

QUESTION WE'VE BEEN ASKED QB 16/05

INCOME TAX – DONEE ORGANISATIONS AND GIFTS

The purpose of this QWBA is to provide guidance about when a donee organisation may issue a donation receipt for payments made to them by individual supporters. The QWBA includes some examples of common fundraising activities.

Donee organisations include organisations like charities, schools, religious, sporting and cultural organisations that are not carried on for private financial gain of any individual and that meet certain other requirements.

The Commissioner understands donee organisations and individuals/natural persons who support these organisations (**referred to as "supporters" in this QWBA**) need more certainty on when payments are gifts for income tax purposes. This is important for donee organisations when issuing donation receipts, and for their supporters when claiming donation tax credits.

While ultimately it is the Commissioner's decision whether a supporter receives a donation tax credit for a particular payment to a donee organisation, it is important to understand the circumstances in which donee organisations may issue donation receipts.

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

This Question We've Been Asked is about ss LD 1 to LD 3.

This item updates and replaces the previous statements made by the Commissioner in "Charitable Donations: Fund Raising Functions and Sponsorship" in *Public Information Bulletin* No 125 (March 1984): 2 and "Cost of Function Ticket: When Charitable Portion Can Qualify for Rebate" in *Tax Information Bulletin* Vol 6, No 2 (August 1994): 18.

Question

1. When may a donee organisation issue a donation receipt to a supporter so the supporter is able to claim a donation tax credit?

Answer

2. A donee organisation may issue a donation receipt for donation tax credit purposes when a supporter makes a "charitable or other public benefit gift" to the organisation of \$5 or more.
3. The term "donee organisation" refers to an organisation not carried on for the private pecuniary profit (personal financial/monetary gain) of any individual and that meets one of the descriptions in s LD 3(2). **"Donee organisation" is a broad term and may include, but is not limited to, charitable entities registered under the Charities Act 2005. It also includes organisations listed in sch 32 to the Act.**

4. A “charitable or other public benefit gift” is a gift of money, or a subscription, of \$5 or more paid to a donee organisation (as long as that subscription provides no rights arising from membership). It does not include testamentary gifts (ie, a gift made in a will).
5. A gift is a payment made voluntarily by a supporter to a donee organisation by way of benefaction in return for which the supporter receives no material benefit or advantage. If a supporter buys something from a donee organisation, such as a ticket to an event or goods the donee organisation is selling, the payment is not a gift.

Explanation

6. The purpose of this QWBA is to provide guidance to donee organisations on when they may issue donation receipts to individuals who support the organisation by making one-off or regular payments to the organisation. These individuals are **referred to as “supporters” in this QWBA**. Additionally, this QWBA aims to assist supporters to understand when they can successfully claim a donation tax credit if they have received a donation receipt.

What is a donation tax credit?

7. Part L of the Act contains the rules about tax credits and how they may be used for meeting tax obligations. Subpart LD sets out the rules for donation tax credits (ss LD 1 to LD 3).
8. A donation tax credit is available for a charitable or other public benefit gift made by a supporter to a donee organisation if the requirements in ss LD 1 to LD 3 are met. Donation tax credits are refundable credits.
9. Section 41A of the Tax Administration Act 1994 (TAA) sets out the requirements for claiming a donation tax credit. An individual taxpayer may complete an IR526 - Tax credit claim form, detailing any charitable or other public benefit gifts made in a tax year. The Commissioner requires this claim to be supported by relevant receipts, each from a donee organisation and each **with “donation” written on it**. The Commissioner considers the application and then notifies the individual of the amount of tax credit that will be allowed.
10. The sum of charitable or other public benefit gifts made by an individual taxpayer in a tax year must not exceed their taxable income for that year. If the sum does **exceed the taxpayer’s taxable income, the Commissioner must reduce the total** amount of charitable or other public benefit gifts so the taxable income is not exceeded (ss 41A(3) and (4) of the TAA).

Who may issue a donation receipt for donation tax credit purposes?

