

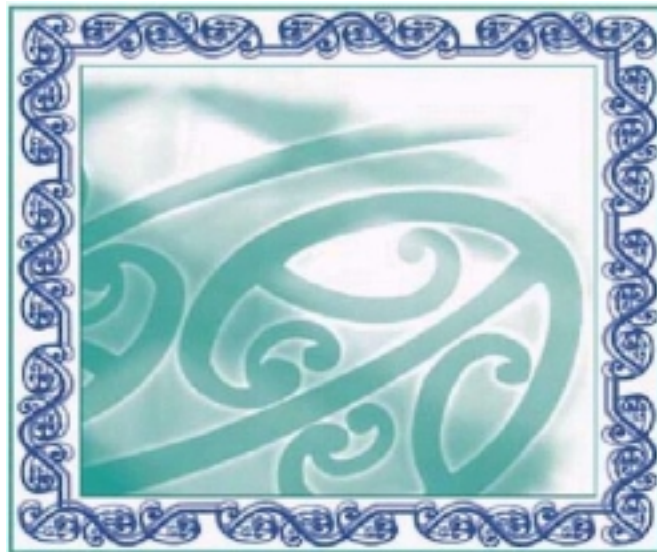
Tax simplification 2

# Taxation of Māori organisations

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*A Government discussion document*

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## **PREFACE**

This document is the second in a series of Government discussion documents that puts forward proposals for simplifying and improving the equity of the tax system. The focus of these proposals is aimed at simplifying the income tax requirements for Māori authorities and those individuals who derive benefits from these organisations.

There are also proposals for clarifying how “charitable” tax exemptions apply to Māori organisations, including marae. These proposals should be considered in the light of the Government’s proposed changes that are likely to emerge from the wider review of tax and charities.

The document is a genuine attempt to respond to the growing number of concerns in the Māori community that the existing income tax laws applying to Māori organisations and businesses are no longer appropriate and should be updated.

Before the Government goes any further with these proposals, we seek your views on whether these proposals are workable and, if so, how they can be further improved.

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# Whakarāpopotonga

*Ko tēnei wāhanga te whakarāpopotonga o ngā kōrero i te reo Māori.*





## **Te arotake i te tāke o ngā rōpū Māori...**

*Kia whakapakari i te wā e tū mai nei*

*He whitiwhitinga kōrero nā te Kāwanatanga e uru atu ai ngā tūtohu mō ngā tāke ka pā ki ngā manatū Māori ā taihoa nei kātahi, me te whakataha te tāke a ngā rōpū Māori.*

### **Te kaupapa o te arotake**

Tākehia ai ngā moni whiwhi a ngā rōpū Māori i runga i ētahi tikanga tawhito, otirā, nō te tau 1952 rā anō tōna arotakenga whakamutunga. Ko te otinga atu, kāore i te whai haere te pakari o ngā tikanga tāke ki ngā whanaketanga o ngā manatū Māori i roto i ngā tau, ā, kāore hoki i te aro atu ki te wāhi nui a ēnei rōpū i roto i te whanaketanga ōhanga, hapori hoki o te iwi Māori whānui. I tua atu o tēnei, kāore i kuhuna atu ngā whakarerekētanga nui ki ngā ture tāke o roto i ngā tau 50 kua pahure ki muri.

I runga i ēnei tū āhuatanga, rite tonu te tono a ngā momo rōpū Māori kia arotakengia ngā ture tāke tawhito, uaua rawa e pā ana ki ngā rōpū, kaipakihi Māori. Me te āwangawanga anō, kei whakararua te whanaketanga ōhanga, hapori hoki o te iwi Māori. Ko te mea kē hoki, e whakaponohia ana, he uaua mō ngā mema o ngā rōpū me ngā kaipakihi nei ki te noho kia ū ki ngā ture tāke, me te aha, kua tōpūtia te utu tāke a ngā rōpū nei.

Ināianei, kua tahuri te Kāwanatanga ki te arotake i ngā ture tāke kei runga o ngā rōpū me ngā kaipakihi Māori, kia hua ake he ture pai.

