



# Taxation issues for charities and not-for-profit organisations

26 February 2015

# Outline

- Deregistered charities
  - Annual returns
  - Sports
  - Social housing
  - Advocacy
  - The *National Council of Women* litigation
- New tax rules
- Donee status and donations

# Deregistered charities

- **Background context**

“The establishment of the Charities Commission will significantly improve the current framework under which charities operate. It will provide the Government, the sector and the public with more comprehensive information about the charitable sector....

...It should help to improve public trust and confidence in the charitable sector.

The establishment of the commission is not just about increasing the sector’s accountability to the public; it is also part of the Government’s wider strategy to strengthen its relationship with the community and voluntary sectors. While the commission will have a registration and monitoring role, it will also have a range of other functions that will allow it to be active in helping to build an effective and efficient charitable sector. That includes the ability to educate and assist organisations about management and governance issues, and the ability to make policy recommendations to the Government on its own motion...

Charities make an important contribution to the social well being of many New Zealanders, by providing valuable services that help to strengthen and support local communities. The Government recognises and values that work...

The passing of this Bill will help to ensure New Zealand’s charitable sector is able to operate effectively and efficiently to deliver necessary and important services for the betterment and benefit of our communities.”

- Hon Judith Tizard, Charities Bill 3R, (12 April 2005) 625 NZPD p19974

# Deregistered charities

- **Select committee rewrite:**
- National Party members of the Social Services Select Committee considering the Charities Bill 108-2, p20:

“The consultation process was inadequate with the original [charities] bill and we have major concerns that the redrafted sections of the bill should have been made available for a further period of sector wide consultation. We all know the devil is in the detail and if the bill gets it wrong, as the first draft definitely did the charitable sector will pay the price and we will see many charitable organisations close. There is the possibility that there are a number of structural issues in the bill remaining unaddressed and without a further period of consultation with the sector it is difficult to fully identify these.”

# Deregistered charities

- Post-implementation review agreed March 2010
- Cancelled November 2012
- Common goals – public trust and confidence in charities
- “Conversations”

# Annual returns

- 2,489 deregistered by November 2012
- New approach – 2 reminders
- At least 555 further deregistrations
- Must comply with new financial reporting rules from 1 April 2015
- Transparency the *quid pro quo*

# Sporting charities

- Swimming New Zealand
- Review of 1800 sporting bodies?

# Social housing charities

- Queenstown Lakes Community Housing Trust deregistered
- "Arbitrary"
- Government pays \$6m tax bill
- Amends the law – s CW 42B
- But: the "booby prize"



# Advocacy by charities

- Section 5(3) of the Charities Act
- Supreme Court decision in *Greenpeace*:
  - Majority: s 5(3) does not prevent the development of the underlying law on the definition of charitable purpose
  - Blanket political purposes exclusion unnecessary and unhelpful
  - Charitable and political purposes are not mutually exclusive – advocacy can be charitable
  - An object which entails advocacy “is just one facet of the public benefit test”
    - Public benefit - a question of fact, decided on the *evidence*

# The *National Council of Women* litigation

- Applied May 2008
- **Registered** June 2009 – identified for investigation (advocacy work – contracted by Government)
- **Deregistered** July 2010 (with effect from August 2010)
- Did not appeal under s 59 of the Charities Act
- Reapplied September 2012
  - “appeal on the record” – provide all evidence
- **Reregistered** April 2013
- Nothing changed!
- Consequences of deregistration
- Refused to backdate reregistration
  - Not registered August 2010 to September 2012
- IRD seeks to impose income tax
  - 3 tax years: 2011, 2012, 2013

# The *National Council of Women* litigation (cont'd)

- **Effective date proceedings** – backdate to date of deregistration under s20(2)(b) Charities Act
- **Tax challenge proceedings** – “tax charity” under sCW41(5)(b) Income Tax Act
- Outcome – registration backdated and tax refunded
- Section 61(4) Charities Act: power of the High Court to make “any order it thinks fit”
- The Charities Act is to be applied “to facilitate charitable works, not frustrate them” (at [53])

# New tax provisions for deregistered charities

- Income tax exemption and donee status until “day of final decision”
- Mechanical calculation rules
- Section HR 12:
  - *Distribute net assets to charitable purposes or in accordance with rules within 12 months of day of final decision or pay tax on the balance*

# What to do if a charity is about to be deregistered

- Notice of intention to decline
- Objections – ss33 and 34
- Section 35 – cannot proceed with the removal unless in the “public interest”
- Natural justice (but no oral hearing!)
- Evidence

# What to do if a charity is deregistered

- Appeal in time
- Appeal out of time
- Reapply
  - Potential for period of deregistration, unless s 61(4)
  - New charity registration number
- Remain non-registered?

# Donee status

## **LD 3 Meaning of charitable or other public benefit gift**

### ***Meaning***

(1) For the purposes of this subpart, a *charitable or other public benefit gift*—

(a) means a monetary **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):

...

### ***Description of organisations***

(2) The following are the entities referred to in subsection (1)(a):

(a) a society, institution, association, organisation, or trust that is not carried on for the private pecuniary profit of an individual, and **whose funds are applied wholly or mainly to charitable, benevolent, philanthropic, or cultural purposes within New Zealand:** ...

# Donee status

- NCWNZ – made a condition
- Not the same thing – no *requirement* for registration
- Self-assessment
- Push towards conflation
- What is a “gift”?





Questions?

[www.charitieslaw.co](http://www.charitieslaw.co)