s 9(2)(a)

From: Anthony Rohan s 9(2)(a)
Sent: Monday, 31 March 2025 4:19 pm
To: Policy Webmaster
Subject: Taxation and the not-for-profit sector

Kia ora Stewart,

Thank you for the opportunity to comment on this officials' issues paper.

Fairground is a CA firm who provides accounting services, some of which to the not-for-profit sector. We are submitting to oppose the proposal to remove the tax exemption to charities on their business income (related or unrelated). We believe that it's more important to know how business profits are being used towards the charity's mission, as opposed to how those profits were earned.

All of our not-for-profit clients operate under the Tier 3 and Tier 4 PBE reporting standards with expenses less than $5,000,000. They provide essential services to the public with already limited resources. The burden of both tax and additional compliance costs would unfairly reduce their ability to deliver on their charitable purpose, especially to those who need it the most.

Also without any data to show how much unrelated business revenue is currently untaxed, we find it difficult to properly consider the benefits of this proposal.

Our submission points are as follows:

1. Point 1.4 in the issues paper refers to "cost" of the tax concession, however there is no acknowledgement of the enormous "benefit" that charities deliver to Aotearoa. If all charities were to wind up their operations tomorrow, what would be the cost to Government of having to meet the needs that charities currently cover? We believe the benefit the public receives (because of the tax exemption), far outweighs the loss of tax revenue to the Government.

2. The term 'unrelated business activity' is difficult to define and leaves it open to interpretation. This in turn could lead to undesired consequences, with some charities choosing to reduce services or even re-structure to come within their interpretation of the definition. Do, for example, returns from an investment into a managed funds scheme count as 'unrelated' business income? And if not, what about returns from an investment into a trading company, owned by the charity?

3. We believe that larger charities, with the available financial resources, would be in the best position to structure their affairs to pay the least amount of income tax (if the tax exemption was removed for business income). This would punish smaller charities with already limited

resources who would struggle to access the same advice, and reduce potential tax revenue (and therefore the justification for making the change).

4. Point 2.13 mentions that charities don't face tax compliance costs, however this ignores the reporting and auditing compliance costs they already face, that many for-profit businesses don't.

5. Should the proposals proceed (noting that we oppose it), we support including a de minimis rule aligned to the charities reporting tiers which exclude Tier 3 and Tier 4 charities. We note that the reporting tiers are based on thresholds of expenditure during a financial period, and not thresholds of revenue or profit. Also it makes no delineation between business and non-business revenue, so some charities might be captured that have no or immaterial amounts of business revenue.

6. If IR are concerned with charities not applying their business income to their charitable purpose, it would be more appropriate to use the existing compliance body (Charities Services) for those matters, as opposed to removing their tax exemption.

7. We are opposed to the repealing of the FBT exemption for charities. Charities already struggle to compete for highly-skilled staff from the commercial sector. Offering fringe benefits is a small way charities can structure a remuneration package that doesn't involve having to spend more money. Especially considering new staff typically take a salary cut to go and work for a charity. It would also further increase tax compliance costs.

Thank you for considering our submission.

Ngā mihi

Anthony Rohan FCA
Director - Fairground Ltd

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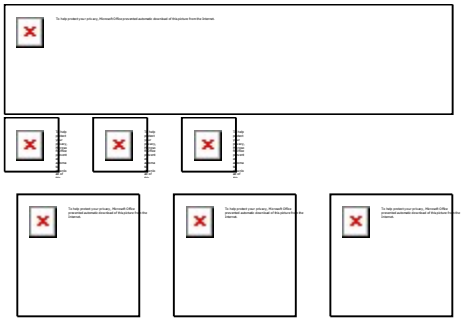


Taxation and the not for profit sector

Zero Waste Network Aotearoa submission
Contact - Sue Coutts s 9(2)(a)

The Zero Waste Network is a membership organisation with 130+ members across the country who work towards Zero Waste with their local communities.

72 of these members provide practical resource recovery and behaviour change services. Collectively they employ 1,088 people, work with 10,400 volunteers, recover 38,400 tonnes of material each year and turnover $79 million. https://zerowaste.co.nz/

Impacts of the change

The Community Enterprise Network Trust (CENT) trading as the Zero Waste Network Aotearoa, our commercial arm Localised and most of our members are involved in a range of business activities which are related to delivering on our zero waste mission and vision.

Generally our organisations are registered as charitable with a constitution that clearly outlines the public good purpose we are working to achieve. In most cases our members have also secured an IRD income tax exemption.

This charitable status means that:

- the enterprise is mission locked around the purpose outlined in the constitution
- there is no ability for individuals to gain from surpluses generated or to gain from the growth of the enterprise in terms of value or asset growth.

Changing the rules around which business activities are related and which are unrelated to the charitable purpose for tax purposes would create uncertainty and complexity and increase compliance costs for the organisations in our network. The current situation which focuses on what happens to any surplus created i.e. returned to the organisation to reinvest in achieving its purpose and not distributed for private pecuniary benefit makes the most sense to us. We support the use of this ‘destination of income’ approach.

Our organisations and our members organisations are working at the margins of what is economically viable. We work in spaces the commercial sector chooses not to invest in because margins are too low or in many cases negative. Generally our sector and charities work anywhere from 100% loss to (if we are lucky) 10% surplus. We work in spaces where need is high and ability and/or willingness to pay is low (social and environmental services). We fill gaps that sit outside government and local government priorities.

Our experience over the years with developing the community recycling sector is that commercial enterprises avoid this area until they can see a space where there is sufficient revenue and surpluses (>10%). Then they will actively work to occupy this commercial space and use various methods and strategies to push us out of this area.

In general, any surplus generated from enterprise activities is reinvested into these organisations to enable them to continue to make a positive impact. Surpluses are generally small in proportion to turnover so it is likely that any potential tax take would also be minor. The main expense for our organisations and our members organisations is local staff employment which generally sits between 50 to 80% of expenses.

This results in significant local benefits in terms of disposable income being available for local economies. It also results in significant central government tax earnings in terms of PAYE and Kiwisaver and ACC Levies. Our enterprises also pay significantly more GST on taxable revenue to the Government as wages are a non-deductible GST expense and so are not claimable against GST earnt. 1,088 part time and full time employees worked in our member organisations in FYE 2024.

In many cases the lost cash flow from an imposed income tax, which would result in the loss of 20-30% of surpluses, could be sufficient to slowly force closure of these financially marginal community enterprises. Leading to the loss of an important local community asset alongside all of the public and environmental benefits these local community enterprises/organisations provide.

Tax concessions enable broader benefits

The starting point for this paper is that the tax concessions for charities and not-for-profits is a way of providing support to these organisations who provide public benefit. We consider this a fair and valid justification for not imposing an income tax liability on organisations who hold charitable status and an income tax exemption.

These organisations return far more, and much broader value to society than the small amount of ‘lost’ income tax. It makes sense to focus on the value of the goods and services provided to society (public benefit) rather than the perceived loss of tax revenue.

Social enterprises and charities make a huge contribution to the public good. They do work that is valued by society which would not otherwise get done because there is no for-profit business model that works and/or no commitment from government - local government to deliver particular goods or services.

The short, medium and long term benefits to society from these organisations far outweigh any tax revenue foregone. The income tax exemption is a low cost and useful means of enabling and supporting the 29,000 registered charitable organisations that are delivering real value for the government.

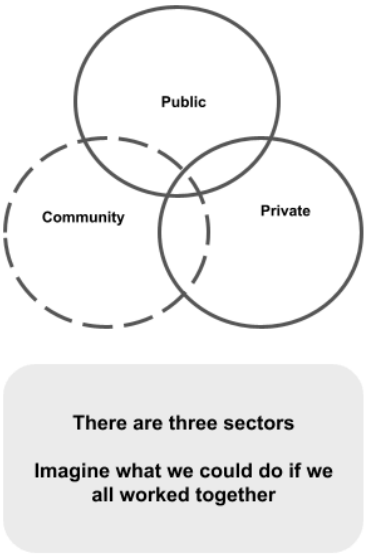
The third sector delivers value

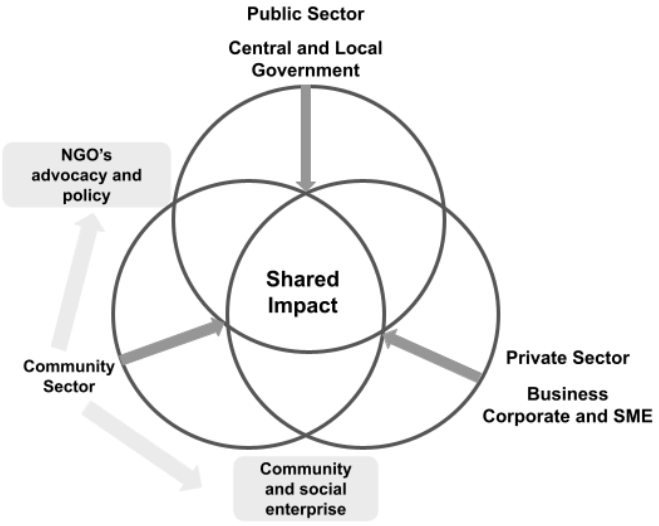
In New Zealand we often consider the public sector and the private sector but do not really consider the third sector which overlaps both and makes important contributions by filling gaps and meeting needs that the public and private sectors for various reasons do not.

The IRD tax and the not for profit sector paper relates to the activities being done and the impact being delivered across this sector by a wide range of NGOs, community organisations, social and community enterprises and purpose driven businesses. They are

all organising systems for getting work done that will not be adequately resourced by the public or the private sector.

It would be useful for the IRD to clearly conceptualise the range of organisations affected by these changes in order to better understand how they fit together, what their drivers are and where and how they make their contributions in relation to impact, economic activity and tax.





Reliable income sources are necessary

Organisations like ours and those of our members require business units to generate a reliable revenue stream to fund our work.

Having a large and stable organisation that can be deployed to achieve a public good mission is a valuable asset for a community of place and /or a community of interest. Running a large and effective organisation requires a steady source of income.

To be able to plan ahead with confidence the Zero Waste Network and many of our members have started commercial activities that are aligned with our mission. As a result we generated money that gets put towards our charitable mission and purpose. Usually these business units deliver outcomes that are aligned with our mission and purpose.

Some organisations look to acquire a traditional 'for-profit' business to help diversify their income stream. Although this activity will be unrelated to their core purpose, the profit they hope to draw from this business activity will provide no personal benefit and be 100% focused towards the mission and purpose of our charitable entity.

Adding an income tax liability for any surplus generated from unrelated business activity will have a chilling effect and cause organisations to question whether the costs will be greater than the benefits. Given that most of the work done by our organisations will not be provided by private enterprise or government there is a risk that community and environmental needs will go unmet.

Being reliant on grants and funding to run an organisation is a risky and challenging strategy. It puts organisations at the mercy of other parties' interests. Priorities change over time for funders and this leaves organisations vulnerable to drops and cuts in resources which cannot always be foreseen.

On a global scale one example is the USAID scenario which saw a sudden policy change result in massive and instant cuts to global AID budgets. At the New Zealand scale this has happened across the environmental sector due to Government budget cuts and policy priorities changing over the last 18 months.

Our organisation and those of our members rely on a wide range of revenue sources. These include earned income through sales of goods and services and contracts as well as funding, grants and donations which are generated through a range of other strategies.

Turnover for our 72 full members was $78m in FYE 2024. The average sits at just over $1m, however there is a wide range with a few organisations sitting at the bottom end of tier 2 and a few in tier 4. Since the tier 2 threshold was increased to $5m+ most organisations now fall into Tier 3.

Developing and maintaining the relationships, systems and processes necessary to generate funding requires a significant amount of administration, liaison, reporting and expense. Generally funding and grants are available for one off or short term projects and activities. It is tough to resource ongoing operations activities using these revenue sources.

The pools of capital and funding available for not-for-profit, charitable and community organisations are limited. Each organisation that finds a way to use commercial activity to generate a revenue stream and deliver impact reduces competition for these pots of funding. We have chosen to develop commercial revenue streams so we can leave these funding and grant opportunities open for smaller organisations who have few other options.

Resource compliance, monitoring and enforcement

The stated goals are are to:

- Simplify tax rules
- Reduce compliance costs
- Address integrity risks

People seem to want reassurance that donations go to support work on the ground rather than administration and compliance activity. A focus on how surplus is spent is a more useful lens for resolving this than adding a tax liability.

We are in favour of increasing Charity Services and IRD investigation activity and increasing compliance capability so they can crack down on 'bad actors' who are taking advantage of their charitable status.

There is a myth that charities abuse their status however no data on the scale of the problem or where in the charities hierarchy the key issues sit is provided in the paper.

There is already a framework in place which includes safeguards. It makes sense to properly resource Charities Services so they can deliver compliance, monitoring and enforcement functions in relation to integrity of charitable organisations. There are already provisions for investigations and mechanisms for addressing integrity issues.

Our charitable sector already has significantly more compliance costs than a comparable private business. We are required to produce annual reviewed or audited accounts (depending on which Tier the organisation sits in) and then file these in the public domain with the Charities Services. This means we are potentially commercially disadvantaged as private sector competitors can publicly view our cost structures, financial performance and position. The auditing and accounting costs are significant at year end including both external professional costs plus and in house staff time.

This seems to be a more useful approach than applying a blanket rule to the majority of the 29,000 charities active in New Zealand.

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?

Should there be some exemptions?

Yes

Second hand goods, donated goods or services are common exemptions overseas.

Charity businesses that are substantially run by volunteers should be excluded but this begs the question around charity businesses that employ staff to do the work and thus contribute income tax to the government coffers. It doesn't seem fair if organisations staffed by volunteers make no contributions and those staffed by employees have to pay both the income tax component of wages and an additional tax on any surplus.

On related and unrelated businesses

We understand that unrelated business activities are the focus of the IRD review. Adding a tax liability in relation to unrelated businesses will add a lot of unnecessary complexity for both the charity and the regulator. It is much more straightforward to carry on using the 'destination of income' approach.

In practice it will be difficult to decide which activities are related and which are unrelated.

Issues will arise with clearly defining which activities are related and unrelated to any particular charitable organisations purpose because:

The sector is diverse - A wide range of activities are undertaken across the sector which span delivering social, environmental, economic and cultural impacts so assessment will have to happen on a case by case basis.One organisation may deliver a wide range of positive impacts directly and indirectly related to their purpose.

Organisations are complex - A single organisation may have a number of different business units delivering value for their communities and meeting local needs in line with their charitable purpose but at first glance these may appear to be unrelated e.g. home insulation, recycling, reuse and repair, bus services, party hire services, swimming pool operation and community education programmes.

Business niches vary by locality - In some communities the only operator willing to provide a particular service or bundle of services could be a registered charity with an IRD exemption. All of the business units will be contributing to overheads and supporting the achievement of the organisation's purpose. They may be meeting local need and will not necessarily be directly related to the organisation's purpose.

Business units deliver different types of value - Defining what is and is not related will not be straightforward. An apparently unrelated business type may be creating jobs or outcomes that are 100% related to the purpose because it is the process of running the business that is important rather than the sector or business type that is most relevant e.g. job creation and training opportunities.

Defining related and unrelated is a compliance cost - It will take time and energy away from delivering on the organisations core activities and put an extra burden on organisations that already face high compliance and reporting burdens. This will soak up time and energy of Boards, Management, accounting legal and admin support staff.

Increase red tape - These organisations are already dealing with a lot of complexity around annual reporting to the Charities Commission alongside accountability to funders, contracting organisations, communities and members. Some also report as limited liability companies (also registered as charitable organisations). Adding an income liability will add another reporting burden. This does not seem fair when the Government is currently reducing red tape for many other sectors.

Require advice so imposes external cost - Proving what is and is not related will require advice and determinations from legal, audit, accounting professionals. If there is a shift to related and unrelated businesses some sort of external yardstick will need to be applied. This will become an industry in itself with external experts required to create guidelines, assess fit, and sign off compliance.

Charities already collect and pay tax - The organisations across our network are generally involved in the service sector so have a high labour component. This means they create jobs which results in a substantial amount of income tax being passed through to the Government. Generally speaking employment related expenses make up 60 -75% of total expenses. Given that income tax comprises around 50%+ of the tax take and companies tax only 16% it is likely that the income tax derived from the business activities of charities are more valuable than the income tax opportunities.

Organisations need to accumulate surplus - There has been some commentary about the $2bn in accumulated surplus that gets carried across the boundary between financial years by our sector. There are many reasons why organisations carry reserves across the boundary between financial years

- Working capital, cashflow, important to avoid trading insolvent

- Income received in advance/ savings to deliver future projects - build up capex and opex needed over time
- Averaged across 29,000 organisations this is only $70k each - many larger organisations would need to hold a lot more than this just to manage cashflow. Many others will be building up capital to deliver future projects.
- Short term single year focus may not be relevant to the goals and purpose of the organisation. They may be building assets to serve their communities in the future.

A specific legal structure

Purpose driven organisations who are running businesses to generate some or all of their income tend to fall between the cracks. They don't fit easily into the charity end of the spectrum or into the business end of the spectrum. That makes it difficult to apply the standard instruments used to manage 'charitable' and 'business' activity to them.

It would be useful to create a specific legal structure for social enterprises and 'for-purpose' or 'more-than-profit' businesses. This would follow the lead of countries like Canada that have this in place already.

A lot of work has already been done to unpick this including work done through the Impact Initiative, which generated a set of recommendations for government on how to better support and enable the sector. These are outlined in the set of White papers here.

See this report for specific detail on the issues relating to legal structures for impact and purpose driven businesses.

2019 Report: Structuring for Impact: Evolving Legal Structures for Business in New Zealand Horan, Jane., Hosking, Amber., Moe, Steven., Rowland, Jackson., Wilkie, Phillippa.

https://www.akina.org.nz/news/legal-structures-holding-back-impact

Chapter 2 Charity Business Income tax exemption Q 1-6

Should charities be taxed on income?

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 think charities should be taxed on any income
The compliance costs outweigh the benefits
Charities generally operate in the margins providing goods and services and meeting needs that commercial businesses and government do not.
We are not aware of any situations where the absence of a tax liability enables our members to outcompete for profit commercial operators. We have not seen any evidence to support the case that this happens in other sectors. Generally charitable organisations are working to deliver qualitatively different goods and services.

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?

See commentary above

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 consider this would be very complicated to determine - see commentary above On related and unrelated businesses.

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?

The threshold should be related to the size of the charity

Tiers 2, 3 and 4 should be exempt

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 - for income distributed over the next 3 years

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?

See commentary above

Chapter 3 Donor controlled Charities Q7-9

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?

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?

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?

No comment

Chapter 4 Integrity and simplification Q 10 -15

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,*

Yes it should be increased to $50,000
As a general principle the compliance costs should be minimised for the small scale NFP's

- *modifying the income tax return filing requirements for NFPs, and*

No comment

- *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 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 on these as they do not directly affect us

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?

Remuneration packages have been developed by some of the organisations in our network based on the current fringe benefit tax exemption. This largely relates to vehicle use. If these rules change then it will take time to unwind these arrangements and to shift to new remuneration models.

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 on this

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?

Tax credits for donors could be improved by allowing real-time tax credits instead of having to save receipt until year end

STUDENT RADIO NETWORK NZ

REPRESENTING: 95bFM AUCKLAND RadioActive.FM 88.6FM WELLINGTON Radio Control 99.4FM PALMERSTON NORTH RDU 98.5FM CHRISTCHURCH Radio One 91FM DUNEDIN

Re: Submission – Taxation and the non-for-profit sector

On behalf of the SRN Charitable Trust, we would like to thank Inland Revenue for the opportunity to provide feedback on the proposed changes to the taxation of charities, not-for-profits, and voluntary organizations in New Zealand. Our submission is largely focused on proposal 1 – Charity business income tax exemption.

CONTEXT:
The Student Radio Network (SRN) has a rich history spanning over 50 years, with a core kaupapa centered around providing charitable services for youth and students, as well as amplifying unique and indigenous voices. Recognized as a leader in supporting New Zealand musicians, SRN continues to maintain a network of alternative platforms, offering communities outside the mainstream a space to be seen and heard.

The SRN is made up of 5 radio stations from around the motu; 95bFM in Auckland, Radio Control 99.4FM in Palmerston North, RadioActive.FM 88.6 in Wellington, RDU 98.5FM in Christchurch and Radio One 91FM in Dunedin.

Feedback:
The proposed tax changes could exacerbate the wealth divide by limiting the ability of charities and not-for-profits to sustainably fund services that directly benefit our communities.

The ripple effect of these tax changes could place additional pressure on already overstretched organizations, diverting critical revenue streams that directly support individuals in need, including those who rely on our services and employees within the charitable sector.

If charities are forced to divert income or are unable to rely on revenue generated from unrelated or direct activities (as outlined by the IRD), the unintended consequences may include more charities facing closure, increased job losses, and further strain on the community sector.

The consultation period has lacked genuine engagement with the community sector and grassroots organizations, raising ongoing concerns rather than allowing space for meaningful dialogue that should be driven by the community itself.

The lack of clear definitions for “related” versus “unrelated” activities creates challenges in accurately categorizing income generated by charities and not-for-profits. We urge the government to provide more evidence and clarity on what constitutes related versus non-related taxable income.

QUEENSTOWN LAKES Community Housing Trust

Unlocking homes in our community.

SUBMISSION

On 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

31 March 2025

QUEENSTOWN LAKES COMMUNITY HOUSING TRUST - SUBMISSION ON INLAND REVENUE'S OFFICIALS' ISSUES PAPER: "TAXATION AND THE NOT-FOR-PROFIT SECTOR"

Introduction

1. This submission is made on behalf of Queenstown Lakes Community Housing Trust ("QLCHT") in response to the Inland Revenue Issues Paper dated 24 February 2025, titled "Taxation and the not-for-profit sector".

Queenstown Lakes Community Housing Trust

2. QLCHT was created in 2007 and operates pursuant to a Trust Deed, and otherwise in accordance with the requirements of the Trusts Act 1956. QLCHT was founded as a result of a community-wide consultation into finding solutions for the district's acute housing affordability issue. It is a not-for-profit organisation with a range of stakeholders and is tasked with the goal of ensuring residents of the Queenstown Lakes district have access to secure housing at a cost within their means

3. The Queenstown Lakes district consistently has one of the highest median house prices in New Zealand. The problem is amplified by the high cost of living in the district.

4. QLCHT is a registered Community Housing Provider (CHP) with the Community Housing Regulatory Authority. We're a recognised leader in the CHP sector, and an active member of peak body, Community Housing Aotearoa (CHA).

5. QLCHT has a Memorandum of Understanding with peak body for Māori Housing, Te Matapihi. This MoU acknowledges the alignment of the purposes and kaupapa of the two organisations. It also provides recognition of the approach QLCHT takes to share its intellectual property and learnings across the country.

6. In 2024 a Heads of Agreement was signed between QLCHT and local kaupapa Māori organisation, Mana Tāhuna, which acknowledges shared values and kaupapa around housing. The HoA outlines the intention to collaborate with the mutual objective of facilitating Māori, and other people and families, into affordable and secure housing.

7. QLCHT contracts to the Ministry of Housing and Urban Development to deliver Public Housing. Our Public Housing portfolio is more than four times that of Kāinga Ora's within the Queenstown Lakes.

8. We offer several housing programmes across the housing continuum, which ensure we cater to a wide range of lower income households, depending on their own situation.

9. We partner with local social services agencies to provide wraparound support services for our clients.

QLCHT Submission

Overview

10. It is the submission of QLCHT that the current tax concessions available for the business income of charities and not-for-profit organisations (hereinafter referred to as Charities) should remain. Charitable business income should not be taxed.

11. The Queenstown Lakes has an on-going (and growing) shortage of affordable housing. QLCHT opposes any tax changes that create further barriers to its work providing affordable housing. As at today, the waiting list for QLCHT's various housing programmes stands at 1,363 individual households.

12. The proposed changes could disrupt funding models for CHPs, weakening our ability to fulfil our charitable objectives.

13. The imperfections noted in 2.13 and 2.14 of the issue paper do not lend support to taxing charity business income for affordable housing providers. The analysis in the document ignores the benefits provided by these charities which we believe are significantly higher than any potential tax revenue.

Further reasons why charity business income should not be taxed

14. Without the ability to receive tax-exempt business income from our business activities, our work would be significantly compromised, given the unique funding, pricing, commercial, regulatory, and other constraints and challenges that are often associated with a charity's business operations and which impact on its financial viability.

15. We do not believe there is any compelling reason to tax charity business income in New Zealand. The practical implications from taxing charity business income are an increase in compliance costs and less revenue to carry out the charitable purposes. The proposals ignore the fact that all charity income must be used in support of those purposes, whether from business activities or other sources.

16. The practical implications of taxing charity business income that is unrelated to charitable purposes is likely to be significant. We are concerned that from a practical perspective it will be difficult to define and differentiate between what is related and unrelated business income. For example, if we were to take on a head lease(s) of housing stock from the private market and then sublease that (at a discount to market), and in return receive a management fee for providing this service, how would that be categorised? If we were to develop a mixed tenure housing development and needed to sell some homes on the open market to enable the feasible delivery of an affordable community housing product, how would that be categorised? There are likely other examples, and in respect of which uncertainty and administrative cost can simply be avoided by rejecting the proposal.

17. The two examples above demonstrate the difficulty of establishing workable criteria to define unrelated business income. They are not considered a diversion from charitable purpose. but a necessary mechanism to fund the mission of delivering affordable housing. As stated above, we do not support removing the tax exemption for charity business income, whether related or unrelated to charitable purposes.

18. Those charities who are 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 increase compliance costs and reduce the amount available for charitable purposes.

19. Providing affordable housing solutions for low to moderate income residents and families in the community, particularly given the long timeframes associated with identifying and securing suitable housing locations in the Queenstown Lakes, obtaining relevant regulatory consents, and then constructing affordable homes that can be supplied to those residents and families, requires a long-term commercial commitment by QLCHT to support these goals and to have access to significant and reliable funding over the entire period of any affordable housing project or projects.

20. Given the need for QLCHT to be able to access significant funding and other assistance through a variety of commercial means and from a range of sources, it will be very important in this context that the test of an "unrelated business activity" does not extend too far, and cover conventional investment, funding, and third-party business activities that may be required by CHPs to assist them to promote their charitable purposes.

21. If business income derived by a charity from business activities of various types is always destined for charitable purposes, and the income is applied in fact to advance those charitable purposes for the benefit of the New Zealand community and not for the private benefit of individual persons, then that income should be eligible for a business income tax exemption because it will directly relate to the furthering the charity's charitable purposes.

Other issues

22. We oppose removing the FTB exemption regardless of potential reductions in compliance costs. We provide vehicles for employees to carry out their duties across a large geographic area including letting properties, responding to maintenance requests and property inspections. Removing the exemption will increase these costs and impact on the ability to provide affordable homes.

23. QLCHT supports the policy-related recommendations to make it easier to apply for Donation Tax Credits.

Summary

24. QLCHT does not believe that any taxing of charitable business income should be applied to registered CHPs. All business income in our unique operations is directed to the pursuit of our strategic vision of transforming the lives of committed people in our district by providing them an opportunity to secure an affordable place to call home.

25. The current charity business income tax exemption is vital for the sustainability of CHPs like us. Taxing unrelated business income would hinder the ability of organisations to respond to urgent housing needs effectively. We urge policymakers to maintain exemptions or design any changes in a way that supports, rather than undermines, charitable efforts.

Communication with officials of IR

26. The management team of QLCHT welcomes the opportunity to discuss any of the points made in this submission with Inland Revenue and any other interested parties.

Ngā mihi

s 9(2)(a)

Julie Scott, Chief Executive
Queenstown Lakes Community Housing Trust
s 9(2)(a)

Ngā Tāpaetanga a Te Runanganui o Ngāti Porou mō te Pire Take.

Submission of Te Runanganui o Ngāti Porou in respect of the Officials' Issues Paper "Taxation and the not-for-profit sector"

Kupu Whakataki

We provide this submission on behalf of Ngāti Porou, represented in this submission by Te Rūnanganui o Ngāti Porou, Ngāti Porou Oranga, Toitu Ngāti Porou (together "Ngāti Porou").

Ngāti Porou is one of the largest iwi in Aotearoa representing over 100,000 descendants, organised into 58 hapū and 48 marae, each exercising mana motuhake and tino rangatiratanga. Through Te Rūnanganui o Ngāti Porou (TRONPnui), we uphold our obligations to serve our people, protect our resources, and ensure the economic and social well-being of our whānau, hapū, and iwi.

Ngāti Porou has a long history of providing charitable benefits to Ngāti Porou, East Coast, and Te Tairāwhiti communities. As one of the largest iwi in Aotearoa we are committed to advancing the social, economic, cultural, and environmental well-being of our people. Our iwi-led initiatives support whānau, hapū, and marae across critical areas such as health, education, housing, economic development, and environmental sustainability.

Through the Ngāti Porou Deed of Settlement (2010), the Ngāti Porou Claims Settlement Act (2012)[1], and the Te Rūnanganui o Ngāti Porou Relationship Accord, the Crown has acknowledged Ngāti Porou's rangatiratanga and affirmed its Tiriti obligations. These agreements recognise the critical role we play in supporting our communities and in ensuring the intergenerational well-being of our people.

We oppose the proposed changes in the consultation paper as they undermine these commitments and threaten the financial sustainability of iwi and Māori organisations that operate for the collective benefit of our communities. The proposed tax measures fail to acknowledge the charitable and public benefit nature of iwi-led development, imposing undue burdens that will ultimately limit our ability to provide services, invest in future generations, and fulfil our kaitiaki responsibilities.

Ngāti Porou urges the government to uphold its Te Tiriti o Waitangi obligations and ensure that taxation policy does not disadvantage iwi, hapū, and Māori-led initiatives. We call for a fair and equitable approach that reflects the unique role of iwi in delivering public benefit and sustaining our communities for generations to come.

We can be contacted at:
Te Runanganui o Ngati Porou
75 Huxley Road, Gisborne

George Reedy (CEO)
s 9(2)(a)

Nga Tapaetanga – Our Submission

Ngāti Porou has significant concerns with several of the proposals outlined in the 'Taxation and the not-for-profit sector' Officials' Issues Paper ("the Paper") published by the Inland Revenue Department ("IRD").

[1] Ngati Porou Claims Settlement Act as at March 27th 2025.
https://www.legislation.govt.nz/act/public/2012/0031/latest/DLM3548725.html

At a high level, we have several initial key comments regarding the proposals outlined in the Paper:

- This could potentially be the largest and most significant tax reform to impact the Māori sector since the introduction of the Māori authority tax regime. The 4-week timeframe for submissions is unreasonable given the material impact this could have on the Māori sector (as well as the broader chartable sector).
- We understand there has been discussion and work done on the Paper (or at least ideas in the Paper) over an extended period of time. However, the current proposals and submission window appear to be rushed. It is crucial that proposals of this magnitude are not rushed in order to allow the affected sectors to provide practical input into any policy design (if any proposals are implemented).
- Many Māori organisations provide significant charitable and social benefits to communities, especially in the regions, and if the proposal captured Māori organisations, it could have an impact that is at odds with the underlying intention of these proposals (which are effectively to ensure charitable benefits are being provided and ensure tax avoidance is not being enabled).
- There is a concern that the proposed one-size-fits-all solution may not adequately address the diverse needs of the various sectors involved. The three types of organisations discussed (i.e. Unrelated business, Donor-controlled, and Not-for-profit) each have unique needs and should be treated as separate projects with separate policy design. The one-size-fits-all approach again seems likely to capture organisations which are not intended as set out in the Paper.
- Many of the impacted organisations do not generally have tax advisors on the basis they have no tax filing obligations. Tax compliance processes require time for adoption (including systems, staff, and understanding), so there should be an appropriate delay in any implementation for any charities or not-for-profits currently not filing tax returns. There is a significant risk of overcomplicating the process and imposing unnecessary compliance burdens on the entire sector without much additional revenue gain.

Our submission below considers some of the specific proposals from the Paper in further detail.

1. Business income tax exemption

Ngāti Porou opposes the repeal of the business income tax exemption and calls for clarity and clear carve-outs in defining ‘business income’ if the proposals do proceed.

For Ngāti Porou, the suggested business income tax exemption is concerning, as our charitable structure is designed for long-term wealth creation, protection, and growth. Ngāti Porou represents its iwi members and has an intergenerational focus committed to providing charitable benefits to the Ngāti Porou, East Coast, and Te Tairawhiti communities for many generations to come. Imposing a tax on business income would create significant impediments to achieving these positive charitable outcomes, which Ngāti Porou provides in a region which has some of New Zealand’s highest need.

Should any form of the proposal to remove the business income tax exemption proceed it will be important to carefully consider the policy design and detail to prevent the possible overreach of any amendments. Clear definitions are essential to avoid unintended consequences and outcomes that do

not address the underlying issues that have been identified in the Paper. Some examples of this include:

- Commercial ventures undertaken for charitable purposes, such as health centres, should have their profits exempt from taxation.
- Specific activities common in delivering charitable benefits (usually with elements of reciprocity), such as sponsorships and government grants, should be considered for carve-outs. Carving out particular activities would ease compliance and improve targeting.
- Charities which are established and operate for inter-generational purposes, only operate in New Zealand, and provide their charitable benefit in New Zealand, should also be carved out of any amendments.

The proposed changes will likely lead to increased compliance costs, further straining charitable organisations and taking time and funding away from their purpose of providing charitable benefits to the community. We urge careful consideration of these impacts to ensure that the charitable goodwill and objectives of organisations like Ngāti Porou are not undermined.

If the proposed changes were to proceed, we would urge IRD to engage with charitable organisations (especially in the Māori sector) early and then to also publish guidance early to support comprehension, adaption and execution.

2. Donor-controlled charities

We appreciate the issues raised in the Paper in relation to certain donor-controlled foundations and acknowledge the importance of improving and ensuring integrity in the charitable sector. We understand the proposed changes aim to ensure that tax regulations capture those who use private foundations to enable tax avoidance. We consider it is of the utmost importance to clearly define 'donor-controlled charities' so as not to inadvertently capture charities who are not private foundations and are truly charitable organisations for the benefit of a very wide group of beneficiaries.

We consider it is crucial to limit the scope of 'donor-controlled charities' to associated parties who have taken a donation credit / deduction or claimed a donation rebate for payments made to charitable foundations. This will ensure it is targeted to where the mismatch in timing can arise, and where arrangements can be utilised to enable tax avoidance.

A clear and workable definition of 'donor-controlled charity' is particularly important and we have concerns with some of the examples in the document using control or contribution as part of the definition. Many charities in the Māori sector are settled by an entity (usually trust) representing a significantly large group of people while governance of the charity is also often connected to the donor entity (the distinction being these are not a single family creating a private foundation). Therefore, it would be unfair to include these charities as a 'donor-controlled charity'. An additional point here is that majority of Māori groups have only been required to establish collective entities as a result of Te Tiriti o Waitangi settlements for which the Crown would only settle with the larger 'iwi' collectives (and not settle with each individual family).

Furthermore, the Crown has imposed restrictions on the structuring options available to Māori groups upon settlement of Te Tiriti o Waitangi claims, for their Post-Settlement Governance Entities (PSGEs). Specifically, the Crown does not settle on charitable trusts which mean iwi must establish a charitable entity to ensure it is able to provide charitable benefits to its communities. PSGEs are established to

address historical grievances and breaches of Te Tiriti o Waitangi, and they undertake a considerable number of charitable activities, especially in many impoverished and underinvested areas. This is why PSGE groups establish charities to carry out the charitable activities.

If 'donor-controlled charities' is not clearly defined or if a specific exception is not made for PSGE, groups this could significantly impact the PSGE groups and their ability to meet their charitable purposes and undertake charitable activities that the Crown would otherwise need to fund or provide.

An additional point relating to Te Tiriti o Waitangi settlement, is that during the transitional phase of the settlement, PSGE groups are required to ring-fence pre-settlement charitable assets, necessitating the need for the creation of a charity within the PSGE group to hold, manage and distribute those ring-fenced assets.

In respect of the idea to implement a minimum distribution rule, this would undermine the premise that these PSGE charities accumulate funds to allow PSGE groups to carry out charitable activities for future generations. The charitable work these organisations strive to achieve also remove the necessity and obligation on the Government who would otherwise need to address these issues and needs. There must be recognition that accumulation of funds can be legitimate and should not, in and of itself, classify an entity as a donor-controlled charity or require of distribution. For example, Ngāti Porou has two charities dedicated to the intergenerational wealth and health of Ngāti Porou and Te Tairawhiti community members. The accumulation of funds is integral in providing these charitable benefits to future generations.

3. Fringe benefit tax ("FBT")

We submit that it would be prudent that any FBT decisions should be delayed until resolution of the broader FBT review which is currently underway.

However, if the FBT proposal in the Paper proceeds, the FBT tax rate needs to be adjusted to reflect the fact that the "cost of the FBT" will remain non-deductible for any charities that fall below the "de-minimis" or any charities that will not have business income (in the event tax deductions were available for the cost of the FBT).

Naku Noa,
George Reedy

s 9(2)(a)

Chief Executive
Te Runanganui o Ngati Porou

Early Childhood Council

Submission on

Taxation and the not-for-profit sector

31 March 2025

Simon Laube

Chief Executive Officer

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Purpose

The Early Childhood Council (ECC) is a membership organisation, comprised of independent members, who own and operate over 1,500 early childhood centres across Aotearoa New Zealand. ECC's activities are funded by its membership and many of the benefits from ECC's advocacy are shared across the ECE sector with non-members. ECC's objective is to improve the standard of ECE delivered in NZ while ensuring the providers remain financially viable.

ECC is the largest association in the early childhood education (ECE) sector. Across our membership, 80% of the centres are single owner-operators. Just under 30% are classified as "community-based" providers by the Ministry of Education. These are institutions that may be charities, for example: incorporated societies, trusts and charitable trusts.

We confirm that Best Start Educare Limited (CC54719), a donor-controlled charity, which is the largest early childhood education provider in New Zealand is not a member of the Early Childhood Council and has not been a member during my tenure as CEO.

ECC itself is a not-for-profit incorporated society, governed by its constitution and working for the benefit of its members by providing support – including resources, advice and services. Some but not all of our supports are also available to non-members. ECC's independence from government is valued by us and we advocate to advance the interests of the ECE sector, who we consider are motivated by serving the best interests of children and families who access their services.

Our OIAs to IRD have revealed that most private providers within the ECE industry do not make profits and profit levels show a worsening trend while debt levels are rising across the industry. There is a mismatch between vexatious claims made by some in the public arena: that the ECE sector/industry is purely profit-motivated, and the reality - that profit levels are extremely low and hundreds of providers have failed in the last three years. ECC's view is the damage done to the ECE sector could have been avoided had the previous Labour Government listened to our advocacy.

The consultation paper 'Taxation and the not-for-profit sector' (Inland Revenue, 2025) seeks engagement on the current tax exemptions for charities and not-for-profit organisations. Inland Revenue argues that the tax exemption system may no longer be fit for purpose and to be generally inconsistent with New Zealand's low-rate tax framework. There are several aspects of this paper that would be likely to impact ECC's members, as well as ECC itself.

ECC supports increasing transparency and fairness through the changes to charities (exemptions removed based on the tiers proposed). The changes for not-for-profits we do not support because the analysis and information is too limited to approach the issue safely. There is too much risk for unintended consequences with the not-for-profit changes.

Discussion

The early childhood education (ECE) and care sector plays an important role in providing families with essential childcare and education services for their young children. ECEs enable adults to participate in the workforce, making it an essential service within the larger economy. The ECE sector is of considerable size, comprised of 4,409 licensed early childhood services, and employing tens of thousands of people, for example more than 33,000 teaching staff

(Ministry of Education, 2025) for the nearly 195,000 children who participate. ECE is considerably large part of the overall NZ education system; schools enrol children starting from age 5 until about age 17, and enrolled 851,000 students across 2,533 schools in 2024. The relative small size of ECE centres compared to schools (relative to total enrolments) enables broader ECE access for families geographically and more choices. We estimate that about 35% of the ECE sector holds charity status or is operated by not-for-profit organisations (excluding providers that are charities who effectively use corporate structures).

The recent Ministry for Regulation report (December 2024) into regulation in the ECE sector argues that the ECE regulatory system needs urgent attention, and that access to ECE services for children is suffering from **under-supply**:

> *"Parents and whanau have limited access to information about their ECE provider options. This means they cannot accurately judge any ECE service by factors such as health and safety risk for their child(ren) or educational quality in comparison to other available ECE services. Also, given the undersupply, parents and whanau often have little practical choice about which local ECE service to access."*

Previous Labour Government policies in the ECE sector have put significant additional pressure on single owner-operators. This is chiefly affecting employers with the best teacher retention rates. The Pay Parity policy does not discern between employers with high teacher salary costs and those with much lower costs. Now the policy has been in place for three years, the incentives are strong and encourage employers to NOT employ experienced teachers (opting for newly trained – who are paid less). The additional funding provided by the Ministry of Education ensures employers must offer a salary scale that is closer to the kindergarten teachers' salary scale (kindergartens are very small in comparison to the wider ECE sector; kindergartens employ 4000 teachers across about 660 kindergartens).

The following discussion points are to provide feedback on the consultation paper concerning the taxation of the not-for-profit sector, with a particular focus on the proposed taxation of business income earned by charities and NFPs paying tax on membership subscriptions and levies. Whilst ECC appreciates the government's intent to ensure fairness and transparency in the tax system, this submission aims to highlight the potential negative consequences of such taxation on the financial viability of charities and not-for-profit associations and the services they provide.

Chapter 2 – Charity business income tax exemptions

Charitable ECE businesses fund their own charitable work

Many charities operate early childhood services as a means to generate revenue for the very same charitable purposes, i.e. to provide a service for their communities' families in the form of education and care. These charities are often community-run, governed by unpaid boards comprised of parents who undertake voluntary work in the upkeep of an ECE, as well as employ teaching staff and other employees. This business model relies on a significant volume of voluntary hours, which generally receives little financial support from government or other sources. All funds raised are for the purpose of paying wages and maintaining and resourcing an ECE centre. Imposing taxes on these charities' income would significantly diminish the financial resources available for community services. Many of these community-based early childhood services serve as a social support structure for families and sometimes engage in other social initiatives besides education, e.g. health and social support services. Charities that are community-run ECEs can often be found in the more deprived areas of Aotearoa New

Zealand, where ECE provision is limited, and parents have little recourse for shopping around and going further afield for childcare services. They depend on this niche service available in New Zealand, which adds to the variety of ECE available in New Zealand.

Impact on charitable services

As the Inland Revenue consultation paper points out, many of New Zealand's 29,000 charities range from small op-shops to significant commercial enterprises. Most of the ECEs operating under charitable status are very small enterprises and their tax-exempt business activities are directly related to charitable purposes. We presume the vast majority will continue to be exempt because they do not fall into the tiers you are considering. This would be likely to change significantly for the worse if you do not exclude If business income generated by these specific charities were taxed, affected early childhood services could be forced to reduce services, downsize, or even cease certain charitable activities altogether. Many ECEs run on extremely lean budgets, with profits from their "commercial" activities reinvested directly into their mission-driven work. Taxing these profits could compromise support for vulnerable populations, educational initiatives, and social support that benefit the wider community.

Changes made to the current tax policy should consider that ECE charitable organisations undertake commercial activities that are directly related to the charitable purpose and direct any profits made to their specified charitable purpose, i.e. to provide early childhood education and care. Although increased compliance cost would pose a significant challenge for small charities, there is merit in following international precedence and distinguish between related and unrelated business activities to determine tax exemptions.

Concerns about unfair advantages

The criticism of accumulation of tax free profits over time also does not reflect the situation of many small charitable ECEs. For small services, it is not possible to amass so much that it represents a competitive advantage over other, tax-paying competitors. Small, community-run ECEs are simply not in this position. In revising the tax policy, it may be possible to distinguish between "grass-roots operations" and larger entities that could be in a position to accumulate profits that enable the unfair under-cutting of competitors.

There may well be the perception that tax exemption gives charitable organisations such as ECEs a greater ability to use predatory pricing to gain an advantage over other, non-charitable status ECEs. However, for small community-run ECEs in areas of low education and care provision there is no scope for cut-price competition. It is also not applicable to community-run ECEs that the theoretical accumulation of income earned enables possible expansion.

Overall, the argument for taxing charities' business income often centres on competitive business practices and ensuring that commercial businesses and charitable businesses operate on a level playing field. However, this perspective fails to account for the broader public benefit provided by charities. Unlike private businesses, charities reinvest all profits into social good, which is of value, too.

Q1: Compelling reasons to tax or not to tax charity business income:

As the IR issues paper points out, the fiscal cost of not taxing charity business income unrelated to charitable purposes, particularly income that is accumulated, is significant and likely to increase. However, this argument does not consider the value of public good charities provide to society. There may be trade-offs, with a corresponding drop in charitable revenue

going into social outcomes, increasing the burden on government to meet these new unmet needs. The fiscal cost of not taxing charities must be counterbalanced by the level of public good the government does not need to provide. There is a lack of impact analysis behind the proposal. ECC regards the social good charities provide as of high value and an economic good that needs consideration in the cost/benefit calculation of taxable activities carried out by charities. You cannot simply tax these organisations and expect them to continue to deliver what they currently deliver.

Q2: Business income that is unrelated to charitable purposes and the practical implications of tax emption removal:

Tier 1 and 2 charities have significant revenue that resembles business or corporate levels. For those in Tiers 3 and 4 (which would retain the exemption under the proposal) examples of unrelated business income for an ECE charitable organisation could include fundraising activities by unpaid volunteers, i.e. parents, selling unrelated goods such as cakes, sausages, or plants and generating income that could be considered unrelated to the business of providing ECE services. And yet, it is quite often these unrelated business activities that keep charities such as community-run ECEs going. Any definition would have to allow for flexibility, otherwise the unintended consequence of removing tax exemption would be entirely detrimental.

Q3: Criteria for unrelated business:

For the ECE sector there is a highly improper classification being used. For example, the Ministry of Education has created a classification called “Authority” and classifies the largest ECE provider in the industry as a “community-based” provider. This provider is not a community-based organisation. The reasoning is that the organisation has charitable status.

While ‘advancement of education’ is a charitable purpose (s5, Charities Act), the ECE sector is comprised of both private and community providers and the main regulator has muddied the waters with its classification of “community-based” provider.

The ECE industry is a competitive market and any government advantages, taxes, penalties or incentives are highly influential. ECC’s focus is on ensuring the market is fair for all providers and there are not unfair advantages being granted by the government to some providers at the expense of others.

If the tax exemption benefit allows a provider to under-cut a competitor then the tax benefit is being used for an improper purpose that we might argue was not sufficiently connected to the charitable purpose as it is more closely connected to a profit-focused or competitive motivation. A definition of “connection” along these lines would require a sufficiency test. In practice there will be a mix of tax benefit/advantage and contribution towards the charitable objects so analysis would be necessary to determine whether the tax benefit/advantage can be justified or if the charitable object contribution is too low. We would suggest a market study or investigation by the Commerce Commission in the first instance because this type of definition is predicated on an assumption that there are anti-competitive actors already in the ECE sector, but robust data could be obtained.

An outcome from this consultation process is likely to include IRD obtaining better information about potential criteria. ECC would welcome reading this feedback.

Q4: Appropriate thresholds for tax exemption:

The summary of the number of charities that reported business income in their published 2024 financial accounts proposes a tier system. The proposed de minimis threshold that continues to provide tax exemption for Tier 3 and Tier 4 could indeed provide a more level playing field.

ECC **strongly supports** this approach including tax exemption for Tiers 3 and 4 and differentiating commercial activities from charitable activities.

ECC is of the view that increasing fair competition within the ECE sector will be positive for the ECE sector at large and for families, whānau and 180,000 children who rely on ECE services every day, providing a more level playing field. The ECE sector has become undermined by some organisation structuring their entities to minimise their tax liabilities through charitable status.

Q5: If the tax exemption is removed for charity business income that is unrelated to charitable purposes, should charity business income distributed for charitable purposes remain tax exempt?

Yes, charity business income distributed for charitable purposes should remain tax exempt. The current rules stipulating that funds intended for charitable purposes during the tax year remain tax exempt are appropriate.

Chapter 3: Donor-controlled charities

ECC's view is that in the ECE sector the tiers as described in Table 1 of the IR Consultation paper should work in this instance as well. ECC supports a de minimis threshold that continues to provide tax exemption for Tier 3 and Tier 4 charities. This would limit the impact of a policy change to charities that report annual expenses above $5 million per annum.

We are not aware of circular arrangements as described in Chapter 3.

Chapter 4: Not-for-profit (NFP)

ECC **strongly opposes the proposal.** We are, however, in favour of keeping the status quo and we advocate for <u>not</u> changing the settings for NFPs. Taxing the entire NFP sector would most likely result in driving inefficiency and impact on public benefits currently delivered by NFPs like ECC.

ECC's view is that the public benefits delivered by NFPs cannot be done more efficiently by government or even be done by government at all. Across the board taxation will result in gaps the government will find difficult to fill. The tiered approach in chapter 2 had the advantage of continuing to exempt charities below a sufficiency level. No such sufficiency test is being proposed here. This means the NFP proposal has the potential to greatly increase administrative and tax burdens for all NFPs, regardless of size/scale. It is likely to impact most severely on the smaller NFPs that may be struggling financially in 2025.

For example, ECC's membership income is currently not taxed. ECC does undertake commercial activities but doesn't generate enough revenue to be taxed. ECC uses its funds from membership subscriptions to fund activities that benefit the entire ECE sector, creating public benefit. Taxing this revenue would jeopardise the overall financial viability of the NFP model where it relies on membership revenue to a high extent. A response to this could be ECC significantly increasing its membership fees for our members. For the last three years

we have been very careful about membership increases especially for our single owner-operator members who we assess as financially non-viable. We believe they would be very sensitive to price increases. An indirect consequence of the Chapter 4 proposal would be exacerbating the financially weaknesses of 80% of our members. This could have major ramifications for both ECC and our members. One potential scenario would be that ECC would need to revert to an operating model that does not rely on paid employees – ie move to a full voluntary model and reapply for charitable status. It would be very costly to restructure the organisation and the proposal would not result in collecting any more tax from ECC but ECC's activities would become significantly constrained as a result.

All income ECC generates is funnelled back to members, in the form of services, advice, resources and providing a voice for the ECE sector. This constitutes a public good, which would be difficult if not impossible to replace if ECC were not able to carry out this not-for-profit function.

ECC is of the view that work could be done to design a definition of "taxable activity". This would be a more sensible first step rather than taxing the entirety of the NFP sector.

Alternative Policy Approaches

If the government is concerned about potential tax avoidance or excessive commercial activity within the charitable sector, alternative measures could be explored, such as:

- Strengthening transparency and reporting requirements for charitable businesses.
- Implementing a test to ensure that business activities align with and support charities' missions/purposes.
- Introducing safeguards to prevent excessive accumulation of untaxed reserves unrelated to charitable purposes.

Conclusion

ECC supported much of the tax proposal, as exemptions always tend to undermine fairness in the tax system. We will be available if you have any further questions. Thank you for consulting with ECC.

TE RARAWA

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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

Te Waka Pupuri Pūtea 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 Te Waka Pupuri Pūtea Trust as an iwi organisation 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 also provides examples on the practical impacts for Te Waka Pupuri Pūtea Trust if charitable reform was made.

Background

Te Rūnanga o Te Rarawa: Guardians of Our Iwi

Te Rūnanga o Te Rarawa serves as the mandated iwi authority for Te Rarawa, a confederation of hapū located in the Far North of Aotearoa New Zealand. Established in 1986, the Rūnanga represents approximately 22,111 registered members across 23 marae, each embodying unique identities and histories.

Historical Context and Treaty Settlement

Te Rarawa's lineage traces back over 6,000 years, with ancestral ties to notable tūpuna such as Tāwhaki, Toi, and Kiwa. These connections span numerous Pacific locations, culminating in the vibrant Te Rarawa communities of today. Central to our heritage is Māui, credited with discovering Te Ika a Māui, giving rise to our region's name, Te Hiku o Te Ika a Māui—the Tail of the Fish of Māui.

In 2015, Te Rarawa reached a significant milestone by finalising a Treaty of Waitangi settlement with the Crown. This settlement acknowledged historical grievances and provided resources aimed at fostering the social, cultural, and economic development of our people.

Establishment and Purpose of Te Waka Pupuri Pūtea Trust

In alignment with our strategic vision, Te Waka Pupuri Pūtea Trust was established as the commercial entity of Te Rūnanga o Te Rarawa. Initially set up to hold Settlement assets, the Trust's mandate has expanded to grow commercial assets of Te Rarawa. Therefore, its primary functions are to hold, protect, and grow these assets to ensure the long-term prosperity of our iwi and to apply funds towards charitable purposes of Te Rarawa whānau, hapū and iwi.

TE RARAWA

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Te Waka Pupuri Pūtea Trust obtained charitable status on 2 April 2013. Te Waka Pupuri Pūtea Trust acknowledges that while charitable status brings tax benefits, we assume the corresponding obligation to carry out our charitable activities in a transparent way. The overarching aim of our charitable activities is to generate support and positive outcomes for our people and our communities.

Vision and Investment Principles

The Trust operates under the guiding vision: "Growing the Te Rarawa asset base and our people alongside it." This vision is supported by key investment principles:

- Strategic Planning: Developing a five-year investment approach to provide reliable contributions to the iwi.
- Fiscal Responsibility: Ensuring expenditures do not exceed earnings.
- Balanced Portfolio: Diversifying investments between real assets (such as farms and businesses) and financial assets (including term deposits, bonds, and equities) to promote resilience.
- Asset Growth: Focusing on increasing the value of financial assets.

The Four Pou Principle

Te Waka Pupuri Pūtea Trust applies the Four Pou Principle to all decisions and functions. These interconnected pillars represent the foundation upon which the Trust strives to fulfil its objective: "to grow a sustainable economic base that will support Te Rarawa whānau, hapū, iwi."

Organizational Structure and Subsidiaries

The Trust oversees a diverse asset base, including sectors such as forestry, farming, fishing, property, horticulture, and financial investments. This portfolio is managed through various subsidiaries, each aligned with our commitment to sustainable growth and the well-being of Te Rarawa people.

TE RARAWA

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Response to Questions in the Issues Paper

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?

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?

Te Waka Pupuri Pūtea Trust is of the view that Officials should not proceed with any changes set out in the consultation document to the taxation rules applying to those business activities carried on by iwi / Māori charities.

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

1. *Decrease the funds available for reinvestment and impact the ability to support those vulnerable.*

   We have set out above in the background our vision to grow the Te Rarawa asset base and our people alongside it. This is funded from charitable business income.

Any tax imposed would significantly reduce the funds available to deliver to the needs of our iwi today, and more importantly, those that are most in need of support.

Increased taxation on operating profits would also directly reduce the funds available for reinvestment. This would hamper Te Waka Pupuri Pūtea Trust's ability to grow our asset base, affecting our capacity to support future initiatives and undermining our commitment to addressing intergenerational needs. Te Waka Pupuri Pūtea must ensure we do not overdistribute our charitable income today and restrict our ability to provide for future generations of our iwi in an equal way. Any tax imposed would detrimentally affect our ability to successfully provide for those most vulnerable for generations to come.

With higher tax liabilities, the funds available for application to our charitable purposes would decrease. This reduction would directly affect our ability to fund essential social, cultural, and educational programs, thereby impacting the well-being and development of our iwi members and communities.

2. *Restrict economic growth within Te Tai Tokerau (the Northland region).*

The focal point of economic activity for Te Waka Pupuri Pūtea Trust is substantially within the regional economies in Te Tai Tokerau. The business activities of forestry, dairy farming, horticulture, plumbing and building in the far North would be significantly impacted by a tax on charitable business income. Te Waka Pupuri Pūtea Trust's investment in these sectors has been pivotal in creating jobs for our iwi members and regional communities in the Far North region.

For example, the acquisition of Kaitaia-based KPH Construction in October 2021 not only expanded our commercial portfolio but also aimed to implement a trade apprenticeship program to grow our people's skills and ensure the availability of capable tradespeople. It also provided means to find economies of scale to provide affordable pathways to home ownership for hapu to achieve Tino Rangatiratanga.

Our recent residential development in Kaitaia, Mahuru, will provide 44, 3–4-bedroom homes aimed at establishing pathways to home ownership for Te Rarawa-only whanau. Increased taxation could constrain our ability to maintain or expand such employment initiatives, adversely affecting the livelihoods of our iwi and community members.

We acknowledge the concentration risk of operating exclusively in one region, but in turn, Inland Revenue must consider the economic impact to the wider region of the taxation changes in the Issues Paper. The ability to re-invest, create jobs and sustain economic growth in the local economies where iwi operate would be impacted.

Diminished reinvestment capacity and employment opportunities would lead to a broader economic downturn in our region. As a significant economic player, any contraction in our activities could negatively impact local businesses and service providers, leading to reduced economic vibrancy in our communities.

3. *Impact on our equity*

As Te Waka Pupuri Pūtea Trust prepares financial statements in accordance with IFRS, the introduction of tax on charitable business income could have a negative impact on our equity through deferred tax impacts.

The introduction of deferred tax liabilities would impact our liquidity, constrain access to borrowing and comes with an increase in compliance costs. This would affect our ability to access funds to manage operational expenses, invest in new opportunities and apply funds to our charitable purposes.

Further complexity and compliance costs will also arise.

4. Impact on Forestry Activities and Assets

Te Waka Pupuri Pūtea Trust's forestry investments are integral to our economic strategy, providing employment and contributing to environmental sustainability. Increased taxation could limit our ability to manage and expand these assets effectively, affecting both economic returns and our environmental stewardship efforts.

5. Impact on Fisheries

Fisheries assets, managed by Te Waka Pupuri Pūtea Limited, part of the TWPP Group, are a Settlement outcome, are vital for providing employment and sustaining cultural practices.

The Te Rarawa Claims Settlement Act 2015 recognises Te Waka Pūpuri Pūtea Limited as an asset-holding company of Te Rūnanga o Te Rarawa, the Mandated Iwi Organisation. Subsequently TWPP Ltd is responsible for these fisheries assets. Te Rūnanga o Te Rarawa also established TWPP Trust as a Charitable entity with responsibility for other Settlement assets. Despite TWPP Ltd being a tax paying entity there are associated issues in respect of these fisheries assets because Te Ohu Kaimoana is a Charitable Trust as well. Any distribution of the Aotearoa Fisheries Ltd shares will be diminished if new taxation rules are to be applied to Te Ohu Kaimoana. Increased taxation would reduce the funds available for sustainable fisheries management, affecting both economic, environmental outcomes and cultural traditions linked to these Settlement assets.

6. Impact on Treaty of Waitangi Settlement

A change in the tax treatment of charitable business income would impact on the Te Rarawa Settlement itself. Te Waka Pupuri Pūtea Trust was not the negotiating entity in terms of the Treaty of Waitangi settlement, however the amount received from the settlement was and remains substantially lower than what is sufficient to address and meet our iwi's needs.

Therefore, the purpose of Te Waka Pupuri Pūtea is to grow our asset base to increase funds when the redress for historical wrongdoings is not sufficient. Applying tax impacts to this purpose will hinder Te Waka Pupuri Pūtea Trust's ability to grow the settlement funds it manages.

7. *Absence of a clear reason for change*

The issues paper notes, which is consistent with the findings of the Tax Working Group, that there is no evidence that the business income tax exemption for charitable businesses creates a competitive advantage compared to other businesses. We agree with this statement and if that is the case, then in our view there is little reason for change.

In addition, we submit that if the government were to collect tax revenue through taxing the charitable sector, the charitable iwi organisations would have limited say in where these funds are redistributed. Under the current approach, the charitable iwi organisations are able to determine where funds are applied bring the best possible outcomes to address and meet the needs of their communities.

In response to 2.13 and 2.14 set out in the Issues Paper, we respond as follows:

- We do not believe that charitable trading entities have any competitive advantage over non-charitable trading entities in terms of compliance costs. Charitable businesses face similar tax compliance costs relating to employer and indirect taxes and whilst they do not face the same income tax compliance costs, they must ensure they are acting in line with the Charities Act. These charities compliance costs would be equal to, if not greater than the cost of income tax compliance. Therefore, by introducing an income tax compliance requirement on charitable business activities, the total compliance cost for charitable businesses would, in our opinion, become greater for charitable entities relative to non-charitable entities, given non-charitable entities do not have a compliance cost with Charities Services.
- We do not agree that the non-refundability of losses for taxable businesses creates a disadvantage for non-charitable entities relative to tax exempt charitable entities as a business loss has the same economic impact in dollar terms.
- Charitable trading entities looking to borrow funds are at a disadvantage as they are only able to rely on their retained earnings as a source of security for borrowing. Te Waka Pupuri Pūtea Trust relies on debt funding for our commercial businesses. The higher the distribution, the lower our ability to borrow and grow our Pūtea.
- On the point of accumulation of business profits, Te Waka Pupuri Pūtea Trust must balance accumulation and distribution to ensure they are able to support the needs of iwi today and in the future.

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.
- Result in it being more difficult for charitable trading entities to raise funds through borrowing due to the impact of both tax and distribution requirements reducing the amount of annual profit and retained earnings available to support borrowing and result in higher borrowing costs.
- Result in significant impacts on existing banking arrangements due to tax impacts on equity with the potential for banking covenants and ratio's either being breached or being required to be re-negotiated and making it harder to obtain funds for investment.
- Result in additional complexity and compliance costs under the suggested tax credit mechanism.

TE RARAWA

Te Runanga O Te Rarawa | 16 Matthews Ave, Kaitaia | Phone +649 408 0141
www.terarawa.iwi.nz

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 criteria for an unrelated business should be that:

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

We would like to emphasise that in the case of iwi Māori businesses that might not appear to be related to charitable purposes in most circumstances do have a wider, charitable purpose.

For example, Te Waka Pupuri Pūtea Trust has investments in building and plumbing industries. At face value, these may appear to be unrelated businesses, however this activity brings a business into the community, creates jobs, provides education and skills, provides cultural support and enhances the community, all of which can in some way be linked to the charitable purposes. Therefore, for the wider benefit to the iwi, there is a charitable purpose behind these business activities.

As such, merely distinguishing between business activities that are related compared to those that are unrelated, in an iwi Māori context has a higher degree of complexity and would result in additional compliance costs.

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 suggest a threshold of $1,000,000 of revenue would be 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 emphasise that we disagree with the removal of the tax exemption for charity business income. However, should this be the outcome, charity business income distributed for charitable purposes should remain tax exempt.

In our opinion, 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 (as opposed to donor established and controlled) charities should be able to re-invest funds into their charitable trading business where a valid distribution has been made and a decision to re-invest those funds is made and implemented on normal arm's length terms.

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?

This would be a significant change to the charitable sector and therefore sufficient time should be spent considering consequences to charitable entities and the tax system. Due to the submission requiring a short turn around period, we have considered the following points:

- The ability to restructure out of the Charities Act – a transition option should be provided to support affected entities in restructuring out of the Charities Act. This will allow these entities to minimise the compliance costs through an agreed template and legislative mechanism, 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 re-emphasise again that we do not agree with the removal of the exemption as set out in the Issues Paper. As mentioned above, often businesses that might not appear to be charitable do have a wider, charitable purpose that is unique in an iwi Māori context. 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?

For integrity and simplification reasons, we believe that New Zealand should make a distinction between donor-controlled charities and other charitable organisations.

Charitable entities established, controlled or associated with an entity established to receive and manage assets arising from a settlement under the Treaty of Waitangi represent a wide class of inter-generational beneficiaries. These entities 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, resulting in increased operating costs and less funds for delivering on charitable purposes.

Conclusion

Implementing changes to the charitable section poses substantial risks to Te Waka Pupuri Pūtea Trust's financial health, operational capacity, and the socio-economic well-being of our iwi. It is crucial to consider these potential impacts to preserve the self-sustaining mechanisms that support our charitable endeavours and ensure the prosperity of current and future generations.

Ngā mihi

s 9(2)(a)

June McCabe
Chair
Te Waka Pupuri Pūtea

Presbyterian Support
New Zealand

Submission

Response to the IRD Issues Paper
on Taxation and the not-for-profit sector

Executive Summary:

Presbyterian Support New Zealand (PSNZ) welcomes this opportunity to positively communicate and reinforce the value to New Zealand society of our charitable enterprise, that this consultation provides. In every region of New Zealand Presbyterian Support has been empowering people, families and communities for more than 100 years.

PSNZ is a federation of the seven Presbyterian Support organisations in New Zealand – three of which (PS Central, South Canterbury and Otago) have sent their own regional submissions to this consultation, providing more detail of their unique, current business activities. Collectively, we are one of the largest providers of social and health services in the country. PSNZ is here to ensure the seven Presbyterian Support organisations network and learn from each other's operations, although they are governed, managed and operated separately to provide local services that meet the demands in each region. They pay levies to come together under the PSNZ federation so that information, best practice ideas and resources are shared across the country.

On reading this issues paper our view is that the IRD holds a narrow view of what constitutes "loss" when it regards tax exemption of charities. We believe cost benefit analysis is essential and missing from this paper. There are no costings or even estimates – ie robust evidence of the "loss" to government revenue identified from not taxing charities on their revenue streams. Similarly there is no costings/estimates of the compliance impacts for this paper's proposed changes.

I therefore welcome this opportunity to help government consider what true "loss" would be felt in local communities and New Zealand society in general, should charitable services such as those provided by Presbyterian Support disappear. I also welcome this opportunity to help government consider what would be the true costs future governments might incur, to deliver these services at comparable quality for communities, without Presbyterian Support's trusted contract provision.

I support IRD's stated objectives of "simplifying tax rules, reducing compliance costs, and addressing integrity risks" but note this has been a recognised strength of our current system in New Zealand. It is not helpful framing charitable settings in terms of "loss" and the suggested "solutions" of this consultation document will not achieve any better results than current legislative and policy settings regulating charities and incorporated societies do currently. For our charitable sector at least, the proposals put forward in this paper move us further away from a simple tax system. Contrary to the stated objectives of the paper, it proposes an overall reduction in support for the charitable sector.

The paper lacks understanding of the benefits to society from charitable work:
Underlying the IRD's consultation paper is a poor conceptual framework for charities, that we should be lacking our own social enterprise and be fully dependent on donations and handouts. Good business practice seeks to diversify revenue streams so that there is no financial dependence. As a major funding partner, Government is wiser to encourage diverse and sustainable income streams.

For decades we have reported against these to our government agency partners within a conceptual framework of Social Investment. We applauded government's adoption of a Social Investment approach therefore, because year on year with the longstanding trust we've established in every region, we can build on government's capital investment in us with more local community trusts and grant funding, through appeals to individual donors, and then through various social enterprises in response to each communities' service demand.

This means the positive measurable outcomes we can achieve through government contracts are embellished with even further benefits to the community. This added social value is even broader when you consider the jobs we provide in every region and the values we embed there, through these local champions. Collectively and over time we have developed a system that gives confidence to our stakeholders, government and community alike, we can deliver far more than the sum of all our capital investments.

A lot of the social value we add is classified as "prevention" which needs greater understanding. Without our presence in every region, for example:

- More children would suffer abuse and neglect, more still would live with trauma untreated;
- More young people might disengage from their education and other learning activities, might turn instead to criminal activities or gangs for their social connection, or worse, thoughts of suicide;
- More young parents would be without parenting courses, dispute resolution services, anger management training, support with neurodiverse children;
- More whānau would live in conditions of material hardship and family harm, without helpful advocacy, budgeting services or social supports;
- More whānau with whaikaha members would lack disability support;
- More poorer older New Zealanders would have to wait until an emergency before they receive any appropriate level of aged care.

We object to the focus on taxing entities like Presbyterian Support, who may be deemed to have "unrelated" business income when compared to their government contracted purposes. It could be said by dissimilar Government agencies funding us for example, that the two brands of charitable services for Presbyterian Support are "unrelated" - Family Works and Enliven - one providing social services to children, young people and their whānau; the other providing healthcare services to seniors, people with disabilities and their whānau. If under the PS region's Enliven management it develops revenue streams such as Food Catering and Delivery Services or an online store for its senior and disabled clients, income generated will support the PS region's finances holistically but might be deemed to be "unrelated" to the contracted services of Family Works. The IRD consultation paper thereby does not simplify its tax settings for charities with this suggested amendment, but in fact opens a complex question in terms of defining "unrelated" business income, across the multiple government agencies that Presbyterian Support regions hold contracts with.

We note New Zealand already has a relatively simple taxation system for Charities.
This is a huge benefit in terms of understanding, cost, and efficiency, and hence adherence. It is a policy stance that should be protected, not questioned by the IRD. As a rule, exceptions often create complication, cost, and unintended consequences. The consultation paper contemplates many new definitions, special rules, thresholds etc all of which require debate, detailed guidance, and could still result in misinterpretation and litigation.

The existing simplicity of the system for Charities, we argue, is in recognition of our importance and the benefits we give to society. Tax exemption therefore reflects the strong level of societal ownership of charities through a lens of benefits and preventative gains. Besides individual income tax that contributes to government's fiscal policy settings for services each year, 4% of New Zealanders are employed by charities, and they also volunteer a staggering 1.4million hours every week. Until now successive Governments have supported taxation concessions to Charities because as much resource as necessary is required towards our charitable purpose, certainly more than the current funded contract amounts for our services. Private pecuniary gain is already not allowed within our current legislative settings.
Given our longstanding presence as a Charity, we are highly efficient deliverers of services. We are part of and close to our communities and due to constrained resources are commonly forced by necessity to be incredibly efficient. We are certain we are much more cost-effective service providers than direct Government service provision would be. This is why charities are recognised for their broad public benefit and impact. Without us, services like ours will fall back onto Government to deliver, or their loss will result in a drop in trust in Government. If charities are not providing their services and addressing societal needs, the result will be increasingly loud calls to Government to address the issues that charities used to address. This has direct cost implications for Government, which will likely be higher, if calculated, than IRD's current support of the charitable sector via tax concessions.

The broader regulatory settings for charities set a high bar already.
Our legislation allows establishment of charities with wide variety and relatively low friction, that come with mandatory obligations on charities as to their public transparency. This includes financial reporting and now Service Performance reporting. This level of public transparency comes at a compliance cost. Generally charities have significantly greater transparency requirements than for-profit entities in New Zealand, most of which have no legislated obligation.