Ko te mahi arotake, e titiro hōmiromiro ana ki ngā tikanga e hāngai ana ki ngā rōpū me ngā kaipakihi e kīia nei he ‘manatū Māori’, ka mutu, ka tirohia ngā tikanga oha pēneki i te ‘hua tūmatanui’, kia kitea ai te huarahi mō ngā rōpū Māori, kia whakawāteatia tā rātou utu tāke i runga i tā rātou tūranga hei rōpū ohaoha. E rapu ana te arotake nei, e pēhea ana ngā tikanga tāke i ngā rōpū me ngā kaipakihi Māori. Kāore e uru ki te arotake nei ngā kōrero mō te utu tāke hokohoko, me pēhea rānei te tākehia o ētahi moni hua pēneki i ngā moni mai ngā whakataunga o ngā tono Tiriti.

Ko tēnei momo tuhituhinga te hua o te arotake a te Kāwanatanga tae noa ki tēnei rā. Kei roto ētahi kōrero kia whakarerekēhia ētahi ture tāke e āta titiro ana ki ngā rōpū Māori pēneki i te Kaitiaki Māori. Kei roto anō hoki ētahi whakamārama o ngā ture oha, me ngā pānga ki ngā rōpū, hapū, iwi hoki, ā, tae noa ki ngā marae.

### **Ngā whāinga o te arotake**

Ko te whāinga nui o te arotake nei, ko te rapu mēnā kei te katia e ngā ture tāke kei runga i ngā rōpū me ngā kaipakihi Māori, ngā ara ki te whanaketanga o te iwi Māori, taha ōhanga, taha hapori. Mēnā kei te whakaae tātou ki taua whakapae, tēnā, me pēhea e taea te pare atu i ngā aukatitanga, kia māmā ai te mahi tāke a ngā manatū Māori.

He wāhanga tēnei o te kaupapa whakapai ake a te Kāwanatanga i te pūnaha tāke a ngā kaupakihi, a te tangata takitahi hoki, kia rite

Ko te whāinga o ngā tūtohunga, kia pai ake te mahi tāke i ngā manatū Māori. Ko te ngako o ngā whakarerekētanga ki ngā ture tāke, kia kaua e tōpū te utu tāke a ngā manatū Māori i raro i ngā tikanga. Kei tua atu o tēnei ētahi whakarerekētanga paku nei ki aua tikanga. Ka whakaitia te wā e whakawhitiwhiti kōrero ana te tangata whai pānga mai ngā manatū Māori, ki te Tari Tāke mō ngā tāke ka utua te take.

Mā ngā whakatakotoranga kōrero e pā ana ki ngā manatū Māori, ka mārāma ake ki ngā rōpū Māori, tae noa ki ngā marae, pēhea te hāngaitanga mai o ngā whakawāteatanga tāke i raro i te kaupapa oha ki tēnā, ki tēnā. Ehara i te mea ka whāiti te ‘hua tūmatanui’ ki ngā rōpū Māori anake, engari ka hāngai pū ki a rātou.

### **Te Tiriti o Waitangi i roto i te arotake nei**

He kawenga tō te Kāwanatanga i raro i te Tiriti o Waitangi ki te tiaki i ngā pānga a te Māori, ki te whitiwhiti kōrero hoki me te Māori, mō ngā kaupapa nui, me ngā wāhanga o roto i aua kaupapa e hāngai ana ki te Māori. I roto i te horopaki whakarerekē ture, ka noho te Kāwanatanga ki te whiriwhiri he aha ngā pānga Māori e hāngai ana, he aha ngā whakaaro o te Māori mō ngā tūtohunga, kia aha, kia whai wāhi atu ai nga kōrero a te Māori ki te hātepe whakatau kaupapa a te Kāwanatanga.

I roto i te arotake tāke nei, i oti te whitiwhiti kōrero a te Kāwanatanga ki ētahi rōpū Māori mō ngā whakahōunga kei te whakaarohia. He wāhi te tuhituhinga nei o te hātepe whitiwhiti kōrero mō te arotake. Mā te arotake nei ka whānui atu te titiro a te Kāwanatanga i a ia ka wānanga me pēhea te tāke i ngā manatū Māori, me te pānga mai o ngā ture oha ki ngā rōpū Māori.

### **Hātepe whitiwhiti kōrero**

I te marama o Hui-tanguru o te tērā tau, i tūria e te Kāwanatanga ētahi huihui ki ētahi rōpū Māori, mātanga hoki, ki te aha, ki te whai i ngā urupare ki ngā ariā kaupapa here i whakaarahia, i whakahiatotia e te rōpū arotake. I āta tirohia i konei te tika o te uta tāke kamupene, tāke tarahiti hoki ki runga i ngā manatū Māori; i tirohia anō hoki ki te pupuri i ngā ture tāke o nāianei, ki te whakangāwari rānei i aua ture. I wānangatia anō te whakarerekē o te ture kaupapa oha e pā ana ki ngā rōpū Māori.

