

25 February 2011

Open letter to:

Rt Hon John Key  
Prime Minister  
Parliament Buildings

Hon Peter Dunne  
Minister of Revenue  
Parliament Buildings

Bob Russell  
Commissioner of Inland  
Revenue

Via email: [john.key@parliament.govt.nz](mailto:john.key@parliament.govt.nz) [peter.dunne@parliament.govt.nz](mailto:peter.dunne@parliament.govt.nz) [bob.russell@ird.govt.nz](mailto:bob.russell@ird.govt.nz)

*This letter also published on our website, with an invitation to interested parties to endorse our recommendations.*

Dear Sirs

## **Donations rebate – urgent income tax amendment**

We recommend and request urgent amendment to section LD 3(1) of the Income Tax Act 2007 to define a “charitable or other public benefit gift” as being:

- (as currently defined) a gift of \$5 or more.....
- (to include) “or verifiable money’s worth”

## **Comment**

In response to recent disasters and in particular the September 2010 and February 2011 Christchurch earthquakes, many individuals and organisations have made donations of goods and services as opposed to cash.

Where the donor has expertise in their field and such goods or services are urgently required, this may in fact be more efficient than donating cash.

The definition of “charitable or other public benefit gift” is currently considered by IRD and others to mean money, and in particular not “money’s worth”. On this basis there may be no tax deduction for the donation.

A company or individual could potentially structure round the restriction to donations of cash by:

- Selling their products or services to a registered charity at cost, or even market value
- Donating the proceeds back to the same charity

This would achieve the same outcome but in a somewhat contrived way.

Our concern (shared by a number of our clients) is that IRD could be placed in an awkward position with the obvious bad publicity that would ensue, should they find themselves having to deny a tax deduction to those businesses who have voluntarily put their hands up to help by donating stocks or equivalent in a form other than cash, or alternatively who have structured round the 'cash' limitation in the way noted above.

### **Our recommendation**

We recommend that the legislation be amended to define a charitable or other public benefit gift as a gift of \$5 or more...or the equivalent value donation of goods or services, provided that gift has that has a defined asset cost or book value in a tax registered entity, or otherwise provable cost price.

In the meantime we recommend a public statement by the Minister of Revenue along the lines that

- such an amendment will be made
- with retrospective effect to (say) the September 2010 Christchurch earthquake (or such earlier time as the Government deems appropriate)
- pending such amendment, a taxpayer that sells goods and services to a charity and then donates the proceeds back to the same charity will be entitled to the deduction or rebate as appropriate

Further background is set out in the attached appendix.

We look forward to your favourable responses.

Yours sincerely

**Jeff Owens**  
Director

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## **APPENDIX 1 - Detailed analysis**

### **Nature of gifts**

There is no doubt that many gifts will be of money, indeed charities often prefer money to goods.

See for example

[www.voxy.co.nz/national/plea-give-money-not-donated-goods/5/83145](http://www.voxy.co.nz/national/plea-give-money-not-donated-goods/5/83145)

Generous-hearted Southlanders are being urged to give money to the official earthquake appeal rather than give goods.

Emergency Management Southland has issued a plea to those organising local appeals, trying to forestall the collection of blankets, clothes, children's toys and the like.

"People have the best of intentions - they really want to do something practical to help Christchurch - but we know from past experience that collecting up second hand goods only causes problems and it doesn't get to the people who are in need of help,"

However in some cases a company may be in a good position to donate significant value in goods, such as building materials, prefab buildings, machinery, water, and household essentials etc, or vouchers for same.

By way of recent example, many such donations have been made in response to both the September 2010 and February 2011 Christchurch earthquakes.

### **Legislation**

#### **Income Tax Act 2007 Part LD**

##### **LD 1(1) AMOUNT OF CREDIT**

A person who makes a charitable or other public benefit gift in a tax year and who meets the requirements of section 41A of the Tax Administration Act 1994 has a tax credit for the tax year equal to the amount calculated using the formula in subsection (2).

##### **LD 1(2) FORMULA**

The formula referred to in subsection (1) is—

total gifts × 33 $\frac{1}{3}$ %.

### **LD 3(1) MEANING**

For the purposes of this subpart, a charitable or other public benefit gift—

(a) means a gift of \$5 or more that is paid to a society, institution, association, organisation, trust, or fund, described in subsection (2) or listed in schedule 32 (Recipients of charitable or other public benefit gifts):

(b) includes a subscription paid to a society, institution, association, organisation, trust, or fund, only if the subscription does not confer any rights arising from membership in that or any other society, institution, association, organisation, trust, or fund:

(c) does not include a testamentary gift.

#### **Our comment:**

The words ‘a gift of \$5 or more’, on the plain meaning, would appear to contemplate a gift of money, as opposed to money’s worth.

### **IRD commentary in relation to donated goods**

The only comment by IRD in relation to donated goods appears to be in relation to the previous donations rebate legislation:

IRD Tax Information Bulletin volume 4 no 4, November 1992

**Section 56A – Rebate in Respect of Gifts of Money and Payment of School Fees:** A taxpayer donated some books to a city library and asked whether this could be treated as a donation for the purposes of the donations rebate...

IRD stated: A taxpayer can only claim a rebate under section 56A for a "gift of money"; s/he cannot claim a rebate for donated goods or property.

### **Other commentary**

In respect of a donations rebate (claimed by a natural person), CCH comments that:

A taxpayer can only claim a rebate under s KC 5(1) for a “gift of money”. This means that a rebate cannot be claimed for donated goods or property. For example, a rebate cannot be claimed for books donated to a city library.

CCH income tax law and practice at ¶661-700 Charitable donations