Due to the very wide variety of type, scale and operating approaches of charities in New Zealand, care should be taken to carefully consider the cost implications of IRD's stated "losses" as well as the suggested changes to our tax settings. 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 – i.e. Who or how many entities are abusing these settings and what is the true value of this loss?

We suggest furthermore that this is an issue that already has a legislative approach to correct for the whole sector. We recommend IRD adopts more of a targeted intervention to those entities suspected to be abusing the concessions. They are exceptions within our otherwise vital, legally compliant and trusted Sector: in our view using our existing legislation to regulate any exceptions would be sufficient, less complex and less costly for IRD to administer.

Our Sector is already financially fragile thanks to years of under-investment from Government. We are not alone in this Sector when we say we "run on the smell of an oily rag". A common irony of the sector is that funders often only want to fund charities that can demonstrate they are financially sustainable. Yet often the funding provided will not be sufficient to cover full costs of providing the funded service.

We rely on donations from individuals in a time of economic recession: Donations from Trusts and Foundations or other philanthropic entities that are highly competitive, as are our Government contracts for charitable service provision; Income from passive investment such as term deposits and our reserves are already being dipped into; We question why now our business operations, too, fall under more Government scrutiny. Only these provide us with any degree of self-control as an income source generator – and they also come with our own higher risk.

We operate with the benefit of considerable pro-bono or semi pro-bono goods and services. Volunteer labour for example, is common as is some people willing to work for less than standard commercial rates due to the charitable purpose. Donated goods and services are commonly either not reflected in financial statements or not at market values. Many leases are provided at discounted or are peppercorn leases.

Conclusion

This IRD consultation document is not balanced nor evidence-based. We call for cost/benefit analysis from the IRD and this should have been provided within the consultation paper, to properly inform this public consultation. Changes suggested, once implemented, may lead to higher compliance costs for charities and likely minimal or no relative revenue for Government.

We do not see the policy logic of allowing passive unrelated business income e.g. investment in term deposits, shares and bonds etc, but not active unrelated business income. Defining what is considered "unrelated" will be highly problematic. It is likely to lead to considerable compliance cost for charities and we suspect for the IRD and DIA Charities Services. There is no evidence provided in IRD's consultation paper of predatory pricing examples or even of independent studies that could indicate this happening.

Charities are already held to a much higher level of reporting requirements and public transparency, which already provides a commercial disadvantage compared to any for-profit competitors. Our reporting requirements are in compliance with legislated reporting standards, and always include independent audit, which imposes greater compliance costs.

We are certain that we are more cost effectively meeting charitable need at present than a Government could without us. We are here so that Government doesn't have to provide so many services. Today's current funding settings from our Government agency partners has greatly reduced our charity capacity however. Removing our means to generating business income doubles down on this economic pressure, impeding our financial sustainability longterm. We believe removing our tax exemption while reducing our charity capacity through funding settings exposes Government to adverse public sentiment and political risk.

We recommend that if abuse of tax concessions by a small exception of entities is the primary issue motivating this consultation, then Government's solution should be to resource the regulator sufficiently to investigate and ensure it can take appropriate action against this small exception. It is

our view that current provisions within our Charity Law are appropriate and maintain the social licence and public confidence of the Charitable sector. Changes should not over-burden the 29,000 charities to address just a few bad actors.

Further to this submission, I fully support the more detailed submissions of three of our members for providing some granular details and examples of their innovative independent revenue streams that go further to benefit communities in their regions as well as create more viable financial independence for them as charitable entities.

Sincerely,

Dr Prudence Stone
National Executive Officer
Presbyterian Support New Zealand
s 9(2)(a)

31 March 2025

Taxation and the Not-for-profit Sector
C/o Deputy Commissioner, Policy
Inland Revenue Department
PO Box 2198
WELLINGTON 6140

Dear Commissioner

SUBMISSION ON TAXATION AND THE NOT-FOR-PROFIT SECTOR CONSULTATION

Introduction

Concrete New Zealand Incorporated (Concrete NZ) serves as the representative body for the wider concrete industry, encompassing over 550 members, including around 100 business members.

Our membership covers a wide range of activities, including cement and ready mixed concrete production, masonry and precast component manufacture, steel reinforcing processing, as well as expertise in structural concrete design and construction.

Concrete NZ appreciates the opportunity to provide feedback on this consultation document. While not all questions directly impact our association, we strongly advocate for a tax and regulatory environment that enables both charities and incorporated societies to continue delivering social and public good. We believe taxation settings should support, rather than hinder, the ability of industry associations to serve their industries effectively, ensuring that these organisations remain sustainable and continue to contribute to the industry they serve and the broader public interest.

Incorporated societies are the foundation of New Zealand's social and economic fabric, facilitating professional standards, industry development, and vital community services. They provide education, advocacy, and networking that strengthen entire sectors, delivering significant public good without seeking profit. Industry associations, such as Concrete NZ, focus on delivering to members valuable offerings such as best practice guidance and technical advice, research, professional development, health & safety and other support which does not include profit-making for private commercial gain.

Concrete NZ is involved in many initiatives and projects which benefit both the industry it serves as well as the end user and general public, for example:

- Concrete NZ has developed *A Net-Zero Carbon Concrete Industry for Aotearoa New Zealand: Roadmap to 2050* the *Roadmap to Net-Zero Carbon for Aotearoa New Zealand's Concrete Industry* which describes an achievable pathway to producing net-zero concrete by 2050 that works for our industry in New Zealand.

- Concrete NZ's project *Transformation To Low Carbon Concrete Industry* is supported by BRANZ and has been developed to identify the change agents and changes needed to achieve a net-zero carbon concrete industry, and to use this information to develop strategies for transforming the industry to net-zero.

- Concrete NZ's certification schemes assuring concrete quality throughout New Zealand.

- The Concrete NZ Learned Society encapsulates the wealth of expertise of its membership and to output this in the form of seminars, technical publications and conferences for the betterment of the concrete and construction industry at large.

Concrete NZ also supports other smaller industry associations, for example, Concrete NZ's Masonry Sector is working with the Master Brick & Blocklayers to review and update the brick and blocklaying industry's suite of New Zealand Standards.

While much of the consultation paper focuses on charities, Concrete NZ feels it is critical to acknowledge the role of incorporated societies, which operate under the Incorporated Societies Act 2022 and are held to strict governance and accountability standards. Many of these organisations exist to support industries, professions, and communities in ways that directly align with charitable objectives, even if they do not always meet the technical definition of a charity. Their ability to function effectively is fundamental to New Zealand's economic resilience and social well-being.

Questions 1-9: Charity Business Income Tax Exemption and Donor-controlled Charities

Although questions 1 to 9 primarily focus on charitable entities, Concrete NZ believes it is important to acknowledge the broader impact on the not-for-profit sector. Many membership organisations also engage in socially beneficial activities, even if they are not classified as charities. Concrete NZ submits that:

- The taxation of charity business income should be carefully considered to ensure that it does not unintentionally discourage organisations from reinvesting in public benefit initiatives.

- Donor-controlled charities should be recognised for their contributions and not subjected to excessive regulatory burdens that may limit their ability to support community-driven initiatives.

- 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.

- 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 must be considered, as increasing regulatory and tax obligations can be fiscally challenging for many charities and incorporated societies. Any new measures should not create undue financial or administrative burdens that could limit their effectiveness.

Question 10: Tax Compliance & Threshold for Small NFPs

Concrete NZ supports increasing the income deduction threshold to better reflect the financial realities of small and medium-sized not-for-profits. Many of these organisations generate income primarily through membership fees, small fundraising initiatives, or sponsorships, with funds being reinvested into services, training and programmes that benefit their members and the wider community. Raising the threshold would:

- Provide a more practical and equitable tax treatment for not-for-profits, better aligning with their purpose of community benefit rather than profit generation.
- Reduce administrative burdens on smaller not-for-profits by removing the need to file income tax returns for minor revenue levels.
- Provide greater financial sustainability for organisations that operate close to breakeven but still generate small amounts of income.
- Encourage sector growth by allowing more resources to be allocated towards member services rather than tax compliance costs.

Question 11: Implications of Removing Tax Concessions for Friendly Societies and Credit Unions

Concrete NZ submits that:

- Friendly societies operate in a way that is closely aligned with incorporated societies, focusing on delivering benefits to their members rather than generating returns for shareholders. Their tax-exempt status recognises their role in promoting financial inclusion, social cohesion, and member wellbeing. Taxing their operations could undermine their financial sustainability, reduce the benefits available to members, and force them to pass additional costs onto the communities they serve. This could have flow-on effects, reducing their ability to provide essential welfare, education, and professional development initiatives.
- Credit unions provide accessible financial services to communities that may not otherwise have access to products and services that are essential to financial inclusion, including transactional banking products and affordable credit. Their tax-exempt status ensures they can continue to reinvest in financial education, community programs, and lower-cost lending options. Removing these concessions risks limiting their ability to offer these essential services, ultimately disadvantaging the very people they were established to support.

Question 12: Tax Exemptions for Industry, Science & Research Bodies:

Concrete NZ supports maintaining tax exemptions for these organisations to safeguard their ability to operate effectively and contribute to New Zealand's economic and social progress.

Incorporated societies that engage in industrial, scientific, and regional development provide significant public good through research, innovation, and sector-wide initiatives. The removal or reduction of their tax exemptions could undermine their ability to deliver long-term benefits and limit their capacity to support sector growth and economic progress.

The work of herd improvement bodies or scientific research organisations strengthens industries, enhances knowledge, and serves the public good. Preserving their tax-exempt status ensures they can continue delivering these benefits.

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?

While this question is focused on charities, we note that some incorporated societies and membership organisations provide fringe benefits to employees. Concrete NZ believes removing or reducing FBT exemptions could have unintended consequences for professional associations that reinvest all revenue into member services.

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?

Concrete NZ supports any initiative that reduces tax compliance burdens for volunteer-driven organisations. Membership groups depend on volunteers, and complex requirements can discourage participation and create unnecessary administrative strain on already limited resources. Concrete NZ also relies on industry volunteers, including Board members and committee members, for their contributions and wise counsel to ensure its work continues to benefit both industry and the end user. While honoraria is not currently paid by Concrete NZ to board members or volunteers, current compliance requirements could discourage volunteers should honoraria payments become necessary in order to attract valuable industry leaders to our Board.

Concrete NZ therefore submits:

- Simplifying reporting requirements for volunteer reimbursements or honoraria and ensuring they are not unfairly taxed.

- Introducing a clear, minimal threshold below which volunteer reimbursements and honoraria are automatically tax-exempt to encourage volunteer participation without excessive paperwork.

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?

While donation tax concessions primarily benefit charities, some membership organisations that operate under incorporated society structures also engage in fundraising activities for sector-wide initiatives. While we acknowledge the importance of regulatory oversight, we urge that any changes do not place undue restrictions on associations that provide significant public and professional benefits.

- Maintaining existing donation tax concessions for organisations that operate in a way that benefits the public good, even if they are not strictly charities.

- Recognising the role of professional and industry associations in supporting education, advocacy, and workforce development, which provide indirect public benefits.

- Ensuring that changes to donation tax concessions do not inadvertently penalise associations that rely on sponsorship, fundraising, and member contributions to sustain sector-wide initiatives.

Conclusion

Concrete NZ is particularly concerned with the proposal to tax the membership subscription income of not-for-profits, which has the potential to undermine the sustainability of some industry associations, particularly smaller industry associations who rely on subscription income to cover operational costs and provide support to their members. Reduced operating revenue due to such a tax could see the closure of smaller trade associations, and the loss of all benefits they provided to the New Zealand public. In addition, the introduction of taxation on surpluses, or new rules around timeframes for distribution of reserves, would also undermine the long term sustainability of many industry and trade associations.

We would welcome further discussion and engagement to ensure that New Zealand's tax settings remain fit for purpose and support the sustainability of the membership sector.

Yours faithfully

s 9(2)(a)

Rob Gaimster
CHIEF EXECUTIVE

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Submission to: Deputy Commissioner, Policy Inland Revenue Department

From: Wayne Francis Charitable Trust

Subject: Taxation and the not-for-profit sector

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

Dated: 31 March 2025

The Wayne Francis Charitable Trust (WFCT) is a family philanthropic trust settled by Deed dated 22 June 1999 and is registered under the Charities Act 2005. WFCT's experience to make this submission comes from:

- The fact it is a 25 year old philanthropic entity aiming to operate in perpetuity;
- As well as being a grant maker/funder, WFCT commissions research, provides in kind advice to charities, makes impact and traditional investments with varying levels of involvement with those businesses and has built houses for an affordable housing project;
- The submission is largely focused on how the issues in the Issues Paper may impact WFCT, with some comments about impact on the charity sector more generally;
- WFCT is a member of Philanthropy New Zealand (PNZ) and has engaged in the PNZ – led conversation on this topic;
- WFCT has an interest in a healthy and sustainable charity sector.

Summary

WFCT is not in favour of progressing any of the proposals in Chapters 2 and 3 of the Issues Paper without further definition analysis and cost benefit study. Most of the proposals in Chapter 2 and 3 would impose an increased and therefore more expensive compliance burden on parts of the charitable sector with no evidence of the tax revenue or net benefit. There is real potential for the proposed changes to promote compromised decision making at a governance level in charitable entities and to stifle innovation and limit diversification of income. Currently, the proposals lack sufficient detail to understand implementation and unintended consequences. Therefore, WFCT recommends that more time is taken to review the potential policies in the context of the charity sector and with financial modelling. Until then, the policies should not proceed.

Initial comments

- We appreciate the time IRD has taken to engage with PNZ and its members on this Issues Paper. However, the whole process from release of the Issues Paper (February 2025), to submissions deadline (March 2025) to Cabinet decision making (April 2025) to potential legislation (August 2025) is short. We are concerned that this process means IRD cannot have a full understanding of all impacts (intended and unintended) of these proposals on the charity sector, and gives an impression that the consultation is not meaningful, and that policy decisions have already been made.

- This is further challenged by the fact that the proposals contain very little detail about how they would be implemented. Much of the impact of the proposals can only be understood when draft definitions are provided. Whilst there is some attempt to consult on definitions at this stage, the fast paced time frame of this process, and attempting to consult on the changes conceptually as well as on their detailed definitions and implementation is inappropriate.
- The Issues Paper includes some high level descriptions of some of the practices which the proposals are attempting to address. However, the paper has a lack of evidence based problem definition and no financial modelling of the impact of the potential changes as to cost or benefit.
- The Issues Paper is written from a tax revenue perspective. It does not consider the context of the charity sector. A wider review including social enterprise, contribution and role of the charity sector to New Zealand's social and cultural wellbeing and increasing generosity would be a better place to also discuss these tax proposals.
- Some of the comments in the Issues Paper are unsubstantiated. For example paragraph 2.15 of the Issues Paper states "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." There is no evidence, explanation or reference in the paper to support this.
- WFCT supports the submission made on this topic by PNZ.
- WFCT has not commented on chapter 4 proposals.

Specific comments

1. **Taxing unrelated business income**
   The stated policy frameworks for this issue covers accumulation, competitive advantage and other general comments.

   General comments
   As we understand this proposal, it would create two tests which charities would have to ask and answer:

   - 1) is it business income? and
   - 2) is the business related to the charitable purpose?

- We note the potential de minimis threshold and if these proposals are accepted, a de minimis threshold would be absolutely critical.
- In WFCT's own experience, in a large part due to the application of the Accounting Standards, we have reported against different tiers over time, between tiers 3 and 2. Any proposal would have to account for charities moving between tiers and therefore being wholly captured by these potential rules in one year and not in another. This only further creates complexity in a compliance regime.
- One of the most significant areas WFCT would need to understand is 'What's the definition of business' for the purpose of these rules. Whilst it is clear passive investment income would not be captured, there may be instances other investment income would be. This level of uncertainty is unhelpful for increasingly common models of collaboration to achieve a goal.

Accumulation

- This proposal creates a distinction about the source of the income where currently no distinction exists. The issues Paper states at 2.5 that

> *"Our income tax exemption framework for registered charities takes a "destination of income" approach. This means that income earned by registered charities is tax exempt because it will ultimately be destined for a charitable purpose."*

There does not appear to be a justification to change from a destination of income approach to a source of income approach.

- Accumulation can apply for several good reasons which would need to be allowed for. Many charities relied heavily on their reserves during the Covid pandemic to ensure their continued operation. However, the creation of rules around what accumulation is or is not allowed for, simply creates another compliance burden and removes the decision making responsibility for financial sustainability and strategy execution from the governance board, who are already subject to fiduciary duties under the Charities Act, Trusts Act, Companies Act or similar.

- WFCT is established to exist in perpetuity. Trustees are required to make decisions in this context which requires a balancing of income and expenditure over multiple years. The underlying assumption that charities do not further their charitable purpose until funding is distributed is flawed and does not take account of the role of impact investments, as an example.

- WFCT as part of its charitable activities, makes impact investments which it reports as assets until they are repaid to WFCT. There appears to be no allowance for such spending in the issues Paper in relation to accumulation. If such investments are not allowed for, this may lead to a move away from impact investing which would be detrimental to the social or environmental outcomes being sought, as well as to the financial sustainability of those aiming to achieve them.

Competitive Advantage

- The Issues Paper states at 2.13 that charitable trading entities do not face the compliance costs associated with an income tax obligation which lowers their relative costs of doing business. This is true. However, the paper does not acknowledge that all charities face compliance costs associated with their charitable status.
- Charities are at no greater advantage in running a business because they cannot raise finance in the same way as in the private sector. Charities are at a further disadvantage because they cannot offset losses against future year profits.
- As noted above, the business income proposal adds 2 tests that charities would have to ask and answer:
    - 1) is it business income? and
    - 2) is the business related to the charitable purpose?
- The paper notes that guidance would be created to assist in answering these questions. However, the nature and consequence of these questions is such that clear lines between

answering ‘yes’ and ‘no’ are not always possible and would unlikely be achieved by written guidance. What is more likely is an increase in public, political, and legal challenges.

2. Designating donor controlled charities

The paper introduces a new concept of a “donor-controlled charity” (DCC) but without a proposed definition to consider. For the purpose of these comments we have assumed WFCT would be a DCC.

- WFCT supports reforms that effectively target tax system abuse in the charitable sector. However, it is not clear from the Issues Paper what the introduction of a DCC concept would achieve that existing laws in relation to tax abuse cannot.
- Related parties are commonly the reason some DCCs could exist in the first place (i.e. a family business is created or sold and a private foundation created (which may be designated as a DCC).
- A blanket ban on related party transactions, where those transactions provide benefit to WFCT would significantly limit the potential growth of WFCT as a philanthropic organisation (where that transaction was to support long term financial growth to allow WFCT to operate into perpetuity). This would be detrimental to the funding available to WFCT to distribute to the charity sector more generally.
- An alternative might be that all the transactions need to happen at market rates or on independent advice, to provide the checks and balances on the transaction without prohibiting it. Different models of transaction need to be considered individually as part of these potential proposals to determine if there is potential to have an unintended restricting impact on charities.
- The Issues Paper at 3.8 states

> *“the definition of a donor-controlled charity could depend on the proportion of funds that the founder (or their associates) contributes to the charity or the control they have over the operation of the charity.”*

This shows that there could be significant variation in the definition. Would the definition be applied each year (i.e. could change) or once applied, the charity always has that designation? If the definition might be one of control only, i.e. if the definition is only applied if the charity is controlled by a majority of directors etc and that is the sole test, it is possible that some organisations will be DCCs at some times and not at others.

- As an example, the WFCT trust deed requires the board to be comprised of a maximum of 3 family members and a minimum of 3 other members. The maximum number of ‘other’ trustees is 6. Therefore, WFCT has included a mechanism in the appointment of trustees to require trustees who are not family members. In fact, the board could comprise of 6 non family members and 0-3 family members. This is an example of the family retaining interest and responsibility for a charity, while requiring independent expertise at the governance level.

Irrespective of that, all trustees are subject to the same fiduciary duties including to act in good faith in the best interests of the charity's charitable purposes.

3. Minimum distributions

- WFCT acknowledges there is some international precedent for minimum distribution rules but the Issues Paper does not cover the impact of these changes (i.e. do they international examples increase the level of giving over the medium to long term?) or the interaction with the existing NZ disclosure regime (noting new requirements for Tier 1-3 charities to answer questions on how the charity will use accumulated funds. As these rules are very new, the effect of them has not yet been seen).

- An example:
    - WFCT net assets are currently approximately $26.5m
    - Using Australian rules, annual minimum distribution would be $1.325m
    - WFCT has distributed as follows in the last 5 years:

Year	**Distributions**	**Meets $1.325m minimum**
2024	1,597,141	Yes
2023	1,243,006	NO
2022	768,219	NO
2021	1,187,477	NO
2020	2,042,236	Yes
5 year average	**1,367,615**	**YES**

    - In this example
        - WFCT net assets (if this is in fact the measure) will vary from year to year. Is it the previous years' net assets that become the basis for the calculation for the present year?
        - If the calculation is based on net assets, in FY 2024, 37% of WFCT's assets are liquid assets. The balance is invested to support long term growth to support the sustainability and purpose of WFCT into perpetuity. Growth assets shouldn't be put at risk by an arbitrary decision of a distribution percentage to satisfy a minimum distribution test. Rules around accumulation perpetuates short term, single year thinking by limiting long term projects, capital projects etc. Makes it harder for charities to achieve financial self-sustainability. Much of WFCT's work is over a medium term, and WFCT itself wants to exist in perpetuity. It would be appropriate to accumulate reserves for these purposes.

- The current accounting rules determine how multiyear donations are represented in our accounts (all in the first year). A multi year distribution average or carry forward would be needed to account for this. This introduces increased compliance to administer.

- What type of expenditure would qualify for this requirement? The figures above reflect WFCT's donations only. However, WFCT is a hybrid giving/doing trust, using its other resources to contribute to charities. Approximately half of the General Manager's time is spent advising and connecting charities. Would this contribution qualify as a distribution for the purposes of this test? What about the funding of research for the benefit of the charitable sector or relevant research commissioned by WFCT? Would social return on impact investments be included as a distribution, or the difference between discounted and market rates on community loans?

- As noted above, there are already additional disclosure requirements on charities to explain their reasons for any significant accumulation.

Conclusion

Most of the proposals in Chapter 2 and 3 would impose an increased compliance burden on the charity sector which would have a cost to implement. Further, the proposals lack sufficient detail to understand implementation and unintended consequences. WFCT recommends that more time is taken to review the potential policies in the context of the charity sector and with financial modelling. Until then, the policies should not proceed.

Officials from Inland Revenue can contact WFCT via s 9(2)(a) to discuss the points raised, if required.

Ngā mihi

s 9(2)(a)

Jenn Chowaniec

General Manager

s 9(2)(a)

From: Tim Malton s 9(2)(a)
Sent: Monday, 31 March 2025 4:31 pm
To: Policy Webmaster
Subject: Taxation and the not-for-profit sector

I am writing this submission as the Salvation Army Officer for Central and South Taranaki, and a member of The Salvation Army Taranaki Area Leadership Team.

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 Salvation Army provides holistic support for communities across the Taranaki, including transitional and supportive accommodation, addictions recovery support, welfare support, and psychosocial/spiritual support. We operate out of centres in New Plymouth, Stratford, and Hāwera. The support we offer is targeted toward those in our community who are particularly vulnerable, such as those facing homelessness, those experiencing ongoing health and mental health challenges (including addictions), families on low income and beneficiaries, and isolated elderly.

Much of our activity is provided by volunteers, with support from a small team of paid employees. The provision of services is dependent on income from donations, grants, rental income (our centres provide facilities to other community-based organisations at favourable rates), and business trading (Family Store) income. We have concern, therefore, for how the proposed changes to tax exempt status could affect our services. We have a number of income streams that, while not being directly for charitable purposes are an essential aspect of our financial and missional infrastructure.

The Salvation Army operates four 'Family Stores' across Taranaki, (in Waitara, New Plymouth, Stratford, and Hāwera). These stores are driven by public goodwill through donations of items for sale and the service of volunteers. I suspect that the public who contribute to the stores do not expect the fruit of their efforts to be taxed. The stores are important institutions in our wider community, and provide the following benefits:

- Reduction in landfill through receiving and processing used clothing and goods.
- Provision of affordable clothing and household items for those on low incomes.
- Space for people who are not able to hold regular employment to contribute and work.
- Opportunities for people to enter paid employment.
- Surplus supports the mission of The Salvation Army in our communities.

Taxation on surplus from these stores will impact The Salvation Army in Taranaki:

- Severe restriction of welfare support across Taranaki and the likely discontinuation of current welfare social support in Stratford and Hāwera including:
    - Welfare assistance in the form of ‘social supermarkets.
    - Case work to assist people to achieve food sovereignty.
    - Free provision of household goods for those in need in our community.

- Severe restriction or discontinuation of psycho-social/spiritual support across Taranaki, including:
    - Tautoko Tane and Tautoko Wahine men's and women's support groups.
    - Recovery Church and ongoing addictions recovery support.
    - One on one Positive Lifestyle and other courses.

A significant source of income for the Hāwera centre comes through rentals to other community-based organisations, with the centre providing a hub for other services in the Hāwera. Taxation on this income would mean that The Salvation Army is unlikely to be able to continue operations from the Hāwera Centre, which already operates at a deficit.

This would result in loss of services to the Hāwera/South Taranaki region as above. The reduction in rental income will also significantly impact our Stratford/Central Taranaki and New Plymouth centres and lead to the reduction or conclusion of community services including welfare/food support, and ongoing addictions recovery support.

The above reduction in Salvation Army services across the Taranaki region would significantly impact our communities across the Waitara, Ngā Motu/New Plymouth, Central and South Taranaki communities. Compounding these impacts is the fact that other community-based service providers will be equally impacted. The Salvation Army will need to severely reduce or cease key services in our community at a time where demand will significantly increase.

Should rental income and trading income for community based charitable organisations be taxed this would therefore have potentially disastrous implications for our communities in The Taranaki.

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?

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?

Given the integral nature of these business activities for Salvation Army services, it would be problematic if the income were to be taxed. Furthermore, given the highly integrated and complex nature of The Salvation Army across New Zealand, placing artificial restrictions on income thresholds and timeframes for distribution are likely to be highly problematic. We therefore propose that in national charitable organisations where the business and charitable activity of the organisation is so demonstrably interconnected, that there are avenues to maintain tax exempt status across all of the organisational activities, with unlimited income and timeframes for distribution. Criteria for assessing such tax-exempt status would need to be explicit, able to be justified in annual auditing processes, and reviewed on a regular basis.

Yours kindly
Major Tim Malton.

Tim Malton (Major)
Corps Officer Hāwera
Corps Officer Central Taranaki
Mobil s 9(2)(a)
Email:

The Salvation Army New Zealand, Fiji, Tonga & Samoa Territory

NZCTU
Te Kauae Kaimahi

Submission to Inland Revenue Department on:

Taxation and the Not for Profit Sector

Submitted by the New Zealand Council of Trade Unions Te Kauae Kaimahi

This submission is made on behalf of the 32 unions affiliated to the New Zealand Council of Trade Unions Te Kauae Kaimahi (CTU). With over 300,000 members, the CTU is one of the largest democratic organisations in New Zealand.

The CTU acknowledges Te Tiriti o Waitangi as the founding document of Aotearoa New Zealand and formally acknowledges this through Te Rūnanga o Ngā Kaimahi Māori o Aotearoa (Te Rūnanga), the Māori arm of Te Kauae Kaimahi (CTU), which represents approximately 60,000 Māori workers.

Purpose:

1. This submission is provided by the New Zealand Council of Trade Unions in response to the IRD Officials Paper Taxation and the not-for-profit sector, issued in February 2025.

2. As a non-charitable not For Profit (NFP) entity, the CTU is concerned with the proposals as set out in chapter 4 of the paper. This paper sets out those concerns.

Integrity and simplification – Issues of Concern

3. The paper outlines IRD's concerns about the tax treatment of subscriptions and/or member trading income. It is not clear who these organisations are. IRD simply refers to them as "clubs, societies, trade associations, professional and regulatory bodies, and industry councils".

4. We understand that the following entities will be exempt from the proposed changes:
    - Charities
    - Organisations that promote amateur sport

5. It is unclear how entities who have sporting arms and other NFP arms or activities will be treated in the system. Will they be required to provide separate accounts for each of their activities? Will the provision of any sporting activity override the requirement to provide tax on subscriptions provided elsewhere?

6. There is no list of potentially affected organisations provided by IRD even though this list must exist as IRD has an estimate of the number of organisations affected. Within the NFP sector confusion currently abounds as to whether these proposals will impact specific organisations. Our discussions with entities in the sector demonstrated both

7. It is not clear why some entities such as sporting institutions have been exempted here while entities such as veterans organisations have not. No rationale is provided within the Officials Paper, nor in any other of the accompanying documentation.

8. We would question how this approach achieves Section 6(1) “must at all times use their best endeavours to protect the integrity of the tax system”, particularly Section 6(2)(c) “the rights of persons to have their individual affairs kept confidential and treated with no greater or lesser favour than the tax affairs of other persons”

9. It is not clear what the problem is that this paper is attempting to solve in chapter 4. There is no rationale provided for why situation needs to change now. No analysis is made of the fiscal consequences of any change, the expected administration costs of changing systems, nor of the expected behavioural response.

10. 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. There is no assessment of the potential costs of administration to these changes within the Officials Paper. Nor is there any cost/benefit analysis, which would determine if the compliance costs would outweigh the financial benefits.

Legal Conundrum

11. The Officials Paper makes a claim that “Most NFPs would not qualify for mutual treatment anyway because their constitutions would prohibit distribution of surpluses to members including on winding up (thus preventing the necessary degree of mutuality)”. This supports IRD’s view that mutuality should no longer be an impediment to income tax on income from transactions with their members.

12. This creates a significant legal conundrum for incorporated societies. Under the Incorporated Societies Act 2022, they are legally barred from making distributions of surpluses on winding up. Section 216 of that Act makes that clear.

13. IRD appears to be using that change as a reason to end mutuality. However, the decision was not NFPs, it was forced on them by government legislation. The use of the phrase ‘because their constitutions’ makes it appear voluntary. This is regrettable, and should be rectified.

14. Once that error has been corrected, the principle of mutuality still stands. On that basis there is no reason for ending mutual treatment of transactions with organisation members, including subscription income.

Subscriptions

15. According to the separate Q and A paper provided with the IRD officials paper, "Inland Revenue's current public view is not-for-profits do not need to include membership fees or subscriptions in annual income tax returns or pay tax on them. The longstanding approach has been that subscription income is not taxable".

16. This now appears to have changed. With IRD now suggesting that "taxable transactions with members, including some subscriptions, are taxable income regardless of whether the common law principle of mutuality would apply".

17. Confusingly, IRD's Q&A document for this consultation states "Inland Revenue is not seeking submissions on whether subscriptions are taxable". Yet, this is the biggest change to the non-charitable NFP sector presented in the paper.

18. The CTU would argue strongly that there is no case detailed within either the paper or the Q&A for any change to the taxable status of subscriptions. The $1,000 deduction does not appear to be based on any research in the NFP sector, nor any design work about how these actual entities operate.

19. No analysis is made of cashflow considerations in NFPs, either large or small. Many organisations in the NFP sector run cash surpluses in years where a conference is not being held. These surpluses are used to offset deficits in years in where conferences/symposia are being held.

20. If an NFP is designed to be time-limited (i.e. has been set up as a means to deliver a non-exempt structure such as a senior citizen club) any subscriptions to support that development would be taxable on the savings. That would defeat the intended purpose of the NFP.

21. No consideration is made to recognise the potential behavioural responses to this proposal. If subscriptions are to be taxable, then this might mean many NFPs move into the charitable sector. It may see the closure of many bodies who work for local communities. It would certainly reduce the resilience of the sector, as operating surpluses would now be taxable, rather than being used to support future activities.

Recommendations

22. The CTU recommends that no additional action through section 4 of this Officials Paper until significant consultation and research is delivered with the NFP sector. A clear case for change needs to be established, and a clear cost/benefit proposal needs to be laid out.

23. The CTU would welcome the opportunity to work with IRD on that consultation. That consultation should establish what working practice is for the use of subscription and trading income and be extremely clear about who will be impacted by any potential changes.

South Canterbury Chamber of Commerce Submission

To: Inland Revenue

Date: 31 March 2025

Subject: Taxation and the Not-for-Profit Sector

Introduction

South Canterbury Chamber of Commerce welcomes the opportunity to provide feedback on the officials' issues paper, "Taxation and the Not-for-Profit Sector." We recognise the importance of ensuring a fair and effective tax system for all organisations, including not-for-profits (NFPs). We are particularly interested in the discussion around the tax-exempt status of incorporated societies and the potential implications for community organisations such as our local Hospice. While we also recognise the need for larger organisations who operate on a significant commercial scale to be taxed appropriately.

Core Premise

Our submission is guided by the core premise that incorporated societies and community groups, including chambers of commerce, play a vital role in the social fabric of local communities. These organisations need to seek alternative revenue sources to remain financially sustainable and deliver services for their interest groups, their members and wider community.

For our local Hospice there is a need to run local op shops and events to meet costs, while for the Chambers it is not possible to rely on membership revenue alone, especially for those who provide services to non-members as well. For other NFP's funding is usually insufficient to maintain a full suite of services. Additional revenue is needed to comply with relevant legislation and local body permits and regulations, which can vary depending on the nature of their services.

The Need for Alternative Revenue Sources

The officials' issues paper acknowledges that many NFPs raise funds through business activities. We agree that this is a necessary practice for several reasons:

- **Financial sustainability:** The full costs of operating an incorporated society are rarely covered by government or other funding. Additional revenue sources are essential to ensure the long-term viability of these organisations.
- **Service delivery:** Alternative revenue streams enable incorporated societies to provide a wider range of services and benefits to their communities of interest/members. This could include core services like end of life care, training programs, networking events, advocacy work, and other initiatives that support the community.
- **Compliance costs:** Incorporated societies face increasing costs associated with complying with legislation, regulations, and local body requirements. These costs can be substantial and often require additional revenue sources to cover.
- **Reinvestment:** Surplus funds generated through alternative revenue sources are typically reinvested back into the organisation to improve services, expand programs, or enhance facilities. This benefits the entire community of interest/membership and non-member customers that utilise the services and facilities.

SOUTH CANTERBURY
CHAMBER of COMMERCE

The Role of Chambers of Commerce

Chambers of commerce - like ours - have the objective to enable and grow the local business community. We are not competing with other private enterprises; instead, we are enablers and connectors at the heart of local business communities. Our activities include:

- **Networking:** Facilitating connections between people in business to foster collaboration and growth.
- **Training and development:** Providing workshops and resources to enhance the skills and knowledge of our members.
- **Export Document Certification:** Supporting exporters with trade and customs documentation, such as certificates of origin.
- **Information and support:** Being the hub and connector of the range of business-related resources and services, often being provided by Government entities who request for chambers to promote across our network.

Generic Commentary

- Recognition that 29,000 charities are registered and many raise funds from business activities from small op-shops to large commercial enterprises!
- Some tax-exempt activities relate directly to charitable purposes such as charity schools or hospitals while others are unrelated to charitable purposes such as dairy farms or food and beverage manufacturing.
- It would appear NZ is an outlier re our tax policy setting and many countries tax income if it is unrelated to charitable purposes. NZ takes a destination of income approach.
- Costs of compliance should the tax laws change could be damaging for smaller charitable entities.
- Tax deductions will also potentially impact a range of community service organisations ultimately leading to their discontinuation.
- Defining and developing a tiered system that enabled smaller charitable organizations to remain exempt would be practical and would ensure that our raft of smaller community facing organizations were not swept up in the proposed changes. It is important that smaller community-based charities are not caught up in the proposal to recoup taxes from some of the more dubious and larger charities. The table below enables clear differentiation of Tier 1 and 2 charities that could be validated to confirm their charitable intentions.

- **Table 1: Breakdown of 11,700 charities that reported business income in 2024/5 Reporting Tier**

  Proportion and number of charities reporting business income **Tier 1** Over $33m 1% (100) **Tier 2** $33m-$5m 10% (1,200) **Tier 3** $5m -$140,000 45% (5300) and **Tier 4** Under $140,000 43% (5,300)

- Donor controlled charities should be distinguished from other charitable organizations and tax exempt status as this is a vehicle that can enable tax emption and raises compliance concerns.

- NFP's that provide benefits to members and to the wider general public and are on the lower tiers should remain exempt.

Commercial Intent and Competitive Advantage

The paper suggests that no competitive advantage is achieved through a tax exempt status – this assumption is challenged and not agreed with. There is a clear competitive and pricing advantage.

It is also noted that a few of the larger charitable organisations have very clear commercial focus and intent.

A Level Playing Field

We understand the government's concern about ensuring a level playing field for all businesses. However, we believe that a balanced approach is needed. It is important to recognise the unique role and challenges of incorporated societies, which often operate with limited resources and rely heavily on volunteers.

We propose that the Government consider a tiered system or a de minimis threshold to address concerns about larger corporate-like entities, while supporting smaller organisations. This would ensure that smaller incorporated societies are not unduly burdened by new tax obligations.

We wish to highlight that the wind-up clauses of nearly all chambers of commerce make it clear that any surplus assets are not returned to members; the surplus assets are transferred to another similar not-for-profit entity with similar objectives.

Impact of Potential Tax Changes

We are concerned about the potential impact of tax changes on the financial sustainability of a number of our local NFP organisations and indeed our own chamber entity.

Any new tax obligations for the chamber would likely result in:

- **Reduced services:** We would need to review the financial viability of continuing our services and programs that we offer to enabling and growing local businesses, factoring in the new tax implications.
- **Increased membership fees:** We would have to increase membership fees to cover the additional costs, which could deter some businesses from engaging and growing.
- **Closure:** In extreme cases, some incorporated societies may be forced to close-down altogether.

It is assumed this would have a similar impact across the NFP sector.

Clear Guidelines and Definitions

If the Government proceeds with tax changes, we encourage the Government to seek a more focused policy approach that does not result in collateral damage to a range of vital community entities.

If Government chooses to proceed with this broad-brush approach, it is crucial to have clear guidelines and definitions to distinguish between taxable and non-taxable activities. We seek clarification on the definition of "commercial activities" and how it would apply to different revenue-generating activities of incorporated societies. This includes revenue from such activities as facility hire, fundraising events, op shops, training services, and sponsorship.

We offer to work with Government to develop practical and workable guidelines that minimise disruption to incorporated societies. We also support the broader NZCCI submission.

Conclusion

The South Canterbury Chamber of Commerce is committed to supporting the growth and success of our local business community and our essential NFP community that underpins our three districts.

We believe that incorporated societies and community groups play a vital role in local communities and that their financial sustainability is essential. We urge the Government to carefully consider the potential impact of any tax changes on the long-term viability of these organisations and the local communities they serve and hence pursue a tiered approach.

We appreciate the opportunity to provide feedback on this important issue and look forward to further with the Government on this topic.

SOUTH CANTERBURY
CHAMBER of COMMERCE

Submitted on behalf of the South Canterbury Chamber of Commerce.

The South Canterbury Chamber of Commerce is the voice of South Canterbury business, serving the community since 1905. With over 520 member businesses and with a strong national and international Chamber family, we work together to build business success. We recognise that healthy businesses lead to the improved wellbeing of all South Cantabrian's.

s 9(2)(a)

Wendy Smith

Chief Executive

Whāia te iti kahurangi ki tōna tauranga, kia pupū ake ai ko ngā painga katoa, ki a rātou e whaipainga ana ki tēnei ngahere

SUBMITTER INFORMATION

Name:	Lake Taupō Charitable Trust as part of the broader Lake Taupō Forest Trust Group
Charities Services Registration Number:	CC24664
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Contact person:	Tina Porou, Chairperson
Email:	s 9(2)(a)
Phone:	s 9(2)(a)

INTRODUCTION

1. This submission is made by Lake Taupō Charitable Trust (the **Trust**) as part of the broader Lake Taupō Forest Trust (**LTFT**) group, in response to the Officials' Issues Paper: Taxation and the Not-for-Profit Sector, dated 24 January 2025 (the **Issues Paper**).

2. This submission will cover:

   (a) background information about the Trust, and the broader LTFT group to provide some important context to the submission; and

   (b) specific concerns the Trust has with the Issues Paper.

3. However, it important to note from the outset, concerns the Trust has in relation to the way in which consultation has occurred given the significance of the proposals set out in the Issues Paper. These concerns are set out below, and inform this submission.

(a) The Crown has an obligation to, but has failed to understand the impact of the proposed policy change for Māori and to consider how any negative or unintended effects might be mitigated, as required by Te Tiriti o Waitangi / the Treaty of Waitangi. Māori comprise a sizeable proportion of the charities sector and have unique drivers and features, that require specialist engagement. The Officials' Issue Paper makes no reference to any impacts on Māori or Māori charities, suggesting that no engagement has been undertaken. IRD must rectify its omission and undertake targeted engagement with Māori in an appropriate manner before proceeding with further policy development.

(b) Recently, on 5 July 2023, the Charities Act 2005 was amended following a comprehensive review of the Charities Act 2005. The Issues Paper proposes significant changes to the charities regime that should have been raised during that review.

(c) We had understood from the IRD that no decisions have been made on whether charities should be subject to income tax.[1] We are somewhat alarmed at a recent statement of the Finance Minister on 23 March 2025 that there is nothing major that is coming in the Budget "except for charities".[2] Our confidence and trust in the Crown's consultation processes would be undermined if, irrespective of the current submissions process, the Crown had in fact already made a decision about whether charities should be subject to business income tax.

(d) Lastly, the timeframes for response have been very short and have not been widely consulted on. Charities should have been engaged with appropriately on such significant amendments. The Trust expects to participate in any select committee process, should the Issues Paper proceed to a Bill being drafted.

HISTORY

4. LTFT has a long and unique history. It is imperative to understand that history, to properly understand the arguments raised in this submission. A summary of that history is set out below.

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[1] https://www.ird.govt.nz/updates/news-folder/2025/public-consultation-on-taxation-and-the-not-for-profit-sector.
[2] https://www.nzherald.co.nz/nz/government-budget-cuts-nicola-willis-is-prepping-for-a-bonfire-of-the-vanity-projects-ryan-bridge/JYC2BVMKGVDXHIHPTEAVGL2KP4/

5. LTFT is located in the Central North Island of Aotearoa. The forest lands are established on ancestral lands occupied for the past 700 years by the Ngāti Tūwharetoa iwi.

6. Te Tiriti o Waitangi / the Treaty of Waitangi, signed in 1840, affirmed the right iwi to retain their ancestral land "so long as it was their wish to retain". Legislation passed by Parliament in the 1860's enabled ownership of Māori land to be determined through processes established by the Native Land Court. These courts issued titles that were transferable usually to the Crown (government) in the first instance. This opened the floodgates for collectively owned tribal lands to be transferred as individual freehold title to meet the high demand for Māori land throughout New Zealand. As a result, over 90% of Maori land was transferred to settlers, land speculators and acquired by the Crown in less than fifty years after the Native Land Courts were established.

7. Ngāti Tūwharetoa retained a relatively high proportion (19 %) of its ancestral lands in comparison to other iwi. This relatively high retention was due mainly to its lands being in low settler demand due to low fertility soils and difficulty of access.

8. The historic loss of over 90% of Māori land occurred in less than two generations. Ngāti Tūwharetoa landowners experienced another wave of land loss throughout the period 1930 to 1970. Crown land acquisitions for public utilities was by far the most destructive mechanism, however, landowners were under constant pressure to retain lands that were being acquired by local territorial authorities.

9. Māori land was acquired by local authorities in lieu of unpaid rates (land taxes) charged against lands that were not productively utilised. Māori land in multiple ownership was fraught with an array of difficulties that prevented the owners from productively utilising their lands.

10. Extensive, commercial plantation forests established on ancestral lands owned by Ngāti Tūwharetoa people was perceived by the owners as an opportunity to prevent further land loss and to start a substantial, sustainable, business on the land. The Crown introduced the idea of developing production forestry on Ngāti Tūwharetoa owned lands in the mid-1960's to increase wood fiber supply for the Central North Island mills that it owned and operated. The Crown acknowledged that increasing the forest cover on lands surrounding the lakes and other waterways protected its investment in the extensive hydro electricity generation

schemes that existed and continued to be developed in the late 1960's and early 1970's.

11. Ngāti Tūwharetoa landowners' consensus was that commercial plantation forest development aligned more closely to their traditional objectives of guardianship over their ancestral lands and waterways than pastoral and livestock farming development. This enabled them to accept the notion of adopting forestry development on extensive land areas that were under utilized for many decades.

12. The goal was to create a large scale forestry development. Every block located between the east of Lake Taupo and the Kaimanawa Forest Park was intended for inclusion in the enterprise. The problem was how to arrive at an agreement to aggregate the interests of all owners of 68 individual land titles. Each title represented a different sized land parcel, each had different attributes for forestry growth and the land blocks contained anywhere between 20 to over two thousands of owners. After several meetings lasting less than two years, the owners eventually agreed that all 68 blocks (a total area of nearly 30,000 hectares) be included in the forestry venture.

13. Since then a further area of over 3,000 hectares has been added bringing the Trusts total area to 33,733 hectares. Of this area, 24,207 hectares (71 per cent) is made up of commercial afforestation of mainly radiata pine (98%). The remaining unplanted area (29 per cent) is retained in native vegetation with a significant area set aside for riparian protection.

14. Ngāti Tūwharetoa tribal arrangements are unique in Aotearoa. It has a single, tribally acknowledged, paramount ariki (chief) as its tribal leader while almost all other iwi have multiple ariki. The Tribal afforestation scheme with the Crown was a major undertaking by both parties. The benefit of this arrangement has been demonstrated many times in the history of Ngāti Tūwharetoa in terms of efficient decision-making and response. The Paramount Chief (Sir Hepi Te Heuheu) was also Chairman of the Tūwharetoa Māori Trust Board, the tribal council. The Ariki and the Board's strong tribal leadership, knowledge and experience were instrumental and persuasive in leading and guiding the negotiations that shaped the afforestation joint venture.

15. The landowners' adherence to Māori customary values was equally strong as was their concern that they should establish a legacy for future generations. The landowners (of which the older generation were the majority), made the selfless sacrifice to commit their lands to a joint venture from which they would receive

no material benefits in their lifetime. They were happy in the knowledge that their lands were safe and that material and social benefits would be generated for their children, grandchildren and the generations that followed.

16. Against this backdrop, LTFT was established.

THE TRUST AND THE BROADER LAKE TAUPŌ FOREST GROUP

17. LTFT today is an ahu whenua trust constituted under TTWMA. The Trust is a Māori Authority for tax purposes. The Trustees of LTFT hold and manage trust property including 32,000 hectares of Māori Land on the eastern shores of Lake Taupō, for the benefit of owners.

18. Since the establishment of LTFT, its group structure has evolved and now includes a range of other entities, including the Trust.

19. The Trust was established in 1997 and approved by the Māori Land Court under the Te Ture Whenua Māori Act 1993 (**TTWMA**).

20. Whilst LTFT is not a charity itself, one of its' purposes is to advance Māori community purposes, as provided for in TTWMA.[3] The trust order for LTFT also enables the trustees of LTFT to apply net proceeds for Māori community purposes, and to make payments to a charitable trust on the basis that the Trust will apply those funds to Māori Community Purposes.[4] These clauses enable a broader distribution of funds, for charitable purposes outside of the owners of LTFT, and extend to the broader whānau of owners.

PURPOSES AND ACTIVITIES OF THE TRUST

1. The purposes of the Trust are broad and include 'Māori community purposes'[5] provided they are charitable, including for the health, social, cultural and economic welfare, education and vocational training and general advancement in life of the Beneficiaries.[6]

2. The Trust applies its charitable funds to 'beneficiaries' of the Trust including registered beneficiaries of LTFT and any descendants of registered beneficiaries.[7]. The current number of registered beneficiaries is approximately 15,000. However, the estimated reach of whānau who benefit more broadly from the Trust is much

[3] See clause 2.2(h) of the trust order for Lake Taupō Forest Trust
[4] See clause 14(r) of the trust order for Lake Taupō Forest Trust
[5] Te Ture Whenua Māori Act 1993, s218
[6] Clause 2(a) of the trust deed for the Lake Taupō Charitable Trust
[7] Clause 15(1) of the trust deed for the Lake Taupō Charitable Trust

larger.

3. The Trust primarily makes the following charitable distributions, generally on an annual basis:

   (a) **Education support**. The 'He Māhuri Toa' programme is run by the Trust. He Māhuri Toa is a programme designed to nurture 'young trees of strength' and to ensure Tūwharetoa tamariki and rangatahi are supported through their schooling and into tertiary education and employment.

   (b) **Tertiary Education Grants**. These are available to fulltime students at any NZQA accredited University, College of Education, Polytechnic or Whare Wananga studying in particular fields including: Forestry, Finance, Business Management, Law, Science, Engineering, Environmental (Taiao), Information Technology, GIS Mapping, Marketing, Te Reo or Health Professionals. 68 grants were awarded in 2024.

   (c) **The Tertiary Forestry Scholarship**. This is available for full-time study in a forestry management diploma or degree at either the University of Canterbury in Christchurch or Toi Ohomai Technical Institute in Rotorua.

   (d) **Kaumatua grants**. Kaumatua Grants are paid to any registered beneficial owner, over the age of 70 years old. Support of kaumatua is critical. Our kaumatua are often most in need, and the annual grant assists them to meet their basic living needs. In 2024 over 1,300 grants were approved and paid.

   (e) **The Pūtea Aroha Tangihanga fund**. This fund provides grants to assist with the expenses of tangihanga, and is normally paid to the person responsible for tangihanga/funeral expenses. 106 whānau benefitted from this grant in 2024.

   (f) **The paramountcy grant**. This is an annual payment to Ariki Tumu Te Heuheu, to enable him to undertake the role as Ariki as an acknowledgement of his tribal leadership in Ngāti Tūwharetoa. The distribution is made to the Ko Tūwharetoa te Iwi Charitable Trust, with charitable purposes including the promotion and enhancement of the health, welfare, education and general wellbeing of all persons of Ngāti Tūwharetoa descent.[8]

SPECIFIC RESPONSES TO THE ISSUES PAPER

[8] See clause 3, the deed of trust for Ko Tūwharetoa Te Iwi Charitable Trust

4. The LTFT group is concerned about the potential unintended consequences of the Issues Paper proposals for the LTFT group and our related entities, given the Issues Paper includes no analysis of the impact of the proposals on iwi, hapū or Māori charitable entities more generally.

5. Accordingly, the Trust opposes the proposal to tax the unrelated business income of charities. For this reason, this submission is focussed on Chapter 2 of the Issues Paper.

6. The Trust responds to the specific questions set out in the Issues Paper in the following way.

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

7. The Issues Paper identifies that charities are able to accumulate funds tax free. The criticism that is levelled at charities (and noted in the Issues Paper) is that they have an advantage compared to other trading entities. While the Issues Paper acknowledges there is no 'competitive advantage' for charities it then goes on to state that charities could have an advantage "if it were to accumulate its tax-free profits back into the capital structure of its trading activities, enabling it, through a faster accumulation of funds, to expand more rapidly than its competitors".[9]

8. However, there is not enough emphasis on the fact that income (whether that be business income or not, or unrelated or not) can only ever be used or applied for charitable purposes. This is because of long standing settings within the charities regime, such as:

   (a) The prohibition of private profit.

   (b) The requirement to distribute funds only for charitable purposes.

   (c) The requirement for charities to maintain charitable registration.

   (d) Restrictions on the application of funds, if the Trust was to be wound up.

   (e) Robust reporting requirements, the annual returns of registered charities are required to be accompanied by financial statements prepared in accordance with financial reporting standards issued by and made publicly available on

[9] Issues paper at [2.14].

the charities register. As a result of this change, research indicates that New Zealand-registered charities are subject to the most comprehensive set of transparency and accountability disclosure requirements for charities in the world.[10]

9. Further, and connected to the point above, the Trust is best placed to carry out the charitable purposes, for the benefit of Owners and their broader whānau. The Trust is based in Tūrangi, is grass roots, knows its people, knows the issues that its community faces, and knows best how to deliver services to those in need.

10. The Issues Paper does not mention Māori charities once. As set out in the history section above, the owners of LTFT suffered significant loss at the hands of the Crown. In response to that loss, and to protect whenua, a single collective approach was agreed and the LTFT group was created. The proposals ignore this important history, and fail to consider and address the unique factors that apply to Māori charities, such as the Trust.

11. in the view of the Trust, any change in legislation needs to appropriately provide for exemptions, where appropriate. Given the unique circumstances of entities that hold and manage Māori land or are in the same group as such an entity, an exemption should be provided for entities of this nature. This could reference any entities established under TTWMA, and through the Māori Land Court and their respective groups.

12. Lastly, it is also not clear from the Issues Paper, whether there is any evidence, or financial modelling undertaken that demonstrates the compliance cost in implementing the proposal to tax business income. This includes the compliance cost for each charity that will be subject to the proposal, the costs of IRD to administer, and the litigation cost, should there be challenge on the application of the tax.

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

13. For the Trust, by far the most significant practical implication will be how business income is determined to be unrelated, or related to the purposes. This is because:

[10] See S Barker *Focus on purpose - what does a world-leading framework of charities law look like?* 10 April 2022 NZLFRR 3, Appendix A.

(a) the purposes of the Trust, are drafted so broadly; and

(b) the health, social, cultural and economic welfare of people, from a tikanga Māori perspective, are so interconnected and intertwined, that such a distinction will be difficult to practically implement.

14. If a tax-credit regime was introduced, which required charities to maintain a special memorandum account, similar to a Māori Authority account as alluded to the Issues Paper, this would create a significant additional accounting burden on the Trust, particularly as it already maintains a Māori Authority credit account.

Question Three: 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. Should there be an imposition of tax for unrelated business income, the criteria used to distinguish between 'related' and 'unrelated' needs to be:

(a) flexible, given charities have a such a broad range of purposes;

(b) allow for purposes to be broadly interpreted and not narrowly construed, so that business income that in some way touches on the purposes can be classified as 'related'; and

(c) allow for an approach for purposes that are interconnected or intertwined to be considered together.

Question Four: 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?

16. If there is to be an imposition of income tax for unrelated business income, we consider that all Tier 2, 3 and 4 charities are excluded. The Tier 2 category captures a significant range (between $5m and $33m), and will impact the smaller Tier 2 charities in a significant way. Marae and urupā should also be automatically exempt.

Question Five: 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?

17. Given the uniqueness of how the LTFT Trust has come about and sheer number of owners it represents, all entities within the LTFT Group must, and do take an intergenerational approach when deciding on the distribution of income. They are required to carefully and intentionally balance the needs and aspirations of generations today with the needs and aspirations of the next generation, and every generation thereafter.

18. Accordingly, income tax should not be imposed on retained or accumulated income for the Trust.

Question Six: 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?

19. In our view, the following policy settings or issues have not been addressed in the Issues Paper.

    (a) The unique drivers and features of charities that are established for the benefit of Māori.

    (b) The social return on investment, and the good that charities, such as the Trust contribute to Aotearoa.

    (c) An in-depth analysis of the underlying drivers for the proposals. The Issues Paper assumes that charities have a competitive advantage without testing that driver, nor providing any evidence of the driver. In particular, it fails to acknowledge the strict rules around distribution and reporting that do not apply to for-profit entities.

    (d) Consideration as to whether a charity could then be relieved from its charitable obligations in relation to any portion of business income that is taxed. It appears the proposal is seeking to remove the blanket income tax exemption approach for charities, but at the same time maintaining the same strict rules around distribution and reporting.

CONCLUSION

20. For the reasons set out in this Issues Paper:

    (a) the Trust does not agree with the proposals in relation to the imposition of income tax on business income for charities.

(b) The Trust urges the Crown to consider how the proposals set out in the Issues Paper impact Māori, and in light of the significant impact (in the opinion of the Trust), look to provide for an exemption that mitigates the negative, and presumably unintended effects on Māori. An exemption should at a minimum apply to entities that hold or manage Māori land under TTWMA, or are in the same group as such an entity, as is the case for the Trust.

Tina Porou

Chairperson, Lake Taupō Charitable Trust

Submission from Wellington Rotary Charitable Trust to: policy.webmaster@ird.govt.nz

Submission on IRD Issues Paper on "Taxation and the not-for-profit sector"

This submission is on behalf of Wellington Rotary Charitable Trust – CC29255.

Introduction

The Trust was established in 1984 by the Rotary Club of Wellington, whose members have contributed generous bequests & now donations from Club members to generate a modest Investment portfolio, which is independently managed by professional advisors. Our Trustees are volunteers. We do not pay any honoraria.

Our submission comments on two issues raised in the Issues Paper. These are:

1. Taxation of charities; and
2. Treatment of honoraria to volunteers

1.Taxation of Charities

1.1 Compelling reasons not to tax charities income

The Wellington Rotary Charitable Trust is reliant on the income from its portfolio to fund its grants to the community.

Removal of its tax-exempt status would reduce the funds available for grants by 39%, placing more pressure on the government to "bridge the gap" to maintain the current level of grants to community organisations already under severe funding pressures.

We understand the rationale for reviewing the charitable tax status is due to the purported $2B difference between the income and expenditure of NZ Charities.

1.2 Measurement Issue with the "gap" between charitable "income" and "expenditure"

Because the Income recorded in the Annual Returns filed with Charity Services includes General Grants, Capital Grants and Donations, and Other Revenue (potentially sale of assets etc), those "capital items" need to be eliminated from total income to provide a more accurate number of the real "gap" between charitable "income" and "expenditure".

The quantum of additional tax revenue on the (significantly reduced) real taxable income may well be less than the additional government funding required to "bridge the gap".

1.3 Transparency of Charities

The compliance and audit requirements of charities is far more transparent than that required for most NZ businesses. The recently introduced review of accumulated reserves requiring charities to now report the purpose of these in their annual return to Chairty Services is an example.

1.4 Imputation Tax Regime

Our Charitable Trust's investment portfolio is largely invested in equities to protect its capital base which means we are disadvantaged by the current Imputation Tax Regime.

We would welcome a discussion to enable Imputation Tax Credits to be treated in the same way as Withholding Tax to increase the net return from equity investments available for charitable purposes..

2.Treatment of Honoraria to Volunteers

While the Trust does not pay its volunteer trustees an honorarium, trustees have considerable experience of working in and with NGOs. NGOs and charities that reply solely on volunteers to undertake their mission and pay some an honorarium will be severely and negatively impacted if honoraria are treated as salary and wages.

They would have to familiarise themselves with Employment legislation which is often complex, keep up to date with this, and invest in an HR records and payment system. They would incur up front and ongoing costs of an HR records and payment system and considerable time in becoming familiar with employment law and then keeping up to date with changes in employment law. Some may decide to stop paying honoraria and thereby could reduce the pool of people willing to be volunteers. Other may decide to cease operating because of the compliance costs.

New Zealand communities and the country are very reliant on volunteers to provide services to the community and for the social cohesion of New Zealand. Rather than adding compliance costs to NGOs and charities that use volunteers to further their missions, the government and government agencies should be reducing their compliance costs to enable them to further their missions/purposes.

Thank you for the opportunity to comment on the IRD Issues Paper. The Trust would welcome the opportunity to discuss our comments especially our comments on Imputation Tax Credits.

Kind regards/Nga mihi nui

s 9(2)(a)

Joan Smith (Chair)
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Meat Industry Association of New Zealand (Incorporated)

Taxation and the not-for-profit sector

31 March 2025

Introduction

1. The Meat Industry Association (MIA) is a voluntary, membership-based organisation representing processors, marketers, and exporters of New Zealand red meat, rendered products, and hides and skins. MIA represents 99 percent of domestic red meat production and exports, making the meat industry New Zealand's second largest goods exporter with exports of $9.9 billion.

2. The meat processing sector is New Zealand's largest manufacturing sector that employs over 25,000 people in about 60 processing plants, located mainly in the regions. The sector is a significant employer in many of New Zealand's rural communities and contributes over $4 billion in household income.

3. A list of members is attached (Appendix A). The majority of members of MIA are limited companies.

Overview

4. MIA opposes the suggested changes to the taxation of the not-for-profit (NFP) sector, including the taxation of subscription income.

5. The Inland Revenue Consultation Officials' Issues Paper dated 24 February 2025 does not contain sufficient detail in relation to the NFP's and friendly society member transactions. Table 1 on page 10 sets out the charities business income in 2024. Yet there is no such information or analysis in paragraphs 4.4 and 4.5 for NFP's and friendly societies. Therefore, it is unclear how much money IRD will receive from the proposed changes, to assess whether the changes are worth it given the considerable administration cost to Inland Revenue and the NFP's themselves. A framework referring to the governing legislation for the entities that are the subject of the Paper, such as the Charities Act 2005 and the Incorporated Societies Act 2022, would make the Paper clearer.

6. MIA is a member of BusinessNZ and supports their submission.

Reasons Not to Tax NFP Business Income:

7. Support for NFP: Exemptions allow NFP's to reinvest earnings from unrelated businesses into their core charitable activities, amplifying their social impact and benefitting members in need.

8. Administrative Efficiency: Determining what constitutes "unrelated business income" can be complex and lead to disputes. Keeping income tax-free avoids potential legal and bureaucratic complications.

9. Preservation of Incentives: Tax exemptions serve as a policy tool to encourage NFP organisations, maintaining the member benefits these entities provide.

10. Economic Contribution: Many NFP's generate employment and contribute to local economies. Taxing them might reduce their ability to sustain or expand operations, indirectly affecting communities they serve.

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

11. Revenue: Potential Reduction in Charity Funding: Charities/NFP relying on unrelated business income to fund their charitable/member activities might face financial strain, potentially reducing their capacity to serve members.

12. Operational Adjustments for Charities: Re-evaluation of Business Activities: Some charities/NFP might choose to scale back or cease unrelated business operations that become less profitable after taxes are applied. Membership may actually decrease if membership fees are increased to cover the tax burden.

13. Market Dynamics: Possible Reduction in Charity-Operated Businesses: If charities/NFP deem the taxed operations unrealistic, this could lead to reduced competition or even gaps in services in some sectors.

14. Administrative Challenges: Increased Complexity: Charities/NFP would face additional administrative burdens to manage tax compliance and report unrelated business income.

15. Impact on Charitable Mission: Reduced Scope of Activities: Limited funding from unrelated businesses could force charities/NFP to narrow their focus, potentially affecting their reach and impact on society.

16. Shift in Organisational Priorities: Charities might redirect energy and resources from their undertaking to navigating tax and financial systems.

Removing tax concessions for friendly societies and credit unions could have significant implications for these organisations and their members. Here are some key considerations:

17. Financial Impact: Without tax concessions, friendly societies may face higher operating costs. This could lead to reduced benefits for members, such as higher fees for services.

18. Administrative Burden: The removal of tax concessions might require these organisations to implement new systems for tax compliance, increasing administrative costs and complexity.

19. Sector Sustainability: Over time, the removal of tax concessions could threaten the viability of smaller friendly societies, potentially leading to consolidation or closure.

20. It is not clear whether the Paper has considered the existing governing legislation behind the NFP sector. For example, the Incorporated Societies Act 2022 at section 103 already sets up a regime for a “small society” if the operating payments are less than $50,000.

21. The Paper does not address the wider societal benefits of supporting the NFP sector and these factors should be considered alongside any additional cost impost.

MIA Contact

info@mia.co.nz, Meat Industry Association of New Zealand

Meat Industry Association of New Zealand (Inc)
31 March 2025

Appendix 1: MIA members and affiliate members as at 17 February 2025

Members	
Advance Marketing Limited Exporter Membership	Waimarie Meats Partnership
AFFCO NZ Ltd - Membership Levy	Wallace Group LP
Alliance Group Limited	Wilbur Ellis NZ Ltd
Ample Group Limited	Wilmar Trading (Australia) Pty Ltd
ANZCO Foods Ltd	
Ashburton Meat Processors Limited	
Auckland Meat Processors	**Affiliate Members**
Bakels Edible Oils (NZ) Ltd	Abattoirs Association of NZ
Ballande NZ Ltd	AgResearch
Black Origin Meat Processors	Alfa Laval New Zealand Ltd
Blue Sky Meats (NZ) Limited	Americold NZ Ltd
Columbia Exports Ltd	Aon New Zealand Ltd
Crusader Meats	AsureQuality NZ Ltd
Davmet NZ Limited	AusPac Ingredients NZ ltd
Fern Ridge Ltd	Beca Ltd
Firstlight Foods Limited	Centreport Wellington
Garra International Limited	CMA CGM Group Agencies (NZ) Ltd
GrainCorp Commodity Management	CoolTranz 2014 Ltd
Greenlea Premier Meats	G-Tech Separation - Bellmor Engineering
Harrier Exports Ltd	Global Life Sciences Solutions New Zealand
Intergrated Foods Consortium	Haarslev Industries New Zealand
Kintyre Meats Ltd	Hapag-Lloyd (New Zealand) Ltd
Lean Meats Oamaru	IBEX Industries Limited
Lowe Corporation Ltd	Intralox LLC
Mathias NZ Limited	Kemin Industries Ltd
Ovation NZ Ltd	Liquistore
Peak Commodities Limited	Maersk A/S
Prime Range Meats	MJI Universal Pte Ltd
Progressive Meats Limited	Oceanic Navigation Ltd
PVL Proteins Ltd	Port of Napier
SBT Marketing (2009) Ltd	Port of Otago Ltd
Silver Fern Farms Ltd	Pyramid Trucking Ltd
Standard Commodities NZ Limited	Rendertech
Taylor Preston Limited	SCL Products Limited
Te Kuiti Meat Processors Limited	Scott Technology Ltd
UBP Limited	Sealed Air - Cryovac
Value Proteins Ltd	Suncorp New Zealand Services Limited

CRAFTSMAN
FINANCIAL MANAGEMENT LIMITED

31 March 2025

Taxation and the Not-for-Profit Sector
C/- Deputy Commissioner, Policy
Inland Revenue Department
P O Box 2198
Wellington 6140

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

Re: Submission letter on **Taxation and the not-for-profit sector**

To Deputy Commissioner, Policy

As a Chartered Accountant, qualified in New Zealand and Canada, who has worked extensively with a wide variety of charities throughout New Zealand for the past 22 years, I submit my feedback on the proposed changes to the taxation of charities and not-for-profit organisations (NFPs) that provide public benefit to this nation.

I present my submission in two parts:

1. Comments on individual questions referenced in the officials' issues paper.
2. Comments on other issues relevant for officials to consider.

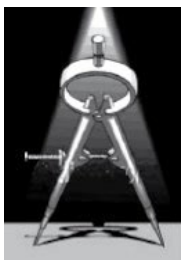
Firstly, in response to specific questions:

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?

Protect the value of our simple system
New Zealand has a comparatively simple taxation system and that is a powerful strength and advantage in terms of understanding, cost, efficiency and ultimately compliance. This attribute of our policy framework should be recognized, valued and protected.

P/2…

P O Box 754, Orewa
Auckland 0946
New Zealand



e • s 9(2)(a)
t • **(09) 427 5107**
m • s 9(2)(a)

Charities deliver quality vital services more cost effectively than government
Charities are vital to New Zealand's prosperity and the wellbeing of its people. New Zealand has more charities and not-for-profit entities per capita than almost anywhere else in the world. Our small population and corresponding tax base must be leveraged in every way possible to deliver the benefits expected by Kiwis participating in the modern world in the way we are known for – punching above our weight, and grappling with the challenges we face as a nation.

New Zealand has developed with great responsibility for many essential services borne by charities including Hato Hone St John, Coast Guard NZ, Surf Lifesaving, and Life Flight/Westpac Rescue Helicopters to name a few most well known. This contrasts noticeably from many other developed countries where these are typically government-operated entities, as they perform essential maritime safety, security, emergency response and law enforcement functions.

The way this has developed in New Zealand, and the level to which we rely on the services provided by charities and NFPs demonstrates the reality that charities are highly efficient deliverers of services and generally much more cost effective than direct government service provision.

In many respects this is due to charities being close to their communities with a workforce, both paid and voluntary that is incredibly passionate about their charitable purpose. Kiwis volunteer for a staggering 1.4 million hours every week. Religious charities in particular mobilise over 65,000 passionate volunteers who serve their communities with an average of 6 active volunteers to every paid staff member, a far more generous ratio than the charity sector average of 2 volunteer hours for every 3 hours of paid staff time.[1]

The "second-order" imperfections in the income tax system (described in 2.13 and 2.14) do not warrant taxing charity business income
The three examples raised in the officials' issues paper each postulate that charitable trading entities have 'unfair' advantages over non-charitable trading entities.

Charities are disadvantaged in raising capital for growth
I would argue that the minimally reduced cost of doing business for charitable entities through lower compliance costs of tax obligations is outweighed by the disadvantage that they face in raising both equity and debt investment capital from private investors and commercial lenders. With a compelling proposal for a growing service opportunity, the tax paying entities have a considerable advantage in being able to attract investment capital to scale up quickly in response to the opportunity.

P/3…

[1] Chevalier-Watts, Dr J (2025, 22 March) Why an atheist academic changed her mind on churches' tax status. *Waikato Times*, https://www.waikatotimes.co.nz/nz-news/360623004/why-atheist-academic-changed-her-mind-churches-tax-status

Business income is key to building resilience
Many charities "run on the smell of an oily rag". There are only 5 avenues for charities to raise funds in support of its work:

1. Donations from individuals
2. Donations from Trusts and Foundations or other philanthropic entities
3. Govt (or private) contracts for charitable service provision
4. Passive investment income (assuming the charity has any funds to invest); and
5. Business operations

1-4 are largely outside the control of the charity. 1-3 are directly reliant on the charity of others. Only the last method provides a charity with a high degree of self-control in their efforts to build organizational resilience and sustainability.

Charities are financially fragile and 'doing more with less'
The statistics simply do not support the postulated examples put forth in the paper. As an example, registered charities in the Healthcare parachurch sector experienced a 736% increase in revenue since 2015 (from $319M to $2.7B). Despite the increase in revenue, expenditure has increased more with the median months of working capital decreased from 9.2 to 4.4 over the same 9 year period – working capital reserves for the sector are half of what they were a decade ago. This concerning trend means the sector is less able to deal with fluctuations in revenue and additional operating cost pressures.[2]

Charity sector statistics under-report true costs.
Most charities operate with the benefit of considerable pro-bono or semi pro-bono goods and services. Volunteer labour is very prevalent and most sector employees work for less than standard commercial rates due to the charitable purpose. Donated goods and services are usually not reflected in financial statements or not at market values.