Ko ngā kitenga nui i ēnei o ngā whitiwhitinga kōrero, kia whakangāwarihia ake ngā ture tāke, kia wātea ake te huarahi ki te whanaketanga o ngā rōpū, kaupakihi Māori i roto i te wā. Ko te whakaaro me ū anō hoki ngā whakarerekētanga o te ture ki te whakaaro kia iti noa ngā wā e whakapā ana te tangata ki te pūnaha tāke. Ko ngā tāngata i hoatu whakaaro, mārāma ana tā rātou e kī, me hanga mai he rārangi ture mō ngā manatū Māori, engari kia āhua māmā ake te takoto.

Hei whakautu ki ēnei kōrero, kua whakahiatotia mai e te Kāwanatanga ētahi kaupapa here ki runga i te take nei, ā, ko tāna ināianei, ko te rapu i ngā whakaaro o te iwi mō te whakamahia o ngā ture nei, me te whakapai ake i ngā wāhi e whakaarohia ana e koutou e tika ana kia whakapaihia ake.

Ko te tūmanako i roto i ngā whakaaro, ka puta i ēnei o ngā whitiwhitinga kōrero, ko ngā titiro a ngā manatū Māori, o rātou mema, ngā mātanga tāke, tae noa ki ētahi atu, he aha ngā tikanga tāke tika rawa atu mō ngā manatū Māori, ngā rōpū Māori e tono ana kia taka rātou ki raro i te tikanga tāke tuku oha.

Ina oti ana te whiriwhiri a te Kāwanatanga i ngā tono mō ngā kaupapa nei, ka titiro ia ki te hanga kaupapa here, ki te whakatakoto ture hoki. Kāore e kore ka puare ake ētahi take i te wā ka whakarerekēhia ngā ture; ka tono te Kāwanatanga mō ētahi whakaaro me pēhea te whakatutukitanga o ēnei.

### **Te Hanga o te tuhuhinga whitiwhiti kōrero me te Rārangi Whakamārama**

Kua wehea te tuhuhinga nei ki ōna wāhanga, arā:

- Ka tīpokaina e te Whakarāpopotonga te tuhuhinga i roto i te reo Māori.
- Ko te Wāhanga I, e whakamārama ana he aha ngā kōrero, ngā tūtohunga o te tuhuhinga.
- Ko te Wāhanga II, ka kōrero i ngā tūtohunga mō:
  - te whakapai i te hātepe tāke i ngā manatū Māori rātou ko te Kaitiaki Māori;
  - te whakawhānui i ngā tangohanga tāke mā ngā manatū Māori ka tuku oha ki ētahi rōpūtanga Māori.
- Kei te Wāhanga III, ka takoto ngā tūtohunga kaupapa here e whakamārama ana i te pānga o ngā ture oha ki ngā rōpū katoa, engari e hāngai pū ana ki ngā rōpū Māori (tae noa ki ngā marae) ka tono whakawāteatanga tāke, i runga i tō rātou tūranga oha.
- Kei te tāpiritanga, ko te tāhū kōrero mō ngā ture tāke i nga manatū Māori.

He **papakupu** kei muri o te tuhuhinga nei hei whakamārama i ētahi kōrero tāke, Māori hoki kei te whakamahia. Kua tuhia ēnei ki te tuhuhinga *itāria* i tō rātou takotoranga tuatahi, kia ngāwari ai te tohutoro.

## **Tahi atu arotake tāke a te Kāwanatanga**

He mahi atu anō kei te mahia tērā ka hāngai mai ki te tāke o ngā manatū Māori.

Tērā ka hua he painga ki ētahi rōpū Māori mea te whakangāwaritanga o roto o te tuhituhinga e kīia nei ko *More time for business – Tax simplification for small business*, i whakaterea i te rā 3 o te marama o Haratua o te tau 2001. Ko te tūmanako, ma ēnei tūtohinga e māmā ake ai te wāhi ki ngā tāngata kaipakihi iti, i roto i ā rātou kaupapa tāke. Ko te titiro whānui kei roto o ngā tūtohinga nei, kia torutoru noa iho ngā wā ka whitiwhiti kōrero ngā kaipakihi ki te Tari Tāke.