11. A **“donee organisation”** may issue a donation receipt for donation tax credit purposes. A donee organisation is defined in s YA 1 as an organisation that fits one of the descriptions in s LD 3(2) or is listed in sch 32 to the Act.
12. Donee organisations must not be carried on for the private pecuniary profit (personal financial/monetary gain) of any individual. Subject to that requirement, the types of organisations that may be able to issue donation receipts are:
 - a society, institution (including a public institution), association, organisation, or trust whose funds are applied wholly or mainly to charitable, benevolent, philanthropic, or cultural purposes within New Zealand;

- a fund (including a public fund) established and maintained exclusively for the purpose of providing money to such donee organisations;
 - a community housing entity that meets the requirements of s CW 42B;
 - a Board of Trustees constituted under Part 9 of the Education Act 1989; and
 - a tertiary education institution.
13. In addition, some organisations may seek approval to be donee organisations, even though they do not meet the requirements of s LD 3(2). These organisations are listed in sch 32. Schedule 32 organisations are organisations Parliament has agreed to recognise as donee organisations.
14. As seen from the list in [12] above, donee organisations may include, but are not limited to, organisations registered as charitable entities under the Charities Act 2005. Donee organisations may also include organisations with benevolent, philanthropic, or cultural purposes within New Zealand, and which meet the requirements of s LD 3(2).
15. A searchable list of organisations whose donee organisation status has been confirmed by Inland Revenue for the purposes of s LD 1 is available at <http://www.ird.govt.nz/donee-organisations/>.

Who may claim a donation tax credit?

16. Individual taxpayers may claim donation tax credits (s LD 2). Companies and **Māori authorities** cannot claim donation tax credits even if they hold a donation receipt from a donee organisation. This is because other provisions in the Act (ie, the deduction provisions) apply to gifts made by them (see ss DB 41 and DV 12). Other types of taxpayers (eg, absentees (as defined in s YA 1), unincorporated bodies, partnerships and trustees) are excluded from claiming donation tax credits.

What is a “charitable or other public benefit gift”?

17. The phrase “charitable or other public benefit gift” is defined in s LD 3(1). It means a monetary gift of \$5 or more paid to a donee organisation. It also includes a subscription of \$5 or more paid to a donee organisation, but only if the subscription provides no rights arising from membership in that donee organisation or any other society, institution, association, organisation, trust or fund (see s LD 3(1)(b)). It does not include testamentary gifts (ie, gifts made through a will).
18. To qualify as a monetary gift, the gift needs to be money of \$5 or more paid to a donee organisation. For example, payment may be by cash, cheque, direct debit, credit card or debit card. However, a charitable or other public benefit gift does not include transfers of value, **ie, money’s worth**. **For example**, a charitable or other public benefit gift does not include the making of a loan to a donee organisation, the forgiving of a loan made to the donee organisation or the transfer of other types of property (eg, art works) **or money’s worth** (eg, free services) to a donee organisation.

What is a gift?

19. The term “gift” is not defined in the Act. In the absence of a definition, the Commissioner considers “gift” should be given its ordinary meaning. This is consistent with the Court of Appeal’s decision in *Mills v Dowdall* [1983] NZLR 154.

20. However, New Zealand case law on the ordinary meaning of “gift” is limited. In contrast, the Australian and Canadian courts have considered the ordinary meaning of the term “gift” on a number of occasions. In the absence of New Zealand case law, the Commissioner considers it appropriate to take guidance from the overseas case law.

