
The History of Charitable Purpose Tax Concessions in New Zealand: Part 1*

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Just as taxpayers are required to meet their fiscal obligations or else face penalties, so too should those organisations with charitable purposes that benefit from fiscal privileges be required to demonstrate precisely how it is that they have benefitted the community through their activities, being activities that are both directly and indirectly subsidised by the taxpayer. Once charitable status has been granted, we need to go beyond the presumption of charitability to ensure that positive outcomes are being achieved as a consequence of the fiscal privileges available to charities. The nexus between charitable status and fiscal privilege is clear, for without the one the other does not follow. This is the first of a two-part article examining the history of the charitable purposes concession in New Zealand.

1.0 INTRODUCTION

In 1767, in *Jones v Williams* the Lord Chancellor defined charity as “a gift to general public use, which extends to the poor as well as to the rich.”¹ *Tudor* restated *Jones* in explaining that the Court of Chancery established “that a trust, in order to be charitable, must be of [a] public character, that is, it must be for the benefit of the community or an appreciably important section of the community.”² Luxton suggests that the concept of public benefit “has for centuries been inherent in the legal concept of charity, and indeed explains equity’s particular tenderness for charitable trusts.”³ Of the Statute of Elizabeth of 1601,⁴ Jones stated that “[p]ublic benefit was the key to the statute, and the relief of poverty its principle manifestation.”⁵ Further, Luxton states:⁶

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¹ *Jones v Williams* (1767) Amb 651 at 652.

² Jean Warburton, Debra Morris and NF Riddle *Tudor on Charities* (Sweet & Maxwell, London, 2003) at 7; see also Gareth H Jones *History of the Law of Charity 1532-1827* (Cambridge University Press, London, 1969) at 22-52.

³ Peter Luxton “Public benefit and charities: The impact of the Charities Bill on independent schools and private hospitals” (1 March 2006) Lancaster University Law School <www.lancs.ac.uk/fass/law> at 3.

⁴ Charitable Uses Act 1601 (UK) 43 Eliz I c 4.

⁵ Jones, above n 2, at 27. See also Jones, above n 2, footnote 3 at 27: “So, in *Fisher v Hill* (1612), Duke, 82, it was held that ‘where no use is mentioned or directed in a deed, it shall be decreed to the use of the poor’.”

⁶ Luxton, above n 3, at 6.

[t]he explanation for the dearth of explicit reference to public benefit before *Pemsel*⁷ seems to be that, until the end of the Victorian era, public benefit was implicit in the legal meaning of charity, so that a charitable purpose was necessarily a purpose for the public benefit.

The concept of charity as a public use is not, according to Jones, “a novel idea.”⁸ Sir Francis Moor(e), who, on the title page of the 1676 edition of Duke’s *The Law of Charitable Uses*, is described as a Member of the Parliament of 43 Elizabeth I, and “the penner” of the Statute of Elizabeth of 1601,⁹ emphasised in his *Reading* “that all charitable uses were ‘publique’ uses.”¹⁰ In 1740, Lord Hardwicke “echo[ed] Moore’s view in *Attorney-General v Pearce*,¹¹ [stating that] the epithet *publick* ‘was meant only by way of description’ of charity, ‘and not by way of distinguishing one charity from another ... It is the extensiveness which will constitute it a public [use]’.”¹² Then, “in 1767 Lord Camden¹³ defined a charitable gift as ‘a gift to general public use which extends to the poor as well as to the rich’” Jones notes that “[i]t is true that the reports of eighteenth-century charity cases are not, on the whole, characterised by comprehensiveness or lucidity; but the available evidence does lead to a tentative conclusion that uses which benefited the public were *ipso facto* deemed charitable.”¹⁴ However, in 1805 in *Morice v Bishop of Durham*,¹⁵ Lord Eldon “enshrined the preamble [to the Statute of Elizabeth of 1601] as the *fons et origo* of all charity, and the argument that ‘upon the authorities almost everything, from which the public derive benefit, may be considered a charity,’¹⁶ was conclusively rejected.”¹⁷ It was the concepts elucidated by Lord Eldon which Lord Macnaghten rested on in *Pemsel* in defining the “legal sense” of charity as comprising:¹⁸

four principal divisions ... : trusts for the relief of poverty; trusts for the advancement of education; trusts for the advancement of religion; and trusts for other purposes beneficial to the community, not falling under any of the preceding heads. The trusts last referred to are not the less charitable in the eye of the law, because incidentally they benefit the rich as well as the poor, as indeed, every charity that deserves the name must do either directly or indirectly.

In spite of the fact that *Pemsel* was also reported in *Reports of Tax Cases*¹⁹ (and in more detail than the Appeal Court report by including the interchanges between the parties) Lord Macnaghten had declared “[w]ith the policy of taxing charities I have nothing to do.”²⁰ However, prior to *Pemsel*, the courts were concerned with the

⁷ *Commissioners for Special Purposes of the Income Tax v Pemsel* [1891] AC 531.

⁸ Jones, above n 2, 121.

⁹ George Duke *The Law of Charitable Uses, revised and much enlarged, with many cases in law both ancient and modern, whereunto is now added the learned reading of Sr [sic] Francis Moor, Kt, methodically digested by George Duke, of the Inner Temple, Esq* (Twyford, 1676).

¹⁰ Jones, above n 2, at 121 citing Duke, above n 9, unpaginated.

¹¹ *Attorney General v Pearce* (1740) 2 Atk 87 at 88.

¹² Jones, above n 2, at 121.

¹³ *Jones v Williams* (1767) Amb 651 at 652, cited in Jones, above n 2, at 122.

¹⁴ Jones, above n 2, at 122.

¹⁵ *Morice v Bishop of Durham* (1805) 10 Vesey Junior 522.

¹⁶ *Morice v Bishop of Durham*, above n 15 at 523.

¹⁷ Jones, above n 2, at 122. Per Lord Eldon at 532: “There are four objects, within one of which all charity ... must fall: 1st, relief of the indigent; in various ways: money: provisions: education: medical assistance; &c.: 2dly, the advancement of learning: 3dly, the advancement of religion; and, 4thly, which is the most difficult, the advancement of objects of general public utility.”

¹⁸ *Commissioners for Special Purposes of the Income Tax v Pemsel*, above n 7, at 583.

¹⁹ *Commissioners for Special Purposes of the Income Tax v Pemsel* (1890-1898) 3 Reports of Tax Cases 53.

²⁰ *Commissioners for Special Purposes of the Income Tax v Pemsel*, above n 7, at 591.

fiscal impact of the exemption from income tax, as can be seen in *The Incorporation of Tailors in Glasgow v The Commissioners of Inland Revenue*.²¹ The introductory note to the case explained that:

[t]his was the third case decided under the new [Customs and Inland Revenue Act 1885], and is of importance, not only because of the considerable amount of Revenue which was involved in the test issue, but also because an approach was made for the first time within official record towards assigning a legal definition to the word “charitable” in connection with any Act passed for the purpose of raising revenue.

While, following *Pemsel*, the judiciary may not consider that charity cases before them are tax cases, the reality is that an entity that is adorned with the status of having charitable purposes automatically benefits from fiscal privileges, the primary privileges being an exemption from income tax and, in New Zealand, donee status.²² A rationale for such privileges is that the work of charitable organisations lessens the government of burden.²³ This concept is also found in parliamentary debate when, in 1885, Mr Holmes MP asked if the Government intended exempting “the property of benefit associations from taxation under the Property Act?”²⁴ This question, he explained, was being asked:²⁵

at the request of the Independent Order of Odd Fellows, at Christchurch ... [whose] sole object was to relieve the State and local bodies of the burden of poverty and suffering caused by want of forethought and thrift. It seemed absurd that these bodies, ... should be taxed on the very means which enabled them to carry out their object.

Relieving the Government of burden also surfaced in 1962 in the debate concerning the donations rebate that the National Government had proposed, when the Hon John Rae MP said that he believed that “if people are given a little incentive great things will be done privately, and fewer demands will fall on the Government’s plate.”²⁶ Mr Rae also considered that “a great deal of good will be done by private donations for all these worthy objectives.”²⁷

While indeed a great deal of good has been done, and continues to be done, through voluntary activity, the author is not aware of any in-depth studies that have attempted to measure whether there is a positive financial benefit to the government in that the cost of the fiscal privileges through income tax exemption and donee status is outweighed by the financial returns to the community through the provision of fiscal privileges to charitable organisations.²⁸

However, attempts have been made in North America to quantify the exemption from income tax with respect to “charitable” hospitals. A report in 1990 by the United States General Accounting Office (GAO) stated that:²⁹

²¹ *The Incorporation of Tailors in Glasgow v The Commissioners of Inland Revenue* (1883-1890) 2 Reports of Tax Cases 297.

²² Income Tax Act 2007, ss CW 41 and CW 42, sub-pt LD and sch 32.

²³ See, for example, Robert Louthian and Amy Henchy “Lessening the Burdens of Government” in Internal Revenue Service *Exempt Organizations Continuing Professional Education Text* (1993) <www.irs.gov>. See also Gino Dal Pont *Charity Law in Australia and New Zealand* (Oxford University Press, Melbourne, 2000) at 446-450.

²⁴ (14 July 1885) 51 NZPD 583.

²⁵ (14 July 1885) 51 NZPD 583. Mr Holmes was advised by Mr Stout MP that “the property was exempt now, and it was not proposed to interfere with it at all.”

²⁶ (11 July 1962) 330 NZPD 840.

²⁷ (11 July 1962) 330 NZPD 840.

²⁸ There may well be social benefits but this article focuses on the fiscal aspects of the concessions.

²⁹ General Accounting Office (GAO) *Nonprofit Hospitals: Better Standards Needed for Tax Exemption* (Report to the Chairman, Select Committee on Aging, House of Representatives, GAO/HRD-90-84, May 1990) <www.gao.gov> at 4. The states reviewed were: Iowa; Michigan; New York; California; and Florida.

Hospitals whose potential tax liability exceeded their uncompensated care expenses had proportionately higher net incomes than other hospitals in their state. Between 43 and 72 percent of the non-profit hospitals in [a review of] five states provided less charity care than what the General Accounting Office estimated as the value of their tax exemption.

The GAO noted that “[t]he amount of tax revenue lost as a result of excluding or exempting certain income from taxes can provide an indication of the relative cost of policies designed to achieve specified public goals.”³⁰ In order to estimate the forgone tax revenue, the GAO “applied the average effective tax rate of a sample of for-profit hospital corporations to the non-profits’ net incomes,”³¹ which provided an estimate of the hospitals’ estimated tax exemption value that was then compared to the uncompensated care provided, being a surrogate of the charitable activities of the hospitals. The GAO reported that:³²

In the five states [that were] reviewed, non-profit hospitals as a group provided more compensated care than the estimated value of their income tax liability. [However, a]bout 15 percent of non-profit hospitals ... provided uncompensated care that was less than the estimated value of the [median] tax exemption.

The value of the uncompensated care costs of the 15 per cent of hospitals, 102 in all, was calculated at USD 79 million, while the value of the median income tax exemption was USD 131 million, a difference of USD 52 million.³³

Such comparisons are not undertaken in New Zealand. In fact, there is an absurdity in that New Zealand’s district health boards are levied a capital charge at a rate of eight per cent of the greater of its actual or budgeted closing equity balance for the year.³⁴ The cash cost to the Canterbury District Health Board alone for the 2012 financial year was \$18.926 million (2011: \$15.428 million).³⁵ The operating surplus before the capital charge was \$15.012 million, which, after the capital charge expense of \$15.055 million, produced a deficit before impairment of property, plant and equipment (PPE) of \$43,000.³⁶ The absurdity is that the private charity hospital in Christchurch, St George’s Hospital, reported an operating surplus of \$6.5 million before proceeds from, and impairment expenses relating to, mediation, insurance and the Canterbury earthquakes of \$66.5 million, generating a net income tax exempt surplus of \$73 million.³⁷ Yet, St George’s Hospital provides no evidence in its annual report with respect to one key element of its charitable objects, which states that:³⁸

The Society was established for medical, religious and charitable objects and purposes within New Zealand only. Specifically, the Society was established:

- to apply any profits accruing from the activities or work of the Society to the furtherance of its charitable objects, *especially the altruistic nursing of the sick* or for such other purposes which accord with its charitable objects.

It is only since 2011 that the Hospital has been reporting “Payments to Philanthropic Causes” in its financial statements, of \$91,463 in 2012 (2011: \$157,967), which is only 0.21 per cent of its total group income of \$44

³⁰ At 26.

³¹ At 26.

³² At 26.

³³ At 27, Table 2.4.

³⁴ Canterbury District Health Board *Annual Report for the year ended 30 June 2012* (5 November 2012) Publications by Title <www.cdhb.govt.nz/communications/publications> at 56.

³⁵ At 44.

³⁶ At 41.

³⁷ St George’s Hospital Incorporated *Annual Report for the Year Ended 31 March 2012* (13 August 2012) Charities <www.charities.govt.nz> Charity registration number: CC27012.

³⁸ St George’s Hospital “The Society of St George’s Hospital Inc” About St Georges Hospital <www.stgeorges.org.nz/About%20St%20Georges%20Hospital/> (emphasis added).

million (2011: 0.39 per cent of \$41 million).³⁹ No detail regarding the nature of such payments is provided in the financial statements, such as whether the payments were to subsidise the cost of patient care, or were donations to external causes.

The remainder of this Part 1 of the article is as follows. Section 2 briefly considers the evolution of charitable purpose fiscal concessions in New Zealand, with section 3 examining the concession of exemption from income tax. Section 4 then considers developments in the income tax legislation, with sections 5 and 6 analysing the National Party's philosophy of self-reliance and the rationale for the donations concession. Section 7 briefly examines the reviews undertaken into the taxation of charities in New Zealand with section 8 concluding this part of the article.

2.0 THE EVOLUTION OF CHARITABLE PURPOSE FISCAL CONCESSIONS IN NEW ZEALAND

There are arguably two ways in which legislation in New Zealand evolved: through the transfer of ideas about taxation; and through the borrowing of ideas from other jurisdictions. This article does not allow for a detailed examination of the arguments proposed by Heagney⁴⁰ and Finn,⁴¹ whose doctoral theses suggest both forms of evolution.