Me whai wahi ngā rōpū Māori katoa e tono ana kia noho ki raro i te ‘kaupapa oha’ ki te pānui i ngā kōrero o te tuhituhinga *Tax and charities*, he mea whāki i te marama o Pipiri o te tau 2001. Ko ngā tūtohinga kei te tuhituhinga nei e rapu ana kia mārama te kupu ‘oha’, kia pai ake te taha tuku pūrongo a ngā rōpū ka taka ki raro i te whakamāramatanga tangohanga tāke ‘oha’.

## **Te tāke i ngā manatū Māori**

### *Ngā whakamārama o ngā momo whakarerekētanga*

Ko te kōrero ‘manatū Māori’, i kitea tuatahi i te ture tāke moni whiwhi o te tau 1939. I whakamahia taua momo kōrero mō ngā rōpū ‘mahi’ i whakatūria ki te whakahaere poraka whenua mō ngā tāngata Māori takitahi. Ināianei, he maha ngā rōpū, kaipakihi Māori ka taka ki raro i taua taitara – Poari Māori, Marae, Poari Whenua Māori, arā noa atu.

He nui ngā whakarerekētanga o ngā manatū Māori mai te tīmatanga. Kua maha ake ngā mahi, ngā rawa kei te whakahaerehia e rātou, atu i te mahi ahu whenua.

Kei te ū tonu ngā manatū Māori ki ngā whāinga mai rā anō, arā, kia hua ake ko ngā taha tikanga, haporī, ōhanga hoki. Ko te mea rerekē o ēneki rā, kua rahi ake ngā mahi whakahaere me te ū ki ngā ture; i runga i tērā, me pai ake ngā pūnaha whakahaere i ngā rawa Māori.

Hāūnga anō ēnei nekeneke, kei te mau tonu ngā tikanga tāke manatū Māori; ko te putanga, kāore pea i te tika ngā tikanga tāke manatū Māori.

### *Ngā tūpuhitanga o ngā tikanga tāke manatū Māori*

Kua whiwhiwhi, kua kore take ngā tikanga tāke i ngā manatū Māori. Ko te hua o tēnei, kua raruraru ngā manatū Māori, tae rawa ki ā rātou mema, i te taha ū ki ngā tikanga nei, kua uaua hoki ki te Tari Tāke ki te whakahaere.

Ko te tikanga, ka whai te tāke o tētahi mea i tōna tūranga i raro i te ture. Mehemea i tūria tētahi mea hei kamupene ka tākehia ia i raro i ngā tāke kamupene; he pērā anō mō te tarahiti, ka hāngai ko ngā tāke tarahiti. Ko te mea kē, kāore e hāngai tēnei mātāpono ki ngā rōpū, kaipakihi Māori. Ki te taka rātou i raro i ngā whakamārama o te manatū Māori, me whai rātou i ngā tikanga manatū Māori, ahakoa tō rātou hanga ā-ture, tō rātou ake huarahi tāke e hiahia ana rātou te whai.

Ka tākehia ngā moni whiwhi a tētahi manatū Māori i runga i te tokomaha o āna mema.

Mēnā kei raro iho i te 20 te tokomaha o ngā mema o tētahi manatū Māori, ka tāke pēneitia rātou. Ka huia katoatia te moni whiwhi more a te manatū i roto i te tau, kātahi ka whakaritea ki tēnā, ki tēnā mema i runga i te rahi, te iti rānei o ana pānga i te manatū. Me pupuri e te manatū ngā moni tāke a tēnā, a tēnā mema, kātahi ka utua e te manatū ki te Tari Tāke.

Ka tirohia, ka kīia tēnei he moni whiwhi hunga whai pānga a te mema, nā reira me whakakī e te mema tētahi puka tāke, ka huihui atu i ngā moni nei ki ētahi atu moni whiwhi, pēneki i ngā utu mahi, aha noa atu. Ka tukuna he whakawāteatanga tāke ki te manatū Māori mō ngā tāke kua utua.

Ko ēnei moni hua ka tohaina, e tirohia ana, he moni whiwhi hunga whai pānga, ā, ka tākehia anō nei i whiwhia e te mema. Me uru tēnei moni whiwhi ki roto i tana puka tāke mō te mutunga tau, ki te taha o ētahi atu moni whiwhi a te mema (pēneki i te utu mahi). Ka taea anō e te mema te tono whakawāteatanga tāke mō ngā tāke i tangohia, i utua e te manatū mōna. Waihoki, ki te iti rawa te tāke i tangohia, mā te mema e utu i tērā kei te tāwēwē.