21. The key principles on the meaning of “gift” taken from case law, are:

- For a payment to be a “gift” it must be made voluntarily and no advantage of a material character may be received by the giver in return for the payment (*FCT v McPhail* (1968) 117 CLR 111 (HCA), *The Queen v Zandstra* [1974] 2 FC 254).
- A payment is not generally regarded as being made voluntarily if it is made under a contractual or some other legal obligation. (Although there may be some limited circumstances where a contractual payment may still be described as voluntary.) (*Leary v FCT* (1980) 80 ATC 4,438 (FCA))
- A payment is voluntary even if made under a sense of moral obligation (*Leary*).
- Gifts do not need to be for benevolent reasons, but an essential element of a gift is that it is made by way of benefaction. Benefaction involves the concept that the recipient is advantaged to the extent of the payment. A gift ordinarily proceeds from a detached and disinterested generosity (*Leary*).
- A gift will not be made by way of benefaction if the giver (or someone else) receives an advantage of a material character in return for making the payment (*Leary, Klopper v FCT* (1997) 97 ATC 4,179 (FCA)).
- A payment that places the recipient under an obligation to do or provide something in return for the payment is not a gift (*Leary*).
- A material benefit or advantage to the giver will prevent a payment from being a gift if it is provided in return for the payment, ie a sufficient nexus or connection exists between the payment made and the relevant benefit or advantage (*Leary, Coleman v The Queen* (2010) TCC 109, DTC 1,096).
- Only material advantages gained in return for a payment should be relevant when deciding whether a gift has been made (*Leary*).
- Fame or honour gained by a supporter from making gifts is not an advantage of a material character (*Leary*).
- Moral benefit or favourable tax treatment (such as the ability to claim a donation tax credit in New Zealand) are not advantages of a material character (*The Queen v Friedberg* (1991) 92 DTC 6,031 (FCA Canada)).
- A supporter being relieved of a liability as a result of making the payment is a material advantage (*Klopper*).

22. The Commissioner considers the New Zealand courts, as the Canadian courts have done, would likely adopt the approach taken by the Australian courts in *McPhail* and *Leary* (and subsequent decisions, such as *Klopper*) on the meaning of “gift” in the context of ss LD 1 to LD 3.

When will the Commissioner consider a payment to be a gift?

23. Based on the above case law, the Commissioner considers a “gift” in s LD 3(1) to be a payment of money of \$5 or more:

- made voluntarily,
- by way of benefaction, and

- in return for which the supporter receives no material benefit or advantage.
24. When deciding if a payment to a donee organisation is a gift, the true nature of the payment is to be determined by considering the overall arrangements and transactions giving rise to the payment.
25. Firstly, the payment must be made voluntarily. This means something more than that the payment was made freely by choice. A **supporter's** payment is not voluntary if it is made under an arrangement (contractual or otherwise) where the payment is made in return for a material benefit or advantage. This is the case even when the arrangement is entered into freely or for benevolent reasons.
26. Generally, payments under a contract are not voluntary, but the presence or absence of a contract does not always indicate **whether a payment is "made voluntarily"**. **The mere existence of a contract may not disqualify a payment from being a gift** if there is no nexus or link between the contract and the payment. For example, there may still be a gift if A and B agree to make donations to a donee organisation, or if A agrees with B to match any gift made by B to a donee organisation.
27. On the other hand, the absence of a contract does not always mean a payment is made voluntarily. A payment is unlikely to be a gift in situations where there is some agreement or understanding in place between the donee organisation and the supporter where the supporter is to receive a material benefit or advantage. Similarly, a payment may not be a gift where there is some agreement or understanding that the donee organisation is to do or provide something in return for the payment. For example, a supporter intends to make a gift of a car to a donee organisation but instead of gifting the car (which would not qualify for a tax credit) the person arranges to make a gift of money to the organisation. The donee organisation then uses the gifted money to purchase the car from the supporter. See Revenue Alert 11/01.
28. Secondly, the requirement that a gift is made voluntarily is connected with the concept of benefaction and the belief that gifts usually proceed from a detached and disinterested generosity. Benefaction is the idea that a gift is made to provide an advantage to, or to do good for, the recipient. Benefaction is an important element of a gift in its ordinary sense; when it is absent there can be no gift (*Leary*).
29. Conversely, the existence of benefaction does not, by itself, establish that a payment is a gift. For example, benefaction does not qualify a payment as a gift if the payment was not made voluntarily or there is a material benefit or advantage for the supporter in return for making the payment.
30. Thirdly, to be a **"gift"** the supporter must receive no material benefit or advantage in return for the payment. This is discussed below in more detail.

