

18 March 2010

Gordon Copeland
C/o Interchurch Working Party
on Taxation
WELLINGTON

☒ via email

Dear Gordon

DONEE STATUS AND OVERSEAS PURPOSES

Summary

1. I refer to your letter of 17 February 2010. In that letter you raised two queries, both as to whether or not donations are eligible for a rebate. In particular, were the following so eligible:
 - (a) a donation to a parish specifically tagged for overseas mission work;
 - (b) a donation made to a missionary organisation into a fund set up by it for expenditure exclusively within New Zealand.
2. In my view, the first is **not** eligible for a tax receipt unless the organisation itself is eligible.
3. The second, although not entirely clear, can be assumed to be available for a rebate.
4. I propose setting out my reasons in more detail, first giving the appropriate statutory provisions applicable to both.

Statutory Provisions

5. The Income Tax Act allows a rebate for what is described as “*a charitable or other public benefit gift*”. That term is defined in section LD3(1) of which the key paragraph is paragraph (a) with the later paragraphs excluding membership subscriptions and testamentary gifts. Section LD3(1)(a) reads as follows:

Thorndon Chambers,
Level 6, 10 Customhouse Quay
PO Box 1530, Wellington 6140
Phone (04) 499 6040
Fax (04) 499 6118
Email ian.millard@chambers.co.nz

“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 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):”*

6. It can be seen that, in addition to having to be \$5 or more, the donation must be paid to an entity described in either subsection (2) or listed in Schedule 32. Subsection (2) has a generic description of various qualifying entities, all of which need to operate within New Zealand. I will come back to that shortly. Schedule 32 is a list of specific entities which provide aid overseas. As you have noted in your discussion paper, it does not include what can be described as proselytising religious agencies but does include various Christian aid organisations that are concentrated on providing aid as such, rather than spreading the gospel. It includes the likes of TEAR Fund, Caritas, The Leprosy Mission NZ and Christian World Service.
7. Turning to the generic description in subsection (2), the key provisions are paragraphs (a) and (c). They read as follows:

“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:*

...

(c) *a fund established and maintained exclusively for the purpose of providing money for any 1 or more of the purposes within New Zealand set out in paragraph (a), by a society, institution, association, organisation, or trust that is not carried on for the private pecuniary profit of an individual:”*

8. In relation to sLD(3)(2)(a) the requirement that a charitable entity apply its funds wholly or mainly for charitable purposes within New Zealand is satisfied if, but only if, a majority of its funds are so applied within New Zealand.

Payments to Parishes for Missions

9. I assume, for the purpose of this question, that the gift for overseas missions is **not** for one of the organisations listed in Schedule 32 of the Income Tax Act 2007. They qualify for a rebate in their own right
10. Where a payment is made to a parish specifically for overseas missions then, at one level, the gift for missions is paid to a parish. That parish will use its funds mainly within New Zealand.
11. However, this is taking a very literal meaning of the section. The reality is that the parish receives the money in trust for the designated missionary purpose. It is obliged to on pay that money to the relevant missionary organisation and cannot apply the payment towards its own, New Zealand purposes. On this basis, in my view, the money is not “paid” to the parish in the sense meant. Rather it is “paid” to the missionary organisation via the parish.
12. Leaving aside the next issue, if the gift was made direct to the missionary organisation for its overseas purposes it would not be eligible for a rebate. It ought not to make any difference that it is paid to the parish with the clear understanding and requirement that it will be paid to the missionary organisation and that the parish is merely acting as a conduit.
13. The position would be different if untagged payments were made to the parish with the knowledge that the parish was committed to giving a set percentage of its income (say 10%) to overseas missions.

Payment to Fund Set up by a Missionary Organisation for New Zealand Purposes

14. It can be seen that sLD3(2) draws a distinction between an entity whose funds are mainly applied for purposes within New Zealand and a “*fund*” whose purposes are exclusively providing money for one or more purposes within New Zealand that are charitable, etc. This distinction is clearly intended to allow organisations that are mainly for overseas charitable purposes to set up a separate fund that can receive money for purposes exclusively within New Zealand.
15. However, those purposes still need to be “*charitable, benevolent, philanthropic or cultural purposes within New Zealand*”. Religious purposes within New Zealand are prima facie charitable.
16. On this basis an organisation like the Bible Society could set up a separate fund for the promotion of bible work within New Zealand that would clearly be within sLD3(2)(c), even if most of the money received by the Bible Society was sent offshore.

17. More difficult would be a missionary organisation such as CMS. It will spend most of its money offshore, but, nevertheless, will have significant New Zealand expenses. These will include home leave payments to missionaries when they are back from the offshore mission field, the home office staff and the money CMS spends promoting overseas missions within New Zealand. Would a gift to a fund set up for this exclusively New Zealand expenditure qualify for a rebate?
18. It is arguable that it is sufficient that the money is spent within New Zealand. Paragraph (c) requires that the fund have the purpose of exclusively providing money for charitable purposes within New Zealand. That is, the “*within New Zealand*” qualifies the provision of money (i.e., the expenditure) rather than requiring the charitable purpose to be exclusively within New Zealand. Such a test has the advantage of simplicity - is the money spent wholly in New Zealand? It also helps to make sense of the distinction between an **organisation** that applies a **majority** of its funds within New Zealand and a **fund** that has to provide **all** its funds in New Zealand. There is little alternative justification for the more stringent exclusivity requirement.
19. Moreover, otherwise problems will arise if the charitable purpose within New Zealand also has overseas benefits. To come back to the Bible Society example, the provision of bibles within New Zealand probably also has benefits overseas in terms of:
 - (a) Those who are inspired to serve overseas;
 - (b) Those who are encouraged to give to overseas missions (including organisations in Schedule 23);
 - (c) Overseas persons who may thereby receive a bible.
20. However, there is a risk such an argument will not be accepted which would mean that the purposes must still be charitable purposes exclusively in New Zealand. In case it is relevant I will consider this alternative approach.
21. It has been held that the provision of retirement benefits for missionaries is charitable – see *Re Mylne, Potter v Dow* [1941] Ch 204. So also was the provision cottages for missionaries – see in *Re White’s Will Trust* [1955] 1 Ch 188. That, however, begs the question as to whether or not, in our context, it was for a charitable purpose within New Zealand when the purpose of providing for missionaries when they retire or come back from the mission field is more to encourage people to offer to work on the mission field.
22. However, I believe there is a reasonable case for saying that it is, nevertheless, a charitable purpose within New Zealand to spend money in New Zealand that has the effect of promoting and encouraging mission service overseas. I say this for the following reasons:
 - (a) The advancement of religion is, prima facie, charitable. It advances religion in New Zealand to have an outward looking faith that seeks to serve others wherever they are situated;

- (b) More generally, to encourage people to be philanthropic for such purposes must itself have a charitable basis. That is, getting people to look beyond their local parochial horizons in a philanthropic way is desirable;
- (c) Missionaries are not well paid and, therefore, to provide relief for them when they are in New Zealand has some elements of relief of poverty;
- (d) The whole structure of para (c) when compared with para (a) in sLD3(2) is that it recognises that a charity may have purposes that mean that more than half its funds are spent overseas but nevertheless can have charitable purposes in New Zealand as well which, by implicit definition, are associated with the overseas charitable work.

Yours sincerely

A handwritten signature in black ink that reads "Ian Millard". The signature is written in a cursive style with a long, sweeping underline that extends to the right.

Ian Millard

