector (including private family foundations) has been subject to increasing regulation and scrutiny. While TTF recognises the importance of transparency alongside the privilege of tax exemption, there are many in the philanthropic sector who feel that the pendulum towards regulation and compliance – especially for those who are simply trying to be generous with their wealth - has swung too far. It is beginning to act as a disincentive to establish long-standing reliable sources of funding for charitable organisations. Further disincentives will not encourage the sort of generosity and partnership that the Government seeks in the form of co-funding or co-investment.

9.4. Increasing regulation (and subsequent media commentary) create uncertainty about the integrity of the charity sector and undermines the public's confidence in it.

9.5. TTF would instead recommend that the Government adopt a proactive supportive approach towards the charitable sector by:

- Publicly promoting the value to communities that the charity sector provides,
- Rather than trying to build public confidence and trust in the charitable sector by focusing on reporting and regulation, requiring Charities Services to balance that by measuring and monitoring the positive impact generated by charities - and to communicate that to the public.
- Working with the philanthropic sector to develop ways of encouraging and enabling more generosity in NZ.

- Require Charities Services to use all of its powers (and in combination with IRD and other Government agencies) to take direct and firm action against those in the charity sector who flout the existing regulations.
  Instead of piecemeal 'reviews' of the charitable and philanthropic sector, ask the Law Commission to undertake a fundamental review of charity law, including the existing heads of charity and the current approach to stating and interpreting charitable purposes which are out of date and unhelpful in modern NZ.

Summary of our position:

- TTF **opposes** taxation of charities who operate businesses for revenue for charitable purposes.
- TTF **believes** that a sustainable charity sector is essential yet undervalued in NZ, and that the paper's proposals undermine its credibility.
- TTF **asserts** that implementing the paper's proposals will force service closures, causing harm to families/whānau and communities.
- TTF **believes** that the proposed taxes will not generate more revenue for the Government and will, instead, lead to an increased demand for its services resulting in greater costs to the Crown.
- TTF **believes** that the donor-led fund proposals create unnecessary complexity and cost and will have a negative impact on the potential for philanthropy in NZ.
- TTF **is open** to discussion regarding minimum distribution levels of net income for donor-led funds.
- TTF **recommends** a review of current taxation law which prevents charitable foundations from claiming imputation credits on dividends from NZ-based companies.

Signed by:

s 9(2)(a)

John McCarthy, Manager, The Tindall Foundation

Pest Free Kaipātiki Restoration Society Inc.
3 Ross Avenue
Glenfield
Auckland 0629

31 March 2025

To Inland Revenue

Introduction

On behalf of Pest Free Kaipātiki Restoration Society (PFK), we submit our feedback on the proposed changes to the taxation of charities, not-for-profits, and voluntary organisations in New Zealand.

PFK exists to restore and protect the natural environment of Kaipātiki (Auckland North Shore) in collaboration with the community. PFK is a local umbrella organisation that works with and connects the community and partner organisations, through activities aimed at native habitat restoration and protection. We created PFK for the Kaipātiki community because we felt it was important to connect the community with the tools, knowledge and support needed to restore and enhance our local natural environment. PFK registered as an incorporated society in 2017, receiving charitable status in the following year. Since then, we have grown year on year, delivering over 1,101 volunteer events and activities and supporting over 50 restoration groups during FY24. We are a growing not-for-profit organisation and currently report under Tier 3 not-for-profit Accounting Standards.

Overview of submission

PFK welcomes the opportunity to respond to Inland Revenue's consultation *Taxation and the not for-profit sector*. We advocate for a balanced approach that upholds the integrity and sustainability of the not-for-profit sector without imposing disproportionate compliance burdens. The stated objectives of the consultation paper of "simplifying tax rules, reducing compliance costs, and addressing integrity risks" are good objectives which PFK supports. However we have concerns that the proposals as drafted run contrary to these principles. We urge Inland Revenue to ensure a rigorous cost/benefit analysis is performed before proposing any changes to tax legislation in this sector. A key component of this analysis should consider the costs to central and local government for additional services needed to be funded if charities are now less financially sustainable.

Response to Questions 1-6: Charities business income tax exemption

Our communities benefit significantly from having a wide variety of charities. Allowing charities to build a stable financial base allows them to grow and continue to do their work. The straitened cost base which charitable organisations like PFK work with, coupled with their ability to activate significant levels of volunteer hours, means that most charities operate in a very cost-effective way. Introducing taxation on "unrelated business" may well force charities to remove these alternative funding streams or redirect operational activities away from community work into compliance activities. Both outcomes run the risk that positive outcomes in our communities are significantly reduced.

We agree that distinguishing between related and unrelated business activities will be difficult in practice. The lack of clear definitions for "related" vs. "unrelated" activities makes it difficult to reliably categorise income derived by charities and not-for-profits. PFK would like to see more evidence concerning what is deemed related or non-related taxable income and we encourage Inland Revenue to use case studies to demonstrate what this might look like for the charitable sector. This should include on-going or other costs that may arise in accountancy and compliance requirements.