Transparency Disadvantage
A level playing field with regards to transparency of reporting for charities does not exist compared with for-profit businesses, i.e. charities have to currently meet a higher level of public transparency. In reality, this creates a competitive disadvantage for charities compared with for-profit 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?

Practically, charities who generate funds through business activities would experience a decline in funds that would otherwise be directed towards their charitable purposes and objectives that are specified within their constitutions. This decline in funds would reduce charitable input into our society, and result in more demand for the funding of

P/4…

[2] Faith in Action – The State of Christian Charities in Aotearoa New Zealand, August 2024, pg 68

services from central and local government. Society would suffer as a result as government-controlled service delivery delivers less measurable benefit per dollar deployed than the charitable sector.

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?

I agree that distinguishing between related and unrelated business activities will be difficult in practise. The legislation and case law currently supports the exemption of income derived from a business carried on by a tax charity provided that those funds are used for the charity's charitable purposes in New Zealand. That is, the thrust of the tax exemptions are simply focused on whether the income, however generated, is used for the charity's charitable purposes, and not for the private pecuniary profit of trustees, officers or associated persons.

I contend that moving away from this simple approach would add cost and complexity both for the sector and the tax department that would outweigh the benefits and net gains in tax take, or in benefits to New Zealand society at large.

Continued scrutiny about how charity business income flows through to their charitable purposes is welcome to ensure that pecuniary profit is not gained by management and governance of the entities, but an acceptance of the diverse income streams that charities innovatively use is needed.

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?

Utilising thresholds will undoubtedly promote structuring aimed to avoid exceeding thresholds. This will result in increased compliance costs for both charities and the government and will result to less funds applied to charitable purposes.

De minimis for small scale trading activities

The cost that would be imposed on charities needing to seek appropriate accounting resource/advice would add to the present difficulty experienced by charities in finding pro bono or semi pro bono accounting and audit resource. This is especially noticeable for smaller charities who may be unable to pay for this.

If the tax exemption were to be removed, then a de minimis threshold would have to be set. An exemption for Tier 3 and Tier 4 charities would be logical to reduce the cost implications for the very small. However, detailed impact analysis is really important to ascertain the extent to which charities operating businesses would be affected by proposed changes. This is the only way to determine any kind of cost- benefit analysis.

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?

I agree that if the tax exemption is removed for unrelated charity business income that is subsequently distributed for charitable purposes, then it should remain tax exempt.

Such a relief mechanism would need to be simple and clear. However, such a system would unquestionably add significant compliance costs and deprive society of further funds and voluntary inputs being applied to charitable purposes.

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?

I agree with the other considerations listed in the paper as all being further complications and complexities that would need to be addressed. These too will increase compliance cost for both government and charities, reducing funds available for charitable purposes. I also note the following issues as considerations not raised in the issues paper:

1. the valuation of pro bono or semi pro bono services as input expenses. Labour cost is a significant input expense for any business. With many in the charitable sector receiving some pro bono labour, paying income tax on profits would necessitate charities valuing and claiming the true cost to their business including pro-bono and volunteer associated expenses. This would raise endless subjective determinations and assessments by management and the tax department as to what fair labour costs should be.
2. The valuation of other advantageous terms such as peppercorn leases.

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?

It would need to be demonstrated how the compliance costs would be reduced by a wider application of the FBT regime for that premise to be accepted.

The implication of removing or reducing this exemption for charities is that the sector and the employees therein will be further disadvantaged for working in this sector where typically remuneration levels lag significantly behind the commercial sector. It's a safe assumption that people who choose to work in this sector do so because of a passionate commitment to the charitable purposes of the charity they work with, and not because of a perceived advantage of being able to receive benefits that would normally attract FBT.

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?

That only 57% of those surveyed were aware the regime existed is interesting. Clearly a large proportion of people display hearts of generosity without tax considerations.

The policy-related recommendations outlined in 4.36 are sensible suggestions worthy of implementation. The simplication would reduce the number of steps for a taxpayer, and the time between donating and receiving the credit.

It would also go some way to increasing the effectiveness of charitable organisations and the services they provide.

Secondly, some comments on other relevant issues.

In agreement with this paper, I acknowledge New Zealand's long-adopted policy of providing tax concessions to charities and not-for-profits (NFPs) to support organisations that provide public benefit.

However, I respectfully disagree with 1.4 – "Every tax concession has a 'cost', that is, it reduces government revenue and therefore shifts the tax burden to other taxpayers." With respect to charities & NFPs, I contend that "every tax concession has a 'benefit', that is, it reduces government expenditure by empowering charities to have more impact at lower cost than the government providing an equivalent service, and therefore reduces the tax burden to other taxpayers." A subtle but important change in perspective!

I suggest that the IRD policy unit and Government consider the risk of unintended consequences to the perceived gain from proposed taxing of charities on their business income:

1. Most charities currently operating businesses do not account 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 will dramatically reduce the business profit and hence any taxation revenue.
2. Reducing the ability for charities to operate businesses will inihibit financial sustainability innovation, and by reducing such a key funding source, also reduce innovation in advancing charitable purposes.
3. Reducing the financial capacity of charities will lead to much greater pressure on both Government and philanthropic entities to fund the issues that charities currently address.
4. Limiting charities income sources to reliance on the charity of others will create more competition between charities for funding, incurring more cost on fundraising which in turn is not available for charitable purposes.

Recommendations

With the above in mind, and on behalf of charities I have worked with directly (including healthcare, disability services, humanitarian aid, faith based community support, food

banks, environmental causes, sports clubs and membership organisations), I appeal for Inland Revenue to:

1. Work directly in meaningful engagement with those who hold governance roles in the community sector.
2. Undertake detailed financial analysis of the expected impact of proposed changes to the charitable sector before implementing the proposed policy ideas.
3. Prepare effective case study information that can be shared within the charitable sector to better understand the tax changes proposed, including what IR anticipates as potential revenue forecasted by these tax changes, and where this tax will go?
4. More comprehensively provide clear definitions for "related" vs. "unrelated" activities.

Because as a nation, we depend more on the capabilities of charities to meet vital needs in our society, we must lead in empowering this sector to change and address the many challenges we face. I welcome contact from officials at Inland Revenue should they wish to discuss the points raised in this submission.

Regards,

s 9(2)(a)

ALLAN GRAV, CA *(New Zealand & Canada)*
Director

31/03/2025

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

Submission on Taxation and the Not-for-profit Sector

Tēnā koutou

Age Concern New Zealand welcomes the opportunity to submit comments on the *Taxation and the not-for-profit sector* Officials' Issues Paper. This topic is vitally important to us and the many other charities providing essential services within local communities throughout Aotearoa.

Charities, such as Age Concern, are committed to making life better for people living in Aotearoa. Many function on a shoe string budget to deliver services for the population of special interest to them. For Age Concern this is people 65 and over, their whānau and friends. Other charities may be focused on children and young people; the homeless; families in distress, or those with mental health issues, to name but a few.

Regardless of their specific focus, charities fill service gaps that would otherwise lead to greater hardship being experienced by those most in need. Funding for charities has become very constrained due to reductions in Government spending and donor and grant income impacted by the financial climate.

We're observing a trend where essential government services are increasingly being moved to the not-for-profit sector, including mental health and counselling services, the provision of social housing, and a number of support services for older people (including but not restricted to the provision of social connection, shopping support, domestic assistance, service navigation, and assistance with digital literacy.)

On the most basic level, we see core services taken up willingly and capably by the not-for-profit sector. For the government to potentially tax charities on their income seems counter-productive.

While we note that this Issues Paper deals with business earnings of charities, we're concerned that potential changes open the door to future changes such as taxing passive

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income and other income related to the operation of a charity (i.e. donations or contracted services). We are concerned about the increased complexity in relation to financial reporting, and the costs aligned with extra requirements.

Not-for-profits already operate in a regulated environment, those receiving tax exemptions must be registered with Charites Services and continue to meet the requirements to remain registered.

In principle, we support the stated objectives in the Issues Paper about simplifying tax rules, reducing compliance costs and ensuring charities demonstrate integrity.

Our overall comment on the Issues Paper, particularly Chapter 2 'Charity business income tax exemption' is that there are existing mechanisms such as the Charities Act 2005, Charities Amendment Act 2023, Charities Services and the Charities Registration Board that can be used to handle any concerns about income raised by charities from businesses they operate.

A major concern we have is the perception being promoted in the Issues Paper that charities, more generally, are profiteering, rather than operating businesses to gain necessary funds to provide essential services. The ultimate result could be the undermining of the viability of services to people who need them.

A further key concern is that if changes are made to the tax rules for charities. many would become unsustainable trying to meet new accountability requirements for very little gain, financial or otherwise, to government, the not-for-profit sector or those currently benefitting from the good work carried out by charities.

Our key recommendations are:

1. Existing mechanisms are used to address any specific issues with individual charities that are causing concern.

2. Exploration of better support for the sustainability, innovation and effectiveness of the charitable sector, which is in fact, saving considerable expenditure of taxpayer funds.

About Age Concern New Zealand

Age Concern New Zealand is a trusted charity working in local communities throughout Aotearoa New Zealand to support older people, their friends and whānau. We have 29 local Age Concerns operating in 40 locations throughout the country and a national office based in Wellington.

Our strategic goal is:

Every older person feels connected, has positive choices and can age well.

Our values of Dignity. Wellbeing. Equity and Respect for older people are our guiding lights and underpin everything we do.

Our core services include advocacy and public awareness, social connection, health promotion, elder abuse and neglect prevention, and providing support through expert information, advice and referrals.

We are proud of our heritage in standing up for the rights of older New Zealanders for more than 75 years. As an organisation, our focus is on contributing to the overall wellbeing of older New Zealanders. We work to prevent the abuse and neglect of older adults; improve their health and wellbeing; end loneliness and social isolation; and advocate for older people's rights.

Our feedback

Age Concern New Zealand is pleased to offer the following feedback to questions raised in the issues paper.

We have not provided responses to every question but have used the numbering from the Issues Paper where possible.

Chapter 2: Charity business income tax exemption

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

a. The issues paper does not indicate the size of the problem outlined i.e. how many charities are using business income for purposes other than the charitable purpose. For example, the issues paper states on page 6 that 'many of the 29,000 registered charities in Aotearoa raise funds through business activities, some small op shops through to significant commercial enterprises.' It would be helpful to provide data on how many significant commercial enterprises exist and how many charities are using business income for other than achieving their charitable purpose.

b. It is suggested (Page 6, clause 2.27) that potential tax changes would only impact Tier 1 and 2 charities, however the impact could be significant on these charities in terms of compliance costs and potential tax bills that will impact their ability to operate, taking up valuable time which could otherwise be dedicated to their

charitable purposes. Even if the changes are initially restricted to Tiers 1 and 2, this opens the door to changes down the track to include the remaining tiers which puts smaller charities at risk.

c. A better solution might be to investigate specific companies that are operating in this way, and tailor a solution to each, rather than legislating for everyone to address perceived wrongdoing by a few. If legislative change does go ahead, a de minimis threshold for small-scale trading activities is an absolute essential, achieved in such a way that future widening of categories be disallowed.

d. Taxing charity business income will increase compliance costs for charities for potentially little financial tax gain. This will, in turn, make running many charities less sustainable rather than more sustainable, resulting in government having to fund the service gaps charities will no longer be able to fill.

e. There are existing mechanisms that can be used to address specific concerns in respect to individual charities and their business income. These include the Charities Act 2005 and Charities Amendment Act 2023, Charity Services, the Charities Register and the Charities Registration Board.

f. We are concerned that removing tax exemptions from charity business income tax may also lead to removing other tax exemptions for not-for-profits. Again, this raises issues about the viability and sustainability of many charities.

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. Defining ‘unrelated’ to charitable purpose would likely be a challenging, confusing and time-consuming process in some instances.

b. Arriving at agreed criteria for unrelated purposes would require considerable consultation and it may be unreasonably complicated to untangle the line in some instances between related and unrelated purpose.

c. Smaller charities would ideally be exempt from charity business income tax. They are likely to be surviving on minimal funding, struggling for their day-to-day survival and be running small businesses such as an attached op shop. Taxing their business income would likely result in some having to close their doors due to compliance costs.

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?**

    a. Yes, absolutely. For charities to achieve their purpose they need sustainable income sources that enable them to be sustainable and innovative rather than simply trying to stay afloat.

    b. Not-for-profits also need to retain the ability to accumulate funds for charitable use in future years (page 11, clause 2.35). Charities may be maintaining reserves for a specified future purpose such as building new premises or extending services to new areas.

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?**

    a. ACNZ considers transparency and reporting requirements for not-for-profits are substantial compared to private businesses who can claim business sensitivity to withhold information. These accountability and transparency requirements do not need to be increased. Charities often rely on a small number of staff, many of whom are part-time, along with volunteers. To meet increased compliance requirements charities would need to use even more of their limited funds to meet requirements rather than benefiting New Zealanders in need

    b. The Issues Paper talks at length about the competitive advantage afforded to charities exempt from tax compared to private businesses. We are curious to hear what and where this competitive advantage occurs. Examples would have been helpful here, along with the size of the issue. Businesses themselves have many advantages and charities are not challenging the right of business to carry out their purpose which has a significant profit element for owners and shareholders.

    c. Tax exemption changes would disincentivise organisations like Age Concerns from seeking out new business ventures (e.g. charity stores) that would further support their charitable work, on the basis that a. it would complicate their tax situation and b. potential profitability of these ventures would be compromised before we even began. This discourages innovation.

Chapter 3 Donor-controlled charities

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?**

   a. Age Concerns are not donor-controlled, and we do not have sufficient information or expertise to make comment here, other than to say that again the paper does not make it clear how much of an issue there is. We note that the paper says that many countries do distinguish between donor-controlled and other charities. Is there a major issue in Aotearoa with tax avoidance amongst donor-controlled charities or is this relatively minor and therefore best handled via existing mechanisms? Increased regulation does not necessarily lead to improved outcomes for those in need.

   b. Our question is whether a tax change for donor-controlled charities would achieve actual gain or be a time-consuming process for little if any tangible benefit. We are all for accountability and transparency, but not for bureaucracy for the sake of it.

Chapter 4 Integrity and simplification

Questions 10 to 15

a. Age Concerns are not mutual associations, and we do not have comment to make here. As a not-for-profit organisation, however, we recommend that the outcomes of the work mutual associations achieve is considered and not jeopardised by any changes. We understand that draft guidance is to come out after this consultation closes which seems unhelpful timing as it may have enabled mutual associations to make more robust comment.

b. Entities listed under question 11 and 12 do not apply to Age Concerns and we have no feedback to offer.

c. We support donation tax concessions (question 15) and agree that easier and timely ways be found for donors to claim tax concessions. Most charities rely on donations, and we would like to see tax benefits for donors retained.

Final comment

Thank you again for the opportunity to provide our submission on *Taxation and the not-for-profit sector,* we are very interested to hear the outcome of the consultation process.

Nāku noa, nā,

s 9(2)(a)

Karen Billings-Jensen
Chief Executive
Age Concern New Zealand

s 9(2)(a)

From: Savannah Feyter s 9(2)(a)
Sent: Monday, 31 March 2025 4:39 pm
To: Policy Webmaster
Subject: Submission - Taxation and the not-for-profit sector [BG-BELLGULLY.FID1478517]

To whom it may concern,

We write to convey our interest in comments made at paragraphs 4.5 to 4.7 of the Issues Paper "Taxation and the not-for-profit sector" regarding the taxation of mutual associations. The application – or non-application – of the mutuality principle in the tax context is an issue that has material significance for many associations operating within New Zealand.

The summary nature of the comments provided in the Issues Paper and, in particular, the absence of any detail supporting the views expressed regarding the taxation of mutual associations, means that it is not possible to meaningfully engage on these comments.

We submit that the IRD should defer taking a position on the taxation of mutual associations until it has provided full details of the basis for any change in view and provided interested parties with the opportunity to engage.

We look forward to publication of the draft operational statement referred to at paragraph 4.6 of the Issues Paper.

Kind regards,

Savannah Feyter (she/her) Senior Associate

BELL GULLY

DDI s 9(2)(a)
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31 March 2025

Submission to Government Consultation: Taxation and the Not-for-Profit Sector

Dear Sir/Madam,

We are submitting this response to your consultation paper regarding the evaluation of charities and not-for-profit taxation, with the aim of providing insights into the potential impact of altering or removing current support. As a relatively new, small charitable trust based in Christchurch, we believe it is essential to highlight the vital role tax concessions play in enabling us to continue providing life-changing services to young people in high deprivation communities.

About Epic Sports Project NZ Charitable Trust

Our mission is to build life-changing connections with young people in high-deprivation communities across Christchurch. We inspire them with hope and help them realise their potential in life by fostering a sense of value, belonging, and self-worth. Through sport and dance, we create a platform to connect with these young people, equipping them with the mindset necessary to thrive and cultivating an environment where they feel valued and empowered to achieve their dreams.

We run 26 free sport and dance sessions each week for young people aged 5–24, serving four high-deprivation communities in Christchurch, as well as the Christchurch Men's Prison Youth Unit. On average, we reach 520 young people every week - an impact of over 21,000 a year.

Challenges Facing Our Charity and the Sector

Our charitable trust was established only 4.5 years ago, and we have yet to meet our budget targets. To address this, we have launched a revenue-generating arm that provides specialist coaching services to communities who can afford it. All profits from this initiative are reinvested into our charitable efforts in high-deprivation communities, helping us reach those in need. However, we are deeply concerned that proposed changes to charity tax concessions could severely hinder our ability to continue this model and achieve long-term financial sustainability.

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The Case for Maintaining Charity Tax Concessions

The impact of charity tax concessions on our work—and on the sector as a whole—cannot be overstated. These concessions are essential for enabling us to fulfil our mission and maximise the resources available for our charitable efforts. Below are the key points we wish to highlight regarding the potential negative effects of reducing or removing charity tax concessions:

1. **Long-Term Social Outcomes and Cost Savings**
   The outcomes of our charity's work—and those of many others—are focused on achieving long-term, positive social outcomes for young people. These efforts, if successful, reduce the long-term social burden on the government, often at a much lower cost. We ask whether the government will be able to effectively fulfil this unmet social need, should charities be forced to scale back their activities. Reducing tax concessions could place an insurmountable burden on charities, potentially undermining their ability to deliver results that (with respect) are often more cost-effective than government-run programmes.
2. **The Personal Conviction of Charity Staff**
   Our vision and mission are driven by personal conviction to serve our communities. Many of our staff and volunteers have the skills and experience to work in the private sector but have chosen to accept lower incomes to pursue their passion for helping others. This commitment to the work we do would be undermined if we were unable to sustain our services financially due to changes in tax policy. Again, it also allows us, and many other organisations in the NFP sector, to achieve more social outcomes at a lower cost than government-run programmes.
3. **Targeted Oversight vs. Blanket Measures**
   While we acknowledge that a small number of charities may abuse current tax concessions, we believe that such cases should be addressed through targeted intervention and oversight by the appropriate authorities, such as Charities Services, rather than through a blanket policy that harms the entire sector. The blanket approach would have more unintended negative consequences than positive outcomes, particularly for smaller charities like ours that rely heavily on these concessions to remain operational and *must* utilise innovative income sources to be financially sustainable.
4. **Focus on Where Funds Are Directed, Not How They Are Generated**
   The concern should be focused on how charitable funds are being used—specifically, whether they are being directed towards charitable purposes—rather than the source of those funds. We question the policy logic behind permitting related business activities to contribute to charitable

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purposes while disallowing unrelated business activity, particularly when profits from both can be reinvested to support the same charitable goals.

5. **Compliance Costs for Small Charities**
   How one defines "related" and "unrelated" business activities place a heavy burden of compliance on charities, especially smaller organisations like ours. As a small charitable trust already held to higher reporting standards than for-profit businesses, we simply cannot afford the additional compliance costs that would come with navigating these definitions. This would divert resources away from our core mission and hinder our ability to serve those who need us the most.

6. **Impact on Long-Term Financial Sustainability**
   Preventing charities from generating their own funds through innovative means would only punish the communities we serve. Without the ability to generate sustainable revenue, we would be left heavily reliant on grants and donations, which are highly competitive and restrictive. This could leave us vulnerable to fluctuations in funding, ultimately forcing us to scale back or cease our services altogether.

7. **Impact on Grant Funding**
   Ironically, grant funders often prioritise funding charities that demonstrate financial sustainability. Limiting our ability to generate our own revenue would directly affect our eligibility for these grants, creating a vicious cycle that undermines our ability to continue our work.

Conclusion and Recommendations

We urge the government to carefully consider the unintended consequences of reducing or removing tax concessions for charities. We recommend that any proposed changes be reconsidered, with a focus on supporting long-term financial sustainability and ensuring that the sector can continue to serve its communities effectively. Specifically, we advocate for:

- Maintaining the current charity tax concessions, which allow organisations like ours to achieve meaningful impact with limited resources.
- Introducing more targeted interventions to address potential abuses of tax concessions, rather than imposing blanket measures that harm the entire sector.
- Supporting the development of innovative revenue-generating models for charities, so that we can reduce our reliance on unpredictable funding sources.
- Focusing on where funds are directed, rather than how they are generated. The key concern should be ensuring that funds are being used for charitable purposes, regardless of whether

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they are derived from related or unrelated activities. This approach would better align with the spirit of charity work, where the impact on communities is what truly matters.

Thank you for taking the time to consider our submission. We trust that the government will carefully consider the potential impact of any changes to charity tax concessions, particularly on smaller organisations like ours that are working hard to support vulnerable communities. We strongly believe that maintaining these concessions is essential for the continued success and sustainability of the charitable sector.

Yours sincerely,

Carolyn Esterhuizen

Co-Founder and Trustee

The EPIC Sports Project

31 March 2025

RE: Submission on "Taxation and the Not-for-profit Sector" Issues Paper

Dear Inland Revenue

On behalf of the Wright Family Foundation and BestStart, I am pleased to submit our response to Inland Revenue's Issues Paper on Taxation and the Not-for-profit Sector. Our submission addresses the issues raised in the paper and outlines why our charitable structure delivers substantial public benefit to New Zealand.

When Wayne and Chloe Wright established the Wright Family Foundation in 2015, they made a conscious choice to keep their successful early childhood education enterprise in New Zealand ownership for future generations.

This deliberate decision to dedicate the business to charitable purposes in perpetuity exemplifies how private philanthropy can create exponentially greater public benefit than traditional business models.

Today, BestStart provides quality early childhood education across 250 centres nationwide, serving 20,000 children and employing 4,300 staff. Through this innovative structure, what could have been private profit is transformed into community support, delivering immediate public benefit while building toward an even greater contribution in the future.

Once the Foundation's acquisition loan is fully repaid in approximately three years, there will be a significant increase in the quantum of funds available to support charitable initiatives that directly impact New Zealand children and families and advance the Foundation's ambitious philanthropic plans for the future.

As the late Chloe Wright said, "I care because I was taught as a young child about giving whatever you had, you gave to others. I cannot, NOT do it. That is The Village."

Preserving New Zealand's current charitable framework is essential to encouraging innovative, sustainable philanthropy that benefits all New Zealanders.

Yours sincerely

s 9(2)(a)

Tony Ryall
Chief Executive
s 9(2)(a)

609 Cameron Road, Tauranga 3112

Wright Family Foundation and BestStart submission on Inland Revenue's Taxation and the Not-for-Profit Sector Issues Paper. Submission dated: 31 March 2025

Introduction

We welcome the opportunity to make this submission on Inland Revenue's issues paper "Taxation and the Not-for-profit Sector" dated 24 February 2025 (Issues Paper).

This is a joint submission on the Issues Paper made by the Wright Family Foundation charitable trust (the Foundation) and the Foundation's principal wholly owned charitable subsidiary company Best Start Educare Limited (BestStart).

Our submission comments on the importance of the public benefit delivered by charities' services and exempting income that is ultimately destined to be used to provide and support those services. It then addresses the following specific matters raised by the Issues Paper:

- Separate regulation of so-called "donor-controlled charities".
- Removal or "reduction" of the FBT exemption for charities.

The submission addresses these matters both from the perspective of the Foundation and BestStart in relation to their own operations and from the perspective of the wider charitable interests that are supported by the Foundation.

Executive Summary

The Foundation and Best Start represent a uniquely New Zealand model of social enterprise that combines charitable purpose with business efficiency to create lasting value for our communities. Founded by Chloe and Wayne Wright, the Foundation and BestStart's story is one of intergenerational commitment to New Zealand families, responsible stewardship, and sustainable philanthropy.

Charities such as the Foundation and BestStart deliver public benefit. An important theme throughout this submission is that the public benefit delivered to New Zealand by charities' services needs to be fully recognised and factored into decisions on matters set out in the Issues Paper. Tax concessions for charities are a fiscal gain, not a fiscal cost, for the government, and a benefit, not a burden, to other taxpayers, once the public benefit of charities' services is factored into the equation.

Our key submission points are:

(a) **The destination principle is fundamental**: New Zealand's charitable framework has traditionally followed a "destination of income" approach - recognising that what matters is where the money ultimately goes, not its original source. The Issues Paper's proposals represent a fundamental shift from this principle that would have far-reaching consequences.

(b) **BestStart aligns with charitable purposes**: All of BestStart's business activities are in early childhood education, which directly relates to the Wright Family Foundation's charitable purpose of advancing education and better outcomes for children and families.

(c) **Donor-controlled charities**: Separate regulation of so-called "donor-controlled charities" is not warranted. The issues raised in relation to such charities are not exclusive to those charities, and the existing legal regime for registered charities is already rigorous and robust.

(d) **FBT exemption**: The quite limited FBT exemption for charities in relation to employees who are not mainly employed in any unrelated business activities should be retained.

The Wright Family Foundation: Growing the Good in New Zealand

The Wright Family Foundation stands as a testament to the power of meaningful philanthropy in New Zealand. Established to advance education, well-being and other community initiatives, the Foundation embodies the deeply personal values of its founders. As the late Chloe Wright eloquently expressed, "I care because I was taught as a young child about giving whatever you had, you gave to others. I cannot, NOT do it. That is The Village."

This philosophy has manifested in tangible support for numerous initiatives that directly impact the lives of New Zealand families. The Foundation's reach extends to programmes like NZ Kids Lit, which now engages approximately 8,000 children in literature; Spelling Bee NZ, which involves 1,000 schools nationwide; and other vital initiatives including I Have a Dream, Great Potentials, and House of Science.

Through the innovative structure of the Wright Family Foundation and its charitable subsidiaries like BestStart, the Wright Family has created a sustainable charitable social enterprise where what could have been private profit is instead transformed into a perpetual source of community support, building a legacy that will continue to enrich New Zealand for generations to come.

Combining Charitable Purpose with Business Efficiency

The Wright Family Foundation Group comprises four integrated charities that share charitable purposes:

- **The Foundation** is the umbrella entity, overseeing the charitable companies in their group as the sole shareholder, distributing over $7m for charitable initiatives in 2024, focused on education, health and wellbeing of children and families. www.wrightfamilyfoundation.org.nz
- **BestStart** provides early childhood education across 250 centres, licensed to educate 19,000 full-time children daily from Kaikohe to Invercargill. www.best-start.org
- **Schools Out** delivers out-of-school care programmes benefiting children and families. www.schoolsout.co.nz
- Birthing Centre Limited (**Birthing Centre**) is a charitable company wholly owned by the Foundation that is focused on providing primary birthing centre services and post-natal care for mothers, with facilities currently located in Mangere. See https://www.birthingcentre.co.nz/

All of the group's operations directly advance the Foundation's charitable purposes.

The Foundation prioritises helping children, young people and their families through: services supporting education, health and wellbeing of children and families; support for organisations working with children and families; support for charitable initiatives benefiting communities where children and families live.

This integrated structure ensures that each entity's activities directly advance charitable purposes, creating a sustainable cycle of social benefit that exemplifies the destination principle at the heart of New Zealand's charitable framework.

The Foundation and other charities in the Group are all registered together under the Charities Act 2005, under registration number CC55444. You can access all of the details of the Group and each of the charities in the Group, including their rules, their officers, and the Group's annual report and audited financial statements, on the Charities Register. See https://www.register.charities.govt.nz/Charity/CC55444.

BestStart: A Sustainable Social Enterprise with Clear Public Benefit

At its core, BestStart is a deliberate, long-term investment in New Zealand's future. When the Wright Family established this model in 2015, they made a conscious choice to keep their successful early childhood education enterprise in New Zealand ownership and dedicate its surpluses to charitable purposes in perpetuity.

The Wright Family Foundation acquired BestStart through a vendor-financed loan that is being systematically repaid. This transaction was designed with careful foresight - enabling a transition that maintains educational excellence while building a permanent endowment for charitable work that will benefit generations of New Zealanders.

We note the focus of proposed income tax changes for charities in the Issues Paper is unrelated business income: : "Some tax-exempt business activities directly relate to charitable purposes, such as a charity school or charity hospital. Other tax-exempt business activities are unrelated to charitable purposes, such as a dairy farm or food and beverage manufacturer. It is the unrelated business activities that are the focus of this review."

All of BestStart's business activities are in early childhood education, which is directly related to the Wright Family Foundation's charitable purpose of advancing education and better outcomes children and families.

BestStart's charitable structure delivers immediate public benefit through advancing quality early childhood education across 250 centres, serving 20,000 children and employing 4,300 staff nationwide. BestStart profits are also soley distributed to the charitable Wright Family Foundation, which in turn distributes funds to support charitable initiatives. Once the Wright Family Foundation acquisition loan is fully repaid within approximately three years, there will be a significant increase in the quantum of funds available for distribution to charitable activities by the Foundation.

This model aligns with New Zealand's charity income tax exemption, which focuses on the destination of funds rather than their source—ensuring what could have been private profit becomes a perpetual source of community support.

The Public Benefit of Charities' Services and the Destination of Income Principle

New Zealand's income tax exemption framework for registered charities has always followed a "destination of income" approach - recognising that what matters is that the money ultimately goes towards furthering charitable purposes, not how the money is earned.

That approach recognises that the services provided and supported by charities, such as the Foundation and BestStart, in furthering their charitable purposes deliver public benefit. It is that public benefit which underpins the tax-exempt registered charities' income including their business income. Once the public benefit of charities' services is factored into the equation, exempting charities'

income, including their business income, from income tax is a fiscal gain, not a fiscal cost, for the government, and a benefit, not a burden, to other taxpayers.

The Issue Paper's proposals to limit the charity business income tax exemption only to business activities that are themselves directly related to a charity's purpose represents a fundamental shift in philosophy that would have far-reaching consequences for many entities in the charitable sector.

As noted, BestStart's business activities (early childhood education) relate directly to the Wright Family Foundation's charitable purposes which include advancing education.

Rather than focusing on how income is generated, tax policy should continue to recognise that what truly matters is where that income ultimately goes - to charitable purposes that serve the public good. The current framework correctly recognizes that sustainable charitable funding often requires diverse income sources, all ultimately serving the same charitable ends.

Maintaining the destination principle is not about tax advantages - it's about ensuring charities can fulfil their missions effectively through sustainable funding models that benefit all New Zealanders.

As acknowledged by the Issues Paper, there is also no competitive advantage reason to depart from the destination principle and tax charities' unrelated business income. Exemption from income tax does not provide any competitive advantage to a tax-exempt charity business as the Issues Paper says. Any perceived advantage is offset by significant constraints in relation to raising external capital and Charities Act registration and compliance.

Submission Points on Specific Matters Raised in the Issues Paper

Separate regulation of so-called "donor-controlled charities"

1. Chapter 3 of the Issues Paper regarding so-called "donor-controlled charities" has a potentially significant impact on the Foundation and its charitable subsidiaries, given that, like many New Zealand charities both small and large, the group has been established, and provided with ongoing support, by private, proactive philanthropists committed to giving back to the community.

2. Separate regulation of so-called "donor-controlled charities" is not warranted, and risks discouraging and hindering that type of genuine and generous philanthropy.

3. The related party transaction and charitable distribution issues raised in the Issues Paper are not exclusive to donor-controlled charities, and registered charities are already subject to clear and robust legal duties and a rigorous registration, reporting and monitoring regime. This is exemplified by the Group's situation, as discussed below.

<u>The Wright Family's establishment and support of the Group</u>

4. Wayne and Chloe Wright set up the Foundation and its charitable subsidiaries and divested their successful early childhood education enterprise to the Foundation so that the enterprise, undertaken by BestStart, is dedicated to charitable purposes in perpetuity. This is a manifestation of their personal commitment to "Growing the Good" in New Zealand.

5. Wayne and Chloe (until her passing) have also been actively involved in governing and overseeing the development of the group's operations and the enhancement of its impact in

the community, as have their children. They have done so as stewards of the legacy that Wayne and Chloe intended to create for the benefit of current and future generations of New Zealanders.

6. The boards of the Foundation and all of the other charities in the Group do include an independent trustee or director (as applicable), and all trustees and directors, whether they are Wright Family members or not, are subject to fiduciary duties to act in the best interests of advancing each charity's charitable purposes.

There is no substantiated basis for distinguishing and separately regulating so-called "donor-controlled charities"

7. The related party transaction and charitable distribution issues raised in the Issues Paper are already covered by clear and robust legal duties and a rigorous registration, reporting and monitoring regime for registered charities, discussed further below.

8. Singling out and separately regulating "donor-controlled charities", when the existing legal regime for registered charities is already rigorous and robust, risks discouraging and hindering the type of private, proactive philanthropy exemplified by Wayne and Chloe Wright and their family. Such generosity should be encouraged, not deterred.

The existing legal regime for registered charities is already rigorous and robust

9. The additional regulation suggested in the Issues Paper for "donor-controlled charities" is not warranted for registered charities in New Zealand, whether "donor-controlled" or otherwise, because the existing legal regime for registered charities, including their boards and officers, is rigorous and robust.

10. Overseas countries' adoption of additional regulation for "private foundations" and the like is not a good reason for importing such regulation into New Zealand. The countries referred to in the Issues Paper have introduced such regulation in circumstances where such charities are not subject to the same rigorous and robust legal regime that applies to registered charities in New Zealand. Approaches that have been adopted overseas are also flawed.

Our answers to the Issues Paper's donor-controlled charity questions for submitters

11. In light of the submission points set out above, our answers to the questions for submitters relating to donor-controlled charities in the Issues Paper are as follows:

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?*
A7	*There is no basis or need to introduce additional complexity, uncertainty, and compliance costs by attempting to define so called "donor-controlled charities" (which would itself be problematic) and then separately regulating such charities by imposing unnecessary and flawed restrictions and requirements.*

	Charities such as the Foundation, BestStart and the other charitable companies in the group, and their respective boards and officers, are already subject to several layers of clear and robust legal duties and a rigorous registration, reporting and monitoring regime. *The existing legal framework provides all of the tools required for Charities Services, the Charities Registration Board, Inland Revenue, and also the Attorney-General to effectively deal with charities, including but not limited to donor-controlled charities.*
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?*
A8	*New Zealand already has a rigorous legal framework, for all types of registered charity, that is applied and enforced by the relevant authorities. The types of prohibitions and restrictions adopted overseas are unnecessary, would introduce arbitrariness and complexity, and would risk precluding or affecting transactions that support charities.*
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?*
A9	*Without derogating from the submission points above, if any minimum distribution requirement were to be introduced, it is critical that it recognises the extent to which an affected charity's asset base is already committed, directly or indirectly, to activities that advance its charitable purposes, as in the case of the Foundation and its charitable subsidiary companies.*

The FBT exemption for charitable organisations

<u>The exemption provides valuable, practical support for charities and should not be removed or reduced</u>

12. The Issues Paper suggests that the fringe benefit tax (**FBT**) exemption for charitable organisations may be removed or somehow "reduced".

13. The FBT exemption, which is already limited in scope, is a valuable, practical form of support for charities (and other qualifying organisations).

14. Again, this is a situation where the concession is a fiscal gain, not a fiscal cost, for the government, and a benefit, not a burden, to other taxpayers, once the public benefit of charities' services is factored into the equation.

15. The limited FBT exemption for charitable organisations has been maintained, essentially continuously since 1985 and despite several detailed tax policy reviews, because of the practical value of the support it provides to the charitable sector.

16. The Issues Paper's reference to a current review of FBT settings potentially reducing compliance costs does not provide any support or basis for removing or reducing the FBT exemption for charities, especially given that no details have been made available regarding the timing, scope or potential outcomes of that review.

17. Removing or reducing the FBT exemption for charities now after essentially 40 years' continuity would also entail significant transitional issues and associated costs for the charitable sector, in relation to reviewing and renegotiating remuneration policies and employees' remuneration. This would also detract from charities focusing and expending their time and resources on delivering services that are of public benefit.

Our answer to the Issues Paper's FBT exemption question for submitters

18. In light of the submission points set out above, our answer to the FBT exemption question for submitters in the Issues Paper is as follows:

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?*
A13	*There is no clarity at all regarding what the review of FBT settings will entail in relation to compliance costs, and in particular compliance costs for the charitable sector, and that review provides no support or basis for removing or "reducing" the FBT exemption for charities. For the reasons noted above the limited FBT exemption should be retained.*

Next steps

19. The Foundation and BestStart look forward to confirmation of Inland Revenue's receipt of this submission and would be happy to discuss the submission with Inland Revenue officials.

20. If any changes to current settings are to be looked into further following the very truncated Issues Paper consultation process, it is also critical that the charitable sector is properly consulted and given the opportunity to make further submissions.

21. To do otherwise would create a significant risk of pursuing unwarranted changes that burden the charitable sector with complexity, uncertainty and compliance and transitional costs, without generating any material tax revenue for the government, to the net detriment of the charitable sector and New Zealand.

For further contact: Tony Ryall, Chief Executive, BestStart Early Learning s 9(2)(a)

SUBMISSION ON
TAXATION AND THE NOT-FOR-PROFIT SECTOR

This submission is filed for Waikato-Tainui by:

Te Whakakitenga o Waikato Incorporated
PO Box 648
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SUBMISSION ON TAXATION AND NOT-FOR-PROFIT SECTOR

1. Te Whakakitenga o Waikato Incorporated (**Waikato-Tainui**), including its wholly-owned subsidiary Tainui Group Holdings Limited (**TGH**), makes this submission in response to the Taxation and the Not-For-Profit Sector Officials' Issues Paper dated 24 February 2025 (**the Paper**). This submission is made on behalf of the Waikato iwi, its affiliated hapuu and marae, and the various entities that represent and work for our iwi.

2. The submission represents the views of, and is endorsed by, the Waikato Raupatu Lands Trust and Group (Charities Act registration no. CC43060).

3. The submission on behalf of Waikato-Tainui comprises the following parts.

   (a) The **Executive Summary** provides a summary of the key submission points from Waikato-Tainui.

   (b) **Part 1** explains who we are.

   (c) **Part 2** discusses key aspects of the current charities framework and tax system affecting Waikato- Tainui entities.

   (d) **Part 3** sets out our perspective on the Paper.

   (e) **Part 4** sets out our perspective and submissions on the proposals regarding the charity business income tax exemption.

   (f) **Part 5** sets out our perspective and submissions on defining related and unrelated business activity income.

   (g) **Part 6** sets out our submission points in responses to some of the specific questions raised in the Paper.

   (h) **Part 7** sets out our proposed exemptions.

4. Waikato-Tainui's submission does not stringently follow the question/answer format of the paper.

5. Waikato-Tainui would welcome the opportunity to clarify or expand on any aspect of the submission, particularly in respect of the proposed exemption that is set out in **Part 7**. As noted later in the submission, we also consider that further consultation will be required in any case, in particular with iwi, including post-settlement governance entities and marae, before any prospective policy, legislative, and/or regulatory measures are further considered or adopted.

EXECUTIVE SUMMARY: WAIKATO-TAINUI'S KEY SUBMISSION POINTS

1. We fundamentally oppose the application of the proposals in Chapter Two of the Paper (concerning the charity business income tax exemption) to iwi and their post-settlement governance entities (**PSGEs**) and marae and consider, for the reasons articulated later in this submission, that they should be exempt from any proposed reform in this area.

2. The Paper fails to give any consideration to the unique nature of iwi and Maaori entities that have been established to receive, manage and deliver the benefits of the settlement of historical grievances under Te Tiriti o Waitangi (**Te Tiriti**). Such settlements were intended as redress for past injustices, yet the Paper overlooks them entirely in its consideration of the scope and implications of possible changes to taxation in the 'Not-For-Profit' sector.

3. As a result, the proposal does not contemplate PSGEs and their purpose and objectives. Put simply, the proposals in Chapter Two should not apply to PSGEs and their related entities, including marae. In addition, we consider that there may be unintended implications for asset holding companies and mandated iwi organisations under the Maaori Fisheries Act 2004, iwi aquaculture organisations under the Maaori Commercial Aquaculture Claims Settlement Act 2004, and Maaori reservations under Te Ture Whenua Maaori Act 1993.

4. The Coalition Agreement between the parties who form the present Government included a clear commitment to uphold Treaty Settlements, recognising their significance in addressing historical injustices. However, the policies being implemented fail to honour this commitment, undermining the relationship and trust established as a result of Te Tiriti settlements. These actions risk eroding the progress made in acknowledging iwi rights and aspirations. This failure not only disregards the Government's own promises, but also threatens the integrity of the settlement process and the long-term relationships between the Crown and iwi.

5. Related to this, despite the IRD having a departmental obligation under Te Tiriti to understand the impact of any proposed policy changes for Maaori and to consider how any negative or unintended effects might be mitigated, the Paper does not engage at all with the impacts of the proposal on iwi and Maaori charities, particularly those holding and managing land and other assets upon behalf of iwi and hapuu and marae. This constitutes a breach of those obligations. In the circumstances, we will take all necessary steps to protect and uphold the arrangements and structures that were established, with the express acknowledge of the Crown, to hold, manage and implement our Te Tiriti settlements.

6. The New Zealand charity and tax landscape in relation to PSGEs is unique. Our settlements are embedded in law. For example, the Waikato Raupatu Lands Trust, the PSGE at the centre of our settlement group, was established by the then Tainui Maaori Trust Board as a section 24B trust under the of the Maaori Trust Boards Act 1955 (which trusts have charitable taxation status as subsequently recognised in Public Ruling BR Pub 08/02), and it was expressly acknowledged by the Crown that this trust would be a charitable entity in our 1995 Waikato Raupatu Lands Deed of Settlement. When the Tainui Maaori Trust Board was dissolved under the Waikato Raupatu Lands Settlement Act 1995 and its assets transferred to the new Waikato PSGE, it was clearly understood that the charitable status of that trust would continue, and its charitable purposes were expressly set out in the terms of settlement. Similarly, when the Waikato Raupatu River Trust was established under the 2009 Waikato River Settlement, it was clearly understood that this new trust would form part of the wider existing Waikato PSGE group and would also operate as a charitable trust on the same terms.

7. Our post-settlement tribal entities have consequently operated as charitable entities for the last 15 to 30 years and have adopted the strict rules and reporting requirements that apply to registered charities. This was an intrinsic part of the settlement negotiations and landscape, and the use of charitable structures were directly anticipated through those settlements.

8. The purpose of Te Tiriti settlements is to acknowledge, apologise for, and address, historical injustices of the Crown in breach of Te Tiriti o Waitangi. However, such settlements did not, and could never, fully compensate for the full extent of what was lost or for the associated intergenerational pain and suffering. For example, 1.2 million acres of land were wrongfully confiscated from Waikato iwi in 1863, yet the settlement returned only 3% of that total land lost (circa 39,000 acres). The value of the raupatu land unlawfully confiscated from Waikato in 1995 dollars (at settlement) was $12 billion, yet our settlement had a value of only $170 million.

9. As such, the redress (by way of money and assets) provided under Te Tiriti settlements is necessarily only a "seed" fund, with the clear understanding and intention that this will be held, managed and used to restore and uplift the iwi through subsequent, intergenerational recovery and investment activity.

10. While iwi settled in real terms at a massive discount, the overarching goal was to establish strong, self-sustaining, and forward-thinking PSGEs for the benefit of both present and future generations of iwi members. These entities were envisioned as the foundation for delivering essential social, cultural, and economic initiatives aimed at restoring Maaori well-being and prosperity. The intent was not merely financial redress, but the creation of viable institutions capable of reversing the lasting impacts of raupatu and other breaches of Te Tiriti o Waitangi. Through strategic development and investment, PSGEs were meant to enable iwi and Maaori communities, supporting them to rebuild from generations of systemic deprivation and reclaim their rightful place as thriving contributors to Aotearoa's future.

11. Charitable status was granted to PSGEs as a redress mechanism to enhance that work, which ultimately benefits the wider community as well. Further work was, and will continue to be, required throughout subsequent generations to redress the full social, economic, and cultural deprivations suffered by Waikato as a result of the raupatu and Te Tiriti breaches. For the avoidance of doubt, this must capture all of the activities that occur at our affiliated marae. Accordingly, upholding the integrity, intent and effect of our settlements is essential.

12. Our Trust Deeds specifically require the organisation to apply its resources and funds to charitable activities within New Zealand. Our fifty-year plan (Whakatupuranga 2050) contains our medium-term vision for the future of our iwi, marae, and people, ensuring sustainability and growth for generations to come. Our contributions and efforts extend beyond commercial growth to cultural, social, economic, and environmental development. Our commercial activities are directly linked to reinvesting in our people and securing a prosperous future for our mokopuna – underpinning the intergenerational decisions we make today. We only invest in our own region, at place for this reason. We attach our Statement of Service Performance and Annual Report 2024 in Appendix One, to further illustrate these points.

13. The changes proposed in the Paper must be seen in the light of the reliance iwi, hapuu, and marae have placed on settlement structures and their ability to support social, cultural, and economic outcomes for our rohe and New Zealand. Time, and careful thought and design, would be required to fundamentally alter, or transition

any PSGE out of, these intended structures as they now form an integral part of the Crown-Iwi partnership.

14. However, the Paper has been released suddenly, and submissions are due within a four-week window. This is not a principled and well-considered consultation process and is likely to have unintended consequences on the entire Not-For-Profit sector, but iwi (and their PSGEs and marae) in particular who are not even mentioned in the Paper.

15. Further, no modelling or specific evidence of any "problem case" is included in the Paper. The Paper itself confirms that no competitive advantage is afforded to tax exempt charitable businesses. Any revenue that might be raised by implementing the proposals is likely to be offset by the costs of compliance, enforcement, and monitoring. In particular, the distinction between related and unrelated business income is likely to be endlessly litigated due to incredible variation in the charitable sector, which includes 29,000 registered charities of varying sizes, complexity, and purposes. Tier 1 and 2 entities in the sector will not passively accept these changes and have the wherewithal to restructure their affairs in response. Any revenue projections will need to account for this inevitability. The regime will be expensive to maintain and there will be little revenue benefit.

16. The tax framework for charities, including the income tax exemptions for both non-business and business income (including 'unrelated' business income), is appropriate and should not be changed. Current tax settings reflect that we are still in a phase of redressing the economic, political, social, and cultural deprivations suffered by our people. Current settings enhance our ability to carry out the work for the benefit of iwi, offset constraints in relation to accessing capital, and avoid the complexity and inefficiency created by having different treatments for different income streams.

17. We consider that, regardless of the broader charitable taxation reforms that the Government might determine to advance, at the very least there should be an express exemption for iwi entities (i.e., PSGEs and their related entities, including hapuu and marae). In **Part 7** of this submission, we have proposed the terms of a simple carve out to achieve this outcome and ensure that the current taxation settings are not changed in relation to iwi and their associated entities and marae. We would be pleased to engage further with officials in relation to this proposed exemption and the rationale that sits behind it.

18. Importantly, in terms of both regional and national implications, our iwi plays a vital role in regional and national economic development through job creation, business opportunities, and leadership. The Waikato region is a key growth area in New Zealand, and also intrinsically interconnected with the prosperity and growth of both Auckland and the Bay of Plenty. The current taxation status of our iwi and its related entities is pivotal to the role that we have played, and continue to play, in that growth and development. Any change to that taxation status would have a chilling effect.

19. New Zealand's current legal, charitable, and tax framework also provides iwi with favourable opportunities to attract foreign investment for essential infrastructure projects that benefit the regions and the entire nation. The Government's recent initiatives to reform foreign investment laws and streamline approval processes create a more welcoming environment for international capital. Iwi representatives highlighted their strengths and investment opportunities at the recent Infrastructure Investment Summit. Iwi showcased their unique infrastructure vision and development prospects to global investors managing approximately $5 trillion in capital. The Government's focus on key growth sectors such as renewable energy, clean technology, and advanced transportation aligns well with iwi sustainable

development goals. The participation of iwi investment entities alongside major national funds at the summit demonstrates the strategic importance of Maaori economic partnerships in attracting foreign investment. By leveraging their unique cultural and economic strengths, iwi can position themselves as attractive partners for foreign investors seeking to contribute to New Zealand's infrastructure development. This approach not only benefits iwi but also supports the government's broader objective of addressing the country's infrastructure gap and fostering economic growth that benefits all New Zealanders.

20. The proposals in Chapter Two of the Paper will have a chilling effect on negotiations with potential infrastructure partners and will reduce and undermine innovation and investment in regional and national infrastructure sectors. The Paper and the proposal within it have already been flagged by one such partner as a concern. This undermines years of work by the iwi and has the potential to damage both the reputation of Waikato and the New Zealand government on the world stage.

21. Finally, it is not within the purview of the IRD to consider the effectiveness of certain tax concessions in terms of charitable objectives and public benefits. Instead, this sits within the remit of the charities regulator. If it is considered by the IRD or the government that the current regime is not sufficiently robust to deal with the small number of outliers in the sector, then a first principles review of the Charities Act 2005 and specifically the charitable purposes set out within it must be required.

22. In that case, Waikato-Tainui considers that the Law Commission ought to be tasked with reviewing charitable law in New Zealand with an attendant focus on the associated tax regime, specifically considering how much support should the government give to the charitable sector in New Zealand via the tax system. Tax and charitable status should never be artificially divorced from one another during policy or legislative reviews, as they are "two sides of the same coin" and cannot be sensibly considered as separate issues. This would allow for properly researched, considered, and informed debate on these important issues.

PART 1: WHO WE ARE – HISTORY OF WAIKATO-TAINUI AND ITS RELATED ENTITIES

Waikato-Tainui and the Waikato rohe

1. Waikato-Tainui are the tangata whenua of the Waikato rohe.

2. Our iwi comprises more than 95,000 registered members who affiliate to 33 Waikato hapuu and are represented by the 68-marae shown in the map below. Many, though not all, of these marae are small charities that have registered under the Act.

3. Te Whakakitenga o Waikato Incorporated (**Waikato-Tainui**) is the governing body for the 33 hapuu and 68 marae of Waikato and manages the tribal assets of Waikato for the benefit of over 95,000 registered tribal members. It is also:

   (a) the trustee of the Waikato Raupatu Lands Trust, the post-settlement governance entity for Waikato-Tainui for the purposes of the Waikato Raupatu Lands Deed of Settlement 1995 and the Waikato Raupatu Claims Settlement Act 1995; and

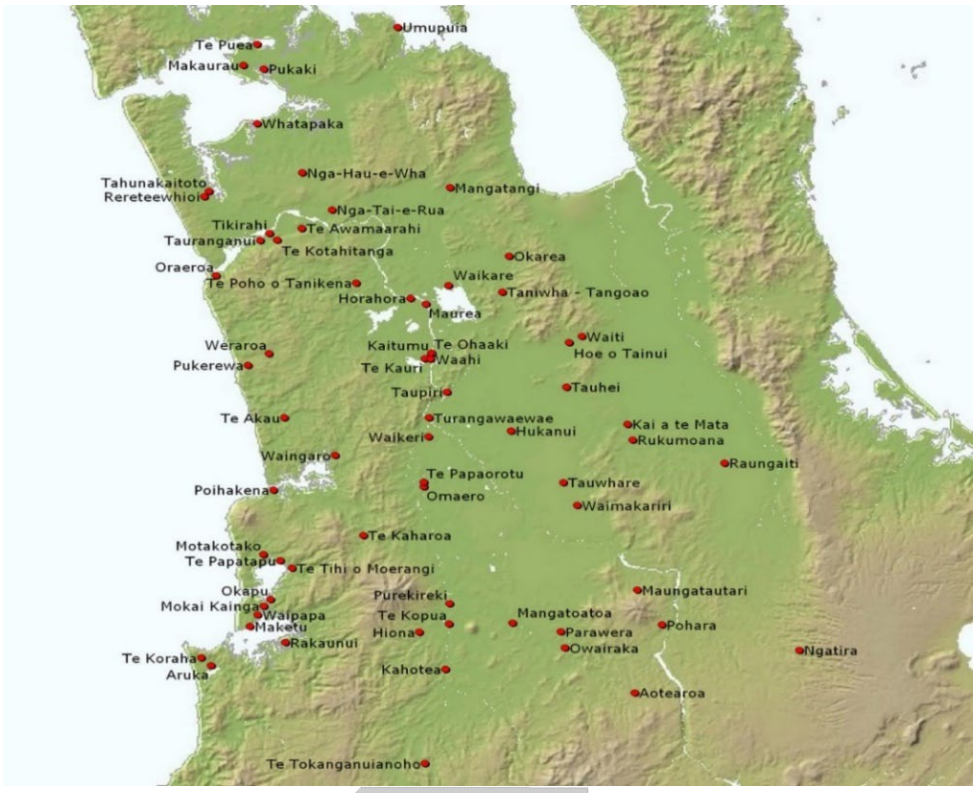
   (b) the trustee of the Waikato Raupatu River Trust, the post-settlement governance entity for Waikato-Tainui for the purposes of the Waikato-Tainui River Deed of Settlement 2009 and the Waikato Raupatu Claims (Waikato River) Settlement Act 2010; and

   (c) the mandated iwi organisation for Waikato-Tainui for the purposes of the Maaori Fisheries Act 2004; and

   (d) the iwi aquaculture organisation for Waikato-Tainui for the purposes of the Maaori Commercial Aquaculture Claims Settlement Act 2004.

4. The rohe (tribal region) of the Waikato iwi is bounded by Auckland in the north and Te Rohe Potae (King Country) in the south and extends from the west coast to the mountain ranges of Hapuakohe and Kaimai in the east.

5. Significant landmarks within the rohe of Waikato include the Waikato and Waipaa Rivers, the sacred mountains of Taupiri, Karioi, Pirongia, and Maungatautari, and the west coast Whaaingaroa (Raglan), Manukau, Aotea, and Kaawhia moana.



Raupatu and other Tiriti breaches and the process of redress and recovery

6. In July 1863 military forces of the Crown unjustly invaded the Waikato region, initiating hostilities against the Kiingitanga and the people of Waikato.

7. Subsequently, in the period 1863 to 1865, the Crown wrongly confiscated over 1.2 million acres of land from Waikato, including a significant part of the Waikato River (the **Raupatu**).

8. The Raupatu was not just a series of hostilities, but was an invasion by land and river, and an attack on the way of life and rangatiratanga of Waikato, which:

   (a) drove the people of Waikato from their lands, kaainga and cultivations, with large numbers exiled to the King Country;

   (b) drove the people of Waikato from their tupuna awa, which was both an important food source and an important portage central to tribal relationships both within and outside of Waikato; and

   (c) resulted in seven generations of mamae (hurt/pain) and trauma for the people of Waikato over the ensuing 155 years; and

   (d) had devastating intergenerational effects on the economic, cultural, social, and environmental health and wellbeing of the people of Waikato, their land and resources, and the Kiingitanga, which continue to be felt today.

9. The Crown acknowledged in the 1995 Waikato Raupatu Lands Settlement that the New Zealand Government perceived the Kiingitanga as a challenge to the authority of the Crown.

10. The search by Waikato for redress and justice for the Raupatu stretched from the 19th to the 21st Century, beginning in 1884 with Kiingi Taawhiao leading a deputation to England to seek an audience with Queen Victoria. Over subsequent decades Waikato took numerous steps to pursue the issue of the confiscation of their lands, including several petitions to Parliament.

11. Pei Te Hurinui Jones, with Tumate Mahuta, began the negotiations on the issue of Raupatu following a report of the 1928 Sim Commission which found that, inter alia:

    (a) the confiscations in the Waikato were "excessive"; and

    (b) the confiscation of lands from iwi driven from their kaainga north of the Mangataawhiri in July 1863 were a "grave injustice".

12. After ongoing fruitless negotiations with successive governments, on 22 April 1946, a partial settlement in relation to the confiscation of lands was reached between Waikato and the Crown, which included:

    (a) the establishment of the Tainui Maaori Trust Board (the **Trust Board**) and the payment to the Trust Board of £6,000 per year for fifty years and £5,000 thereafter in perpetuity; and

    (b) an admission from the Crown that its invasion of the Waikato and the subsequent confiscations were wrong.

13. No lands were returned to Waikato under the 1946 partial settlement, and this remained an outstanding issue for Waikato. From 1947, the Trust Board sought to care for the socio-economic wellbeing of its beneficiaries with the limited resources it had, while also seeking to advance further negotiations towards the settlement of Raupatu issues.

14. The return of Waikato lands was always a priority for the Trust Board in order to advance the socio-economic position of Waikato in a rapidly growing and changing society. In 1986, the jurisdiction of the Waitangi Tribunal (the **Tribunal**) was extended, and the Tribunal was permitted to hear and determine historical claims relating to the period from 1840.

15. In 1987 Sir Robert Te Kotahi Mahuta filed the Wai 30 claim in the Tribunal in relation to the historical Treaty of Waitangi claims of Waikato on behalf of himself, the Tainui Māori Trust Board, Ngaa Marae Toopu (an organisation of Tainui marae) and Waikato (the **Wai 30 Claim**).

16. The Wai 30 Claim included Waikato's historical Treaty of Waitangi claims in relation to the confiscation of lands (the Raupatu Lands Claim) as well as claims in relation to the Waikato River, West Coast Harbours and other lands.

17. In 1989 Waikato entered into direct negotiations with the Crown in relation to the Raupatu Lands Claim. Those negotiations were advanced by Waikato on the basis of two key principles:

    (a) "*I riro whenua atu me hoki whenua mai*" (as land was taken, land should be returned); and

    (b) "*Ko te moni hei utu mo te hara*" (the money is the acknowledgment of the crime).

18. A Heads of Agreement setting out the framework for the settlement of the Raupatu Lands Claims was entered into between the Crown and Waikato on 21 December 1994. Following further negotiations, the Waikato Raupatu Lands Deed of Settlement between the Crown and Waikato was signed on 22 May 1995.

19. The redress offered by the Crown was substantially less than full compensation for all of the losses suffered by Waikato and in order to:

(a) conclude a settlement with Waikato; and

(b) provide Waikato with the assurance that the settlement would remain proportionate to future settlements -

Waikato and the Crown agreed to the inclusion of a relativity mechanism in the settlement.

20. The Waikato Raupatu Lands Deed included, inter alia, the following provisions:

(a) an apology from the Crown to Waikato (clause 3), which is set out in both Maaori and in English in the settlement legislation;

(b) the return of lands (clauses 5-6);

(c) an assurance that the settlement will not affect the excluded claims (including the claims to the Waikato River, the West Coast Harbours, the Waiora and Waiuku blocks and any claims by the hapuu of Waikato-Tainui to non-Raupatu land outside the Waikato-Tainui Claim Area) (clause 24.1);

(d) a "Redress Amount" of "$170,000,000" (as defined in the interpretation section, clause 34) from which the value of the lands returned was deducted;

(e) a right of first refusal in favour of Waikato-Tainui in respect of residual Crown land (clause 10);

(f) a relativity clause (attachment 9); and

(g) mutual acknowledgements of Waikato-Tainui and the Crown (clauses 16.1-16.3).

21. The apology in the Waikato Raupatu Lands Deed includes (at paragraph 6):

> Noo reira ka kimi Te Karauna, mo te taha ki ngaa Iwi Katoa o Niu Tireni, i te huarahi e whakamaarie ai i eenei tuukinotanga, araa, mo te waahanga e taea ai, aa, i teenei whakatutukitanga o teenei take whakamau o Te Raupatu. He whakaotinga teenei i raro i ngaa take raarangi o Te Pukapuka Whakaaetanga i hainatia i te 22 o ngaa raa o Haratua 1995, maana hei arahi atu ki te ao hoou o te mahi tahi ki Te Kiingitanga me Waikato.
>
> The Crown seeks on behalf of all New Zealanders to atone for these acknowledged injustices, so far as that is now possible, and, with the grievance of raupatu finally settled as to the matters set out in the Deed of Settlement signed on 22 May 1995 to begin the process of healing and to enter a new age of co-operation with the Kiingitanga and Waikato.

22. The mutual acknowledgements in the Waikato Raupatu Lands Deed include:

> 16.1 The parties acknowledge that the public acknowledgements of the wrong done and the redress to be provided under the Settlement reflects:

16.1.1 the final amount of land confiscated and the death and destruction visited on Waikato-Tainui (it being the largest confiscation by area); and

16.1.2 the manner by which Waikato's grievance came about; and

16.1.3 the seriousness with which the Crown views raupatu;

and that, accordingly, the Redress Value represents 17% of the value of the redress deemed to have been set aside by the Government for Historical Claims on 21 September 1992 including the 1992 settlement of the fisheries claims (and approximately 20% of the redress for all such Historical Claims excluding those fisheries claims).

…

16.3 The parties acknowledge that the approximately 19,000 hectares (approximately 47,000 acres) of land (not including the Waikato River and the West Coast Harbours) within the Waikato Claim Area administered by the Department of Conservation is significant to Waikato. In recognition of the fact that that land is held by the Crown on behalf of all New Zealanders, for the purposes of conservation, and therefore is significant to all New Zealanders, Waikato in exercising their mana and as a free gift will through the Settlement give up their claim to that land and forgo further redress in respect of that claim, except the right of first refusal referred to [in] clause 10.

23. The small size of the Crown's residual land holdings and the value of the settlement relative to the losses suffered again reinforced the twin principles of the Raupatu Lands Claim. Rebuilding the tribal estate of Waikato through the return of land was a paramount aspiration, but:

(a) that would take both time and money, which was taken into account and reflected in the Waikato Raupatu Lands Deed;

(b) that was only the first step in the process of restoring:

(i) the economic, social, and cultural health and wellbeing of Waikato and its people; and

(ii) the health and wellbeing of the lands, waters, forests, fisheries, natural resources and other taonga within the Waikato rohe; and

(c) the Waikato Raupatu Lands Settlement was therefore not the end, but the beginning of a longer journey to:

(i) address and redress the intergenerational effects of the Raupatu on Waikato and its people; and

(ii) establish a renewed and enduring relationship between the Crown and Waikato.

24. The Waikato Raupatu Lands Deed was the first substantive settlement of a historical Treaty of Waitangi claim between the Crown and an iwi and paved the way for other iwi to engage with the Crown to settle their historical Treaty of Waitangi claims.

25. The Waikato Raupatu Lands Deed was given legislative effect through the 1995 Raupatu Settlement Act. Section 2 of the 1995 Raupatu Settlement Act provides the intention of Parliament is that the provisions of the 1995 Raupatu Settlement Act shall be interpreted in a manner that best furthers the agreements expressed in the Waikato Raupatu Lands Deed.

Our recent history

26. The recent history of our iwi has been shaped by the raupatu that occurred in the 1860s - including the confiscation of land in our rohe and the related invasion, hostilities, war, loss of life, destruction of taonga and property, and consequent suffering, distress, and deprivation of our iwi - and other Tiriti breaches by the Crown.

27. Through Tiriti settlements and related processes (e.g., right of first refusal ("RFR") processes to acquire Crown assets), and the work of Te Whakakitenga and other Waikato-Tainui entities, our iwi has been progressively working to redress and recover from the economic, political, social, and cultural deprivations suffered by our people as a result of raupatu and other Tiriti breaches and to re-build the iwi's asset base for the benefit of present and future generations.

28. Waikato-Tainui's Tiriti settlements (and related processes) recognise that the raupatu was a violation and grave injustice against our people, our rohe, our ancestral river, and our rights under Te Tiriti, and had a crippling effect on the welfare, economy, and potential development of our iwi.

29. The settlements also recognise that our Tiriti rights - including our rangatiratanga and mana whakahaere over our rohe and taonga - are not diminished or in any way affected. They are enduring.

30. The settlements began a process of healing and a new age of cooperation with the Crown, but that process of healing and the process of regenerating and advancing the welfare, economy, and development of our iwi is ongoing.

31. Tiriti settlements and related processes only provide partial redress and a starting point for recovery and there is substantial mahi still to be done, especially given that Waikato iwi members remain overrepresented in the lower quartile for various socio-economic and health measures.

The entities that represent and work for Waikato-Tainui

32. The Waikato-Tainui entities that represent and work for our iwi hold and exercise kaitiakitanga (stewardship) of our whenua and other taonga and assets that provide the foundations for the economic, political, social, and cultural well-being of the iwi.

33. The majority of these assets have been returned to Waikato-Tainui through Tiriti settlements and related processes, in recognition of raupatu and other Tiriti breaches and the resulting economic, political, social and cultural deprivations suffered by our people.

34. The principal entities that represent and work for our iwi and hold and exercise kaitiakitanga of our assets are as follows:

    (a) Te Whakakitenga is the umbrella entity for the iwi. Its objectives include protecting, advancing, developing, and unifying the interests of our iwi, and it is the sole trustee of Waikato-Tainui's two raupatu settlement trusts.

    (b) The two raupatu settlement trusts established as post-settlement governance entities for Waikato-Tainui are:

(i) the Waikato Raupatu Lands Trust (**Lands Trust**), established for the purpose of the Waikato-Tainui Raupatu Claims Settlement Act 1995; and

(ii) the Waikato Raupatu River Trust (**River Trust**), established for the purpose of the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010.

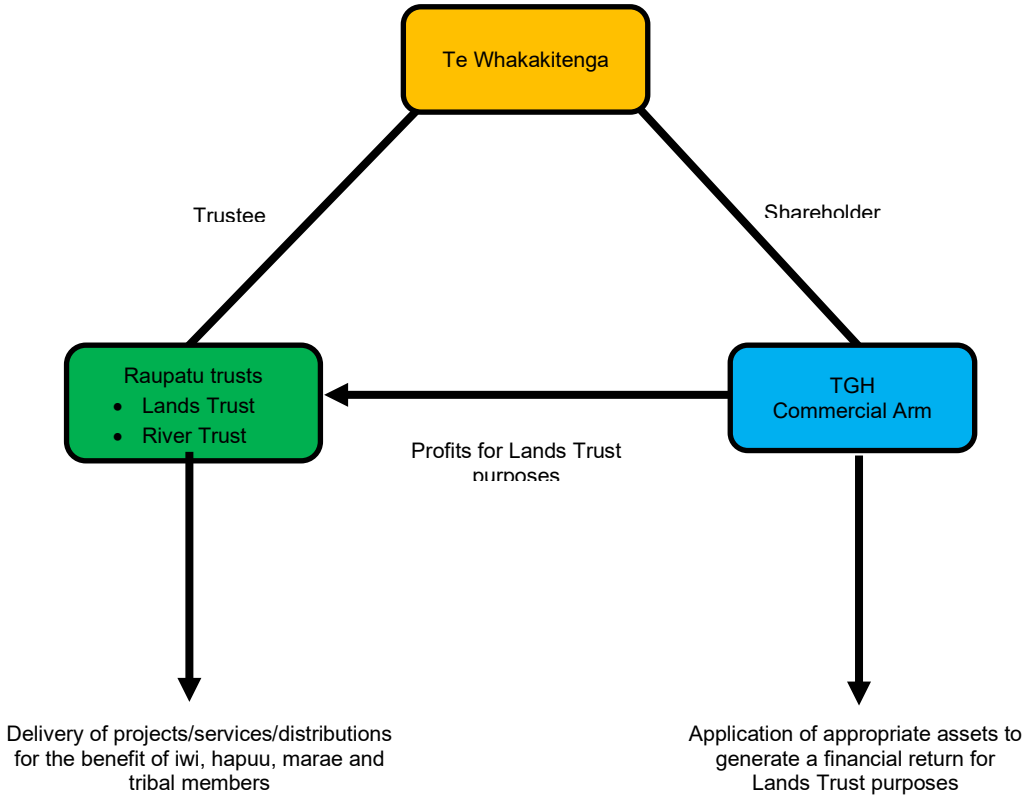
These entities hold land (in the case of the Lands Trust), rights in respect of the Waikato River (in the case of the River Trust), and settlement funds received from the Crown, on trust, to redress the economic and wider deprivations suffered by our people as a result of the Raupatu and other Tiriti breaches. Te Whakakitenga is the corporate trustee of each of these Trusts.

(c) Tainui Group Holdings Limited (**TGH**) is 100% owned by Te Whakakitenga and oversees Waikato-Tainui's commercial arm. Waikato-Tainui's commercial arm seeks to provide a robust economic base for the iwi and generate sustainable financial returns from appropriate assets in order to further the purposes of the Lands Trust for the benefit of the iwi, now and into the future.

35. Additional entities work underneath or alongside the principal Waikato-Tainui entities to deliver or undertake particular activities or projects for the benefit of our iwi. As noted, our iwi and hapuu are also represented and provided for by the various marae within our rohe.

36. These principal Waikato-Tainui entities and their respective roles are illustrated in the diagram below.

PRINCIPAL WAIKATO-TAINUI ENTITIES



Our approach to providing the foundations for the well-being of our iwi

37. Waikato-Tainui honours and pursues the vision inherited from Kiingi Tawhiao, "*maaku anoo e hanga I tooku nei whare…*" - to build our own house in order to face the challenges of the future. In doing so, Waikato-Tainui exercises rangatiratanga, mana whakahaere, and perpetual stewardship over our rohe and our whenua and other taonga and assets for the benefit of our iwi.

38. As kaitiaki or stewards of our rohe and our whenua and other taonga and assets, our mahi is to preserve, protect, and enhance our rich natural environments for both current and future generations. This involves looking many generations into the future, i.e. over the next 500+ years, not just looking at the next few years or decades. This stewardship obligation goes to the very core of our worldview and our connection with our whenua and other taonga, including our rivers.

39. Sound stewardship of our assets also extends to applying appropriate assets to investment and business activities, which is fundamental to providing the foundations for the well-being of our iwi. This is consistent with the mission set down by Princess Te Puea - *kia tupu, kia hua, kia puaawai* - to grow, prosper and sustain, to flourish. A robust economic base and sustainable financial returns using appropriate assets gives us the capacity to manaaki, or care for and respect, our whaanau, hapuu, and iwi and the communities in which our people live.