When will the Commissioner consider a payment is *not* a gift?

31. The Commissioner considers a payment will not be a "gift" where:

- the supporter's payment is made in return for a material benefit or advantage, or
- the donee organisation is placed under a material obligation to do or provide something in return for the supporter making the payment.

32. A material benefit or advantage does not need to come directly from the donee organisation and does not need to be received directly by the supporter who made the payment (eg, someone else may deliver or receive the benefit) so long as under the arrangement the material benefit or advantage to the supporter is in return for making the payment.

Material benefit or advantage

33. A benefit or advantage **will be considered "material" if it** is of substance and can be valued and/or owned. (Sometimes these benefits are referred to as pecuniary or proprietary benefits.) In this context, determining if a benefit or advantage is material is **not** a comparative materiality test (as is used in accounting practice). Rather, the question is whether the benefit has some value that is able to be objectively ascertained. An example of a material benefit would be a book sold by an organisation in their gift shop given to a supporter **in return for** making a payment to a donee organisation. Another example would be the offer of a 10% discount on a purchase from **the organisation's gift shop in return for** a payment. (In the case of a discount, it does not matter whether the supporter takes advantage of the offer; it is the availability/provision of the discount **in return for the supporter's payment that is the material benefit** (unless the maximum value of the discount is in itself trivial (de minimis).)
34. A benefit or advantage will not be material if it is intangible and cannot be valued or owned. This includes benefits or advantages that might give a supporter a good feeling, bring them public recognition or make them happy. Non-material advantages include such things as public acknowledgement - for example, when an individual supporter's **name is printed in a donee organisation's** newsletter as a way of acknowledging their gift. This acknowledgment might make the supporter feel proud, but that benefit has no objectively ascertainable value. On the other hand, if a supporter is in business and is given public recognition by a donee organisation for commercial advertising purposes, that will be a material benefit. Sponsorship of donee organisations by businesses generally fall into this category. In such a case, although a donation tax credit will not be available, the supporter may be entitled to an income tax deduction for the cost of sponsoring a donee organisation.
35. Sometimes a benefit or advantage may have a value in the eyes of the donee organisation or the supporter, but that value is not of substance and cannot be objectively ascertained. In that case, the benefit **will not be "material"**. For example, meeting the conductor after a concert might be a valuable and enjoyable experience for an enthusiastic orchestra supporter. However, if the experience is usually given for free, it is likely it will have no objectively ascertainable value and will not be a material benefit.

Sufficient link between payment and benefit or advantage

36. Not every material benefit or advantage will necessarily disqualify a payment from being a gift. A payment will not be a gift where there is a sufficient link between **the supporter's payment and any material** benefit or advantage gained in return. The strength of the link between the **supporter's** payment and the benefit determines whether the payment is a gift. This can usually be determined from the circumstances surrounding the gift. For example, a sufficient link to disqualify a payment as a gift will exist where:
- the supporter knowingly seeks the benefit in return for making the payment, or
 - the donee organisation offers the benefit as an inducement for the payment.
37. An example of a material benefit provided in return for a **supporter's** payment is the offer of a free ticket to a concert in return for a minimum donation amount. Another example is where a supporter makes a payment to a donee organisation in return for an invitation to a dinner with a guest celebrity speaker.
38. Sometimes a payment may be a gift even if the supporter obtains a material benefit. This happens when the connection between the payment and the benefit is too remote to prevent the payment from being a gift. An example of a material advantage not having a sufficient link to a payment is where an arthritis sufferer makes a \$50 donation to a national arthritis drug research charity. While the arthritis sufferer may ultimately obtain a material benefit in the form of a new treatment, the connection between the benefit and the payment is too remote for the benefit to prevent the payment from being a gift (*Coleman*).
39. Depending on the circumstances, other factors might have a bearing on the strength of link **between a supporter's payment and a benefit**, including such things as the relationship between the supporter, the donee organisation or any ultimate recipient, any **conditions attached to the payment, and the parties' expectations of how the payment will be used** (*Coleman*). When deciding if a payment to a donee organisation is a gift, **the true nature of the supporter's payment** is to be determined by considering the overall arrangements and transactions that gave rise to the payment. In considering all the circumstances, it is important to remember that gifts ordinarily proceed from a detached and disinterested generosity (*Leary*).