2.1 Transfer

Heagney notes that Daunton has suggested that “the colonies of the British Empire imported their tax systems from home.”⁴² Using the theory of transfer, Heagney develops this concept further in his thesis (of relevance to this article), sch E to the British Income Tax Act 1842 and the Property Rate Ordinance 1844.⁴³ Heagney concludes that:⁴⁴

From the research undertaken, the three core hypotheses of the chapter [observation, direct communication and assimilation] are found to be highly plausible. First, there was a partial transfer to the colony of Schedule E of [the British Income Tax Act 1842 in 1843]. Second, Schedule E brought with it the accumulated knowledge, up to that time, on political economy. Third, this transference of political economy and public opinion laid the foundation for a uniquely New Zealand approach to fiscal policy, and the formation of public attitudes in regard to taxation.

However, sch E itself has no further relevance to this article as sch E, which was promulgated as a Property and Income Tax in the *New Zealand Gazette* on 27 September 1843, applied only to “New Zealand recipients of

³⁹ St George's Hospital Incorporated, above n 37, at 7. The amount for 2012 is for 11 months as the Hospital has changed its reporting period from April to March “so as to be coterminous with the year end of its associates” (see Note 23 at 15).

⁴⁰ Kevin John Heagney “The Genesis and Early Evolution of New Zealand Income Tax: An Examination of Governor Fitzroy's Experiments with Taxation, 1843-1845” (thesis presented in fulfilment of the requirements for the degree of Doctor of Philosophy in Economics, Massey University, 2009).

⁴¹ Jeremy Nigel Finn “The Inter-Colonial Element in Colonial Statute Law: An Enquiry into Aspects of the Legislation of the British Settlement Colonies 1790-1900” (thesis submitted in partial fulfilment of the requirements of the degree of Doctor of Philosophy in the Faculty of Law in the University of Canterbury, 1995).

⁴² Kevin Heagney “Australasian Taxation Schedule E: A Precursor of New Zealand's Institutional Framework?” (Discussion Paper 10.11, School of Economics and Finance, Massey University, August 2010) School of Economics and Finance, Massey University <<http://economics-finance.massey.ac.nz>>, citing Holger Nehring and Florian Schui “The Transfer of Ideas about Taxation since 1750” (Centre for Research in the Arts, Social Sciences and Humanities, Cambridge, 16-18 September 2005) at 3. The concept of the transfer of ideas about taxation was first proposed by Martin Daunton in *Trusting Leviathan: The Politics of Taxation in Britain 1799-1914* (Cambridge University Press, Cambridge, 2001).

⁴³ Heagney, above n 40, at ii.

⁴⁴ Heagney, above n 40, at 149.

income that was derived from public funds.”⁴⁵ Heagney’s discussion of sch E is nevertheless highly relevant from the point of view of an example of the transfer of a taxation principle from Britain to New Zealand.

2.2 Borrowing

Finn’s thesis took a different approach in his study of colonial statute law than that of Heagney’s “transfer” concepts, by considering “the [various factors] which shaped the development of the statute law of the British Settlement colonies in the nineteenth century ... especially those factors which encouraged colonies to look at developments in other colonies as a source of inspiration or precedent for legislation.”⁴⁶ Finn argues that “a statute may be considered derivative if it expresses a policy or procedure which is essentially similar to that adopted by a different or foreign legislative body at some earlier time,”⁴⁷ and that (in the context of his thesis) “a statute will be described as being the result of ‘borrowing’ from another colony if it is clear that significant elements of the statute are in whole, or in substantial part, taken in form and substance from the legislation of another colony”⁴⁸ – or, may the author respectfully suggests, another jurisdiction. One method described by Finn as a tool to identify borrowing is textual comparison, which:⁴⁹

if admitted to be a valid procedure, can also be useful in determining the course of transmission of a particular statute from one colony [or jurisdiction] to another. ... the presence or absence of amendments to the statute as first passed in any particular colony can give indications as to which version of the statute was under review at the time of enactment at later stages in other colonies [or jurisdictions].

Finn also observes that:⁵⁰

although direct evidence is scarce, it seems a fair inference that the inadequacy of some Attorneys-General encouraged the use of legislation drawn from other colonies – on the basis that it was safer to adopt the text of a statute which had been found to work well enough elsewhere than it was to try to draft an enactment from scratch.

3.0 CONCESSIONS IN NEW ZEALAND: EXEMPTION FROM INCOME TAX

The origin of concessions in legislation regarding the exemption from income tax provided to entities with charitable purposes dates to William Pitt the Younger and his Duties upon Income Act 1799 39 Geo III c 13, of which s 5 provided “[t]hat no corporation, fraternity, or society of persons established for charitable purposes only, shall be chargeable under this Act, in respect of the income of such corporation, fraternity, or society.”⁵¹ New Zealand, having been colonised by the English and annexed in 1840,⁵² the year in which the Te Tiriti o Waitangi was signed,⁵³ followed English legal and constitutional traditions and, in 1854, established a General Assembly comprising the Governor, the Legislative Council and the House of Representatives, following the

⁴⁵ Heagney, above n 40, at 115-117.

⁴⁶ Finn, above n 41, at iv and 2.

⁴⁷ Finn, above n 41, at 28.

⁴⁸ Finn, above n 41, at 28.

⁴⁹ Finn, above n 41, at 35.

⁵⁰ Finn, above n 41, at 130.

⁵¹ For a full discussion on the history of the charitable purposes exemption from income tax, see Michael J Gousmett “The Charitable Purposes Exemption from Income Tax: Pitt to Pemsel 1798-1891” (thesis submitted in partial fulfilment of the requirements for the Degree of Doctor of Philosophy in the University of Canterbury, 2009).

⁵² WH Oliver (ed) and BR Williams *The Oxford History of New Zealand* (Oxford University Press, Wellington, 1981) at 58.

⁵³ Robert Consedine and Joanna Consedine *Healing our History The Challenge of the Treaty of Waitangi* (Penguin Books, Auckland, 2001 and 2005) at app 2, 260.

passing of the New Zealand Constitution Act by the British Parliament on 30 June 1852.⁵⁴ In 1878, the first Land Tax Act was passed and, in that Act, concessions are to be found with respect to charitable activities.⁵⁵

3.1 Land Tax Act 1878

As with any form of taxation, the introduction of a land tax was not universally welcomed. Suggestions were made that “an income tax would be unpopular, and justly so.”⁵⁶ “Country Settler”, the author of a letter to *The New Zealand Herald*, concluded his letter with: “Therefore, I say, no Income Tax, no Property Tax, no Land Tax, until such times that we, the people, have been consulted in a fair and constitutional manner.”⁵⁷

Faced with a “financial crisis,” the Premier, Mr Peter Ballance, announced on 18 January 1877 “that fresh taxation would have to be faced up to next session. ... [Mr Ballance’s] opinion was that a land tax would be one of the fairest means of meeting the difficulty.”⁵⁸ However, “small proprietors should be exempt, *as they were already large contributors through the Customs to the revenue.*”⁵⁹ The Land Tax Bill, as reported in the newspapers of the day, provided for the exemption of certain lands from the tax, but there was no mention of a clause in the Bill with respect to charitable institutions.⁶⁰ Early in the debate on the Land Tax Bill in 1878, the Premier commented that:⁶¹

[i]t is said that we should have an ‘all-round’ tax – that is to say, that we should submit to a taxation similar to that which is in force in the United States, and that all our property ... should come under the ken of the tax-gatherer. ... I do not think we, in this country, are prepared to adopt the system simply because it prevails in America. Honourable members will own that a system which leads unnecessarily to fraud by placing the taxpayer in a position of being constantly tempted to misrepresent the value of his property is not a system of taxation that we should adopt in this country.

It was not only to America that our early politicians turned for inspiration. The Premier also quoted the “testimony of Mr Gladstone”, that:⁶²

[t]he machinery of the income tax, involving, as it necessarily does, to so large an extent the objectionable principle of self-assessment, in my opinion can never be satisfactory to the country. First, because self-assessment leads to grievous frauds upon the revenue, and renders the real inequality of the tax far greater than any of those among its inequalities which immediately strike the public eye and feelings; and secondly, because of the tendency to immorality, which is, I fear, essentially inherent in the nature of the operation.

On 3 September 1878, Robert Stout MP made some very interesting comments, which are all the more surprising in that he did not comment on exemptions from income tax for charitable entities in New Zealand, nor did he specifically refer to the charitable purpose income tax exemption contained in the Income Tax Act

⁵⁴ John E Martin *The House: New Zealand’s House of Representatives 1854-2004* (Dunmore Press Ltd, Palmerston North, 2004) at 11.

⁵⁵ Land Tax Act 1878.

⁵⁶ “Editorial” *Hawkes Bay Herald* vol XX, iss 3831 (25 January 1877) Papers Past <<http://paperspast.natlib.govt.nz>> at 2.

⁵⁷ Country Settler “Income, Property, and Land Tax” *The New Zealand Herald* vol XIV, iss 4942 (18 September 1877) Papers Past <<http://paperspast.natlib.govt.nz>> at 3.

⁵⁸ “Mr Ballance at Marton” *The Wanganui Herald* vol XI, iss 2829 (18 January 1877) Papers Past <<http://paperspast.natlib.govt.nz>> at 2.

⁵⁹ Above n 58 (emphasis added).

⁶⁰ “General Assembly” *The New Zealand Herald* vol XV, iss 5233 (24 August 1878) Papers Past <<http://papersast.natlib.govt.nz>> at 5.

⁶¹ (30 August 1878) 28 NZPD 607.

⁶² At 607.

1842 (UK) 5 & 6 Vict c 35.⁶³ In discussing the exemptions from the proposed land tax for improvements and realised personal property as contained in the Land Tax Bill, Mr Stout observed that:⁶⁴

Honourable members have said that the exemption is something new in taxation. They cannot have read much about taxation, or they would have seen that is incorrect. There is an exemption in the income tax in England, and all through the world exemptions are given.

Alfred Brandon MP objected to an exemption from the land tax for Māori, and asked:⁶⁵

If there is to be a land tax, is it right that there should be exemptions? Why should the largest landowners in the colony – the Natives – be exempt? Their land is as much enhanced in value by civilization and by the construction of public works as that of the Europeans; and this exemption is a double benefit to them, because they are relieved from the tax upon sugar and flour, which they use largely. I hold that the Natives should be made to bear their fair share of the burdens of the State. Then I would ask, where is the justice of the policy?

Edward McMinn MP objected to the exemption of land below the value of £500, exclaiming:⁶⁶

I cannot understand on what principle that exemption is founded. I voted against it, and wished it had been thrown out. If there had been an income and property tax I could understand an exemption clause; but, with merely a land tax I cannot see the slightest ground for the exemption, for the simple reason that a very wealthy man may not have more than £500 invested in land, and he will thus be exempt from the tax. In Committee there was a debate on a clause exempting land held by Maoris under Crown title. Under that clause the greater portion of land in the North Island will be exempted from taxation. *This could only be defended on the ground of expediency, and not on principles of equal justice.* It required the strong assurance of the honourable member for Waikato and several other very experienced members to induce me to vote for that clause. ... *I believed that the justice of this House would lead to exemptions being put on a fair, equitable basis. I am sorry to say that we have not seen anything of the kind.* We still have the exemption clauses left in the Bill; we still have the provisions regarding the rating of Maori land; and we have the unjust principle on which it is proposed to tax leasehold property. *I am sorry to say that the House has been tricked into this taxation.*

Sir George Grey would have none of that. Comparing how religious orders had been badly treated in the past in England, with their land and properties being taken and the nuns turned out being told, when they asked how, having nothing, they could support themselves, “Go spin, ye jades; go spin”,⁶⁷ Grey told the House that “[i]n the colony of New Zealand at the present moment there were living many Natives, and more now dead, who gave away large tracts of land for charitable and educational purposes. That was their Christianity; that was their civilisation.”⁶⁸

The Rt Hon George Waterhouse considered the exemptions:⁶⁹

... to be utterly vicious in principle ... if I have a hundred times more means than another man, it is right that I should pay a hundred times more taxation: but it is not a sufficient reason for the other man to be exempt altogether from the burden of taxation. ... The exemption is vicious in another respect – that it has a demoralising tendency upon the community. It is calculated to raise up a class in society whose interest and desire it will be *to throw the burden of taxation upon other shoulders, and to remove it entirely from themselves* ... For this reason I oppose entirely the principle of exemptions contained in this Bill.

⁶³ This is an Act for granting to Her Majesty duties on profits arising from property, professions, trades, and offices. See Gousmett, above n 51, ch 6 for his discussion on Gladstone’s challenge to the charitable purposes exemption from income tax.

⁶⁴ (3 September 1878) 29 NZPD 42.

⁶⁵ (10 September 1878) 29 NZPD 66.

⁶⁶ (3 October 1878) 29 NZPD 532 (emphasis added).

⁶⁷ (3 October 1878) 29 NZPD 541.

⁶⁸ (3 October 1878) 29 NZPD 541.

⁶⁹ (14 October 1878) 30 NZPD 759 (emphasis added).

However, Mr Waterhouse made no comment about an exemption for charitable purposes. When passed, the Land Tax Act 1878 contained exemptions for certain persons or activities, beginning with Māori, by providing that:⁷⁰

No land owned and occupied by aboriginal natives only shall be liable to land tax; but if such land has been leased to any person, or is occupied by any other person than the aboriginal owner, the tenant shall, for the purposes of this Act, be deemed to be the owner thereof, and shall be liable to land tax accordingly.

“Further exemptions” from the land tax, which contain what today would be recognised as a mix of charitable, philanthropic or benevolent activities, as well as being for the public good, were described as follows:⁷¹

- (1.) Land owned by any *religious body* as a site for a place of worship, and actually used as such;
- (2.) Land used as a site of or for any *public school* established by any Education Board under “The Education Act, 1877,” or which is or may become subject to inspection by an Inspector appointed under that Act, or as a site for any university or college or school incorporated by any Act or Ordinance;
- (3.) Land used or occupied for the purposes of a public cemetery;
- (4.) Land used and occupied as the site of a public library, athenaeum, or mechanics’ institute, or any public museum;
- (5.) Land occupied and used by any agricultural society or friendly society as a place of meeting only, and not for any other purpose;
- (6.) Land occupied and used by any Municipal Council, County Council, Road Board, River Board, or Harbour Board as a place of meeting only, and not for any other purpose;
- (7.) Land occupied and used as a site for *charitable institutions*;
- (8.) Lands reserved for public gardens, domains, or recreation, or other public reserves not occupied by a tenant.