40. Manaakitanga manifests itself in many ways, for example by providing educational and vocational opportunities for our people, looking after our kaumaatua and supporting our marae through grants and scholarships. We are also involved in or pursuing various other projects for the benefit of our people, including housing assistance for those in need and healthcare and other initiatives.

41. A further important aspect of our approach is that Waikato-Tainui entities represent and work for, and are accountable to and held accountable by, our people, in particular through Te Whakakitenga and its executive committee Te Arataura (which principally comprises elected marae representatives).

PART 2: KEY ASPECTS OF THE CURRENT CHARITIES FRAMEWORK AND TAX SYSTEM AFFECTING WAIKATO-TAINUI ENTITIES

1. Key aspects of the current charities framework and tax system affecting Waikato-Tainui entities are as follows.

   (a) Under New Zealand's current, English-based charity law, charitable structures and associated tax concessions are the best available fit, albeit not an ideal fit, for many PSGEs and other Maaori entities that represent and work for iwi and hapuu and should be tax-exempt, in relation to both non-business income and any business income.

   (b) The availability of charitable and tax-exempt status for PSGEs and other Maaori entities that work for the benefit of iwi and hapuu appropriately reflects that we are still in a phase of redress and recovery from the economic, political, social and cultural deprivations suffered as a result of historical and ongoing Tiriti breaches, and this will continue for the foreseeable future.

   (c) This applies to Waikato-Tainui charities such as Te Whakakitenga and the Lands Trust, and the commercial arm TGH that supports the purposes of the Lands Trust, which have a critical, long-term role in relation to redress and recovery from the economic, political, social and cultural deprivations suffered by our people as a result of raupatu and other Tiriti breaches. As noted, this mahi will continue for many years to come.

   (d) Charitable structures and associated tax concessions are not an ideal fit, because New Zealand charity law, including the "charitable purposes" definition, fundamentally remains an English law construct, with significant Crown intrusion (e.g., via the role of the Attorney-General). In addition, Waikato-Tainui's rangatiratanga, mana whakahaere and perpetual stewardship over our whenua and other taonga and assets for the benefit of our iwi, under the mana of Kiingitanga, means that Waikato-Tainui charities may be viewed as more akin to the Crown itself and other governmental authorities that are tax-exempt, rather than being ordinary charities.

   (e) However, unless and until a more comprehensive review of New Zealand charity law is undertaken, in order to truly modernise the law for Aotearoa New Zealand and to weave Te Ao Maaori into the fabric of the law, the current charitable structures and associated tax concessions will remain the best available fit.

   (f) The settlements of Waikato-Tainui's Tiriti claims have recognised that the raupatu - including the confiscation of land in our rohe and the related invasion, hostilities, war, loss of life, destruction of taonga and property, and consequent suffering, distress and deprivation of our iwi – was a violation and grave injustice against our people, our rohe and our ancestral river, and against our rights under Te Tiriti, and had a crippling effect on the welfare, economy and potential development of our iwi.

   (g) The settlements also recognise that our Tiriti rights - including our rangatiratanga and mana whakahaere over our rohe and taonga - are not diminished or in any way affected. They are ongoing.

   (h) The settlements began a process of healing and a new age of cooperation with the Crown, but that process of healing, and the process of

regenerating and advancing the welfare, economy and development of our iwi, is ongoing.

(i) Consistent with our tikanga for our iwi, and for our entities' operations, proposed changes to the New Zealand tax system:

(i) must not be driven purely by economic or financial considerations. In particular, social, cultural and environmental considerations must be taken into account; and

(ii) must work for both current and future generations, and this means looking many generations into the future, i.e. over at least the next 500 to 600 years, not just at the next few years or decades.

(j) A strong, sustainable economic foundation gives us the capacity to manaaki, or care for and respect, our whaanau, hapuu, iwi and community. We do this in many ways, including through educational and vocational opportunities for our people through grants, scholarships and our own institutions and businesses. We are also involved in or considering various other projects that directly benefit our people, including housing projects and healthcare initiatives. As is the case with this submission, our current economic situation allows us to be informed and take action in keys areas that affect our people. A favourable tax framework is vital to the sustainability and success of our various initiatives. Success in these areas leads to favourable outcomes for both our iwi and the communities in which they live.

(k) Mahitahi and kotahitanga, collaboration and unity, are also relevant to this kaupapa. These values capture our commitment to work together with others to achieve common goals. In that spirit, our submission in centred on our desire to see a tax system that supports all Maaori in growing and sustaining tribal assets consistent with the time-honoured vision inherited from Kiingi Tawhiao, "maaku anoo e hanga I tooku nei whare…" - to build our own house in order to face the challenges of the future.

PART 3: OUR PERSPECTIVE ON THE PAPER

Concerns over timing of consultation and need for informed policy development

1. The sudden release of the Paper with a four-week submission window raises serious concerns. This timeframe does not allow for a principled and well-considered consultation process. Given the complexity of the charities and tax sector, and the potential impacts on not-for-profits, iwi, and PSGEs and marae, a more deliberate and consultative process is required. The rushed nature of this consultation makes unforeseen consequences inevitable. This will lead to endless challenges and remedials. A longer, structured consultation would enable affected organisations to engage meaningfully, ensuring that any reforms are fit for purpose.

2. Furthermore, the issues and questions raised in the Paper are not new. The 2018 Tax Working Group, and then the Charities Working Group, examined aspects of tax integrity, compliance burdens and the role of not-for-profits in the tax system.

3. A practical and balanced approach to addressing concerns around integrity was introduced through the improved disclosure amendments to the charities legislation to enhance transparency and voluntary accountability. For example, changes to the annual return forms for charities now require large charities to explain why they are accumulating funds. This ensures that charities provide clear justification for retained earnings, rather than merely reporting amounts in isolation.

4. As noted in the Charities Services annual report "*[b]y specifying their reasons, charities can show they are using their funds wisely, not just storing money without a clear plan. Previously, charities only reported the amount saved. This change helps reassure donors and the public that funds are managed responsibly and support the charity's mission"*[1], which addresses a sensible pragmatic result on requiring improved disclosure and hence increased transparency and voluntary accountability.

5. Enhanced transparency measures have already been introduced and are actively improving accountability. No further changes are required in this regard.

Recognising the unique role of Iwi and PSGEs in the Charitable Sector

6. The Paper fails to acknowledge the unique governance structures of iwi and PSGEs. These entities operate with long-term intergenerational objectives tied to their respective Te Tiriti settlements and play a critical role in delivering economic and social benefits to iwi. The proposed taxation changes risk undermining these objectives and our settlements by imposing compliance burdens that do not align with our agreements with the Crown. Without direct and targeted consultation with iwi, PSGEs, and marae, changes to policy will create unintended financial and administrative consequences that will hinder our ability to fulfil not only our mandates.

7. Further, this risks a regression in our relationship with the Crown moving from a place of healing and co-operation back to one of grievance. This exposes the Crown to new claims under Te Tiriti and will undermine the progress made via settlements. Despite IRD having a departmental obligation under Te Tiriti to understand the impact of any proposed policy changes for Maaori and to consider how any negative or unintended effects might be mitigated, the Paper does not engage at all with the impacts of the proposal on Maaori charities.

[1] Charities Services Annual Review 2023/2024, Nga-Ratonga-Kaupapa-Atawhai-Annual-Review-2023_2024-V1.pdf.

Integrity and Simplification

8. The Paper states that the objectives of the Government's tax and social policy work programme, is to "*simplify tax rules, reduce compliance costs, and address integrity risks*". However, there is little supporting analysis to demonstrate how these objectives will be met. Key concerns include the following.

   (a) If integrity risks within the not-for-profit sector are a concern, any specific issues should be addressed within the existing charitable sector framework rather than through sweeping tax policy changes that impact all not-for-profits, including iwi, PSGEs, and marae. If the primary concern is the misuse of charitable status under the Charities Act, a targeted response within that framework would be more effective. Applying a broad-brush approach through tax exemptions is likely to result in disproportionately affecting legitimate organisations while failing to address isolated cases of misconduct.

   (b) It is not within the purview of the IRD to consider the effectiveness of certain tax concessions in terms of charitable objectives and public benefits. Instead, this sits within the remit of the charities regulator. If concerns exist around integrity risks in charities and not-for-profit entities, a first-principles review, similar to the Law Commission's approach to Incorporated Societies, should be undertaken. This review should critically examine the role of charities in modern Aotearoa New Zealand, their contribution to society, and the level of public and regulatory support they should receive. Such an approach would ensure that any policy changes, including taxation proposals, are evidence based, fit for purpose, and aligned with the broader social, economic, and Te Tiriti obligations that underpin PSGEs.

   (c) The paper omits any modelling to show how any proposed changes will lead to tax simplification or compliance cost reductions. Many iwi, PSGEs and marae may, in fact, experience increased compliance burdens, given their unique structures and responsibilities. Effective tax policy must be evidence-based, with clear projections of its impact on the sector.

   (d) The paper itself acknowledges that tax-exempt charitable businesses do not have a competitive advantage. Any revenue that might be raised by implementing the proposals is likely to be offset by compliance, enforcement, and monitoring cost.

New Zealand's unique tax treatment of charitable business activities

9. The Paper asserts that the current tax policy setting makes New Zealand an international outlier, indicating that many countries restrict charitable entities' commercial activities or tax unrelated business income to avoid unfair competition claims and to separate risk from a charity's assets, and ensure profits support charitable purposes.

10. Our view is that New Zealand's current approach to charities, including PSGEs, reflects our unique legal and economic landscape. While our arguments against taxation on unrelated business income are covered in greater detail in Part 4 of this submission, we assert that being an international outlier is not inherently problematic. For example, New Zealand does not impose a capital gains tax, setting us apart from many other jurisdictions. Similarly, the current tax treatment of PSGEs has been intentionally structured to support their long-term intergenerational obligations arising out of Te Tiriti settlements. Any changes to this tax framework

must carefully consider these unique factors rather than simply seeking alignment with international practices.

11. Notably, we are currently attracting foreign investors to continue our pipeline of development in our rohe due to the investment sector stability and relatively simple tax settings. Those investors will be observing these proposals closely to consider the impact that this will have on negotiations with potential infrastructure partners which include iwi investment entities. We explore this further in Part 5 of this submission.

12. The assertion in the Paper that "*Tax concessions for unrelated charity businesses reduce revenue and therefore shift the tax burden to other taxpayers*" is fundamentally flawed. Charities and PSGEs use tax exemptions to reinvest in their communities, reducing reliance on government welfare programmes and driving economic development. The revenue generated by Waikato-Tainui entities is not lost to the tax system. It is redistributed into social, cultural, education and economic initiatives that ultimately reduce the need for government support and intervention. In particular, taxing PSGEs would not ease the burden on other taxpayers. Rather, it would increase the pressure on government resources as PSGEs will be forced to cut back on vital services, creating long-term costs for the government and taxpayers alike.

PART 4: WAIKATO-TAINUI'S PERSPECTIVE AND SUBMISSIONS ON THE PROPOSAL TO TAX UNRELATED BUSINESS INCOME

1. The income tax exemption for charities' business income, to the extent that such income is attributable to charitable purposes in New Zealand, is appropriate and should be maintained. This includes the continued application of the exemption to so-called "unrelated" business income. Criticism of this exemption from some quarters does not give sufficient weight to the benefits of the current exemption. These benefits include:

    (a) enabling charities to accelerate business growth, whether related or unrelated to the relevant charitable purposes, in order to maximise and sustain revenue to further those charitable purposes; and

    (b) offsetting constraints that apply to businesses dedicated to charitable purposes in relation to accessing capital; and

    (c) encouraging innovation; and

    (d) keeping charity and charitable group arrangements simple, rather than encouraging restructuring and inefficiency by having different treatments for different income streams. It does not create an unfair advantage.

2. In the case of Waikato-Tainui entities that utilise the exemption, including TGH, which runs the Waikato-Tainui's commercial arm with the sole objective of furthering the Land Trust's charitable purposes, the exemption enables such entities to maximise and sustain their contribution towards redressing the consequences of Raupatu and Te Tiriti breaches for our iwi, as noted above.

3. Sound steward of our assets also extends to applying appropriate assets to investment and business activities, which is fundamental to provide a sustainable foundation for the wellbeing of our iwi. In Waikato-Tainui's case, taxation of business income generated for charitable purposes will have a significant impact on our ability to support our whaanau, hapuu, and iwi and positively contribute to the growth of New Zealand's economy. Waikato-Tainui has a range of charities within our PSGE structures that manage Te Tiriti settlement redress assets, assets received to remedy historical breaches by the Crown of Te Tiriti and support restoration of the hapuu and iwi economic base on an intergenerational scale.

4. Our commercial entities, such as TGH, has the responsibility to protect and grow the commercial assets of our iwi. All profits generated by TGH fund education, health, kaumaatua (elderly), cultural, housing, employment and environmental programmes implemented by Waikato-Tainui and are reinvested into growing the economic base of our iwi to foster mana motuhake (self-reliance) and intergenerational sustainability for future generations.

5. Distribution payments from TGH enables us to deliver initiatives that support our whaanau, marae, hapuu and iwi in the following ways.

    (a) Funding tribal development programmes such as annual education scholarships, kaumaatua and medical grants, reo and tikanga development, tribal events as well as operational costs.

    (b) Providing kai to our marae, some of which is sourced through business partnerships. Each year meat to the value of $800 and 60kg of kuutai (mussels) are donated to marae. When available, kaimoana is also sourced.

6. The tribal investment frameworks set out tribal expectations for our commercial investments, which continue to be embedded into decision-making to ensure alignment to our iwi aspirations. These frameworks differentiate the status of our commercial entities as a unique iwi commercial enterprise, helped by a number of our programmes such as internships, rural cadetships, Te Ohu Amorangi future director programme, job and iwi business procurement opportunities, workshops, and an internal cultural competency focus.

7. The proposal contained in the Paper to tax business income that is unrelated to an entity's charitable purposes, particularly income that is accumulated, as a means to increase government revenue and relieve taxpayers of the burden, fundamentally undermines the ability of PSGEs to achieve the objectives for which they were established to manage its Te Tiriti settlement redress for the benefit of its iwi members. It disregards the unique nature of Te Tiriti settlements and the long-term strategies PSGEs must employ to provide intergenerational benefits to our iwi.

8. The tax framework for charities, including the income tax exemptions for both non-business and business income (including 'unrelated' business income), is appropriate and should be maintained. Current settings enhance our ability to carry out the work for the benefit of iwi, offset constraints in relation to accessing capital, and avoid the complexity and inefficiency created by having different treatments for different income streams.

9. In particular, Waikato-Tainui submits that:

   (a) the availability of charitable and tax-exempt status for many Maaori entities, including Waikato-Tainui entities, that work for the benefit of iwi and hapuu, appropriately reflects that we are still in a phase of redressing the economic, political, social and cultural deprivations suffered by our people, and by other iwi and hapuu, as a result of raupatu and other Tiriti breaches. This will continue to be the case for the foreseeable future; and

   (b) tax-exempt status for Waikato-Tainui entities, albeit with reference to the English law construct of "charitable status", is also consistent with Waikato-Tainui's rangatiratanga, mana whakahaere and perpetual stewardship over our whenua and other assets for the benefit of our iwi. In this sense Waikato-Tainui entities are more akin to the Crown and public authorities that are tax-exempt to other "ordinary" charities.

10. When the economic downturn had a negative impact on commercial growth in New Zealand, TGH was able to meet its 2.5% distribution target in FY24 with $32.6m being paid to Waikato-Tainui. However, this required TGH having to top up a shortfall of $2.6m from its cash reserves. When achieving strong returns and the distribution target is positive, using cash reserves to fund distribution is unsustainable. While there are some signs of recovery in the global economy, the WRLT fund's concentration of domestic investment assets means that the FY25 results will likely be more subdued than we have seen in FY24. These investments allow us to build a sustainable foundation to support the charitable objectives of our iwi.

11. Building charitable reserves or funds intended for passive investment is a widely recognised and traditional approach to governance in the charitable sector. However, the practical reality of managing a prudent investment portfolio is that the capital allocated for investment must be substantial in order to generate meaningful income, which can then be utilised to support ongoing operations. As was the case for Waikato-Tainui, having access to cash reserves is crucial for supporting our iwi,

particularly during times of economic downturn. Even if our entities do not perform well financially in any given year, these reserves allow us to continue to meet the needs of our whaanau, hapuu and iwi. During periods of financial stability or market growth we set aside funds, ensuring that when there is a downturn, we can rely on these reserves to maintain our services and commitments.

12. Our approach to accumulation is integral to our long-term financial strategy. The purpose of accumulation is to preserve the buying power of the funds in order to support future generations. Any attempt to tax accumulated funds will undermine the long-term objectives of our iwi and affiliated marae.

13. The Paper suggests that untaxed, unrelated business income within charities represents a fiscal loss to the government. This oversimplified approach overlooks the significant public benefits generated by charitable entities with an intergenerational lens. Charities, including iwi, PSGEs, and marae play a vital role in supporting their communities, and provide social, cultural, and economic value that extends well beyond their immediate operations. Rather than creating a tax burden on other taxpayers as suggested in the Paper, tax concessions enable these organisations to fulfil their charitable purpose and contribute to society. If taxation on unrelated business activities is pursued, it is essential that iwi, PSGEs, and marae are excluded from that policy change in the light of their Te Tiriti settlements and their long-term intergenerational goals. These entities should not be subject to the same tax treatment as other charities without a clear understanding of the unique context and the critical role they play in addressing the intergenerational impacts of Te Tiriti breaches.

PART 5: WAIKATO-TAINUI'S PERSPECTIVE AND SUBMISSIONS ON DEFINING RELATED AND UNRELATED BUSINESS ACTIVITY INCOME

1. The distinction between related and unrelated activities is complex, particularly in the context of iwi, PSGEs and marae. All activities, commercial, social, cultural and educational, are inherently connected to the broader purpose of advancing iwi interests and addressing the intergenerational impacts of Te Tiriti breaches. Applying the 'fiscal cost' rationale set out in the Paper is misguided and overly simplistic and fails to account for the matters set out in our submission.

2. More widely, the current proposal fails to consider the extreme diversity among the 29,000 registered charities in New Zealand of varying sizes, complexity and purposes. Attempting to define related and unrelated business activity in a way that applies universally would lead to endless litigation and administrative challenges. There is no one-size-fits-all definition that can effectively capture the vast range of activities across this sector. Tier 1 and 2 entities in the sector will not passively accept these changes and have the means to restructure their affairs in response. Any revenue projections must account for this inevitability. Any proposed regime will be expensive to maintain and is unlikely to yield the desired fiscal benefits.

3. A broad definition of "unrelated" business activity could have significant adverse impacts on PSGEs that were created to address the long-term effects of raupatu and Te Tiriti breaches, as follows.

    (a) If a tax is imposed on income that is either passive or accumulated, this will reduce our ability to effectively manage and distribute funds into critical iwi development projects, such as social, education, housing, health and the environment. The inability to generate sufficient income would result in reliance on government support and funding, undermining the principle of mana motuhake (self-sufficiency) intended by our settlement.

    (b) PSGEs and marae would be burdened with the administrative complexity of distinguishing between related and unrelated income (and expenses). A proposed definition risks introducing a costly and inefficient system of classification that would divert resources away from fulfilling charitable purposes, ultimately undermining the very goals the government seeks to support within the community.

    (c) A proposed definition would erode the foundations of Te Tiriti settlements, which were to enable iwi to manage their own affairs and create economic independence. By narrowing the scope of what constitutes "related" business activities, the Crown could effectively limit the ways in which PSGEs and marae can use their assets to fulfil their charitable purposes.

    (d) PSGEs and marae rely on income from a broad range of sources, commercial and non-commercial, to fund strategic investments that enhance iwi prosperity. Imposing tax on unrelated business activity would discourage long-term planning and investment in ventures that ultimately support iwi growth and wellbeing.

4. Changes to the tax treatment of business income will have a significant negative impact on our ability to effectively manage and distribute funds for the benefit of our iwi and marae. Making commercial returns is vital for enabling social and cultural outcomes, especially for PSGEs and marae. These entities rely on the generation of income from both charitable and commercial activities to fund important initiatives, such as housing, education, and health.

5. Moreover, Waikato-Tainui operates with a high degree of accountability. Representatives from our marae are directly involved in ensuring that funds are expended and align with community needs and long-term aspirations. Any changes that undermine our ability to make commercial returns could restrict our ability to achieve these outcomes. For example, our overarching investment framework includes mechanisms to ensure that we maintain the purchasing power of iwi funds for the future generations.

6. One of our most significant concerns is that the proposed definition could inadvertently capture passive and investment income, which is a critical component of our long-term financial strategy. Investment income is not derived from competitive advantage, and it should not be subject to the same tax treatment as active business income. For this reason, we strongly recommend a carve-out for investment income to preserve the tax-exempt status it currently enjoys. Applying taxes to investment income would create undue financial pressure on PSGEs and disrupt long-term planning. This could also raise concerns among international investors who are attracted to New Zealand due to its stable investment environment. Any uncertainty in the tax framework could discourage investment and undermine the economic growth needed to support our iwi.

7. The government's focus on key growth sectors such as renewable energy, clean technology, and advanced transportation aligns well with iwi sustainable development goals.

8. The Ruakura Superhub is a signature project and example of the intergenerational approach TGH takes to investment. We are deeply committed to our tribal rohe (region) and to its development, sustainability and prosperity. The Superhub is dedicated to sustainability and is actively working towards reducing our carbon footprint and emissions, enhancing ecological values, and harnessing clean energy sources to create a more sustainable and eco-friendly future for our community and Aotearoa New Zealand.

9. Ruakura Inland Port is a joint venture between TGH and the Port of Tauranga. The Port creates an integrated, cost-effective supply chain solution for both importers and exporters and is situated within the Ruakura Superhub which occupies underlying iwi held land.

10. Similarly, Ruakura Energy is one of our infrastructure investments. It launches in mid-2025 and provides another valuable asset to the tribal kete that has already attracted overseas investors.

11. The participation of iwi investment entities alongside major national funds at the recent Infrastructure Investment Summit demonstrates the strategic importance of Maaori economic partnerships in attracting foreign investment. By leveraging their unique cultural and economic strengths, iwi can position themselves as attractive partners for foreign investors seeking to contribute to New Zealand's infrastructure development. This approach not only benefits iwi but also supports the government's broader objective of addressing the country's infrastructure gap and fostering economic growth that benefits all New Zealanders. The proposals in the Paper will have a chilling effect on negotiations with potential infrastructure partners and will reduce and undermine innovation and investment in regional and national infrastructure sectors. The Paper and the proposal within it have already been flagged by one such partner as a concern.

12. A proposed definition on unrelated business income and its potential application to our activities creates significant uncertainty, particularly in the context of attracting international business partners and investors. PSGEs often engage in global

partnerships to further their development initiatives, and this uncertainty could negatively affect their willingness to invest in or partner with New Zealand-based entities. This risks deterring international investors who rely on the current simplicity, clarity and predictability of the New Zealand tax environment.

13. The proposed system would likely result in considerable administrative costs, both for charities and for the government. The complexities of defining related and unrelated business activities, coupled with the need for ongoing compliance, will create a significant administrative burden. We doubt whether the revenue generated from taxing unrelated business income would be sufficient to justify the costs of implementing and managing such a system.

14. Finally, if the intention behind this definition is to tax unrelated business income, we strongly believe that the definition should specifically exclude iwi, PSGEs and marae. These assets were acquired to redress historical wrongs and should not be subject to taxation that would undermine their purpose. Taxing income from these entities would be inconsistent with the intentions of Te Tiriti settlements and will have a detrimental impact on the ability of iwi to continue their development and healing process.

PART 6: RESPONSES TO CERTAIN QUESTIONS RAISED IN THE 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 [of the Paper] warrant taxing charity business income?

1. The purpose of settlements is to apologise for, and address, historical injustices, but they did not, and cannot, fully compensate for the extent of what was lost. For example, 1.2 million acres of land were wrongfully confiscated from Waikato iwi in 1863, yet the settlement returned only 3% of that total land lost (circa 39,000 acres). The value of the confiscated land in 1995 dollars (at settlement) was $12billion and our settlement valued at only $170million. Iwi entities received under settlements what can only be described as "seed" money and assets with the clear intention to restore and uplift the iwi through subsequent, intergenerational recovery and investment activity.

2. This work continues and will be required for subsequent generations to address the social, economic, and cultural deprivations suffered by Waikato as a result of the raupatu and Te Tiriti breaches. The tax framework for charities, including the income tax exemptions for both non-business and business income (including 'unrelated' business income), is appropriate to these ends and should not be changed. Current tax settings reflect that we are still in a phase of redressing the economic, political, social, and cultural deprivations suffered by our people. Current settings enhance our ability to carry out the work for the benefit of iwi, offset constraints in relation to accessing capital, and avoid the complexity and inefficiency created by having different treatments for different income streams.

3. The consultation process has not provided sufficient time or meaningful engagement with iwi, Maaori, and post-settlement governance entities (**PSGEs**) to assess the full implications of the proposed tax changes. Without robust consultation and publicly tested modelling, we cannot provide a well-informed response to these questions. However, we raise significant concerns about the potential impacts on iwi and their PSGEs and their ability to fulfil their mandates.

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?

4. For the avoidance of doubt, we reject the need for any change. If any changes are made, a simple carve out should be effected (see **Part 7** for the suggested detailed wording) to ensure that the settings are not changed in relation to PSGEs and/or marae.

5. Any definition of "unrelated business activity" must ensure it does not undermine the fundamental purpose of PSGEs, which is to generate income to support the social, cultural, and economic development of our people and for our mokopuna. PSGEs are not traditional charities—they were established to provide redress for Treaty breaches and enable self-determination (mana motuhake). Commercial activities and investment income are essential tools for achieving these outcomes. Applying a tax burden to these activities' risks reversing the progress that settlements were designed to achieve.

6. The proposed taxation framework lacks clarity on whether passive investment income would be captured. Investment portfolios are a key strategy for PSGEs to sustain intergenerational wealth and avoid dependence on government funding. Imposing taxes on these funds would create financial instability and undermine the ability of PSGEs to provide for future generations. Any definition of unrelated

business income must explicitly exclude investment income and Treaty settlement assets.

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?

7. For the avoidance of doubt, we reject the need for any change. If any changes are made, a simple carve out should be effected (see **Part 7** for the suggested detailed wording) to ensure that the settings are not changed in relation to PSGEs and/or marae.

8. Further consultation would be required to assess whether any threshold for small-scale business activities could be appropriate. Many PSGEs operate a mix of commercial ventures, passive investments, and reinvestment strategies to maintain long-term financial security. Arbitrary thresholds could impose unnecessary constraints that do not align with the needs and structures of iwi organisations.

9. If the intention is to raise government revenue, a tiered system with a de minimis threshold does not justify the likely harm it would cause for marae, iwi and PSGEs. As noted in the Paper, only a portion of charities may be carrying on activities unrelated to their charitable purposes. However, such a creating a de minimis threshold could inadvertently affect the broader scope of iwi organisations, particularly marae, some of whom are registered charities, relying on income from various sources and activities to support their charitable purposes.

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?

10. For the avoidance of doubt, we reject the need for any change. If any changes are made, a simple carve out should be added to the Income Tax Act 2007 (e.g. new section HF 2(2)(d)(vi) via Order in Council dealing with PSGE and marae commercial activities) to ensure that the settings are not changed in relation to PSGEs and/or marae.

11. Previous consultation and changes to the charities monitoring and enforcement regime resulted in Tier 1-3 charities having to explain why accumulations are being made in their annual reporting. We consider as an affected charity that this has achieved the desired transparency, and no further change is required.

12. In any event, Waikato-Tainui has a thoughtful, transparent, and closely monitored reserving policy built into its sophisticated investment framework. This has been developed proactively over time and accumulation issues have been carefully addressed and thought through. Waikato-Tainui is severely and appropriately constrained by the immediate oversight of its beneficiaries via their marae, who would not tolerate the accumulation of funds if that were not congruent with its settlement purposes and goals.

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.

13. For the avoidance of doubt, we reject the need for any change. If any changes are made, a simple carve out should be effected (see **Part 7** for the suggested detailed

wording) to ensure that the settings are not changed in relation to PSGEs and/or marae.

14. For the reasons set out in this submission above, before any changes are entertained let alone made, the government must undertake proper consultation in which detailed financial modelling is provided to understand the true impact on affected parties. Without this, the proposed changes risk being counterproductive, creating financial instability in the charitable sector and undermining Te Tiriti settlements.

15. Finally, we strongly caution against any approach that does not recognise the unique status and settlement history of iwi and PSGEs who operate in the charitable sector. The Crown has a direct obligation to iwi under Te Tiriti, and PSGEs exist because of historical breaches of Te Tiriti by the Crown. Removing charitable tax status for Te Tiriti settlement assets and iwi commercial activities would be a step backwards in the Crown-iwi partnership, and if effected in this manner will give rise to new Te Tiriti claims and grievances.

PART 7: EXEMPTION

1. Any proposal to change the tax settings that apply to charities needs to carefully assess the impact on Maaori charities. If a tax on unrelated business income were to proceed, Waikato-Tainui considers that a general exemption should be granted to specified Maaori charities regardless of their tier, including the following.

   (a) Charities established as part of PSGE structures to hold and manage Treaty settlement redress acquired to redress historical wrongs. They should not be subject to taxation that would undermine their purpose. Taxing income from these entities would be inconsistent with the intentions of their Te Tiriti settlements and could have a detrimental impact on the ability of iwi to continue their development and healing processes.

   (b) Mandated iwi organisations (**MIOs**) and asset holding companies (**AHCs**) established under the Maaori Fisheries Act 2004 (**MFA**) and iwi aquaculture organisations (**IAOs**) under the Maaori Commercial Aquaculture Settlement Act 2004. These entities are established to hold and manage fisheries settlement assets for the benefit of hapuu and iwi. MIOs, IAOs and AHCs are already subject to onerous compliance requirements under the MFA.

   (c) Maaori Trust Boards established pursuant to the Maaori Trusts Boards Act 1955 (**MTBA**). Maaori Trust Boards are similar to PSGEs in that they were originally established to receive and administer compensation awarded by the Crown in recognition of Maaori grievances, have an option to become charitable under s24B of the MTBA, and are exclusively established to hold assets for collective iwi benefit. Their functions are statutorily prescribed under s24 of the MTBA and are charitable in nature.

   (d) Companies, trusts, or Maaori reservations established under Te Ture Whenua Maaori to hold their assets on charitable trust. The Maaori Land Court has jurisdiction to declare any trust holds its assets on charitable trust under s245, and any Maaori incorporation may hold assets on charitable trust by special resolution under s258 (although that will not cause a Maaori land entity to become tax exempt). Maaori reservations hold their assets for communal benefit.

Detailed wording for exemption

2. We suggest the following detailed wording to effect the above outcomes.

   Exempt income

   Income derived directly or indirectly from a business is exempt income if carried on by, or for:

   (a) an entity which, at the time that the income is derived, is registered as a charitable entity under the Charities Act 2005; and

   (b) is for the benefit of a trust, society, or institution of the kind referred to in section 2 below.

Exempt entities

Trusts and subsidiaries

(a) The trustees of a trust that is recognised by Te Ohu Kai Moana Trustee Limited as a mandated iwi organisation under section 13(1) of the Māori Fisheries Act 2004:

(b) The trustees of a trust established by an order made under Te Ture Whenua Māori Act 1993 (the Māori Land Act 1993):

(c) The trustees of a trust who own land that is subject to Te Ture Whenua Māori Act 1993 (the Māori Land Act 1993):

(d) The trustees of a trust who own land as a Māori reservation established under s 338 of Te Ture Whenua Māori Act 1993 (the Māori Land Act 1993):

(e) The trustees of a trust who:

(i) on behalf of Māori claimants, receive and manage assets that are transferred by the Crown as part of the settlement of a claim under the Treaty of Waitangi; and

(ii) are contemplated by the deed of settlement of the claim and are performing the functions described in subparagraph (i):

(f) a wholly owned subsidiary of a trust of the kind referred to in subparagraph (e).

Companies and subsidiaries

(a) A company established by an order made under Te Ture Whenua Māori Act 1993 (the Māori Land Act 1993):

(b) A company that owns land that is subject to Te Ture Whenua Māori Act 1993 (the Māori Land Act 1993):

(c) A company that is established by a mandated iwi organisation to be an asset-holding company, as contemplated by section 12(1)(d) of the Māori Fisheries Act 2004:

(d) A company that on behalf of Māori claimants, receives and manages assets that are transferred by the Crown as part of the settlement of a claim under the Treaty of Waitangi;

(e) A wholly owned subsidiary of a company of the kind referred to in subparagraph (d).

Māori Trust Board

(a) A Māori Trust Board, as defined in section 2 of the Māori Trust Boards Act 1955.

Other charities

(a) A charity that is otherwise established for the exclusive benefit of a hapū or iwi.

DATED 31 March 2025

TE WHAKAKITENGA O WAIKATO INCORPORATED

s 9(2)(a)

Donna Flavell
Chief Executive Officer

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APPENDIX ONE - Statement of Service Performance and Annual Report 2024

The Statement of Service and Performance and Annual Report 2024 (Te Puurongo aa-Tau a Waikato-Tainui) can be accessed in the link here.

Submission

IRD Consultation: Taxation and the not-for-profit sector

Name	Fraenzi Furigo, Secretary/Treasurer & Richard Wells, Vice-Chairperson
Email	s 9(2)(a)
Organisation/Iwi	French Pass Residents Incorporated
Date	31 March 2025

Thank you for the opportunity to comment on the Officials' issues paper concerning taxation and the not-for-profit sector.

We are submitting as representatives of a small (Tier 4) charity, and our views might not be shared by all of our members.

We have reviewed the issues paper and found that for us the most important of your questions is

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 residents withholding tax exemption rules for NFPs**

We think that it would be good to increase the current deduction from $1,000 to $10,000. This would remove a lot of the smaller NFPs from the tax system, but still would ensure that 'big earners' pay tax once their income is higher. Doing this would reduce the costs of transactions for smaller NFPs and also IRD, which should be a win-win for both parties.

Rātā Foundation

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31 March 2025

David Carrigan
Deputy Commissioner, Policy
Inland Revenue Department
Via email policy.webmaster@ird.govt.nz

Rātā Foundation appreciates the opportunity to submit on Inland Revenue's Official Issues Paper: Taxation and the Not-for-Profit Sector. We acknowledge the government's intent to review the tax concessions provided to charitable entities.
Rātā Foundation is one of the twelve Community Trusts, established under the Community Trusts Act 1988. Rātā Foundation is the South Island's most significant community investment fund.

Rātā manages a $700 million pūtea. The investment income generated from this investment portfolio is used to inflation proofing of the fund, ensuring intergenerational sustainability, and distribution of $26 million per annum into its funding regions of Canterbury, Nelson, Marlborough and the Chatham Islands.

At Rātā, our work is driven by evidence. Our funding makes the biggest difference in the lives of people with greatest need. We partner with communities and stakeholders to help create an equitable and sustainable society. By working together, we make an impact in people's lives. So, people are empowered to thrive.

This submission addresses the proposed changes from two perspectives: 1) the perspective of the not for profit entities we typically fund, and 2) Rātā Foundation as a non-tax paying entity.

Summary of Submission

1) **There are potentially some unintended consequences for the not-for-profit sector with the changes proposed, caution is needed so these are not materialised.**
2) **This change could inadvertently capture Community Trusts formed under the Community Trusts Act 1999, and their subsidiaries. These organisations should be excluded from the review.**

Issues for the Not-for-Profit Sector

We are uncertain whether the changes being considered are net beneficial when looking at the increased revenue generations against the decreased ability for charities to sustainably deliver social benefits.
A stated driver is revenue generation, however the examples provided seem to be outliers and imply some use of the current system for non-altruistic purposes. This would not be our general observation of the sector. Our views would be:

1. **Cost Benefit**

   Charities in New Zealand play a crucial role in providing social outcomes, including lifting learning outcomes, improving quality of life for vulnerable people, enhancing community connectedness, enabling participation in cultural activities alongside

environmental outcomes. The benefit provided from tax exemption is reciprocity for the valuable contribution made by the sector. We submit that the country gets a good deal in terms of the averted social harm which might arise in the absence of a vibrant community and not for profit sector. We would encourage Inland Revenue to fully evaluate the value of these benefits in comparison to forecast revenue generation.

2. Self-Reliance and Financial Sustainability of the Sector

a) Over many years, Rātā Foundation and other philanthropic funders has sought to strengthen the community sector by encouraging organisations to look at their financial sustainability. This has included work to strengthen governance, fundraising capabilities and in some cases diversify to develop social enterprises. Many charities operate trading arms (e.g. op shops, training programs) to generate sustainable revenue. Subjecting these to taxation could undermine self-sufficiency and increase dependency on external funding including that from Rātā.

b) The proposed approach is likely to further disincentivise charities to invest into what could be seen as unrelated business activity and encourage charities to continue with more passive forms of investment (which often results in much of the capital being invested offshore). For example, a charity has the opportunity to invest in a passive New Zealand index fund or some infrastructure within New Zealand Fund (hospital, educational facility or similar) – both would provide similar levels of financial return, but on the one hand a shares in a passive New Zealand index fund could be considered related business activity and tax exempt, the investment into New Zealand infrastructure could be deemed unrelated business activity and income from this attracts tax obligations.

c) If the government does review the Income Tax Act as it applies to charities, we would support the review to look at how to incentivise the investment of charities into business activity or infrastructure within New Zealand.

3. Impacts on charity sustainability

Charities also take a long-term view to encouraging sustainability, this can mean accumulating reserves to be able to manage through uncertainties. As a philanthropic funder, we take a view on the line that is drawn between an organization being sustainable and balancing the need for funding from us. We have learnt that this is nuanced. Our Community Organisation Reserves policy aims to empower organisations to be intentional and clearly articulate their need to accumulate reserves, and to what level.

4. Reduced availability of Grant Funding

Philanthropic foundations and Trusts already make a huge contribution to the voluntary sector. If charities are financially disadvantaged by tax changes the call on philanthropic funds will be greater, at a time when philanthropic foundations are already facing increased demand. This would be compounded by Foundations themselves having their income reduced because of the tax changes.

Rātā Foundation as a non-tax paying Community Trust

We understand that the aim of these potential changes is not to capture community trusts (or community foundations) however the way it is implemented could inadvertently capture us because of our arrangements.

Our submission is the proposed changes should be explicitly clear that any community trust that has a tax exemption under Section CW52, or wholly owned subsidiary of that trust, is excluded from any proposed changes.
If this exclusion is not granted Inland Revenue has asked for specific examples of unintended consequences for the tax-exempt community trusts like Rātā Foundation:

1. **Taxation of Accumulated Income:**
   a) The proposed changes suggest that accumulated income within businesses unrelated to charitable purposes may become subject to taxation if not allocated towards charitable activities. This presents a significant risk to Rātā Foundation, as it could impact our ability to manage and distribute funds effectively.
   b) While Community Trusts like Rātā Foundation are tax-exempt under CW52 of the Income Tax Act, the risk lies where the accumulated income sitting in subsidiary charities is deemed unrelated to the business and is therefore taxed. These subsidiary charities were set up partly in response to the Income Tax Act changes in 2007/8.
   c) This could significantly erode the capital base which our trustees were entrusted to preserve at our inception, directly impacting our granting activity and our ability to support the communities in our funding area.
2. **Compliance and Administrative Burden:**
   The introduction of new tax regulations would likely increase the compliance and administrative burden on Rātā Foundation. The need to navigate complex tax rules and ensure compliance with new requirements could divert resources away from our core mission of supporting community initiatives. This increased burden is likely to lead to higher operational costs, further reducing the funds available for charitable purposes.
3. **Impact on Investment Strategies:**
   a) The proposed changes may necessitate a review of our investment strategies to ensure alignment with charitable purposes and avoid potential tax liabilities. This could limit our flexibility in managing investments, decreasing our ability to manage risk and reduce the overall returns on our portfolio.
   b) Restructuring is likely to increased risk of contagion, if one of our investment's defaults. This could have a cascading effect on our financial stability. In efforts to mitigate this we are likely to adopt a much more conservative asset allocation, reducing our long-term returns and impacting distribution.
   c) The need to restructure investments to comply with new regulations could also result in additional costs and complexities.
4. **Uncertainty and Financial Stability:**
   The uncertainty surrounding the proposed changes and their potential impact on our financial stability is a significant concern. The lack of clarity on how the changes will be implemented and their long-term implications could create an unstable environment for Rātā Foundation. This uncertainty could affect our ability to plan and execute our strategic priorities effectively.
5. **Mismatch in Cost-Benefit Analysis:**
   a) There is a mismatch in the cost-benefit analysis of introducing additional tax compliance obligations for community trusts compared with any potential revenue increase for the Government. The financial benefit anticipated by the Government may not justify the additional compliance costs imposed on Rātā Foundation.
   b) Additional compliance costs will result in us needing to reduce the amount of funds available for distribution to meet any tax requirements.

Conclusion

Our submission is that rather than comprehensively review the charitable tax exclusion we would support a more targeted approach to address, where potential misuse of the intent of charitable purpose is thought to have occurred. It would be our view that the Charities Act already has provisions to address this, and it is a lack of enforcement of those provisions which leads to these instances arising.

Our submission would be to reframe the review to answer the following question: How do we [government and not-for-profit sector] work together on a set of tax changes to unlock the potential of capital investment by the not-for-profit sector into housing, infrastructure and environmental projects within New Zealand? We note that that government is working to establish Invest NZ to catalyse overseas investment into New Zealand. Broadening the focus of Invest NZ to include domestic investment with a focus on Charities would seem to be a concrete step to enable this.

It is our view that catalysing investment from charitable entities such as iwi, Community Foundations and other large charities would be a pathway to growth. By enabling investment vehicles which enable charities to be tax efficient, would both enable entities to become more self- sustaining and at the same time bring additional investment into the New Zealand economy and infrastructure.

Yours sincerely

s 9(2)(a)

Leighton Evans
Chief Executive

Mb: s 9(2)(a)
Em

Public Consultation on taxation and the not-for-profit sector

Delivery	Policy.webmaster@ird.govt.nz
Date	31 March 2025
Submission	Central Kids Trust CC56826
Primary Contact	Mandy Carson Interim Chief Executive s 9(2)(a)
Second Contact	Suzanne Flannagan Board Chair s 9(2)(a)

Introduction

Central Kids Trust ('Central Kids') has been providing high-quality, affordable early childhood education and care since 1951. Central Kids is a not-for-profit organisation, holding charitable status, focused on producing impact and delivering against our charitable purpose.

Central Kids welcomes the opportunity to submit our feedback on this consultation. We are in the *one percent*, with expected expenditure for our 2025 financial year exceeding the defined 33m threshold. Central Kids are willing and able to commit to further contributions, should you need participation from key charities to shape policy in the future as we have in previous reviews – most recently the December 2024 Regulatory Review of Early Childhood Education undertaken by the Ministry for Regulation.

Background

Central Kids operates 50 kindergartens and early learning centres in 27 towns across the central North Island. With a pedagogy that is child-led, and a philosophy founded on learning through play, tamariki are able to grow at their own pace – socially, emotionally, physically and cognitively. Central Kids has professional governance, experienced leadership, and a team of over 290 highly qualified kaiako

(teachers), who understand the importance of providing children with passionate and positive influences from an early age. In total, we employ 611 staff.

In 2023 our organisation was acknowledged at the Waikato Business Awards in the For Purpose category, where we were awarded two prizes - for using commercial strategies to support community impact, and People's Choice, where our whānau and communities voted for us. We are a sustainable and strong organisation, independently verified as delivering a social return on investment measured to be $2.70-2.90 for every $1 of government funding received. We are truly invested in the future of the tamariki in New Zealand.

All of our early education services live and breathe te ao Māori values, to connect our tamariki to our history and heritage. Te reo is naturally woven into our everyday language and we authentically engage with local iwi and marae to expose our tamariki to customs and culture from an early age. It's important to us that we celebrate diversity and create a culture of inclusiveness for a more connected community, inside and outside of our early education services. Tamariki attending our services are from a range of demographic backgrounds, with 50% being Māori. Alongside our early childhood services, we provide whānau with a self-funded wrap around support towards achieving a resilient, stable and supportive home life for tamariki.

More information on Central Kids can be found here – www.centralkids.org.nz

Response to request for Submissions

For many years New Zealanders have been supported by charities. Charities are often the final backstop for Kiwis in need, complementing public services and filling gaps or finding solutions where the public sector cannot fully address need.

Charities are granted exemption from taxation in recognition of the positive work they do in the community for the public good. Regardless of the makeup or direction of the government of the day the outcomes of what charities deliver, and the impact they produce, are valued, and contribute to a well-functioning society.

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 most compelling argument to tax charitable business income is to consider and address the perception that a small number of businesses hide their activities behind a protective charitable shield.

Instead, we support stronger compliance under the current taxation system, and suggest the option to appropriately empower and resource Charities Services to better investigate and take action, and to continue to raise the expectation of performance reporting to include outcomes and impact information in annual return submissions. For those subject to annual external audit, standards could be amended to allow the auditor to undertake assurance of charitable activities.

We do not consider the *accumulation* or *competitive advantage* factors to warrant taxing charity business income. Competition can be fierce in the for-profit ecosystem. The main argument from competing for-profit businesses appears to be that because a charitable business does not pay tax that it can and will undercut competitors. There is no clear evidence that shows this. The Australian Henry Report 2009 considered this issue, concluding on page 209:

> *'in relation to pricing, NFP organisations, like for-profit organisations, will seek to maximise their profits in support of their philanthropic activities. Accordingly, it appears that the income tax*

exemption does not provide an incentive for NFP organisations to undercut the prices of their for-profit competitors; rather, NFP organisations follow the same pricing policies as their competitors to maximise their profits'.

To offer context, our service pricing is not based on our competitors, it is based on what our community can afford and what is required to operate a sustainable service – now and into the future. We make choices on an individual level to discount or remove cost barriers to our service users, and measure our impact alongside our financial performance.

Accumulation can occur from a modest surplus under prudent financial management, and allows an organisation to generate the necessary operating cash flow to invest in innovation, systems and capital expenditure in order to support the charitable purpose.

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 would be a number of significant practical implications, including:

- Cashflow, changes to cashflow patterns resulting from the introduction of taxation, and impacting working capital, business planning and operations, in turn resulting in decisions being taken that will reduce the value of outcomes and amount of impact;

- Compliance costs, introducing new costs to organisations in order to assure compliance with taxation legislation, adapting systems, upskilling staff in financial management and governance, consultancy support for change, audit and assurance, increased reporting and filing, as examples, none of which add value to the organisation or are in the interests of public benefit;

- Fixed Asset Register compliance, line-by-line review of fixed assets to ensure compliance with Inland Revenue depreciation rates;

- Risk of encouraging entities affected by the change to reconsider their organisational structures and constitutions to better fit the resultant charitable regime in order to maintain their exemption;

- Risk that the increasing demands and complexity for board members, especially those that are voluntary, will be less interested in pursuing governance roles in the future.

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 could be difficult in some instances without clear guidance and process. The Charities Act 2005 provides the legislative framework for both initial and continued registration, and perhaps this can be strengthened to undertake more rigorous review upon initial application and subsequent annual review to offer further assurance that exempt business income is clearly aligned to the organisations charitable purpose.

Inland Revenue have already established some criteria that could be leveraged in their interpretation statement 'Charities – Business Income Exemption IS24/08'. Restrictions on exempt income were noted as:

If a tax charity's charitable purposes are not limited to New Zealand, income derived from the business in the relevant annual period must be split on a reasonable basis between its charitable purposes in New Zealand and those outside New Zealand. Only the part that a tax charity

apportions for tax purposes to its charitable purposes in New Zealand is exempt income (which this statement refers to as the "territorial restriction").

The business income is not exempt if a person with some control over the business is able to direct or divert an amount derived from the business to the benefit or advantage of a person other than the charity (or charities) for whose benefit the business is carried on, except for a purpose of the charity (or charities) (which this statement refers to as the "control restriction"). If a tax charity breaches the control restriction, all of the business income it derives is taxable.

We support these exemptions.

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 based on the organisations charitable financial reporting tier may be the easiest to implement and administer, and is a sensible starting point when considering the threshold for small-scale business activities as it is an existing and robust framework.

A tax exemption for Tier 3 and Tier 4 charities would reduce the number of impacted organisations significantly, and focus attention on charities of reasonable size (total expenditure great than $5 million per annum). These organisations are more likely to have the capability and means within management and governance to implement any resultant changes.

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 if the tax exemption is removed for charity business income unrelated to charitable purpose that distributions made to support charitable purpose should remain tax exempt. We would anticipate that this could see a parent charity receive a distribution from a charitable organisation within their group – which aligns to the approach many will presently undertake. This would require anti-avoidance rules to be legislated, meaning amounts distributed to the parent could not be offered back immediately to the business making the distribution.

Policy design should also consider the necessity for accumulated funds. Accumulated funds should not be assumed to be taxable profits, and it is important to consider the necessity to achieve modest surplus results as part of prudent planning and management. These modest results enable positive operating cashflow to be generated, allowing for future reinvestment in maintenance, upgrades or capital expenditure.

We would expect that any regime for taxing unrelated business income derived by charities would provide relief when current year income is donated or accumulated surpluses are eventually distributed for charitable purposes. In other words, any tax would likely only be temporary until accumulations are applied to a charitable purpose.

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?

We would like further consideration and understanding of the impact of any proposed change on entity structuring to ensure the intent of the change is delivered upon. It would be unfortunate to strengthen

compliance with charitable purpose and in doing so introduce the risk of complex entity structuring for groups that can undertake this type of physical reorganisation.

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 are in support of this distinction, and understand the rationale for raising this issue. Ensuring circular arrangements do not occur, transfer pricing is fair, and that the time from tax-concession to ultimate public benefit is reasonable are all risks that should be addressed.

The model adopted in Canada seems sensible as this considers control and contribution as the key metrics of donor-control. Majority control (50 percent or greater) of directors, trustees or like officials, or an individual or group of people who have contributed half or more of the capital are most likely representative of donor-control.

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?

We support restrictions to be in place to tackle tax abuse, specifically to ensure circular donations do not take place, and to ensure related-party conflicts are managed (for example, restricting transactions between material contributors, foundation management and governance, and immediate family members).

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?

We believe a minimum distribution should be made each year, and we suggest 5% of the donor-controlled charities working capital would be appropriate, with no minimum distribution figure in place. This would ensure the concerns on accumulated surpluses and any risk of timing mismatch between receipt and distribution are in part addressed, while the organisation is not at significant risk of compromising its financial position.

5% would not erode bank holdings significantly, and for charities with longer term objectives could be routinely replaced through fund management and interest or investment revenue. The use of working capital as the basis for the calculation also allows for charities to commit to investments with a term greater than one year, thus being excluded from the working capital calculation. Term investments could be used to signify or align to accumulated funds held for a specific project, and in doing so, the process would not need to consider a process to record and agree exceptions to distributions, instead requiring a simpler audit check to assure accumulated funds are distributed for the project. This audit check could occur periodically every five years, with non-compliant organisations required to distribute at that point.

Integrity & 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?

Reducing the compliance costs of Fringe Benefit Tax alone is not enough to offset the impact of removing or reducing this exemption for charities. This exemption is important for charities, and widely supported. As one example of its application, it allows an organisation to operate a safe and efficient fleet of vehicles,

to support the charitable purpose of the organisation, and in some instances provide this vehicle for the staff members limited personal usage. This allows charities to offer remuneration packages that are more competitive with the private sector, and eliminates a compliance cost to allow more funds to be directed to the organisation's charitable purpose.

If FBT is reintroduced to the charitable sector, compliance and taxation costs will increase and less funding be available to deliver outcomes to the community. It may also result in the need to amend individual employment agreements if the change results in a knock on effect to personal use vehicles. This would again add cost to the organisation, with salaries and PAYE payments increasing to offset lost benefits.

Other charities provide other non-cash benefits outside of motor vehicles, including as examples car parks, health insurance, or wellness activity support. These and other programmes may become taxable, and in doing so, reduce funds available for public benefit.

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 are supportive of equitable concessions, and we believe it makes sense to reduce taxation compliance costs in relation to volunteers. As honoraria are a non-contractual obligation, and a gesture of gratitude, it is sensible to reduce compliance requirements.

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 are supportive of the Donation Tax Credit regulatory review recommendations, and would like to see this process de-linked from the income tax regime. This would allow more real-time payments to occur (provided the system changes can be made by the donee organisation and Inland Revenue).

We believe that this is a positive step in streamlining systems and processes, and the benefit should see charities that can comply with filing requirements are able to generate increased donation receipts as a result of this, and in turn provide further public benefits to New Zealand.

Central Pacific Collective

memo

To: Inland Revenue Department
Copies: Fa'amatuainu Tino Pereira, Chief Executive Officer

From: Central Pacific Collective
Date: 31 March 2025

Subject **IRD Submission**

Submission on Behalf of the Central Pacific Collective

Introduction

The Central Pacific Collective's (CPC) mission is to enhance inter-generational wellbeing, reduce and eliminate inequities, build capacity, and empower Pasefika communities in the Wellington region.

Our purpose is to enable targeted initiatives that address critical community needs across areas such as housing, health, education, community development, income and consumption, and safety and security.

Guided by the principles of reciprocity, respect, genealogy, tapu relationships and belonging, our approach is rooted in collectivism, recognising that the wellbeing of our communities is intertwined with the wellbeing of our people.

We are compelled to make this submission because the proposed changes to charity business income taxation could significantly impact our ability to serve vulnerable communities effectively, undermining our commitment to the broader social wellbeing of Aotearoa New Zealand.

Munro Benge House
Level 6, 104 the Terrace
Wellington CBD

Executive Summary

Our submission focuses specifically on the taxation aspects affecting the charitable sector. However, we recognise that charitable activities are part of a broader ecosystem involving complex interplays between government and private sector responsibilities. We encourage policymakers to consider this comprehensive context when evaluating our position on maintaining existing tax exemptions for all charity business income, ensuring that charities can continue to contribute meaningfully to societal wellbeing without unnecessary financial constraints.

CPC strongly opposes the proposed taxation of income derived from charities' related and unrelated business activities. As a registered charity devoted entirely to serving disadvantaged Pasefika communities in Wellington, CPC reinvests all generated income directly into achieving its charitable objectives, guided by a long-term vision that encompasses governance, intergenerational intervention, and a holistic approach to community development. This strategic perspective extends beyond the confines of a single tax year, focusing on sustainable impact rather than short-term financial gains. Taxing charitable business income—whether related or unrelated—would not only divert vital resources away from vulnerable communities but also undermine our financial sustainability, limit innovation in service delivery, and impede our responsiveness to emerging societal needs.

Rather than imposing broad changes that could harm the entire sector, policymakers should consider targeted measures to address any specific instances where charities might not be operating in line with their charitable purposes. This approach would protect the most vulnerable groups in our society and ensure that the charitable sector can continue to support those in need effectively.

Submission

This submission focuses specifically on Chapter 2 of the IRD Consultation Officials' Issues Paper, which pertains to the charity business income tax exemption. We do not comment on other aspects of the paper.

Question 1: Should charity business income be taxed, and if so, how?

We strongly oppose taxing charity business income, whether from related or unrelated activities. As a registered charity, CPC reinvests all generated income into achieving its charitable objectives. Taxation would divert vital resources away from vulnerable communities, diminish our financial sustainability, limit innovation in service delivery, and negatively affect our responsiveness to emerging societal needs.

Taxing unrelated business income and related business income have distinct implications, with the former affecting long-term strategic initiatives and financial planning, and the latter impacting core services and immediate operational sustainability. These implications are highlighted below, under Question 2 and Question 3.

Question 2: What are the implications of taxing related business income?

Taxing related business income would have a direct and immediate impact on charities' core activities. Charities rely heavily on this income to fund essential services, and any taxation would significantly reduce their ability to deliver these services. This financial fragility makes charities particularly susceptible to any income leakage due to taxation, directly impacting their financial sustainability and long-term viability. Furthermore, taxation would complicate existing fundraising challenges, reducing the amount of money charities can retain and reinvest into their programmes. The increased need for tax compliance would also divert resources away from service delivery, as charities typically lack the sophisticated tax expertise required to navigate complex tax obligations, necessitating further expenditure on seeking professional tax advice.

Question 3: What are the implications of taxing unrelated business income?

Removing tax exemptions on unrelated business income would have a profound impact on charities' long-term strategic capabilities. This income is crucial for accumulating funds for long-term projects and strategic initiatives, which are essential for sustainable impact and innovation.

Taxing unrelated business income would not only increase compliance costs but also potentially shift charities towards passive investments, leading to fewer innovative programmes and reduced responsiveness to community needs. Given the charitable sector's dire funding situation, which relies heavily on short-term

grants and lacks stable long-term funding sources, taxing unrelated business income would exacerbate the challenges of planning beyond a year.

Additionally, the arbitrary nature of the tax year can lead to unintended financial outcomes for charities, which do not operate with profit motives, necessitating special tax considerations to accommodate their unique operational needs.

Question 4: How should unrelated business activities be defined?

If policymakers consider taxing unrelated business activities, we strongly advocate for a clear and consistent approach. However, our primary position remains that unrelated business activities should not be taxed, as they often support the broader charitable mission. If taxation is pursued, we suggest focusing on the use of profits rather than the purpose of the activities. This approach would ensure that any profits generated from unrelated activities are used to support charitable functions, aligning with the organisation's mission.

Question 5: Should there be a de minimis threshold for small-scale trading activities?

Yes, a de minimis threshold is necessary to protect smaller charities from undue financial hardship. Tier 3 and Tier 4 charities should be safeguarded through appropriate revenue thresholds aligned with their operational scale, ensuring they can continue delivering essential services without disproportionate financial constraints.

Question 6: What support mechanisms should be put in place for charities to comply with any new tax rules?

If new tax rules are implemented, policymakers should provide accessible resources and support, particularly for smaller charities, to facilitate compliance without imposing disproportionate administrative burdens. Clear guidelines and examples must accompany any new criteria to ensure consistent interpretation and application across the charitable sector. Additionally, it is crucial to consider that implementing new tax rules could divert charities' resources away from their core mission, as they may need to focus on structural adjustments or tax compliance strategies rather than delivering charitable services. Furthermore, if income tax is applied, it would be essential to make imputation credits refundable

to prevent charitable funds from being permanently locked up in non-refundable tax payments.

Conclusion

Taxing charity-generated income would undermine the critical role of charities like CPC in addressing societal gaps. We strongly advocate maintaining current tax exemptions to ensure continued meaningful contributions towards societal wellbeing without unnecessary financial constraints.

Rather than applying blanket changes that could harm the entire sector, policymakers should consider targeted measures to address any specific instances where charities might be exploiting tax advantages. This approach would protect the most vulnerable populations, who rely heavily on charitable services, and ensure that the sector can continue to support those in need effectively.

We urge policymakers to consider the broader social benefits provided by Aotearoa New Zealand's charitable sector and maintain existing tax exemptions accordingly.

Central Pacific Collective

s 9(2)(a)

From: arlene kim s 9(2)(a)
Sent: Monday, 31 March 2025 4:43 pm
To: Policy Webmaster
Subject: CRLJC submission of appeal for taxation issues

Kia ora,

CHURCH OF THE RISEN LORD JESUS CHRIST, is a charitable organization that help the community in need and am one of them that receives help.

POINT OF 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.

THANK YOU GOD BLESS NEW ZEALAND 🙏

RSC Golden Bay
RURAL SERVICE CENTRE
Vet Clinic • Country Store

Submission in Response to Consultation on "Taxation and the Not-for-Profit Sector" – 24 February 2025

Dear Sir/Madam,

Thank you for the opportunity to respond to the consultation on taxation and the not-for-profit sector. I write on behalf of the Golden Bay Veterinary Club, a community-founded, community-serving not-for-profit organisation that has been delivering essential veterinary care to the Golden Bay region since 1952.

About the Golden Bay Veterinary Club

The Golden Bay Veterinary Club was created by and for the people of Golden Bay, a remote and often isolated community on the other side of the Takaka Hill. Our Club was established with one clear goal: to ensure ongoing access to high-quality veterinary services in an area where commercial viability for private clinics has always been uncertain.

Over seven decades later, that founding mission still drives everything we do. We exist to serve our people, our animals, and our land—not shareholders. Our structure enables us to reinvest every dollar we earn back into the community we love.

Why the Tax-Exempt Status Matters

For small, rural communities like ours, the continuation of tax-exempt status for not-for-profit veterinary clubs is not just a financial consideration, it's a matter of resilience and survival. The Golden Bay Veterinary Club stands as a pillar of both animal welfare and community well-being. Removing our tax exemption would erode our ability to deliver the very services we were established to provide.

1. Sustaining Access to Veterinary Services in Remote Communities

Golden Bay's geographic isolation means we are frequently cut off by weather events and road closures. Our Club is the only veterinary service in the region. Without the financial flexibility afforded by tax exemption, this essential service could become unsustainable, risking animal health, public health, and food production in our area.

2. Reinvesting in the Local Community

As a not-for-profit, our surplus is directly channeled into community benefit. This includes:

- Subsidised vaccination clinics for pets in lower-income households

Rural Service Centre, PO Box 160, Takaka, 7142
Country Store Ph: 525 9113 E: admin@rsc.co.nz
Vet Clinic Ph: 525 8011 E: reception@rsc.co.nz

- Support for local schools, agricultural education programs, sports clubs, rural events, and a raft of community projects, including 25K to the local hospital, and 25K to the local recreation park.

- Emergency animal welfare interventions following natural disasters

These initiatives reflect the Club's deep commitment to community-led development and care.

3. Supporting Local Knowledge and Education

We regularly run field days and educational workshops for farmers and animal owners. These are not profit-making activities; they are part of our mission to upskill the community and promote best-practice animal welfare. The loss of tax exemption would force us to scale back or eliminate these vital learning opportunities.

4. Promoting Ethical, Community-Oriented Veterinary Care

Our governance model ensures that veterinary advice is based solely on what's best for the animal and the client—not on profitability. We are accountable to our members and our mission, not external investors. This keeps our services ethical, affordable, and deeply rooted in local values.

5. Ensuring Long-Term Industry Sustainability

We are proud to provide supportive pathways for young veterinary professionals. Our clinic offers mentorship, a healthy work-life balance, and a community-focused environment—key factors in attracting and retaining talent in a sector under significant strain. Taxation changes would compromise our ability to continue this support.

6. Protecting Against Centralisation and Corporate Consolidation

Removing tax exemption for not-for-profit clinics like ours would accelerate the takeover of rural veterinary care by large corporate chains. That shift would ineservice ande prices, reduce personalised service, and put profit above animal welfare. We must not let this happen in vulnerable regions like Golden Bay.

Conclusion

The Golden Bay Veterinary Club is more than a clinic. We are a vital thread in the fabric of our region, ensuring continuity of care, educating future farmers, supporting local schools, and maintaining animal welfare as a community priority.

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RSC Golden Bay
RURAL SERVICE CENTRE
Vet Clinic • Country Store

We urge the Government to recognise the unique value provided by not-for-profit veterinary organisations like ours—and to retain the current income tax-exempt status that allows us to continue delivering these critical services.

Thank you for considering our submission and for supporting sustainable, community-driven animal care in Aotearoa.

Sincerely,

Brendan Richards (Chairman)

On behalf of the Golden Bay Veterinary Club

Rural Service Centre, PO Box 160, Takaka, 7142
Country Store Ph: 525 9113 E: admin@rsc.co.nz
Vet Clinic Ph: 525 8011 E: reception@rsc.co.nz

Submission to:	Deputy Commissioner, Policy Inland Revenue Department
On:	Taxation and the not-for-profit sector
By email:	policy.webmaster@ird.govt.nz
Date:	31 March 2025

Contact

This submission is from Braemar Charitable Trust (**BCT**) and its wholly owned subsidiary Braemar Hospital Limited (BHL).

We are available to discuss these submissions. Our details are:

Paula Baker – Manager Braemar Charitable Trust Mobile: s 9(2)(a) email: s 9(2)(a)	Marc Scott – Chief Financial Officer Braemar Hospital Limited Mobile: s 9(2)(a) email: s 9(2)(a)

About BCT

BCT's mission is to improve health outcomes in our community. We do this by providing:

- free surgeries - the Braemar community surgery programme,
- health-related scholarships and professional development - building health sector capability,
- health infrastructure, innovation and technology – 100% ownership of Braemar Hospital Limited, and
- funding to health-related research.

Summary of Submissions

Regarding the Taxation and the not-for-profit sector paper (the **Paper**), it is BCT's view that:

1. It appears from the Paper, that the proposals made are an attempt to simplify tax rules and reduce compliance costs, amongst other things. With respect, this would not be achieved by way of the proposals made in the Paper. Rather, it would create a burdensome and unnecessary system for charities to adopt. Namely, BCT refers to the six different proposals as set out in Chapter 2 of the Paper; it is inconsistent to state that the goals of the Paper are to achieve simplification, yet to suggest a number of convoluted methods for doing so.

2. The Paper also sights the desire to improve integrity measures, however the review takes the narrow view of a revenue lens, rather than broader economic, social and environmental benefits that charitable organisations provide to the country.

3. If the proposals in the Paper are put into place, it would have the impact of curtailing charities in such a manner that BCT foresees that the charities sector will be significantly impacted. Flow on effects will likely be seen immediately and the likely effect will be the exact opposite of what the Paper claims to resolve. If the proposals in the Paper are implemented, government organisations are likely to be required to fill a gap that will be created by a reduction in the work that charities are currently undertaking – the costs of such government organisations being entirely funded by taxpayers.

4. The Paper takes an overly simplistic approach and appears to have a lack of understanding of current charity laws and regulations. We would have expected that the Paper should have been prepared in consultation with relevant charities experts, rather than produced in its current form.

Question one:

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?

Charity business income should not be taxed. Taxing charity business income will reduce the charitable work these organisations can do in New Zealand. Taxing charity business income will lead to a direct reduction in the good community outcomes delivered by charities. Charities are proven to be lean operators, delivering community services at a lower cost than government can, so even if the additional government revenue is allied to the shortfall in social services, New Zealanders will still be worse off.

The factors described in 2.13 and 2.14 are only relevant to a very small number of outlier organisations, if any. It is hard to name a commercial industry in New Zealand that is commercially dominated by or significantly impacted by a charity. If there is such a situation the Charity Services are already armed with the appropriate tools to deal with these organisations. They are the vast exception, not the rule.

Question two:

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

It is difficult to provide any detail on the practical implications for BCT at this point given there is no guidance on what will be considered unrelated business income. If the exemption is removed, this will obviously be the most critical part of the policy. We believe it is appropriate that submissions/feedback is sought on the definition of unrelated business if the proposed reforms are introduced.

Overall, we believe this proposal would significantly reduce charitable outcomes achieved in New Zealand, provide significant uncertainty for charities and increase operating costs for charities.

Without a bright line between a "related" and "unrelated" business, charities will suffer significant uncertainty as to what their obligations and liabilities are.

Taxing a charity's unrelated business income will reduce the charitable work these organisations do through the loss of resources to fund income tax obligations. This will lead to a direct reduction in the good community outcomes delivered by charities. Charities are proven to be lean operators, delivering community services at a lower cost than government can, so even if the additional government revenue is allied to the shortfall in social services, New Zealanders will still be worse off.

This action will also increase the operating cost of charities with the requirement to undertake tax compliance duties. In many organisations staff expertise will be insufficient to undertake the work required to complete tax compliance obligations and additional resources will be required.

Question three:

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?

Unrelated business activity should be activity in a distinctly different industry, operated in a separate legal entity.

Any business activity that is primarily engaged in growing knowledge, educating or delivering health services should be excluded, as should any business selling donated goods or services or that is substantially run by unpaid volunteers.

A materiality measure should be applied. Activity like a drop in café, operated as an out-reach from a small part of an existing site, with income immaterial compared to the charity's core operations, should not be defined as unrelated.

Question four:

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 would be good to exempt minor or incidental activity, so a threshold that reflects this would be valuable, like 10% of turnover.

Question five:

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, this would be fair. A refund arrangement where tax paid on earnings are refunded once funds are distributed to the charity would be an effective method.

Question six:

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

Question seven:

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

Question eight:

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

Question nine:

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?

No comment

Question ten:

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

Question eleven:

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

No comment

Question twelve:

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

Question thirteen:

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 Paper proposes to remove the FBT exemption without an adequate understanding of how charities operate and attract and retain employees. The FBT benefit allows charities to offer benefits to employees without being taxed for those benefits, given the traditionally lower pay rates in the charity sector, being able to offer such benefits to employees enables charities to attract and retain employees that are integral to operation of that charity. If this exemption was removed, charities will lose a valuable tool in attracting talent into the sector.

Question fourteen:

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

Question fifteen:

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

Other

Although IRD has not requested submissions regarding other issues, BCT considers that the following aspects, omissions and/or implications are highly relevant to considerations under the Paper.

It is BCT's view that charities that operate as companies are already adequately regulated in terms of the concerns raised in the Paper by the following legislation:

- Section 143 of the Companies Act 1993 provides that a company's directors must act in accordance with the company's constitution. This provision is mirrored in section 5 of the Incorporated Societies Act 2022. Provision for similar duties are also recorded in the Trusts Act 2019, whereby trustees are required to act in accordance with the terms of the trust.

- Section 131 Companies Act 1993 provides that directors of companies have a duty to act in good faith and in the best interests of the company. This is mirrored in section 54 of the Incorporated Societies Act 2022.

In consideration of the above, it can broadly be considered that a charity that operates as a company has a fiduciary duty to its constituents. Therefore, a standard already exists for charities that operate as companies to be held accountable in accordance with their fiduciary duties, which can in turn be drawn from the charity's charitable purposes. It is unclear from the Paper why further regulations in this area are required, and the proposals in the Paper would amount to what BCT believes is 'over-regulation' that would negatively impact the positive that charities such as BCT have on New Zealand's community.

Accumulations and Charitable Purposes

It is apparent that the author of the Paper has reached the conclusion that a charity that accumulates funds, is not acting within its charitable purposes. BCT does not agree with this suggestion.

A fundamental aspect of a charity is ensuring that all aspects of its ventures align with that charity's charitable purposes, including the accumulation of funds. This appears to have been overlooked in the Paper and requires further consideration. If the proposals in the Paper are appropriated by the Government, it would have the impact of a significant number of charities being negatively impacted. In respect of BCT, that impact would be reflected in issues such as:

- The need to invest in long term assets like surgical theatres. These assets have wide ranging benefits to the community and the taxation of accumulated funds would remove vital funds from this essential charitable activity.