Can a benefit obtained by the supporter ever be overlooked?

Stewardship

40. Sometimes organisations will thank and acknowledge their supporters' generosity by inviting them to a function or by giving them a token of appreciation. This is often referred to as "stewardship". In those situations, a benefit provided to a supporter by a donee organisation, even if material, may not disqualify a **supporter's payment from being a gift**.
41. Stewardship activities are not part of any agreement or arrangement between the donee organisation and the supporter, and will often be unplanned and based on opportunity. A supporter has no expectation of being invited to participate in stewardship activities when making a payment to a donee organisation. In these circumstances there is an insufficient link or connection **between the supporter's payment** to the donee organisation and the stewardship activity such that it cannot be said that the **supporter's** payment is made in return for any benefit.

Accordingly, the provision of true stewardship benefits by a donee organisation will not usually prevent supporters' payments being gifts.

Minimal benefit or advantage

42. Occasionally, benefits or advantages obtained by a supporter in return for making a payment to a donee organisation will be so minimal or trivial they can be overlooked, in accordance with de minimis principles.
43. To be overlooked under de minimis principles, the benefits must be minimal or trivial **both** in their own right **and** when compared with the payment made. For example, a supporter makes a donation of \$50 and is promised in return and receives a plastic **key ring with the donee organisation's logo printed on it**. **Although the supporter obtained a "benefit" in return** for the \$50 payment, the plastic key ring is too trivial in its own right, and in comparison to the amount of the payment, to prevent the payment from being a gift in those circumstances.

Can a gift be for a specific purpose?

44. Sometimes gifts are paid by supporters to a donee organisation for a specific purpose or project, for example, to a church for a new church building or to a hospital for a new baby incubator. The fact that an organisation seeks donations for a specific project will not, in itself, prevent the payment being a gift. In the **Commissioner's view, a gift made for a specific purpose will** not cease to be a gift so long as it has the attributes of a gift and there is no material benefit or advantage provided in return for the supporter making the payment. Further, the fact that the supporter, or people close to the supporter, may be among those who ultimately benefit from a project (eg, the supporter's **family** attends the church receiving the payment or is within the area served by the hospital receiving the payment) may not disqualify the payment from being a gift. However, the stronger the connection **between the supporter's payment and any material benefit** or advantage obtained in return, the less likely it is that the payment will qualify as a gift.

Can part of a payment be a gift?

45. The Commissioner considers **a supporter's** payment cannot be split into a gift component and a non-gift component where a supporter receives a material benefit or advantage in return for making that payment.
46. **The term "gift" describes a particular transaction. The legal arrangements entered** into and carried out by the parties establish the nature of that transaction. If a **supporter's payment is not a gift at common law**, it is not open to the parties to then describe the payment as comprising two separate payments – one for consideration (eg, a sale) and one made voluntarily for no consideration (a gift). For example, if the price paid for an item at a charity auction to raise funds for a donee organisation exceeds the value of the item, the amount paid in excess of its value cannot be treated as a gift. No donation receipt may be issued in that situation.
47. However, a donation receipt may be able to be issued where a supporter makes two payments contemporaneously to a donee organisation. For example, if a supporter purchases tickets to an event being hosted by a donee organisation and at the same time voluntarily supports the donee organisation by making an additional payment, the additional voluntary payment may be a gift. For the additional payment to be a gift, the supporter must be able to attend the event regardless of whether any additional payment is made – ie, the ticket purchase must not be dependent on the supporter making an additional payment. In that

situation, the donee organisation may choose to issue a single invoice to the supporter, so long as it clearly identifies the two separate payments (the ticket sale and the gift), and a donation receipt may be issued for the gift made by the supporter.

Examples

48. The following examples are provided to illustrate the Commissioner's view on when certain common fundraising activities may or may not involve gifts.