The Land Tax Act 1878 did not use the phrase “charitable purposes”, unlike the Land Tax Act 1976 which defined “charitable purpose” as including “every charitable purpose, whether it relates to the relief of poverty, the advancement of education or religion, or any other matter beneficial to the community.”⁷² The list of exemptions for “certain classes of land” had also grown, from eight in 1878 to 13 in 1976, including at s 27(h):⁷³

- (h) [I]and owned by or in trust for any society or institution established exclusively for charitable purposes, and not carried on for the private pecuniary profit of any individual, if the land is used as a site for the purposes of that society or institution.

Evidence of how the Land and Income Tax Acts worked in New Zealand in the early 20th century can be seen in Cunningham and Cumming’s *Land and Income Tax Law and Practice*, which stated that with respect to s 57(c) of the Land and Income Tax Act 1917, “[I]and owned by or in trust for a separate institution under The Hospitals and Charitable Institutions Act 1909 were [sic] exempt.”⁷⁴ The institutions, defined as “separate institutions” and named in the Second Schedule to the Hospitals and Charitable Institutions Act 1909, were:

- Mercury Bay Hospital;
- Oamaru Hospital;

⁷⁰ Land Tax Act 1878, s 6.

⁷¹ Land Tax Act 1878, s 7 (emphasis added). On the third reading of the Bill, the Act was passed by a majority of 42:19 on 3 October 1878.

⁷² Land Tax Act 1976, s 2.

⁷³ Land Tax Act 1976, s 27.

⁷⁴ HA Cunningham and EJR Cumming *Land and Income Tax Law and Practice: An Exposition of the Law and Practice relating to Land Tax and Income Tax in New Zealand* (The Accountancy and Educational Publications Ltd, Wellington, 1946) at 24.

- Wellington Convalescent Home;
- Jubilee Institute for the Blind, Auckland;
- Reefton Ladies' Benevolent Society;
- St Andrew's Orphanage, Nelson;
- Wellington Society for Relief of the Aged Needy;
- Wellington Ladies' Christian Association.

The naming of the separate institutions in the legislation continued the practice of the first Hospitals and Charitable Institutions Act 1885 which, in its Second Schedule, listed 37 hospitals and 32 charitable institutions, the charitable institutions being separate institutions as defined in the Act, that is, "an institution as herein defined, which is separately incorporated under this Act, and has its own separate managers."⁷⁵ An "institution" was defined as:⁷⁶

Any hospital for the reception, relief, treatment, and cure of disease, and includes any public establishment instituted for the reception or relief of orphans, aged, infirm, incurable, or destitute persons, or established for any one or more of such objects, or the administration by any body or association of persons of charitable aid.

The incorporation of separate institutions was also governed by the Hospitals and Charitable Institutions Act 1885, which stated that:⁷⁷

any institution supported in whole or in part by the voluntary contributions of not less than one hundred persons, who shall have signified their intention to contribute and have contributed [in yearly sums of not less than five shillings an amount of not less than one hundred pounds to such institution, and who shall have paid one year's subscription in advance, or a donation in one sum of not less than ten pounds],⁷⁸ may be incorporated as hereinafter mentioned as a separate institution under this Act.

3.2 Companies Income Duty Bill 1878

In 1878, an unsuccessful attempt was made to introduce a Companies Income Duty Bill.⁷⁹ The Bill contained a clause that exempted the income of certain entities from the duty, as reported by *The New Zealand Herald*, that:⁸⁰

[n]o duty shall be payable under this Act in respect of the income of any company or association of a religious, educational, or charitable nature, nor in respect of the income of any duly registered friendly society, trade union, building society or any duly constituted savings bank.

3.3 Property Assessment Act 1879

The need for an income or property tax was first hinted at by the Premier, Sir George Grey, when, in January 1878, he was reported as having "given several broad hints as to the necessity of an income or property tax, but

⁷⁵ Hospitals and Charitable Institutions Act 1885, s 4. The Hospitals and Charitable Institutions Act 1885 repealed numerous Acts of the General Assembly, an Act of the Province of Wellington, and various Ordinances of the Provinces of Taranaki, Canterbury and Otago.

⁷⁶ Hospitals and Charitable Institutions Act 1885, s 4.

⁷⁷ Hospitals and Charitable Institutions Act 1885, s 42.

⁷⁸ Hospitals and Charitable Institutions Act 1885, s 38.

⁷⁹ "Companies' Income Duty Bill" *The New Zealand Herald* vol XV, iss 5233 (24 August 1878) Papers Past <<http://paperspast.natlib.govt.nz>> at 5.

⁸⁰ Above n 79. See also New Zealand Parliament, Bills Thrown Out, An Act to impose a Duty upon the net income of joint stock and other companies (1878).

[he] has not, so far, disclosed any definite decisions of the Cabinet regarding the subject.”⁸¹ In February 1878, the Colonial Treasurer, Major Atkinson, announced at a public meeting in New Plymouth that “the House had passed a resolution last session directing the Government to introduce a property tax [in 1879].”⁸²

Discussion on a property tax was initiated in the House by the Colonial Treasurer, Major Atkinson, on 17 November 1879 when he declared, in presenting his Financial Statement that:⁸³

[n]o taxation is pleasant, and a new tax is especially unpalatable – the more so if direct in its form; but it will, I think, be generally admitted that we have now reached a stage at which a property tax in some shape is unavoidable. The principle of a land tax has already been affirmed by this House, and there is much to be said for the policy of specially taxing unused land, held for speculative purposes. I shall therefore ask the House to impose a property tax [based] upon the American model, excluding incomes, and thereby to affirm the principle that realised wealth, in whatever form, shall bear its fair share of the burdens of the State. The Government, after careful consideration, have come to the conclusion that an income tax is not applicable to the existing circumstances of the colony. It is inquisitorial, and unavoidably open to great inequalities. The machinery, too, for levying such a tax must be elaborate and expensive, and far out of proportion to the revenue to be derived from it.

Thus, with his reference to “the American model” there is clear evidence of “borrowing” as discussed by Finn⁸⁴ in the statement made by the Colonial Treasurer.⁸⁵ Major Atkinson also stated, again with reference to the American model, that:⁸⁶

the Government will ask Parliament to merge the land tax in the property tax which we intend to introduce, thus including land in the same category as all other property, making it equally but not specially liable to general taxation. ... The principle of the American property tax is to tax everything a man possesses, including his income, after deducting all his outstanding liabilities.

If further evidence is required of borrowing, or transfer as proposed by Heagney,⁸⁷ then Mr Moss MP provides that when he declared:⁸⁸

We are told we are to have an American system of taxation. I have taken considerable pains to understand that system. It has always struck me as being worthy of study, because, while our English system of income tax was tried in America and speedily abolished, they have adopted a system of property tax which has become the recognised and habitual system throughout the States. ... [W]hen forty-five or fifty millions of people of intelligence – certainly as great as we have ourselves – when they deliberately adopt a system of taxation as the main system of the country, it is worth enquiring into, and likely to have some good.

Two days later, on 19 November, Mr Gisborne MP asked the Colonial Treasurer, “[t]o what specific American Act he referred, when in his Financial Statement he [had] asked the House to impose a property tax upon the American model?”, to which Major Atkinson replied that “he referred to the New York Statute of 1869.”⁸⁹ However, it appears that the reference to 1869 in the *New Zealand Parliamentary Debates* (NZPD) is

⁸¹ “Monthly Summary for the English Mail” *The Timaru Herald* vol XXVII, iss 1925 (1 January 1878) Papers Past <<http://paperspast.natlib.govt.nz>> at 4.

⁸² “Major Atkinson at New Plymouth” *North Otago Times* vol 1819, iss XXVI (22 February 1878) Papers Past <<http://paperspast.natlib.govt.nz>> at 2.

⁸³ (17 November 1879) 33 NZPD 298.

⁸⁴ Finn, above n 41.

⁸⁵ (17 November 1879) 33 NZPD 298.

⁸⁶ At 298 and 299.

⁸⁷ Heagney, above n 42.

⁸⁸ (17 November 1879) 33 NZPD 313.

⁸⁹ At 298; (19 November 1879) 33 NZPD 344.

incorrect as there was no such statute of 1869, but there was one of 1859 – the New York Real Property Tax Law, being a Revised Statute.⁹⁰ At Chapter XIII *Property Liable to Taxation*, § 5 [Sec. 4], the statute provided a comprehensive class of exemptions including:⁹¹

1. All property, real or personal, exempted from taxation by the constitution of this State, or under the Constitution of the United States: ...
4. Every poor house, alms house, house of industry
6. All stocks owned by the state, or by literary or charitable institutions; ...

The Property Assessment Act 1879, which repealed the Land Tax Act 1878,⁹² was introduced concurrently with the Property Tax Act 1879 on 19 December 1879. The Property Tax Act 1879 provided for a property tax to be levied, commencing on the first day of April 1880, of one penny for every twenty shillings of value on all property.⁹³ The Property Tax Act 1879 also charged a levy on all fire, marine and guarantee policies, of thirty shillings for every one hundred pounds of premiums received by insurers.⁹⁴

The purpose of the Property Assessment Act 1879 was described as being “to regulate the assessment of real and personal property for the purposes of taxation.”⁹⁵ Accordingly, s 26 of the Property Assessment Act 1879 provided exemptions for a range of various types of property (emphasis added):

26. The following property shall be exempt from taxation:-

- (1.) All agricultural implements in actual use;
- (2.) All property of the Crown, or of any local body, or of any company or society of persons not formed wholly or mainly for the purpose of gain or profit divisible amongst the shareholders;
- (3.) All churches and other places used exclusively for public worship;
- (4.) *All property of, or vested in, any body or persons for public charitable, or public educational purposes;*
- (5.) All property of, or vested in, any public body, society, or persons and used only for the purposes of public health, or recreation;
- (6.) All public reserves of whatever nature made under any law granted to, or vested in, any body or persons;
- (7.) All property of Maoris ;
- (8.) All property owned in reversion, remainder, or expectancy of any kind, the owner thereof not having any present beneficial interest therein at the time an assessment is made thereof;
- (9.) All vessels of every kind;
- (10.) All policies of life assurance, except as hereinafter mentioned.

A statement reportedly made by Major Atkinson during the General Assembly session on 1 September 1877 is worthy of comment in that he indirectly referred to the concept of charitable activity as relieving the Government of burden, when he said that the Government was considering:⁹⁶

⁹⁰ John Christopher Schwab *History of the New York Property Tax* (Volume 5, Issue 5 of Publications of the American Economic Association, 1890) at 431. Library of Congress *The Revised Statutes of the State of New York* (Revised Statutes) (5th ed, 1859) vol 1. My thanks to Sue Johnston, Librarian, University of Canterbury Law School, and Luis Acosta, The Library of Congress, Washington DC, for their invaluable assistance in tracking down a copy of the statute of 1859.

⁹¹ Revised Statutes, above n 90, at 906.

⁹² Property Assessment Act 1879, s 97.

⁹³ Property Tax Act 1879, s 2.

⁹⁴ Property Tax Act 1879, s 2.

⁹⁵ Property Assessment Act 1879, Preamble.

how all descriptions of property could best be made to contribute fairly to support the burdens of the community[;] also how, if possible, necessities of life could to some extent be relieved. Government held themselves, on full consideration, at liberty to make such proposals in this direction as might be most desirable, and to propose such exemptions as they might consider just.

The key exemption that was being considered was the exemption of “small proprietors” from the tax, who should be exempted “because they were already large contributors through the Customs to the revenue,”⁹⁷ but no mention was made of entities with charitable purposes being affected by the proposed property tax.

3.4 Land and Income Assessment Act 1891

While the Property Assessment Act 1879 “included personal property in its base, although a substantial exemption of £500 applied,”⁹⁸ arguably the first true Act to tax income in New Zealand was the Land and Income Assessment Act 1891.⁹⁹ This Act also repealed the Property Assessment Act 1885 and the Property Assessment Act 1885 Amendment Act 1886.¹⁰⁰

However, while the Land and Income Assessment Act 1891 exempted the land of “[p]ublic charitable institutions constituted under The Hospitals and Charitable Institutions Act 1885, and charitable institutions not carried on for gain or profit,” the Act did not provide for the income of public charitable institutions to be exempt.¹⁰¹ This was observed by a Member of the House during the passage of the Land and Income Assessment Bill who, on 30 July 1891, asked:¹⁰²

[w]hether [the Government would] amend section 16 of the Land and Income Assessment Bill so as to exempt from taxation ... all institutions that are purely charitable ... there were a large number of institutions of a purely charitable nature which ... were not included in section 16 of the [Bill] ... like the Magdalen Home in Christchurch, which was under the control of the Roman Catholic Church, and the Rhodes Convalescent Home, which was under the management of subscribers.

The Government assured the Member “that the Government would take the matter into consideration.”¹⁰³ The Member replied that “as the public were admitted to these institutions free of cost, he considered they should be exempted from taxation.”¹⁰⁴ However, it was not until the following year that the matter was resolved. The *Wanganui Herald* of 21 September 1891 noted that “[o]ne of the defects of the [Land and Income Assessment Act] 1891 was that friendly societies, savings banks, and charitable institutions came within reach of its

⁹⁶ “The General Assembly” *The Otago Witness* iss 1344 (1 September 1877) Papers Past <<http://paperspast.natlib.govt.nz>> at 8.

⁹⁷ “Mr Ballance at Marton” *The Wanganui Herald* vol XI, iss 2829 (18 January 1877) Papers Past <<http://paperspast.natlib.govt.nz>> at 2.

⁹⁸ Jonathan Barrett and John Veal “Land taxation: a New Zealand perspective” (2012) 10 *eJournal of Tax Research* 573 at 577. With respect to property liable to taxation, s 12 of the Property Assessment Act 1879 provided that “[a]ll property within the colony of which any person is owner shall be liable to taxation in respect of so much of the value thereof as shall exceed five hundred pounds sterling, but subject to the exemptions and to the deductions hereinafter provided.”

⁹⁹ See Robert J Vosslamber “Taxing and Pleasing: The Rhetoric and Reality of Vertical Equity in the Development of the New Zealand Income Tax on Employees, 1891 to 1984” (Thesis submitted in partial fulfilment of the requirements for the Degree of Doctor of Philosophy, University of Canterbury, 2010) for an excellent discussion on the history of income tax in New Zealand.

¹⁰⁰ Land and Income Assessment Act 1891, s 2.

¹⁰¹ Land and Income Assessment Act 1891, s 16(1)(g).