- Maintaining funding to charitable initiatives in years where there are challenging external economic conditions that negatively impact funding sources, like donations and trading activities. The ability to accumulate funds allows the funding of charitable activities in these lean years and makes possible multiple year commitment, like educational scholarships.
- Given that improving health outcomes is intergenerational, accumulated funds enable the Trust to deliver on its Strategic Plan and ensure that it has sufficient funds to meet the needs of current and future generations

Annual Returns

In April 2024, IRD released new annual return forms to be completed annually by registered charities. Specifically, the form requires that charities provide information regarding their accumulated funds and how accumulating funds aligns with their charitable purpose. Based on this change to the annual return forms, it appears that the IRD is already acting upon the assumption that the proposals in the Paper will be implemented. Given the significant and far-reaching proposals in the Paper, this stance is surprising and concerning.

Burden to Taxpayers

It is unclear to BCT from where the IRD has drawn the conclusion that the current income tax exemption passes the burden onto other taxpayers. It is an oversimplification of the situation and does not analyse the benefit that taxpayers enjoy by virtue of a charity's income tax exemption. Charities, at their core, assist people and communities in ways that those people cannot ordinarily achieve themselves. This burden would be passed to government organisations (if it is passed on at all) which are entirely reliant on funds from taxpayers. It is unequivocal that in such situations, taxpayers are facing a higher burden than they would by virtue of charities enjoying the tax exemption.

The Paper appears to entirely ignore this factor.

Business Income

The Paper, at its core, appears to be based on a number of incorrect and misinformed assumptions. An example of this is the assumption that charities are able to grow more rapidly than their tax paying competitors. This is an incorrect oversimplification that ignores the numerous barriers faced by charities, that do not impact their tax paying competitors. A significant example of this is the barriers that charities face in being able to raise capital. Charities often have no security to offer to lenders (such as personal liability), lenders are often unwilling to provide lending to charities and charities do not have the ability to raise capital from shareholders. This provides significant barriers to charities trying to further their endeavours.

The Paper further assumes that businesses who wish to enjoy the current charity tax exemption can do so by acting under the guise of being a charity. This overlooks the already high standard that charities are held to, in that all activities that are undertaken by charities must be in accordance with their charitable purposes and furthering those purposes. To imply otherwise ignores the regulations set out in the Charities Act 2005.

Minimum Distribution Requirements

The Paper proposes imposing minimum distribution requirements, which historically have been opposed by the charities sector for a variety of highly valid reasons. In particular, minimum distribution requirements would impose a rigidity to the way that charities operate and in many cases would act as a hindrance to charities fulfilling their charitable purposes. Examples of this would be charities which accumulate funds for legitimate charitable purposes like investment in land, buildings, plant and equipment.

FBT

The Paper proposes to remove the FBT exemption without an adequate understanding of how charities operate and attract and retain employees. The FBT benefit allows charities to offer benefits to employees without being taxed for those benefits, given the traditionally lower pay rates in the charity sector, being able to offer such benefits to employees enables charities to attract and retain employees that are integral to the operation of that charity.

SUBMITTER INFORMATION

Name:	Te Hiku o Te Ika Iwi Development Trust
Charities Services Registration Number:	CC 57572
Address:	7 Melba Street, Kaitaia
Contact person:	Carol Berghan, Chief Executive Officer
Email:	CEO@tehikuiwi.com
Phone:	s 9(2)(a)

INTRODUCTION

1. This submission is made by the trustees of Te Hiku o Te Ika Iwi Development Trust (the **Trust**) in response to the Officials' Issues Paper: Taxation and the Not-for-Profit Sector, dated 24 January 2025 (the **Issues Paper**).

2. This submission will cover:

   (a) background information about the Trust to provide some important context to the submission; and

   (b) specific concerns the Trust has with the Issues Paper.

3. It is important to note from the outset, concerns the Trust has in relation to the way in which consultation has occurred given the significance of the proposals set out in the Issues Paper. These concerns are set out below, and inform this submission.

   (a) The Crown has an obligation to, but has failed to understand the impact of the proposed policy change for Māori and to consider how any negative or unintended effects might be mitigated, as required by Te Tiriti o Waitangi / the Treaty of Waitangi. Māori comprise a sizeable proportion of the charities sector and have unique drivers and features, that require specialist engagement.

(b) The Trust understands that none of the Te Hiku Iwi have been engaged with on this Issues Paper and that the existing mechanisms like the successful Te Hiku – Crown Social Accord Governance model has not been utilised. The IRD must rectify its omission and undertake targeted engagement with Te Hiku Iwi in an appropriate manner before proceeding with further policy development.

(c) Further, and related to the above, twice-yearly Ministers of the Crown meet with the Te Hiku Iwi chairs to strengthen the Treaty partnership. Known as the Taumata Rangatira, it is the time for Ministers and Te Hiku Iwi that have settled with the Crown to mutually discuss opportunities the parties can work on together and to raise issues of significance. The 2023 Taumata Rangatira Joint Report, sent to all Ministers in the Te Hiku – Crown Social Wellbeing and Development Accord (the **Accord**) has identified a trend in that broader legislative reforms are impacting on specific activities and initiatives in respective Te Hiku settlements. As this reform occurs, and as new policy initiatives are developed, there is a requirement to ensure:

(i) the intent of the Treaty of Waitangi settlements remains intact;

(ii) checks and balances are in place for new policies and legislative reforms to align and not erode existing Treaty of Waitangi settlements; and

(iii) effective engagement with iwi, as Treaty Partners is in place and matters like this come before yearly meetings, like the Taumata Rangatira for discussions.

This is particularly poignant in Te Hiku, where legislative reform processes in Wellington are so far removed from the everyday lives of people in Te Hiku. The proposals set out in the Issues Paper, and the way in which we are being engaged, is an example of this uninformed reform process.

(d) Recently, on 5 July 2023, the Charities Act 2005 was amended following a comprehensive review of the Charities Act 2005. The Issues Paper proposes significant changes to the charities regime that should have been raised during that review.

(e) The timeframes for response have been very short (just over a month) and

have not been widely consulted on. Charities should have been engaged with appropriately on such significant amendments. The Trust expects to participate in any select committee process, should the Issues Paper proceed to a Bill being drafted.

BACKGROUND

4. The Trust was established in November 2012, by deed of trust. It was registered as a charity with Charities Services, in November 2019. The Trust is a Tier 2 charity.

5. It is important to understand the broader context in which the Trust operates, which has informed this submission. This is set out below.

   (a) Land loss by the iwi of Te Hiku o Te Ika (**Te Hiku Iwi**) has limited meaningful participation by iwi in the social and economic development within their rohe. Over time iwi found that even a subsistence lifestyle was not possible for most of their members. Loss of land and autonomy together with economic marginalization had devastating effects on the social, economic, cultural, physical and spiritual wellbeing of the iwi that continue to be felt today.[1] Te Hiku o Te Ika Iwi have lacked opportunities for economic and social development and some have endured extreme poverty and poor health.

   (b) Settlement of historical Treaty of Waitangi claims between the Crown and Te Hiku Iwi are provided for in the Te Hiku o Te Ika Iwi – Crown Social Accord (the **Accord**). The purpose of the Accord is to provide a means for the Crown and Te Hiku Iwi to work together to improve the social wellbeing of the people of Te Hiku o Te Ika. In particular, the shared vision of the Accord is:

   "kia whiwhi ngā hapori, whānau, hapū me ngā iwi of Te Hiku o Te Ika i te oranga tonutanga, kia rānea – the communities, whānau, hapū and iwi of Te Hiku o Te Ika are culturally, socially and economically prosperous"[2]

   (c) The outcomes provided for in the Accord include:

      (i) **Outcome 1**: Secure standard of living. The members of Te Hiku o Te Ika Iwi have a secure standard of living comparable to the New Zealand population as a whole.

[1] The census data classifies Te Hiku o Te Ika as an area of social deprivation and the members of Te Hiku o Te Ika Iwi are over represented in criminal justice statistics.
[2] See clause 21 of the Accord

(ii) **Outcome 2**: Educated and skilled. The members of Te Hiku o te Ika Iwi are well educated and skilled people who contribute positively to society and their own wellbeing.

(iii) **Outcome 3**: Culturally strong. The members of Te Hiku o te Ika Iwi have a strong and vital culture, history, language and identity; including the preservation and protection of taonga both tangible and intangible.

(iv) **Outcome 4**: Healthy. The members of Te Hiku o te Ika Iwi are addressing their health needs in a holistic way, and are accessing health services that are appropriate to their needs and culture.

(v) **Outcome 5**: Well housed. The members of Te Hiku o te Ika Iwi are living in healthy and secure environments that are appropriate to their needs and culture.

(vi) **Outcome 6**: Economically secure and sustainable. The members of Te Hiku o te Ika Iwi are engaging in diverse, progressive and sustainable economy.

(vii) **Outcome 7:** Respected and safe. The members of Te Hiku o te Ika Iwi are living in a safe and just society where there is respect for civil and democratic rights and obligations.

6. The Trust was established as a collective vehicle for Te Hiku Iwi, to implement collaborative programmes and shared outcomes that Iwi seek collectively, and to implement the Accord.

ACTIVITIES OF THE TRUST

1. The organisational structure of the Trust is set out at **Appendix One**.

2. The Trust primarily makes the following charitable activity:

(a) The implementation of the Joint Work Programme (**JWP**). The Joint Work JWP is one of the fruits of the Accord. Locally led, regionally enabled and centrally supported. The JWP is a co-governance, shared decision-making model between Iwi and the Crown. Founded on establishing relationships in the community, the JWP prioritises whānau by putting the whānau voice front and centre. Our team identifies systemic challenges and works to remove them in order for the whānau of Te Hiku to thrive. The JWP operates

by:

(i) identifying issues, by utilising local intel;

(ii) prioritising and confirming issues;

(iii) appraising, by gathering information and interviewing stakeholders;

(iv) identifying potential solutions, including "quick wins", design and incubating solutions;

(v) conducting analysis and gathering appropriate evidence to support recommendations;

(vi) call to action – through the 'Local Conditions Working Group'; and

(vii) monitoring and reporting back

(b) Success stories from the JWP, include:

(i) **The Puna Wai Ora project**. This project was designed to improve Te Hiku whānau resilience and water access during droughts. The National Emergency Management Agency and Social Accord partners set up a three-year Te Hiku Drought Relief initiative to ensure Te Hiku whānau have continued access to clean drinking water and marae are able to serve as central water sources for kāinga. Through the installation of close to 500 water tank systems, fewer Te Hiku whānau are affected by drought and water poverty, there are fewer water-related health issues, and whānau are more resilient in the face of ongoing climate change challenges.

(ii) **The Tupu Training and Employment Programme.** This is an initiative incubation launched by the Trust and local business partners, to address high unemployment and seasonal work. The initiative helps out-of-work whānau find meaningful mahi in the horticulture industry by dividing their time between learning and working for local horticulture businesses. Tupu Horticulture is now in year three and has expanded its scope of training and work opportunities into plumbing; applying the Tupu model into the trades sector to support the opportunity presented through the Puna Wai Ora – Te Hiku Drought Relief water tank initiative.

(iii) **Whiria Te Muka - weaving the strands**. This is a unique solution focused on preventing and reducing the family harm experienced by Te Hiku whānau, hapū, iwi, and communities. Whiria Te Muka is a partnership initiative between the New Zealand Police and Te Hiku Iwi. The Trust is privileged to be the host on behalf of Te Hiku Iwi. We work to reduce and prevent whānau harm and uplift Mana Tangata for the people of Te Hiku.

SPECIFIC RESPONSES TO THE ISSUES PAPER

3. The Trust strongly opposes any taxing of business income. This is whether that business income is related, or unrelated to charitable purposes, and whether that business income is accumulated or not. For this reason, this submission is focussed on Chapter 2 of the Issues Paper.

4. The Trust responds to the specific questions set out in the Issues Paper in the following way.

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

5. The imposition of income tax would be manifestly unjust given the nature and character of the Trust, and its link to the respective Treaty of Waitangi settlements of Te Hiku Iwi, which were provided as recognition of the Crown's Treaty breaches.

6. Further, settlement assets were received to remedy historical breaches by the Crown of the Treaty of Waitangi. To tax Māori when they generate income from those assets, penalises iwi and hapū who are successful, discourages development, and is counter intuitive to the manner in which the assets were transferred.

7. Accordingly, the Trust submits that there should be an exemption of entities that receive, hold or manage any assets or income, that are connected to a Treaty of Waitangi Settlement.

8. Further, the Trust considers that as income earned (regardless of whether that is business income, or not), can only ever be used or applied for charitable purposes, they should not be taxed. This is because of long standing settings within the charities regime, such as:

(a) The prohibition of private profit.

(b) The requirement to distribute funds only for charitable purposes.

(c) The requirement for charities to maintain charitable registration.

(d) Restrictions on the application of funds, if the Trust was to be wound up.

9. Further, and connected to the point above, the Trust is best placed to carry out the charitable purposes, for the benefit of Owners and their broader whānau. The Trust is uniquely placed, given the role it plays, the functions it carries out, and the fact that it is locally placed, in Te Hiku.

10. It is also not clear from the Issues Paper, whether there is any evidence, or financial modelling undertaken that demonstrates the compliance cost in implementing the proposal to tax business income. This includes the compliance cost for each charity that will be subject to the proposal, the costs of IRD to administer, and the litigation cost, should there be challenge on the application of the tax.

Question Two: 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. The Trust has the following purposes, as provided for in its trust deed:

(a) The promotion amongst the Participating Iwi of the educational, spiritual, economic, social and cultural advancement or well-being of the Members of the Participating Iwi including through participation in the Te Hiku o Te Ika Iwi – Crown Social Development and Wellbeing Accord;

(b) The promotion of the economic advancement or well-being of the Members of the Participating Te Hiku o te Ika Iwi in order to relive poverty;

(c) The promotion of the health of the environment in the Participating Iwi rohe including revitalisation of Te Oneroa-a-Tōhe and other places of special significance to the Participating Iwi;

(d) The facilitation of collaborative working relationships between the Participating Iwi for the benefit of the Members of the Participating Iwi and/or their environment including assisting the Participating Iwi to participate in Te Hiku o Te Ika Iwi – Crown Relationship Redress and to support multi iwi engagement with the Crown and/or other third parties;

(e) To receive, protect, manage and administer the Trust Fund on behalf of and for the benefit of the present and future Beneficiaries; and

(f) Any other Charitable Purpose that is beneficial to the Beneficiaries.

12. For the Trust, by far the most significant practical implication will be how business income is determined to be unrelated, or related to the purposes. This is because:

(a) the purposes of the Trust, are drafted so broadly; and

(b) the health, social, cultural and economic welfare of people, from a tikanga Māori perspective, are so interconnected and intertwined, that such a distinction will be difficult to practically implement.

Question Three: 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?

13. Should there be an imposition of tax for unrelated business income, the criteria used to distinguish between 'related' and 'unrelated' needs to be:

(a) flexible, given charities have a such a broad range of purposes;

(b) allow for purposes to be broadly interpreted, so that business income that in some way touches on the purposes can be classified as 'related'; and

(c) allow for an approach for purposes that are interconnected or intertwined to be considered together.

Question Four: 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?

14. If there is to be an imposition of income tax for unrelated business income, we consider that all Tier 2, 3 and 4 charities are excluded. The Tier 2 category captures a significant range (between $5m and $33m), and has the ability to impact the smaller Tier 2 charities, such as the Trust in a significant way.

Question Five: 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?

15. Furthermore, assets are held on an intergenerational basis[3]. The Issues Paper fails to recognise this point of difference for iwi and hapū charities who exist for the benefit of current and future uri / descendants. It is imperative that the Trust balances the accumulation of funds vs. the utilisation of funds, given this intergenerational lens.

Question Six: 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?

16. In our view, the following policy settings or issues have not been addressed in the Issues Paper.

    (a) The unique drivers and features of charities that are established for the benefit of Māori.

    (b) The social return on investment, and the good that charities, such as the Trust contribute to Aotearoa.

    (c) An in-depth analysis of the underlying drivers for the proposals. The Issues Paper assumes that charities have a competitive advantage without testing that driver, nor providing any evidence of the driver. In particular, it fails to acknowledge the strict rules around distribution and reporting that do not apply to for-profit entities.

CONCLUSION

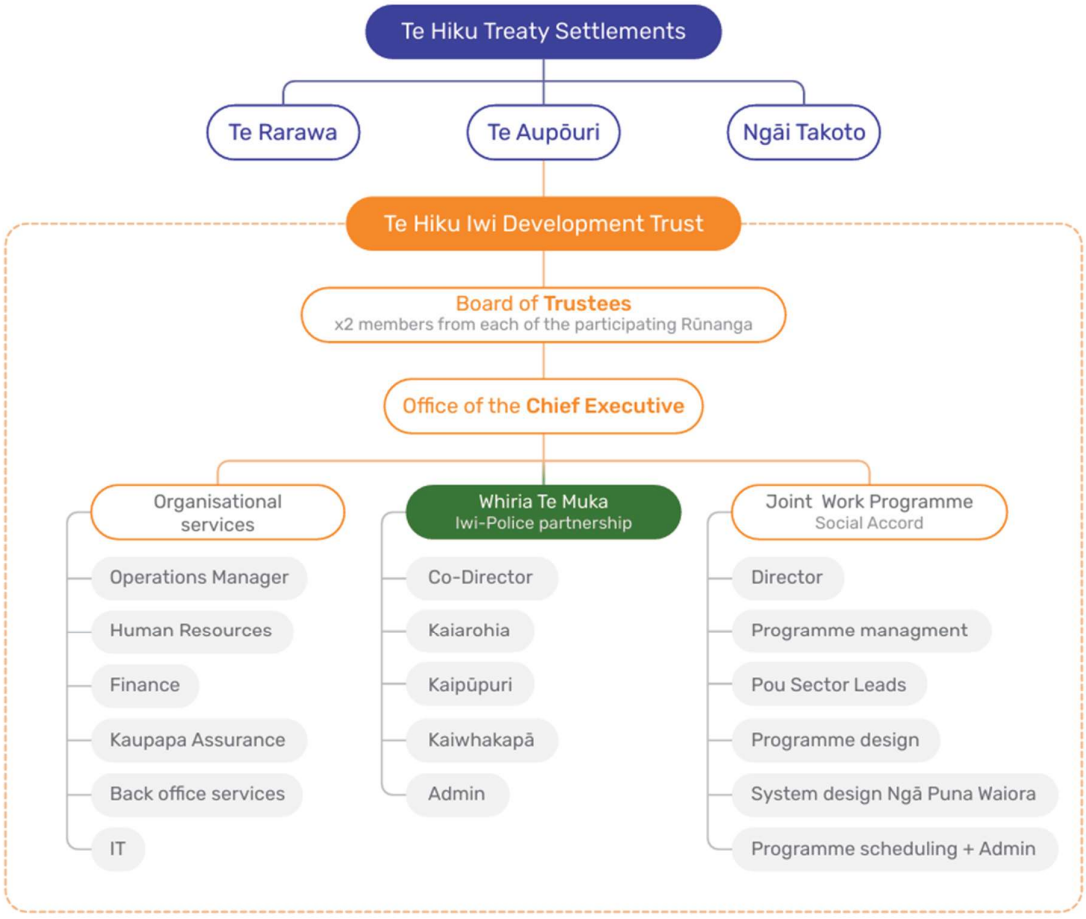
17. For the reasons set out in this submission:

    (a) the Trust does not agree with the proposals in relation to the imposition of income tax on business income for charities.

    (b) The Trust urges the Crown to consider how the proposals set out in the Issues Paper impact Māori, and in light of the significant impact (in the opinion of the Trust), look to provide for an exemption that mitigates the negative, and presumably unintended effects on Māori.

[3] This was acknowledged by the Tax Working Group, see the Interim Report at page 121

Appendix One: Organisational Structure



31 March 2025

Submission on the Taxation and the Not-for-Profit Sector Consultation
Submitted to: Inland Revenue Department, New Zealand
Submitted by: Athletics New Zealand Incorporated [216839]
Submission Date: 31 March 2025

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1. Introduction
Organisation Name: Athletics New Zealand Incorporated
Legal Status: Incorporated Society
Primary Purpose: As the national governing body for Athletics in New Zealand, Athletics NZ looks after the sport across all disciplines from grassroots, through to high performance teams
Contact Person: Cam Mitchell
Contact Email: s 9(2)(a)

Our Not-For-Profit (NFP) status enables us to reinvest all funds directly into the community. We maintain low membership fees to ensure that participation in our sport remains accessible to the majority of communities. Our events operate at a financial loss, and we rely significantly on grants and sponsorships to cover the associated costs. The introduction of additional taxation on NFPs would have a profound and widespread impact on our capacity to support community investment and expand participation, particularly among Tamariki and Rangatahi.

---

2. Key Submission Point
Not-For-Profit Business Income Tax Exemption

- **We do not support** the proposal to tax charity or NFP business income unrelated to charitable purposes.
- The impact of this change on our organisation would be: reduced funding for community investment, increased compliance costs, reduced financial sustainability.

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3. Conclusion and Recommendations
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 on incorporated societies and their ability to serve communities.

We are happy to discuss this submission further and provide additional input if needed.

Signed by:
s 9(2)(a)

Cam Mitchell
CEO
Athletics New Zealand Incorporated

NGATI TUWHARETOA FISHERIES
CHARITABLE TRUST

31 March 2025

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

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

Kia ora koutou

Submissions on consultation paper

Thank you for the opportunity to submit on the Taxation and the not-for-profit sector consultation paper (the *Paper*). We are writing on behalf of Ngāti Tūwharetoa Fisheries Charitable Trust (NTFCT).

In 2023 the trust's group made Grants and Donations of $454,306, primarily contributing to our Iwi's education grants.

Ngāti Tūwharetoa Fisheries Charitable Trust

Te Ariki Te Heuheu Tukino VII Tumu (Tumu Te Heuheu) as settlor, established the Ngati Tuwharetoa Fisheries Charitable Trust to act, amongst other things, as the Mandated Iwi Organisation of Ngati Tuwharetoa for the purpose of the Maori Fisheries Act 2004 and to act as the Iwi Aquaculture Organisation for the purpose of the Maori Commercial Aquaculture Claims Settlement Act 2004.

The Ngāti Tūwharetoa Fisheries Group is listed in *Appendix A*.

Asset-Holding Company

Under the Māori Fisheries Act 2004 and as part of the Treaty settlement in relation to fisheries, iwi hold shares (or are entitled to hold shares) in Aotearoa Fisheries Limited and may hold annual catch entitlements in respect of fishing quota. The Māori Fisheries Act 2004 requires that iwi hold their shares in Aotearoa Fisheries Limited via an *Asset-Holding Company*.

Our Asset-Holding Company is one of the approximately two-thirds of all Asset-Holding Companies that are registered charities. We are concerned that the proposals discussed in the Paper could lead to charitable our Asset-Holding Company being taxed on dividends we receive from Aotearoa Fisheries Limited and revenues from annual catch entitlements even though in our view:

- the dividends we receive from Aotearoa Fisheries Limited and the revenues we receive from annual catch entitlements ought to be characterised as passive income (as opposed to business income); and

- there are strong reasons to suggest the ownership of Treaty settlement assets on behalf of our people is so inextricably linked to the specific charitable purposes our Asset-Holding Company, that it would be wrong to suggest the income derived from those assets is "unrelated" to our charitable purposes. The Māori Fisheries Settlement was on behalf of all Māori, and the quota held which generates annual catch entitlements, is for the benefit of our iwi members and future descendants.

Any reform to the taxation of charities that distinguishes between 'business' income and 'passive' income should come with clear guidance as to what constitutes business income. We note that there are already provisions in the tax legislation that specifically refer to assets held pursuant to the Māori Fisheries Act 2004, and so there is precedent for specifically referring to these assets that could be used in the context of an exclusion from any new taxing provision.

Accumulated funds

The Issues paper also considers an option of tax only being paid on accumulated surpluses rather than all business income.

I have ***attached*** in *Appendix B* the document "Distribution Spending Policies Considerations Dec 2012".

The report discusses the important issues relating to the allocation of iwi income between annual spending and investment, including the challenges of balancing the sometimes-competing objectives of intergenerational fairness, stable income to fund spending and strong wealth creation.

NTFCT's goal is to accumulate sufficient funds to cover the impact of inflation and ideally provide for a growing membership base.

In our 2023 Annual Report we noted that number of members over 18 registered with addresses increased from 8,695 (2022) to 9,674.

We note that in the most recent census to number of people who identify as Ngāti Tūwharetoa increased:

2023 – 48,960 (Source = Te Whata)

2018 – 47,103 (Source = Wikipedia)

2013 – 35,877 (Source = Te Whata)

https://tewhata.io/ngati-tuwharetoa-ki-taupo/social/people/demographics/

Engagement

We want to express our disappointment regarding the short timeframe to respond. There should have been wider and more substantial consultation.

The Crown has obligations 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. Considering the significant lack of engagement, it is clear that the Crown has not acted consistently with this obligation. Accordingly, NTFCT 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.

Recommendation

NTFCT's overarching recommendation is that if the proposals are progressed, a specific exemption should be provided 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.

Ngā mihi

s 9(2)(a)

Danny Loughlin
General Manager

Appendix A: **Ngāti Tūwharetoa Fisheries Group**

The Group is currently comprised of three entities:

- Ngāti Tūwharetoa Fisheries Charitable Trust
- Ngāti Tūwharetoa Fisheries Holdings Limited
- Te Kupenga Hōu Limited

Charity Name	**Registration Number**
Ngāti Tūwharetoa Fisheries Group	CC55373
Ngāti Tūwharetoa Fisheries Charitable Trust	CC20197
Ngāti Tūwharetoa Fisheries Holdings Limited	CC20221
Te Kupenga Hōu Limited	CC59329

Appendix B: **Distribution Spending Policies Considerations Dec 2012**

December 2012

DISTRIBUTION & SPENDING POLICIES

CONSIDERATIONS FOR IWI

"Ma te huruhuru te manu ka rere"

"Distribution policy" in this report refers to the allocation of commercial and investment returns between iwi spending and investment.

bnz

E rua tau ruru
E rua tau wehe
E rua tau mutu
E rua tau kai

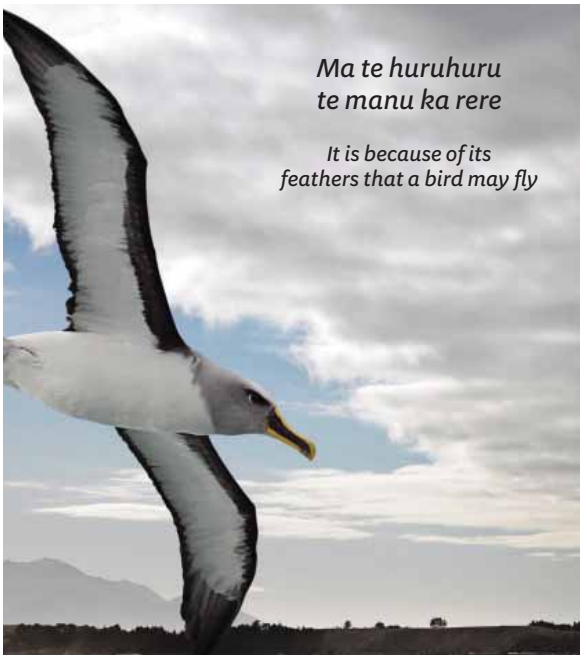
Two years of wind and storm
Two years when food is scarce
Two years when crops fail
Two years of abundant food

There have been lean years for Māori, and as we enter into a time of prosperity for Māori we need to look at how we can protect current assets for use by future generations yet still meet the needs of today, and part of that is to understand the best way to allocate Māori and iwi income between spending today and investment for tomorrow.

BNZ recognises the importance Māori place on an intergenerational perspective. The goal of this report is to assist iwi, Māori land trusts, and other long term intergenerationally focused organisations in forming sound policies to govern the decision on how much to spend today and how much to invest for tomorrow.

The approach taken can have a critical impact on intergenerational fairness, spending stability and overall wealth generation. A small misalignment now can have a very large impact when compounded over the very-long term focus of many iwi. But, despite often being topical, there does not appear to be a lot of framework development or formal publication on the issue amongst the wider Māori community.

Contents



EXECUTIVE SUMMARY

Introduction

In Part 1 of this report we discuss important issues relating to the allocation of iwi[1] income between annual spending and investment, including the challenges of balancing the sometimes competing objectives of intergenerational fairness, stable income to fund spending and strong wealth creation. We close this part with iwi Q&A on distribution policies, with a generous contribution from Mike Sang of Ngāi Tahu.

In Part 2 we turn our attention to iwi spending policies, with a special focus on universal cash payments to iwi members. This is an issue that may attract more attention as iwi wealth and incomes continue to grow.

PART 1: DISTRIBUTION POLICIES

How to best allocate income between spending and investment?

Each year iwi commercial assets and investments generate returns. In deciding how to allocate those returns between spending today and investment for tomorrow, iwi make a number of important tradeoffs.

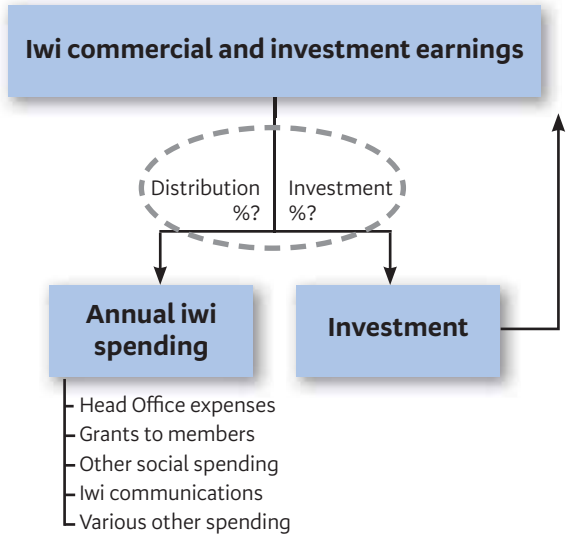
A desire to achieve intergenerational fairness, for example, means that over time the annual split between spending and investment needs to be fair to both current and future generations. A high investment rate today, at the expense of spending, might not be fair to the current generation. Likewise, a low investment rate today might limit the funds available for spending in the future and disadvantage future generations.

The decision on how much to invest versus how much to spend each year can also be complicated by the volatility of returns. Iwi may want distributions from commercial assets and investments to be stable from year to year, so they can plan and budget their spending effectively. But returns can be volatile from year to year, and there can be a risk of spending too much in the good times and not having enough when times are hard. The right disciplines are needed in order to achieve a strong and stable income flow for annual iwi spending and a satisfactory intergenerational fairness outcome, whilst maintaining an asset base that is sustainable in perpetuity.

1 For the sake of brevity references to iwi also include Māori land trusts and other long term intergenerationally focused organisations.

*Achieving the best balance of iwi financial outcomes requires an appropriate investment policy governing commercial assets and other investments. It also requires an appropriate policy for balancing the level of iwi spending and investment each year. We refer to this as the "**distribution policy**", and it is the main focus of Part 1 of our report.*

The distribution decision: What's the best split?



For clarity, please note that in Part 1 of this report we have referred to iwi grants to members as 'spending' rather than 'distributions'. We have endeavoured in Part 1 to reserve the term 'distribution' to refer to how much of an iwi's income is spent rather than invested.

Current iwi distribution policies

Different distribution strategies are used by iwi. Examples include:

- s 18(c)(i)
- s 18(c)(i) commercial and investment operations have, in recent years, focused on providing a consistent dividend each year.

Many iwi do not publish their policy relating to annual distributions. We expect that some of these iwi may use a discretionary approach. They might decide how to allocate income on a case-by-case basis, taking each year as it comes.

Such an approach may have been put in place deliberately, or have come about by default.

The adoption of a discretionary approach might reflect an iwi being at an early stage of commercial development, still awaiting progress on treaty settlement; or an iwi with otherwise insufficient income to warrant a formal distribution policy.

s 18(c)(i) will provide an interesting new reference point as its income levels increase significantly. The commercial and investment activities will generate high levels of income relative to the number of iwi members. The governing entity is moving away from a charitable structure - partly to provide greater flexibility around distributions.

Distribution rules used by overseas permanent funds

We have examined the distribution policies used by permanent investment funds overseas for allocating their annual earnings between: (i) investment and (ii) distributions to their parent organisation for annual spending.

Like iwi, many permanent funds overseas need to ensure they maintain their asset base in perpetuity, while generating a regular income flow to finance the not-for-profit activities of the organisation they support.

Key observations include:

- The approach permanent funds take to managing their portfolios has refined and developed over the last hundred years, and distribution polices have needed to evolve accordingly.
  - Early funds concentrated on "fixed income" types of investment and it was fairly straightforward to determine annual distribution payments using the value of income generated.
  - Since the 1950s there has been more emphasis placed on portfolio diversification and a shift from a pure income focus to a total return focus (i.e. income plus capital gains). This shift brought about a change in distribution policies. Permanent funds started using the market value of their investment fund, rather than the fund's annual income flow, to determine annual distribution payments. They needed to do this because a significant portion of their returns was now in the form of capital gains.
  - Using the value of an investment fund to calculate yearly distributions can lead to distributions being volatile from year to year. Rules have been developed to smooth this volatility and provide more stable funds for annual spending.
- Today a variety of rules are used by overseas permanent funds to determine the annual level of distribution. These include:
  - Simple discretionary or income-only approaches;
  - Rules linked to a moving average of the market value of the portfolio;
  - Rules which determine an appropriate starting level of distribution and then grow it each year; and
  - Hybrid rules which combine a formula linked to the market value of the portfolio with formulae to provide distribution stability (Ngāi Tahu use this type of approach).

The "Yale Rule" is often cited as an example of best practice in the US. It is designed to provide stability in annual distributions and to be responsive to changes in the value of the investment portfolio.

The rules adopted by permanent funds seek to provide sustainable distributions and the settings they use will typically account for the effects of inflation. An overview is provided in the following table.

Summary of the main methods for allocating income between investment and spending

Rule Category	Method of calculating distributions	Features	Examples of possible relevance to iwi *
Discretionary	• Decide an appropriate level of distribution each year.	• Flexible, but long term sustainability could be an issue and distributions may not be stable.	• Might suit some iwi who want maximum flexibility and who have the ability to adjust spending as required. • Requires careful governance. Achieving intergenerational fairness and growth in the asset base could be very challenging.
Income Only	• Spend current income but leave the principal intact. May invest some income to protect the principal against inflation.	• Encourages conservative investing that emphasises income, which may limit long term growth. • Protection against inflation only if sufficient income re-invested.	• May suit some iwi with extremely limited funds who require very stable income to meet a tight annual spending budget.
Inflation-based	• Determine an appropriate starting annual distribution level and then grow it each year at the rate of inflation. • May use cap and floor levels, expressed as a percentage of the value of the investments.	• The chosen starting level of spending has a critical impact. • Without cap and floor levels it is de-linked from moves in the value of investments, which creates a risk that future distributions might not be sustainable.	• Might suit some iwi that wish to focus on running a low level of spending for a period of time while they build up their investments.
Market Value	• Each year distribute a specified percent of the market value of investments. • May use the market value at the start of the year or a moving average of recent years. • The distribution rate is set at a level which leaves sufficient returns invested to allow for the effects of inflation.	• Allows total return investing, which should, over time produce higher returns than a conservative income-focused fund. • Distributions lack predictability and can be prone to volatility. • Moving average approach is widely used in the US and provides more stable distributions than rules using the market value at a single point in time.	• Iwi seeking to maximise long term growth in their asset base are likely to focus on total return investing rather than investing just for income. • The Market Value approach provides a method for determining distributions when some investment returns are coming from capital gains.
Yale/ Stanford	• Current year distribution is a weighted average of (i) last year's distribution, adjusted for inflation, and (ii) the policy target distribution rate (e.g. 5%) multiplied by the market value of the fund.	• Combination of stable year-to-year spending and linkage to changes in market value of portfolio, with moderation. • The weightings provide an organisation with the means to customise a policy that balances its needs.	• May be suitable for iwi who are investing on a total return basis, but who want greater stability in annual distributions than that provided under a Market Value approach.
Stabilisation Fund: Alpha/Beta	• Returns from the investment portfolio that are in excess of the target distribution rate are placed in a separate fund (the "stabilisation fund") and invested alongside the main portfolio. • The stabilisation fund can be drawn down when the performance of the main portfolio is below the target distribution rate.	• Can be effective in achieving intergenerational fairness objectives and maximising total benefits (total distributions + portfolio growth) over time. • Distributions are sensitive to market volatility. • Can be combined with a Yale approach to trade off some of the value generated in return for the greater distribution stability.	• Versions of the stabilisation fund approach, such as the Alpha/Beta method, may appeal to iwi who wish to run a liquidity buffer alongside their main portfolio of commercial and investment assets. • Some versions of this approach allow the stabilisation fund to run negative balances at times. This particular aspect may not suit iwi who prefer not to use borrowings to support distributions.
Milevsky Brown	• Parameters set in order to achieve a high probability (e.g. 95%) of achieving the desired outcome.	• Can be effective in preserving the real value of capital, but is complex to calculate and reliant on assumptions. • Higher volatility in distributions.	• The administrative complexity and distribution volatility is unlikely to suit many iwi.

** This column does not provide an exhaustive list. It is not meant to be prescriptive in any way and the intent is only to provide examples for consideration.*

Appendix 1 of the report outlines the distribution policies used by a selection of overseas institutions operating permanent funds. The distribution rules outlined here are a starting point only. Multiple variations are possible and each organisation needs to do their individual analysis, and adopt or customise rules to suit their situation and objectives. Strategic spending for example, such as spending on large infrastructure assets, can benefit multiple generations. However, the cost might not be met proportionately by current and future beneficiaries. This needs to be taken account of when assessing appropriate distribution rates.

Some iwi may not feel the need for a distribution rule at all and may be comfortable with a discretionary approach. But at the very least, it is prudent to monitor aspects such as intergenerational fairness and the purchasing power of income generated by assets held, and to ensure appropriate governance is in place.

What distribution rate is sustainable in perpetuity?

- The "distribution rate" typically refers to the ratio of the annual distribution amount[2] to the total equity value of the investment portfolio. In the case of iwi, investments might include commercial businesses, property and fishing quota, in addition to market securities such as shares and bonds.

In considering what distribution rate is sustainable, several US studies suggest that paying out an amount equivalent to 5% of a portfolio's market value each year would be too high for many US permanent funds, and wouldn't leave enough in the fund to fully compensate for inflation.

- The sustainable distribution rate for New Zealand iwi will vary on a case-by-case basis. It depends on factors such as the composition of commercial assets being included in the distribution calculation. For example, some iwi may hold large amounts of commercial land not yet developed and not producing income, that might be excluded from the distribution calculation.
- An iwi would need strong justification to support an underlying annual distribution rate equivalent to 5% or more of the value of equity they have invested in commercial assets and other investments. To generate sufficient returns they would need to consistently outperform many US endowment funds (assuming a similar risk profile). Otherwise there is a risk that their distribution rate might not be sustainable over the long term, and that the value of their investment base might not keep pace with inflation.
- Generally, the US endowment fund material we reviewed did not consider intergenerational fairness from a per-person perspective. Most US university endowment funds are not established with the intent of sustaining a growing number of beneficiaries. However, iwi may wish to take population growth into account, in accordance with their intergenerational fairness objectives.
- As an example, let's say an iwi wants the ratio of the amount they spend each year divided by the number of iwi members to be consistent over time (adjusted for inflation). Let's also assume that the iwi's population is expected to grow at 1.3% per year and their portfolio or balance sheet is split 35% into income assets (e.g. bonds and term deposits) and 65% into growth assets (e.g. shares in companies). The table below provides indicative sustainable distribution rates, showing how the rate varies under different assumptions for tax and population growth.

Indicative sustainable distribution rates for an example portfolio

		Effective tax rate	
		0%	**28%**
Population growth	**0%**	5.0%	3.4%
	1.3% p.a.	3.7%	2.1%

Source: BNZ Private Bank

Because each iwi's portfolio of commercial and investment assets requires unique analysis, we stress that these figures are a starting point only, and not a substitute for the expert investment advice that is ultimately required.

PART 2: SPENDING POLICIES

In this Part of the report we look at some of the issues and current practices relating to iwi spending policies.

- The starting point for establishing appropriate spending polices (and for that matter distribution

2 ie. the amount available for annual iwi operating expenses, grants and other spending.

and investment policies as well) is an iwi's core values and objectives (desired outcomes). These need to be clearly articulated, and for many iwi this will already be the case.

- Historically, many iwi have structured their organisation as a charitable trust, which can operate with favourable tax status (tax rate of 0%), but is subject to limitations on how funds may be used. Newer iwi structures are tending to take a different approach.
- s 18(c)(i) will provide a useful new reference point for a non-charity, as their income ramps up.
- Operating separate business units for achieving commercial and social objectives provides clarity of focus and accountability. Many iwi organisations are now structured this way.
- Some iwi spend on a wide range of tribal development and support activities. With less wealthy iwi, spending tends to be predominantly directed towards tribal operational expenses and discretionary grants.

Focus topic: Universal cash payments to individual iwi members

In this focus topic we touch on some of the issues and overseas experience in relation to universal, direct cash payments to individuals (often referred to as "per capita payments"). In New Zealand, direct payments by iwi to individual members have typically been targeted and in the form of small grant schemes to assist in areas such as education, sporting development and health. However, as iwi wealth grows, so does the capacity to increase returns to tribal members and the political pressure to do so.

- Regardless of philosophical position, an overriding constraint on making per capita payments is the availability of cash. For some iwi the capacity to pay universal cash distributions is very limited.
- We note that amongst American Indian tribes the decision on whether or not to make per capita payments is very tribe-specific. Having a large amount of tribal revenue available does not necessarily mean that a tribe will choose to make per capita payments.
- Some American Indian tribes attach conditions to per capita payments to promote desirable behaviours. For example, deductions from family entitlements when children show a poor attendance at school.

Cash (and tax) constraints aside, the choice of whether it's better to make universal cash payments to individuals or not comes down to the objectives and values of individual iwi. This is a crucial point, and it's a judgement call.

While not the same as universal per capita cash payments, s 18(c)(i) Unlike universal cash payments, recipients need to contribute their own capital and expose it to investment risk; and face a delay before they can access the benefits. Importantly, the programme encourages desired behavioural outcomes (e.g. saving habits).

Appendix 2 of the report provides a case study of the Alaska Permanent Fund - an interesting example of a fund with an intergenerational focus that makes universal cash payments to individuals.

Summary comments

- **Policies governing the allocation of income between spending and investment can have a profound impact on long term iwi outcomes and need careful consideration. There does not appear to be a lot of formal framework development across the wider iwi community, but we expect greater focus on this area as iwi incomes grow and settlements progress.**
- **A range of approaches for determining the best spending/investment allocation have been adopted by permanent funds overseas. No one size fits all, and different approaches - or combinations of approaches - may suit different iwi.**
- **The proportion of income being spent each year needs to be sustainable over the very long-term if intergenerational fairness is important. If the spending rate is too high, then the value of the underlying assets won't be able to grow sufficiently to keep pace with inflation. US evidence suggests that the sustainable annual amount of spending is probably less than 5% of the value of equity invested.**
- **If an iwi is seeking to sustain their real (inflation adjusted) level of spending on a per-person basis, then they need to allow for population growth.**
- **Given the potential for the world to enter a low-growth, low-inflation environment, the ability to distribute at past levels may be severely restricted for some time.**
- **Structural separation of iwi commercial and social operations enhances clarity and accountability.**
- **As iwi wealth grows we may see more debate around the issue of universal cash payments to members. Ultimately the approach taken is a judgement call, which may vary across iwi. If adopted, universal cash payments can be structured in ways which promote desirable social outcomes.**

PART 1:

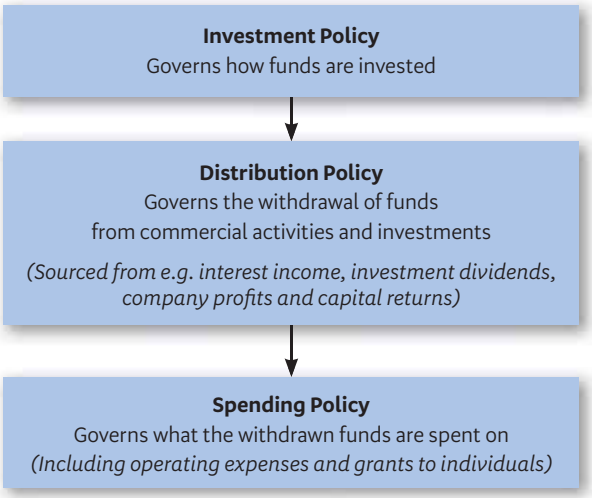
Distribution Policies

PART 1: DISTRIBUTION POLICIES

How to best allocate income between spending and investment?

1.1 Introduction

Managing iwi[1] investments (including investments in commercial activities) and the returns they generate can be viewed in three parts:



The primary focus of Part 1 of this report is on key issues relating to iwi distribution policy. The approach taken can have a critical impact on achieving iwi objectives and we hope this report will assist iwi in forming sound policies.

We look at the different approaches to distribution policy taken by some iwi so far and some of the approaches taken by charitable organisations in other countries as they seek to balance current spending demands with other objectives such as intergenerational fairness ("intergenerational equity").

As iwi wealth and income continue to grow, wider avenues for investing and distributing funds can be considered, and we believe there will be increased focus on distribution policy in the coming years. Several larger iwi have already developed and refined their approach in this area.

Please note: Our report is intended to be an aid to discussion, rather than a complete guide.

Throughout the report we often use the term "investments" to capture both:

i. Commercial enterprises owned by iwi (such as fishing interests, dairy farms, forestry assets, commercial properties, tourism ventures and other businesses); and

ii. Portfolio investments (such as shares in listed companies and bonds).

For clarity, please note that in Part 1 of this report we have referred to iwi grants to members as 'spending' rather than 'distributions'. We have endeavoured in Part 1 to reserve the term 'distribution' to refer to how much of an iwi's income is spent rather than invested.

1.2 Distribution policy: Managing important trade-offs

Each year iwi commercial assets and investments generate returns. In deciding how to allocate those returns between spending today and investment for tomorrow, iwi make a number of important tradeoffs. For example:

- A desire to achieve intergenerational fairness means that over time the annual split between spending and investment needs to be fair to both current and future generations.
    - A high investment rate today, at the expense of spending, might not be fair to the current generation. Likewise, a low investment rate today might limit the funds available for spending in the future and disadvantage future generations.
- There might also be a desire to maximise the total benefits to iwi members, over the very long term.
    - It is possible that a high investment rate today might lead to higher iwi wealth and income overall. But it might benefit future generations disproportionately.

Iwi may also want distributions from commercial assets and investments to be stable from year to year, so they can plan and budget their spending effectively. Achieving stability also involves trade-offs. For example:

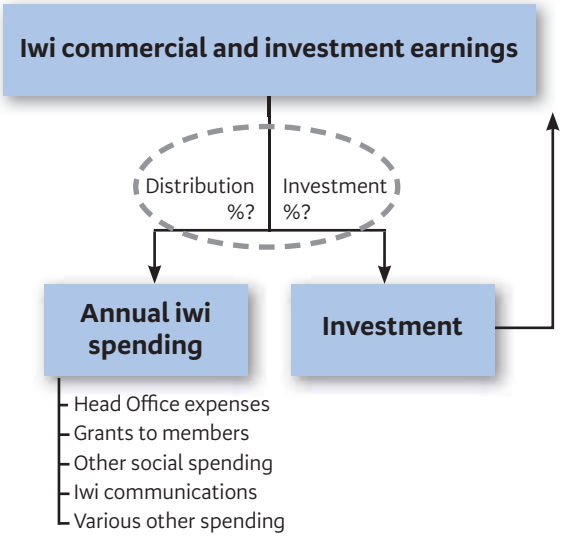
- Investing in a portfolio of government bonds and using the interest income each year to finance iwi spending might produce a stable income flow. But it might not be very effective at maximising iwi wealth and income over the long term. And it might not be fair to future generations if it isn't managed in a way that compensates for inflation or allows for population changes.

1 For the sake of brevity references to iwi also include Māori land trusts and other long term intergenerationally focused organisations.

- Investing in other asset classes, such as equities, might give higher long term returns. But those returns can be very volatile from one year to the next. This can complicate the decision regarding what proportion of returns to allocate for iwi spending each year, especially if iwi are to avoid distributing too much in the boom years and having too little in the future or when times are tough.

*Achieving the best balance of iwi financial outcomes requires an appropriate investment policy governing commercial assets and other investments. It also requires an appropriate policy for balancing the level of iwi spending and investment each year. We refer to this as the "**distribution policy**".*

The distribution decision: What's the best split?



1.3 How do iwi currently allocate income between spending and investment?

Examples of current distribution policies

While specific details on distribution and spending policies are not publicised by many iwi, it appears that iwi with a relatively small amount of annual income either make discretionary allocations each year, or follow straightforward distribution and spending policies (e.g. a budgeted allowance for educational grants).

In some such cases a more comprehensive policy might not be needed and might be administratively expensive and time consuming.

For more wealthy iwi a key focus is on achieving a reliable income stream to fund tribal expenditures. s 18(c)(i) For many iwi, intergenerational fairness is an important influence on the decision of how much to spend today and how much to invest for the future.

In the following sections we show approaches to distributions taken by a sample of iwi.

s 18(c)(i)

s 18(c)(i)

s 18(c)(i)

s 18(c)(i)

Points of note

Payout Ratios

Using the tabled data in the previous section, dividend payments from commercial operations have been, on average:

- s 18(c)(i)

These figures provide useful reference points. However, please note that the limited timeframe means we can't draw conclusions about what

payout levels are sustainable over the long term. Furthermore, assessing sustainable payout levels requires thorough analysis of the mix of assets in the investment portfolio, and would consider market values rather than the accounting values we have used in the tables.

Distributions with a link to asset value

A particularly salient aspect of s 18(c)(i) policy is that distributions by the commercial arm are linked to a percentage of assets[3]. This is in contrast to approaches that link distributions purely to investment income or are driven by predetermined spending formulae. Linking distributions to the value of the asset base is a practice prevalent overseas and we discuss this kind of approach in more detail later in this Part of our report.

1.4 How are the distribution policy and the investment policy interrelated?

The commentary in this section provides background context for the discussion in sections 1.5 and 1.6 on policies for distributing income between investment and spending. In the interest of clarity, please note that distribution policy and the methods we discuss are relevant to iwi regardless of whether they operate separate social and investment arms or a single integrated entity.

Potential uses of commercial and investment returns

The potential uses of returns from an iwi's commercial and investment operations can be summarised as follows:

Use of Funds		Categories
Investment		• Investment into the existing businesses for maintenance and growth. • Investment into new commercial and investment opportunities.
Spending	**Tribal**	• Spending on ongoing tribal services and social objectives – such as administration, governance, education grants and marae upkeep. • Strategic spending - in areas such as advocacy, long term community infrastructure, or the purchase of assets for social or cultural purposes (as opposed to investment).
	Individual	• Targeted payments to members – such as education grants. • Universal payments to members - if deemed appropriate.

3 "Assets" in this context effectively refers to the market value of equity invested.

Factors influencing the spending / investment split

The decision on how to split each year's returns between investment and spending ("distribution policy") involves balancing multiple factors, some of which have competing objectives. The amount of funds available is a clear constraint, but other factors influencing the allocation decision include:

(i) Capital requirements of existing commercial businesses

To some extent the capital requirements of existing businesses are commercial decisions determined at the operating business level. For example, the decision on how much capital to retain to keep the business running in good order. Decisions regarding surplus funds beyond this amount are governed by the corporate level dividend policy and/or over-arching portfolio investment policy.

Interestingly, there is no global consensus on the best approach to corporate dividend policy, despite a huge amount of academic research. The situation is summed up well in a recent review of this area: "No general consensus has yet emerged after several decades of investigation, and scholars can often disagree even about the same empirical evidence."[4] For many iwi-run businesses, their appropriate dividend policy may vary on a case-by-case basis.

(ii) Preservation of assets and growth aspirations

Ongoing investment is required in order to preserve the value of the asset base from the effects of inflation. This applies to both iwi owned businesses and iwi "portfolio holding" investments in assets such as bonds and shares in listed funds or companies. Furthermore, some iwi may have a bias towards growing their asset base rather than running it down.

Deeper considerations around the issue of preservation of the asset base go beyond inflation-adjusting and look more closely at the capacity to sustain income generation. For a detailed discussion in this area we refer readers to a 2005 report by James Garland called "Long-Duration Trusts and Endowments"[5]. Garland focuses on "fecundity", which he describes as "a measure of the spendable cash that a fund can provide today without unduly threatening its ability to provide similar amounts – adjusted for inflation – in the future."

4 Dividend Policy: A Review of Theories and Empirical Evidence", Al-Malkawi, Rafferty, Pillai, International Bulletin of Business Administration, Issue 9 (2010).
5 Long-Duration Trusts and Endowments", James P Garland, The Journal of Portfolio Management 2005.31.3, pages 44-54.

(iii) Intergenerational fairness

Individuals vary in their preferences for consumption spending versus savings over the course of their life and there are several economic theories that try to model and explain this (theories of "intertemporal consumption"). A pension plan is typically designed to provide a person with a certain amount of income in retirement. How much they want to have in retirement determines how much they need to save beforehand. The asset mix changes as the person ages and their requirements change.

However, an iwi is a mix of individuals and collectively has a much longer time perspective for spending than an individual does. The iwi investment horizon stretches into the ultra long term, well beyond that of the average pension plan or kiwisaver account. It's perpetual. With a perpetual horizon, there is no "retirement" point – no binary switch from saving to spending. Saving and spending continually need to happen at the same time.

Achieving intergenerational fairness is an important driver of how an iwi's commercial asset base is managed. The debate around intergenerational fairness can get very philosophical – as many discussions around fairness do. However, our focus is primarily on economic and financial aspects, such as the need to compensate for the corrosive effects of inflation and the need to allow for population growth. We acknowledge that there are wider considerations, outside of the scope of our report, and in many cases best left to the judgement of individual iwi.

(iv) The requirement for stable cashflows to fund a base level of tribal expenditures

For many iwi, a base level of expenditure has been established. Regardless of whether the commercial operations have a good year or bad year, certain tribal expenses still need to be paid. The requirement for a base level of tribal funding is well demonstrated by s 18(c)(i) emphasis on stable dividends.

(v) Discretionary tribal spending and disbursements to members

Many iwi have the desire and the financial capacity to spend beyond the base level of spending that keeps the organisation ticking along. Some of this spending is targeted towards tribal development and advocacy. Some of it is spent in ways where iwi members can benefit directly from the fruits of the investments - such as a new community centre, or individual education or social grants.

Some types of tribal expenses may be non-essential, but a strong history of regular payments can lead to expectancy and political pressures for them to continue, regardless of tough economic times.

Key points

Broadly speaking, the investment / distribution policy mix is attempting to balance 3 things:

- **Preserve and grow the asset base**
- **Provide stable distributions for tribal spending**
- **Achieve intergenerational fairness**

Interdependence of investment, distribution and spending policies

The investment, distribution and spending policies are interdependent.

- The returns generated by investments determine how much income is available each year. The distribution policy allocates it between spending and further investment.
- Future spending requirements, which are influenced by intergenerational fairness objectives, affect the amount of new investment needed each year and the investment portfolio mix.

This interdependence means that all three policies need to considered and analysed together, and not viewed in isolation.

1.5 How do permanent investment funds in the US allocate their annual returns between investment and distributions to their parent organisation?

If intergenerational fairness is an objective, a portfolio of commercial/investment assets needs to be maintained in perpetuity. There needs to be a permanent capital base. The size and composition of that base may change over time, but an underlying permanency must prevail.

In considering how to best manage a permanent fund, including the balance between investment and distribution policies, there is a wealth of overseas experience that we can draw on. A particular area we are going to focus on is permanent funds in the United States.

US permanent funds - background and similarities with iwi wealth management

Many not-for-profit institutions in the US - such as universities, colleges and museums - source a significant part of their funding from endowments (donations such as money or property). With some institutions the capital built up over time from successive endowments has amassed into substantial investment funds ("endowment funds") – some worth several billion US dollars.

Like iwi, many endowment funds have a need to balance an intergenerational time horizon with a need to make regular distributions to fund operating expenditure. They also need to take account of inflation. University endowment funds, for example, may focus on inflation specific to the education sector and its implications for how they manage withdrawals from their funds.

Another similarity with iwi is a heavy reliance on the income earned from the invested funds. For example, some US universities may source 30-40% of the income they need each year from earnings generated by endowment funds. This is a substantial component of a university's income, and needs very careful management.

While 30-40% reliance is not exactly the same as some iwi's 100% reliance on commercial and investment earnings to fund tribal operations, many of the considerations on how to manage investments and distributions are similar. For example, stable, consistent distributions are important, because volatility in funding can be very disruptive to operations. Smoothing the volatility of distributions has been a key focus of US endowment funds and a range of developments have been made in this area. We review these in the following sections.

Before we do though, we wish to draw attention to a particular difference between the situation of iwi and that of US endowment funds. The portfolio of a typical US endowment fund might include a diversified mix of asset classes such as domestic equities, global equities, fixed income securities, real assets (e.g. property), hedge funds and private equity. However, the mix of assets invested in by most iwi is quite different. For example:

- The investment preferences of iwi may include regional concentrations (e.g. preference for NZ and/or local region) and/or sector concentrations (e.g. property, farming, fishing, tourism); whereas US endowment funds may be more globally and sector diversified.
- Many US funds invest a large portion of their portfolio in highly liquid assets (easily sold), such as listed shares and bonds which can be bought and sold daily. In contrast, some iwi may have a higher weighting to less liquid assets, such as direct property holdings.
- The asset portfolios of some iwi are small and may consist of a limited number of investments.

It is important to keep these differences in mind when translating the US experience into what might be most appropriate for iwi in NZ. The lessons may be the same, but the application different. Often it's the rationale behind the US approach that's most relevant to take note of, rather than the final approach they adopt.

Evolution of distribution rules used by US permanent funds[6, 7]

A useful starting point is to review the evolution of US endowment distribution policies, to understand why certain features have come about.

The 12th century (and possibly earlier)

- Rental income from land holdings was used to support religious organisations.
    - Both land values and rents tended to rise over time, providing increased distributions.

Early 1900s

- By the early 1900s the predominant assets of endowment funds had shifted to fixed interest investments. Portfolios might also include dividend paying blue-chip equities.
    - The trustees of the funds would simply distribute income generated by investments – such as dividends from blue chip stocks and interest from investment quality bonds - and keep the principal capital invested.
    - It was important to maintain the historic value of the source capital.
    - Capital gains were invested and not distributed.

1950s-60s

- Stock market booms in the 1950s and 1960s caused a greater focus on capital gains and saw a shift in endowment funds from a pure income focus to a total return focus (investing for both income and capital gains).
- However, receiving a much greater share of a fund's investment returns in the form of capital gains can cause problems if these capital gains cannot be realised or distributed under a fund's distribution policy.
- A new distribution method was developed in the late 1960s and is the origin of the distribution policies of most non-profit endowment funds in the US today.
    - The new method linked distributions to the value of the fund's investments. It involved using a moving average of the value of the fund over a specified historic period (e.g. 3-5 years), and applying a pre-determined spending rate (typically 4.0-5.5% of the fund's average value).

1970s-80s

- High inflation in the 1970s and 1980s, declining dividend yields, and further developments in investment and portfolio strategies all contributed to shift preferences away from fixed income securities and towards other types of investments.
    - Inflation can be very corrosive. For example, funds invested in a 5 year bond paying 5% interest per year will suffer an erosion in purchasing power if inflation averages, say, 7% over the life of the bond. Inflation in New Zealand is now held in check by the Reserve Bank, but the peak rate of New Zealand inflation in the 1970s and 1980s approached 20%.
- Introduction of the Uniform Management of Institutional Funds Act (UMIFA) in 1972 meant US charities could distribute capital gains (but a fund still could not go below the original value of the principal capital). Previously charities generally relied on trust law for guidance, which was conservative and did not allow total-return investing.

2000s

- Major falls in fund values due to the GFC (Global Financial Crisis) and other major market declines this century have seen some large cuts to distributions by US endowment funds.
    - In some cases these cuts have been very painful, as the organisations (such as universities) benefiting from the income flowing from the fund are heavily reliant on this source of income.
    - Some organisations made special appropriations, outside of the level determined by their spending rule, to soften the blow.
- Market declines saw many funds "underwater", a situation where the value of the fund was lower than the value of the original capital invested. Under UMIFA, underwater funds were restricted from spending.
- The Uniform Prudent Management of Institutional Funds Act (UPMIFA) was approved in 2006 and replaced the 1972 UMIFA. The new Act removed the requirement of the UMIFA that endowment funds could not distribute out of principal capital. The new Act also placed an emphasis on preserving the purchasing power of the fund, not just the value of the original capital contributed. (Further commentary on UPMIFA is provided in Appendix 3.)

6 "Evolution of Endowment Spending Policies and Today's Best Practices", Callan Associates, November 2004.
7 "Sustainable Spending for Endowments and Public Foundations: Achieving Better Long-Term Results", Bernstein Global Wealth Management, January 2011.

Key Points

1. **Portfolio emphasis shifted away from "fixed income" types of investments in response to stock market booms, the effects of inflation and developments in portfolio theory. More emphasis on diversification and more emphasis on capital gains as a source of total returns.**
2. **This necessitated distribution rules linked to the value of the investment fund rather than its income flow.**
3. **Volatility in the value of the investment fund causes volatility in distributions. Rules to smooth this volatility can help.**
4. **But some funds have needed to step outside their distribution rule to avoid excessively painful spending cuts.**

1.6 What are the main types of distribution policies used by US permanent funds?

We now turn to consideration of the main distribution rules used by US endowment funds.

Note beforehand: When we express distribution rates as percentages of market values, the market values generally refer to the market value of the *equity* invested. Any borrowings by an iwi or investment fund would be deducted from the value of their assets. Many investment funds are not geared, in which case their asset value is similar to (or the same as) their equity value.

Distribution rules

The distribution rules used by US endowment funds can be grouped into several main categories, which we summarise in the table below. Further variations are also possible.

Summary table: Types of distribution rules

Rule Category	Methods	Description
Discretionary	Discretionary	• Decide an appropriate level each year.
Income only	Simple	• Spend all current income, leave principal intact. • One alternative is to invest some current income to inflation-protect the principal.
Market value	Simple	• Specified % of starting market value.
	Moving average	• A set percentage of the average market value of the fund (commonly the average market value taken over a 3 to 5 year period).
Inflation based	Inflation protected distributions	• Grow distributions at the rate of inflation.
	Banded inflation	• Grow distributions each year at the rate of inflation, with the amount subject to cap and floor levels, expressed as a percentage of the value of the fund at the start of the year.
Hybrid rules	Yale / Stanford	• Current year distribution is a weighted average of last year's distribution, adjusted for inflation, and the policy target distribution rate (e.g. 5%) multiplied by the market value of the fund.
	Stabilisation Fund: Alpha/ Beta	• Returns from the fund that are in excess of the target distribution rate are placed in a separate fund and invested alongside the main fund. The stabilisation fund can be drawn down when the performance of the main fund is below the target distribution rate.
	Milevsky Brown	• Parameters set in order to achieve a high probability (e.g. 95%) of achieving the desired outcome.

The following sections look at each type of rule in more detail. We draw on a range of reference papers and a summary of the main sources is in Appendix 4.

1. Discretionary approach

The starting point is no rule – distributions are decided on a discretionary basis each year. Despite developments made in relation to distribution rules, many funds choose to retain a relatively simple approach.

Distribution = A discretionary amount each year

Although simple, this rule can still be appropriate in certain circumstances. For example:

- An organisation that's not very dependent on the endowment fund for their income might not be concerned about volatility in payments from the fund, and prefer a straightforward approach to distributions.
- A small organisation with a limited number of assets (e.g. a few property holdings rather than a diversified portfolio of equities and bonds) might find a discretionary approach with a few basic guidelines more appropriate than a rigid or complex rule. Particularly if the income from their limited asset set is reliably consistent and inflation is low, stable and easy to adjust for.

In the US, this method of deciding an appropriate distribution rate is used by a range of endowment funds, but it is most prevalent amongst the funds with investments below US$50m. For a discretionary approach like this to be sustainable for an iwi over the ultra long term, we believe strong governance and budgeting systems are essential.

2. Income-only rules

Another relatively simple approach is to spend only the income generated by the fund each year (from dividends and interest payments) and leave the principal intact.

Distribution = Income generated by the fund over the year

Example: A fund receives $2m in dividends from companies they have invested in, receives $3m in interest income from a bond portfolio and the market value of their investments increases by $1m due to share price rises. The amount distributed by the fund would only be the $5m of dividend and interest income.

This approach can be used in a variety of circumstances. For example, some funds adopt this type of approach following large falls in the fund's value, to allow the capital base to rebuild over a period of time (presumably via capital gains and new funds from fresh donations). One variation is to re-invest some of the fund's income each year to inflation protect the principal.

A downside of rules that distribute only a fund's income flows (and ignore capital gains) is that they can lead to an investment bias towards assets with attractive yields, at the expense of growth assets.

3. Market Value rules

Market value approaches link distributions to the market value of the portfolio. They are used in conjunction with an investment policy that focuses on total returns (as opposed to just income returns).

Simple Market Value Based Rule

A simple approach is to distribute an amount based on a predetermined proportion of the fund's value at the start of the year. This proportion, or "distribution rate", is set at a level expected to be sustainable over the long term. The level set typically aims to ensure that the value of the fund grows sufficiently to keep pace with inflation.

Distribution = R x V_{t-1}

R = Distribution Rate (%)
V_{t-1} = Value of invested funds at the end of last year

Example: A fund has determined that an annual distribution rate of 4.5% is sustainable over time and will leave enough funds invested to grow the asset base sufficiently to compensate for the effects of inflation. If the value of the fund at the end of last year was $100m, the distribution this year will be $4.5m, regardless of how the fund performs this year and regardless of the composition of returns between interest, dividends and capital gains.

This rule can result in volatility in the amount distributed from the fund each year, so a fund adopting this approach would need to be comfortable with that volatility. The volatility stems from changes in the market value of the investment portfolio, which occur due to changes in asset values such as share and bond prices.

Moving Average Rules

A partial solution to distribution volatility is to use a moving average of market value, rather than a single point in time. Moving average rules are the most popular distribution method used by US endowment funds.

The approach typically takes the moving average of the fund's value at the start of the last few years or quarters and applies a set distribution rate to it.

- The period used for the moving average is commonly the previous 3 years or 12 quarters, although 5 years or 20 quarters is also used.
- The distribution rate applied to the average fund value is typically 4.0% to 5.5%.

The formula below assumes a 12 quarter moving average. The example following it illustrates a 3 year moving average.

Distribution = R x $[V_{t-1} + V_{t-2} + V_{t-3} + ... + V_{t-12}]$ / 12

R = Distribution Rate (%)
V = Value of invested funds at the end of each of the previous 12 quarters

Example: A fund has determined that an annual distribution rate of 4.5% is sustainable over time and will leave enough funds invested to grow the asset base sufficiently to compensate for the effects of inflation. The fund uses a 3 year moving average and the values of the fund at the end of the 3 previous years were $120m, $110m and $130m. The average value is therefore [120m+110m+130m]/3 = $120m. The distribution this year will be 4.5% x $120m = $5.4m, regardless of how the fund performs this year and regardless of the composition of returns between interest, dividends and capital gains. Note that a further adjustment could potentially be made to increase the distribution to adjust for inflation.

The method can work well at smoothing out some of the distribution volatility, when the fluctuations in markets are moderate. It doesn't work so well with prolonged upswings and downswings, or when markets move sharply. For example, the increases in distributions dictated by the rule might not be sustainable; or required cuts in distributions might be abrupt and difficult to implement (not to mention painful).

4. Inflation-based rules

In the context of current practice by US endowment funds, "inflation based rules" refer to inflation-adjusting the fund's *distributions*, rather than the fund's investment *assets*.

Inflation protected distribution rule

An appropriate dollar amount of annual distribution is determined by the organisation (e.g. based on its view of what is sustainable). The setting of this initial level of distribution is very important, as too high an amount might not be sustainable over the very long term.

The distribution amount is then adjusted each year in accordance with the rate of inflation.

Distribution = D_{t-1} x (1 + δ)

D_{t-1} = Distribution $m last year
δ = The rate of inflation in the last year

Example: Last year a fund paid a distribution of $10m to its parent organisation. The relevant inflation rate for the last year was 3.0%. This year the fund will pay a distribution of $10.3m ($10m x 1.03) to its parent, regardless of the fund's performance.

The inflation index used might be the Consumer Price Index, or a measure more specific to the organisation, such as an index that tracks costs in the education sector. Some organisations just use a predetermined inflation rate.

On the positive side, this method provides stable and predictable income to the organisation. Income is steady, even when investment markets go through a downturn.

On the negative side, it disconnects the distributions from the underlying asset base of the fund. Over the long term this can mean the rule leads to much lower spending than rules linked to investment values, because market investment returns should outstrip inflation. In the shorter term, it's possible that a large fall in the market value of the fund, coupled with a period of high inflation, could result in withdrawals from the fund consuming a disproportionate amount of the capital base.

Banded Inflation Rules

To mitigate the disconnection effects, some organisations apply upper and lower spending limits, linked to the market value of the fund. For example, using a ceiling of 6% and a floor of 3%.

We illustrate how this might work in the following table. The default distribution is the previous year's distribution adjusted for inflation. However, if that default value exceeds the maximum or falls below the minimum allowable level, then the cap or floor apply. The calculated default, maximum and minimum values are shown in the "Decision Calculations" section of the table. The one that applies in each year is in bold.

Banded Inflation rule example

Year	Fund at start		Inflation	Decision calculations			Result
	Value $m	% chg	%	Last year's distribution plus inflation	Maximum distribution If 6% of fund value	Minimum distribution If 3% of fund value	Distribution $m
Year 1	100	..	..	..	..	..	**4.500**
Year 2	135	35%	3%	**4.635**	8.100	4.050	**4.635**
Year 3	165	22%	2%	4.728	9.900	**4.950**	**4.950**
Year 4	125	-24%	1%	**5.000**	7.500	3.750	**5.000**
Year 5	80	-36%	2%	5.099	**4.800**	2.400	**4.800**

Cap applies — Floor applies

Compared to moving average methods, institutions using a banded inflation approach tend to spend less during rising markets and more during falling markets.