I tīkina te tau 20-mema i te tauira mō ngā mema whakahoa mai te whakahoa ā-ture i te tau 1952. Nō te koroua rawa, kua pīrahia tēnei tikanga. Ehara tēnei i te tikanga hōu, pai hoki mō te whakarite i te tāke a ngā rōpū Māori.

Ki te kō atu i te 20 ngā mema o tētahi manatū Māori, ka tākehia a rātou moni whiwhi ka toe i te paunga o te tau, i te reiti 25 ōrau. Ki te tohaina e te manatū ētahi moni whiwhi ki tētahi o ana mema, ka noho te moni rā hei mea tango mā te manatū, engari ina tae aua moni whiwhi ki roto i ngā ringaringa o tētahi mema, ka tākehia te mema ki te 33% i raro i te tikanga tāke pupuri.

Ko ngā tohatoha ki ia mema, (tae noa ki te wāhanga tāke pupuri) e tirohia ana, he moni whiwhi peke, ā, ka whakaurua ki te puka tāke, ki te pūrongo moni whiwhi rānei a ia mema. I tua atu, ka ratoa he whakawāteatanga tāke ki te mema, e taurite ana ki te tāke pupuri e 33% kua tangohia e te manatū. Mēnā kei raro iho i te 33% te reiti tāke tuarua ki te mema, ka āhei ia ki te tono ki te Tari Tāke kia whakahokia te rahi e tāwēwē ana ki a ia. Ki te nui ake i te 33% te reiti tāke tuarua a te mema, me utu e te mema tērā e nama ana.

Mehemea he rahi atu ngā moni i tohaina ki ngā mema, ki te moni whiwhi more i kuhu mai i roto i te tau moni whiwhi, ka tareka e te mema te tono kia uru atu taua moni ki ngā puka tāke o tētahi o ngā tau tata e whā kua pahure. Ki te pā mai tēnei āhuatanga, ka whiwhia te manatū ki ngā tāke o aua moni whiwhi o aua tau tawhito.

I runga i te tikanga whā tau e kōrerohia i runga ake nei, hei ētahi wā kua tōpūngia ngā tāke. Kua utua e te manatū te tāke (i te 25%), nō reira, ko ngā tohatoha o aua moni ka whai, ka tākehia ina tau ana ki ngā ringa o te mema.

## *Te whakatau he aha ngā tikanga tāke e tika ana mō ngā manatū Māori*

Ko ngā tikanga tāke e mea ana, kia tākehia ngā rōpū i runga i te ara e tika ana, ā, kia aro atu hoki ki te āhua, te hanga, tae noa hoki ki ngā mahi ki ngā here o runga i aua rōpū. Ko te tikanga, ka tākehia he mea i runga i tōna hanga i raro i te ture, nō te mea, ko te hanga ā-ture o tētahi rōpū, manatū aha noa, ka tohu ki tōna āhua. I runga i tērā, ka tākehia te kamupene i raro i ngā ture tāke kamupene, ka tākehia te tarahiti i raro i ngā ture tāke tarahiti.

I te whakataunga ko tēhea te tikanga tāke pai rawa mō ngā manatū Māori, e tika ana kia titiro te Kāwanatanga mēnā ka tākehia ngā manatū i runga i tō rātou hanga i raro i te ture.

Ehara i te mea he ōrite ngā rōpū, ngā kaipakihi ka taka ki raro i taitara ‘manatū Māori’. He rerekē ō rātou hanga, ō rātou āhua i raro i te ture, ā rātou kaupapa mahi, ngā hua ka puta i a rātou, ā rātou mema, ō rātou whāinga hoki.

I runga i te huhua o ngā rerekētanga o ngā manatū Māori, he uaua te uta i ngā tikanga tāke kamupene, tarahiti hoki ki runga i te katoa o ngā manatū Māori. Hei tauira atu, ko ngā manatū Māori e tiaki ana i ngā rawa a te iwi, hapū rānei, i te nuīnga o te wā, kāore ō rātou rārangi o ā rātou mema. Me te aha, ka tino uaua te uta i ngā tikanga pupuri hea (he tikanga tērā ka mahia i raro i te tikanga tāke kamupene), te whakarite rānei i ngā moni whiwhi ki tēnā, ki tēnā mema (tērā kia whakamahia i raro i ngā tikanga tarahiti).

