

24 February 2016

Chief Tax Counsel
Inland Revenue
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Via email: PublicConsultation@ird.govt.nz

Submission on: PUB00190: Income Tax – Donee Organisations and Gifts
From the: Arts Council of New Zealand Toi Aotearoa (Creative New Zealand)

1. Creative New Zealand welcomes the opportunity to make a submission on **PUB00190: Income Tax – Donee Organisations and Gifts**.
2. The key contact person for matters arising from this submission is:

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Submission

3. Creative New Zealand has concerns about the proposed response to the Question We've Been Asked, 'When may a donee organisation issue a donation receipt to a supporter so the supporter is able to claim a donation tax credit?'. We understand that a Question We've Been Asked is designed to provide guidance to taxpayers about how Inland Revenue approaches particular situations, the tax implications of which are not otherwise necessarily clear.
4. Given the lateness in this consultation coming to our attention, and the relatively short extension granted, we haven't been in a position to seek full feedback from the arts sector. We have however alerted key organisations and the broader arts community to the consultation, outlined our own position and sought their support. Sixty-one individuals and arts organisations from around New Zealand have endorsed this submission, as listed on pages 3 and 4.
5. While the draft response does usefully set out the relevant case law principles, those principles refer to donors 'seeking' benefits in return for a donation. This implies that the benefits which might accrue are actively influencing donors' decisions to provide donations. We are not convinced that this will always be the case. We consider that benefits that are not an inducement to donate (which may include benefits unknown at the time of the donation) should not be counted.

6. The draft response later goes on to talk about seeking and *obtaining* (paragraph 37). Again, it's not clear whether the benefits offered by means of thanks for a donation will always be taken advantage of by the donor (eg, an offered benefit of discounted ticket prices will only accrue if the donor actually purchases tickets, and the ultimate materiality would differ greatly depending on the number of tickets purchased).
7. There is also useful distinction to be drawn here between 'benefits' and the concept of stewardship, this being the method of keeping donors connected to the organisation through relationship development. Stewardship activities should be considered separately from material benefits; they are not suggested to the donor in advance, are not part of the 'agreement' and are often unplanned and based on opportunity. Good stewardship is a critical part of keeping year-on-year donations developing for arts organisations.
8. Despite the examples provided in the draft response, we believe it will be difficult for arts organisations to determine the materiality of benefits in many cases. We would encourage you to broaden the range of examples further, to try and make this task easier for those using the guidance. Also, it isn't clear whether further assistance or advice on individual donor/supporter schemes will be available from Inland Revenue, to assist with compliance. We know the arts sector would appreciate this.
9. As mentioned in our support of Te Papa's submission, we are particularly concerned around organisations not being able to apportion donations into a benefits component and a 'pure' donation. Not being able to apportion donations in this way may create an extra administrative burden on already stretched arts organisations, and might require two distinct transactions for compliance purposes. The draft response isn't clear on this point.
10. We encourage Inland Revenue to consider all practical ways of allowing a single payment to occur, and to make guidance on this clearer. Later on in the document, Example 6 suggests that if the two elements were clearly delineated within the one transaction (eg, separate lines for a benefits package and for a donation) then this would be acceptable, as opposed to a global donation of which only the non-benefits portion is tax deductible. The distinction seems to be quite artificial to us.
11. There may also be a flow-on effect to prospective donors, who may consider the process too cumbersome or difficult to engage with. This may even inhibit any donation being made at all. 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. Like Te Papa, we also ask that you consider ways in which Inland Revenue might encourage more people to donate through greater tax incentives, rather than overly complicating the donation process.

Background on Creative New Zealand

12. Creative New Zealand is New Zealand's arts development agency, responsible for delivering government support 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 2014/15, we invested over \$41.5 million in the arts sector nationally.
13. 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.

14. 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. Please do not hesitate to contact David Pannett (Senior Manager, Planning, Performance and Stakeholder Relations) or me if you wish to discuss this submission.

Yours sincerely



Stephen Wainwright
Chief Executive

This submission is supported by:

Artists Alliance
 Ashburton Gallery
 Auckland Art Gallery Foundation
 Auckland Art Gallery Toi o Tāmaki
 Auckland Philharmonia Orchestra
 Auckland Theatre Company
 Auckland University Press
 The Auckland Writers and Readers Charitable Trust
 The Basement Theatre
 BATS Theatre
 The Big Idea Charitable Trust
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 Circa Theatre
 City Gallery Wellington
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 Dame Jenny Gibbs
 Dunedin Public Art Gallery
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Everybody Cool Lives Here Trust
Footnote New Zealand Dance
Fortune Theatre
The Gap Filler Trust
JoAnne Heaphy
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New Zealand Society of Artists in Glass
The New Zealand String Quartet Trust
NZTrio Foundation
Objectspace
Orchestra Wellington
Performing Arts Network of New Zealand (Arts Market and Tour-Makers)
The Physics Room
Playmarket
Marcus Puentener
Q Theatre
Red Leap Theatre
Regional Facilities Auckland
Silo Theatre Trust
Shakespeare Globe Centre NZ
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