¹⁰² (30 July 1891) 72 NZPD 614. Ten days earlier, in London, on 20 July 1891, the judgment in *Commissioners for Special Purposes of the Income Tax v Pemsel* [1891] AC 531 was handed down. Coincidence, or was the Member aware of this seminal development?

¹⁰³ Above n 102.

¹⁰⁴ Above n 102.

operations. They will under the amending Act be exempted.”¹⁰⁵ The Government was true to its word and, in the Land and Income Assessment Act Amendment Act 1892, provision was made for the “additional exemptions from liability to tax” including:¹⁰⁶

[a]ll mortgages held, and all income received or derived, by or on behalf of any public charitable institution, whether formed under “The Hospitals and Charitable Institutions Act, 1885,” or any other Act for the time being in force, or howsoever formed, if carried on for any public charitable purpose, and not for any gain or profit.

As with William Pitt the Younger’s Duties upon Income Act 1799 39 Geo III c 13, there was no substantive debate in the New Zealand General Assembly as to why charities should or should not be exempt from income tax.¹⁰⁷ The exemption had historical precedence; therefore, it should continue.¹⁰⁸

3.5 Concessions in New Zealand: Donations

In 1962, for the first time in New Zealand tax history, a government provided concessions for donations made by individuals in supporting worthy causes. Before discussing that development, a brief comment is warranted on New Zealand’s political scene in the years preceding the General Election of 1960, as it was during that election campaign that the National Party had announced its intention that, if elected, it would provide a concession for charitable donations. A key element of the time was the Labour Government’s so-called Black Budget of 1958,¹⁰⁹ with its increases in taxation and other sources of government revenue.¹¹⁰ As reported in 2010 by DB Breweries Export, in 1958 the Labour Government had done “something stupid. They taxed the price of beer out of the reach of kiwi men.”¹¹¹ As Homer Simpson would say, “never get between a man and his beer.”¹¹² The Government did, and the Opposition could smell blood for they could see that the next Election would be theirs to lose, as the Leader of the Opposition, the Rt Hon Keith Holyoake, considered it “as good as won.”¹¹³ Mr Holyoake commenced the Opposition’s contribution to the debate on Customs and Excise Duties on 26 June 1958 by declaring that:¹¹⁴

Sir, out of a very full and kind heart I offer my sincere sympathy to the members of the Government. They are a very gloomy looking lot tonight. We have been informed that the members of the Government were told the contents of the Budget only two hours ago, and I can well believe it.

“Labour,” writes Vosslander, “was soundly defeated at the 1960 General Election.”¹¹⁵ National won “with a majority of 4 per cent of the vote and 12 seats.”¹¹⁶

¹⁰⁵ “Land and Income Tax Bill” *The Wanganui Herald* vol XXVI, iss 8004 (21 September 1892) Papers Past <<http://paperspast.natlib.govt.nz>> at 2.

¹⁰⁶ (20 September 1892) 78 NZPD 232; Land and Income Assessment Act Amendment Act 1892, s 3(4).

¹⁰⁷ See Gousmett, above n 51.

¹⁰⁸ See Gousmett, above n 51, at ch 6.

¹⁰⁹ “In 1930 J.G. Coates had called Ward’s budget ‘the Black Budget’.”: Keith Sinclair *Walter Nash* (Auckland University Press, Auckland, 1976) at 309.

¹¹⁰ For a detailed analysis of Mr Nordmeyer’s “Black Budget”, see Rob Vosslander “Narrating history: New Zealand’s ‘Black Budget’ of 1958” (2012) 17 *Accounting History* 481.

¹¹¹ Vosslander, above n 110, citing “Nordmeyer and the 1958 Black Budget” (2010) DB Breweries Export: History <www.dbexportbeer.co.nz/History>.

¹¹² Homer Simpson Rotating Eyes Wall Clock (2009) Foolish Gadgets <<http://foolishgadgets.com>>.

¹¹³ Vosslander, above n 110, citing Barry Gustafson *Kiwi Keith: a biography of Keith Holyoake* (Auckland University Press, Auckland, 2007) at 110.

¹¹⁴ (26 June 1958) 316 NZPD 289.

¹¹⁵ Vosslander, above n 110, at 491.

3.6 The General Election of 1960

Chapman's history of the 1960 General Election,¹¹⁷ which was held on Saturday 26 November, is the only text on the subject which makes a mention of the announcement of the charitable donations concession on 7 June 1960 when the Leader of the Opposition, Mr Holyoake, announced to the Dunedin electorate that, if elected, the National Government would "progressively reduce the rates of both personal and indirect taxation ... death duties would be reduced, gift duties would be reviewed, and donations out of income to charitable, educational and welfare organisations would be made deductible for tax purposes."¹¹⁸ However, the donations concession appears to have been almost an after-thought, having been announced amid a raft of tax cuts promised by Mr Holyoake in the National Party's 1960 Election Manifesto. Gustafson noted that:¹¹⁹

[d]uring the 1960 campaign both Holyoake and Marshal declined to be specific in the details of National's policies – although they did promise to reduce personal income tax, remove import controls, tackle inflation, rebuild New Zealand's overseas currency reserve, and abolish compulsory unionism. Their argument was 'We are not buying votes'.

At the National Party's annual Dominion Conference in Wellington, which was held on 25 and 26 July 1960,¹²⁰, after declaring that "[I]ast Thursday we listened to the third budget presented by Mr Nordmeyer," of which Mr Holyoake was "firmly convinced that it will be his last",¹²¹ under the heading in his notes "Tax Policy 2", Mr Holyoake announced the National Party's tax policy, including the donations concession.¹²² Also on 26 July, the Party's tax policies were announced in the House during the debate on the Financial Statements, including the donations concession:¹²³

To encourage a greater degree of community self-help and initiative, donations within prescribed limits, made out of income to approved charitable, educational and welfare institutions, will be deductible items for income tax purposes, under the next National Government.

An examination of the archives of material relating to the introduction of the charitable donations concession revealed very little on the concept. The author had assumed that the donations concession had, at some time in the past, been introduced by a Labour Government, on the basis that it was those on the lower end of the social spectrum who would benefit from donations made by wealthier persons to charitable organisations. However, the author was unable to find any comment by Labour in the period leading up to the 1960 General Election on this concept, but there is evidence that at some time Labour had given the idea consideration. Mr Nordmeyer had said, with respect to "[the] proposed exemption of up to £25 for gifts to certain religious and charitable objects [that] [w]e on this side of the House had a similar proposal in our 1960 programme, but we certainly envisaged something more generous than what the Government proposes."¹²⁴

¹¹⁶ Barry Gustafson *The First 50 Years: A History of the National Party* (Reed Methuen Publishers Ltd, Auckland, 1986) at 82. Gustafson made no mention of the charitable donations concession.

¹¹⁷ Robert McDonald Chapman, William Keith Jackson and Austin Vernon Mitchell *New Zealand Politics in Action: The 1960 General Election* (Oxford University Press, London, 1962).

¹¹⁸ At 92.

¹¹⁹ Gustafson, above n 116, at 82.

¹²⁰ "National Party's Tax Cut Promise: Lower Personal, Indirect Rates" *The Dominion* (8 June 1960) (unpaginated copy).

¹²¹ Keith Holyoake "Budget 1960" (25 [or] 26 July 1960) Speech Notes of Keith Holyoake, Sir Keith Holyoake Collection, MS Papers 1814 Folder 657.1, Alexander Turnbull Library, Wellington (copy seen by the author). The author thanks the librarians for the excellent service provided during the author's short visit.

¹²² Above n 121.

¹²³ (26 July 1960) 322 NZPD 883.

¹²⁴ (3 July 1962) 330 NZPD 583.

The announcement in Dunedin by Mr Holyoake on 7 June 1960 barely rated a mention in *The Dominion* of 8 June. While the headline blared “National Party’s Tax Cut Promise: Lower Personal, Indirect Rates,” there, placed in the middle of the article, was one paragraph, apparently copied from the National Party Manifesto, which stated that in order “[t]o encourage a greater degree of community self-help and initiative, donations (within prescribed limits) made out of income to *approved* charitable, educational and welfare institutions will be allowed as deductible items for income tax purposes.”¹²⁵

The newspaper made no further comment; whether Mr Holyoake had expanded on the new concession at any length during his electioneering is so far unknown. What is known is that the donations concession was not a National Party social policy initiative, as a set of Mr Holyoake’s speech notes has the donations concession placed under the heading “Tax Policy.”¹²⁶

Mr Holyoake did not explain what he meant by “approved” institutions; neither did he mention this in the House on 26 July 1960 when he announced that the National Government would be “go[ing] further” than Labour in its fiscal initiatives.¹²⁷ However, it was not to be until 1962 that the promise of the National Government concerning the donations concession would be fulfilled. Mr Nordmeyer, by then in Opposition, no doubt took delight in noting that National (with the Hon Harry Lake as the Minister of Finance), in its Financial Statement for 1961, had appeared to have overlooked its election promise regarding the concession for donations. Mr Nordmeyer stated that he:¹²⁸

express[ed his] regret that the Minister has not seen fit to agree to some exemption from taxation for donations to religious, charitable, or educational objects. *I think that both political parties at the last election undertook to make this provision.* There will, or course, always be doubt as to the extent to which relief should be given, and obviously there will have to be a limit set on these donations. Only a portion of them would, perhaps, qualify for the advantage, but I had hoped, and I am sure many people had hoped, that the Minister would at least have made a start in this direction this year. I personally express my regret that he has not seen fit to do so.

Mr Nordmeyer was responding to the announcement by Mr Lake, in the Financial Statement of 20 July 1961, that:¹²⁹

The Government has considered proposals for the exemption from taxation of donations made to approved charitable, educational, and welfare organisations. *It is felt, however, that the present time is inopportune for its introduction. The cost cannot be assessed in advance, but it is evident that if the scheme were unduly availed of it would put further pressure on the building industry.* As soon as circumstances permit the matter will be reconsidered.

The Hon Mick Connelly MP, repeating Mr Lake’s words, responded with vigour: “By Jove, this Government can conveniently find excuses when it suits it. It states it cannot permit donations to be allowed as tax exceptions, when given for educational purposes because of pressure on the building industry!”¹³⁰

The comment by Mr Nordmeyer that Labour had also considered a concession for donations is interesting, as no source could be found during the research for this article. For example, there were no such references in any of Labour’s 1960 electioneering material. However, Labour (through Mr Nordmeyer) claimed that, regarding

¹²⁵ “National Party’s Tax Cut Promise: Lower Personal, Indirect Rates”, above n 120 (emphasis added). Papers Past (<http://paperspast.natlib.govt.nz>), while being an invaluable resource for research purposes, does not include material beyond 1945.

¹²⁶ Holyoake, above n 121.

¹²⁷ (26 July 1960) 322 NZPD 883.

¹²⁸ (25 July 1961) 326 NZPD 791 (emphasis added).

¹²⁹ (20 July 1961) 326 NZPD 741 (emphasis added).

¹³⁰ (27 July 1961) 326 NZPD 904.

the proposed donations concession of up to £25 a year,¹³¹ “we ... had a similar proposal in our 1960 programme, but we certainly envisaged something more generous than what the Government proposes. ... [O]n the surface it does appear to be a very small amount,” to which Mr Lake replied, “[i]t is a start.”¹³² It was indeed a start, as those were to prove to be prophetic words for National, because in 2007 Labour removed the cap on private donations which, at that time, was \$1,890 with a rebate of a maximum of \$630, and provided for a tax credit of one-third on donations up to an individual’s taxable income. This was, in 2012, to become more than just a headache for National.

There can be no doubt that the donations concession was intended to encourage philanthropy, as can be seen in Mr Holyoake’s words, that “[t]he Government is now giving an incentive to people to think of what they can give, not what they can get. *This is an incentive to our people to give.*”¹³³ But what was behind the incentive? When Mr Holyoake says that the incentive “will encourage self-help, community help, and community welfare activity,”¹³⁴ was National’s underlying rationale that if we encourage greater community activity, then there will be less of a call on government funds? Was this Government abdicating its responsibility for those less fortunate based on its philosophy of individual responsibility, or a genuine desire to assist the community in helping itself? Can the answer be found in National’s 1960 Election Manifesto? The author pondered on this thesis during the research phase, and eventually found an answer provided by Mr Rae, who said that:¹³⁵

The exemption of the donation is £25, which can be deducted for income tax purposes. ... I believe that this sum, which starts off quite modestly, can grow. At the moment it is limited to individuals. It is denied to companies. We will see how it goes *and what it costs the country*. I believe if people are given a little incentive great things will be done privately, *and fewer demands will fall on the Government’s plate. I look forward to this concession growing with time*. I believe that a great deal of good will be done by private donations for all these worthy objectives.

In other words, community activity will relieve the government of burden, by transferring the cost to charitable entities which, in turn, would benefit from being exempt from income tax and donors would receive concessions. The unasked and answered question, however, is whether the cost to the government would be at least equal to or less than the tangible benefits provided by charitable entities to the community. Fortunately, the cost of the donations concession was mentioned during the debate on the Financial Statement when Mr Lake stated that “the estimate is that if two-thirds of the taxpayers take advantage of the concession the annual cost will be about £1.5 million in taxation.”¹³⁶ This is equivalent to approximately \$60 million today,¹³⁷ \$40 million short of the average annual claims for donations rebates before the rebate cap was lifted by Labour/United Future.¹³⁸ As had been hoped, the incentive was indeed taken up by the donating public! The total of all concessions that were announced in the 1962 Budget was £14 million,¹³⁹ making the donations concession at £1.5 million about 11 per cent of the total taxation concessions.

¹³¹ See n 135.

¹³² (3 July 1962) 330 NZPD 583.

¹³³ (3 July 1962) 330 NZPD 591 (emphasis added).

¹³⁴ (3 July 1962) 330 NZPD 591.

¹³⁵ (11 July 1962) 330 NZPD 840 (emphasis added).

¹³⁶ (13 July 1962) 330 NZPD 937.

¹³⁷ Using the Reserve Bank of New Zealand’s Inflation Calculator at www.rbnz.govt.nz.

¹³⁸ See discussion at section 7.4: Greater Incentives for Charitable Donations.

¹³⁹ (28 June 1962) 330 NZPD 535; HR Lake *Budget 1962 Financial Statement (In Committee of Supply, B6, 28 June 1962)* (RE Owen, Government Printer, Wellington) at 23-24 in Appendix to the Journals, Session 1962 vol 1 (RE Owen, Government Printer, Wellington, 1963).

Frederick Hackett MP argued that, instead of a concession for donations of £1 or more (up to £25), the concession should “cover all donations.”¹⁴⁰ Mr Hackett knew “of one person who usually gives from £1,000 to £1,500 a year. If he deducts £25 from £1,000 he will still have to pay tax on £975.”¹⁴¹ Mr Hackett also argued the case for “the small people who donate amounts of 2s. 6d., 5s., or 10s.”¹⁴² He also stated that “[m]any people make regular contributions to organisations such as CORSO, [and] when the Minister brings down this legislation, I sincerely hope [that the Minister] will include a greater variety of organisations, and also that he will consider making provision for the amount of £25 to be any sum up to £25.”¹⁴³

Debate also ensued on the effect of the proposal, as pointed out by the Rt Hon Walter Nash.¹⁴⁴

If a person has a taxable balance of £100 he can deduct £25, which brings his taxable balance down to £75. On a taxable balance of £100 he would pay £15 in income tax; on a taxable balance of £75 he will now pay £11 5s in income tax. So he is gaining a concession of only £3 15s.

However, Mr Nash said, “[a] married man with three children earning £16 a week at present pays no income tax, so he will receive no benefit, [even if he pays] 5s., 6s., or 10s a week so that his children can attend a church school.”¹⁴⁵

Finally, on 28 June 1962, under the heading “Taxation Adjustments, Exemptions from income tax of certain donations for charitable purposes”, Mr Lake declared:¹⁴⁶

In last year’s Budget I said that, as soon as circumstances permitted, [the] Government would re-examine the question of exempting from taxation donations made to approved charitable, welfare, and educational organisations. It is considered that a start can now be made with a modest scheme for individual taxpayers. The Government has, therefore, decided to allow a deduction up to a maximum of £25 per annum for ordinary income tax purposes in respect of donations made to institutions and societies whose funds are devoted wholly or principally to certain objects to be defined in amending legislation. Donations to special funds established by religious and other organisations and devoted to these objects will be included. Without necessarily being exhaustive the objects which will qualify for the proposed relief are:

- (a) The care of aged [men – omitted from transcript], women, and children and orphans; the care of the infirm, cripples, the blind, war veterans, and disabled persons; the care of spastics, the mentally retarded, discharged prisoners, and alcoholics.
- (b) Donations to public relief and disaster funds, health camps, free ambulances, the relief of distress, life saving, and youth welfare.

¹⁴⁰ (12 July 1962) 330 NZPD 888.

¹⁴¹ (12 July 1962) 330 NZPD 888.

¹⁴² (12 July 1962) 330 NZPD 888.

¹⁴³ (12 July 1962) 330 NZPD 888. CORSO is an acronym for Council of Organisations for Relief Services Overseas.

¹⁴⁴ (13 July 1962) 330 NZPD 934.

¹⁴⁵ (13 July 1962) 330 NZPD 935.

¹⁴⁶ (28 June 1962) 330 NZPD 535. In “Taxation Notes” (1962-63) 41 *The Accountants’ Journal* at 31, Simcock wrote that “[t]his year’s budget contained new proposals in relation to donations, in fulfilment of a promise made in the election campaign two years ago. ... It is interesting to note that some countries already permit deductions for donations. In the United States, for example, donations to certain organisations and bodies have been allowable deductions for many years. ... An intriguing aspect of the United States position is that apparently an impressive volume, approximately twice the thickness of a Wellington telephone directory and with comparable print, is needed to record the names of all of those organisations to which deductible donations may be given. It is fruitless to compare New Zealand with the United States, but with the recent announcement of the proposal to make certain donations deductible from income for taxation purposes, one may wonder whether a similar volume may appear on the New Zealand scene.” For many years, the annual issue of *Staples Tax Guide* contained the list of donee organisations, but the list is now discontinued as it is available on the Inland Revenue website at <www.ird.govt.nz/donee-organisations/>. As at 19 February 2012, the list contained 25,035 donee organisations.

(c) Free kindergartens, nursery play centres, schools for the deaf, blind, and intellectually handicapped; the Maori Education Foundation; educational and medical research; and donations to universities, libraries, art galleries, and museums.

(d) Donations to building funds of private schools.

The scheme will cover donations made during the current income year and tax adjustments will be made after the end of the year in respect of claims made in income tax returns. It will apply to individual donations of £1 or more, subject to the production of receipts and subject also to the maximum overall deduction of £25 over annum already referred to.

3.7 Land and Income Tax Amendment Act (No 2) 1962

During the debate on the Land and Income Tax Amendment Bill, the Labour Opposition was critical of the proposed concession, which they referred to as a “special exemption for income tax purposes.”¹⁴⁷ Because of the way in which the concession was structured, with the wealthy benefiting more than those less well off, Labour suggested that “[p]erhaps a fairer way would have been to give a flat rebate of £5 or £10, instead of this sliding scale, with many getting nothing and a few getting a substantial benefit.”

On 14 December 1962, the National-led Government fulfilled its promise when the donations concession was passed into law. When the concession finally appeared in the legislation, it was extensive, encompassing both non-testamentary gifts of money and payment of school fees:¹⁴⁸

4. Special exemption in respect of gifts of money and payments of school fees

The principal Act is hereby further amended by inserting, after section 84A (as inserted by section 24 of the Land and Income Tax Amendment Act (No. 2) 1958), the following section:

“84B. (1) For the purposes of this section, the term ‘gift’ includes a subscription paid to a society, institution, association, organisation, trust, or fund, only if the Commissioner is satisfied that that subscription does not confer any rights arising from membership in that or any other society, institution, association, organisation, trust, or fund.

“(2) For the purpose of assessing ordinary income tax, every taxpayer, other than an absentee or a company or a public authority or a Maori Authority or an unincorporated body, shall, subject to the provisions of this section, be entitled to a deduction by way of special exemption from his assessable income of the amount of any gift (not being a testamentary gift) of money of the amount of one pound or more made by him in the income year to any of the following societies, institutions, associations, organisations, trusts, or funds (being in each case a society, an institution, an association, an organisation, a trust, or a fund in New Zealand), namely:

“(a) A society, institution, association, organisation, or trust which is not carried on for the private pecuniary profit of any individual and the funds of which are, in the opinion of the Commissioner, *applied wholly or principally to any charitable, benevolent, philanthropic or cultural purposes within New Zealand*:

“(b) A public institution maintained exclusively for any one or more of the purposes within New Zealand specified in paragraph (a) of this subsection:

“(c) A fund established and maintained exclusively for the purpose of providing money for any one or more of the purposes within New Zealand specified in paragraph (a) of this subsection, by a society, institution, association, organisation, or trust which is not carried on for the private pecuniary profit of any individual:

“(d) A public fund established and maintained exclusively for the purpose of providing money for any one or more of the purposes within New Zealand specified in paragraph (a) of this subsection:

“(e) The Council of Organisations for Relief Services Overseas (CORSO):

“(f) The Red Cross Society Incorporated:

¹⁴⁷ (4 December 1962) 333 NZPD 3057.

¹⁴⁸ Land and Income Tax Amendment Act (No 2) 1962, s 4 (emphasis added). From 1989 to 2007, the author was the General Manager of the Pacific Leprosy Foundation, formerly the Lepers’ Trust Board on incorporation in 1942 until 1978 when the name was changed to the Leprosy Trust Foundation, the use of the word “leper” being considered inappropriate by the World Health Organisation, and then in 1991 the name was changed to its present name.

“(g) The Lepers Trust Board Incorporated:

“(h) The Mission to Lepers (New Zealand).

“(3) For the purpose of assessing ordinary income tax, every taxpayer, other than an absentee, shall, subject to the provisions of this section, be entitled to a deduction by way of special exemption from his assessable income of the amount of any fees paid by him in the income year in respect of the education of a person who is under the age of eighteen years at the beginning of the income year, and is a child, stepchild, or foster-child of the taxpayer, at-

“(a) A private primary school or private secondary school registered under the Education Act 1914 and conducted by a society, institution, association, organisation, or trust which is not carried on for the private pecuniary profit of any individual; or

“(b) A public school in New Zealand for the deaf, the dumb, the blind, the mentally defective, the intellectually handicapped, the crippled, or the otherwise disabled or afflicted or handicapped; or any school in New Zealand for any such persons conducted by a society, institution, association, organisation, or trust which is not carried on for the private pecuniary profit of any individual.

“(4) The deductions by way of special exemption provided for in this section shall not, in the case of any taxpayer, in any income year exceed in the aggregate the sum of twenty-five pounds.

“(5) No deduction by way of special exemption shall be allowed under this section in respect of any gift or, as the case may be, any fees, *unless the taxpayer furnishes to the Commissioner in support of his claim for the deduction a receipt evidencing to the satisfaction of the Commissioner the making of the gift or, as the case may be, the payment of the fees by the taxpayer.*”

Staples clarified the meaning of this new provision in the 1963 edition of his tax guide, in which he classified the categories of the special exemption as:¹⁴⁹

(a) Organisations in New Zealand

Payments to organisations in New Zealand not carried on for the private pecuniary profit of any individual, and the funds of which are applied wholly or principally for charitable, benevolent, philanthropic or cultural purposes within New Zealand:

(b) Special Funds in New Zealand

Payments to special funds established in New Zealand by the class of organisation mentioned in (a), and public funds in New Zealand devoted exclusively for the above purposes:

(c) Special Funds for purposes outside New Zealand

Payments to:

(i) CORSO

(ii) The Red Cross Society Inc.,

(iii) The Lepers' Trust Board Inc.,

(iv) The Mission to Lepers (New Zealand),

(d) School Fees.

In order to clarify the meaning of the legislation with respect to charitable purpose, Staples provided specific advice on church offerings:¹⁵⁰

The legislation refers to organisations whose funds are applied “wholly or principally for charitable ... purposes within New Zealand.” “Charitable purpose” includes every charitable purpose, whether it relates to the relief of poverty, the advancement of education or religion, or any other matter beneficial to the community (s 2 of the Principal Act). The Commissioner has indicated that church offerings come within the spirit of the legislation. The receipt or

¹⁴⁹ Charles A Staples *A Guide to New Zealand Income Tax Practice 1962-63* (23rd ed, Sweet & Maxwell, Wellington, 1963) at 184.

¹⁵⁰ At 185.

acknowledgment need only be for the total amount donated during the coming year; and it is a matter for the organisation itself to decide as to a method whereby a record of the parishioners' regular donations is kept.

3.8 Special Funds for Purposes outside New Zealand

The list of special funds outside New Zealand grew slowly, with Volunteer Service Abroad added in 1965-66, being the first of many that would follow.¹⁵¹ However, the Government's intention regarding "approved charitable educational and welfare organisations"¹⁵² becomes clear in the 27th (1966-67) edition of Staples's *Guide*, which reported that "[t]he Commissioner announces that donations to the following causes will qualify under [organisations and special funds in New Zealand]":¹⁵³

- Birthright Inc. (Subscriptions will be treated as donations.)
- Greymouth Civic Centre Inc.
- March of Medicine Appeal, by the Royal Australasian College of Physicians.
- "Milk for Millions" Appeal.
- New Zealand Council for Educational Research.
- New Zealand Crippled Children's Society.
- *New Zealand Journal of Educational Studies*.
- New Zealand Workers' Educational Association Inc.
- New Zealand Optometrical Association "Special Educational Fund".
- Payments to school committees of parent/teacher associations. (Activity fees not allowed.)
- Yoga Institute of New Zealand. (Membership fees not allowed.)
- Churchill Memorial Fund.

The maximum amount of the exemption was also being increased, to:¹⁵⁴

- \$50 for donations to charities;
- \$100 for gifts of money (as distinct from school fees) to non-profit private or handicapped children's schools;
- \$100 for gifts of money and school fees;
- \$100 for donations to charities, gifts of money and school fees, provided that the donations to charities do not exceed \$50.

¹⁵¹ Charles A Staples *A Guide to New Zealand Income Tax Practice 1965-66* (26th ed, Sweet & Maxwell, Wellington, 1966) at 213.

¹⁵² See n 129.

¹⁵³ Charles A Staples *A Guide to New Zealand Income Tax Practice 1966-67* (27th ed, Sweet & Maxwell, Wellington, 1967) at 229.

¹⁵⁴ At 230.

4.0 DEVELOPMENTS IN INCOME TAX LEGISLATION

During the fifty years following the introduction of the donations concession, numerous changes have been made to New Zealand's income tax legislation regarding the concession.¹⁵⁵ However, for our purposes it is of interest to note the various relevant sections as contained in the Income Tax Act 2007 (ITA 2007) as reprinted at 31 December 2012, to see how extensive the changes have become:

- Section DB 41 Charitable or other public benefit gifts by company: A company is allowed a deduction for a charitable or other public benefit gift that it makes to a donee organisation, limited to the extent of the company's net taxable income.
- Section DV 12 Maori authorities: donations: Māori authorities are allowed a deduction for donations to a Maori association or for charitable or other public benefit gifts made to a donee organisation. Compare with s 4 of the Land and Income Tax Act 1954 Amendment Act (No 2) 1962, which disallowed deductions by way of the special exemption for donations made by Maori authorities.
- Section LD 1 Tax credits for charitable or other public benefit gifts: Donors now receive a refundable tax credit of 33.33 per cent of their total gifts, to the extent of their taxable income.
- Section LD 3 Meaning of charitable or other public benefit gift: Gifts must be for \$5 or more, excluding testamentary gifts, paid to an entity as described in s LD 3(2) or sch 32.
- Section LD 4 Tax credits for payroll donations: Donations paid through the payroll giving scheme also qualify for tax credits, which have the effect of an immediate payment to the donor against their PAYE.
- Schedule 32: Recipients of charitable or other public benefit gifts: The most significant change is in donee organisations with overseas purposes, which are now listed in sch 32 to the ITA 2007. As at 31 December 2012, the list comprised 99 entities (an average of fewer than two entities a year), including the four first listed in the Land and Income Tax [Act 1954] Amendment Act 1962, that is: CORSO (now CORSO Inc); The Red Cross Society Inc; The Lepers' Trust Board Inc (now The Pacific Leprosy Foundation); and The Mission to Lepers (New Zealand) (now The Leprosy Mission New Zealand Inc).

5.0 THE NATIONAL PARTY'S PHILOSOPHY OF SELF-RELIANCE

It is clear from the National Party's Election Manifesto that the National Party espoused a sense of social responsibility as seen in the Party's 1949 General Election Policy, with its reference to the provision of "[f]inancial assistance by way of subsidies and loans ... to churches and other organisations, providing accommodation for the needs of people both young and old."¹⁵⁶ However, their largesse was not intended to be the "cradle to the grave"¹⁵⁷ philosophy of the Labour Party's welfare system, as:¹⁵⁸

the Party believes that by ensuring full employment and by a nation-wide campaign to remove, or at least, reduce greatly the causes of sickness and disability, *it will be possible to lessen the need for people to apply for sickness, medical and pharmaceutical benefits*. Good health and productive employment are much better than medicines or sick and relief payments.

¹⁵⁵ This will be the subject of further in-depth research.

¹⁵⁶ New Zealand National Party (NZNP) *Policy, General Election 1949* at s 9 Social Security[:] Eventide and Other Homes. My thanks to the staff of the Parliamentary and National Libraries for their assistance in accessing this material.

¹⁵⁷ "Supporters of the scheme extolled a welfare system that now protected New Zealanders 'from the cradle to the grave'." "Social Security Act passed" New Zealand History online <www.nzhistory.net.nz>.

¹⁵⁸ NZNP, above n 156, at s 9 Social Security [Introduction] (emphasis added).

The National Party's 1954 General Election Policy noted that "the time is now ripe for the careful review of existing policies and the fuller co-ordination of the resources of religious and charitable organisations, local authorities and government."¹⁵⁹ This theme is evident in the Party's General Election policies in later years, becoming more refined as time went by. It was firstly "the right and responsibility of the family to care for [their] older members," the Party declared in 1957.¹⁶⁰ If that was not possible, "then the community in which they live, working through religious or welfare organisations, and with government assistance, is best qualified to care for them."¹⁶¹ Failing that, "then the Government, working through Hospital Boards, will care for them."¹⁶²

Becoming increasingly more sophisticated, the National Party's 1960 General Election Policy included a copy of a pamphlet of the differences between National and Labour.¹⁶³ Whereas National encouraged "personal initiative" and "the desire to venture and progress," Labour, National claimed, "discourages individual initiative" and their "applied Socialism breeds dependence on others, encourages uniformity, discounts brilliance and leads to mediocrity."¹⁶⁴ The Party's 1960 Policy document, issued on 1 November 1960, included the announcement that Mr Holyoake had made on 7 June 1960 that "[d]onations (within limits) out of income for approved charitable, educational and other similar institutions will be deductible for income taxation."¹⁶⁵ Further details were provided under "Taxation and Finance":¹⁶⁶

To encourage a greater degree of community self-help and initiative, donations (within prescribed limits) made out of income to approved charitable, educational and welfare organisations and medical research institutions will be allowed as deductible items for income tax purposes.

Later in the 1960 General Election Policy, under the heading "Points of Interest to Women from 1960 Policy Plans", after restating the donations concession policy, the National Party declared that "[t]his will be a big help to many organisations doing fine work for the welfare of women and children."¹⁶⁷

The author was unable to find any evidence that Labour had an interest in such a donations concession at that time. On the contrary, the Labour Party's report to their 1948 conference provides evidence of their desire for the Government to be the provider of welfare, as the report contained a remit "[t]hat the Plunket Society be taken over by the Government," which was, however, rejected.¹⁶⁸ By 1966, the Labour Party's attitude to voluntary organisations had changed somewhat, as expressed in the Election Manifesto for that year, that "[t]he work of voluntary organisations will be fostered and the organisations will be encouraged to maintain their independence and voluntary character."¹⁶⁹

¹⁵⁹ NZNP *A Record of Progress, Policy, General Election 1954*, Health, The Care of the Aged at 3.

¹⁶⁰ NZNP *Policy, General Election 1957*, Health, Care of the Aged at 2.

¹⁶¹ Above n 160.

¹⁶² Above n 160.

¹⁶³ NZNP *Policy, General Election 1960* (September 1960) Differences: Two Parties.

¹⁶⁴ Above n 163, Differences: Two Parties.

¹⁶⁵ Above n 163, 1960 Policy, Principal Points at 2A (b).

¹⁶⁶ Above n 163, 1960 Policy, Full Details at 2B 9.

¹⁶⁷ Above n 163, 1960 Policy, Points of Interest to Women at 28 [2].

¹⁶⁸ New Zealand Labour Party (NZLP) *Report of the Thirty-second Annual Conference* (Dunedin, 3-7 May 1948) Report of Social Security and Health Committee, Remit 1 (d).

¹⁶⁹ NZLP *1966 Election Manifesto*, Welfare and Social Justice, Voluntary Organisations at 3.

6.0 A RATIONALE FOR THE DONATIONS CONCESSION

Simcock has observed that “[t]he taxing Acts of both New Zealand and England have always granted concessions to charities, and since 1962, in New Zealand, an exemption to donors to charities.”¹⁷⁰ Further, that, “[i]n spite of the great cost to the Revenue each year, every recent Government-instituted committee or commission of inquiry has supported the retention of such concessions.”¹⁷¹ Simcock argued that charitable donation tax concessions are necessary in order to:¹⁷²

- Counter some of the effects of inflation and high taxes upon the financing of charities;
- Spread the sources of their funds by attracting new donors; and
- Procure the growing sums they will want for their increasing work.

Thus, Simcock argues:¹⁷³

[t]he New Zealand Government aids charities through the tax system by [granting] concessions to donors which act as incentives to giving, and by exemptions [from income tax] to the charities themselves, enabling greater retention of funds for expenditure on their charitable activities.

Simcock described the principal arguments in favour of donor concessions as being:¹⁷⁴

- The notion of charity pertains more to the act of giving than receiving so that concessions to the subscriber rather than the recipient should be favoured;
- Such concessions have the result of increasing donations. The UK Advisory Group considered that they “were convinced that the only sure way of attracting additional private funds is to give donors more positive encouragement in the form of tax incentives, *which cost the Government much less than the services performed by charities that would otherwise be wholly at the expense of the state.*”¹⁷⁵

However, Simcock observed that it was noted in the United Kingdom that “[t]he main argument against income tax deductions for donors is that they offend the principle that the tax system does not in general take account of the way in which the taxpayer spends his money.”¹⁷⁶ That aside, if there is a benefit to the Government through the donations concession, then why did the National-led Government in 2012, fifty years after introducing the concession, act to restrict access to this incentive due to fiscal concerns?¹⁷⁷

¹⁷⁰ Donald Hugh Simcock *The Charitable Tax Concessions* (Unpublished Master of Laws thesis, Victoria University of Wellington, 1972) at 40.

¹⁷¹ At 40. Simcock was referring to: Taxation Review Committee (also known as the Ross Committee, New Zealand, 1967); Royal Commission on Taxation (also known as the Carter Commission, Canada, 1966); Royal Commission on the Taxation of Profits and Income (United Kingdom, 1955).

¹⁷² At 45.

¹⁷³ At 45. See Gousmett, above n 51, ch 10 for discussion on the contemporary rationale on the charitable purposes exemption from income tax.

¹⁷⁴ At 45.

¹⁷⁵ Report of Advisory Group on Charities and Taxation UK (1972) at 3, as cited by Simcock, above n 170, at 45.

¹⁷⁶ Report of Advisory Group on Charities and Taxation UK (1972) at 3, as cited by Simcock, above n 170, at 47.

¹⁷⁷ Jo Goodhew “No review of the Charities Act at this time” (media release, 16 November 2012).

The 1967 Taxation Review Committee, also known as the Ross Committee, five years after the donations concession was introduced into legislation in 1962, provides a five-year history of the donations concession, which was classified as a “Special Exemption”:¹⁷⁸

Charitable Donations and School Fees: Income Derived

During Year Ended 31 March

1963

For purposes of ordinary income tax exemption, up to an overall limit of £25, was allowed to individuals for certain charitable donations paid in money, and for school tuition fees paid to registered private schools, or special schools for handicapped children, not carried on for private pecuniary profit, in respect of a child, step-child, or foster child of the taxpayer.

1964 to 1967

The exemption was increased to an overall amount of £50. No more than £25 may be claimed in respect of charitable donations but an overall amount of £50 is allowable for donations to the above schools, for tuition fees paid to such schools even though carried on for private profit, or for a combination of those charitable donations, school donations, and tuition fees.

While most submissions to the Ross Committee on the question of exemptions and deductions argued that “exemptions for education expenses and donations to charities should be increased,” one submitter, the Ross Committee noted “[w]ith interest ... advocated the abolition of this type of exemption.”¹⁷⁹ The Ross Committee also considered that “[t]he exemptions for charitable donations and school fees ... are matters of Government policy rather than tax problems.”¹⁸⁰

6.1 Precedent for the Donations Concession

There appears to have been a precedent for the donations concession of 1962, as there is evidence that such thinking appeared between 1922 and 1952, and again in 1962.

6.1.1 1922: Donations to hospital boards

In 1922, a meeting of the Hospital Boards’ Association petitioned the Prime Minister, the Rt Hon William Massey (Reform Party), requesting “[t]hat voluntary donations to hospital boards be allowed as deductions from profits for the purpose of income tax.”¹⁸¹ Mr Massey’s reply is worth reciting in full, for the quality of his answer is very enlightening:¹⁸²

¹⁷⁸ Taxation Review Committee *Taxation in New Zealand: Report of the Taxation Review Committee* (Government Printer, Wellington, 1967) at 473. The Committee was chaired by LN Ross, hence it is also known as the Ross Committee.

¹⁷⁹ At 106.

¹⁸⁰ At 107.

¹⁸¹ “A Vanishing Point: Taxation of Donations to Hospitals” *Northern Advocate* (20 September 1922) Papers Past <<http://paperspast.natlib.govt.nz>> at 6.

¹⁸² Above n 181. The Rt Hon William Massey (1856-1925) died in office; he held office from 10 July 1912 to 10 May 1925. See “Prime Minister of New Zealand” Wikipedia <<http://en.wikipedia.org>>.

I have to advise you that a donation to a hospital board is a disposal of the assessable income after it is earned and not necessary outgoing incurred in the earning of it. As the Act provides only for the deduction of expenditure incurred in the earning of income, it would be necessary to legislate if donations such as the above are to be allowed as deductions from profits.

I cannot, under the circumstances, agree that this is done. The assessable income (which represents the net income of taxpayers after allowing the deduction of expenses and outgoings incurred in earning it), liable for taxation for 1921-22 was approximately 40½ millions. The special exemptions already provided for in the Act whittled this amount down to a taxable income of 28½ millions, and on this sum our income tax revenue was collected. To continue further in the direction of special exemptions must inevitably lead to a diminished taxable quantity with a correspondingly high rate of tax to get the required revenue.

The effect of this is to make it appear that the income tax in New Zealand is at a higher rate in the pound than in other British Dominions, whereas the reason is that 12 millions out of 40 millions (and this represents the taxable people only) escapes taxation altogether by reason of special exemptions, which, for various reasons, have been granted.

I do not think it wise to extend exemption practice. If the worthiness of the object is to be the reason of granting the deduction, then it is difficult to draw a line of resistance in other cases, such as educational, religious, or patriotic movements, and it is conceivable that the taxable income might reach vanishing point when every taxpayer has dispersed his income on his own particular fads instead of recognising his first duty, which is to pay his just dues to the state and thereby uphold the Empire to which he has the privilege of belonging.

6.1.2 1923: Maintenance of mental health patients

In another example of “borrowing” from other legislation, on 25 July 1923, George Witty MP (for Riccarton), asked the Minister of Finance “[w]hether he will bring the Land and Income Tax Act into line with the English Act, so as to exempt from income tax money paid for the maintenance of inmates of mental hospitals or other institutions by their relatives?”¹⁸³ The Minister of Finance, Mr Massey, replied “[t]hat the matter referred to ... will have careful consideration.”¹⁸⁴ The matter does not appear to have gained any traction as no special exemption provision is contained in the Land and Income Tax Act 1923, which contained special exemptions only for an individual taxpayer, a taxpayer’s dependent children, contributions towards support of a taxpayer’s widowed mother, and in respect of a taxpayer’s life insurance premiums for the taxpayer “for the benefit of his wife or children.”¹⁸⁵ However, by 1954, the Land and Income Tax Act included a special exemption for the support of relatives without independent means.¹⁸⁶

6.1.3 1929: Donations to disaster relief funds

The concept of allowing tax relief on donations to funds for disaster relief in New Zealand is evident from an item in *The Evening Post* of 27 June 1929, in response to the Murchison earthquake on 17 June 1929,¹⁸⁷ in which it was reported that the Dunedin Chamber of Commerce recommended to the Prime Minister “that ... donations to the earthquake fund be free of income tax.”¹⁸⁸ It appears that at least the Amusement Tax was waived, as can be seen in an advertisement for a fundraising concert by “Hinemoa” and an “All Maori”

¹⁸³ (25 July 1923) 201 NZPD 191.

¹⁸⁴ Above n 183. In 1923, “there were about 5,000 patients on the registers of ... mental hospitals in New Zealand.”: “Appalling Figures” *The Evening Post* vol CVI, iss 45 (22 August 1923) Papers Past <<http://paperspast.natlib.govt.nz>> at 6. The 1921 Census reported a population in New Zealand of 1,271,664, with a further 13,209 persons living in the Cook Islands and other annexed Pacific Islands: Census and Statistics Office *The New Zealand Official Year-Book* (Wellington, 1923) section V Population.

¹⁸⁵ Land and Income Tax Act 1923, ss 74 to 77.

¹⁸⁶ Land and Income Tax Act 1954, s 84.

¹⁸⁷ “Murchison Earthquake” New Zealand Disasters <<http://christchurchcitylibraries.com/Kids/NZDisasters/>>.

¹⁸⁸ “Taxation Request” *The Evening Post* vol CVII, iss 149 (28 June 1929) Papers Past <<http://paperspast.natlib.govt.nz>> at 9.