Nā runga i te āhua hiranga o ngā manatū Māori, me te whānui o ā rātou kaupapa, ko te whakaaro o te Kāwanatanga, kāore pea i te tika tēnei pūnaha tāke mō rātou, tae rawa ki a rātou mema, nā te uaua o te whakakī.

Ko tētahi anō āhuatanga me titiro, ko te rerekē o ngā tāngata whai pānga ki ngā manatū Māori ki ētahi atu tāngata utu tāke he rite nei ō rātou rawa. Hei tauira atu, he nui ngā here e uaua ai te hoko a te mema o tētahi manatū Māori i ana hea, kāore i pēnei i te tangata he hea āna i roto i tētahi kamupene, ka taea noa iho e ia te hoko i ana hea.

Ko tā te Kāwanatanga tirohanga, tērā pea e tika ana kia takoto he rārangi tikanga ake mō ngā rōpū, kaipakihi Māori e ahu mai nei ō rātou moni whiwhi i ngā rawa nō te katoa. Nō reira, e tautoko ana te Kāwanatanga kia pupuritia tētahi rārangi tikanga ake mō ēnei mea.

### **Ngā tūtohunga kia pai ake ngā mahi tāke manatū Māori (wāhanga 4)**

Kei te wānangatia e te Kāwanatanga ngā tūtohunga e toru e titiro ana ki ngā tikanga tāke manatū Māori he mea māmā, mārama hoki ki te whai. Ka hāngai ēnei tūtohunga e toru ki ngā raru pēneki i te tōpū o ngā tāke o ngā moni whiwhi a te manatū Māori, me ngā here i runga i te āheinga o te manatū Māori ki te whakamahi i ētahi atu tikanga tāke māia ake.

Taketake ake ngā tūtohunga e toru nei i ngā tauira tāke kei te whakamahia ināianei i raro i ngā ture tāke moni whiwhi (pēneki i te tauira kamupene, tarahiti rānei), engari kua hurihia kia hāngai ake ki ngā āhuatanga ake o ngā manatū Māori.

(1) *Te tikanga tāke o nāianei i ngā manatū nui (tirohanga tuatahi)*

Ka hāngai ake ki ngā manatū Māori katoa te tikanga tāke i ngā manatū Māori e 20 neke atu rānei ā rātou mema, ka mutu, ka whakatikatikahia ngā pōraruraru (pēneki i te tōpūtanga o ngā tāke). Ka whakakorehia te wā tatari whā tau, ka whakakuhuna ko tētahi tikanga e tareka ai te huri i aua tohatoha rawa tāwera hei tātai tāke, ka tango mai i ngā moni whiwhi ā ngā tau kei te tū (pēneki i te hingatanga i roto i ngā tauhokohoko).

Ka pā tonu mai te tāke pupuri ki ngā moni whiwhi ka tohaina ki ngā mema, engari ka arotakengia e te Kāwanatanga te reiti o nāianei, kia hāngai atu ki te toharite o te reiti tāke moni whiwhi o taua mema. Me mātua uru atu ngā tohatoha nei ki te puka tāke, pūrongo moni whiwhi rānei a te tangata.

(2) *Te tāke whakamutunga i te taumata manatū (tirohanga tuarua)*

Ka tākehia whakamutuhia ngā moni whiwhi a ngā manatū Māori katoa. Koinei te tāke mutunga i te taumata o te manatū. Kāore e tākehia i tua atu te moni nei ina tau atu ki ngā ringaringa o ngā mema.

(3) *Tāke pupuri i runga i te moni whiwhi me te whakawāteatanga tāke (tirohanga tuatoru)*

Ko ngā moni whiwhi a ngā manatū Māori katoa, ka tākehia i te taumata manatū ki te tāke pupuri. Ka tukuna ngā moni tāke nei ki tētahi pūtea tāke, ka tāpirihia ngā whakawāteatanga tāke ki ngā tohatoha ki ia mema. He aronga ēnei whakawāteatanga tāke mō ngā tāke kua utua kē e te manatū mō aua moni whiwhi. Ka taea e ngā mema te whakamahi i ngā whakawāteatanga tāke nei mō ō rātou ake kawenga tāke moni whiwhi.

Ko ngā tohatoha hua pēnei i te whakawāteatanga tāke, ka kīia e te Tari Tāke, he moni whiwhi peke, ā, i runga i tērā, me whakakuhuna ki te puka tāke, pūrongo whiwhi moni rānei; i tua atu, ka taea te tono wāteatanga tāke mō ngā take i utua e te manatū Māori. