

29 July 2016

Chief Tax Counsel
Inland Revenue

Via email: PublicConsultation@ird.govt.nz

Submission on: IRRUIP9: Donee organisations – clarifying when funds are applied wholly or mainly to specified purposes within New Zealand

Made to the: Public Rulings Unit, Office of the Chief Tax Counsel, Inland Revenue

From the: Arts Council of New Zealand Toi Aotearoa (Creative New Zealand)

1. Creative New Zealand welcomes the opportunity to consider and make submissions on Inland Revenue's issues paper **IRRUIP9: Donee organisations – clarifying when funds are applied wholly or mainly to specified purposes within New Zealand**.
2. The key contact person for matters relating to this submission is:
Name: David Pannett
Title: Senior Manager, Planning, Performance and Stakeholder Relations
Email: david.pannett@creativenz.govt.nz
Phone: 04 473 0772 (DDI)

Submission

3. Creative New Zealand has concerns about the likely effects of changing the interpretation of aspects of section LD 3(2)(a) in the Income Tax Act 2007 (herein the Act). It's not immediately clear to us the extent to which the proposed ruling will affect the arts sector. We are aware though of a number of charitable organisations which provide opportunities for New Zealand artists to travel, perform and study overseas for periods of time.

'Wholly or mainly'

4. One of our principal concerns is how Inland Revenue proposes to interpret the phrase '*funds are applied wholly or mainly to charitable, benevolent, philanthropic, or cultural purposes within New Zealand*', in the context of donee organisations who help promote New Zealand's arts and artists internationally.
5. We note the argument that *wholly or mainly* most likely means more than 51 percent (as it is currently interpreted). However, it's our belief that that the proposed 90 percent safe-harbour level is unreasonable and that the level shouldn't be set any higher than 75 percent. We think at 75 percent the level could still be fairly described as *mainly*.
6. In any event, Inland Revenue's ultimate guidance on this matter will need to clearly explain why and how the level chosen was reached, and what the practical implications of this are. The

method for measuring the level will also need to be plain and straight-forward, so that donee organisations can easily meet their obligations. We note that Chartered Accountants Australia and New Zealand's submission to you on the issues paper states: '[W]e consider the suggested method is unnecessarily complex and will be difficult to apply; especially for smaller charitable organisations.'

Application of funds

7. The issues paper also confirms that applying funds to specified purposes within New Zealand does not limit an organisation to just spending funds within New Zealand. We support this approach, and the clarification provided here is useful. Donee organisations' support for New Zealand artists to travel, study or reside overseas for a period of time is of vital importance for the arts sector.
8. We also support the view that accumulating funds, so as to apply these at some future point, is a legitimate action for a donee organisation to take.

Schedule 32 listing

9. Our initial thinking on reading the issues paper was that the 'wholly or mainly' issue might be able to be effectively sidestepped by an arts organisation, if it could make a fair case to be listed on Schedule 32 of the Act.
10. However, on a closer read, the criteria for inclusion is quite restrictive and relates to organisations which principally apply their funds to:
 - the relief of poverty, hunger, sickness or the ravages of war or natural disaster
 - the economy of developing countries (recognised as such by the United Nations)
 - raising the educational standards of a developing country.
11. We encourage Inland Revenue to undertake policy work to look at whether these purposes should be widened, particularly to include promotion abroad of New Zealand arts and culture.

Building a culture of giving

12. More generally, we are concerned about the cumulative effect of both this and Inland Revenue's earlier paper, *PUB00190: Income Tax – Donee Organisations and Gifts*. In our submission on that paper, we stated: 'In a difficult fiscal environment, where government is doing all it can to encourage private support for the arts, determinations which complicate seeking that support are problematic.'
13. We are naturally concerned that while Inland Revenue taking a conservative approach on these matters may help clarify the rules, it may also produce disincentives towards private giving. This runs counter to Government policy around boosting a culture of giving in New Zealand and encouraging New Zealanders to make philanthropic contributions to the arts. We urge Inland Revenue to consider the wider implications of its decision-making in this area and suggest officials meet with the Ministry for Culture and Heritage to discuss these matters further.

Other comments

14. We recommend that the guidance on this matter include an illustrative set of examples throughout, which are of relevance to the arts sector. Including these examples would be

particularly useful for readers in helping them decipher and understand quite a complex policy and operational area.

15. We also ask that a reasonably generous transitional period be put in place, should change occur, so that affected donee organisations have sufficient time to adjust. Many charitable entities in the arts sector are small organisations with limited resources, and need longer lead-times to implement changes like this.
16. The arts sector is also likely to require further assistance or advice on these matters, which can best be given by Inland Revenue. We encourage you to provide all assistance possible to enable organisations to comply, and we know that the arts sector would very much appreciate your strong support.

Background on Creative New Zealand

17. Creative New Zealand is Aotearoa's national arts development agency, developing, investing in and advocating for the arts. We are an autonomous Crown entity, continued under the Arts Council of New Zealand Toi Aotearoa Act 2014. We receive our funding through Vote: Arts, Culture and Heritage, and the New Zealand Lottery Grants Board. In 2015/16, we invested over \$43.6 million in the arts sector nationally.
18. Creative New Zealand's Strategic Plan 2013–16, Te Mahere Rautaki 2013–16, identifies the four outcomes we are seeking to achieve on behalf of all New Zealanders:
 - New Zealanders participate in the arts
 - high-quality New Zealand art is developed
 - New Zealanders experience high-quality arts
 - New Zealand arts gain international success.
19. Creative New Zealand contributes to achieving these outcomes by delivering programmes in the following areas:
 - funding for artists, practitioners and organisations
 - capability building for artists, practitioners and organisations
 - advocacy for the arts.

Thank you again for the opportunity to comment, and please don't hesitate to contact me if you wish to discuss this submission further.

Ngā mihi nui



David Pannett
Senior Manager, Planning, Performance and Stakeholder Relations