Programme”, “Book early, Reserves 3/-, no tax.”¹⁸⁹ Racing clubs were given “two extra permits for meetings in aid of the earthquake appeal,” but it appears that calls by the clubs for the takings to be free of income tax went unheeded by the Government.¹⁹⁰ By the middle of August, over £100,000 had been contributed to the Central Relief Fund.¹⁹¹

6.1.4 1940-1943: Patriotic war fund

The Evening Post of 20 February 1940 reported that the Mayor of Pahiatua, Mr SK Siddells, suggested at a public meeting that the Government should give consideration to a suggestion that donors be given relief “by allowing as a deduction against assessable income money donated to patriotic purposes.”¹⁹² *The Evening Post* of 24 February 1940 published an untitled item, presumably issued by the Commissioner of Stamps who is mentioned in the item, which advised the public that “[a]ll gifts to the patriotic funds are specifically exempt from duty under the War Emergency Regulations.”¹⁹³ The issue appears to not have been resolved as two years later, in 1942:¹⁹⁴

the Wellington Metropolitan Patriotic Committee ... resolved to support the Provincial Patriotic Committee in its approach to the Government for some relief from taxation on donations for patriotic purposes, either by the granting of exemption from taxation or a Government subsidy on all funds raised for patriotic purposes.

The Committee also noted that the Wellington Patriotic Appeal had to date raised £58,000.¹⁹⁵ On 2 October 1942, the Commissioner of Taxes issued a Taxation Ruling which stated that:¹⁹⁶

donations made out of income could not be allowed as a deduction from assessable income for income tax. ... It did not matter whether the gift was made to patriotic funds or War Expenses Account, and all claims made under the heading of donations would be disallowed in the taxpayer’s assessment.

This decision was met with strong opposition, and in the following year the debate continued, with Mr Bain MP (Wanganui) claiming that “the Taxation Department, with its complete knowledge of the incidence of taxation, should be the authority to devise some means by which patriotic gifts should be tax free.”¹⁹⁷ Then, on 5 August 1943, the Hon Mr Broadfoot asked the Minister of Finance:¹⁹⁸

[w]hether his attention has been drawn to the statement that the larger companies are being hampered in contributing to patriotic funds for the care of sick and wounded soldiers by reason of the fact that the gift of £1 entails the payment of £3 for taxation; and if so, whether he will take steps to exempt such gifts from income tax?

¹⁸⁹ Advertisements, *The Evening Post* vol CVII, issue 6 (6 July 1929) Papers Past <<http://paperspast.natlib.govt.nz>> at 4.

¹⁹⁰ “The Earthquake Relief Fund” *The Auckland Star* vol LX, iss 169 (19 July 1929) Papers Past <<http://paperspast.natlib.govt.nz>> at 6. It may be that the request was not favourably received. A review of *Hansard* may be warranted for the period June to December 1929 for any reaction by the Government, but as a response does not appear to have been reported in the newspapers.

¹⁹¹ “The Central Fund” *The Evening Post* vol CVIII, iss 38 (13 August 1929) Papers Past <<http://paperspast.natlib.govt.nz>> at 11.

¹⁹² “Taxation Relief” *The Evening Post* vol CXXIX, iss 43 (20 February 1940) Papers Past <<http://paperspast.natlib.govt.nz>> at 10.

¹⁹³ Untitled, *The Evening Post* vol CXXIX, iss 47 (24 February 1940) Papers Past <<http://paperspast.natlib.govt.nz>> at 13.

¹⁹⁴ “Taxation Relief: Patriotic Donations” *The Evening Post* vol CXXXIV, iss 48 (25 August 1942) Papers Past <<http://paperspast.natlib.govt.nz>> at 4.

¹⁹⁵ Above n 194.

¹⁹⁶ “Taxation Ruling: Gifts Not Allowed as Deductions” *The Evening Post* vol CXXXIV, iss 81 (2 October 1942) Papers Past <<http://paperspast.natlib.govt.nz>> at 4.

¹⁹⁷ “Taxation on Gifts: Patriotic Funds” *The Evening Post* vol CXXXVI, iss 25 (29 July 1943) Papers Past <<http://paperspast.natlib.govt.nz>> at 6.

¹⁹⁸ (5 August 1943) 263 NZPD 559.

The Hon Mr Nash's reply was unequivocal in that he considered that:¹⁹⁹

[n]o additional income tax is payable on that account and there is provision for exemption from gift duty. On the other hand, the Government does not consider it necessary or desirable to introduce legislation providing for a reduction in taxation normally payable because of donations to patriotic funds. *Any such provision would amount to an indirect subsidy on such donations.*

6.1.5 1946: Voluntary donations

The issue of concessions for private donations continued when, in 1946, the question of income tax concessions for donations was again raised, this time in respect of community facilities. Ernest Aderman MP was interested to know if the Minister of Finance, Mr Nash, would inform the House:²⁰⁰

whether any remission of income tax is conceded in respect of private donations for the planning, construction, and maintenance of community centres, hospitals, libraries, or other amenities by local government authorities, and, if not, whether he will consider remission of income tax on voluntary donations?

Immediately following the question by Mr Aderman, there is a note which has been inserted into the NZPD that reads: "The payment of taxation on gift donations to humanitarian projects has been one of the factors responsible for the decrease of private support."²⁰¹ This suggests that because there is no tax relief on private donations, donors were reluctant to support voluntary activity; therefore, a concession is necessary to encourage such support. As well as referring to the question in the House in July 1943 about patriotic funds, the reply by the Minister is very informative, as it justifies why such concessions were, in his opinion, inappropriate:²⁰²

The position is that donations made out of profits or earnings of employers or employees to such humanitarian projects are gifts of income, and gifts of this nature cannot be permitted as a deduction from the assessable income of the donor. The same principle has always applied with respect to gifts made for any charitable purposes. *If an exemption were allowed for taxation purposes in respect of gifts or donations, the result would be that the revenue would, in effect, provide part of the donor's gift.* For example, if the tax payer whose income tax rate is 10s in the pound donates, say, £100 annually, the revenue would clearly be providing £50 of the £100 donated. Exemption of donations of the kind mentioned would involve the Government in [a] heavy loss of revenue, and the matter of granting exemption cannot be given favourable consideration.

6.1.6 1948: New Plymouth Hospital Ex-patients' Association

Mr Aderman was clearly the champion of voluntary causes and philanthropic support at that time, as he again surfaces in 1948, this time asking if the Minister of Customs would reconsider his decision not to provide for a refund of sales tax on equipment that had cost the New Plymouth Hospital Ex-patients' Association £4 13s 3d.²⁰³ The Minister had replied to the Association that while he commended their "charitable work ... no legislation existed whereby such relief could be given."²⁰⁴

6.1.7 1952: Donations concession

Ten years before the National Government introduced the donations concession into legislation, during the Address in Reply: Want of Confidence in 1952, the Hon (later Sir) Leon Götz MP, after suggesting that the Government should establish a fund to support charities that did not want to rely on gambling profits, stated that

¹⁹⁹ Above n 198 (emphasis added); "Patriotic Gifts: No Tax Exemption" *The Evening Post* vol CXXXVI, iss 32 (5 August 1943) Papers Past <<http://paperspast.natlib.govt.nz>> at 7.

²⁰⁰ (11 September 1946) 275 NZPD Addendum Questions and Replies 777.

²⁰¹ Above n 200.

²⁰² Above n 200 (emphasis added).

²⁰³ (24 September 1948) 283 NZPD 2556.

²⁰⁴ Above n 203.

he had “[a]nother suggestion” which he said was “guided by some extent by the donation recently made by a leading company in Auckland ... that donations to approved charities should be removed from the necessity of having to pay income tax.”²⁰⁵ Mr Götz pointed out that:²⁰⁶

[a] donation recently made of £5,000 means something in excess of £11,000 of profits. Many of these charitable organisations are being denuded of funds, from having to draw on their capital. *They are carrying out a duty which, if there were no such charitable institutions, would devolve on the State*, and any assistance, any encouragement which we can give to those institutions to carry on their wonderful work would be of very great advantage not only to this country, but to the particular beneficiaries.

The comment by Mr Götz that, if there were no charities, then it would be the responsibility of the State to provide for the people that charities would otherwise have assisted, is a hint at the underlying rationale for the donations concession as stated by Mr Holyoake in 1960, and is also a suggestion that it is up to the community to care for its own and not to rely on the State. Mr Götz also spoke of his own voluntary activity in the community, noting that:²⁰⁷

among the organisations to which I am privileged to give my little share towards assisting the sick, the aged, and the infirm, there are no Labour members sitting, and yet they have an equal opportunity, and the same invitation as I receive, to participate in what is being done. This Government is imbued with the highest ideals of doing all that is humanly possible to help those in need.

7.0 REVIEWS OF THE TAXATION OF CHARITIES

7.1 1967: The Ross Committee

In 1966, the Holyoake Government (with the Hon Robert Muldoon as Minister of Finance) instigated a review of taxation in New Zealand, with the task being assigned to a committee chaired by LN Ross (hence the committee is also known as the Ross Committee). The Ross Committee’s mandate was:²⁰⁸

to carry out a comprehensive review of the rates, structure, and incidence of the whole field of central government taxation in New Zealand, including both direct and indirect taxes, and to report any changes in taxation law or practice which appear to be desirable.

After outlining the general principles regarding the taxation of religious and charitable organisations, co-operative and friendly societies, and statutory and incorporated organisations,²⁰⁹ the Ross Committee then discussed the trading activities of charitable organisations.²¹⁰ The Ross Committee concluded that “incomes derived from activities of a commercial nature should, in principle, be included in the tax base.”²¹¹ This led to the Ross Committee recommending that:²¹²

1. The existing legislation [under the Land and Income Tax Act 1954] should be amended to provide that:
 - Profits from trading derived directly or indirectly by charitable organisations, and

²⁰⁵ (10 July 1952) 297 NZPD 245.

²⁰⁶ Above n 205 (emphasis added).

²⁰⁷ Above n 203.

²⁰⁸ Taxation Review Committee *Taxation in New Zealand: Report of the Taxation Review Committee* (Government Printer, Wellington, 1967) at 8.

²⁰⁹ At 308.

²¹⁰ At 308.

²¹¹ At 309.

²¹² At 312.

- Dividends derived from any company substantially owned by such organisations

are assessable for income tax at normal rates.

2. All other income of charitable organisations should remain exempt from taxation.

Earlier in its report, the Ross Committee had considered the issue of tax exemptions and deductions allowed to individual taxpayers.²¹³ At that time (1967), a special exemption for donations and charities of up to \$100 per annum was allowed “for ordinary income tax purposes.”²¹⁴ The Ross Committee had no further comment on this issue, other than to say that:²¹⁵

we consider that exemptions for charitable donations and school fees are matters of Government policy rather than tax problems. Accordingly we recommend no change in the present exemptions.

7.2 1987: The Lange Government

On 17 December 1987, the Hon Roger Douglas MP, the Minister of Finance in the Lange-led Labour Government, released a *Government Economic Statement*²¹⁶ that included the removal of fiscal privileges for charitable organisations.²¹⁷ Mr Douglas proposed that:²¹⁸

- (a) Donations will be exempt and expenditure incurred in raising donations will be non-deductible;
- (b) Income from activities undertaken for the purpose of making a profit will be assessable, and expenditure incurred in that process will be deductible;
- (c) Income from activities undertaken for purposes other than making a profit (ie income from charitable activities) will be assessable, but offsetting that, expenditure will be deductible to the extent that it was incurred in the production of that assessable income.

This proposal was included in Annex 5, under the heading, “Other Base-broadening Measures”.²¹⁹ By removing the fiscal privileges, Mr Douglas considered that “[government] assistance to charitable organisations can be more efficiently delivered through direct expenditure programmes.”²²⁰ This would be achieved through the removal of the income tax exemption, “and the equivalent level of aggregate funding [being] made available through [direct] expenditure programmes.”²²¹

Mr Douglas also argued that, as charities were exempt from income tax and benefitted from concessionary treatment under the goods and services tax (GST), “this treatment raised two problems. First, assistance provided through the tax system was often poorly targeted and, second, this special treatment was being exploited to avoid tax.”²²² Mr Douglas then argued that “as loopholes in the tax system were being closed off, pressure on the remaining openings for avoidance would increase.”²²³ The new tax regime for charities “would

²¹³ At 103.

²¹⁴ At 104.

²¹⁵ At 107.

²¹⁶ New Zealand Government *Government Economic Statement* (Wellington, 17 December 1987).

²¹⁷ Oliver Riddell “Tax exemption clampdown to hit charities” *The Press* (18 December 1987) at 1.

²¹⁸ New Zealand Government, above n 216, at 33.

²¹⁹ At 33.

²²⁰ At 33.

²²¹ At 33.

²²² Riddell, above n 217.

²²³ Riddell, above n 217.

recognise their activities such as raising donations, making investments, and other business done for profit, and the delivery of social services [that charities] provided.”²²⁴ Mr Douglas’s proposal was that “[e]ach of those types of activity would have an associated stream of income and expenditure with its own tax treatment.”²²⁵ Further.²²⁶

[n]o charity receiving donations would have to pay tax on any aspect of that operation, but a charity that was involved in commercial business to raise money would be treated like any other business. It would pay tax on its profits, but its legitimate expenses would be deductible.

Mr Douglas also explained that “the reason for including income from charitable activities – but not from donations – in the tax base was to limit the scope for charities to be used for tax avoidance.”²²⁷ However, Mr Douglas also went on to say “[t]hat income, for example, would include fees charged for emergency accommodation or rest home care.”²²⁸ If these proposals had been introduced, then entities running business activities under the guise of charitable status, such as St George’s Hospital, Ngai Tahu Charitable Trust and Marist Holdings (Greenmeadows) Ltd, would today be entities that paid income tax.²²⁹

Mr Douglas went even further than the income tax exemption issue, having also proposed that the income tax deductibility on donations to charitable organisations was to be abolished.²³⁰ This proposal is to be found in the main body of the *Government Economic Statement*, under the heading “Tax Rebates and Deductions”, which stated that.²³¹

- Most personal tax rebates and deductions will be removed – many of these are of [the] greatest benefit to people with high incomes.
- Alternative funding support will be provided for charitable activities benefiting from present concessions relating to gifts and donations.

It is also possible to identify Mr Douglas’s agenda, through the title of the proposals, under the heading “Other Base-broadening Measures”,²³² that is, this proposal was intended to broaden the tax base. In the opinion of the Opposition, the reason why Labour intended to remove the tax deductibility on school fees was that “the Government hates the thought of private education.”²³³

The Government’s response to the reaction to the various tax reform proposals contained in the *Government Economic Statement* was to establish a consultative committee under Dr Don Brash, to which submissions on the various topics could be made. However, two years after announcing its economic reforms, in response to a question by the Hon George Gair MP, the Government was not able “to give a clear and unequivocal answer as to [its] intentions regarding the tax treatment of [charities],” with the Hon David Caygill not being able to say,

²²⁴ Riddell, above n 217.