5. Hybrid Rules 1: Yale / Stanford rule

A particular type of distribution rule combines elements that are designed to both generate spending stability and respond to changes in the market value of the investment fund. Variations of these rules are often referred to as the 'Yale Method' or 'Stanford Method' or 'Tobin Method' and they are used by several of the major US universities with large endowment funds.

This approach uses a market-value rule and an inflation-based rule and then assigns weights to each.

One example of this type of rule is:

Distribution = $W \times V_{t-1} \times R + [1 - W] \times D_{t-1} \times [1 + \delta]$

W	= Weight applied to market value of the fund
V_{t-1}	= Value of invested funds at the end of last year (can use earlier values)
R	= Distribution Rate (%)
D_{t-1}	= Distribution last year $m
δ	= The rate of inflation in the last year

- The weight applied to the value of the fund is typically between 0.2 and 0.4, which means that the greatest emphasis is on the previous year's level of spending.
- The distribution rate is typically between 4% and 6% of the market value of assets.
- The measure of the market value of the fund might be taken from the previous year, or earlier.
- The weightings can be altered to shift the emphasis between stability and responsiveness to movements in the market value of the fund.

Yearly distributions are more stable (in dollar terms) than those calculated using moving average methods.

Example:
(i) A fund has determined a target annual distribution rate of 4.5%, which is viewed as sustainable over time and should leave enough funds invested to grow the asset base sufficiently to compensate for the effects of inflation.

(ii) The value of the fund at the end of last year was $100m.

(iii) Last year the distribution paid by the fund was $4m.

(iv) Inflation last year was 2.0%.

(v) The organisation has decided to apply a weight of 0.2 to the value of the fund and a weight of 0.8 to last year's spending.

The distribution this year will be:
(0.2 x $100m x 4.5%) + (0.8 x $4m x 1.02)
= $0.9m + $3.264m = $4.164m, regardless of how the fund performs this year.

Note that further adjustments could potentially be made (e.g. using a different period or combination of periods to calculate the market value used in the formula).

6. Hybrid Rules 2: Stabilisation funds - the Alpha-Beta approach

A further type of rule, proposed by Mehrling in 2004[8], advocates the use of two separate funds, a primary fund and a stabilisation fund, in an attempt to improve the management of intergenerational fairness.

8 "Endowment Spending Policy: An Economist's perspective", 2004, Perry Mehrling, Barnard College http://net.educause.edu/ir/library/pdf/FFP0413S.pdf

1. The primary fund contains the original capital and is grown at inflation each year (by investing earnings).

2. An annual distribution rate is decided, expressed as a percent of the market value of the fund. Let's call this "Alpha". Alpha should be set at a level below or equal to the expected real rate of return of the fund. One suggestion is to have the rate sufficiently low, such that the earnings of the investment fund can cover it most of the time.

3. In times when the primary investment fund earns high returns, surplus earnings are invested in the stabilisation fund.

4. In times when the primary investment fund does not earn enough to pay for the required distribution, funds are drawn out of the stabilisation fund (which can be overdrawn).

5. Over time, the average balance of the stabilisation fund should be zero. In order to ensure this happens (because it won't unless Alpha is set perfectly), a distribution rate is applied to the stabilisation fund. Let's call this "Beta". To achieve a zero balance over time, the Beta rate will need to be higher than the real rate of return, given that Alpha is probably below the real rate of return.

The full formula is then:

Distribution = α x V_{t-1} + β x S_{t-1}

V_{t-1}	= Value of Primary Fund at the end of last year
S_{t-1}	= Balance of Stabilisation Fund at the end of last year

Example:
Assumptions
Value of primary fund at the end of last year = $100m
Value of stabilisation fund at the end of last year = $5m
α = 4.5%. β = 8%
Inflation this year = 2.0%
Fund returns this year = 7% (=$7m)

Calculations
Distribution this year = 4.5% x $100m + 8.0% x $5m
= $4.5m + $0.4m = $4.9m
Increase in primary fund = $100m x 0.02 = $2m
Increase in stabilisation fund = $7m - $4.9m - $2m = $0.1m

High values of Beta help correct misspecifications of Alpha, but can also produce greater volatility in distributions. One possibility for dealing with this is to incorporate the smoothing technique of the Yale rule.

For example:

Distribution = W x [α x V_{t-1} + β x S_{t-1}] + [1 - W] x D_{t-1} x [1 + δ]

W	= Weight applied to the Alpha-Beta calculation
D_{t-1}	= Distribution last year $m
δ	= The rate of inflation in the last year

Another alternative is to allow Beta to vary over time, such as using a higher value when the stabilisation fund is large. But not so high that distribution volatility is excessive.

7. Hybrid Rules 3: Milevsky-Brown rule

Professors Moshe Milevsky and Sid Browne advocate the setting of probabilistic criteria to guide endowments in their policies for asset allocation and distribution payments.

This involves using a tolerance level (e.g. "95% of the time") in conjunction with the financial policy parameters. For example, "a 95% probability of achieving investment returns of 6% pa over 30 years and reaching a target ending portfolio value".

The rule is more complex than the others we have discussed, and for a detailed discussion we refer readers to research papers by Milevsky and Browne. For example: "A New Perspective on Endowments", Moshe A Milevsky, York University, 10 March 2003.

Summary table: Pros and cons of different distribution rules

Rule Category	Methods	Pros	Cons	Examples of possible relevance to iwi*
Discretionary	• Decide an appropriate level each year	• Flexibility to adapt to conditions.	• Long term sustainability could be an issue. • Distributions may not be stable.	• Might suit some iwi who want maximum flexibility and who have the ability to adjust spending as required. • Requires careful governance. Achieving intergenerational fairness and growth in the asset base could be very challenging.
Income Only	• Income based	• Capital can be preserved (if principal is protected from inflation e.g. through investment of some of the year's income).	• Encourages conservative investing that emphasises income, rather than total return investing. This may limit the growth of the fund and reduce the probability that the future purchasing power of distributions is preserved.	• May suit some iwi with extremely limited funds who require very stable income to meet a tight annual spending budget.
Inflation-based	• Inflation protected distributions	• Stable distributions year-on-year, with purchasing power maintained.	• De-linked from moves in portfolio value, which creates a risk that future distributions might not be sustainable. • Initial level of spending set has a critical impact.	• Might suit some iwi that wish to focus on running a low level of spending for a period of time while they build up their investments.
	• Banded inflation	• Relatively stable distributions. • Partial link to changes in portfolio value.	• Initial level of spending set has a critical impact.	
Market Value based	• Specified % of starting market value	• Simple. • Market value approach allows total return investing, which should, over time produce higher returns than a conservative income-focused fund. • Distributions maintain relativity to the value of the underlying investments.	• Driven solely by the market level at a point in time, which is somewhat arbitrary. • Distributions lack predictability and are prone to volatility.	• Iwi seeking to maximise long term growth in their asset base are likely to focus on total return investing rather than investing just for income. • The Market Value approach provides a method for determining distributions when some of iwi investment returns are coming from capital gains.
	• Moving average (e.g. 12 quarters)	• Provides more stable distributions than rules using the market value at a single point in time. • Distributions maintain relativity to the value of the underlying investments.	• Anomalous temporary portfolio moves have an impact for the whole term of the moving average. • A long term in the moving average calculation can make it slow to adapt to large portfolio moves.	

Rule Category	Methods	Pros	Cons	Examples of possible relevance to iwi*
Hybrid Rules	• Yale / Stanford	• Stable year-to-year spending. • Adapts to changes in the market value of the portfolio, with moderation. • The weightings provide an organisation with the means to customise a policy that balances its needs.	• Dependent on weightings assigned. • Compromise may not result in optimal outcome for any of the primary goals (capital preservation, intergenerational fairness, distribution stability).	• May be suitable for iwi who are investing on a total return basis, but who want greater stability in annual distributions than that provided under a Market Value approach.
	• Stabilisation Fund Alpha/Beta	• Intergenerational fairness. • Effective in different types of markets. • Good at maximising total utility (total distributions + portfolio growth) over time.	• Distributions sensitive to market volatility.	• Versions of the stabilisation fund approach, such as the Alpha/Beta method, may appeal to iwi who wish to run a liquidity buffer alongside their main portfolio of commercial and investment assets. • Some versions of this approach allow the stabilisation fund to run negative balances at times. This particular aspect may not suit iwi who prefer not to use borrowings to support distributions.
	• Yale + Alpha/Beta	• Moderately stable year to year distributions. • Adapts to changes in the market value of the portfolio, with moderation. • Good at maximising total utility (total spending + portfolio growth) over time.	• Dependent on weightings assigned. • Trades off some of the value generated by the Alpha/Beta in return for the greater stability of Yale.	• May be suitable for iwi who want to run a stabilisation fund but want greater stability in annual distributions than that provided under a standard Alpha/Beta approach.
	• Milevsky Brown	• Preserves real value of fund capital.	• Complex to calculate. Reliant on assumptions. • Higher volatility in distributions. Can get large reductions in distributions when portfolio drops.	• The administrative complexity and distribution volatility seems unlikely to suit many iwi.

** This column does not provide an exhaustive list. It is not meant to be prescriptive in any way and the intent is only to provide examples for consideration.*

Prevalence of distribution rules amongst US Endowment funds

The table below shows the types of distribution rules used by endowment funds in the US in 2010.

Distribution Rule	Category	Proportion of funds using
Percentage of moving average assets	Market value based	75%
Percentage of beginning market value	Market value based	4%
Yale/Stanford	Hybrid	7%
Spend all current income	Income only	4%
Select a rate each year	Discretionary	11%

Note: figures do not add to 100% due to rounding. Category definitions may not match exactly with the categories we have described earlier.

Source: Russell Research, "Non-profit spending rules", October 2011; which sourced the data from the NACUBO-Commonfund Study of Endowments 2010 Survey.

- A strong majority used rules linking distributions to a percentage of asset values, with most opting for a moving average approach.
- Usage of the Yale/Stanford type of rule is more prevalent amongst larger endowment funds. While we do not have details of why this is the case, we suspect it may be at least partly due to the larger funds being at the "leading edge" of policy development. 15% of endowment funds with assets over US$1 billion and 12% of those with assets US$500m-$1bn use this type of rule.[9]
- Approximately 3% of funds use inflation-based rules, i.e. they grow distributions at the rate of inflation. (We do not know which category in the above table this is recorded in.)

Provisions for liquidity

Following the liquidity crisis in 2008/2009 there has been more focus on whether or not US endowment funds should make liquidity provisions to guard against future liquidity squeezes. Two key considerations are:

- How much cash to put aside (e.g. enough to cover a set period of spending requirements); and
- How to invest the cash that accumulates in the liquidity fund (e.g. high quality government or money market investments with maturities throughout the likely period of spending need).

An example might be to segregate 5-10% of the market value of the fund into a separate portfolio invested in high quality liquid investments, such as 90 day Treasury bills. The organisation can draw on this fund when the performance of the main fund is below the target distribution rate or when liquidity is an issue.

Another alternative is to borrow funds to cover a temporary liquidity squeeze, although this relies upon borrowings being available.

1.7 How well do the distribution rules work?

US Experience with Moving Average Rules

Looking at the predominant rule used by US endowments, the moving average rule, trends over the boom and bust of the tech bubble in the early 2000s provide some interesting observations[10]:

1. At the start of the year 2000, 65% of institutions were using a moving average rule.
2. The tech bubble then burst and complying with the moving average rule became a struggle. In 2001 the proportion of institutions using a moving average rule dropped to 43%.
3. Markets subsequently recovered and by 2004 the proportion of institutions using a moving average rule was up to 73%. It has stayed around that level since.

While a high proportion of funds use a moving average rule, many of them also make "special appropriations" outside of the rule. In the years immediately prior to the onset of the GFC 12% to 16% of funds were doing this. As the recession onset in 2008 this proportion rose to 19%.[11] While that means 81% didn't reach into the pot to supplement distributions (many of whom would have implemented budget cuts instead), 19% is still a significant enough figure to make one cautious of adopting a moving average rule on a "set and forget" basis. Operating a moving average rule during periods of large market declines can be challenging.

US organisation Commonfund[12] reports anecdotal evidence that more organisations are considering moving away from a moving average approach, and towards an inflation-based or hybrid method instead.

9 "Endowment Spending: Building a Stronger Policy Framework", Verne O Sedlacek and William EF Jarvis, Commonfund Institute, October 2010.

10 Ibid., page 9.
11 Ibid., page 9.
12 Ibid., page 18.

European analysis

A paper by Cardinale, Purcell and Bishop[13] investigates the spending policies of European foundations. The paper identifies 3 properties for determining a good distribution rule, based on an intergenerational fairness test, and runs simulations to look at how well various distribution rules perform. The 3 properties are:

1. Maintain the real (inflation adjusted) value of the fund capital.
2. Provide smooth distributions from year to year.
3. Maximise distributions over the long term.

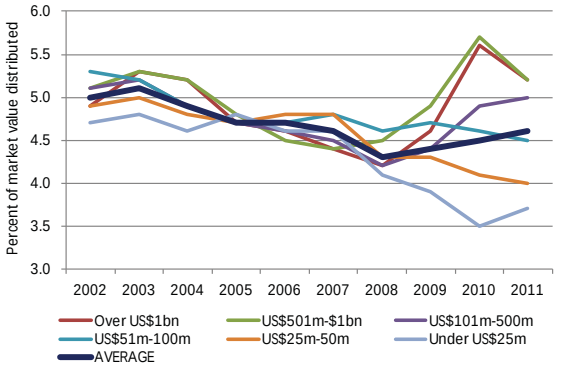
Some of the conclusions of their analysis are:

- A simple inflation linked spending rule is highly dependent on initial conditions. It will have difficulty in preserving capital if the initial spending rate is high and the fund's investment mix is conservative.
- The Yale rule is often cited as an example of best practice in the US. In the European analysis it was potentially very risky if the implied expected return is too optimistic relative to the fund's investment mix.
- The Alpha-Beta rule seemed to perform better than a standard Yale rule at preserving capital and maximising distributions over time. But the volatility in distributions from year to year was higher than using a Yale rule. Changing parameters can help with the volatility but at the expense of the other two objectives.
- The Milevsky-Brown rule ensures that capital is preserved, but the more risk averse a fund, and the shorter the timeframe, the greater the impact on permitted distribution level.
- Complex rules, such as Alpha-Beta and Milevsky-Brown, provide a more sophisticated way of managing the trade-offs than the more conventional Yale and inflation linked rules.

1.8 How have the distribution rates of US endowment funds tracked over the past 10 years?

The chart below shows how the effective distribution rates for US college and university endowment funds have tracked over the past 10 years. The distribution rate is expressed as a percent of the fund's market value at the start of the year. It measures the amount available for spending after deducting expenses associated with managing and administering the fund. The table following shows the investment returns of the funds (net of fees).

Effective Distribution Rate by Fund Size



Fund size US$	Average Net Investment Returns % pa			
	2011	3 year	5 year	10 year
Over $1bn	20.1	2.4	5.4	6.9
$501m-1bn	18.8	2.6	4.8	6.0
$101m-500m	19.7	2.6	4.4	5.3
$51m-$100m	19.3	2.8	4.4	5.1
$25m-$50m	19.4	4.2	4.7	5.0
Under $25m	17.6	4.6	5.2	4.9
All 823 funds	19.2	3.1	4.7	5.6

Data Source: The 2011 NACUBO-Commonfund Study of Endowments.

http://www.nacubo.org/Research/NACUBO-Commonfund_Study_of_Endowments/Public_NCSE_Tables.html

Interestingly, the current distribution rates across most fund sizes are higher than their 3 year and 5 year annual investment returns. The global financial crisis continues to have a strong negative influence.

The strong investment performance in 2011 is having a significant impact on the returns figures. In 2010 the average 5 year return across all funds was 3.0% pa, compared to 4.7% pa when measured in 2011.

1.9 What distribution rate is sustainable in perpetuity?

A closer look at US distribution rates: Is 5% too high for a diversified investment portfolio?

As one "marker" for the upper bound of what the sustainable distribution rate might be, the US UPMIFA legislation specifies that if a distribution

13 "Are Spending Policies of European Foundations Sustainable?" Mirko Cardinale, Richard Purcell and Marcus Bishop, Technical paper February 2007, page 13.

rate is over 7% of the market value of the portfolio, then the onus is on the fund to justify that the distribution rate is not imprudent.

Most US public endowment funds have a distribution rate much lower than 7%. Typically, distribution rates are equivalent to between 4.0% and 5.5% of the market value of investments (refer chart in previous section).

Another type of US organisation, the charitable private "foundation", is *required* to distribute at least 5% of the value of its endowment each year in order to maintain favourable tax status. Consequently, there has been a lot of analysis in the US around the suitability of a distribution rate equal to 5.0% of the market value of a permanent investment fund.

The 5% distribution rate has attracted much criticism. For example:

- A report published in the early 2000s by Sedlacek and Clark[14] estimated that a 5% distribution rate would result in the market values of approximately one third of endowment funds not being able to keep pace with inflation.
- A 2010 report by Ho, Mozes, and Greenfield[15] investigates the interplay between endowment distribution policy and the volatility of investments. Their analysis shows that in order to support distribution rates of 4% to 5% of the market value of investments, and stay within reasonable risk guidelines, the investment portfolio must perform considerably better than typical market portfolios have over the past 20 years. Without sustained significant out-performance, endowment funds with high distribution rates will need to either reduce those rates or accept a higher probability of suffering a significant loss.
- Evidence reviewed by the Drafting Committee for the UPMIFA suggested that few funds could sustain spending at a distribution rate above 5%, and that at that time (circa 2007) 5% might even be too high[16].
- A 2012 report[17] by Russell Investments uses 112 years of data to analyse the likelihood of a fund being able to maintain its value, on an inflation adjusted basis, for different combinations of distribution rates and portfolio mix.
  - Using 20-year periods, the analysis indicated that there was only a 50% chance of maintaining the inflation-adjusted investment base when using a 5% distribution rate.
  - Including "alternative assets" as well as stocks and bonds in the portfolio gave a slight improvement.
  - The report also includes analysis of forecasts of 10 year forward returns, using data from a Survey of Professional Forecasters maintained by the Federal Reserve Bank of Philadelphia. Using a portfolio with a shares/bonds split of 60/40, the data imply average returns over the next 10 years of 5.3% per year, before adjusting for inflation, and 3.0% after adjusting for inflation. Interestingly, the forecasts have been steadily trending down for the past 20 years. In the 1992 survey the equivalent 10-year forecasts were 8.7% for returns before adjusting for inflation and 5.0% after. While forecasts are always highly debatable, the changes in expectations over time strongly suggest that a 5% distribution rate might not be as viable as it seemed 20 years ago.

Please note: While at face value, distribution rates of 4% to 5% might at first appear low, given levels of investment returns, we need to remember that the distribution rate reflects the need of endowment funds to protect against inflation over the long term. So, a 4.5% distribution rate might reflect expected long term investment returns of 7.0% (after fees) and expected inflation of 2.5%. In other words, the distribution rates discussed in this section are analogous to expected real (i.e. inflation adjusted) returns.

Sustainable distribution rates: New Zealand context

The US-centric distribution rates won't translate exactly to New Zealand iwi. In particular, the portfolio mix of iwi is in many cases very different from that of a US endowment fund.

A range of other factors also need to be taken into account, such as differences in interest rates and tax status. US public endowment funds tend to be tax exempt, as are many iwi. Adjustments may also be needed for factors such as holdings of undeveloped land which don't currently generate income and are not for sale.

14 "Why do we feel so Poor?", Verne Sedlacek and Sarah Clark, Commonfund Institute, 2003, page 10.
15 "The Sustainability of Endowment Spending Levels: A Wake-up Call for University Endowments", Gregory P. Ho, Haim A. Mozes, and Pavel Greenfield. The Journal of Portfolio Management, Fall 2010.
16 p27 of the UPMIFA Act with prefatory notes and comments.
17 "Are 5% distributions an achievable hurdle for foundations? Were they ever?" Steve Murray, Russell Investments, August 2012.

Furthermore, US institutions operating endowments may face inflation rates quite different from those experienced by iwi. For example, when Stanford University reset its distribution rate in 2008, it considered the new rate of 5.5% to be reasonable given the endowment fund's ability to earn expected returns of 10% pa and average institutional inflation of 4.0 to 4.5% pa.[18]

While New Zealand iwi commercial and investment portfolios aren't the same as those of US endowment funds or foundations, the 5% distribution rate figure still provides a useful upper marker. Essentially, distributions that are close to or above 5% of invested funds (equity) will need strong justification to show that underlying investment returns will consistently outperform the returns of many US endowment funds. Otherwise sustainability may be questionable.

However, for many iwi it will be important to grow their assets beyond what is required to preserve them against inflation - population growth also needs to be taken into account.

Generally, the US endowment fund material we reviewed did not consider intergenerational fairness from a per-person perspective. Most US university endowment funds are not established with the intent of sustaining a growing number of beneficiaries[19].

What happens if we add per-person fairness into the mix? For clarity, we are not talking about universal cash payments to individuals here. Rather, we're looking at total iwi spending and/or assets, divided by the number of iwi members.

Statistics New Zealand has prepared projections of the Māori population out to 2026, using 2006 as a base. Using a "medium" scenario, the total Māori population is expected to grow, on average, at 1.3% pa over the period 2006-2026.

As an example, let's say an iwi wants the ratio of the amount they spend each year (or the value of assets) divided by the number of iwi members to be consistent over time (adjusted for inflation). Let's also assume that the iwi's population is expected to grow at 1.3% per year.

- To keep up with the population growth, the value of the iwi's investment in commercial and investment assets might need to grow approximately 1.3% more per year than it would if the population was static (we are making a number of simplifying assumptions here).
- To achieve this additional growth in the investment base, the annual distribution rate might need to come down 1.3% compared to what it otherwise would have been, and the amount foregone invested instead.

18 Stanford University Budget Plan 2007/08, page 8.
19 House Committee on Constitutional Revision, Texas House of Representatives Interim Report 2002, page 10.

The analysis in this example is "partial analysis". Wider considerations also need to be taken into account. For example, comprehensive analysis would allow for factors such as investment returns not being a constant percent rate every year, population growth rates varying and interaction effects. We also acknowledge that the time horizon to 2026 is much shorter than the very long term, intergenerational perspective of many iwi, and deeper considerations are also necessary.

Putting everything together, let's now look at what sorts of distribution rates might be sustainable for New Zealand iwi who want to grow their wealth sufficiently to protect against inflation and keep pace with population growth. To do so we draw on extensive modelling and analysis work done by BNZ Private Bank.

We look at one hypothetical portfolio, as a reference point. Because each iwi's portfolio of commercial and investment assets requires unique analysis, we stress that this is a starting point only, and not a substitute for the expert investment advice that is ultimately required.

The analysis assumes a portfolio or balance sheet split 35% into income assets (e.g. bonds and term deposits) and 65% into growth assets (e.g. shares in companies). A shift in this ratio in either direction will have an impact on the sustainable distribution rate achievable and volatility of returns (riskiness).

The following table provides indicative distribution rates for the reference portfolio, showing how the rate varies under different assumptions for tax and population growth.

Indicative sustainable distribution rates for an example portfolio

		Effective tax rate	
		0%	**28%**
Population growth	**0%**	5.0%	3.4%
	1.3% p.a.	3.7%	2.1%

Source: BNZ Private Bank

If a hypothetical iwi had a mix of assets that matched the reference portfolio and desired to grow their assets sufficiently to keep pace with population growth and inflation, then their sustainable distribution rate might be between 2.1% and 3.7%, depending on their tax rate.

A rate above this range may be sustainable if the asset mix is more aggressively growth oriented (but will incur commensurate additional risk); and a rate below this range might be appropriate if the asset mix is highly conservative.

1.10 Other considerations

Strategic spending

Strategic spending, such as spending on large infrastructure assets or Treaty settlement protection, can benefit multiple generations. Furthermore, spending on these items can often be "lumpy", rather than evenly spread over many years. These factors need to be taken account of when modelling distribution rates and assessing fairness or utility (benefits to tribal members).

This is a very important consideration when it comes to assessing distribution levels.

Possible reasons to run a conservative distribution rate

- Future returns are unknown. History is typically used as a guide and to determine inputs for simulation models, but there is no guarantee the future will map out the same.
- Governments can sometimes cut back on spending. Iwi might want to increase assistance to members during those times.
- The world is potentially moving into a low growth, low inflation environment. The ability to distribute at past levels may be severely restricted for quite some time.

Wealth and income constraints

The strength of financial position varies considerably amongst iwi and influences which types of distribution, spending and investment polices are most appropriate. Some iwi may be served best by a clear, simple approach; whereas others may need more comprehensive management policies. For example:

i. Limited income and wealth can constrain some iwi to using investment earnings for collective tribal maintenance and governance activities (e.g. marae upkeep), with a small amount available for targeted grants to individuals.
    - With limited room for discretion, simple, easy to manage, distribution and spending policies may be appropriate.

ii. Some iwi are asset rich but income poor. In some such cases the preference might be to use investment earnings primarily for further investment, such as the commercial development of selected land holdings.
    - Detailed considerations around distribution policy may not be a priority for some time yet. Such considerations may take on more significance once a "critical mass" is reached by the investment base.

iii. Other iwi are in a stronger income and wealth position. They have a much wider range of spending and investment options available to them.
    - For this group, a more comprehensive distribution policy might be appropriate.
    - A well designed distribution policy can provide multiple benefits. It can enhance governance and accountability; facilitate the achievement of intergenerational fairness; and help withstand cyclical political pressures (e.g. the pressure to spend more in the good times, rather than save for the inevitable not-so-good times).

Financial modelling of investment and distribution policies – important components

We strongly recommend detailed financial modelling to fully explore the dynamics of the investment and distribution policies. It will:

- Assist in determining the most appropriate policy combinations.
- Provide an education tool – through examining different scenarios, risks and interactions.
- Provide a means of ongoing monitoring to help keep on track.

Important components of the modelling process are briefly canvassed below.

1. Establish measurement criteria
    - Measures need to be established to determine whether the distribution policy is achieving relevant tribal objectives, such as intergenerational fairness. While there is a discretionary element to assessing intergenerational fairness, for long run modelling we focus on more easily measurable financial aspects. Measures need to take account of both inflation and demographic changes. Possibilities include:
        - Consistent real (inflation adjusted) annual tribal spending, when calculated on a per-person basis.

- Consistent real (inflation adjusted) value of assets, when calculated on a per-person basis.
- A combination of the above.

2. Generate projections of long run returns from commercial assets and other investments
   - The modelling needs to estimate what returns the current and future asset base are likely to generate, taking account of growth and compositional changes. The amount available for new investment each year will vary with the distribution policy being modelled.
   - Investment policy is beyond the scope of our report, but will cover aspects such as asset allocation, acceptable risk parameters and other constraints such as tribal asset preferences.
3. Model the impact of different distribution policies and distribution parameters
   - Distributions will finance both the core spending level that needs to be maintained and additional discretionary spending.
   - Results from modelling distribution scenarios alongside investment scenarios may cause reconsideration of aspects of the investment policy. For example, an ultra-conservative investment policy may not produce sufficient growth to meet future requirements, which may necessitate spending cuts and/or a greater weighting to "growth" investments, which tend to carry more risk.
4. Model different scenarios, including short term volatility
   - In addition to modelling long term returns and distributions, specific consideration needs to be given to short term volatility. For example, in a year of very low commercial/investment returns, will assets be sold so that tribal spending can be maintained? Will discretionary tribal spending be cut back? Will borrowings be increased in order to maintain distributions?

Many iwi may need to seek professional advice in this area.

No one size fits all

The distribution rules that we have outlined are a starting point only. Multiple variations are possible and each organisation needs to do their individual analysis, and adopt or customise rules to suit their situation and objectives.

Some iwi may not feel the need for a distribution rule at all and may be comfortable with a discretionary approach. But at the very least, it is prudent to monitor aspects such as intergenerational fairness and the purchasing power of income generated by assets held, and ensure appropriate governance is in place.

Part 1: Summary comments

- **Policies governing the allocation of income between spending and investment can have a profound impact on long term iwi outcomes and need careful consideration. There does not appear to be a lot of formal framework development across the wider iwi community, but we expect greater focus on this area as iwi incomes grow and settlements progress.**
- **A range of approaches for determining the best spending/investment allocation have been adopted by permanent funds overseas. No one size fits all, and different approaches - or combinations of approaches - may suit different iwi.**
- **The proportion of income being spent each year needs to be sustainable over the ultra long-term if intergenerational fairness is important. If the spending rate is too high, then the value of the underlying assets won't be able to grow sufficiently to keep pace with inflation. US evidence suggests that the sustainable annual amount of spending is probably less than 5% of the value of equity invested.**
- **If an iwi is seeking to sustain their real (inflation adjusted) level of spending on a per-person basis, then they also need to allow for population growth. This will lower the sustainable distribution rate.**
- **Given the potential for the world to enter a low-growth, low-inflation environment, the ability to distribute at past levels may be severely restricted for some time.**

s 18(c)(i)

s 18(c)(i)

s 18(c)(i)

PART 2:

Spending Policies

PART 2: SPENDING POLICIES

2.1 Introduction

In this Part of the report we look at some of the issues and current practices relating to iwi spending policies. We give particular focus to the topic of universal cash payments to individual iwi members. This is an area which may attract more attention as iwi wealth and incomes continue to grow.

2.2 Iwi objectives, values and principles ultimately drive the spending policy

The starting point for establishing appropriate spending policies (and for that matter distribution and investment policies as well) is an iwi's core values and objectives (desired outcomes). These need to be clearly articulated, and for many iwi this will already be the case.

The spending policy is a servant of these objectives and needs to be aligned accordingly. For example, a strong value placed on the learning and development of tamariki might be reflected in the granting of financial assistance for education. The iwi's objectives frame the territory and provide an over-riding benchmark for determining whether particular approaches to spending are acceptable or not.

Some iwi objectives might be met by spending made in the collective interests (e.g. spending on marae maintenance or measures to influence government decision making). Other objectives are served by payments to individual members (such as education grants). Prioritising these objectives is important and involves applying a set of collective judgments that is unique to each iwi.

2.3 Tax and regulatory influences

Regulatory factors such as tax can have a major influence on how iwi can spend their investment earnings.

Setting up the most appropriate organisation structure requires sound legal and accounting advice (including tax advice), which is beyond the scope of this note. However, we do make a few general comments.

New structures versus historical

Historically, many iwi have structured their organisation predominantly as a charitable trust s 18(c)(i) Charitable trusts can operate with favourable tax status (tax rate of 0%) and have been widely used.

However, newer structures are taking a different approach.

s 18(c)(i)

Please note: It is not easy to change organisational structures, which means that some existing iwi structures might reflect legacy decisions and therefore may not be optimal examples for iwi setting up new governance entities today.

Charitable status – flexibility limitations

A charity needs to be registered with the Department of Internal Affairs (since July 2012 - previously the Charities Commission) to receive tax exemptions. To be a registered charity an organisation must have a "charitable purpose". In section 5(1) of the Charities Act a "charitable purpose":

"... includes every charitable purpose, whether it relates to the relief of poverty, the advancement of education or religion, or any other matter beneficial to the community."

The Charities Act also has specific provisions relevant to Māori. For example, maintaining and administering land and buildings of a marae on reservation land can be deemed a charitable purpose.[1]

1 http://www.charities.govt.nz/setting-up-a-charity/organisational-structure/iwi-and-Māori/

For some iwi, particularly those with limited funds, meeting the "charitable purpose" requirement might be relatively straightforward. For example, if distributions to individual iwi members are limited to education grants, and other iwi funds are used for maintaining the marae land and buildings.

But iwi who want greater flexibility over how they distribute their income might find the requirements for charitable status too restrictive. While the final part of the "charitable purpose" definition might seem wide open, the legal interpretation is more restrictive. Komihana Kaupapa Atawhai (the Charities Commission) has published a guidance sheet[2] which provides helpful further explanation. It states that for a benefit to be a public benefit:

"the benefit must be available to the general public, or to a wide section of the public".

Operating with charitable status can also have implications for investment policy. For example, investing in a listed company that delivers part of their return to investors via imputation credits might be inefficient if the investing entity has charitable status and is unable to utilise or pass on those imputation credits.

Important to seek expert tax and legal advice

Tax and legal structures can get very complex and the impact of an inefficient structure can have significant financial implications. Clearly the difference in tax rates for charities (0%), Māori Authorities (17.5%) and companies (28%) can have a substantial impact on net income. Different blends of charitable trusts, Māori Authorities, commercial companies and partnerships will yield different results in terms of the cash and tax credits available for distribution. Some iwi operate with both charitable and non-charitable entities.

Structural considerations should include the impact on the tax position of both the organisation and individual iwi members. For example, analysis should take account of tax credits available for distribution and the ability of iwi members to utilise them. If members have a strong ability to utilise tax credits, then an entity structure incurring a 17.5% or higher tax rate, rather than a 0% rate, might not be as disadvantageous as it appears prima facie.

2 http://www.charities.govt.nz/assets/docs/information-sheets/charitable-purpose.pdf

For an introduction to the tax implications of different structures, some readers may find the following publicly available report prepared by Ernst and Young useful:

Report to Crown Forestry Rental Trust: "Tax Advice for Claimant Groups on Post-Settlement Governance Entity Structures", Selwyn Hayes and Amanda Johnston, Ernst and Young, May 2012.

We strongly recommend iwi seek professional tax and legal advice when making structural changes or setting up new structures.

2.4 Why do some organisations separate social and commercial operations?

Ngapuhi's 2011 Annual Report provides an apt quote to open this section.

> *'It is the economic horse that pulls the cultural cart'.* [3]

Commercial objectives and social objectives can often conflict. Consequently we often see organisations operating a separate arm for each. Sometimes it might be referred to as a split between commercial and social. Other times it might be referred to as a split between investment (to earn the income) and distribution (spending the income).

There is strong supporting precedent for this type of structural separation. In New Zealand we have several highly visible examples at the level of central government, with SOEs like Meridian and Genesis Energy focused on being good commercial businesses; and social objectives handled by other government departments with appropriate specialist expertise (e.g. in the areas of environment, health or welfare). While under the State Owned Enterprises Act 1986 an SOE can potentially have non-commercial roles, doing so requires Ministers to pay the SOE for services provided.

Prior to the formation of SOEs, government enterprises were performing poorly. A review[4] identified the major problem as "a lack of clear objectives for departmental trading activities". Many departments had multiple objectives.

3 Quote is by American Native Indian Chief Clarence Louie of the Osoyoos Indians. Sourced from page 12 of Ngapuhi's 2011 Annual Report.
4 "State Owned Enterprises: History of Policy Development and Implementation", September 1996, The Treasury, page 9.

For example, the New Zealand Forest Service was on the one hand responsible for protecting conservation interests, while on the other hand involved in commercial harvesting operations. The proposed solution was the State-Owned Enterprises model, the primary aim of which was "to clarify objectives faced by managers of state businesses and at the same time establish managerial autonomy and accountability"[5]. If commercial operations can perform better, there is more income generated to put towards achieving social goals.

Like central government, iwi may have both commercial and non-commercial objectives. The separation of these objectives, for operational purposes, provides clarity of focus and accountability and many iwi organisations are now structured this way.

The separation into commercial and non-commercial arms at an operational level does not mean they're separated in all respects. For example, the governing body might require an element of regional focus to the investment policy. Investments will still be run purely commercially, but local iwi members benefit from things like the associated job creation.

s 18(c)(i)

2.5 How do iwi currently spend their income?

For less wealthy iwi, spending is predominantly on tribal expenses and discretionary grants.

Others spend on a wide range of tribal development and support activities.

Restrictions of charitable status constrain spending options for charitable entities.

s 18(c)(i)

Spending under charitable restrictions

To recap, in order to retain charitable tax status, the distributions for many iwi entities are restricted to the following purposes:

1. The relief of poverty.
2. The advancement of education or religion.
3. Marae administration and maintenance (if criteria are met).
4. Any other matter beneficial to the community (acceptable to the authorities).

Iwi who operate charitable entities manage to accommodate a wide range of activities within these constraints. The next two sections show the organisational structures and spending compositions of Ngāi Tahu and Waikato-Tainui, who primarily operate charitable structures.

s 18(c)(i)


s 18(c)(i)

s 18(c)(i)

Focus topic: Universal cash payments to individual iwi members

2.6 Policy considerations

In this section we briefly consider some of the issues in relation to universal cash payments to individuals ("per capita payments").

Note beforehand: Some Māori organisations already make distributions directly to individuals (such as some land trusts which pay dividends to shareholders). The discussion that follows is intended more for consideration by organisations managing collective iwi assets that don't have allocated individual shareholdings.

Universal cash payments may become more of an issue

One of the key philosophical debates that can come up when considering tribal spending policies is whether to make universal cash payments to individuals. By this we mean making cash payments to all members within an iwi (not necessarily payments of equal value).

So far in New Zealand, spending by Post Settlement Governance Entities ("PSGEs") has tended to be allocated on a targeted basis, aimed at achieving specific social outcomes. This partly reflects the limited income generation historically across many iwi and in some cases may perhaps reflect the constraints of operating under historical structures designed around charitable tax status. However, as iwi wealth continues to grow over time, and further settlements are paid out, the issue of universal cash payments to individuals may gain prominence. We could also see more internal political pressure within iwi for these types of payments.

Typical arguments for and against making cash payments to each tribal member ("per capita distributions")

*Typical arguments **for** per capita distributions*

- Individuals and families are best placed to determine what use of cash best meets their needs. People should be allowed to think for themselves, rather than have an external committee decide what's good for them. For one family, cash might be best spent on improved medical treatment; for another it might be best spent on remedial education.
- Per capita distributions allow all members to share in the wealth and success of their iwi. The income generated from iwi assets belongs to iwi members. It's theirs.
- Per capita distributions are fair, because all benefit equally (if equal payments).
- Per capita payments can be structured in ways that promote behaviours that iwi wish to encourage. For example, making deductions to a family's payment if their children's school attendance is too low; or paying a slightly higher payment if the iwi member speaks Te Reo.[1]
- Initiatives run by governments – whether tribal governance authorities, central government or local councils – can often be inefficiently run, achieve poor results and waste money.

*Typical arguments **against** per capita distributions*

- Some recipients can view per capita distributions as hand-outs and this can contribute to an attitude of dependency.
- Individuals might not use the cash "appropriately" (e.g. not directed towards the social needs of them or their family, or not in a manner consistent with wider iwi values).
- Generous per capita payments can potentially lead to tribal registry issues. The prospect of cash payments incentivises people to get on the iwi register so they can benefit. This could lead to arguments over the criteria for iwi citizenship.
- If the asset base is very narrow (e.g. heavily reliant on a particular industry or sector), then the funds may be better off invested in ways which diversify the asset base, to provide a more stable platform for the future.
- Once established, per capita distributions can potentially become a restrictive drag on the underlying commercial businesses. An expectancy to get their annual payments could develop amongst iwi members, putting political pressure on the cash generating businesses to pay out more than the underlying businesses deem commercially appropriate.
- Public good can be better enhanced if funds are applied from a holistic perspective. The central body is better placed to build social infrastructure - like a new kindergarten.

1 Please note that these examples are illustrative only and are not necessarily recommended. Policy tools need careful crafting to avoid unintended behavioural responses and to ensure money is well spent.

General considerations

For many of the above arguments, for either side there is a counter argument. The debate can be endless. A few general comments we would make are:

- In some cases there are mitigants or policy responses which can help reduce adverse effects (or perceived adverse effects) of per capita distributions.
- Per capita distributions and public good initiatives are not mutually exclusive. For example, a system of per capita cash payments can sit alongside other initiatives like education grants, sports scholarships and a social infrastructure program.
- In some ways the issue of how best to spend iwi funds for the social benefit of members faces similar policy considerations to those central government faces when deciding how to achieve social outcomes. However, an important difference is that all iwi members are effectively owners of their tribe's commercial assets and the income, which can produce a sense of individual entitlement that's not dependent on "need".
- Regardless of philosophical position, an overriding constraint is the availability of cash. For some iwi the capacity to pay per capita distributions is very limited. In some cases it might, for example, be more effective to pay one person a $400 education grant, rather than 400 members a $1 cash payment each.
    - s 18(c)(i)
- The cost of administration for per capita payments is an important factor that needs to be taken into account. What is the size of administrative expenses relative to the value of distributions?
- Once an iwi is in a position to pay meaningful per capita payments (should it wish to do so), financial modelling is required to properly assess the proposition, including considerations such as sustainability, operating costs and intergenerational fairness.
- Establishing or altering an organisational structure to facilitate the spending flexibility required for per capita payments can be a major decision that needs careful analysis of the costs and benefits (including tax and legal advice). If per capita distributions are a future possibility, then organisational structure issues should be considered well in advance (to the best extent possible, given that it is not possible to anticipate all future regulatory changes). Once established, some structures may be difficult to change.

Cash (and tax) constraints aside, the choice of whether it's better to make per capita distributions or not comes down to the desired objectives and values of individual iwi. This is a crucial point, and it's a judgement call.

2.7 Overseas experience with universal cash payments - American Indian tribes

The US regulatory setting

Many American Indian tribes receive a large part of their revenues from gaming operations. The Indian Gaming Regulatory Act (IGRA) was enacted in 1988, to regulate the conduct of gaming on American Indian Lands. IGRA establishes the National American Indian Gaming Commission (NIGC) and a regulatory structure for Indian gaming in the United States.[2]

American Indian tribes are entitled to use revenue from gaming operations to:[3]

i. Fund tribal government operations or programs;
ii. Provide for the general welfare of the tribe and its members;
iii. Promote tribal economic development;
iv. Donate to charitable organizations; or
v. Help fund operations of local government agencies.

If a tribe wishes to go beyond this list and allocate any gaming profits using per capita payments, then they must submit a Revenue Allocation Plan (RAP) for approval by the Bureau of Indian Affairs. The RAP outlines how the tribe will use their gaming revenues.

Tribes need to distinguish between per capita distributions and distributions for the purposes of (i) to (v) above, for tax reasons. Payments for items (i) to (v) are general welfare measures and are not subject to federal taxes. Per capita payments are subject to federal taxes, which are collected through withholding taxes.

2 http://www.nigc.gov/Laws_Regulations/Indian_Gaming_Regulatory_Act.aspx
3 Sec 290.9 Ref: http://www.ho-chunknation.com/?PageId=304

A RAP must meet 5 basic criteria[4]: The plan must:

- Allocate an "adequate" portion of net revenues for one or more of the items in (i) to (v) above.
- Contain sufficient information to enable the government to test compliance.
- Protect the rights of minors and others legally incompetent.
- Have a system to notify members of their tax liabilities.
- Contain eligibility criteria for establishing tribal membership.

4 Sources: http://www.casinoenterprisemanagement.com/mp3-library/rap-primer and http://www.nigc.gov/Laws_Regulations/Indian_Gaming_Regulatory_Act.aspx (sections 3 and 2(B))

Specific approval is required if per capita payments represent over 50% of tribal net gaming revenue.[5]

Examples of how American Indian tribes allocate their gaming revenues

The table below provides examples of how American Indian tribes allocate their gaming revenues, for a sample of tribes that make per capita payments. Figures are sourced from tribe Revenue Allocation Plans.

5 http://www.bia.gov/cs/groups/xraca/documents/text/idc013360.pdf

Spending allocations for a sample of Amercian Indian tribes

Tribe/ Confederated Tribes/ Community	Date	Tribal Government Operations & Programs	Tribal Economic Develop-ment	General Welfare of the Tribes & its Tribal Members	Donations to Charitable Organisations	State and Local Governments	Other / Category allocation unclear	Per Capita Payments
Klamath	2006	19%	19%	19%	2%	1%		40%
Stockbridge-Munsee	c2007	35%*	35%*	30%*	1%x max			Determined annually and funded from general welfare bucket
Ho-Chunk Nation	2006	13.68%	7.48%	78.26%	0.30%	0.28%		Determined annually and funded from general welfare bucket
Puyallup	2006	27.6%	1.6%	35.4%				35.4%
Grand Ronde	c2006							25%
Eastern Band of Cherokee	c2009	21.5%		15.25%			13.25%	50%
Bishop Paiute	2006	20%	25%	15%				40%
Little Traverse Bay Bands of Odawa	c2006	40%	13%	25%	2%			Up to 20%. Any surplus is allocated to General welfare
Siletz Indians of Oregon	2009	11%	29%	15%	0.5%			40%
Rincon Band of Luiseno Mission Indians		8% to 13%	8% to 12%	8% to 15%	0% to 1%		0%-9% discre-tionary reserves	50% to 70%
Poarch Band of Creek Indians	2011						80%	Max 20%
Forest County Potawatomi Community							>= 50%	Max 50%
Gila River	2007	30% to 64%	10% to 44%	15% to 49%	0% to 1%	0% to 1%		11%
Elk Valley Rancheria	2002						70%	Max 30%
Yavapai Apache	2004						Max of 85%	10% now and a further 5% invested for future allocation%

** Adjustable. Eastern Band of Cherokee figures outside of per capita are approximate groupings only from adding together itemised categories. Siletz economic development figure of 29% includes 17% for "Economic Development" and 12% allocated to "Investment".*

Incidence of per capita distributions

Many American Indian tribes don't make per capita distributions because they simply can't afford to. For others the choice of whether or not to make per capita distributions is a policy decision.

As at March 2008, approximately 73 out of over 200 American Indian tribes that operate casinos had Revenue Allocation Plans in place for making per capita distributions[6].

American organisation Two Hawk Institute conducted a series of research interviews with North American Indian tribes, looking into perceptions, experiences and policies regarding per capita payments[7]. Findings included:

- In general tribes making per capita payments and tribes not making per capita payments defended their own positions.
- There was an overall belief that: "per capita money by itself would not cause harm, but that desirable outcomes were dependent upon how it was used."
- "A great deal of effort must be expended to ensure a successful program that does not jeopardize tribal members and tribal financial systems."

While the last point suggests a note of caution, we suspect the comment about not jeopardising tribal members might reflect the sometimes very large payments involved. Some payment amounts to tribal individuals are sufficiently large (thousands of dollars) to influence decisions over whether or not to seek higher education or employment.

Using per capita distributions to influence behaviour and help achieve social outcomes

While American Indian tribes predominantly make equal per capita payments to all members, there is a growing trend towards varying payment amounts according to circumstance and attaching conditions to payments.

Examples[8] include:

- Making additional payments to elders and members with special requirements.
- Accumulated payments to minors, which are held in trust, being paid when they are 18 years old if they receive a high school diploma, but otherwise not paid until they are 25.
- Paying minors a certain portion of their payments held in trust when they receive a high school diploma and the remainder when they receive a college degree. Without a degree they need to wait longer.
- Redirection of all or part of per capita payments when child support payments are not being met by the member.
- Deductions from a member's payments if they are in jail.
- Deducting from a family's entitlements when children miss school.

A raft of examples of measures to achieve beneficial behavioural outcomes exists in the wider context of general social policy.

Effects that the size and frequency of payments can have

Anecdotal evidence[9] suggests that relatively small per capita payments (small is not defined, but let's assume hundreds of dollars as opposed to thousands of dollars) can have positive effects on people's lives. Modest payments are typically spent on school uniforms, house repairs, debt reduction, general living expenses and the like. As payments get more significant, negative effects can start to appear. For example, one tribe reported a drop in motivation amongst tribal members once they introduced payments of around US$2,000 per month[10].

The timing and frequency of payments can also affect how they get used. For example, small regular payments may be more likely to discourage impulse spending, compared to large lump sums. American Indian tribes making payments over $2,000 per year tend to break it into multiple smaller payments.[11] Tribes with modest distributions are more likely to make them via a single payment. Some tribes align payments with times of year when members face budget pressures (e.g. Christmas time or the start of the school year).

6 http://www.casinoenterprisemanagement.com/mp3-library/rap-primer
7 http://www.twohawkinstitute.com/seminars-publications/per-capita-issues-and-concerns/
8 Primarily from: "Per Capita Distributions of American Indian Tribal Revenues: A Preliminary Discussion of Policy Considerations", S Cornell, M Jorgensen, S Rainie, I Record, R Seelau and R Starks, Udall Centre for Studies in Public Policy, The University of Arizona, 2007. Pages 11 and 12.
9 ibid., page 9.
10 ibid., page 9.
11 ibid., page 12.

Considerations when drawing inferences for New Zealand

Many American Indian tribes receive a significant level of revenue from casino operations. In some cases this revenue can fund substantial distributions. For example, the Puyallup tribe uses 40-55% of its gaming revenue in its per capita program (up from 35% in 2006), with individual tribal members receiving pre tax payments of approximately US$2,000 per month.[12] For many tribes, actual amounts distributed to members are often not disclosed, but suggestions are that some monthly payments can be very large – even over US$10,000 for the very rich American Indian nations[13].

When using the US examples to make inferences for New Zealand we need to be careful to take into account that some of the American Indian tribes are very rich, which influences their decision making.

Another important factor to take into account is that the United States has a substantially different government funded welfare system to New Zealand. This has implications for how American Indian tribes might use their funds. For example, some tribal distributions might be used to pay for welfare services which in New Zealand are already provided adequately by central government.

To us, one of the main observations from reviewing the American Indian experience is that it reinforces the tribe-specific nature of the decision on whether or not to make per capita payments.

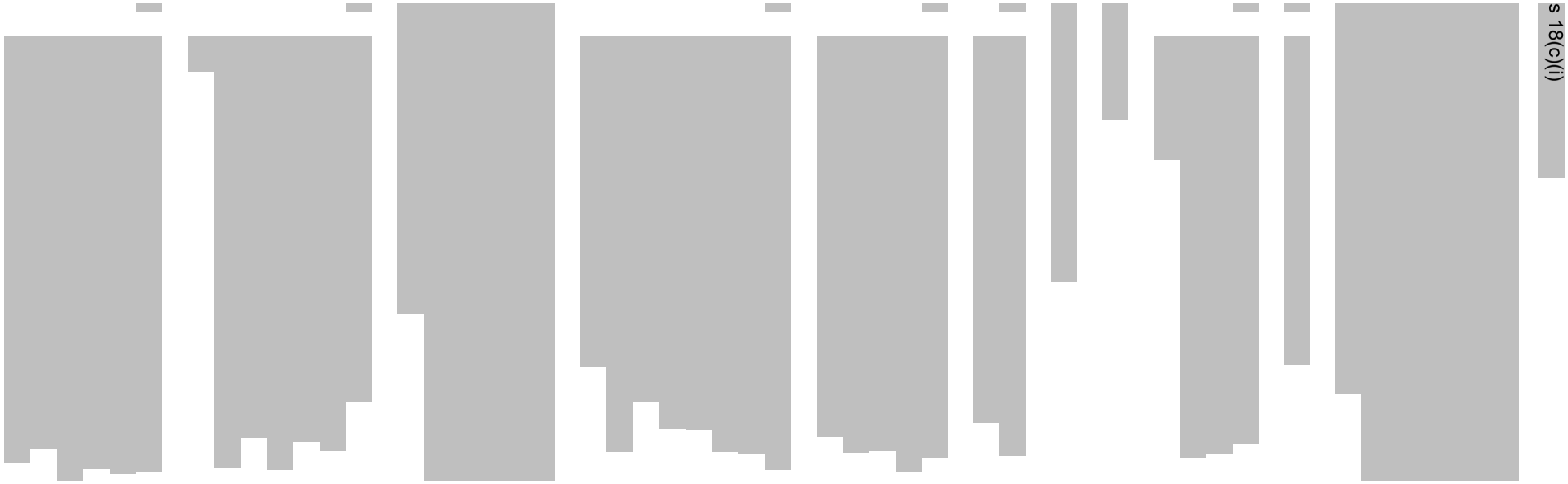
s 18(c)(i)

s 18(c)(i)

of $500 at a time (this figure can vary).

12 http://www.puyalluptribalnews.net/news/view/per-capita-program-designed-to-meet-long-term-needs/
13 Cornell et el. (2007) page 9.


s 18(c)(i)


s 18(c)(i)

s 18(c)(i) [redacted]

[redacted]

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[redacted]

[redacted]

[redacted]

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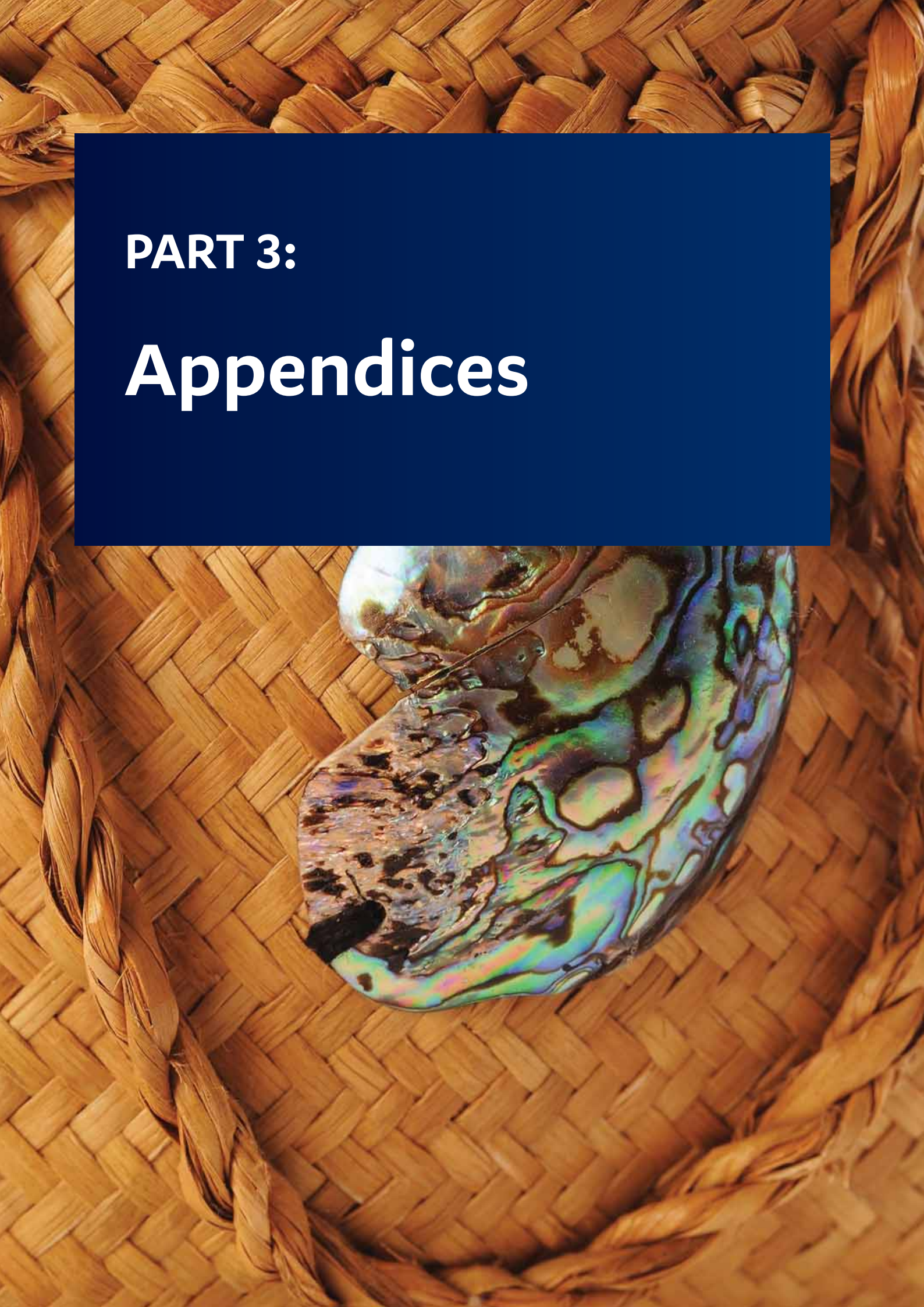
Part 2: Summary comments

- **Structural separation of iwi commercial and social operations enhances clarity and accountability.**
- **As iwi wealth grows we may see more debate around the issue of universal cash payments to members. Ultimately the approach taken is a judgement call, which may vary across iwi. If adopted, universal cash payments can be structured in ways which promote desirable social outcomes.**

[redacted]

PART 3:

Appendices



Appendix 1: Examples of distribution policies of overseas permanent funds

The examples here are predominantly US universities with large endowment funds. Large funds such as these have a greater preponderance of hybrid rules.

US universities

Yale Endowment Fund [1]

The market value of the Yale endowment was US$19b at the end of FY11. It funded 36% of Yale's operating budget. Yale's policy for distributing the fund's earnings aims to balance the objectives of a stable income flow and preservation of the real value of the fund over time. To do this it uses a long term spending rule and a smoothing rule (refer earlier comments on "Yale Model").

Specific parameters used by Yale in 2011 were:

- The spending rule sets the target distribution rate, which is currently 5.25% of the value of the fund.
- The smoothing rule gradually adjusts the distribution to changes in the market value of the fund. Under the rule, annual distributions are calculated as:
  - 80% of the previous year's distribution; plus
  - 20% of the targeted long-term distribution rate applied to the market value two years prior
- The resulting figure is then adjusted for inflation and constrained so that it falls between 4.5% and 6.0% of the fund's inflation adjusted market value two years prior.

In earlier years Yale had used 30% as the weight applied to the fund's market value, rather than 20%.

1 2011 report of the Yale Endowment.

Stanford University Endowment Fund[2]

The market value of the Stanford endowment was US$16.5b as at 31 Aug 2011. It provides funding for approximately 22% of Stanford's expenses (FY11).

- Stanford uses a smoothing rule which sets the coming year's payout rate to be a weighted average of the current year's payout rate and the target rate.
- Over the 2007-2011 financial years, the annual amount of the fund paid out has ranged between 4.3% and 6.8% of the market value at the start of the year. The current targeted spending rate is 5.5% (the smoothed rate actually paid out will differ from year to year).
- Reductions in distributions from the fund of 10% in FY10 and a further 15% in FY11 were implemented in response to the economic downturn.
- The Stanford board approves the annual payout amounts, taking into account factors such as those listed in Section 4 of the UPMIFA (refer Appendix 3).

The Stanford payout policy is specified as[3]:

$$\text{Distribution} = W \times D_{t-1} \times [1 + \delta] + [1 - W] \times V_{t-1} \times R$$

W	= Weight applied to the previous year's distribution
V_{t-1}	= Value of invested funds at the end of last year
R	= Distribution Rate (%)
D_{t-1}	= Distribution last year $m
δ	= The rate of inflation in the last year

Note: This is effectively exactly the same formula as in section 2.2. We've just changed W to apply to last year's distribution and [1-W] to apply to last year's value of the fund, instead of vice versa, to match the way it's expressed in the source report. The values of W and [1-W] reverse accordingly.

Harvard University Endowment Fund[4]

Harvard's approach to distribution uses a formula that is intended to provide budgetary stability by smoothing the impact of annual investment gains and losses, and to preserve the value of the endowment in real terms (after inflation). The formula's inputs reflect expectations about long-term returns and inflation rates. (We don't have the actual specifications of the formula, but it sounds as though it's likely to be a Yale type of approach.)

2 Stanford University Annual Report, 2011.
3 "Endowment Spending Goals Rates and Rules", P Mehrling (Barnard College), P Goldstein (Stanford University) and V Sedlacek (Commonfund).
4 2011 Annual Report of Harvard University, page 4.

- The Fund has a targeted payout ratio of 5.0% to 5.5% (again, the smoothed rate actually paid out will differ from year to year). The fund believes this level provides a balance between the maintenance of purchasing power for future generations and the desire to pursue current opportunities.
- For the 2011 fiscal year, the approved endowment distribution represented 4.5% of the fair value of the endowment fund at the beginning of the fiscal year.

Massachusetts Institute of Technology (MIT)[5]

MIT believes that to balance the needs of all generations of scholars it needs to minimise fluctuations in year-to-year distributions, whilst also being responsive to changes in the value of the fund. The initial approach MIT used to achieve this was to average the value of the endowment fund over a 3 year period and target a distribution between 4.75% and 5.50% of that average. However, this method did not generate sufficient stability when markets declined in the early 2000s and a change in policy was made.

MIT's new approach adopted a "Tobin Spending Rule", named after famous economist James Tobin. (Note – this is another term for the approach followed by Yale and Stanford.) The formula has two terms – one to generate stability and one to pick up on market movements.

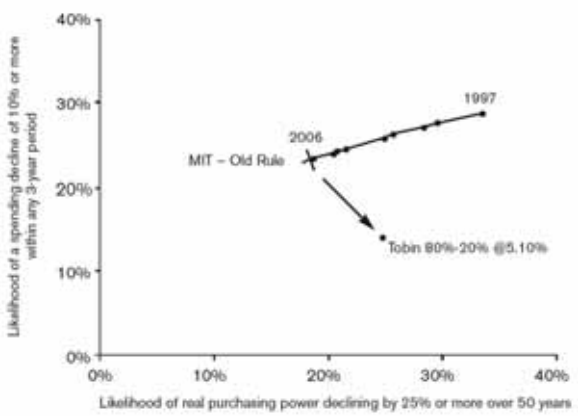
MIT uses the following formula:

Distribution =
80% x (Distribution in prior year increased by inflation)
+
20% x (5.1% x The market value of the endowment fund)

The 80% and 20% weightings can be altered to shift the emphasis between stability and responsiveness to movements in the market value of the fund.

The Institute used a technique called Monte Carlo analysis to simulate a large number of potential outcomes. Over the short term, MIT is focused on avoiding drops in distributions of more than 10% in any 3 year period. Over a longer term (50 year time horizon) the focus is on avoiding a deterioration in purchasing power of more than 25%. The following graphic shows the impact that moving to a Tobin Spending Rule has on these two measures for MIT.

Endowment Spending Policy at MIT:
Results of applying the Tobin Rule



Graphic source: MIT Faculty newsletter May/June 2008.

Princeton University Endowment Fund[6]

Princeton has one of the larger US university endowments, with assets of approximately $17 billion (June 2011). This fund is operated using two policy settings to achieve a prudent trade-off between current needs and stability, and maintaining long term purchasing power:

- The *Spending Rate* is the amount distributed by the endowment divided by the endowment's market value at the beginning of the financial year. The policy band set by trustees currently allows the spending rate to be between 4.00% and 5.75%.
- The *Spending Rule* stipulates that the distribution paid by the endowment will increase by a set percentage each ear. The current rate is 5% per year. The rule may be modified for a given year, such as in situations where it would result in a spending rate outside of the policy band.

5 MIT Faculty newsletter, May/June 2008 http://web.mit.edu/fnl/volume/205/alexander_herring.html

6 http://finance.princeton.edu/policy-library/endowment/endowment-spending/ (October 2011 update).

University of Texas Fund[7]

The Permanent University Fund (PUF) in Texas provides funding to a group of state universities. It was established in 1876. The state government vested land assets with the fund, and the PUF benefited substantially from the subsequent oil boom.

As at 30 June 2012 the market value of the PUF was US$13.1 billion, exclusive of land acreage. Assets include a portfolio of investments and land holdings.

Distributions from the fund are subject to the following over-riding conditions:

- Distributions cannot exceed the previous year's level unless the purchasing power of the PUF's investments has been preserved, for any rolling 10 year period (except as necessary to pay debt servicing on PUF bonds).
- The minimum amount payable is the amount needed to pay any debt servicing on bonds issued by the PUF. Debt servicing on PUF bonds is deducted from PUF distributions. Remaining distributions are used to fund academic programs at the recipient universities.
- The maximum amount payable is 7% of the average fair market value of PUF investments in any fiscal year (except where necessary to pay debt servicing on PUF bonds).

7 https://www.utsystem.edu/cont/Reports_Publications/LARs/14-15AUFLARAug.pdf and the PUF's 30 June 2012 Semi-Annual Report.

Other overseas examples

Cambridge University[8]

The Cambridge University Endowment Fund (CUEF) had a market value of £1,550m as at 31 July 2011. (Note - this is a separate fund to the endowments of the university's independent colleges, which have assets of several billion pounds.)

- The Fund's long term objective is: "to achieve annual growth equal to Retail Price Inflation plus 1% (after distributions are taken into account) in order to keep pace with projected academic costs."
- The long term investment objective is returns equivalent to Retail Price Inflation plus 5.25%. Combined with the above statement, this implies a long term annual distribution rate of 4.25%.

Annual distributions are determined by "a formula based on underlying capital values combined with factors which smooth the rate of spending changes from year to year". This suggests to us a "Yale" type of approach.

As at 30 June 2011, assets comprised: global equities 61%, equity long-short 7%, private investments 3%, absolute return 10%, credit 3%, real assets including property 13%, and fixed income and cash 3%.

Colleges and other charities are permitted to invest in the CUEF.

University of Oxford[9]

The Oxford Endowment Fund is a vehicle to invest gifts and donations in perpetuity. It opened to investors in 2009. As at the end of 2011 the University of Oxford had £709m invested in the fund.

The fund invests on a total return basis (i.e. not solely focused on generating income). It aims to:

- Achieve a real (i.e. inflation adjusted) long-term rate of return of 5% over the Consumer Prices Index.
- Distribute an average rate of 4% to investors to fund their charitable activities.

A smoothing formula is used to minimise the effects of capital value volatility on annual payments and to enable the distribution rate to be achieved over long periods of time.

8 Information has been sourced from Cambridge University's 2011 Annual Report; and Cambridge University Reporter, 21 Dec 2011, Financial Management Information for the year ended 31 July 2011 http://www.admin.cam.ac.uk/reporter/2011-12/special/06/

9 Information sourced from The-Oxford-Funds Annual Report, 2011.

Appendix 2: Case Study: The Alaska Permanent Fund

The Alaska Permanent Fund is an interesting example of a fund with an intergenerational focus that makes universal cash payments to individuals.

Background

In 1976 Alaska voters approved the establishment of the Alaska Permanent Fund. It was created by an amendment to the state constitution that requires at least 25% of the proceeds from various mineral lease rentals and royalties to be paid into the fund.

The fund came about because the state government spent mineral income received in the early 1970s very quickly. With substantial future oil revenue expected, Alaskans wanted to safeguard some of the state's revenue for all generations of Alaskans (including those which will not have income from oil).

- The size of the fund has grown to approximately US$40 billion (as at Sep 2012).
- The fund aims to generate a real return (i.e. inflation adjusted) of 5% per year. The level of risk of the investments is prudent and broadly consistent with that of other large investment funds.
- The principal of the fund can only be used for income producing investments. It is protected from spending. It is not invested in projects which focus on economic or social development.
- Net income is available for appropriation by the state government. Each year the state government allocates these funds for dividends, inflation proofing (additional investment) and whatever other lawful purposes it may decide. There is extremely strong public political pressure for the dividend program to be maintained.
- In 1982 inflation proofing of the fund principal was enacted, to protect the purchasing power of the fund. However, this protection is only partial – the state government decides each year whether to use the Fund's earnings to protect the fund principal from inflation.
- Since 2000 the trustees of the fund have promoted a Percent of Market Value (POMV) approach, which would limit annual spending (including dividends) to 5% of the fund's market value.
- The 5% figure is viewed as the long term expected difference between the return on the fund's investments and the rate of inflation. It is also similar to the median payout of endowment funds in the US at that time (4.9% in 1999).
- Imposing such a spending limit would provide enhanced inflation-proofing, as it removes the state government's discretion in the matter.
- Despite the support of the trustees, POMV has encountered public opposition and we understand that it has not yet been successfully legislated for (requires a constitutional amendment).

Approach to distributions

- Over the last 20 years annual dividend payments to Alaskan residents have mostly been in the range of US$900-US$1,500 per person.
- Alaskans are very favourably disposed to the dividend program and are strongly against allowing the government to tamper with the fund.
- Alaskans must apply each year to receive a dividend. Applicants must meet residency requirements (e.g. resident for all of the prior calendar year and intend to remain a resident indefinitely). Certain criminal offences will render a person ineligible.
- The fund can distribute realised income (such as share dividends, bond interest and net profits from selling assets) to qualified Alaska residents. The fund cannot spend the principal and it cannot distribute non-realised income (income not received in cash) - such as changes in the market value of properties.
- Only half of net realised income is available for dividends each year.
- Annual dividends are calculated in accordance with a formula set in state law. The formula uses the fund's average income of the latest 5 years, which helps keep the dividend amount stable.

1) Total net income from the 5 most recent years.
2) Multiply by 0.21.
3) Divide by 2 (only 50% of earnings are available for dividends).
4) Check that the calculated amount does not exceed 50% of the balance of the realised earnings account. (A defined constraint that must be met.)

5) Make adjustments for operating costs, designated state expenses, etc.

6) Divide by the number of successful applicants.

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http://www.apfc.org/home/Content/home/index.cfm
[Home page of the Fund]

http://www.apfc.org/_amiReportsArchive/2011Insert.pdf
[Example of dividend calculation]

http://en.wikipedia.org/wiki/Alaska_Permanent_Fund
[Background on the Fund]

http://www.apfc.org/home/Media/publications/2009AlaskansGuide.pdf
[Guide to the Fund]

Appendix 3: Uniform Prudent Management of Institutional Funds Act (UPMIFA)

General UPMIFA guidance on investment decisions and endowment expenditures for charitable organisations

In the US the "Uniform Prudent Management of Institutional Funds Act" (UPMIFA) provides guidance on investment decisions and endowment expenditures for charitable organisations. The UPMIFA is law in most US states, although each state adopts its own version of endowment management law. The UPMIFA only applies to endowments that are permanently restricted, by the donor or law. A link to the Act is:

http://www.uniformlaws.org/shared/docs/prudent%20mgt%20of%20institutional%20funds/upmifa_final_06.pdf

The UPMIFA reduced some restrictions of earlier legislation and made it easier for funds to handle short term volatility. The spending floor was removed and US charities could now spend as much as they deemed prudent. However, while the Act does not require principal capital to be set aside from distributions, it does assume that the charity will act to "maintain the purchasing power of the amounts contributed to the fund".

While aspects of the Act are not directly relevant to iwi (e.g. most iwi funds don't come from donors), in many areas the Act provides a useful set of governance considerations for permanent funds. The following three tables provide some of the US Act's requirements in relation to investment and distribution policies.

UPMIFA: Factors, where relevant, that must be considered when managing and investing funds

1. General economic conditions.
2. The possible effect of inflation or deflation.
3. The expected tax consequences, if any, of investment decisions or strategies.
4. The role that each investment or course of action plays within the overall investment portfolio of the fund.
5. The expected total return from income and the appreciation of investments.
6. Other resources of the institution.
7. The needs of the institution and the fund to make distributions and to preserve capital.
8. An asset's special relationship or special value, if any, to the charitable purposes of the institution.

Source: UPMIFA (2006), Section 3 (e)(1).

UPMIFA: Factors, where relevant, that should be considered when deciding whether to distribute or accumulate funds

1. Duration and preservation of the endowment fund.
2. Purposes of the institution and the endowment fund.
3. General economic conditions.
4. Possible effect of inflation or deflation.
5. Expected total return from income and the appreciation of investments.
6. Other resources of the institution.
7. The investment policy of the institution.

Source: UPMIFA (2006), Section 4 (a).

UPMIFA: The Act also requires charities (and those who manage their funds)[1] to:

1. Give primary consideration to donor intent as expressed in a gift instrument.
2. Act in good faith, with the care an ordinarily prudent person would exercise.
3. Incur only reasonable costs in investing and managing charitable funds.
4. Make a reasonable effort to verify relevant facts.
5. Make decisions about each asset in the context of the portfolio of investments, as part of an overall investment strategy.
6. Diversify investments unless due to special circumstances, the purposes of the fund are better served without diversification.
7. Dispose of unsuitable assets.
8. In general, develop an investment strategy appropriate for the fund and the charity.

Source: UPMIFA (2006).

1 These factors reflect that intentions of the donors to endowment funds need to be taken into account. In the case of iwi it is more about the values and requirements of the tribe, but in many other respects the factors above are equally applicable.

Appendix 4: Summary of key information sources and references

Part 1: Distribution policies: How to best allocate income between spending and investment?

1. Annual reports and web sites of New Zealand iwi.
2. "Endowment Spending: Building a Stronger Policy Framework", Verne O Sedlacek and William EF Jarvis, Commonfund Institute, October 2010.
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5. "Sustainable Spending for Endowments and Public foundations: Achieving Better Long-Term Results", Bernstein Global Wealth Management, January 2011.
6. "Which Spending Policy is Best for Your Endowment or Foundation", Lancaster Pollard Investment advisory Group, January 19, 2011 (presentation slides).
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13. "Are 5% distributions an achievable hurdle for foundations? Were they ever?" Steve Murray, Russell Investments, August 2012.

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   http://www.charities.govt.nz
3. Report to Crown Forestry Rental Trust: "Tax Advice for Claimant Groups on Post-Settlement Governance Entity Structures", Selwyn Hayes and Amanda Johnston, Ernst and Young, May 2012.
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5. "Per Capita Distributions of American Indian Tribal Revenues: A Preliminary Discussion of Policy Considerations", S Cornell, M Jorgensen, S Rainie, I Record, R Seelau and R Starks, Udall Centre for Studies in Public Policy, The University of Arizona, 2007.
6. "Per Capita: Issues and Concerns"
   http://www.twohawkinstitute.com/seminars-publications/per-capita-issues-and-concerns/
7. "A RAP Primer"
   http://www.casinoenterprisemanagement.com/mp3-library/rap-primer
8. Indian Gaming Regulatory Act.
   http://www.nigc.gov/Laws_Regulations/Indian_Gaming_Regulatory_Act.aspx

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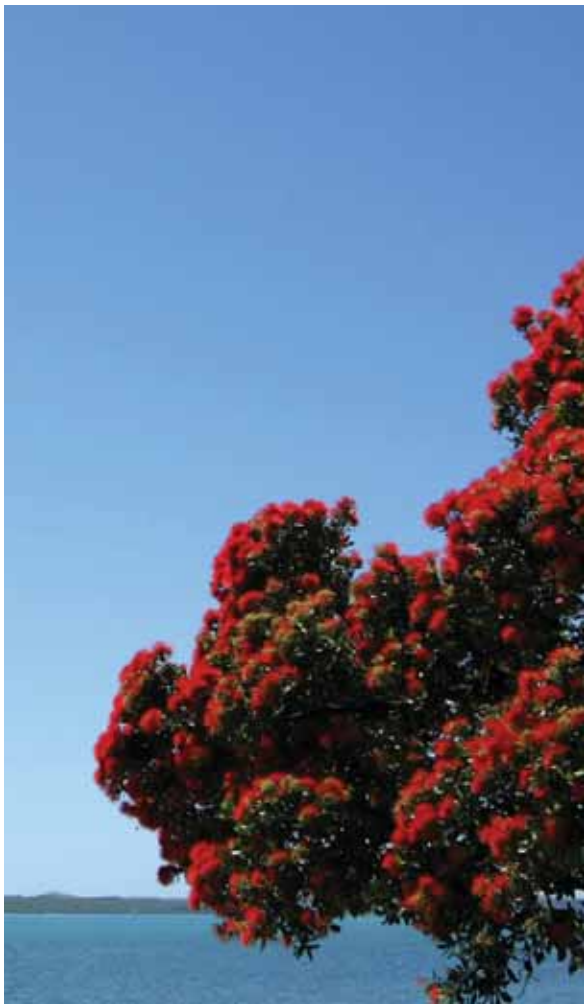
Mb. s 9(2)(a)
Em.



Submission

IRD Consultation: Taxation and the not-for-profit sector

Name	Fraenzi Furigo, Secretary/Treasurer
Email	s 9(2)(a)
Organisation/Iwi	Elaine Bay Community Association Incorporated
Date	31 March 2025

Thank you for the opportunity to comment on the Officials' issues paper concerning taxation and the not-for-profit sector.

I am submitting as a representative of a small (Tier 4) society, and my views might not be shared by all of our members.

I have reviewed the issues paper and found that for us the most important of your questions is

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 residents withholding tax exemption rules for NFPs**

We are a very small community association and are only having income that currently is not requiring declaration for income tax. (Societies are filing annual financial statements with the Societies Office).

I think that it would be good to increase the current deduction from $1,000 to $10,000. This would remove a lot of the smaller NFPs from the tax system, but still would ensure that 'big earners' pay tax once their income is higher.
Doing this would reduce transaction/admin costs for smaller NFPs and also IRD, which would be beneficial for both.

In my opinion the RWT exemption rules for NFPs should remain.

Once a NFP applies for exemption of RWT, it should also be tested if they qualify for the deduction for income tax purposes. This would make it easier for NFPs to understand what their tax obligations/benefits are, as currently they have to apply for both separately.

31 March 2025

Partner Reference
G B Cumberland - Auckland

Writer's Details
Direct Dial: s 9(2)(a)
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Sent by Email

Taxation and the Not-for-profit Sector
c/- Deputy Commissioner, Policy
Inland Revenue Department
PO Box 2198
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policy.webmater@ird.govt.nz

Submission for Auckland Council on Inland Revenue's Taxation and the Not-for-profit Sector Issues Paper

1. This submission on Inland Revenue's issues paper "Taxation and the not-for-profit sector" dated 24 February 2025 (**Issues Paper**) is made for Auckland Council, addressing concerns regarding aspects of the Issues Paper that have been raised with us by the Council and complementing the Council's own submission on the Issues Paper.

2. The submission focuses on prospective changes signalled by the Issues Paper that would potentially have a significant adverse impact on entities in the Council group, and in particular the Council-controlled charitable trust Tātaki Auckland Unlimited Trust (**TAU Trust**), and on other charities and not-for-profits that operate in and for the benefit of Auckland and its communities.

3. In particular, the submission addresses the following prospective changes that are signalled by the Issues Paper:

   (a) Prospective taxation of charities "unrelated" business income.

   (b) Prospective removal or "reduction" of the local and regional promotional body (**LRPB**) income tax exemption.

   (c) Inland Revenue's approach to the mutuality principle.

   (d) Prospective removal or "reduction" of the FBT exemption for charities.

4. The key submission points are summarised at paragraphs 6 to 15 below and then discussed in further detail.

5. Legislation referred to in the submission includes the Income Tax Act 2007 (**Income Tax Act**) and the Charities Act 2005 (**Charities Act**).

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www.simpsongrierson.com

Summary of the key submission points

TAU Trust income should continue to be fully exempt

6. It is critical that the tax-exempt treatment of the TAU Trust's income is not adversely affected, and that restructuring, compliance and tax costs do not need to be incurred in respect of the Trust, on account of any change made to tax charities' "unrelated" business income. This can be achieved by:

   (a) maintaining current charity income tax exemption settings; or

   (b) ensuring that the design details of any change make it clear that all of the TAU Trust's income will continue to be tax-exempt as non-business income or "related" business income; or

   (c) a legislative change to the Income Tax Act to confirm the tax-exempt treatment of TAU Trust's income.

Charities' "unrelated" business income should continue to be exempt, or the taxation of such income should be carefully targeted

7. The Council is concerned about the adverse impact that any change to tax charities' "unrelated" business income would have on numerous other charities that operate in and for the benefit of Auckland and its communities and may derive "unrelated" business income to support the delivery of their charitable services. To address those concerns:

   (a) current charity income tax exemption settings should not be changed; or

   (b) any such change should be carefully targeted so that the change:

      (i) focuses on private charities' large-scale "unrelated" business activities;

      (ii) does not impact on charities' non-business and "related" business income, including their investment and charity fundraiser income;

      (iii) provides for full exemption or other tax relief for "unrelated" business income to the extent that such income is distributed or applied to advance a charity's charitable purposes, rather than accumulated; and

      (iv) in relation to all of the above, is simple and clear – to minimise complexity, uncertainty, and compliance and transitional costs.

The LRPB income tax exemption should be maintained

8. The LRPB income tax exemption should be maintained, not removed or "reduced". The exemption continues to be an important and justified exemption, on account of the public benefit delivered by entities that qualify for the exemption.

9. In Auckland, this is exemplified by associations qualifying for the exemption that participate in the Council's Business Improvement District (**BID**) programme. There are currently 51 BIDs in Auckland, delivering locally-led developments and improvements for the benefit of communities throughout the region.

There needs to be further disclosure and consultation regarding mutuality

10. The Issues Paper refers to an unreleased draft Inland Revenue operational statement on mutuality and mutual association rules under the Income Tax Act, which might have an impact on any entities in the Council group that apply the mutuality principle in determining their tax position. However, this is not clear from the minimal details disclosed in the Issues Paper.

11. There needs to be further disclosure and consultation regarding Inland Revenue's draft updated position on mutuality and mutual associations, and the Council should be given the opportunity to be involved in such consultation.

The limited FBT exemption for charities should be maintained

12. The current, limited FBT exemption for charities should be maintained, not removed or "reduced".

13. The FBT exemption is an important, albeit limited, form of support for the TAU Trust and other charities, simplifying tax compliance and effectively lowering the cost of employee remuneration that includes some fringe benefits, enabling charities to offer such remuneration to attract and retain staff. The public benefit delivered by charities' services warrants the continuation of the exemption.

Further consultation with the charitable sector and stakeholders is critical

14. The Council is also concerned about the rushed consultation on the Issues Paper not giving the charitable sector and other stakeholders the information and time required to provide fully-considered input on the various matters raised in the Issues Paper. This is exacerbated by the broad-ranging, high-level nature of the Issues Paper, and the lack of detail and analysis to assist those potentially affected or interested.

15. Further consultation with the sector and other stakeholders should be undertaken regarding any prospective changes to charity and not-for-profit tax settings before any decisions are made to proceed with any such changes. Again, the Council should be given the opportunity to be involved in and provide input into the consultation process.

Prospective taxation of charities' "unrelated" business income

Current charity income tax exemptions

16. The current income tax exemptions under the Income Tax Act for charities' non-business and business income are relatively straightforward and easy to apply, especially for charities registered under the Charities Act (**registered charities**) that pursue their charitable purposes in New Zealand. Such charities generally have the flexibility to pursue what they consider to be the best option or options for generating revenue to support the delivery of their charitable services, without having to consider or deal with income tax in relation to any such revenue streams.

17. The exemptions are justified on the basis that the public benefit of charitable services delivered by a registered charity such as the TAU Trust outweighs any "fiscal cost" of tax

foregone on the taxable income, if any, that the charity might otherwise derive. Deadweight income tax compliance costs are also removed.

Implications of prospective change

18. If the current exemptions were to be changed to tax "unrelated" business income then, depending on the exact design details of the changes, implications for registered charities such as the TAU Trust would include the following:

    (a) They would need to keep track of and characterise various revenue-generating activities and identify any “business” income that is "unrelated" business income and any related expenditure/loss that would be tax-deductible.

    (b) If their income were to include any "unrelated" business income taxed under the changes, that income (net of deductions) may be subject to income tax – and for charitable trust structures, for example, taxable trust income is generally taxed at the 39% trustee income tax rate unless distributed as beneficiary income and taxed at a lower rate.

    (c) It is highly likely that charities would instead look to stay away from "unrelated" business income opportunities that might otherwise help to support the delivery of their charitable services and/or to restructure (involving time and cost) so that they can generate income from those opportunities without incurring income tax.

19. The overall result would be a significant deadweight transitional and ongoing compliance costs and potentially immaterial additional revenue collected by the government, at the expense of leaving charities to focus their time and resources on delivery of their charitable services and allowing them to generate tax-exempt revenue, including business income, to support those services.

The TAU Trust's position

20. The TAU Trust exemplifies the type of registered charity that should not be subject to income tax, on any of its income, on account of the public benefit delivered by its charitable services. It is critical that the tax-exempt treatment of the TAU Trust's income is not adversely affected, and that restructuring, compliance and tax costs do not need to be incurred in respect of the TAU Trust, on account of any changes to tax charities' "unrelated" business income.

21. The TAU Trust is a charitable trust with a corporate trustee, Tātaki Auckland Unlimited Limited, that was first established as "Regional Facilities Auckland" as part of the Auckland local government reorganisation in 2010.

22. The TAU Trust's charitable purposes, set out in its trust deed, are focused on promoting the effective and efficient provision, development and operation of regionally-significant arts, culture, heritage, leisure, and sport and entertainment facilities throughout Auckland, for the benefit of Auckland and its communities.

23. The facilities owned and operated, and managed, by the TAU Trust include a wide range of community assets of regional significance in Auckland, such the Aotea Centre, the Auckland Art Gallery Toi o Tāmaki, Auckland Zoo, a network of Auckland stadiums, the New Zealand

Maritime Museum, the Civic theatre complex, the Viaduct Events and Bruce Mason centres, and others.

24. As required by its trust deed, the TAU Trust owns, operates and manages such facilities on a prudent commercial basis, with a view to operating them as successful, financially sustainable community assets. Nonetheless, the TAU Trust's operations are not, and would never be, self-funding, and the TAU Trust requires and receive a significant amount of operational and capital funding support from the Council.

25. Running, maintaining and developing such facilities to achieve the TAU Trust's charitable objectives for Auckland and its communities is not, and inherently cannot be, done for the purpose of making a profit, even if operating profits might be generated by some aspects of the TAU Trust's operations from time to time that can be reinvested in the TAU Trust's operations.

26. All of the TAU Trust's operations, including any business or business-like activities undertaken as part of or to support running, maintaining and developing the various regional facilities for which the TAU Trust is responsible, are intertwined with, and "related" to, advancing and achieving trust's charitable purposes set out in its trust deed.

27. In light of those points regarding the TAU Trust's position, it is critical that the TAU Trust remains fully tax-exempt and does not need to deal with any transitional/restructuring or ongoing compliance costs as a result of any prospective change to tax charities' unrelated business income.

28. There are three options for achieving that outcome, namely

    (a) Maintaining the current charity income tax exemptions, because of the public benefit delivered by charities' services, instead of burdening charities with transitional and ongoing compliance and tax costs, at the expense of their services, by introducing new "unrelated" business income tax rules.

    (b) If new "unrelated" business income tax rules were to be introduced, ensuring that the design details make it clear that all of the income of a charity such as the TAU Trust will be treated as non-business income or "related" business income, not "unrelated" business income. For the TAU Trust, it would be especially important that the definition of "related" business activities clearly covers all of its operations relating to running, maintaining and developing its regional facilities which advance, and are part and parcel of and inseparable from, the trust's regional facilities–related charitable purposes.

    (c) Making a legislative change to the Income Tax Act to confirm the tax-exempt treatment of the TAU Trust's income. It would be optimal for this to be a standalone exemption for the TAU Trust, or for the TAU Trust to be added to the LRPB exemption (as in the case of Auckland's Cornwall Park Trust). Possible alternatives would be "local authority" income tax treatment (but there are "trustee income" exclusion and other issues with that option), or adding the TAU Trust to the new Auckland Future Fund trust exemption (but that exemption is tailored to the Auckland Future Fund).

29. Making a legislative change to confirm the tax-exempt treatment of the TAU Trust's income would not, however, address the Council's broader concerns regarding the impact of any

change on other charities that operate in and the benefit of Auckland and its communities, discussed further below.

The position of other charities supporting Auckland and its communities

30. The Council has also raised concerns about the potential adverse impact of any change to tax charities' "unrelated" business income on many other charities that operate in and for the benefit of Auckland and its communities and that may derive "unrelated" business income to support the delivery of their services.

31. The Council has an interest in those charities because of what they deliver for Auckland and its communities and the Council group has relationships with, and provides support to, such charities, eg in the form of community grants and community leases of Council land and facilities. If such charities are adversely affected by any change, there will be a call for the Council to provide additional support for the delivery of their charitable services or those services will simply go undelivered, or under-delivered, to Auckland and its communities.

32. It is also important to highlight and keep in mind the following points:

    (a) Any decision on whether or not to tax charities' "unrelated" business income needs to properly take into account the public benefit that arises from charities' delivery of their services and potential net detriment to Auckland and New Zealand of introducing "unrelated" business income tax rules.

    (b) If there is a concern that some charities that derive tax-exempt business income are not delivering public benefit, because they do not use the income for their charitable purposes or because of the nature of their charitable purposes, then that should be the target of any review, not taxing other charities' business income.

    (c) Changing the current charity income tax exemptions to tax charities' "unrelated" business income would entail significant complexity, uncertainty, compliance costs, and transitional/restructuring costs, potentially without generating any material additional tax revenue.

33. In light of those points, it is submitted that either the current charity income tax exemptions should not be changed at all, or any changes must be carefully and clearly targeted so that it does not inappropriately affect the income of charities that are delivering services that are of clear public benefit and are not involved in large-scale "unrelated" business activities.

34. In relation to targeting any changes:

    (a) There should be clear exclusions from any "unrelated" business income tax rules for registered charities that do not run large-scale unrelated businesses, eg excluding all registered charities/groups that are in Tiers 3 and 4 for Charities Act financial reporting purposes and all registered charities/groups whose "unrelated" business income does not exceed a specified threshold.

    (b) It should be clear that any change does not impact on the tax-exempt treatment of charities' non-business income and "related" business income, and that this includes their investment income and their income from charity fundraising events and the like that does not involve charities competing with other

businesses. As part of this, there needs to be a definition of "related" business activities that covers any business that, in and of itself, advances any one or more of the charity's charitable purposes (as in the case of the TAU Trust).

(c) There should still be a full exemption, or tax-deductibility, for “unrelated” business income to the extent that such income is actually distributed or applied (even within the same legal entity) to advance a charity's charitable purposes, and also tax relief if tax has been paid in relation to business income and then business funds are subsequently distributed or applied to advance a charity's charitable purposes.

35. In relation to all of those design details, any changes need to be as simple and clear as possible, in order to minimise complexity, uncertainty, and compliance and transitional costs for registered charities, eg it needs to be easy for charities to be able to determine whether or not they are excluded from any "unrelated" business income tax rules, and to be able to distinguish between "business" and "non-business" income and "related" and "unrelated" business if required.

Prospective removal or "reduction" of the LRPB income tax exemption

Current LRPB income tax exemption and implications of change

36. The LRPB income tax exemption applies to income derived by associations and societies if the relevant entity is established mainly to advertise, beautify or develop a city or other district to attract population, tourists, trade or visitors and/or to create, develop or increase amenities for the general public in a city or other district. In addition, the entity’s funds must not be used or available for use for any other purpose, other than a charitable purpose.

37. Like other exemptions under the Income Tax Act, such as the exemptions for amateur sport promoters and for community housing entities, the LRPB exemption applies to not-for-profit entities that:

(a) may not be charitable in a strict charity law sense or for Charities Act registration purposes (on account of Charity Services and the Charities Registration Board’s narrow approach to charitable status); but

(b) nonetheless, like charities and other entities, pursue purposes and apply their funds, in accordance with the exemption’s terms, in order to deliver public benefit services and outcomes (not private benefits), with the public benefit outweighing the "fiscal cost" of any tax foregone.

38. The potential implications of changing the LRPB exemption would include the imposition of transitional costs and ongoing compliance and tax costs on this type of public benefit entity and/or restructuring that involves deadweight costs and results in little if any additional tax revenue collected, at the expense of the public benefit services delivered by such entities.

LRPB income tax exemption should be maintained

39. The LRPB exemption is not "out of date" and it should be maintained, not removed or “reduced”. There are also aspects of the exemption’s terms that could be made clearer, eg explicitly affirming that trusts can qualify for the exemption (as has been done in the amateur sport promoter exemption, and in the community housing entity exemption).

40. The position that entities which qualify for the LRPB exemption do not, and might not, qualify for charitable status or Charities Act registration is not relevant in this context. The exemption is justified because of the public benefit delivered by LRPB entities, which is not dependent upon charitable status at law. Exactly the same position applies to other tax-exempt entities, such as amateur sport promoters and community housing entities.

41. In Auckland, the continued relevance and importance of the LRPB exemption, and the public benefit delivered by entities that qualify for the exemption, is highlighted by associations qualifying for the exemption that participate in the Council's Business Improvement District (**BID**) programme.

42. The Council's BID programme involves the Council working with local associations, independent of the Council, to develop business districts throughout Auckland. There are currently 51 BIDs in Auckland, representing over 25,000 businesses, delivering locally-led developments and improvements for the benefit of the communities, including businesses, residents and visitors, served by the various business districts. The Council also levies targeted rates to support the programme, making these funds available for a local association to lead development activities in their BID area.

43. Further details regarding the Council's BID programme are available at: https://www.aucklandcouncil.govt.nz/about-auckland-council/business-in-auckland/Pages/business-improvement-district-programme.aspx.

44. Associations participating in the BID programme, and other such entities, that qualify for the LRPB exemption should continue to be tax-exempt. If that position were to change, the result would be significant compliance and potentially tax costs incurred by those associations, or restructuring to bring operations in-house into the Council rather than incurring such compliance and tax costs, at the expense of leaving such associations to focus on their locally-led and important work for Auckland and its communities.

Inland Revenue's approach to the mutuality principle

45. The Issues Paper refers to an unreleased draft Inland Revenue operational statement on mutuality and mutual association rules under the Income Tax Act, which might have an impact on any entities in the Council group that apply the mutuality principle in determining their tax position. However, this is not clear from the minimal details disclosed in the Issues Paper.

46. In addition, while the Issues Paper refers to Inland Revenue having a draft updated position on mutuality and mutual associations, the questions for submitters do not appear to focus at all on mutuality, so it is unclear whether or not this is supposed to be part of the Issues Paper consultation process.

47. There needs to be further disclosure and consultation regarding Inland Revenue's draft updated position on mutuality and mutual associations, and the Council should be given the opportunity to be involved in such consultation.

Removal or "reduction" of the FBT exemption for charities

Current FBT exemption and implications of change

48. The current, limited FBT exemption for charities enables registered charities to include benefits covered by the FBT rules in their employees' remuneration, without having to deal with FBT compliance and payment. There are existing limitations that exclude:

    (a) employees mainly employed in business activities falling outside a charity's charitable purposes, ie "unrelated" business activities; and

    (b) such as use of charity employer's credit/debit card or supplier account, if they exceed a *de minimis* threshold (generally $1,200 per employee per annum).

49. The exemption effectively lowers charities' costs in relation to offering remuneration with fringe benefits that can help to attract and retain staff. Fringe benefits may also be delivered without significantly cutting into a charity's financial resources (eg, providing access to the charity's services or benefits sponsored by third parties).

50. If the exemption were to be removed or "reduced", the implications for charities using the exemption to help attract and retain staff would include the following:

    (a) They would need to identify relevant benefits and work out whether or not such benefits would continue to be FBT-exempt on any other basis.

    (b) If FBT would become applicable to any benefits because of the change, they would either need to deal with FBT compliance and payment or discontinue or restructure the inclusion of such benefits in employees' remuneration.

    (c) Discontinuing or restructuring the inclusion of benefits in employees' remuneration will involve employee consultation/engagement, changes to remuneration details, and other transitional issues.

51. The overall result would be a reduction of charities' resources available for other aspects of delivering their charitable services (because of the effective increase in the cost of maintaining the value of employees' remuneration), or the charity offering remuneration of less value to employees (affecting the charity's ability to attract and retain good staff), or a combination of both of those adverse effects.

FBT exemption should be maintained

52. The current, longstanding FBT exemption for charities should be maintained, not removed or "reduced".

53. The FBT exemption is an important, albeit limited, form of support for the TAU Trust and other such charities, simplifying tax compliance and effectively lowering the cost of employee remuneration that includes some fringe benefits, enabling charities to offer such remuneration to attract and retain staff.

54. Again, this is a situation where the public benefit delivered by charities' services warrants the continuation of the exemption, because that public benefit outweighs any "fiscal cost" of the exemption.

55. If there is a concern that some charities do not deliver public benefit, because of the nature of their charitable purposes or their operations, then that should be the target of any review, not removing or "reducing" the FBT exemption for other charities.

56. Any fiscal cost of the current exemption is also already contained by the limitations included in the exemption, ie the exclusion for "unrelated" business employees and the very tight cap that applies to any "short term charge facility" benefits.

57. The Issues Paper makes reference to a current review of FBT settings which has, as one of its aims, reducing compliance costs, and the paper seems to suggest that such a review may be relevant to submitters' positions on the FBT exemption for charities. However, the minimal detail included in the Issues Paper regarding that review does not provide any reason or basis for removing or "reducing" the FBT exemption for charities.

Next steps/further consultation

58. We look forward to Inland Revenue's confirmation of receipt of this submission. We also confirm that we would be happy to discuss any aspect of this submission with Inland Revenue officials.

59. We also reiterate that further consultation should be undertaken with the charitable sector and other stakeholders, including the Council, regarding any prospective changes to charity and not-for-profit tax settings – before any decisions are made to proceed with any such changes.

60. There is otherwise a very real risk that the rushed consultation on the Issues Paper will result in unwarranted and misdirected changes to charity and not-for-profit tax settings, to the net detriment of Auckland and New Zealand.

Yours faithfully
SIMPSON GRIERSON

s 9(2)(a)

Nicholas Bland | Senior Associate

New Zealand Buddhist Council

Submission to Inland Revenue
On Charity Business Income Tax Exemption Review - March 2025

The following points of concern are from the perspective of Buddhist communities in Aotearoa New Zealand, most of which are constituted as legal entities with charitable status and perform many charitable functions, including significant contributions to social cohesion and social support.

1. Charitable Income Should Remain Tax-Exempt Regardless of Source if Applied to Charitable Ends

Charities are not-for-profit by design. All surplus, including from ancillary business activity, is reinvested into charitable programmes. Taxing “unrelated” business income penalises effectiveness rather than misuse. This change undermines the principle that what matters is how income is used, not how it is earned.

2. The Proposed Change Risks Undermining Charitable Mission Delivery

For many Buddhist centres and other small charities, business income from things like hall hire, garage sales, shop sales, or fundraising dinners is essential to fund core activities: meditation retreats, free public teachings, community meals, youth engagement, and refugee support. Taxing this income would:

- Force charities to divert energy to compliance or fundraising, rather than service.
- Reduce the scale and scope of their charitable offerings.
- Make long-term planning for capital projects like retreat centres and temples more difficult, especially if retained earnings are taxed.

3. The Line Between “Related” and “Unrelated” Income is Often Artificial and Complex

Charities with mixed activities would face a compliance burden to segment income streams, apply grey-area judgments, and meet additional reporting duties. For volunteer-run religious charities, this imposes a disproportionate and unhelpful regulatory overhead. It also raises risks of inconsistent enforcement or retrospective interpretation.

4. Taxing Unrelated Business Income Sets a Dangerous Precedent

Once the principle is established that income used for charitable purposes can be taxed, it opens the door to further erosion. There is then nothing to prevent future governments, especially under fiscal pressure, from targeting passive investment

income, or even including income earned through core religious or educational programmes?

5. The Current Exemption is Not a Loophole—It is a Recognition of Public Benefit

The exemption of business income is not an anomaly to correct, but a reflection of the broader social contract: that supporting charities supports the wellbeing of society. As Stephen Moe has argued, “just because income is earned in a different way doesn’t make the charitable purpose it funds any less valid.” The system should support, not hinder, charities’ capacity to be self-sustaining.

6. Charities Already Operate Within Constraints and Oversight

Charities are subject to oversight through Charities Services and all income must be applied to charitable purposes. There are already safeguards to prevent private benefit. Imposing income tax introduces duplication of accountability without clear benefit.

7. Equity and Consistency Matter Across the Sector

Large, professionally managed charities may find ways to structure operations to minimise the impact of these changes, while small, flax roots organisations will be disproportionately harmed. This creates an inequitable system that weakens the diverse fabric of New Zealand’s charitable sector.

s 9(2)(a)

From: Jonathan Manning s 9(2)(a)
Sent: Monday, 31 March 2025 4:51 pm
To: Policy Webmaster
Subject: Taxation and the not-for-profit sector.

Hello,
I am the Team Lead in the Gifts in Wills space for the Salvation Army New Zealand, Fiji, Tonga & Samoa Territory.
This is my brief submission on the above discussion document.

Every year supporters of the Salvation Army leave legacy gifts. These funds are use for capital spending – bricks and mortar in building such facilities as social housing villages or apartment complexes for struggling New Zealanders.
Tenants for these are taken off the government social housing register and given a permanent home – providing them with housing security – many enjoying that security for the first time in their lives.

These housing villages need to be areas where public amenities are within easy walking distance or on bus routes as in many cases tenants do not have their own transport.
Appropriate land within city limits is not always readily available, so the funds to build these villages with often be tagged but set aside until the right land is found or becomes available.

If the funds set aside were to be taxed, it would severely reduce the Salvation Army's ability to build such villages and house struggling New Zealanders.

The issue with the current IRD set up is the fourth point around the definition of a charity is incredibly broad and easily able to be exploited. Tightening of the rules around what a charity is, how it operates and how it manages its funds need to be overhauled.
Simply taxing available 'cash on hand' or 'assets' does not allow for the nuances of the work that genuine charities perform.

Please feel free to reach out to me if someone would like to discuss further.

Ngā mihi nui / Kind regards and appreciation

Jonathan Manning
Territorial Gifts in Wills Manager/Team Leader
Supporter Engagement & Fundraising
P: s 9(2)(a)
W: www.salvationarmy.org.nz

The Salvation Army | New Zealand, Fiji, Tonga & Samoa
caring for people | transforming lives | reforming society

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TE OHU KAIMOANA

31 March 2025

PRIVATE AND CONFIDENTIAL

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

Tēnā koutou

Te Ohu Kaimoana submissions on consultation paper

We refer to the Taxation and the not-for-profit sector consultation paper (the *Consultation Paper*). Thank you for meeting with us on Friday 21 March 2025 to discuss the Consultation Paper, and for the opportunity to follow-up that meeting with written submissions. These submissions contain confidential information and **should not** be published.

As we have discussed, Te Ohu Kaimoana received Treaty of Waitangi settlement assets from the Crown as part of settling outstanding claims and Treaty grievances of Māori in relation to fisheries.

There exists general recognition that Te Ohu Kaimoana has charitable status because it assists the Crown and Māori to fulfil a public purpose by resolving claims, and further, it is not intended to be the final recipient of settlement assets, it is merely the trustee of the assets acting for and on behalf of the final beneficiaries (all Māori throughout Aotearoa).

Te Ohu Kaimoana is a registered charity (s 9(2)(b)(ii) and its purpose is to advance the interests of iwi individually and collectively primarily in the development of fisheries and fisheries-related activities. Te Ohu Kaimoana also has a statutory responsibility to contribute to the achievement of an enduring Māori Fisheries Settlement, as well as assisting the Crown to discharge its obligations under this settlement.

Further to our previous discussions, we are writing to:

- Provide an overview of Te Ohu Kaimoana's income sources.
- Set out the reasons why, in our view, Te Ohu Kaimoana should not be subject to tax on the income it derives.

Overview of Te Ohu Kaimoana charitable income sources

Te Ohu Kaimoana derives income from:

- s 9(2)(b)(ii)

- s 9(2)(b)(ii)

Te Ohu Kaimoana, Te Pūtea Whakatupu Trust and Te Wai Māori Trust could each be thought of as examples of statutory bodies that perform functions required of them under legislation. Ultimately, we submit that these entities should not become subject to tax and suggest this could be achieved by:

(i) providing clear guidance that income generating activities of these entities do not constitute a business;
(ii) ensuring that changes do not impact 'Government established sinking-funds' and similar entities; or
(iii) including specific exclusions from the scope of any taxing provision for these entities.

With regard to the third bullet point, we note that the Income Tax Act 2007 already contains specific reference to entities that receive assets from the Crown in accordance with the Māori Fisheries Act 2004, which could be adapted for further exclusions (see section HR 12(3)(b)).

Further consideration of impact on Treaty settlements

To the extent that charities reform may impact the taxation of Treaty settlements (such as the assets held by Te Ohu Kaimoana), further work must be done to ensure that any reform is consistent with the full and final nature of those settlements. We are concerned that introducing a change this significant without fully understanding the impact on Treaty settlement assets feels ill-considered. We would be happy to discuss this matter with officials, specifically as we see it relating to Te Ohu Kaimoana, at an appropriate time.

Please do not hesitate to contact us if you have any questions regarding our submissions.

Ngā mihi

s 9(2)(a)

Graeme Hastilow

Te Mātārae | Chief Executive

s 9(2)(a)

From: Alison Broad s 9(2)(a)
Sent: Monday, 31 March 2025 4:52 pm
To: Policy Webmaster
Subject: FW: Submission - taxation and the NFP sector

From: Alison Broad s 9(2)(a)
Sent: Monday, 31 March 2025 4:50 PM
To: 'policy.webmaster@ird.govt.nz.' <policy.webmaster@ird.govt.nz.>
Subject: Submission - taxation and the NFP sector

Kia ora

Below is my submission, structured in response to your questions.:

Q1. What are the most compelling reasons to tax, or not to tax, charity business income?

a. Charity business income is multifaceted. I would be happy to see the business activities under the umbrella of charities such religious bodies be subject to tax. In Southland there are very significant businesses operated under the auspices of the Exclusive Brethren. I can see no reason why they should not pay tax as their business competitors do. However this is probably a question related to the ongoing validity of religion being a recognised charitable purpose.
b. A charity such as Hospice, Red Cross, Women's Refuge who operate second hand shops to raise funds for their under-funded charitable work should not have to pay tax on their retail income. To do so would simply increase the funding burden on other sources or reduce the services available in our communities. It would be shooting our communities in the foot.

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?

c. See b above.

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?

d. Tax exemptions as outlined in clause 2.24 would be essential. These would address the concerns in b above.

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?

e. Tax exemption for Tier 3 and Tier 4 charities would be appropriate. The businesses referred to in a above are likely to be in Tier 1 or 2.

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?

f. If 88% of charities in NZ are Tier 3 or 4, it is vital to not crush these mainly voluntary community organisations with complicated tax rules / processes. For example, we are lucky to have people in our community who will help ensure women and children can escape violent situations (Women's Refuge). These people do this work at all hours and in sometimes threatening situations. I believe we should be grateful to them for their work, and not expect that they will be tax accountants as well!

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?

g. No comment

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?

h. The examples listed in clause 3.6 are of concern. I would support tightening the rules to prevent such tax avoidance and compliance dodging.
i. Community Foundations should remain tax exempt.

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?

j. I support the concept of removing tax concessions for privately controlled foundations or trusts that do not have arm's length governance or distribution policies.

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?

k. I have concerns that this could lead to perverse outcomes.
l. If a minimum distribution was to be intoriduced, I believe it should only apply to funds over a pre-determined level. Eg $1M. Most charities are small, and disincentives to accumulate some reserves would be counter-productive.

Qs 10,11, 12 & 13

m. No comment

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?

n. I fully endorse your interest in lowering tax-related compliance costs for volunteers.
o. The taxation of honoraria as schedular payments is a disproportionately burdensome responsibility for volunteers.
p. Making honoraria taxed as salary and wages merely shifts the compliance burden to the charity. This is ok for FENZ and similar who already have PAYE systems set up for their professional staff. For charities which are completely volunteer run, the PAYE system responsbilities would be even more burdensome than the schedular payment system.
q. Honoraria are often VERY much at the token end of the spectrum.
r. I think there should be a threshold for honoraria below which the honararia are tax-free. If that is not the case, I think the charity should have an option of either have honoraria as schedular payments OR as salary and wages. In that case, the charity could select the least burdensome for its scale and operation.

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?

s. No comment other than to ensure that the DTC system continues, in current or amended form.

Thank you for the opportunity to comment on this. Please bear in mind the small scale and volunteer reliance of so much of our community sector. Our communities are deeply reliant on the NFP sector, and on volunteers. This is

especially the case in regional and rural NZ. For example, in an accident scenario, ALL of the responders and support teams may be volunteers, with nobody in a paid role except police and hospital staff. We need to support our NFP sector, not squash it with compliance or complexity.

Nonetheless, there is significant room for more appropriate taxation of large businesses run under the auspices of NFP structures.

All the best!

Alison Broad
s 9(2)(a)

s 9(2)(a)

From: s 9(2)(a)
Sent: Monday, 31 March 2025 4:53 pm
To: Policy Webmaster
Subject: Taxation and the not-for-profit sector.

SUBMISSION – Please maintain confidentiality

Kia ora,

Sports Chaplaincy NZ is a charity dedicated to providing pastoral care and well-being support to athletes, staff and whānau associated with sport. We have 115 sports chaplains who collectively donate upward of 16,000 hours a year making their care available to around 30,000 sports related people and their families. We do not ask for nor receive funding directly from National Sports Organisations (NSOs) nor regional or local sports entities. This is because we provide athletes and staff with an independent, confidential presence. Being funded by the sports entity could be interpreted as collusion and thus seen to compromise to sense of confidentiality required for good pastoral care. All our funding comes by donation, and around 50% of this comes from grant makers that benefit from a large charitable farming trust. In our case, the company generating the income does not donate directly to us but through several distribution-only grant making trusts. Our work saves the lives of athletes (see reports on suicidal ideation among youth). Without the funding provided from the farming trust we would have to close our doors.

Nga mihi aroha,

s 9(2)(a)

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s 9(2)(a)

www.sportschaplaincy.co.nz
ko te manaaki i ngā kaihākinakina o Aotearoa
caring for New Zealand's sports community


Sports Chaplaincy
NEW ZEALAND

Continence NZ: Submission for the IRD Consultation March 2025

Context summary:
The New Zealand Continence Association, trading as Continence NZ, is an incorporated society and charity with a contract to provide education and awareness services about continence related topics.

We receive $76,000 per annum from Te Whatu Ora, and supplement this with grant and trust income. We had planned to start a social enterprise, selling continence related products at an affordable price point to ensure that anyone disadvantaged by incontinence has access to quality products at affordable prices, which would also assist to supplement our very low level of government funding and enhance our sustainability. Any changes to tax in relation to charity business income may change those plans.

Our submission covers the questions that relate to our operations and would impact on our work, hence we have not responded to them all.

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?

There are many compelling reasons not to tax charity business income. From our perspective, the most compelling is the fact that charity business income is used to provide significant benefit to our communities and reduces the need for government to provide various social services.

Our organisation receives $76,000 per annum from the government to provide extensive national delivery service, far beyond what is possible based on our government contract. Charity business income provides organisations such as ours with the opportunity to supplement low government contract funding. The stark reality is that we would not be able to deliver the services we provide with our government contract alone. As grant and trust funding can be incredibly unreliable, charity business income provides an additional revenue stream to diversify revenue streams and enhance sustainability.

Membership fees are also income for various societies (who are also charities). In our case, this income is used as grants for our health professional members to enhance their knowledge and practice in the field of continence, which is of significant importance and benefit to New Zealand. To tax membership income would significantly impact our ability to support education and research.

Charity business income also provides the opportunity for charities to grow, and further extend their support of communities, which is why tax exempt status is so critical. The factors described in 2.13 and 2.14 do not warrant taxing charity business income. Charities exist to serve society and support the disadvantaged, any potential benefit

from our tax exempt status only further enhances our work to support those who need it most.

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?

Charity business income is generally related to charitable purposes, as it is generally used to help sustain the charity. If a charity exists that does not provide benefit to society, based on the requirements of the Department of Internal Affairs, there are existing mechanisms in place to address this.

We do not believe that tax exemption should be removed for charity business income, however, support the IRD and Department of Internal Affairs using their powers to address any issues that exist in relation to charities abusing their tax exempt status.

We have existed formally since 1992, and it is incredibly difficult to remain a viable charity that meets the extensive needs of our communities with our very limited government contract, especially with the increasing pressures on the charitable sector, and government cuts to services for the disadvantaged. Social enterprise models that provide tax exempt income for charities provide the opportunity to increase service delivery, enhance financial sustainability, and reduce reliance on trust and grant income. Less reliance on trust and grant income significantly enhances a charity's operating practices as they can begin to move away from the often hand-to-mouth nature of grant and trust funding, which requires significant effort in relation to ongoing application and accountability reporting, with very little stability. Enhanced financial sustainability, increased funding from charity tax income, and time saved through less grant and trust applications truly enable a charity to strengthen their work and cement their strategic objectives, which greatly benefits Aotearoa.

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 a charity has a business that is unrelated to their charitable purpose, but that funds their charitable work, tax exempt status should still apply. For example, a charity may run a café and the proceeds of the café are used towards supporting mental health initiatives. This model significantly benefits our society and is not uncommon. In fact, more of this type of charitable model would greatly benefit society.

If a charity has an unrelated business that in no way positively contributes to society, then that income should be taxed at the usual business rate. The criteria could be a

percentage of return being required to be spent on charitable purposes (e.g. 100% of profit is to be used for charitable purposes).

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?

Yes, in this example tax exempt status should remain for income distributed for charitable purposes.

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?

It would seem prudent to make a distinction between donor-controlled charitable organisations and other charitable organisations given that it is entirely possible for people to operate as a charity and personally profit based on the current legislation. Although there is some community benefit from these operations, it can be argued that the personal gain is far more significant than the community benefit in some examples, which are the minority.

There are many donor-controlled charities who genuinely exist to serve and support our communities, and our charitable sector would be significantly smaller without them. It is important to ensure that they are able to continue to operate with some level of tax exempt status that is appropriate based on the benefit to the community.

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, there should be a requirement to make a minimum distribution each year. We don't feel we can comment on the minimum distribution rate.

122 St John Street, PO Box 207
Ōpōtiki 3162
Tel: 073156150

Monday 31 March, 2025

Tēna koe,

This submission is provided by Te Tāwharau o te Whakatōhea ("Te Tāwharau"), on behalf of Te Pou Oranga o Te Whakatōhea Charitable Trust with regards to the Official's Issues Paper released by the Inland Revenue Department ("IRD"), on 'Taxation and the not-for-profit sector' (the "Issues Paper").

If you would like to discuss any points raised in this submission, please do not hesitate to contact me by telephone s 9(2)(a) or by email s 9(2)(a)

Ngā mihi,

s 9(2)(a)

Dickie Farrar
Chief Executive
Te Tāwharau o Te Whakatōhea

This submission is provided by Te Tāwharau o te Whakatōhea ("Te Tāwharau"), on behalf of Te Pou Oranga o Te Whakatōhea Charitable Trust

Te Tāwharau is the Post Settlement Governance Entity ("PSGE") established to receive and manage Te Tiriti o Waitangi settlement assets as well as the assets of the Whakatōhea Māori Trust Board. It is a collective entity which operates on behalf of and for Whakatōhea Iwi.

Our purpose as Whakatōhea is "Kia rangatira ai ngā uri o te Whakatōhea" meaning "growing and investing in the well-being of our people". Our focus extends beyond immediate concerns, encompassing a broader vision for a prosperous future and fostering impactful leadership within our community. We remember that our Iwi resilience lies in our people's unity and solidarity; we thrive together. An Iwi's strength is its people's unity.

Te Pou Oranga Charitable Trust is the charitable arm in the Te Tāwharau structure and has its own purpose of "whānau ora, hapū ora, ka ora ai te Iwi" meaning "when our families are well, our hapū are well, our Iwi can thrive". Te Pou Oranga exists to provide charitable benefits to the people and communities within the Whakatōhea region.

Te Pou Oranga is dedicated to enhancing the well-being of Whakatōhea through integrated education, health and social services. A holistic approach focuses on building strong relationships and leadership within the community to ensure the well-being of whānau, hapū, and Iwi as a whole, specifically ensuring:

- Our pēpi (babies) are born healthy, thrive, and are well-prepared for school.
- Our tamariki (children) live in safe and nurturing homes.
- Our rangatahi (youth) grow as aspiring leaders who contribute to our community.
- Our kaumātua (elderly) are provided with respect, care, and dignity.

The Official's Issues Paper released by the Inland Revenue Department ("IRD"), on 'Taxation and the not-for-profit sector' (the "Issues Paper") gives rise to great concern for Te Tāwharau, as we could be directly impacted by the proposed changes.

There are several matters of significant concern arising from IRD's proposals. We outline some overarching concerns in the section that follows (section 1), before addressing the two main proposals outlined in the Issues Paper further below (sections 2 and 3).

1.0 Overarching concerns

1.1 Timeframe for submissions

The proposals outlined in the Issues Paper could be the most significant tax reform to ever impact the Māori sector, which makes the four-week timeframe for submissions completely unreasonable. We understand discussions and work regarding the charities sector and tax rules have been underway for several years. This long discussion period makes the submission window seem incredibly short

considering the material impact this could have on the Māori sector (and associated benefits iwi charities are providing to communities).

In addition to this, the ability to appropriately engage with our Iwi and stakeholders requires time given the large number of people Te Tāwharau represents (which is the same for many Māori and charity organisations). Four weeks is nowhere near enough time to receive the Issues Paper, analyse it, discuss it, and then go out and engage with all our people and communities who are ultimately the ones who will be impacted by any proposed changes.

We are aware that the short timeframe means that many charities may not even be aware of the Issues Paper and even if they are, their ability to appropriately engage and submit is impacted due to the timeframe.

We recommend full and proper engagement is undertaken if any of the proposals in the Issues Paper are moved forward following this submission process.

1.2 Diverse needs within the charity sector

We are concerned that the proposals will impose a blanket rule across several different types of charitable organisations which all have their own needs and requirements. If any policy changes are to be made these diverse needs should be considered and addressed respectfully (i.e., charities with business, donor-controlled charities, and non-for profits, are all different in nature yet are being captured under the same policy design).

The majority of Māori sector organisations function for the benefit of community, social, and environmental prosperity. The proposals in the Issues Paper effectively aim to address key issues such as charities with business income who are not providing charitable benefits to their communities, and charities which are being utilised to enable tax avoidance (neither of which apply to the Te Tāwharau group structure).

If charities that sit within an iwi group structure are captured by any of the proposed changes the impact is likely to be the opposite to the underlying intention of these proposals. This again highlights that a blanket rule approach does not adequately address the diverse needs of the various sectors involved and is likely to capture organisations which are not intended.

1.3 Increased compliance

The proposed changes will have a significant impact in terms of compliance time and cost. Implementing tax compliance procedures where they have not been required previously will mean many iwi charities will now need to implement new or additional systems, understanding, and upskilling of staff. We also note the likely need to engage a tax agent or advisor to assist with navigating what is likely to be very complex rules.

Even if any changes to the rules did not impact a specific charitable organisation, the charity would still need to engage tax lawyers or advisors to help them understand and confirm whether the rules did apply to them.

It is imperative that practical input regarding policy design is sought if any changes are going to be implemented. Implementation should be delayed if necessary to ensure this practical input is incorporated. There is a significant risk of overcomplicating the process and imposing unnecessary compliance burdens on the entire sector without additional revenue gain.

2.0 Donor Controlled Charities

We understand the IRD's concern with the issues noted in the Issues Paper regarding 'donor-controlled charities', particularly the point on how the donor or associates can have control over the use of charity funds and use this to enable tax avoidance. However, it is critical that 'donor-controlled charities' is clearly defined to ensure it is only capturing those it is intended to capture to address the issues noted.

The Issues Paper specifically references 'private foundations' and 'the donor, donor's family, or their associates'. It also notes how donors to 'donor-controlled charities' can access the same tax concessions as other 'widely supported charities'. Iwi charities are established to be genuine charities that provide benefits to a very wide range of beneficiaries including the community, iwi members and local organisations. This illustrates the importance of ensuring such organisations are not captured by the definition of 'donor-controlled charities' as these can be clearly distinguished from 'private foundations' as outlined in the Issues Paper.

We also consider the definition of 'donor-controlled charities' should be restricted to situations where a donor has received a donation credit or deduction or has claimed a donation rebate for contributions made to a charitable organisation which it controls (directly or indirectly via associates). This approach will ensure the focus is on matters such as timing mismatches and arrangements that may be utilised to enable tax avoidance, meaning that it does not inadvertently capture other charities where these do not apply. It would be unfair to include charities who do not gain a benefit from the tax concessions provided to the donor, as a 'donor-controlled charity'.

We note that iwi collective entities primarily exist by way of Te Tiriti o Waitangi settlements, which attempt to address Te Tiriti grievances and breaches. The Crown imposed restrictions on how iwi could structure their PSGE, including that The Crown would only settle with 'iwi' groups (and not settle with each individual hapū, whānau or family), and would not settle on a charitable entity. This meant a charitable entity often needed to be established as part of the wider PSGE group to allow charitable benefits to continue to be provided by the PSGE to the community. These charitable benefits include education, undertaking charitable activities in impoverished or uninvested areas and social welfare. Te Pou Oranga provides a significant number of services to the community including Domestic Violence

support, Social Work, Kaumatua services and Family Start that support the health and wellbeing of whānau and communities. Te Pou Oranga provides services that The Crown would otherwise need to provide.

Another example of a PSGE needing to establish a charity in its group structure is the requirement during the “transitional phase” of Te Tiriti o Waitangi settlements for all pre-settlement charitable retained earnings and assets to be ‘ring-fenced’ and only used to provide charitable benefits and distributions in the future. To ensure compliance with this requirement PSGE organisations establish a charitable entity to hold, manage and distribute these amounts, again highlighting how certain structures have been imposed on PSGE organisations rather than established because it best fits the purpose of the organisation.

We also provide comment on the “minimum distribution rule” and highlight this would not allow for the accumulation of funds necessary for PSGE groups to carry out charitable activities with future generations in mind. This is a clear example of how accumulation of funds in a charity can be important for the charitable purpose which sometimes has both a short-term and long-term focus. This should not mean an entity is a ‘donor-controlled charity’ just because they are in a phase where they need to accumulate funds. Providing charitable benefits to the community is at the centre of what our iwi charity, Te Pou Oranga, does where there is a focus not only on now, but also on future generations to come.

3.0 Business income Tax exemption

Te Tāwharau opposes the repeal of the business income tax exemption. Imposing a tax on business income could significantly limit the many positive charitable outcomes that Te Pou Oranga has provided to date and will continue to provide for many generations to come. However, if this proposal was to proceed, we call for a proper engagement process to inform the policy design and ensure there is clarity in defining ‘business income’. This will ensure any unintended outcomes that do not address the underlying issues that have been identified by IRD, are avoided.

For example, ensuring that the following situations are not caught by any changes:

- Charities which are established and operate only in New Zealand and provide their charitable benefit here in New Zealand, and have a long-term focus across many generations, should be carved out of any amendments
- Any commercial operations undertaken for charitable purposes, such as health centres and addressing poverty and homelessness, should have their profits exempt from taxation.
- Any funding provided which enables and supports a charity to undertake it charitable purpose and activities, such as Government Grants should also remain exempt.
- An exemption from tax profits should also be allowed for charities who undertake activities that are generally expected from a charity when providing its charitable benefits such as sponsorship for community events.

The proposed changes are likely to cause strain on our organisations and increase compliance costs, taking time and funding away from us delivering on our charitable purpose, which is the opposite of what we understand your proposals intend to do. Without careful consideration of these impacts, many organisations like us will need to seek expensive advice as to whether any changes apply to us.

For the reasons above, if the proposed changes were to proceed, we recommend IRD to engage with charitable organisations (especially in the Māori sector) early and provide public guidance to allow for organisations to efficiently and effectively adapt to any new rules.

If you would like to discuss any points raised in this submission, please do not hesitate to contact me by telephone s 9(2)(a) or by email s 9(2)(a)

Ngā mihi,

s 9(2)(a)

Dickie Farrar
Chief Executive
Te Tāwharau o Te Whakatōhea

ANDERSEN

31 March 2025

C/- Deputy Commissioner, Policy
Inland Revenue
PO Box 2198
Wellington 6140

Delivery via email policy.webmaster@ird.govt.nz

Dear Mr. Carrigan,

Re: Submission on the Issues Paper – Taxation and the Not-for-Profit Sector

1. Introduction

We appreciate the opportunity to provide input on Inland Revenue's Issues Paper *Taxation and the Not-for-Profit Sector* (February 2025).

We strongly oppose changes that would remove the current tax exemption for charities' business income, as well as other tax concessions that enable charities to focus on their missions effectively. Any concerns around potential misuse of charitable status should be addressed through stronger regulatory enforcement by the Charities Services, not through broad legislative changes that would increase compliance burdens and reduce the financial sustainability of the sector.

The current tax framework is sound. Charities operate businesses not for private gain, but to generate funding for their charitable purposes. If a charity's business income is ultimately used for charitable activities, it should remain tax-exempt.

Below, we outline our position on key issues raised in the consultation paper and provide recommendations for preserving the integrity and efficiency of New Zealand's charitable sector.

2. Charities' Business Income Should Remain Tax-Exempt (Q1 & Q2)

Many charities engage in trading or operate businesses to raise funds that support their core purposes. These operations are not carried out for personal gain, but to strengthen their ability to deliver public benefit. They provide a reliable source of income that helps charities become more financially sustainable, especially in a volatile funding environment where donations and grants fluctuate.

The proposal to remove the business income exemption, even in relation to "unrelated" business income, risks creating unintended consequences. It may discourage charities from developing enterprise models that increase their independence and could result in scaling back services or becoming more reliant on public funding.

It's important to recognise that charitable businesses are not on a level playing field with private businesses.

Charities cannot raise capital through equity and their ability to pay competitive wages is limited. Every dollar earned must be reinvested in their mission and their governance and reporting obligations are already extensive.

Furthermore, there is little evidence that charities distort markets. The suggestion that they use their tax-free status to undercut competitors is largely anecdotal and overstated. A comprehensive review by the Australian Productivity Commission found no compelling evidence that tax concessions provided charities with an unfair competitive advantage. On the contrary, the report noted that any perceived advantage is often offset by structural constraints unique to the charitable sector—such as restrictions on distributing surpluses, governance obligations and limited access to capital[1].

We submit that the current exemption for business income used to fund charitable purposes should be retained. The financial sustainability, innovation and efficiency this supports far outweigh any potential tax revenue gains.

3. Membership and Subscription Income Should Remain Exempt Under the Principle of Mutuality (Q3)

Many not-for-profits—such as clubs, professional associations, and cultural groups derive income through membership fees or subscriptions. These are contributions made by members for shared services or benefits within a mutual structure. This income is not profit-seeking but supports the collective interests of members and furthers the organisation's objectives.

The long-standing tax principle of mutuality recognises that an entity cannot make a profit from itself. Surpluses are reinvested for the benefit of members and the wider community, rather than distributed privately. Taxing such income would risk harming the viability of countless membership-based NFPs that rely on subscriptions to operate.

We submit that the current exemption for membership and subscription income under the mutuality principle should be preserved to protect the sustainability of member-based not-for-profits and ensure consistent, equitable treatment under tax law.

4. Fundraising Income Should be Excluded from Taxable Business Income (Q4)

Charities rely on a variety of income sources to sustain their work, many of which are clearly not commercial in nature, even if they involve transactions. These include:

- Fundraising events and campaigns
- Raffles and lotteries
- Sponsorships
- Membership fees or subscriptions

Imposing tax on these activities would be administratively burdensome, discourage grassroots support, and deliver limited fiscal return. More importantly, it would reduce funds available for the charitable purpose and undermine the long-standing recognition that these are not profit-driven ventures.

[1] Productivity Commission (2010), Contribution of the Not-for-Profit Sector, Research Report, Canberra.

We submit that any legislative changes should explicitly exclude charties' fundraising income and membership fees from the definition of taxable business income.

5. Income Distributed for Charitable Purposes Should Remain Exempt (Q5)

In cases where charities run businesses through subsidiaries or structured entities, the profits are often distributed directly to the parent charity. These funds are then applied toward public benefit purposes, whether it be funding homelessness initiatives, scholarships, aged care, or environmental projects.

To tax these profits before they reach the charitable arm would effectively result in double taxation, once at the business level and again through the erosion of funds available for the charitable purpose. This would disincentivise reinvestment, disrupt funding models and penalise charities for seeking financially sustainable solutions.

Most jurisdictions that tax unrelated business income allow for relief when profits are distributed for charitable use. The OECD has noted that in many countries, income from commercial activity may be taxed. But where profits are reinvested in charitable purposes, a full or partial exemption is often granted.[2] New Zealand should be no different if any changes are made. The principle of "destination of income" remains important, what matters is that the funds are ultimately applied for charitable purposes.

We submit that If any change is made to tax business income, then income distributed to a registered charity and applied to charitable purposes must remain tax-exempt. A practical mechanism, such as a memorandum account or tax credit scheme, could be used to track and exempt such distributions.

6. Fringe Benefit Tax (FBT) Exemption Should Be Retained (Q6 & Q7)

Charities are uniquely constrained in the employment market. They often compete with the private sector for skilled staff but cannot match salaries or performance-based incentives. The current FBT exemption allows charities to offer modest non-monetary benefits (e.g., subsidised services, wellbeing programs, parking) as a way to attract and retain talent—without compromising their mission or draining limited resources.

Removing this exemption would reduce charities' ability to compete for qualified professionals, especially in specialist roles such as social work, legal advice, or health services. The effect would be especially stark for charities in remote or high-need areas. It would also disproportionately affect charities with limited resources that rely on small benefits to support volunteer managers or overstretched staff.

Any tax collected through FBT would come at the expense of service delivery. For charities, every dollar paid in tax is one less dollar available for community impact.

We submit that the FBT exemption should be preserved to allow charities to remain competitive in the

[2] OECD (2020), Taxation and Philanthropy, OECD Tax Policy Studies, No. 27, pp. 57-64.

employment market and maintain service levels without incurring unnecessary compliance or financial burdens.

7. Removing the Business Income Exemption Would Substantially Increase Compliance Costs (Q8 & Q9)

Charities currently benefit from relatively streamlined tax compliance, allowing them to direct resources toward their charitable objectives. Removing the business income exemption would require many charities to:

- Register for income tax
- File annual tax returns
- Keep detailed records distinguishing taxable and non-taxable income
- Potentially restructure their operations to meet compliance obligations
- For many charities—especially smaller ones with part-time or volunteer staff—this represents a significant increase in complexity and administrative burden.

Additionally, if different forms of revenue (such as donations, sponsorships, raffle proceeds, or membership fees) are treated differently under tax law, charities will need to adopt more complex financial systems and classification processes. This diverts resources from impact to administration.

The burden of compliance could easily exceed the potential tax revenue, especially for charities with modest trading activities. Even larger charities, while more resourced, would still incur costs to separate entities, maintain transfer pricing records, or ensure compliance across multiple reporting streams.

We submit that the current exemption should be maintained to avoid disproportionate compliance burdens. If changes proceed, then this must include a high de minimis threshold and clear guidance on the treatment of different income streams.

8. Targeting Larger Charities for Special Treatment is Unjustified (Q10 & Q11)

The Issues Paper hints at introducing additional rules or scrutiny for larger charities. However, this assumes that larger charities are more likely to misuse their status, which is not supported by evidence.

In fact, larger charities already undergo a higher degree of scrutiny:

- They are subject to independent audits or reviews, depending on their reporting tier.
- They file detailed financial statements and performance reports with Charities Services, which are publicly available.
- They are generally more transparent and better governed due to regulatory requirements and public expectations.

By contrast, many smaller charities fall under thresholds that don't require audit or extensive disclosure. If misuse or abuse is a concern, it should be investigated based on evidence and behaviour, not size alone. Singling out large charities would be unfair and inconsistent with the principles of good regulatory design.

We submit no arbitrary thresholds based on size be introduced. Enforcement must be based on risk and conduct, not scale i.e. an evidence-based approach to any changes.

9. Regulatory Oversight, Not Tax Policy, Should Address Misuse of Charitable Status (Q12–Q15)

Concerns about charities misusing their tax-exempt status are best addressed through stronger regulatory enforcement, not through changes to income tax law.

New Zealand already has a robust framework in place:

- Charities must be registered with Charities Services to access tax exemptions.
- They are required to report annually on their financial performance and use of funds.
- The regulator has the power to investigate and deregister charities that do not operate for public benefit.

If there are genuine concerns about accumulation of funds or "donor-controlled" charities, these can be addressed through greater transparency, clarification of reporting obligations and targeted enforcement.

Blanket tax policy changes aimed at all charities are unnecessary and risk harming the many for the sake of addressing the few.

We submit that Charities Services' enforcement and education functions should be strengthened. These channels should be used to address misuse rather than imposing new tax obligations on compliant and impactful charities.

10. Inconsistent Treatment Across the Sector Creates Inequity

The Issues Paper notes that some not-for-profits, such as amateur sports bodies or religious organisations, may be unaffected by proposed tax changes. If these groups retain exemptions while other charities become subject to income tax, this would result in inconsistent and inequitable treatment.

Charities working in health, education, social services and cultural development would be disadvantaged relative to other exempt NFPs conducting similar income-generating activities (e.g. venue hire, event sales, lotteries, merchandise).

We submit that any changes to tax policy must apply consistently across similar entities, with clear justification for any exclusions. A patchwork of exemptions would undermine trust and coherence in the tax system.

11. Removing the Business Income Exemption Will Increase Reliance on Taxpayer-Funded Support

The current exemption for business income allows charities to build independent, sustainable funding streams that reduce their reliance on government grants and ad hoc donations. These earned income models help charities withstand economic shocks, adapt to changing needs and invest in long-term impact.

Removing the exemption would significantly reduce the net revenue available from these activities, particularly where margins are tight. Many charities would be forced to:

- Reduce or close income-generating programmes
- Scale back frontline services
- Increase applications for government funding to replace lost income

Ultimately, this would shift costs from the charitable sector to the government and subsequently, rely on the taxpayers' funds. Instead of charities using self-generated income to deliver services, the Government would need to directly fund services previously sustained by charitable enterprise. This would place additional fiscal pressure on the state and may lead to delays, fragmentation, or loss of culturally responsive community services.

We submit that maintaining the current exemption for business income is fiscally prudent, as it allows charities to continue delivering services that would otherwise require government intervention and funding.

12. Conclusion

New Zealand's charities play an essential role in delivering public benefit, in many cases more efficiently, innovatively and responsively than government agencies. Their ability to do so relies on stable, flexible funding. The current tax settings, including the business income exemption, Fringe Benefit Tax exemptions and the treatment of fundraising income, are crucial to sustaining this impact.

Removing the business income exemption would significantly reduce the resources charities can apply to their missions. Many would be forced to reduce services or seek increased government funding, ultimately shifting the cost-of-service delivery from charities to taxpayers. This is neither fiscally efficient nor socially responsible.

Finally, applying tax changes inconsistently, for example, exempting sports or religious organisations while taxing others, would create a fragmented and inequitable system. Charities deserve coherent, transparent treatment under the law.

We therefore submit that the current tax settings should be maintained. If any reforms are introduced, they must be carefully targeted, Treaty-compliant and designed to preserve the sector's ability to innovate and deliver long-term public benefit.

We therefore submit that:

- The business income exemption should be retained.
- Distributions used for charitable purposes must remain tax-exempt.

- The FBT exemption must be preserved.
- Compliance costs should not be increased unnecessarily.
- Fundraising and membership income should not be taxed.
- Tax settings must treat all charities equitably.
- Misuse concerns must be addressed through the charities regulator, not tax law.

We would be happy to discuss this submission further and provide case examples or data from the sector if required. Please contact Galina Bell of Andersen New Zealand in the first instance on s 9(2)(a)

Yours sincerely

s 9(2)(a)

Serjit Singh FCA
Director - Head of Tax
Andersen New Zealand Limited

NZCIC submission on Taxation and the Not-for-Profit Sector Consultation

Submission

To: Deputy Commissioner, Policy Inland Revenue Department
On: **Taxation and the Not-for-Profit Sector Consultation**
Date: 31 March 2025
From: New Zealand Construction Industry Council (NZCIC)

About NZCIC

NZCIC is a not-for-profit industry association of associations in the building and construction, design and property sectors. It is the collaborative voice of the construction industry in New Zealand and operates at the interface between government (central and local) and industry. NZCIC members are not-for-profit organisations and peak bodies for professions involved in the delivery of our built environment – designers, and specifiers (architects, engineers, designers etc.) contractors and suppliers (manufacturers, distributors, contractors, builders, sub-contractors etc.) and a range of other building professionals (in the areas of building compliance, research, surveying, and development).

NZCIC is making this submission on behalf of its members. We acknowledge that our members have a range of views on this issue. This is not a summary of our members' concerns and does not claim to be representative of all of them; however, this submission reflects the general tenor of the concerns raised by our members and, through them, the wider construction industry.

Introduction

The construction sector is a key contributor to the New Zealand economy:

- **Significant Economic Contribution**: The construction sector accounted for 6.2% of New Zealand's real GDP in the year ended March 2024.
- **High Economic Value**: In 2024, the sector contributed over $17 billion to the economy in wages and salaries; suppliers to the industry received $70 billion in sales; and the total industry turnover was $99.4 billion.
- **Major Employer**: Directly and indirectly employs 576,000 people, making up 20% of the total workforce (StatsNZ August 2024).
- **Critical to National Growth**: A key driver of economic development and job creation across the country.

The scale of the sector and its proportion of the economy is reflected in its engagement with not-for-profit membership organisations. There are around 100 membership organisations in the construction sector that range considerably in scale from large sub-sector organisations to very small niche groups that might focus on one specific trade. All, regardless of size, are important to the industry, the wider public, the economy and the government. Given this scale it is essential that the voice of the construction sector is heard. NZCIC, through its member organisations, represents 70% of the sector and this submission is the work of our members; their voice is our voice.

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.

Membership organisations exist to support their members, disseminate information, inform the public and advise government through engagement with ministries and sector advocacy. All of these activities cost money and most cost more than the membership fees any single membership orgnisations receives. Consequently most membership organisations offer wider services and events (webinars, conferences etc) to its members and also to non-members.

We note that Inland Revenue's current public view is that 'not-for-profits do not need to include membership fees or subscriptions in annual income tax returns or pay tax on them. The longstanding approach has been that subscription income is not taxable.'[1] It is noted that the current policy consultation is focused on simplification measures for smaller not-for-profits and that 'Inland Revenue is not seeking submissions on whether subscriptions are taxable'[2], we are concerned that taxing subscriptions is presaged and will be addressed in the draft operational statement that will clarify when 'subscription income may be taxable under ordinary tax rules, based on established principles.'[3]. How is it possible to consult on one aspect, but not the other? Surely, membership subscriptions, other activities and simplification measures need to be seen in the same light and at the same time? It is disingenuous to call for feedback about the meal based on the hors d'oeuvres, while in the kitchen, the main course is being sliced up and the portion sizes reduced.

While this current consultation is not looking to tax membership subscriptions (yet…), any attempt to tax other activities will have a direct effect on the membership fees charged and the ability for membership organisations (particularly small ones) to deliver core services to their members. Any additional (non-membership subscription-related) activities are not done to make a profit, but simply to be sustainable and to survive. Taxing these activities would be perverse, especially when there is a downturn on the economy, leading to fewer businesses and therefore, fewer members of organisations.

The not-for-profit sector delivers significant public benefits that often reduce costs to government—for example, through the work of membership organisations that boost productivity and prevent harm. This contribution is far more valuable than any potential fiscal gain from taxing the sector. Many associations do more than serve members; during natural disasters like floods or earthquakes, construction professionals—such as engineers and surveyors—volunteer their expertise, coordinated by these organisations. In times of crisis, public-good providers are essential. Imposing vague or additional tax burdens risks weakening these organisations, threatening their sustainability and limiting their ability to serve both members and the wider community. Recognising and supporting their role is critical to ensuring they can continue to respond when New Zealand needs them most.

There is a fine line between those additional services that are an appropriate use of membership fees (conferences, say) and activities that might be deemed commercial (a consumer advice service…?). Using a blunt object on a fine line risks destroying the organisations and diluting the benefits they offer. Any proposed tax needs to understand and reflect the nuances of membership organisations. We applaud the intent of the proposal, but not its breadth which, as written, is too all-encompassing.

NZCIC supports tax and regulatory settings that empower charities and incorporated societies to deliver public good. Policies should enhance, not restrict, their capacity to serve communities, ensuring long-term sustainability and continued contribution to New Zealand's social and public wellbeing.

[1] Q and As - Taxation and the not-for-profit sector - V3 – updated 18/03/2025, p1
[2] Q and As - Taxation and the not-for-profit sector - V3 – updated 18/03/2025, p2
[3] Q and As - Taxation and the not-for-profit sector - V3 – updated 18/03/2025, p2

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?

The issues identified in 2.13 and 2.14 do not generally apply to membership organisations in the construction sector as there is very little competition between representative membership organisations. There is no disadvantage that needs to be corrected through taxation.

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?

Notwithstanding that the tax exemption should not be removed, any taxation of charity business income must be carefully assessed to avoid discouraging reinvestment in public benefit initiatives.

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 tax exemption should not be removed.

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?

The tax exemption should not be removed.

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?

The tax exemption should not be removed.

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?

Integrity and simplification measures should enable – not hinder – legitimate not-for-profits, with compliance requirements scaled to their size and role. Tax exemption reviews must protect mutual organisations and professional associations that reinvest in member and public-benefit services. Rising compliance costs are a concern; new rules should avoid creating financial or administrative burdens that reduce these organisations' ability to deliver value.

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?

Donor-controlled charities play a vital role and should not face excessive regulation that hinders their support for community-driven initiatives.