PFK considers that applying principles to determine which activities fall within unrelated business activities, or applying thresholds will increase the tax compliance burden for both charities and the government. These activities typically fall on operational staff, whose salaries are notoriously difficult to fund where entities like PFK are dependent upon grants. In addition, these changes appear to also extend to gaming trusts, who represent a significant proportion of the grant funding bodies relied upon by charities to fund operational activities. Both of these factors run the risk of further destabilising the financial security of many charities that are already struggling, particularly in the current economic environment.

The outcome of these issues is that the costs of overhauling the tax rules, coupled with further costs for the government to fund issues currently addressed by charities, would likely be greater than any tax revenue received.

Question 13: Fringe benefit tax (FBT) settings

PFK believes that removing this exemption will have a significant impact on charities, add extra compliance costs, and divert funds away from charitable purposes. We disagree with the view that there are weak efficiency grounds for maintaining this exemption, as it distorts the labour market. This exemption is not intended to reduce tax liability but rather to help enable charities to offer competitive benefits to attract and retain skilled staff, as they cannot compete

with corporations in terms of remuneration. Any simplification of the FBT framework must be carefully assessed to avoid unintended impacts on charities that provide modest benefits to staff or volunteers in recognition of their service.

Question 15: Donation Tax Credit

PFK is aware that low numbers of people claimed their donation tax concessions and that this potentially reduces the amount of public donations that can be recycled back into the charitable sector. The policy recommendations appear sensible, however the potential additional administrative burden placed on charities should be carefully considered when assessing the cost benefits of any such change, particularly in the context of the pressures of obtaining funding for administrative roles in the charitable sector.

Conclusion

PFK appreciates the opportunity to provide feedback on this important review. PFK believes that it is imperative that detailed work to understand the implications for communities should tax changes occur is carried out, including what could be lost if charities are substantially less sustainable. Given the proposals appear targeted at a small number of charities that are suspected of flouting the law, we suggest a potential solution would be to enhance the resources of Charities Services to assist in the identification and removal of any charities pertaining to be charitable when in fact they are not.

We are open to further dialogue and would welcome opportunities to contribute constructively to any ongoing policy development.

Annie Dignan
General Manager
Pest Free Kaipātiki Restoration Society Inc.

Corporate Taxpayers Group

31 March 2025

Taxation and the not-for-profit sector
C/- Deputy Commissioner, Policy
Inland Revenue Department
PO Box 2198
WELLINGTON 6140

BY EMAIL: policy.webmaster@ird.govt.nz

Dear David

Taxation and the not-for-profit sector: proposals for amendments

The Corporate Taxpayers Group ("the Group") is writing to submit on the Officials' issues paper *"Taxation and the not-for-profit sector"* ("Officials' issues paper). The Group is happy for Inland Revenue to contact the Group to discuss the points raised.

GENERAL COMMENTS

The Group is concerned that there is insufficient problem definition, and consequently the Officials' issues paper is lacking in focus and clarity about what it proposed and why. It is unclear that there is a problem to be solved from a tax perspective (noting that there are also non-tax rules for the not-for-profit sector), beyond enforcement of existing tax rules, as well as further guidance on member transaction organisations. The Group is concerned that tax reform for this sector is likely to consume a disproportionate amount of resource for the level of potential additional tax collected. Instead, the most likely outcome is a deadweight cost to society. This does not seem consistent with some of the Governments priorities of reducing compliance costs and partnering with the private sector rather than having the Government deliver everything (in this case the not-for-profit sector)

The Group is concerned that the consultation as currently drafted implies that the changes will cast a wide net to capture significant numbers of charitable entities that will have income tax obligations going forward and/or complex boundary issues and definitions to navigate. Having income tax obligations would add significant compliance costs on not-for-profit entities who would need to spend time calculating their tax positions and filing income tax returns, taking their already resource constrained time away from their core charitable purposes. It would also consume Inland Revenue resources in ensuring that these enhanced compliance obligations are being met.

Chapter 2 – Charity business income tax exemption

While the Group understands the general concern around business income of charities that is unrelated to their charitable purposes, Inland Revenue needs to thoroughly consider these changes given that it is unlikely that any substantial revenue will be collected. These entities are all "not-for-profit" and act accordingly, meaning the tax revenue gained from any changes is likely to be minimal and over time should net to nil.

Further, when considering some of the proposals in the paper like providing relief when accumulated surpluses are eventually distributed for charitable purposes and memorandum accounts similar to imputation credit accounts, it is

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DDI: s 9(2)(a)
Email: s 9(2)(a)

clear that the matters being discussed would introduce a considerable additional compliance cost burden that will net off against any potential revenue benefit the government collects.