Example 1 – Charity dinner and dance

49. Sally purchases a ticket to a dinner and dance being put on as a fundraising event by her favourite dog refuge charity, which is a donee organisation. The ticket costs her \$150 and entitles her to attend the event. The charity calculates it will raise approximately \$90 from each ticket sold to help feed and re-house stray dogs. None of the ticket price paid by Sally is a gift. The charity has sold the ticket to Sally for \$150. The charity should not issue a donation receipt to Sally for any portion of the ticket price.

50. In contrast, if the charity sold each ticket for \$100 and at the same time asked ticket purchasers to consider making a donation to the charity of \$20, \$50, \$100 or any other amount chosen by the supporter, and Sally opted to buy a ticket and make a \$50 donation, the charity may issue a donation receipt to Sally for the \$50.

51. While at the charity dinner, Sally is asked if she would like to contribute towards the cost of a new kennel block at the dog refuge. She agrees to make a donation of \$500. The charity is very grateful and they advise Sally she will be acknowledged in their next newsletter. The charity may issue a donation receipt to Sally for \$500. The public acknowledgement of her generosity is not a material benefit.

Example 2 – Charity auction

52. Simon has purchased tickets to attend a dinner and charity auction to raise funds for a local community group supporting children in need. The community group qualifies as a donee organisation.

53. Before the auction night, the community group asks local people to contribute "prizes" that it can auction off to raise funds. **Clare, a local artist, donates a painting.** The painting would ordinarily **sell at one of Clare's exhibitions for \$300.** The painting sells at the auction for \$500. Although Clare has donated the painting to the community group, she should not be given a donation receipt as she has not made a gift of money to a donee organisation.

54. On the night of the auction, after an enjoyable dinner, various donated items are sold by auction to the guests to raise funds for the charity. Simon bids on a signed rugby jersey. A similar jersey recently sold in an online auction for \$200. Simon is keen to support the charity and so he bids \$800 for the signed jersey and wins the auction. Although Simon may have purchased the jersey for well in excess of the recent online auction price, no amount of the purchase price he paid is a gift. The charity should not issue a donation receipt to Simon.

Example 3 – Supporter package for dramatic society

55. Bruce loves going to the theatre and he likes to support his local dramatic society, which is a donee organisation. To help with its funding, the society offers a variety of supporter packages for different levels of financial support. A supporter makes

a specified **cash "donation" and** in return receives the package of benefits associated with that level of payment. This year Bruce selects a Silver package for \$150. The benefits of the Silver Package include two tickets, an opportunity for a **private "behind the scenes"** visit before a performance, and acknowledgement as a Silver supporter in **the next season's programme**.

56. **No amount of Bruce's \$150 payment** is a gift. The dramatic society has sold Bruce a package that he has purchased for an agreed amount. While Bruce has voluntarily purchased the package, knowing it will help the society, he has not made a gift because he obtains material benefits in return for the payment (the tickets are a material benefit). The dramatic society should not issue a donation receipt to Bruce.

Example 4 – Supporter package for performing arts centre

57. The Pohutukawha Performing Arts Centre, a donee organisation, decides to offer its patrons a new range of supporter packages. Patrons who purchase performance tickets are given the option of making a donation at different levels – Crimson (\$100), Silver (\$250), Gold (\$1,000) and Platinum (>\$1,000). Sylvia chooses to become a Crimson supporter. Sylvia purchases two performance tickets and makes a donation of \$100. In return for her donation Sylvia will be **acknowledged as a Crimson supporter in the next season's programme and she** will be invited to meet the cast of the current production.
58. In this case, there are two separately identifiable amounts paid to the donee organisation, the ticket price and the \$100 donation by Sylvia to become a Crimson supporter. The \$100 donation is a gift because Sylvia has voluntarily chosen to make the donation, and while she does receive benefits in return, they are not material benefits. The public recognition of an individual supporter by a donee organisation is not a material benefit. The invitation to meet the cast, while exciting for Sylvia, in this case has no objectively ascertainable value, as the cast do not usually meet the public and so do not ordinarily charge for the opportunity. The tickets were purchased separately and were not provided in return for the donation. The centre may issue Sylvia a donation receipt for \$100.

