

10 June 2026

## **THOUGHTS ON THE DONATIONS TAX CREDIT CAP**

Inland Revenue (“**IR**”) is concerned that donations tax credits are being misused for “aggressive tax planning”,<sup>1</sup> but we do not have a lot of visibility as to what exactly the nature of this misuse might be. IR points to arrangements where “donor-controlled” charities acquire goods or services from a donor on terms that would not normally exist between unrelated parties. However, it is not possible for a donor to “control” a charity lawfully, in the sense of directing it to act otherwise than in furtherance of its stated charitable purposes; in addition, a charity that is complying with its rules must be furthering its stated charitable purposes and cannot lawfully be providing unacceptable private pecuniary profit to anyone, as discussed further below.

IR also points to “circular arrangements”, where donors gift money to a charity they “control”, only for the charity to then reinvest the funds back into the donor’s business in return for only paper returns. However, a charity entering into such an arrangement must be able to demonstrate, if asked, how doing so was in the best interests of its charitable purposes; an inability to do so fundamentally represents a breach of fiduciary duty. Acting in breach of fiduciary duty is “unlawful”, which constitutes “serious wrongdoing” as that term is defined in the Charities Act 2005. Serious wrongdoing is grounds for Charities Services to take a range of actions, including deregistering the charity,<sup>2</sup> and/or banning people from being officers of a registered charity for up to 5 years.<sup>3</sup>

The real issue appears to be accumulations: IR points to donor-controlled charities (an oxymoron, as discussed above) that “accumulate most or all” of their funds and make “no or very minimal charitable distributions”, arguing that this results in a “significant lag” between the time of tax “concessions” [sic] for the donor and the charity,<sup>4</sup> and the “time of the ultimate public benefit”.

### **Are accumulations inherently nefarious?**

The idea that accumulations are somehow inconsistent with public benefit can be traced back to at least 2018, and the work of the Tax Working Group | Te Awheawhe Tāke (“**the TWG**”). Although the terms of reference for the TWG were entirely silent on the topic of charities, the Group did consider issues relating to charities at one of its meetings. In advance of the 6 July 2018 meeting, officials prepared a background paper focused on what officials described as the two “most important tax policy matters for

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<sup>1</sup> See Inland Revenue | Te Tari Taake [Regulatory Impact Statement: Taxation and the not-for-profit sector: Changing donation tax credit policy settings](#) 12 May 2026 at [29].

<sup>2</sup> See Charities Act 2005, section 32(1)(e).

<sup>3</sup> See Charities Act 2005, section 36C.

<sup>4</sup> The characterisation of the tax privileges for charities as “concessions” is contested. See, for example, Austaxpolicy [Do businesses run by charities have a competitive advantage?](#) 17 November 2021.

not-for-profits”: private foundations and business income, concluding that “accumulations” were an “underlying issue for both”.<sup>5</sup>

At this meeting, the TWG concluded that the “default setting should be distribution”,<sup>6</sup> a finding which then flowed through to its interim and final reports.<sup>7</sup> However, perhaps reflecting the fact that issues relating to charities had received little more than one hour’s deliberation during the entire tenure of the TWG, issues relating to charities were identified as “matters requiring further work” and “kicked for touch” to the review of the Charities Act.<sup>8</sup>

That review put forward the option of isolating “fundraising charities” (defined essentially as private foundations and charities running businesses) for the purpose of requiring minimum distributions of 5% of their net assets every year.<sup>9</sup> However, in the face of strong opposition from submitters, this option was rejected,<sup>10</sup> and instead, charities’ annual return forms were amended in April 2024 to require larger charities to report the reasons for their accumulated funds.<sup>11</sup>

Somewhat ominously, the new forms also include the following question:

Is generating funds for, or making grants or donations to, other charities or organisations the main way your organisation/charity carries out its charitable purposes?

This question appears intended to dovetail in with the accumulating funds question to identify which charities with accumulated funds fall within the TWG categories of “private foundations and charities running businesses”, to build the case for somehow ensuring the “default setting is distribution”.

This concern is underscored by the fact that, following the review of the Charities Act, IR appears to have taken matters into its own hands.

### **A surprise “cap” on donations tax credits**

Throughout 2025, IR recommended a new category of “donor-controlled” charity for the purpose of imposing minimum distribution requirements and other very complex tax rules.<sup>12</sup> It is an enormous relief that these measures are not being progressed. The experience of other jurisdictions indicates that attempts to create bright-line rules in a fundamentally purposes and principles-based area of law are fraught with difficulty, not least because they fail to accommodate the diversity of ways in which people try to benefit other people, leading to a requirement for endless adjustment to fill gaps and address unintended consequences. Such a black letter approach in turn risks enlivening a culture of regulatory gaming, which only serves to invite into the charitable sector

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<sup>5</sup> Inland Revenue and the Treasury for the Tax Working Group [Charities and the not-for-profit sector: Background Paper for Session 13 of the Tax Working Group](#) 6 July 2018 at 2.

<sup>6</sup> Secretariat for the Tax Working Group [Minutes](#) 6 July 2018 at 4 - 5.

<sup>7</sup> Tax Working Group [Future of Tax: Interim Report](#) 20 September 2018 at 23; Tax Working Group [Future of Tax: Final Report](#) 21 February 2019 at 103 - 104.