For completeness we note that significant political challenges exist in making changes in this space given the importance of the current regime to Māori, Religious and Cultural sectors of society. This should not be underestimated.

Chapter 3 – Donor-controlled charities

On the second topic in respect of donor-controlled entities, we understand that Inland Revenue considering review of this area is warranted because donor-controlled charities can enable tax avoidance and raise compliance concerns as a result of their ability to manufacture circular arrangements. The Group believes that if there is a concern about circular arrangements, there are existing mechanisms within the existing legislation to address this. For example, it may be that s BG 1 of the Income Tax Act 2007 (the ITA), could apply to these artificial arrangements. Additionally, the Charities Service is the governing body in New Zealand for all matters in relation to charities and is likely better placed to be dealing with concerns related to the structure and activities of these charities. If these entities are not acting in accordance with their relevant charitable purposes or are directly or indirectly providing benefits to associates, then Charities Services should step in to remove their charitable status.

Chapter 4 – Integrity and simplification

Mutual associations

The Group notes that on the third topic of integrity and simplification, the main subject of review is mutual associations. The Officials' issues paper quotes an unreleased operational statement about the mutual rules, noting that Inland Revenue's new view is that the current law requires most mutual associations to tax all transactions and not exclude transactions with members. We expect this to be the opposite position to that which most mutuals currently take so it has the potential to impose tax on many not-for-profits where there is misalignment between collection of funds from members and the corresponding spend.

The Officials' issues paper estimates 9,000 organisations may be impacted but the Group suggests this number is a considerable understatement, or at a minimum, will cause many more thousands of informal groups with cost sharing arrangements (such as residents associations) to have to incur costs in understanding any changes in rules.

If this new interpretation of the existing law is considered correct, the Group would urge the Government to legislate to override this interpretation, with its consequential disruption to so many, and to reinstate the status quo. This helps ensure that longstanding practice is not disturbed and additional compliance costs are not imposed on these entities (again, for little to no revenue).

Income tax exemptions / FBT exemption

The Group also notes that the final chapter also brings into question a number of exemptions in the ITA, suggesting that these could be removed as they are outdated (including in relation to FBT).

While the Group can understand that there may be incoherence where charities have an exemption from FBT, the Group recommends that, rather than making a decision now, that charities are instead able to review and comment on proposed changes to the FBT regime when the FBT policy review is released for consultation. This will allow charities to take a more informed view on the potential level of compliance costs and additional tax liabilities they may face.

As the Group has been stating for many years, the FBT regime needs to be reformed as it is unnecessarily complex and unfair. To impose the FBT regime on charities, when they have had no prior need to understand the myriad of interpretations and exclusions will disproportionately impact them if the FBT review does not result in materially better compliance cost outcomes.

Tax simplification – Volunteers

In respect of volunteers, the Group has faced issues where volunteers have been utilised for various activities where honoraria payments are given to the volunteers as a gesture of goodwill. Under the current framework, businesses have to require each payee to provide a completed IR330C which is a high administrative burden in proportion to the relatively small amounts paid (for one member, this is maximum $200-$300 per volunteer).

In order to reduce compliance costs, the Group recommends:

- Removing the requirement for volunteers to complete the IR330C form as this is a disproportionate burden and in some instances details can't be collected for privacy reasons[1], meaning the 45% non-notification rate automatically applies;
- Applying a progressive rate to payments to volunteers for the amount of honoraria paid (i.e. 10% up to $200, 20% up to $500 etc) rather than a non-notification rate of 45%;
- If the IR330C requirement cannot be removed, the Group would recommend extending the filing and payment date to once a month or once every six months for not-for-profits rather than on payday or twice a month.

SPECIFIC COMMENTS

The Group has specific comments in respect of certain 'Questions for submitters' questions 1, 2 and 5, contained within Chapter 2 and question 7 in Chapter 3.

Q1. What are the most compelling reasons to tax, or not to tax, charity business income? Do the factors described in 2.13 and 2.14 warrant taxing charity business income?

Q2. If the tax exemption is removed for charity business income that is unrelated to charitable purposes, what would be the most significant practical implications?

Some of the Group's members have established charitable trusts or foundations as part of corporate social responsibility efforts to give back to their communities. Charities play an important role in improving New Zealand's wellbeing and the environment. Charity tax exemptions is one way for the Government to support charitable activities.

Creating distinctions to tax different types of charity revenue creates definition complexity and uncertainty.

a. For example, it is unclear from the consultation what qualifies as 'business' income. One of our members has donated a lump sum intended to enable a foundation to operate for at least ten years. The trustees of the foundation decided that part of this should be put into an investment portfolio and term deposits to support a sustainable level of grant making every year and grow the funds available to distribute over time. The Group's view is that passive investment income should not amount to 'business' income. Managing and realising investments as part of managing the charity's funds prudently is distinct from carrying on a business of dealing in investments.

b. It can be unclear what income would qualify as 'unrelated'. For example, charities may undertake fundraising by selling goods (e.g. T-shirts, soft toys and other novelty items) to obtain more funds. Although the fundraising activity itself may not directly advance the charity's purposes, the income is applied to charitable purposes.

