



# **Philanthropy New Zealand Conference**

## **Corporate Social Responsibility – The Tax Framework**

**19 March 2009**



BDO Spicers

# Corporate Social Responsibility

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- It is the purpose of a business to deliver an economic return to its owners
- No business manager is going to spend money on social responsibility issues unless it makes sense in the context of that business
- At 30% of profits, company tax is one of the bigger costs of doing business
- Part of the business challenge is therefore to make the SR spend in a tax effective manner

# Stages of tax efficiency

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- Make social responsibility payments from after-tax income
  - Not so clever
  - For every dollar earned, only 70 cents is available for the SR spend
- Make social responsibility payments from before-tax income
  - Better
  - Every dollar earned is delivered to the SR spend
- Don't pay any income tax
  - The ultimate
  - Needs specialised structures

# Option 1 - Payments from after-tax income

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- This happens when a payment is not allowed as a tax deduction
- Tax law allows a tax deduction under two circumstances
  - General principles where an amount of expenditure has a nexus with the income earning process
  - Under a specific provision of the Income Tax Act 2007
- General principles will not deliver a tax deduction for many kinds of SR spending because there is no nexus
- For every dollar earned, only 70 cents is available after tax for the SR spend

## Option 2 - Payments from before-tax income

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- Happens when the SR spend is tax deductible
- Challenge is to convert non-deductible expenditure into deductible
- Otherwise section DB 41 of the Income Tax Act 2007 specifically allows a company a deduction for certain types of gifts
- Must satisfy the definition of a “Charitable or other public benefit gift”
- May gift up to the amount of the company’s taxable income for the year

# Charitable or other public benefit gift

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- Means a gift of \$5 or more that is:
  - paid to a society, institution, association, trust or fund;
  - that is not carried on for private pecuniary gain of an individual; and
  - whose funds are applied wholly or mainly to charitable, benevolent, philanthropic, or cultural purposes
  - within New Zealand; or
  - An overseas operator listed in Schedule 32 (*section LD 3*)
- Must be in cash
- Recipient called an “approved donee”
- Go to IRD website for a full list

# Company giving

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- All companies qualify - prior to 1 April 2008 small “close” companies were not eligible
- Maximum gift is the taxable income of the company
- Prior to 1 April 2008 limited to 5% of the taxable income
- Claim is made in the company income tax return.
- Estimate prov tax to accelerate cash flow benefit
- This has tax planning opportunities when taken together with new Charities Rules
- Risk of gift duty being imposed over \$27,000

## Option 3 - Don't pay any tax

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- There is no need to worry about whether a payment meets the definition of “Charitable or other public benefit gift”
- ITA lists various types of orgs that are tax exempt:
  - Community trusts (CW 52)
  - Local Beautification Societies (CW 40)
  - Friendly Societies (CW 44)
  - Bodies promoting amateur games and sport (CW 46)
  - TAB and racing clubs (CW 47)
  - Tax Charities (CW 41 and CW 42)

# Tax Charity

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- Tax Charity is defined as trust, society, or institution registered as a charitable entity under the Charities Act 2005
- Prerequisite for access to Charitable Purposes Exemption in sections CW 41 and CW 42
- This is a subset of the wider set of entities receiving charitable or other public benefit gifts income

# Gift duty

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- The Estate and Gift Duties Act 1968 creates an exemption from gift duty for all gifts made to a “tax charity”
- It follows that any charitable or other public benefit gift in excess of \$27,000 is subject to gift duty if the recipient is NOT a tax charity
- Moral is that the SR spend is most tax effective to a donor when directed at a tax charity

# Tax treatment of gifts - update

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- From 1 April 2008 an individual may claim a refundable tax credit amounting to 33 1/3% of all charitable or other public benefit gifts
- Maximum amount of gift is the taxable income of the individual
- Used to be \$1,890 before 1 April 2008
- The IRD will refund this credit in cash upon filing the claim – it is not a part of the person's income tax return
- Claim form available on IRD website (IR 526)

# Payroll Giving

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- Still in Bill form
- Expected to be passed in June, implementation date uncertain but probably 1 April 2010
- Not binding on employers
- Another administrative burden on employers
- Delivers the refundable tax credit for gifts at the point of payment of wages

# Travis V Charities Commission

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- Judgement in the High Court on 3 December 2008
- First test case on what constitutes charitable purpose for the purposes of the Charities Act 2005
- Travis Trust was appealing against the CC refusal to register it as a charitable entity (ie a tax charity).
- The direct purpose of the trust was to provide stake money for a specific race at the Cambridge Jockey Club on the main day of the April meeting.
- Question was whether this fell within one of the four heads of charity

# Travis V Charities Commission

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- It was common ground that only the 4<sup>th</sup> head of charity applied ie “other purposes beneficial to the community”
- Trust argued the provision of the prize was to ensure the ongoing success of the club and the wider bloodstock industry and to provide leisure opportunities to a broad section of the general public
- The CC argued the purpose supported only a narrow sectional interest (ie the members of the Jockey Club) and one essentially private in nature

# Travis V Charities Commission

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- Court ruled in favour of the CC
- The purpose of the trust is to fund a race for the benefit of the Cambridge Jockey Club's race programme.
- Promotion of a horse race is not a charitable purpose of itself, nor is the promotion of horse racing in general
- Membership of the club is not open to the general public
- Even if promotion of a horse race were charitable, the membership of the Club is not a sufficiently large section of the public to satisfy the public benefit test

# Corporate Social Responsibility

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*That's all folks!*