²²⁵ Riddell, above n 217.

²²⁶ Riddell, above n 217.

²²⁷ Riddell, above n 217.

²²⁸ Riddell, above n 217.

²²⁹ See the Appendix of this article. This issue will be the subject of Part 2 of this article.

²³⁰ Max Abbott “Death of the Voluntary Sector” *Mental Health News* (February/March 1988) at 3.

²³¹ New Zealand Government, above n 216, at 7.

²³² Abbott, above n 230.

²³³ (16 March 1988) 487 NZPD 2762.

“at this stage, when an announcement of the Government’s intentions will be made.”²³⁴ History suggests that the process died a natural death.

7.3 2001: The Clark Government

In June 2001, the Clark Government released a discussion document, *Tax and charities*,²³⁵ which once again raised the issue of income tax and donee status. The discussion document was particularly interested in the accumulation of profits by businesses run by charities, and of investments, and whether these should be taxed, as was being proposed regarding a charity’s trading activities.²³⁶ The proposal regarding trading activities was that such operations “would be subject to tax in the same way as other businesses, but with an unlimited deduction for distributions made to relevant charitable purposes.”²³⁷ In effect, this is the route now being taken in Australia with respect to charities and their business activities.²³⁸

The discussion document also considered increasing the limit for donations to be eligible for rebates, proposing that the limit be raised from \$1,500 to \$1,800 per individual per year, which would provide a maximum rebate of \$600.²³⁹ The limit was eventually increased in 2003 to \$1,890²⁴⁰ and then, in 2007, removed altogether.

7.4 Greater Incentives for Charitable Donations

In February 2007, the Hon Dr Michael Cullen (Labour), Minister of Finance, in response to a question by Gordon Copeland MP as to “[w]hat reports has the Minister seen on new developments in fiscal policy,” replied that:²⁴¹

[he had j]ust today seen reports suggesting that a major new policy on welfare would be released ... which is simply the National Party’s submission on the tax and charities discussion document released by my colleague the Hon Peter Dunne earlier this month. It is, of course, Mr Dunne who has been leading the charge in terms of changes to the charities taxation regime.

National (through John Key MP) had that day issued a press release claiming that “a bold charity tax policy” was being announced which will “support private giving and is serious about backing groups doing important work in our communities.”²⁴² The policy would “[r]emove the \$1,890 cap on charitable donations, [and that] donations of any amount, up to an individual’s total net income, will be eligible for the 33.3% rebate.”²⁴³ National stated that “[t]he existing level of donations is about \$350 million a year. If National’s policy sees donations increase as much as we estimate, then donations will increase by a further \$300 million – nearly doubling the amount that goes to the sector.”²⁴⁴

²³⁴ (13 December 1989) 495 NZPD 9053. The author has not, at the time of writing, found a consultative document by the Brash Committee concerning the tax reforms of concern to charities.

²³⁵ New Zealand Government *Tax and charities* (Policy Advice Division, Inland Revenue Department, Wellington, June 2001).

²³⁶ At 45.

²³⁷ At 44.

²³⁸ See n 256.

²³⁹ New Zealand Government, above n 235, at 49.

²⁴⁰ Inland Revenue “Donation rebates, 2002 to 2011” About us <www.ird.govt.nz/aboutir>.

²⁴¹ (27 February 2007) 637 NZPD 7657.

²⁴² NZNP “Bold charity tax policy announced” (press release, 27 February 2007).

²⁴³ Above n 242. Concessions for donations by companies and Māori authorities would also be increased.

²⁴⁴ Above n 242.

It was, however, Labour and United Future that removed the maximum limit on the tax credit for donations made by individuals, as well as removing the five per cent deduction limit on donations made by companies and Māori authorities through amendments to ss DB 41 and DV 12, and sub-pt LD, of the Income Tax Act 2007.²⁴⁵

The impact on private charitable giving has been significant. According to data available on the Inland Revenue website,²⁴⁶ the average claimed by way of donations rebates for the period March 2001 to March 2008 was \$98.5 million per year. Following the removal of the cap, the average claimed per year increased to \$193 million, with the average amount for rebates increasing from \$256 to a tax credit of \$504. The annual cost to the Revenue is clearly significant.

7.5 What the Government Giveth with One Hand, the Government may Taketh Away with the Other

7.5.1 1979: CORSO

CORSO's story has been well told by Sutton, Cordery and Baskerville, and the author commends their paper to readers.²⁴⁷ CORSO ran foul of the then Prime Minister, the Rt Hon Robert Muldoon, and the National Government which, in response to a film produced by CORSO in 1979, *A Fair Deal*, which Television New Zealand (TVNZ) refused to screen, "legislated the removal of the tax exempt status of CORSO and ended a \$40,000 annual government grant to the organisation."²⁴⁸ The Hon Derek Quigley advised the House of the charity law concerning political activity, referring to the four principal divisions of charity as laid down in *Pemsel*,²⁴⁹ and that a "former president of CORSO said that the organisation had become analogous with HART and CARE, ... and that the organisation is now a political one."²⁵⁰

7.5.2 2012: Review of the Charities Act 2005

While the decision of the National Government to disestablish the Charities Commission and to redistribute its functions to the Department of Internal Affairs as from 1 July 2012 was unexpected by the charity sector, the decision announced in November 2012 by the Minister for the Community and Voluntary Sector, the Hon Jo Goodhew, that the Government would not now proceed with the planned "First Principles" review of the Charities Act 2005²⁵¹ was even more of a shock. The reasons given by the Minister were that "the regulatory

²⁴⁵ Inland Revenue "Greater tax incentives for charitable donations" (28 April 2008) Technical tax area <www.ird.govt.nz/technical-tax>. The changes were included in the Taxation (Annual Rates, Business Taxation, KiwiSaver, and Remedial Matters) Bill, which was introduced in May 2007, and were effective from the 2008-2009 income year. The term "tax credit" was introduced to replace "tax rebate" for donations.

²⁴⁶ Inland Revenue "Donation Rebates, 2001 to 2010" About us <www.ird.govt.nz/aboutir>.

²⁴⁷ The author is indebted to David Sutton, Carolyn Cordery and Rachel Baskerville for their paper on the CORSO story, "Paying the Price of the Failure to retain Legitimacy in a National Charity: the CORSO Story" (Working Paper 47, Centre for Accounting, Governance and Taxation Research, School of Accounting and Commercial Law, Victoria University of Wellington, 2007) Centre for Accounting, Governance and Taxation Research <www.victoria.ac.nz/sacl/cagtr>, a story which the author was aware of but not to the extent as described in their Working Paper. To complete the story, the rebate in respect of gifts of money to CORSO was removed in s 11 of the Income Tax Amendment Act 1979 (No. 18), which repealed sub-paragraph (e) of s 56A (2) the principal Act, as inserted by s 9 (1) of the Income Tax Amendment Act 1977 (No. 2). The principal Act was the Income Tax Act 1976 (No. 65). Muldoon ensured CORSO's removal by tabling a Supplementary Order Paper to that effect during the debate on the Income Tax Amendment Bill in September 1979. See 426 NZPD 3183 ff.

²⁴⁸ Sutton, Cordery and Baskerville, above n 247, at 13, citing *The Evening Post* (12 November 1994). See also (27 September 1979) 426 NZPD 3182-4831 for the lively debates in the House surrounding CORSO.

²⁴⁹ *Commissioners for Special Purposes of the Income Tax v Pemsel*, above n 7, at 583.

²⁵⁰ (27 September 1979) 426 NZPD 3189.

²⁵¹ Goodhew, above n 177.

regime for charities is still bedding in and the [Government's concerns due to the] continuing constrained fiscal environment."²⁵² The reasons behind this decision became clear after the Minister stated that the Government had considered.²⁵³

narrowing the review to look only at the definition of charitable purposes in the [Charities] Act. However, it is likely that the current tight fiscal environment would limit the scope of such a review *due to the probable tax implications of any widening of the definition. ... I will reconsider a review of the definition once the fiscal situation has improved.*

The Cabinet Social Policy Committee papers throw even more light on the background to the decision, as in the papers it is stated that "... it might be unhelpful to conduct a review while the fiscal environment remains constrained *as it may create expectations of more organisations being eligible for charitable status*, which in light of the associated taxation concessions, could result in increased fiscal costs."²⁵⁴

Finally, in a personal letter to the author, the Minister states that "... policy reviews [are] being conducted by Inland Revenue on tax issues relating to charities and donee organisations ...".²⁵⁵ Clearly, the Government has been 'spooked' by the reality of the fiscal implications with respect to charities and donee organisations. However, is the Government also looking at the contribution these entities make to society, as well as questioning those entities that accumulate wealth but fail to provide evidence of how, through their activities, they are of benefit to the community?

8.0 CONCLUSION

Fifty-one years ago, in 1962, the National Party announced, as a part of the Party's tax policy as contained in their Election Manifesto, that National, if elected, intended to encourage greater community self-help and initiative through the provision of a concession for donations to certain approved organisations. In 2012, that same political party moved to stifle the creation of charities and other organisations that benefit the community. One-hundred-and-twenty-one years ago, in 1892, organisations with charitable purposes in New Zealand were granted the privilege of an age-old exemption from income tax. However, did the legislators of that time even consider the extent to which that privilege would be taken advantage of by charities in the 21st century, through their commercial structures? Australia is moving to introduce an unrelated activities tax, to ensure that fiscal privileges are being applied as the legislature intended, and are not being unfairly taken advantage of by commercial entities at the expense of for-profit entities.²⁵⁶ New Zealand has yet to discuss this issue. The author considers that the issue should be discussed on the basis that if the Government is serious about the fiscal implications of donee status, then the Government should also be as concerned about the fiscal implications of

²⁵² Goodhew, above n 177.

²⁵³ Goodhew, above n 177 (emphasis added).

²⁵⁴ Cabinet Social Policy Committee "Future of the Charities Act Review" (2012) (emphasis added) Department of Internal Affairs <www.dia.govt.nz>.

²⁵⁵ Letter from the Hon Jo Goodhew (Minister for the Community and Voluntary Sector) to the author regarding the review of the Charities Act 2005 (12 December 2012).

²⁵⁶ See Myles McGregor-Lowndes, Matthew D Turnour and Elizabeth Turnour "Not for profit income tax exemption: Is there a hole in the bucket, dear Henry?" (2011) 26 ATF 601 for a discussion on the implications of the decision in *Federal Commissioner of Taxation v Word Investments Ltd* [2008] HCA 55, (2008) 236 CLR 204, 70 ATR 225. The Abstract to the paper states: "Australia's Future Tax System Review, headed by the then head of the Australian Treasury, and the Productivity Commission's Research Report on the not for profit sector, both examined the state of tax concessions to Australia's not for profit sector in the light of the High Court's decision in *Commissioner of Taxation v Word Investments Ltd*. Despite being unable to quantify with any certainty the pre- or post-*Word Investments* cost of the tax concessions, both Reports indicated their support for continuation of the income tax exemption. However, the government acted in the 2011 Budget to target the not for profit income tax concessions more precisely, mainly on competitive neutrality grounds." This article examines the income tax exemption by applying the five taxation design principles, proposed in the Australia's Future Tax System Review, for assessing tax expenditure. The conclusion is that the exemptions can be justified and, further, that a rationale for the exemption can be consistent with the reasoning in the *Word Investments* case.

income tax-exempt commercial activities, by requiring those organisations, as well as all charities, to demonstrate public benefit by providing written reports that are available to the public via the Charities Register of their activities and their contribution to society.²⁵⁷ That is the least that should be expected of them in return for the privilege of the fiscal concessions that are available to this significant part of our economy and society.

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²⁵⁷ Space did not allow for a discussion on this issue, which the author is researching for publication in the future.

APPENDIX

When William Pitt provided an exemption from income tax in 1799 to corporations, fraternities and societies of persons established “for charitable purposes only,”²⁵⁸ the concept of a corporation then did not include for-profit corporations in the form of limited liability companies. Corporations were either ecclesiastical or lay,²⁵⁹ with lay corporations further subdivided into eleemosynary and civil.²⁶⁰ Eleemosynary corporations were constituted “for the perpetual distribution of free alms, or bounty of the founder of them, to such persons as he has directed.”²⁶¹ Of those there were two further types, “hospitals for the maintenance and relief of poor and impotent persons; and colleges for the promotion of learning, and the support of persons engaged in literary pursuits ... within the universities ... and others ... out of the universities.”²⁶² Eleemosynary corporations were incorporated by trustees for the purpose of “public charity”, such as “the corporation created in the reign of Queen Anne.”²⁶³ Civil corporations were created for “temporal purposes”, for example, local government; “the maintenance and regulation of some particular object of public policy, such as the Corporation of the Trinity House for regulation navigation;” and “the College of Physicians and the Company of Surgeons in London for the improvement of medical science.”²⁶⁴

In the 21st century it is not uncommon, although not generally known by the public, for the form of the limited liability company to be used for charitable purposes. Given the scale of the commercial activities of such entities, the protection afforded by the status of limited liability is prudent business practice. However, the question to be asked, and answered, is what are the expectations of the tax-paying public who subsidise such entities with respect to distributions to charitable purposes? In the 18th century, the expectation was that surplus funds would be applied to charitable purposes, as in *The Case of Thetford School*, for which a charitable corporation was vested in trustees for the purposes of the corporation, requiring “the annual income of the land appointed for the maintenance of the objects of the founder’s bounty ... to be distributed in a certain proportion ... and if afterwards the revenues increase by a rise in the rents of the land, the increase shall be employed in making a proportionable increase in the allowance of the objects of the charity.”²⁶⁵ Two hundred years later, ~~should this concept be revisited in light of the apparently minimal distributions, relative to their total revenues, by the Ngai Tahu Charitable Trust and the Society of Mary General New Zealand Trust?~~ is it also time for New Zealand to reconsider the presumption of charity?

²⁵⁸ Duties upon Income Act 1799 39 Geo III c 13, s V. See Gousmett, above n 51.

²⁵⁹ Stewart Kyd *A Treatise on the Law of Corporations* (J Butterworth, London, 1793) at 22.

²⁶⁰ At 25.

²⁶¹ At 25.

²⁶² At 25.

²⁶³ At 27.

²⁶⁴ At 28.

²⁶⁵ At 179, citing *The Case of Thetford School* 8 Co Rep 130b, 77 ER 671.