Working through the complexity of where the boundary lies for 'unrelated' and 'business' income is likely to create a significant compliance burden, which takes away from resources that could otherwise be applied for charitable work.

[1] For example, for payments to volunteers for medical trials

We cannot emphasise enough that ultimately, these funding receipts are destined to be applied for public benefit. Charities are strictly regulated under the Charities Act 2005 to apply all funds towards their charitable purposes rather than for private gain. Taxing a charity's income would reduce the amount of funds available for charitable activities. Any abuse of these rules would be better targeted by applying the sanctions available in the Charities Act and enforcement under the ITA to prevent misuse of tax exemptions, rather than by changing how we tax charities.

The consultation document also notes a concern about accumulation of funds. From our experience, there is a wide variety of charities and a range of operating philosophies, even amongst the charities our members have established. Some trusts receive an annual donation to sustain their next year of operations and would therefore not appear to have any accumulation. Others have a bigger upfront donation on establishment to enable sustained giving over years, even in periods where the donor business may not have as much surplus. There are also strategic reasons for a charity accumulating funds. Crafting a prudent investment portfolio is common within charitable governance practice, but this requires a considerable amount of capital to yield any significant income to fund a charity's operations. Charities may also choose to build reserves for commitments to multi-year funding arrangements, future projects or economic downturns as part of their long-term strategy. Mandating distributions removes the autonomy for charities to operate and manage their funds as they see fit, discourages long-term programs and may impede the length of time for which that charity can exist.

Q5. If the tax exemption is removed for charity business income that is unrelated to charitable purposes, do you agree that charity business income distributed for charitable purposes should remain tax exempt? If so, what is the most effective way to achieve this? If not, why not?

Removing the charity tax exemption for unrelated business income until it is distributed for charitable purposes appears to only give rise to a timing difference when compared to current settings, i.e. tax is paid on unrelated business income and then refunded later when the income is distributed. It would impact on a charity's cashflow to have to pay an amount of tax upfront and only receive a refund after it has distributed the funds which could be years hence. This also imposes additional compliance costs to administrate the refunds, which again impacts on a charity's ability to devote their resources to charitable purposes. It would be better to retain the current settings which treats the income as tax exempt based on destination rather than source.

Q7. Should New Zealand make a distinction between donor-controlled charities and other charitable organisations for tax purposes? If so, what criteria should define a donor-controlled charity? If not, why not?

Corporates that establish a charitable foundation often need to assess whether they control it for accounting purposes per NZ IFRS 10 *Consolidated Financial Statements* to determine if the foundation needs to be consolidated as part of the accounting group. Our view is that charities that are not seen as being controlled by their settlor for accounting purposes should not constitute donor-controlled charities.

Under NZ IFRS 10, a corporate has control over the charitable foundation if all three of the following criteria are met:

a. Power over the charitable foundation,
b. Exposure, or rights, to variable returns from the corporate's involvement with the foundation, and
c. Ability to use power over the charitable foundation to affect the amount of the corporate's returns.

Relevant factors in the assessment include the level of the corporate's involvement and decision-making powers with the foundation, and whether there are any special rights or returns to the corporate from the foundation.

Given this analysis is detailed and often subject to a third-party audit, we consider it would streamline compliance to align the definition of 'donor-controlled' with the accounting definition of 'control'.

The Group would be happy to discuss the points in the submission further.

For your information, the members of the Corporate Taxpayers Group include:

1	AIA New Zealand Limited
2	Air New Zealand Limited
3	Airways Corporation of New Zealand
4	ANZ Bank New Zealand Limited
5	ASB Bank Limited
6	Auckland International Airport Limited
7	Bank of New Zealand
8	Chorus Limited
9	Contact Energy Limited
10	Downer New Zealand Limited
11	Entain New Zealand Limited
12	First Gas Limited
13	Fisher Funds Management Limited
14	Fisher & Paykel Appliances Limited
15	Fisher & Paykel Healthcare Limited
16	Fletcher Building Limited
17	FNZ Limited
18	Fonterra Cooperative Group Limited
19	Genesis Energy Limited
20	Heartland Bank
21	IAG New Zealand Limited
22	Infratil Limited
23	Kiwibank Limited
24	Lion Pty Limited
25	Mercury NZ Limited
26	Meridian Energy Limited
27	Methanex New Zealand Limited
28	New Zealand Post Limited
29	New Zealand Superannuation Fund
30	Oji Fibre Solutions (NZ) Limited
31	OMV New Zealand Limited
32	One New Zealand Group Limited
33	Pacific Aluminium (New Zealand) Limited
34	Powerco Limited
35	Resolution Life Australasia Limited
36	SkyCity Entertainment Group Limited
37	Sky Network Television Limited
38	Spark New Zealand Limited
39	Summerset Group Holdings Limited
40	Suncorp New Zealand
41	T & G Global Limited
42	The Todd Corporation Limited
43	Westpac New Zealand Limited
44	WSP
45	Xero Limited
46	Z Energy Limited
47	ZESPRI International Limited

We note the views in this document are a reflection of the views of the Corporate Taxpayers Group and do not necessarily reflect the views of individual members.