Example 5 – Hospice afternoon tea

59. Matt makes regular donations to the hospice, which is a donee organisation. In recognition of his on-going support and generosity (and to keep him engaged with the organisation), the hospice invites Matt to a **"Friends of the Hospice" afternoon tea** where the hospice takes the opportunity to thank all its regular donors and explain its plans for the coming year.
60. The afternoon tea was not planned when Matt made his donations and was not part of any package offered to Matt by the hospice to encourage him to make donations. It is a stewardship activity. The invitation to the afternoon tea does not stop the payments Matt has made (and hopefully will continue to make) from being gifts. The benefit of the afternoon tea is not in return for the payments Matt makes to the hospice.

Example 6 – Christmas cards and donation

61. Felicity received a letter from a donee organisation, which is also a registered charity, offering her the opportunity to purchase a pack of 10 hand-painted Christmas cards for \$20. On the order form, Felicity could also choose to add a donation. She chose to purchase one pack of cards and to make a donation of \$30. She sent the card order away with her credit card details authorising a payment of \$50.

62. The charity then sent her the ordered cards and a donation receipt for \$30. This is **correct**. **Felicity's \$50 payment** comprised two separately identifiable amounts paid to the charity - \$20 to purchase the cards and the \$30 donation. The donation portion was made voluntarily, and Felicity sought no material advantage in return for making the additional payment. The cards Felicity obtained were not conditional on her payment of the additional \$30.

Example 7 – Friend of the Surf Lifesaving Club

63. Hoani is an active member of his local surf lifesaving club, which is a donee organisation. **As a way for members to contribute to the club's financial wellbeing**, the club offers members the option of becoming Friends of the Surf Club by making a donation of \$500 or more. By being a Friend of the Surf Club, Hoani is not entitled to any special benefits beyond being named on the Friends board in the clubrooms and receiving a Friend bumper sticker for his car. Hoani donates \$500 to the surf lifesaving club. The club may issue Hoani with a donation receipt. This is because he receives no material benefit in return for his payment. Being named on the Friends board is not a material benefit and therefore will not prevent the payment from being a gift. The benefit of the bumper sticker is insignificant, both in its own right and in comparison to **Hoani's** payment, so it may be overlooked.

Example 8 – Payments to a Local Football Club

64. Jill's two children are junior members of the local football club, which is a community-focused sports club that qualifies as a donee organisation. Jill pays membership fees to the club for her two children, with membership giving her children the entitlement to train and play in their respective age-group football teams. The club has also recently been fundraising for five new sets of goals for the club's 30 junior teams, and Jill makes a \$100 donation to the club as part of this fundraising.

65. The membership fees paid by Jill are not gifts, and they are not "subscriptions" that qualify as gifts because junior membership rights are provided in return for the fees. However, the club may issue Jill with a donation receipt for her \$100 donation.

66. In this case, the fact that Jill's children, as junior members of the club, may benefit from the club's fundraising activities does not disqualify her payment from being a gift. This is because any benefit or advantage in this context is too remote and therefore is not in return for Jill's payment to the club.

References

Subject references

Charitable or other public benefit gift

Gift

Tax credits

Legislative references

Income Tax Act 2007, ss LD 1 to LD 3, YA 1
(definition of "charitable or other public benefit gift")

Tax Administration Act 1994, s 41A

Cases cited

Coleman v The Queen (2010) TCC 109, DTC 1,096

FCT v McPhail (1968) 117 CLR 111 (HCA)

Klopper v FCT (1997) 97 ATC 4,179 (FCA)

Leary v FCT (1980) 80 ATC 4,438 (FCA)

Mills v Dowdall [1983] NZLR 154 (CA)

The Queen v Friedberg (1991) 92 DTC 6,031 (FCA
Canada)

The Queen v Zandstra [1974] 2 FC 254