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?

NZCIC has no view on this issue.

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?

NZCIC has no view on this issue.

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.*

Currently, not-for-profits without full tax exemption can deduct up to $1,000 of income before tax applies, creating an administrative burden for smaller organisations with minimal surplus revenue. Raising this threshold to $10,000 would better reflect the financial realities of small and medium not-for-profits, many of which rely on membership fees, fundraising, or sponsorships. This change would ease compliance costs, support financial sustainability, and allow more resources to be directed toward community-focused services rather than tax administration.

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

Friendly societies and credit unions have long delivered vital financial and community services, operating under mutual, not-for-profit models that reinvest in their members and communities. Their tax-exempt status recognises their role in promoting financial inclusion, social cohesion, and member wellbeing. Removing these concessions could undermine their financial sustainability and ability to offer affordable services, forcing costs onto the communities they support.

Such a move would also set a troubling precedent for other mutual organisations, including professional associations, trade bodies, and incorporated societies, many of which provide critical, non-commercial services. Taxing friendly societies could signal broader changes for the sector, creating uncertainty and discouraging reinvestment in public benefit initiatives. Retaining their tax-exempt status is essential to preserving their community impact.

Maintaining tax exemptions for friendly societies and credit unions is vital, as their mutual, community-focused structures align with many incorporated societies. These organisations contribute significantly to New Zealand's social and economic wellbeing, and tax changes should not undermine their ability to operate effectively or continue delivering public benefit.

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?*

NZCIC has no view on this issue.

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?

While this question targets charities, many incorporated societies and membership organisations also provide employee fringe benefits. Removing or reducing FBT exemptions could unintentionally impact associations that reinvest all income into member services. Simplifying the FBT framework is positive, but any changes must be carefully assessed to avoid disadvantaging not-for-profit organisations through increased costs or compliance burdens.

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?

Reducing tax compliance burdens for volunteer-led organisations is essential. Member groups depend on volunteers, and complex requirements can discourage participation and create unnecessary administrative strain on already limited resources. We recommend simplifying volunteer reimbursement reporting and ensuring such payments aren't unfairly taxed. A clear, minimal tax-exempt threshold should be introduced to encourage volunteerism without creating excessive administrative burden.

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?

While donation tax concessions mainly support charities, some incorporated membership organisations also fundraise for sector-wide initiatives. We urge that any changes avoid restricting associations that deliver public and professional benefits. Concessions should be maintained for groups serving the public good, even if not formal charities. Professional and industry associations support education, advocacy, and workforce development, and changes must not penalise those relying on sponsorships and fundraising to sustain their work.

Tommy Honey, on behalf of the New Zealand Construction Industry Council (NZCIC)
execdirector@nzcic.co.nz
s 9(2)(a)

IRD Charity Tax Law Feedback

To: Minister Nicola Willis
Re: Submission – Taxation and the not-for-profit sector
Date: March 31, 2025
policy.webmaster@ird.govt.nz

Dear Minister Nicola Willis,

The Association of Professional Orchestras of Aotearoa (APOA) is a national collective of professional symphony orchestras who come together to share resources, collaborate, advocate, and improve the quality and impact of the orchestral sector. APOA is pleased to submit the following feedback on the Officials' Issues Paper "Taxation and the not-for-profit sector" on behalf of the Dunedin Symphony Orchestra, Christchurch Symphony Orchestra, Orchestra Wellington, New Zealand Symphony Orchestra, and Auckland Philharmonia.

New Zealand's orchestral sector values efficiency, lean operations, and maximum impact. We prioritise both earned and contributed revenue, while employing highly skilled artists and creative workers, and staying true to our charitable missions. Given this environment of high inflation and costs, we are concerned that further barriers to sustaining our charitable mission will result in a significant erosion of our artistic product, our impact in the community, our contribution to the local economy, and social morale of the cities we serve.
As a sector, we acknowledge that the capacity of Central Government to inject additional funding into the sector is limited and that savings must be made to continue to prioritise critical infrastructure needs. We are concerned about the extent to which IRD's recommendations will negatively impact our sector and believe the framework would serve to slow growth, reduce services to New Zealanders, and ultimately damage the charitable arts sector in our country. The majority of charitable organisations are not large economic players impacting the free-market commercial sector in any significant way. This legislative change is a blunt tool that will negatively impact the entire sector, when it should be used to address a small number of organisations who are taking advantage of the system. We worry that it shows a lack of understanding of how New Zealand's charities--and especially its significant arts and culture sector—operate, and it would undermine any ability for our organisations to maintain financial sustainability.

Q1. What are the most compelling reasons to tax, or not to tax, charity business income?

1. Charities tax-exemption status allows us to meet needs that the governments are unable or unwilling to take on—filling a clear gap in public, social, and wellbeing services.
2. Specifically, professional orchestras rely on multiple sources of revenue to make up our budgets including self-presented concerts, education and community programming activity, private philanthropic funding, commercial hires, recordings, memberships and subscription fees, government grants, etc. The lack of clarity around whether any of our existing (and important) sources of revenue would be considered "business income" unrelated to our charity is

worrisome, and taxation would reduce the funds we can earn to recycle back into our mission.

3. Proposed changes to reserves appear punitive, overlook the cyclical nature of arts funding, and would impact the long-term sustainability of our sector.
4. A large majority of charitable organisations already live hand to mouth—quickly applying income to cover the infrastructure, human resource, supplies, and expertise needed to meet their charitable mission.
5. Charities should not be penalised for being creative and enterprising in the ways they deliver their value to benefit the public.

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?

6. Many charities must use "non-charitable revenue" sources in order to fund their charitable mission. This change would erode our ability to undertake meaningful work in our communities.
7. The unknown administrative toll on both sides likely outweighs the forecast benefits of the change.
8. The definitions on what is and is not considered income related to the charity's purpose is ill-defined and sets a dangerous precedent to punish charities for being creative in the ways they earn revenue to meet their mission. For example, under the current description, revenues from a cupcake sale to fund the purchase of a youth orchestra's new musical instruments could be taxed. Similarly, our sector is unsure whether or not our commercial recording work would be considered "unrelated business income"--a valuable source of revenue that helps maintain balanced budgets. We believe the subjectivity of defining "unrelated businesses" would result in costly and time-consuming disputes and administrative burden.

Further to questions 3, 4, and 5, we believe that New Zealand should continue the practice of exempting charities from income tax, maintaining the practice that seven other highly developed countries around the world also have (including Canada, the United States, and the United Kingdom). We have no opinion to share for questions 6 to 15.

In addition to the above noted points, we have deep concern around the paper's criticism of "accumulation" of revenue and note that the orchestral sector often commits to and raises money for initiatives across multiple fiscal years (additionally, donors, often direct funds over multiple tax years). Also, when the majority of charities funnel "surplus" revenue back into their charitable mission, it seems counterproductive to IRD's revenue goals to tax "trading activity intended to earn a surplus." Outside the orchestral sector, the change would negatively impact meaningful and public-serving social enterprises including charity op shops, sports clubs, and recreational associations—the majority of whom are not guilty of "masquerading" as charitable organisations.

In summary, we believe this change will result in a negligible result for central government while putting undue and unnecessary strain on a sector that is already designed to work in a lean and effective manner. It will hamstring charities from being able to successfully run their programmes efficiently and result in greater burden for central government when the

beneficiaries of charitable services experience ever greater need because of the instability caused by this change. In the end, our opinion is that this will cause greater pressure to government to care for and serve New Zealanders whose needs are currently addressed by charities and further diminish the already tenuous culture of philanthropy in our country.

Thank you for the opportunity to send this feedback on behalf of New Zealand's orchestral sector.

Sincerely,
Association of Professional Orchestras of Aotearoa

Philippa Harris, General Manager, Dunedin Symphony Orchestra
Dr. Graham Sattler, CEO, Christchurch Symphony Orchestra
Beckie Lockhart, General Manager, Orchestra Wellington
Barbara Glaser, Interim CEO, New Zealand Symphony Orchestra
Diana Weir, CEO, Auckland Philharmonia

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 David

Taxation and the not-for-profit sector: proposals for amendments

Introduction and summary

1.1 I am writing to submit on the Officials' issues paper "Taxation and the not-for-profit sector" ("Officials' issues paper").

1.2 My name is Vivien and I have worked in tax for the last seven years, both in an advisory firm and in-house. In addition, I have a general interest and some experience in purpose-driven organisations, including management roles in charitable trusts and six years as a social entrepreneur. I would like to provide my personal views and comments based on my experience.

1.3 From the Officials' issues paper, it appears that a wide range of charities could be captured and subject to income tax. This would add complexity in understanding the boundaries of what constitutes 'unrelated' and 'business' income, which would divert many charities' resources away from doing good. The current tax exemptions allow charities to operate sustainably, reduce their reliance on government funding and donations, and ultimately to focus on their charitable purposes which benefit New Zealand.

1.4 I recommend Inland Revenue maintain the current charity tax settings to ensure charities can continue to maximise their benefit to New Zealand's communities. The proposed changes will consume resources to both implement new distinctions and for charities to comply, which could lead to an overall deadweight loss.

Chapter 2: Charity business income tax exemption

2.1 Question 1 asks about the reasons to tax, or not tax, charity business income. Charities play an important role in improving New Zealand's wellbeing and environment. These organisations are often run by volunteers to provide social welfare, education, health and other services for the benefit of the general public that the Government would otherwise need to fund or deliver. Enabling charities to operate effectively reduces the amount of Government intervention required, leading to value back to New Zealand overall.

2.2 The administration of taxing charities is currently simple. This allows charities to devote their time and resources to their charitable purposes. I am concerned about the consequences of changing this and the definition complexity created by taxing different types of charity revenue.

2.3 Working through what falls within or outside the definitions of 'unrelated' and 'business' income may lead to uncertainty and increased compliance costs, which takes away from the charitable sector's resources to do good. Charitable purposes are not always specific in constitutions and may be very general provided they fall within the four 'heads' of charitable purposes. Defining

what activities would be 'related' to a charity's purpose could be difficult in practice. It may also be difficult to allocate expenditure between 'business' versus other activities of the charity.

2.4 Currently, all types of charity business income that are applied to the charity's New Zealand charitable purposes are tax exempt. This includes fundraising income, where a charity may sell goods to raise funds for its purposes but the goods themselves may not directly advance its purposes. Such fundraising activities help charities develop sustainable income streams to do more good for society. Taxing such income discourages self-sufficiency.

2.5 All of a charity's revenue is ultimately destined to benefit the public because charities are required under the Charities Act 2005 to apply their income towards charitable purposes. The positive work they do in our communities is why they are taxed differently from private businesses. Even if they were to be taxed, it is unclear if this would raise much revenue.

2.6 Removing or restricting the income tax exemption could reduce many charities' capacity to undertake their activities and even threaten their future viability. This could lead to greater reliance on Government funding to offset tax costs. Charities cannot raise capital as easily as private sector entities and often struggle to attract talent because their for-profit competitors can offer higher remuneration. Charities that are unable to secure additional funding may need to reduce the services they provide or, in the worst case scenario, cease operations.

2.7 The Officials' issues paper does not appear to define the problem or what it is looking to achieve by taxing charities. If there is any misuse of the tax exemption, it may be better targeted through considering charities legislation and enforcement (such as by Charities Services) rather than changing how we tax charities.

2.8 In response to Question 5, removing the charity business income tax exemption until it is distributed for charitable purposes merely gives rise to a timing difference where tax is paid upfront and refunded later after distribution. This would likely impact on a charity's cash flow and require the charity to devote additional compliance time and costs. I recommend maintaining current settings to treat charities' income as tax exempt based on destination to avoid additional administration by both Inland Revenue and charities.

2.9 One concern raised in the Officials' issues paper is that taxing based on destination allows funds to be accumulated tax free for years. From my experience, there is a wide spectrum of charities operating in New Zealand. Each has their own theories of change and long-term strategy. For example, charities may build reserves to form a prudent investment portfolio, fund multi-year arrangements for beneficiaries, prepare for future projects or have a 'rainy day fund'. Mandating distributions removes the autonomy from charities to operate and manage their funds. It may also have unintended consequences such as discouraging long-term programs and potentially disrupting the length of time for which a charity can exist. Registered charities are already subject to strict regulatory oversight.[1] Disclosure requirements have also been recently introduced for large charities to explain why they are accumulating funds. Given there is existing oversight and regulations, we should allow charities to advance their purposes in the way they think is best.

Chapter 3: Donor-controlled charities

3.1 In respect of donor-controlled charities, I understand Inland Revenue is concerned about circular arrangements which could enable tax avoidance. I consider that there are existing rules

[1] This includes reporting their finances publicly on the Charities Register and being required to demonstrate their funds are being used for charitable purposes.

that could deal with any mischief, such as section BG 1 of the Income Tax Act 2007, without affecting charities that may have a legitimate reason for accumulating funds (as explained in 2.9 of this submission).

3.2 The Charities Act 2005 requires charities to apply all funds towards their charitable purposes and prohibits non-arm's length transactions. Any abuse of these rules may be better targeted through considering charities legislation and enforcement to prevent misuse of tax exemptions.

Chapter 4: Integrity and simplification

Fringe benefit tax exemption

4.1 If the section CX 25 charities' fringe benefit tax exemption was removed as suggested in Question 13, most charities would struggle with suddenly being subject to a complex regime that they did not need to consider before. The resulting compliance costs may be disproportionate to any revenue raised.

4.2 I recommend the charitable sector be given the opportunity to understand and comment on proposed changes to the fringe benefit tax regime when they are released for consultation before a decision is made to remove the exemption.

Donation tax credit regime

5.1 In response to Question 15, the current donation tax credit regime benefits donee organisations by incentivising initial and subsequent donations. Organisations like TaxGift show how donations can be amplified by about 48% of the original donation if the refunded donation tax credits are donated back to the donee organisation.[2]

5.2 I recommend maintaining the donation tax credit regime as it supports donating to advance charitable purposes and amplifies the donations' impact. If there are low levels of awareness or uptake and there is a desire to prioritise this, Inland Revenue and Charities Services could consider ways to publicise the regime, or consider whether donation tax credit administration could be automated for individuals (similar to income tax assessments).

Conclusion

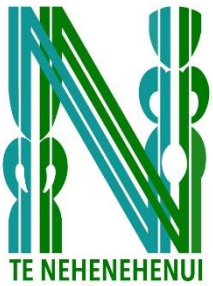
6.1 Thank you for taking the time to consider this submission on the Officials' issues paper. Please feel free to contact me if Inland Revenue would like to discuss the points raised in this submission further.

Yours sincerely,

s 9(2)(a)

Vivien Lei

[2] For example, a $100 donation has an available tax credit of $33.33, which when donated can result in a further tax credit of $11.11, which if donated again can result in a further tax credit of $3.70. This means over three financial years, a donor's total donation to the charity is $148.14.



SUBMISSION TO THE INLAND REVENUE DEPARTMENT ON OFFICIALS' ISSUES PAPER: TAXATION AND THE NOT-FOR-PROFIT SECTOR

31 March 2025

TE NEHENEHENUI TRUST'S POSITION AND RECOMMENDATIONS

Introduction

1. This submission is given on behalf of Te Nehenehenui Trust ('**TNN**'), the post-settlement governance entity for Ngāti Maniapoto. We have prepared this submission in response to the Officials' Issues Paper 'Taxation and the Not-For-Profit Sector' (the **Officials' Issue Paper**).

2. Ngāti Maniapoto are **opposed** to removing the income tax exemption for unrelated business income of charities. This submission sets out the basis of Ngāti Maniapoto's opposition. Our submission is categorised into two parts. Part 1 sets out who TNN are, our Treaty settlement background and our charitable purposes and activities. Part 2 covers the Ngāti Maniapoto's concerns on the matters covered in the Officials' Issue Paper.

3. At the outset, we wish to indicate our concerns with the process of consultation followed to date. We note that the Officials' Issues Paper was released on 24 February 2025, and the submission deadline is 31 March 2025. We make the following observations:

    a. Firstly, as a recently settled post-settlement governance entity that has tried to maintain a partnership-based relationship with the Crown, TNN is disappointed and surprised not to be given any forewarning of these significant proposals. That would have given us the chance to feed into the analysis presented in the paper to ensure any impact on us was understood by the Crown prior to release. This may explain why the Officials' Issue Paper makes no reference to any impacts on Māori or Māori charities.

    b. Secondly, a period of one month is not a sufficient time period for iwi organisations in particular, who carry the onerous burden of consulting with marae, hapū and whānau on significant Crown proposals. Many of our marae are in remote areas of our rohe without easy access to technology that would have enabled them to receive and become aware of the matters being consulted on.

    c. Finally, we had understood from the IRD that no decisions have been made on whether charities should be subject to income tax.[1] We are somewhat alarmed at a recent statement of the Finance Minister on 23 March 2025 that there is nothing major that is coming in the Budget "except for charities".[2] Our confidence and trust in the Crown's consultation processes would be undermined if, irrespective of the current submissions process, the Crown had in fact already made a decision about whether charities should be subject to business income tax.

WAHANGA 1 - KO WAI A NGĀTI MANIAPOTO: PART 1 – WHO ARE NGĀTI MANIAPOTO

4. TNN is the post-settlement governance entity **('PSGE')** for Ngāti Maniapoto. The trustees of TNN manage the Treaty settlement assets of Ngāti Maniapoto pursuant to the Deed of Settlement between the Crown and the trustees of TNN, and the Maniapoto Claims Settlement Act 2022. TNN is, pursuant to the Māori Fisheries Act 2004, also the mandated iwi organisation of Ngāti Maniapoto.

5. The Maniapoto rohe incorporates the eastern boundary along the Rangitoto-o-Kahu and the Hurakia ranges; the western boundary with Aotea and Kāwhia harbours and extending 20 nautical miles out to sea; the northern boundary from Raukūmara to the Waipingao Stream; and the southern boundary

[1] https://www.ird.govt.nz/updates/news-folder/2025/public-consultation-on-taxation-and-the-not-for-profit-sector.

[2] https://www.nzherald.co.nz/nz/government-budget-cuts-nicola-willis-is-prepping-for-a-bonfire-of-the-vanity-projects-ryan-bridge/JYC2BVMKGVDXHIHPTEAVGL2KP4/ This

of the Tūhua ranges. There are also shared boundaries with other iwi along the Wharepūhunga, Hauhungaroa and Tūhua ranges. The **Appendix** to this submission identifies our Treaty settlement area of interest.

6. There are currently over fifty marae that associate with Ngāti Maniapoto through whakapapa connections, many of which are registered charities. A vast majority of Ngāti Maniapoto live outside of the tribal boundaries. As such, these marae provide an important tūrangawaewae (a place to stand and belong) for those individuals and whānau to connect and reaffirm their hapū identities.

7. Based on the 2023 census, the population of Ngāti Maniapoto is approximately 56,856 which represents approximately 5.8% of the Māori population of Aotearoa[3]. The population of Ngāti Maniapoto is steadily increasing. Between 2013 to 2023, the Ngāti Maniapoto population increased by 60.8%, compared to a general Māori population increase of 46.3% for the same time period.

Our Treaty settlement

8. The journey for Ngāti Maniapoto in achieving its Treaty settlement was long and fraught.

   The Maniapoto Māori Trust Board was mandated by a majority of Ngāti Maniapoto to negotiate with the Crown a settlement of the historical claims of Ngāti Maniapoto after a long series of consultative hui in late 2016. Maniapoto Māori Trust Board was originally established as a Māori Trust Board under the Māori Trust Boards Act 1955. The Maniapoto Māori Trust Board held its income tax exemption, through statue, being s 24B of the Māori Trust Boards Act 1955.[4].

9. TNN was established as the PSGE on 17 October 2021, and the comprehensive Treaty settlement was signed on 11 November 2021.

10. Section 208(1) of the Maniapoto Claims Settlement Act freed the assets of the Trust Board from their charitable trusts, and transferred all assets and liabilities to TNN. It also transferred Ngāti Maniapoto's asset holding company (now called Ahuahu Group Limited) under the Māori Fisheries Act 2004 to be a subsidiary of TNN. Both TNN and Ahuahu Group Limited are Māori authorities and pay 17.5% tax. However, Section 228 outlines the requirements that the retained earnings accumulated prior to the Settlement Date must be spent on charitable purposes.

Our charitable activities

11. Currently, TNN has a subsidiary charity called Waihikurangi Charitable Trust. It is established to progress every charitable purpose in New Zealand, including:

    (i) fostering and strengthening te reo me ngā tikanga o Ngāti Maniapoto;

    (ii) providing support to Ngāti Maniapoto, including the marae and hapū that are set out in the Te Nehenehenui Trust Deed and the Members;

    (iii) providing support and assistance to Members in respect of education, housing, health, aged care and relief of those suffering from mental or physical sickness or disability;

    (iv) promoting amongst Members the educational, spiritual, economic, social and cultural advancement and well-being of Ngāti Maniapoto;

[3] Demographics | Ngāti Maniapoto | Te Whata

[4] See s 2 of the Trust Deed of Waihikurangi Charitable Trust.

(v) promoting and advancing the social and economic development of Ngāti Maniapoto including, without limiting the generality of this purpose, by the promotion of business, commercial or vocational training or the enhancement of community facilities in a manner appropriate to the particular needs of Ngāti Maniapoto;

(vi) developing and enhancing community culture facilities or places for the benefit of Ngāti Maniapoto;

(vii) maintaining and establishing places of cultural or spiritual significance to Ngāti Maniapoto;

(viii) providing assistance to Ngāti Maniapoto marae, hapū or other Qualifying Entities (as defined in the TNN Trust Deed);

(ix) supporting and protecting Ngāti Maniapoto matauranga in the management of the natural environment; and

(x) supporting and enhancing natural resources, including upholding and protecting the mana and health and wellbeing of the Ngāti Maniapoto environment.

WAHANGA 2 – Ō MĀTOU MĀHARAHARA: PART 2 - OUR CONCERNS IN RELATION TO THE OFFICIALS' PAPER

12. Broadly, Te Nehenehenui is concerned at the wide-ranging impact of the proposal, not just on post-settlement governance entities but broadly on iwi groups. The questions in the Official Issues Paper suggest IRD is considering taxing unrelated business income of charities. Te Nehenehenui **opposes** removing the income tax exemption on unrelated business income of charities, whether or not that income is accumulated. We set out responses below on each question.

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

13. The Officials' Issues Paper identifies that charities are able to accumulate funds tax free. The criticism that is levelled at charities (and noted in the Officials' Issues Paper) is that they have a competitive advantage compared to other trading entities. While the Issues Paper acknowledges there is no 'competitive advantage' for charities it then goes on to state that charities could have an advantage "if it were to accumulate its tax-free profits back into the capital structure of its trading activities, enabling it, through a faster accumulation of funds, to expand more rapidly than its competitors".[5]

14. Firstly however, we point out that a charity can only ever use or apply its income for charitable purposes. Irrespective of where we derive our income, as a charity we are bound by constraints that have long been recognised in our law and do not apply for example to private companies. The existing settings within the charities regime provide the safeguards required to ensure that charities are delivering, such as:

a. the prohibition on private pecuniary profit;

b. the requirement to only distribute funds for charitable purposes; and

c. the requirement for charities to maintain charitable registration.

[5] Issues paper at [2.14].

15. Secondly, the Officials' Issues Paper does not contain sufficient information required to determine whether the proposal will be beneficial or not. For example, there is no cost-benefit analysis to inform the public, or Māori about the cost of having to comply with a new regime of accounting for unrelated income and expenses, let alone the cost to taxpayers on IRD having to administer the new regime.

16. Thirdly, entities that have received a Treaty of Waitangi settlement should be enabled to succeed. Many iwi settle, for only a fraction of what was lost. For the Crown to then penalise Māori post settlement governance entities, by imposing a tax on business income, does the opposite of enabling success, rather it penalises success and further perpetuates harm.

17. Lastly, many Māori charities are distinct in that they are established by their hapū or iwi to support the revitalisation of culture, identity, language and the restoration of their environment. The Official Issues' Paper has given no thought whatsoever to the impacts on the important work Māori charities do, particularly ones directed towards improving the social and cultural outcome for Māori.

18. For the reasons set out above, we consider that any proposal to tax business income, should include an exemption for entities that receive or manage assets received from a Treaty of Waitangi settlement. We consider that such an exemption should at a minimum apply to any charitable entity within the PSGE group structure (as assets are often transferred within a structure depending on the nature of those assets), and to any marae or urupā.

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

19. The practical implications for TNN (or, more particularly Waihikurangi Charitable Trust), would be substantial in that:

    a. A substantial amount of our income derives from interest, dividends and other passive investment revenue. It will be practically difficult to determine whether income earned off charitable investments would be considered "unrelated business income".

    b. The compliance cost to TNN would increase significantly. We would need to account for unrelated business income and unrelated business expenses when filing our annual returns. This will likely require specialist advice for no obvious corollary benefit to the iwi we are accountable to and established to support. Given the difficulty in distinguishing, we expect this added compliance cost to be significant.

    c. We must, and do take an intergenerational approach. To not do so, would be a disservice for the future mokopuna of Ngāti Maniapoto. As an intergenerational Māori charity, we need to retain capital to ensure that we can deliver our support to Maniapoto over the long-term. We therefore accumulate some funds and manage those funds as a capital asset to ensure long-term financial sustainability of the Trust. Taxing income earned off that asset will negatively impact on our current and future operations and activities.

Question Three: 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?

20. We reiterate that we are opposed to the taxing of unrelated business income of charities. However, if a tax is imposed, we consider that the criteria to distinguish between 'related' and 'unrelated' should be:

a. Broad and flexible, to ensure that 'related business income' can be interpreted and apply to the full range of charitable purposes a charity has been established for;

b. Allow for the purposes themselves to be broadly interpreted and not narrowly construed. This is particularly important for Māori charities which operate in a unique cultural context, and are often established for restoration of hapū culture and identity due to historical land loss.

Question Four: 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?

21. If there is to be an imposition of income tax for unrelated business income, we consider that all Tier 2, 3 and 4 charities should be excluded. The Tier 2 category captures a significant range (between $5m and $33m), and will impact the smaller Tier 2 charities in a significant way.

22. Further, we consider that marae and urupā must be exempt, regardless of the tier.

Question Five: 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?

23. At the outset, we reiterate that we do not support a tax on unrelated business income for charities for the reasons set out in our responses above.

24. However, if one is imposed, we consider that there should be a tax exemption if business income is distributed. In our view:

a. There should be an outright exemption for Māori charities on accumulation of income (i.e., income that is not distributed). This is to account for the fact that Māori are intergenerational investors that are established primarily for hapū restoration.

b. The time limit on distribution should be a substantial period of time (i.e., at least 10 years), to take into account the fact that all charities' assets must be distributed for charitable purposes ultimately.

Question Six: 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?

25. In our view the Crown needs to consider the unique impacts of any proposal to tax charities on Māori charities. In particular we note the following:

a. The purpose and function of many Māori charities is to enable hapū restoration and development as a result of the historical impacts of Crown Treaty breaches. The inequalities that Māori experience have not been of their choosing. Adding a tax on business income will create an environment of uncertainty and stymie the work that we are doing to address and uphold Maniapoto's cultural revitalisation.

b. If business income tax was imposed, whether a charity could then be relieved from its charitable obligations in relation to that portion of income. It appears the proposal is seeking to tax charities, but at the same time maintain the same strict rules around distribution and reporting.

c. We do not believe that Māori charities are the intended target behind these proposals. This is because many Māori charities manage Treaty settlement assets or were selected as entities because of specific statutory drivers (such as the Māori Fisheries Act 2004). The paper currently does not consider the impacts on Treaty settlement entities, for example.

FURTHER POINTS

26. Te Nehenehenui acknowledges the concern IRD has regarding private foundations which are used to enable tax avoidance.

27. It will be very important that IRD clearly defines 'donor-controlled charity', noting the below:

    a. Māori sector organisations (such as TNN and Waihikurangi) represent a large group of people, typically a hapū or iwi grouping with thousands of individual members linked by common whakapapa.

    b. Many iwi structures establish a charity to ensure the iwi can efficiently and effectively provide charitable benefits to the iwi and community.

    c. The PSGE can often be connected to the charitable organisation (and often provides the funding and has some measure of control) – it would be unfair to capture these iwi charities which can be distinguished from those private foundations seemingly referred to in the Issues Paper.

28. Donor-controlled charities should also be limited to those who have a donor who takes advantage of the donation credit / deduction or claim a donation rebate for payments made to the charitable entity (which is where the Issues Paper suggests tax avoidance can then be enabled).

29. PSGE structures are imposed on iwi due to Treaty of Waitangi settlement and structuring choice is restricted (i.e., the Crown will not settle on a charity). Therefore, there is a need to create a charitable entity within the PSGE structure to ensure the iwi can continue to provide charitable benefits to the community.

30. Additionally, pre-settlement amounts are also required by the Crown to be ring-fenced and only used for charitable purposes. This again highlights why PSGE structures require a charity to manage these charitable assets.

31. Accumulation of funds should not in and of itself be something that falls within the definition of a 'donor-controlled charity'. There are many legitimate reasons why a charity will need to accumulate wealth, which includes having an inter-generational focus (which is also why a de minimis rule would also undermine a PSGE group's ability to accumulate wealth for future generations).

CONCLUDING REMARKS

32. Ngāti Maniapoto reiterate that we are strongly **opposed** to imposing any tax on unrelated business income of charities for the reasons set out in this paper.

33. Should such a tax be opposed, Ngāti Maniapoto urge the Crown to consider how the proposals set out in the Issues Paper impact Māori, and in light of the significant impact, look to provide for an exemption that mitigates the negative, and presumably unintended effects on Māori.

34. More importantly, it is disappointing to us that we were not consulted, that the impacts on Māori charities and Treaty settlement entities were not considered prior to the release of the Officials' Issues Paper.

35. We welcome the opportunity to discuss this with you in more detail.

CONTACT

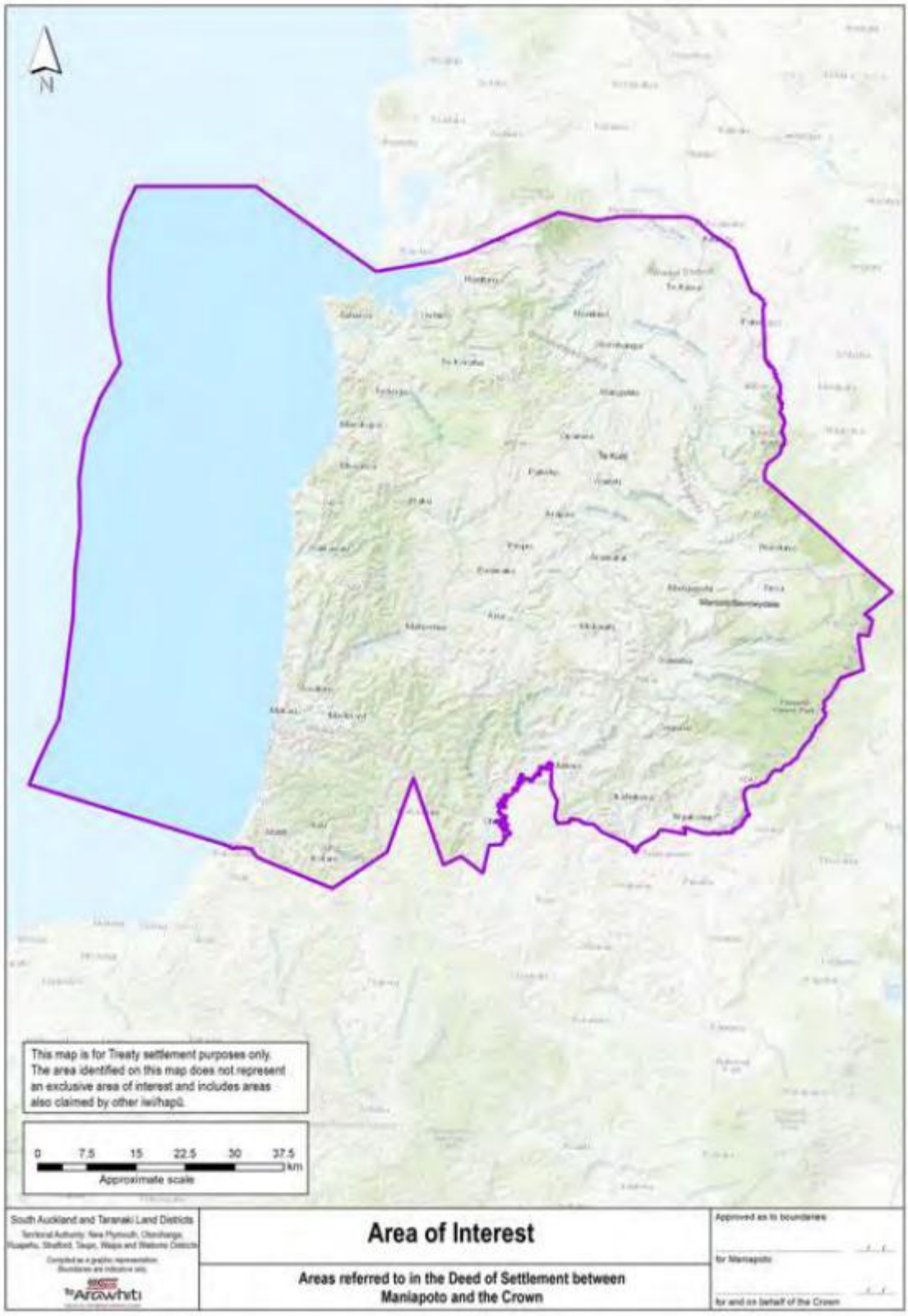
36. Te Nehenehenui contact details for this submission are:

s 9(2)(a)

Samuel Mikaere
s 9(2)(a)
Group CEO – Te Nehenehenui

Tramaine Murray
s 9(2)(a)
Settlement Protection, Rights & Interests Manager
s 9(2)(a)

APPENDIX


N
This map is for Treaty settlement purposes only.
The area identified on this map does not represent an exclusive area of interest and includes areas also claimed by other iwi/hapū.
0 7.5 15 22.5 30 37.5 km
Approximate scale
South Auckland and Taranaki Land Districts
Area of Interest
Areas referred to in the Deed of Settlement between Maniapoto and the Crown
Approved as to boundaries
for Maniapoto
for and on behalf of the Crown

Library and Information Association of New Zealand Aotearoa
Te Rau Herenga O Aotearoa

March 28, 2025

LIANZA RESPONSE TO OFFICIALS' ISSUE PAPER - TAXATION AND THE NOT-FOR-PROFIT SECTOR

BACKGROUND INFORMATION

- Te Rau Herenga o Aotearoa, The Library and Information Association of New Zealand Aotearoa (LIANZA) is a not-for-profit membership body for New Zealand's library and information profession.
- With a strong national network, active member communities and volunteer base, an established profile, and strong international connections, LIANZA spans all parts of the diverse library and information sector. This includes public, school, tertiary, health, prison, special libraries and information services. LIANZA is the peak body for the library and information sector.
- LIANZA is incorporated under the New Zealand Library Association Act 1939 but is not a registered charity.

COMMENTS ON TAXATION AND THE NOT-FOR-PROFIT SECTOR OFFICIALS' ISSUE PAPER

- LIANZA's comments relate to *Chapter 4: Integrity and Simplification* of the Officials' Issue Paper.
- LIANZA provides various services to its members who pay a yearly membership fee. Our members are institutional or personal (plus retired, overseas or student members). In addition, LIANZA charges fees for professional registration and professional development events including our biennial conference, which generate additional income.
- LIANZA files a yearly tax return and pays tax on its assessable activities. However, LIANZA has relied on Inland Revenue's current public view that not-for-profits do not need to include membership fees or subscriptions in annual income tax returns or pay tax on time.
- LIANZA receives just under $300,000 in membership fees each year, which typically represent at least 75% of its revenue, excluding the years in which LIANZA hosts its biennial conference.

THE IMPACT OF POSSIBLE CHANGES TO CURRENT SETTINGS ON LIANZA

- Membership fees support LIANZA in our mission to create a thriving library and information sector. We work alongside library and information staff and services to strengthen our sector to be innovative and responsive to New Zealanders' information needs.
- The environment that libraries work in is changing. They are at the apex of the communities they work within, and where there can often be challenges. Support from organisations such as ours is crucial so that libraries can better respond to the needs of their many community members. Libraries are at the forefront of enhancing wellbeing by:
    - providing trusted information and learning resources
    - supporting people who may have limited access to digital and other resources
    - and a safe space for those community members seeking connection.

- LIANZA's role is to support, guide, and provide leadership and skills development so that libraries can better support their communities and users. One-third of New Zealanders are library users. Their value to New Zealanders is seen in the increased use of libraries and their services, particularly after COVID, and because they are largely free to use.
- LIANZA and its predecessor's purposes have always been charitable. Over the years they have contributed to:
    - establishing programmes such as the National Library Service and the LIANZA Children's Book Awards
    - supporting library and information qualifications
    - implementing professional registration
    - working in partnership with Te Rōpū Whakahau, the organisation supporting tangata Māori library professionals
    - advocating for library and information professionals through pay equity, copyright, vocational education reforms.
- This means our members are supported in their professional growth and enjoy meaningful connections within the community. They are provided with tools, guidelines, and information to be supported in their work. These include:
    - Professional registration
    - Professional recognition
    - Workforce capability and workforce development
    - Professional development and training
    - Guidelines and information such as Māori subject headings (Ngā Upoko Tukutuku) and the Freedom to read toolkit
    - Information and publications.
- LIANZA's ongoing professional development supports members strengthen their skills and professional development to better respond to the needs of their many community members.
- A reduction in the membership fees, as a result of the imposition of tax, would have an extremely negative impact on LIANZA's ability to provide our valuable service to members and the wider library and information sector.
- This impact would have a flow-on effect on the profession's ability to provide services to the public and private sectors and the wider community. Libraries are already feeling the impact of reductions in funding with stretched local government funding affecting budgets in areas such as professional development.

For certainty and consistency, LIANZA strongly suggests Inland Revenue confirm the application of its currently held position that incorporated not-for-profits do not need to include membership fees or subscriptions in annual income tax returns or pay tax on time.

s 9(2)(a)

From: William Fordyce s 9(2)(a)
Sent: Monday, 31 March 2025 5:02 pm
To: Policy Webmaster
Subject: Submission – Taxation and the Not-for-Profit Sector

My name is William Fordyce, and I am a member of Hastings Salvation Army Corps, having moved here from Albany Bays Corps in July last year. I have been a life-long member of the Salvation Army, volunteering with them since the early 1970s in Terrace End, Palmerston North.

I want to state my concerns over the proposed tax changes.

The net profit from the Salvation Army Family Stores is put back into our work in the community, so taxing it means we have less to give to help the many needy people who come to us for help. We can't use what we don't have and if the shop profits are taxed it would stop us helping the way we do now.

Any accumulated funds the Salvation Army has are used within the organisation for maintenance and special projects, and to provide for all the services that we freely offer the community – these may not happen with less money available if our accumulated funds were taxed.

Salvation Army personnel are not highly paid, and it also relies on volunteers to do its work. Staff and volunteers regularly use their personal vehicles and other items so that we can do necessary work. The Salvation Army therefore provides vehicles and other items to help support its staff in their work, rather than paying a higher wage. Having fringe benefit tax taken from these items would take money away from where it is needed most – helping vulnerable members of society.

Therefore I feel that the less funds available to us because of higher taxation in these areas, the less we can help the community.

I am happy to be contacted about this

William Fordyce
Ph s 9(2)(a)

s 9(2)(a)

From: Alex Baker s 9(2)(a)
Sent: Monday, 31 March 2025 5:01 pm
To: Policy Webmaster
Subject: Taxation and the Not-For-Profit Sector - Submission

I write this submission in my personal capacity.
However, I am currently on the Board of the Auckland Bridge Club(ABC), a NFP entity, and my submission primarily concerns Bridge and other similar-sized charitable and NFP organisations.

SUMMARY

I do not support removing tax exemptions for sports and recreation organisations, incorporated societies, etc., that exist for charitable purposes and public benefit.

Bridge is not officially classified as a sport in NZ, so there is a chance that Bridge clubs and other smaller "apparent non-sporting activities" could inadvertently be overlooked in any legislative change. This must be avoided.

A De minimis rule should be applied to smaller NFP organisations (Tier 3 & 4 per cl 2.28) to minimise the effect of any policy change re business activities. A $5m income/turnover threshold seems very fair and realistic.

SUBMISSION

As well as currently serving on the Board of the ABC, I have previously held other roles on various charitable organisations. These include President of the Auckland Philharmonia Guild for many years, and chair of the Fundraising Committee for Sculpture on the Gulf (Waiheke). Accordingly, I have had significant involvement in the NFP sector, in an entirely voluntary capacity.

All organisations of this nature entirely rely on the generosity and goodwill of volunteers to run them, organise events and raise funds to sustain them. It is a very time-consuming and difficult task requiring much resilience and energy. Making ends meet and fundraising for charitable purposes is eternally problematic and even more so in current economic conditions, particularly with fewer people available to work in and support the NFP sector in a voluntary capacity. Any business-type activities in most instances are merely an adjunct to basic fundraising activities.
To tax such organisations and consequently increase compliance and running costs, would literally take the lifeblood out of many organisations. Their ongoing viability would be questionable and many

would need to close permanently. They struggle to exist under present conditions, so to impose possible tax liability would make matters worse per se, not to mention the additional compliance and accounting costs involved etc.

The whole purpose of NFP organisations is to benefit the community and have as many people as possible involved in social, sporting, cultural and other activities at an affordable level. Most clubs only survive through subscriptions and fees, and in the case of bridge, "table money" each time a session is played. Fees are kept to a minimum to encourage players to participate and ensure clubs remain sustainable. Raffles and fundraisers also assist as top-ups and supplements. In terms of Bridge, it's not only a mindful exercise, but also a very social activity for members of all ages (particularly the older generation) and is often key to their weekly activities (engaging younger membership is one of our ongoing goals). The risk of closure could take this enjoyment and associated benefits away.

The overarching difficulty in terms of financial sustainability is perhaps best exemplified by our organisation, the ABC, which at present is well down the path of concluding amalgamation with Remuera Bowling Club, to ensure the longstanding viability of both clubs. Both are asset-rich and cashflow poor, having made losses for some years. We are fortunate to have a strong asset base which has been capitalised (sold) to facilitate combining the 2 clubs to create a new entity with new facilities. However, ongoing financial success will only be ensured by continuing to have the organisation run and governed by volunteers and engaging in charitable fundraising and bridge and bowls tournaments, which by and large only break even. The key point is to ensure maximum participation, enjoyment and benefit to members and the public for the respective games. Any potential taxation would be a "noose around our neck". Positions such as Treasurer and Secretary etc, would also become much harder to fill as duties involving compliance and tax issues would increase significantly, requiring far more voluntary time.

From cl 2.25-2.29 in the CONSULTATION PAPER, the De minimis principle is discussed, and is, in my view, on point. It seems sensible and logical to aim any legislative change at much larger organisations and those with significant turnover (often using charitable status as a shield), rather than hindering the majority of NFP entities which have relatively small income (less than $5m) and operate for the benefit of members. Any business activities (small as they are) are solely for fostering that purpose. I urge that any change be applied to Tier 1 and 2 as referred to in that section.

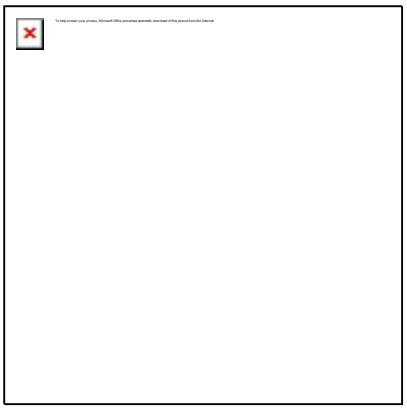
Alex Baker LL.B.

Alex Baker
RESIDENTIAL SALES
Mobile s 9(2)(a)

Remuera s 9(2)(a)

[Please click here to view my Personal Video]
[Please click here to view our latest Sold Magazine]

Please click below to view our High End Magazine



The Methodist Church of New Zealand

Te Hāhi Weteriana o Aotearoa

Submission on Officials' Issues Paper

Taxation and the not-for-profit sector

Issued 24 February 2025

Contents

INTRODUCTION

Methodism in New Zealand-Foundation

On 22 January 1822, the Rev. Samuel Leigh and his wife arrived in New Zealand to begin the Wesleyan Methodist Mission. They had been appointed to mission work in the colony by the Wesleyan Methodist Conference in England, and they thus represented missionary zeal that marked Methodism almost from its inception under John and Charles Wesley. By the late nineteenth century, the Wesleyans, Primitive Methodists, Free Methodists, and Bible Christians (all to be joined in 1913 to form the Methodist Church of New Zealand) were meeting in almost 1,000 churches, halls, and houses, and there were over 100,000 people attending the services.

Based upon 2013 census data, 3% of those people who reported a religious affiliation indicated they were Methodist. This accounts for just under 103,000 people. The Methodist Church is the 5th largest Christian based Church within New Zealand.

The Methodist Church of New Zealand (the Church) was instrumental in gathering signatories for the Treaty of Waitangi, supporting Māori and developing a bi cultural Church to further meet obligations under the Treaty.

The Church has moved from the traditional view of "mission" within the new colony of New Zealand and has broadened its approach as the needs of New Zealanders and society have changed. The focus on social justice is strong within the modern Methodist Church of New Zealand.

Vision Statement

Te Haahi Weteriana O Aotearoa – The Methodist Church of New Zealand is a Church:

- Passionate in its commitment to living out the love and grace of God known in Jesus Christ;
- Actively concerned with all life;
- Committed to the Treaty of Waitangi and to talking and walking justice.

Strategy: To achieve this vision the Church will:

- Creatively focus its people, finances and resources in the life and Mission of the Church.
- Empower the people to live out the Vision by establishing cost effective:
  - communication networks;
  - accessible education opportunities
- Constantly evaluate its work against the Vision Statement.

While the heart and direction of the Methodist Church is rooted in New Zealand, its ethos and ethical outlook will not allow it to solely deal with issues in New Zealand. Methodism in New Zealand is part of a global family and as such in times of need it will put up its hand and provide assistance. This has happened since the first days of the "mission" from its roots in England. Providing assistance overseas, especially into the Pacific is important work and work that has occurred since Methodism came to the Pacific.

Constitution of the Methodist Church of New Zealand

The Methodist Church of New Zealand "Conference" was separated away from the Australasia Conference via private Acts of Parliament in the early twentieth century. (see Methodist Church of New Zealand Act 1911). It is not an unincorporated entity in New Zealand. However, the law Book of the Methodist Church is understood to be the prima facie evidence of the laws of the Church.

The Methodist Church is NOT a traditional hieratically structured Church. The Methodist Church prides itself as being "Connexional" and allows the local parishes, synods, missions to work with local communities to better match their needs so long as they comply with secular law, Church law and the ethical standards that it imposes upon itself.

This means that there is no standard accounting system throughout the country, there is no central body controlling the day to day work of the Church. The central Church does oversee its activities on an exception basis.

Registration Under the Charities Act 2005

The Methodist Church of New Zealand is not a separate registered charity, but it has registered every Parish, Synod, Company, Limited Partnership, Trust, etc. as separate registered charities. In that way the whole of the Church, its assets, liabilities and income and expenses are in the public forum.

There are approximately 130 to 150 separate registered Methodist Church entities that report to the Conference of the Methodist Church. There are two reasons for registering in this way:

- The history of the Church, as outlined in this submission, is to work in local community with local people and resources;
- The need to have one consolidated set of financial statements for the whole of the Church was not relevant or needed for the Church to fulfil its mission in New Zealand. The resources required to do this are better used elsewhere.

Based upon the Church's financial year (30 June), approximately 12 to 15 of its registered charities would have operating expenditure of over $5 million dollars (Tier 1 and 2 reporting entities under the current External Reporting Board's reporting standards for public benefit entities) with the balance being Tier 3 and 4 reporting entities. Each one of the Tier 1 and 2 reporting entities within the Church would be differently affected depending on the definition of "unrelated business activity" or if that remains undefined, how "business activity" is defined (assuming it will be defined different to the contents of IS4 24/08).

Current Situation of Income Tax for Registered Charities

The current income tax concession is subject to a number of factors, including that any business income derived is applied to charitable purposes within New Zealand, and no person with control over the business activities of the charity is able to direct or divert income derived from the business to their benefit or advantage. There has been debate in some circles that the business income of charities (whatever that would mean) should be subject to tax (at some rate to be determined). The Church would question the effect on New Zealand society if that were to occur, and what the net result to society would be. Further, would the marginal increase in the tax revenue be warranted with the increased costs to monitor and enforce, and more importantly, would the loss of that marginal "cash" being withdrawn from the charitable sector place additional costs on society? There is also a shared view that there is an alignment of the fundamental purposes of government agencies and charities/not-for-profits and that is in a collective responsibility to work together for the good of all rather than for personal benefit. If this is the case, should some government departments/agencies also be income taxed on their own business income?

Charities also receive concessions under fringe benefit tax rules. Parts of these concessions have been reviewed (e.g. housing to Ministers) in recent years to clarify the position on fringe benefits in the charitable sector. The Church itself does pay some fringe benefit tax. While it understands that there is an exemption, it looks to make sure that it deals with the "intent" of

the exemption and therefore if the benefit being supplied to a person does not meet the intended spirit of the exemption, it pays the tax.

While there is some relief from goods and services tax in the Goods and Services Tax Act for charities, those provisions were made in light of submissions made at the time the Goods and Services Act was introduced to ensure fairness and that charities were not being disadvantaged due to the introduction of that Act.

One matter missing from the officials paper is the inability of registered charities to have the imputation credits returned to them. This is not addressed within the officials paper. We would like this to be discussed, and options presented.

SUBMISSION

Accounting process

Currently registered charities are required to lodge their Annual Return to Charities Services. The Annual Return includes a copy of the financial statements that meet the requirements of Sections 41 and 42A of the Charities Act. These financial statements, in essence, need to comply with general accepted accounting practice, which is normally in accordance with accounting standards approved by the External Reporting Board. These accounting standards were not designed to meet the needs of preparing financial statements for income tax purposes. The accounting policies and basis of preparation is based upon a completely different set of users and design parameters.

For the IRD, the media and other commentators relying on the financial information contained on the Charities Services website shows a fundamental lack of appreciation of the user base the External Reporting Board was aiming the approved reporting standards to.

The Methodist Church has little, if any, detailed knowledge of the preparation of financial statements for the purposes of lodging a tax return for each of its registered charities. The introduction of income tax on the Tier 1 and 2 reporting entities of the Church would add additional cost and complexity to the structure of the Church. Additional mandates would need to be added to safeguard the Church from "getting it wrong".

A major issue that the Department seems to have missed, from the Church's perspective, is there are very limited resources and skills available at the governance level of registered charities to produce income tax returns to comply with the Income Tax Act. If the "de minimums" option is not taken up by the IRD and rather than "unrelated business activities" being the criteria and "business income" this would pose a major rethink of how accounting is undertaken within the Church, and we would suggest for many other registered charities.

While I do not have current and up to date statistics, many of our parishes and synods and other smaller registered charities associated with the Church have older, retired New Zealanders or people who have never had to deal with the complex compliance issues completing the bookkeeping associated with a "business". The Department will know that voluntary organisations are finding it very difficult to fill important roles within their entities and much of this stems from increasing compliance which takes the focus off the fundamental work of the organisation.

Unintended Consequences

Registered charities could move all 'unrelated business income' operations to a company or companies or other business structure, outside the scope the Charities Act as there would be no compelling reason to have that part of the charity registered. This would:

- Avoid charities disclosures and filing requirements entirely, which means less transparency.
- Increase the set up costs, software, personnel and potentially annual costs for maintaining companies or whatever tax structure chosen.

- As a Company or Companies, they could distribute all 'net profits' to registered charities as donations and pay nil or little tax in any event.

In effect, nothing has changed, except the IRD, the Government and the registered charity have wasted considerable financial and human resources that could have been directed to charitable purposes.

If more "cash" is being removed from registered charities in social housing (it would seem that this would fall under the definition of "business activity") then more cash would need to be provided to support that activity. That "cash" could only be provided from two sources. One of these would be the client in the housing complex and the other, the government in the way of social assistance. If neither of these revenue streams are forthcoming and the social housing is making cash losses, then divestment may occur which would be contra to current policy direction. If the social housing stock were to move away from charities/not-for-profits and back into government hands or for profit entities, we believe the costs would fall back onto the government in any event and those costs would be higher.

There is no guarantee that in the long term that the Government would see a material or significant increase in its income tax raised. However, it may mean that those proponents of taxing charities business income are silenced, and that the public perception is that of an even hand being applied but at great cost to the community.

Some unintended consequences take years or decades to show. For example, the increase in migration into New Zealand increased demand for houses and increased the cost of housing in New Zealand fuelling a demand for social housing. This took five to ten years to work through. In the 1960's residential care for older New Zealanders was mainly provided in small community settings and made sure that people grew old in the communities in which they belonged. These facilities were run by either community groups or small operators. During the 1980's there were changes made in the way funding was allocated and contracts for the supply of residential care came in. Quality standards were mandated and then slowly these smaller rest homes closed leaving smaller rural communities without the ability to support their own older community. Today residential care is mainly found in the private sector in larger urban settings. This took 20 to 30 years to occur.

While the Charities Act is not a focus of the Officials paper the Church is concerned that the IRD, central government and the media are focused on a small number of registered charities they have concerns about. Over the last five to seven years there was a major review of the Charities Act to "modernise" it. If there are issues with a small number of registered charities and action cannot be taken against them for breaches of the Charities Act, then why did we go through that whole process with substantial costs to the taxpayer with no visible results?

Transparency

Much has been made in the past about ensuring that registered charities are transparent as possible and therefore should file an Annual Return with their financial statements attached to it. This was done as the argument is that the taxpayer is supporting charities via income tax exemptions, tax donation rebates, FBT exemptions, etc.

If registered charities are to be required to pay income tax on their business income, then the need for transparency is no longer there as these charities will be at a competitive

disadvantage by continuing to have this information exposed to their competitors (so the argument would go). If income tax is to be paid by registered charities on either their unrelated business income or all of their business income, the Charities Act should be amended to provide a general exemption from the need to file financial statements with the Annual Return or, if this is not possible, then the financial statements of those entities who believe that registered charities do have a competitive advantage due to the tax free status should be asked to file their financial statements and have them open to the public in the same way as registered charities.

National Party Statements in the Charitable Sector

While this may not be relevant for the input into an IRD consultation document it is still worthy to note the views that have been expressed by the National Party.

The National Party in New Zealand has expressed support for the work of charities through various initiatives and statements. They emphasize the importance of community support and the role of charities in enhancing social welfare. Here are a few key points:

1. **Economic Support**: The National Party aims to rebuild the economy, which they believe will enable better funding and support for charitable organizations[1].
2. **Community Engagement**: They have highlighted the significance of community events and celebrations, which often involve and benefit from the work of local charities[1].
3. **Policy Initiatives**: Their policies include measures to improve healthcare and education, areas where many charities are actively involved[2].

The National Party has also expressed strong support for charities and their volunteers, emphasizing their vital role in communities across New Zealand. They aim to ensure that charities operate under legislation that is practical and enables them to contribute effectively (4). Additionally, their proposed Social Investment Fund seeks to collaborate with the philanthropic and charitable sectors to address social challenges and improve outcomes for disadvantaged citizens (5).

References

[1] National Party - getting our country back on track

[2] National's plan to get our country back on track | National Party

[3] One Year of Getting New Zealand Back on Track | National Party

(4) Hansard on the second reading of the Charities Amendment Bill, 17 May 2023 – Penny Simmonds (National)

(5) Social Investment Fund web page National Party Official website (https://www.national.org.nz/policies/social-investment-fund)

These efforts reflect the National Party's commitment to fostering a supportive environment for charities to thrive and continue their valuable work in New Zealand. We can only hope that this continues.

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?

This question seems to have removed the concept of taxing business income unrelated to the charitable purpose of the registered charity and we assume this is a simple oversight as removing the "unrelated" wording would shift the outcomes of any future Tax Bill.

We see no compelling reasons to tax a charity's business income if any surplus being derived by the entity is being used for one or more of the main pillars of a charitable purpose as this would mean that the government is signalling a reduction in support of those entities providing social good in local communities by reducing the amount of cash available for that social good. In establishing this belief, the view of the Church is that the focus should not be on the "activity" but the intent of the outcomes of that activity.

We are concerned that there may be questions raised about charitable purpose as defined in Common Law, the Charities Act and the Income Tax Act due to a misalignment of definitions.

As to the discussion in sections 2.13 and 2.14, we believe that these questions were raised as part of the "Future of Tax" paper and the Final Report of the Tax Working Group in 2018. The Tax Working Group final report made it clear that the perception by a small minority of commentators of a possible competitive advantage of not paying tax were not well founded.

We believe that in many larger registered charities taking on a new "business activity" a commercial approach is taken from a risk management perspective to ensure the new activity (such as social housing, supply of meals, social work, etc.) is able to be run on the revenue earned. But risk management is more than just a financial matter as a new activity may have other risks associated with it. In many cases the work that a registered charity undertakes would not be undertaken at the same cost structures and risk profile within a fully commercial model.

In relation to taxing the accumulated income of a registered charity on the basis that it is not being used as intended within a timely manner, we are unsure how this will work on a practical basis. Firstly, we will need concrete definitions of its meaning for income tax purposes. As the IRD will be aware, accumulated funds is simply an accounting concept to balance the difference between total assets and total liabilities. Accumulated funds do not mean that the registered charity has cash resources available. It could be that due to the accounting process that are needed to comply with accounting standards that most of the accumulated funds are revaluation reserves or restricted reserves unsupported by "cash". In the event that income tax is paid on some notion of accumulated funds, many registered charities will not have the cash resources to pay the tax due to be paid. Even if they do have the cash to pay and do pay it then that may make them insolvent. Secondly, the current accounting treatment to arrive at accumulated funds found on registered charities balance sheets does not reflect the same result if the financial statements had been prepared based upon IFRIS and Income Tax law. Thirdly, registered charities

will be primarily reporting to Charities Services on the basis they are public benefit entities and so report their financial information based upon either International Public Sector Accounting Standards, Tier 3 or 3 Simple Format Reporting Standards NOT International Financial reporting Standards. The results may be different.

If there is to be some form of income tax on accumulated funds, then we would suggest a line in the sand approach is taken and that no income tax is taken based on a set end of financial year approach.

In section 2.13 there is discussion on registered charities ability to raise finance for banks and the need for charities to accumulate cash reserves to "save up" for further capital development. For smaller registered charities the ability to put cash aside could be for the simply matter of purchasing small pieces to computer equipment, to larger charities needing to use a combination of internal funding, grant funding and bank finance. In our experience, when a bank looks at providing finance for Church development the basis they supply that finance is on a purely commercial basis. In our experience the banks appear not to treat us differently and work through their own internal risk/reward processes to approve loans. The Church pays commercial rates. Internal funding can only go so far. Grant funding can only go so far, so at times external funding is required.

For the Church there is some risk when government contracts are entered into that may span multiple election periods and a new government comes in and programmes put in place by previous governments are terminated. In many cases the Church will undertake the setup of new programmes prior to funding arriving only to have programmes cut with only three months' notice. These cash flow implications are not normally factored into funding received.

One compelling reason not to tax income from business activities is in relation to defined benefit superannuation schemes which are registered as charities. These schemes have in recent years have found themselves in actuarial deficit, meaning the liabilities of the scheme far outweigh the assets of the scheme. In some cases, the Financial Markets Authority have intervened asking employers to deal with this issue and put more cash into the scheme. The Methodist Church has found itself in this situation and has decided on a process of funding the deficit over a period of six years. To do this it is required to pay ESCT on the gross cash contributions made into the scheme at the default rate of 33%. If the business income of this entity were to then be subject to income tax at the current Trustee Rate of 39% (for the 2024-25 tax year). This would undermine the work that the Church has put in place to deal with the deficit of the scheme.

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 Church is fundamentally opposed to the view that registered charities should have their business income taxed if it is being used for one of the charitable purposes as set out in the Law. In the Church's view it will have long term consequences for New Zealand society which are unintended and not foreseen or cannot be foreseen in 2025 as the Church is unable to predict the outcomes of other decisions made by organisations outside of its control.

Having said this and as mentioned above, the answer to this question is in the definition of "unrelated business activities". It is the belief of the Church that it works within all of the pillars associated with charitable purposes within New Zealand (the relief of poverty, the advancement of education, the advancement of religion, any other purposes beneficial to the community, not falling under the preceding heads) and therefore all of its business activities support, in some way its charitable purpose.

It would also be the view of the Church that given that Charities Services have already registered each and all parts of the Methodist Church and there is an obligation under Section 13A of the Charities Act that "every charitable entity must remain qualified for registration as a charitable entity at all times" then its activities which must also be provided in a charities application for registration must be accepted by Charities Services at the time of registration and while it is registered.

As mentioned elsewhere, it is not helpful that there are definitions in both the Charities Act and the Income Act regarding defining charities as this can lead to different views.

From a practical point of view, the introduction of income tax on business activity, in my view would be a five year project for the Church. It would be a separate and distinct project to review all of its registered charities, accounting systems, personnel and structure from what is in place now to a new model.

Firstly, the Church may wish to look at its structure for the purposes of both registration for Charities Services and for Income Tax purposes, but this is very dependent on definitions that would come out in a final Tax Bill. For the Church this may take two years.

Each registered charity may need to reassess whether they should still be a public benefit entity as defined in the External reporting Boards standard XRB A1.

As mentioned above, each separate entity within the Church is separately registered with Charities Services. It has 1 Tier 1 Public Benefit Reporting Entity (PBE), 12 to 14 Tier 2 PBE, 76 Tier 3 PBEs, and 40 Tier 4 PBEs. The accounting standards and reporting of accounting information is very different. Considerable time, cost and energy would be needed to formulate a strategy for the Church to "get it right".

Questions to be worked through include whether the accounting systems being used still fit for purpose to deal with the needs to produce management reports for the entity, the reporting required under the Charities Act and the need for financial reporting under the Income Tax Act. If not, then some registered charities may need to go through a procurement and implementation process. This could take between one and two years assuming the entity has both the financial and human resources capabilities to undertake the process.

There is then the human resources required to ensure its staff and volunteers understand the Income Tax Act and Tax Administration Act. Currently there is very little expertise in this area and the Church may need to recruit staff with this expertise or rely on external expertise. Each way incurs a significant cost.

While we have not undertaken any formal projection of costs, we believe that the total costs of a five year project would be in the region of $1,750,000 broken down into Church wide human resource project management costs ($700,000), possible new accounting systems ($600,000), external tax advice ($250,000) and other advisory costs ($200,000). Then there will be the ongoing costs to comply after that initial five year period.

The other practical issue is who is going to provide the tax advice to those registered charities who will require such advice, and will the registered charities fully understand and be able to actually implement that advice? There are already staff shortages within accounting firms and enrolments in tertiary education units for accounting courses are reducing. If there is a reduced supply of tax professionals and then additional work, one of three things will occur, prices will increase, tax professionals hours will increase or a combination of both.

An example within the official's paper of business income being unrelated to an organisation's charitable purpose was that of a diary farm. The Church was gifted diary farms in 1931 and structured this as a separate trust registered under the Charitable Trusts Act 1957 and also under the Charities Act 2005. The farms continue to be farmed to this very day. If this business activity is deemed to be unrelated to the charitable purpose of either the trust or the Church it will mean a total review of the structure of the trust, its accounting processes and the way it makes grants and distributions under its deed of trust. Neither the trust board nor the Church is able to sell the land and buildings that have been gifted so if cash losses are made then the trust board of the Church will need to make decisions about abandoning the farming activities, reducing its farming activities, reducing the amount of grants it can make, etc. Currently the trust distributed 65% of its net surplus on grants for student bursaries and other youth activities run by other registered charities. There are flow on effects into the wider community that taxing these type of activities will have.

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 a difficult question for us to answer as we would argue that all the net income we receive from a business is related to our charitable purpose and therefore the definition is not relevant.

This view is held on the basis that a business activity is an unrelated business if it meets ALL three of these requirements:

- It is a trade or business,
- It is regularly carried on, and
- It is not substantially related to furthering the exempt purpose of the organisation.

As mentioned above, the Church believes that its work within New Zealand fits within all four pillars of a charitable purpose and therefore the third bullet point is not met and therefore all business income would continue to be exempted.

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?

To reduce compliance costs within the sector the suggestion provided in the official paper of exempting both Tier 3 and 4 financial reporting entities who are registered charities is a concept the Church would support as it would be easy to understand and implement.

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. The Church's view, as already expressed is that it works within all four pillars of what is a "charitable purpose/activity" and therefore all its business income, whether related or unrelated is used to meet those outcomes but the "devil is in the detail" and within the detail it is not possible to provide comment other than to say the most effective way is to leave the current situation as it is.

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?

This question has been answered in the responses above.

Chapter 3: Donor-controlled charities

The answers to the questions raised will depend on the definition being used for the purposes of the Income Tax Act of "Donor controlled charity" and how that is to be implemented against either registered charities or non-registered charities in New Zealand.

Given the structure of the Church, we would not wish to see the definition solely centred on whether the charity is more than 50% controlled by another charity or organisation. This would have major structural implications for the Church and may even mean a fundamental rethink of Church structure.

With over 200 years of serving New Zealanders, the Methodist Church of New Zealand is a "Connexional" Church, highly decentralised and not hieratically structured as a corporate. It is focused on local community.

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?

Depends on the definition to be given to "Donor controlled charity" as provided above.

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?

Does this relate to the investments made **BY** the registered charity or investments made **INTO** the registered charity?

On the assumptions that registered charities are attempting to maximise the return on their investments given the risks associated with those investments and using the returns on those investments for activities associate with their charitable purpose then "no" there should be no restrictions. In some cases, "investments" maybe the purchase of land and environmental and social means in which the investment return, from a financial point of view is zero or negative but there maybe good social reasons for that investment.

We do not believe that investments by non-charitable organisations into a registered charity to give them "control" of the entity is a favoured outcome but there are situations in which companies or limited partnerships are incorporated to form a working relationship BUT any returns made by those entities would be taxed based upon the tax status of the receiving 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?

No. It would be too different to implement and enforce by smaller registered charities who do not have the skills and experience to do this.

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.

The existing thresholds have not changed for many years and as a minimum should be increased by the accumulated CPI from the date when they were last changed to the date the $1,000 deduction is charged.

The sector does need further compliance work on submitting tax returns which is of no value to either the IRD or the charity. If no tax is to be paid, then a simple declaration should be all that is required.

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

As we are not a friendly society and do we operate a credit union we are unable to provide comment on this matter.

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?***

As these elements of the issues paper do not affect the Church, we offer no comment on the issues raised and leave the response to those who are affected by it.

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?

This part of the discussion needs to be read in the context of Ministers of the Church and the stipend they receive for the work they do. A stipend is simply a fixed living payment received and is not based on the amount of work being undertaken nor is it intended to compensate for the hours of work that Ministers put in.

The Church is therefore responsible for the health and welfare of its Ministers.

If the current provisions of CX 25 of the Income Tax Act were to be removed, then the Church would be required to pay Fringe Benefit Tax on a number of items. For example, the Church requires its Ministers to have a basic form of medical insurance and life cover in place and it pays for that insurance. Ministers are able to purchase additional services at their own cost. If Fringe Benefit tax is to be paid on this one element, the Fringe benefit Tax could be in the region of $6,000 to $7,000 per month. This is the amount of cash that could not be used for other important community development, may reduce the current community development or stop it in its tracks for smaller rural based Churches.

As the stipend is a living wage and Ministry is seen as literacy, the Church has always provided residential accommodation for its Ministers. There are special provisions within the PAYE rules relating to the calculation of the taxable amount of accommodation provided. It is unclear how these rules would interact with the Fringe Benefit rules if the provisions in CX 25 were to be removed.

There are specific implementation issues that would arise if the exemption were to be removed. For example, for motor vehicles, the taxpayer must select either the cost option or the tax book value. This selection must be made on the first FBT return for the vehicle. This process is fine if the motor vencile being supplied is new or near new at the time the FBT exemption is removed. However, if the motor vehicle is older then determining the tax book value would have to be calculated and used based on assumptions. In some cases, the vehicles being supplied could be second hand or more than 10 years old. Once this selection has been put in place it cannot be changed for at least 5 years. Do charities assume that when the exemption is removed, they do so on the assumption that it's their first FBT return, or will there be special rules around this?

CX 23 provides that the "premises of a person" does not include premises occupied

by an employee of the person for residential purposes. This provision is included as part of the employees benefits received.

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?

The Church believes that the taxation of Honorarium should be reviewed. The concept of an honorarium is that of an ex gratia payment that has no legal or other liability attached to it from the givers perspective. Payments are made to recipients for their volunteered services. In many cases it is seen as being a way to reimburse the person for costs they have incurred while performing their roles within a charity. There should be an exemption of taxing honorarium if the value to an individual or an associate of that individual is under a prescribed value.

We agree that having honorarium payments part of the schedular payments process for tax purposes has caused issues for a small number of people receiving them. Some individuals receiving an honorarium payment do not understand why they are receiving an invoice from ACC which is difficult to explain to those who receive the payment and then receive invoices from ACC for the employee levies.

As we normally make such payments via our payroll system it would simply mean changing the tax code in the payroll system. The volunteer would need to complete another IR330C to advise us of their correct tax code as we do not always know their tax position.

We agree with the view expressed in the official's issues paper.

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?

Our understanding is the current way that the IRD deal with donation tax concessions is quite labour intensive so would the delinking of the DTC increase the workload on the IRD staff and therefore it would take longer for the DTC payment to reach the done?

The Church undertook some research from Christian based Churches in New Zealand on how they processed their end of year tax donation receipts. We had 256 responses. The findings of that research stated that:

- 41% of respondents used a manual system to create their end of end tax donation receipts to give to their donees.
- For the 59% of respondents who used a computer based system, 72% of them used a desktop model rather than a cloud based solution.
- The main software used is an Excel spreadsheet with a Word document for mail merging.
- 81% of respondents said their current system did what they needed to do.

There were a number of qualitative questions that went with the survey but we believe that the Church any many smaller registered charities are not ready to collect data from them in

a format that can be uploaded directly to the IRD (we do not collect IRD numbers of donee's as an example).

The issue for the three month grace period may need to be extended so that Charities Services are able to work with the charity on deregistration. So the suggested three month grace period should commence from the date of registration by Charities Services.

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