Yours sincerely

s 9(2)(a)

John Payne
For the Corporate Taxpayers Group

To:

Taxation and the not-for-profit sector
C/- Deputy Commissioner,
Policy Inland Revenue Department,
PO Box 2198 Wellington 6140

From:

Geyser Community Foundation
Helene Phillips
Chairman

RE: INLAND REVENUE CHARITIES TAXATION REVIEW SUBMISSION.

Geyser Community Foundation is an independent, local, not-for-profit charitable trust whose main role is to encourage charitable giving in the Rotorua and Taupō communities, and throughout the Central North Island region.

Our Community Funds represent donations from individuals, organisations and businesses in the Rotorua and Taupō Districts who want to contribute towards a permanent legacy for the benefit of their community.

Geyser Community Foundation is affiliated with Community Foundations of Aotearoa New Zealand (CFANZ) and like CFANZ we are relieved to know that there will be no change to the taxation framework applied to community foundations in NZ.

Geyser Community Foundation makes the following submission reiterating the following points made by CFANZ;

Submission Points:

1. Tax incentives for charitable giving are vital for encouraging philanthropy.
Any changes to taxation rules should further encourage (not discourage) donations from individuals and businesses to community foundations and similar entities.

2. Negative narratives currently in play around charities and income streams are likely to affect the level of philanthropy flowing through to the charity sector.
Philanthropy needs positive promotion in Aotearoa.

3. Tax Systems Should Encourage Philanthropy.
A tax policy shift on imputation credits is an example of a positive tax change yet it is not being discussed. By alleviating the financial burden associated with taxation on investment income, charities could allocate a greater portion of their funds toward their core missions, benefiting the communities they serve.

3. Impact on Service Delivery.
The charities sector provides essential services to vulnerable populations. Proposed changes in taxation could lead to reduced funding and resources for these organisations.

4. Increased Administrative Burden.
Implementing a new taxation framework needs to reduce (not increase) the administrative workload for charitable organisations. Many organisations, including community foundations, operate with limited resources and staff. Additional compliance requirements will divert time and funds away from our core mission.

5. Economic Contributions.
The charities sector is a significant contributor to the New Zealand economy, providing jobs and fostering community development. The Government must ensure that altering taxation does not lead to the sector being less capable of contributing to the economy and society, or result in job losses within this sector, which could negatively impact local economies.

6. Equity and Fairness.
The charities sector operates on principles of equity and fairness. It is crucial that any taxation policies reflect the values of inclusivity and equity that underpin the not-for-profit sector.

7. Fiscal Agency and Impact.
Charities need to have fiscal agency to deliver scaled community impact. Proposed changes to charitable tax framework including, the requirement for minimum capital distributions, or fringe benefit tax could weaken a charities balance sheet.

Alternative Solutions

Rather than changing the taxation framework for charities, the government could consider more growth orientated alternatives, including;

a) Make investment imputation credits tax-deductible for philanthropic charities.

b) Government investment in growing philanthropy through matched giving programmes, like that of Creative Partnerships Australia where matched giving is promoted.
c) Providing better support and resources to charitable organisations, enhanced collaboration between sectors, and increased funding for social initiatives.
d) Support evidence-based bequest and giving campaigns to lift NZ's understanding of the opportunities and benefits of structured giving; these campaigns have been shown to be extremely effective internationally to enable a country's philanthropic culture to thrive.

Conclusion

In conclusion, Geyser Community Foundation urges you to reconsider any proposed changes to the taxation framework for the charities sector in NZ.

The potential negative consequences on service, philanthropy, economic contributions, fiscal agency, and equity may outweigh any benefits that may arise from such changes.

Geyser Community Foundation requests that the government provides stability and a positive narrative around philanthropy. We urge the government to encourage progression and innovation in our sector.

We welcome consultation should the government wish to discuss the alternative solutions proposed in this submission.

Thank you for your consideration.

Nga mihi nui

s 9(2)(a)

HELENE PHILLIPS

Chairman

Presbyterian Support Northern

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Charity no: #CC21532

Response submission

Taxation and the not-for-profit sector (February 2025 – Official's Issues Paper)

Submission made by (on behalf of Presbyterian Support Northern):
Craig Brown – Chief Financial Officer
s 9(2)(a)

s 9(2)(a)

31st March 2025

To: policy.webmaster@ird.govt.nz

"Taxation and the not-for-profit sector"

Background

Presbyterian Support Northern has been helping vulnerable New Zealanders for 140 years, and is one of New Zealand's largest Social Services, Disability Support and Aged Care not-for-profits.