<sup>8</sup> See Secretariat for the Tax Working Group, 6 July 2018 [Agenda](#) at 1; Tax Working Group [Future of Tax: Interim Report](#) 20 September 2018 at 23; Tax Working Group [Future of Tax: Final Report](#) 21 February 2019 at 12 - 13, 103 - 104.

<sup>9</sup> Te Tari Taiwhenua | Internal Affairs [Charities accumulating funds](#) (initial policy paper) May 2021 at 1-3.

<sup>10</sup> Te Tari Taiwhenua | Internal Affairs [Regulatory Impact Statement: Modernising the Charities Act](#) (Report, 19 October 2021) at 36.

<sup>11</sup> Minister for the Community and Voluntary Sector press release [Charities Act changes to benefit NZ communities](#) 2 June 2022.

<sup>12</sup> See Inland Revenue | Te Tari Taake [Taxation and the not-for-profit sector](#) February 2025, chapter 3 and Inland Revenue | Te Tari Taake [Taxation and the not-for-profit sector: Targeted consultation on detailed design](#) November 2025

those who would do harm, while pushing away those with genuine charitable intent. Minimum distribution requirements also tend to act as a *target*, which can paradoxically *create* a culture of hoarding (the very thing they purport to address). Creating complex new tax rules would be particularly problematic because New Zealand specifically *removed* the function of administering charities law from the tax authority when the Charities Act was passed in 2005.

Kudos to the Government for having the presence of mind not to take New Zealand down this rabbit hole. However, the alternative solution of reinstating a “cap” on donations tax credits came as a surprise, not least because it was not properly consulted on before being included in the Budget Bill, and passing into law on 5 June 2026.<sup>13</sup>

Although a cap is considerably less complex than creating a new, inherently incoherent concept of “donor-controlled charities”, it is not the right solution for New Zealand. At no point, in the process to date, has the option of using existing tools to address any issues of concern been properly considered or even raised as an option for consultation.

### **Why not enforce the existing law?**

All registered charities are subject to important fiduciary duties: any registered charity should be aware that, as a condition of its registration, it may be called upon to demonstrate how any decision (for example to run a business, to purchase assets, to invest, to lend, to accumulate rather than spend, or whatever it might be) has been made in good faith in the best interests of its stated charitable purposes and otherwise in accordance with its rules and the general law.<sup>14</sup> Such questions are informed by the comprehensive information now made available by means of the charities register. Provided the charity can meet this minimum threshold, in principle, there is no difficulty,<sup>15</sup> no reason for the state to intervene, and no need for a “cap” on donations. Instead, the onus would fall to those who allege otherwise to demonstrate that the charity’s decision was or could not have been so made, if they wanted to take further action (such as deregistration, as discussed above). There are many examples of how effective an approach of simply “asking questions” can be.<sup>16</sup>

A key advantage of charities is that they are not subject to the dictates of the median voter, which can enable them to address issues on a longer-term basis than governments: accumulations may be essential for such public benefit to be achieved. Charities work best when they are free from undue government interference:<sup>17</sup> it is critical to respect the independence of charities, or we will lose that which makes them distinctive and valuable;<sup>18</sup> charities are independent, self-governing organisations best placed to determine for themselves how best to further their charitable purposes,

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<sup>13</sup> See [Taxation \(Budget Measures\) Act 2026](#).

<sup>14</sup> Inland Revenue Department [Tax and charities, a government discussion document on taxation issues relating to charities and non-profit bodies](#) June 2001 at [9.8].

<sup>15</sup> *Re The Foundation for Anti-Aging Research and The Foundation for Reversal of Solid State Hypothermia* (2016) 23 PRNZ 726 at [88].

<sup>16</sup> See, for example, M Sharpe [Low-profile charity criticised for low donation rate despite \\$111 million fund](#) Stuff 9 December 2022 and M Sharpe [Trustees gone from \\$131m charitable trust after 'modernisation process'](#) Stuff 17 October 2023.

<sup>17</sup> See, for example, section 3(d)(iii) of the Incorporated Societies Act 2022, which reflects the general principles relating to not-for-profit entities articulated in New Zealand Law Commission | Te Aka Matua o te Ture [A New Act for Incorporated Societies](#) (Report 129, 2013) at [1.10]–[1.12].

<sup>18</sup> See Lord Hodgson of Astley Abbots [Trusted and Independent: Giving charity back to charities – Review of the Charities Act](#) July 2012 at [3.15].

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including whether to accumulate or spend. The point is that not all accumulations are beyond the pale: a targeted approach is required.

An approach of clarifying and enforcing the fiduciary duties on a case by case basis would achieve this by working *with* the underlying law, rather than cutting across it: charities law already contains adequate protections, they simply need to be *used*. Working with the underlying law would provide clarity of mandate for Charities Services and IR, a clear basis for oversight of charities' activities and clear limits for regulatory intervention, without requiring blanket rules such as a "cap" on donations, or granular assessments of charities' activities, that risk excessive regulation, stifling of voluntary effort, and discouraging giving at a time when it is never more needed.

### **Fast law does not make good law**

The new cap takes effect on 1 April 2027, prior to which there is an intervening general election. We would like to see a proper discussion now take place about what problem is actually sought to be addressed, and whether using existing tools might in fact be the better way to address it. If you would like to join or support this conversation, please get in touch:

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