The IRD Tax paper requests submissions in response to the proposals being made to change the tax exemptions as they apply to charities and not-for-profit organizations. PSN has relied on investment returns to prop up loss making government contracts. Without the income from other sources, we would not be able to continue to contract with government to deliver services to the community. As a charity we make no distributions of our profits, and reuse our profits to support our sustainability. Any potential to tax revenues from any source, will reduce our available funding, and jeopardise our ability to maintain the level of services we provide.

The reasons to remove tax exemptions and increase costs to charities, must meet the IRD objectives of "simplifying tax rules, reducing compliance costs, and addressing integrity issues", and these proposals fail to deliver on these objectives.

In the introduction the issues paper states at 1.4

> "Every tax concession has a "cost", that is, it reduces government revenue and therefore shifts the tax burden to other taxpayers".

By definition, a PBE is a public benefit entity, and as charities, there are benefits that we provide at no cost to the government, or below cost to the government, which are a Net Benefit to the government, even after accounting for the foregone revenue that IRD may have collected on the income or FBT account. i.e on the cost vs benefit analysis, charities are funded at a level below cost (underfunded), to deliver the work on behalf of government, and costs exceed their revenues, so a tax relief needs to be assessed in comparison to the burden that charities relieve government to support vulnerable New Zealanders.

Per 1.5

> "The review will consider a range of integrity measures as well as what improvements and simplifications can be made to some of the existing rules."

As a very large charity in New Zealand, we can confirm that the level of financial income from the government contracts does not keep up with the annual increase in the direct costs of running these contracts, and we have seen a consistent year on year reduction in government funding in real terms, and each year, this reduction in support decreases the level of services we can undertake for our clients.

Any proposal to further reduce government support through changes to tax incentives, will further reduce the level client support we can deliver. It is inconsistent, with this long history of reductions in real contract values, to propose a change in the tax system to reduce incentives, will be made good by increases from other government agencies to increase contract values. Government has consistently demonstrated policy to reduce costs year on year. We already lose money running government contracts, which we supplement with passive income, adding a new tax burden to charity run operations will worsen this loss.

Response to questions per the IRD issues paper numbering

Chapter 2: Charities business income tax exemption

Q1. What are the most compelling reasons to tax, or not to tax, charity business income? Do the factors described in 2.13 and 2.14 warrant taxing charity business income?

Response

- Tax exemptions recognise the positive contribution charities make to the community. Charities provide cost effective services to vulnerable New Zealanders that if not provided could fall on the Government to provide. Typically, when provided by the Government these services are at a much higher price point. Charities need to be innovative in how they accumulative sufficient resources to deliver their services. The use of "business" income is one of the ways this is achieved. Removing tax exemptions from this income will ultimately reduce the effort that charities can deliver, thus putting more demand on Government.

- These proposals fail to deliver on the IRD objectives of "simplifying tax rules, reducing compliance costs, and addressing integrity issues" Removing tax exemptions results in increased compliance costs to charities, without improving integrity.

- The operating capacity of charities will reduce, and government departments who have to fill the gap, will pay more to deliver the same services, as they have higher operating costs.
  e.g. PSN operates Lifeline, with over 400,000 phone and txt responses a year, at a salary cost 50% lower than the government funded helpline 1737. If we discontinue this service due to increased tax and compliance costs, the government will have to pay to pick up this service at a higher cost.

Q2. If the tax exemption is removed for charity business income that is unrelated to charitable purposes, what would be the most significant practical implications?

Response

- How will "Business Income unrelated to the charitable purpose" be objectively defined. It would be impractical and costly for 29,000 charities to seek legal advice on the interpretation of " business income that is unrelated to charitable purposes". The resulting subjectivity and high levels of inconsistency, along with the high level of compliance costs.

- The proposed changes will not prevent bad actors to continue to game the system. If there is a need to crack down on institutions using a charitable status to avoid taxes, then more measures should be taken to enforce compliance, rather than adding significant compliance costs to the sector to resolve an issue, that is not

throwing a blanket over the entire charity sector with changes to tax exemptions just to solve a compliance issue.

- Removing tax exemptions for Income tax and FBT, will increase the cost and lower the available funding for PSN to undertake the work we do for the vulnerable. The impact of removing exemptions will result in us needing to reduce our services to the vulnerable.

Q3. If the tax exemption is removed for charity business income that is unrelated to charitable purposes, what criteria should be used to define an unrelated business?

Response

- It could be subjective whether a business is for charitable purpose or not, and will mainly depend on the interpretation of accountants and advisors, some of whom will not have deep understanding of the question.

- The level of ambiguity is more likely to work for current charities that are the target of these changes – who are gaming the system, and hurt honest charities who are not.

Q4. If the tax exemption is removed for charity business income that is unrelated to charitable purposes, what would be an appropriate threshold to continue to provide an exemption for small-scale business activities?

Responses

- Use of Charities already existing structure size, ie. Tier 3 and 4 should be exempt as they could not bear the burden of the compliance costs should they be captured.

Q5. If the tax exemption is removed for charity business income that is unrelated to charitable purposes, do you agree that charity business income distributed for charitable purposes should remain tax exempt? If so, what is the most effective way to achieve this? If not, why not?

Response

- Agree the business income distribution should remain exempt, but the reality is that in order to achieve this through a new entity (trading company or subsidiary charity) will add unnecessary compliance costs.

Q6. If the tax exemption is removed for charity business income that is unrelated to charitable purposes, what policy settings or issues not already mentioned in this paper do you think should be considered?

Responses

- The operating capacity of charities will reduce, and government departments who have to fill the gap, will pay more to deliver the

same services, as they have higher operating costs.

- Policy needs to consider that Revenues collected by IRD will be offset by costs incurred in other government departments, who incur a high operating cost compared to charities.

- Charities are obliged to be more transparent in reporting (eg. Through Charities Services annual reporting) that is not the same with non-listed commercial enterprises.

Chapter 3: Donor-controlled charities

Q7. Should New Zealand make a distinction between donor-controlled charities and other charitable organisations for tax purposes? If so, what criteria should define a donor-controlled charity? If not, why not?

Response

No comment

Q8. Should investment restrictions be introduced for donor-controlled charities for tax purposes, to address the risk of tax abuse? If so, what restrictions would be appropriate? If not, why not?

Responses

No comment

Q9. Should donor-controlled charities be required to make a minimum distribution each year? If so, what should the minimum distribution rate be and what exceptions, if any, should there be for the annual minimum distribution? If not, why not?

Responses

No comment

Chapter 4: Integrity and simplification

Q10. What policy changes, if any, should be considered to reduce the impact of the Commissioner's updated view on NFPs, particularly smaller NFPs? For example:

- increasing and/or redesigning the current $1,000 deduction to remove small scale NFPs from the tax system,
- modifying the income tax return filing requirements for NFPs, and
- modifying the resident withholding tax exemption rules for NFPs.

Responses

- To achieve the IRD stated objectives, exemption levels should be set high enough (eg Tier 3 and Tier 4 Charities) to ensure compliance and filing costs do not exceed Tax revenues.

Q11. What are the implications of removing the current tax concessions for friendly societies and credit unions?

Responses

No comment

Income tax exemptions

Q12. What are the likely implications if the following exemptions are removed or significantly reduced:

- local and regional promotional body income tax exemption,
- herd improvement bodies income tax exemption,
- veterinary service body income tax exemption,
- bodies promoting scientific or industrial research income tax exemption, and
- non-resident charity tax exemption?

Responses

- In the case of New Zealand bodies, it is normally a requirement that they are not able to distribute surplus funds to their members, and only raise the minimum membership fees and levies to undertake their work. Changing existing tax rules to deal with a non-existent problem, is likely to increase compliance costs without generating revenue, and reduces the available funds for the bodies to undertake their work.

- If a non-resident charity is gaming the system then remove their tax-exempt status, but do not change exemption rules for charities to fix non-compliance by a minority of charities.

FBT exemption

Q13. If the compliance costs are reduced following the current review of FBT settings, what are the likely implications of removing or reducing the exemption for charities?

Responses

- To remove tax exemptions for FBT, will require FBT filing and this will incur compliance costs (tax accountants and filing returns), in addition levying FBT will reduce available funds from our charity to complete our work with the community, and this work will fall back to government to undertake at a higher cost.

- Government agencies, including MoH, MSD & Oranga Tamariki, pay their staff 15%-25% higher salaries, than provided for under PSN funding contracts. FBT exemption partially reduces the gap to overcome this market distortion. This exemption currently ensures that we are not priced out of the market by our own Funders.

- We disagree the stated IRD objectives of "simplifying tax rules, reducing compliance costs, and addressing integrity issues", will be achieved. The proposal will increase complexity, increase compliance costs and increase costs to charities.

Tax simplification

Q14. What are your views on extending the FENZ simplification as an option for all

NFPs? Do you have any other suggestions on how to reduce tax compliance costs for volunteers?

Responses

No comment

Q15. What are your views on the DTC regulatory stewardship review findings and policy initiatives proposed? Do you have any other suggestions on how to improve the current donation tax concession rules?

Responses

- If donors are not claiming credits, from the government as DTC's, then any simplifications in the system to refund donation tax concessions is a positive move, as it encourages higher giving.

31 March 2025

To: policy.webmaster@ird.govt.nz

SUBMISSION ON TAXATION AND THE NOT-FOR-PROFIT SECTOR
by
David Hayes - Barrister

This submission focusses on two areas: (1) what is an unrelated activity and (2) donor controlled charities, primarily in the context of a religious charity.

THE RELATED / UNRELATED ACTIVITY DEFINITION.

> ***Q3. If the tax exemption is removed for charity business income that is unrelated to charitable purposes, what criteria should be used to define an unrelated business?***

It appears proposed that profit making activities unrelated of a charity will be liable for income tax. A church operating a Weet-Bix factory is a big picture example of unrelated business as the factory has nothing to do with advancement of a religion. It is assumed that in principle, unrelated activities are those not directly involved in the provision of the charitable purposes. Too loose a definition will allow disputes. It needs to be made clear precisely what is to be a related activity to avoid disputes at the margins.

The ITA section CW 41 and CW 42 currently differentiate between charitable income of all types under CW 41 and 'other' business income. Under CW 41 Charity related activities are currently exempt from tax (e.g. an education charity operating a pre-school) whereas CW42 effectively covers unrelated income (e.g. operating a Weet-bix factory). However the dividing line is not always clear cut because an 'unrelated' business activity can be conducted directly by a charitable organisation, (the same organisation that conducts the charitable purpose) or such a business may be conducted by a wholly owned charitable company. CW 42 applies to both circumstances where the activity can be structured as operated directly by the charity or through a wholly owned Limited company.

The proposals indicate that CW 42 business activity will be deemed unrelated income which doesn't create issues if there is a separate entity doing the trading.

The problem I see is that in the circumstance the charitable purpose entity also operates the 'unrelated' activity it will permit a subjective opinion as to what is

related and what is not. For example, if a church operates a café with paying customers on its premises, such would arguably be an unrelated activity as a café is not of itself religious. But then distinction could be made between a café that only caters to church members and on that also has public use.

Another example could be where a church may operate a relationship counselling service for a fee. Would that be an unrelated activity? On one analysis it would be related as it was supplied on church premises but only loosely. On another analysis it would be an unrelated activity as it is not advancing a religion.

Then there are certain religious activities upon which reasonable minds may differ as to their connection to advancing or practicing a particular belief. An IRD officer would be called upon to determine whether a religious practice is a related activity, a field even a seasoned judge would fear to tread.

Further confusion is in the wind as found in the recent IS 24/08 para 30 which defines business income in a way that could be applied to even include religious rituals and related donations.

> "Charities that engage in activities on a continuous and ongoing basis, commit time, money and effort to those activities, and conduct a large volume of transactions, with the intention of making a surplus are carrying on a "business", as s YA 1 defines that term. This is the conclusion even though the object of the business is directed to charitable ends, not private pecuniary gain."

When applied in a religious context religious activities could be caught. It does not appear unusual that a church otherwise not conducting business could find itself caught if it suggested donations in conjunction with the provision of otherwise religious acts. IRD simply needs to assert the activity is primarily for revenue raising to deem the activity unrelated.

It is therefore submitted the use of related unrelated business terms need to be specific.

IS 24/08 does not make a distinction relevant to all charities. Charities of necessity need to fundraise. They do so by anything from a car wash to operating an unrelated business.

To avoid the issues previously discussed I would propose that certain activities be excluded so that specified fundraising activities are not caught.

Therefore a definition of unrelated business income could be: "Income from *a trade or business, regularly carried on, that is not substantially related to the charitable, educational, or other purpose that is the basis of the organization's exemption."*

This definition would mean that related activities such as a café or counselling would not be caught as an unrelated activity unless their scale was more than substantial.

More radically the rules could be changed so that any unrelated business activity would need to be conducted through another wholly owned entity. That would

DONOR CONTROLLED CHARITY

Q7. Should New Zealand make a distinction between donor-controlled charities and other charitable organisations for tax purposes? If so, what criteria should define a donor-controlled charity? If not, why not?

The purpose of this possible change appears to be to ensure income and capital is used for charitable purposes rather than being diverted to related parties.

This raises a further issue that requires consideration in that a religious charity could be deemed to be a 'donor controlled charity' due to the level of control exercised over it ecclesiastically if it sends money to the overseas organisation.

This is especially the case where there is an International religious body that directs the formation, and operation by way of international policy and procedure. This issue needs consideration so as to exempt such organisations from being deemed to be donor controlled given there is no personal benefit as would be the case in the examples provided. Also the use of the term "arm's length" dealings in the definition would not be appropriate in such circumstances as the entities are related.

Therefore it is submitted that if there is to be a change to provide for donor controlled charities the definition should allow for exemptions where the other entity is also a charity.

Currently as the law arguably stands arguably up to 50% of a charities income can be sent to overseas charities and so the interface with that provision with donor controlled charities would need clarification.

A proposal to add anti-avoidance provisions would be subject to challenges and so the potential for subjective interpretation would remain.

Yours faithfully,

s 9(2)(a)

D G Hayes

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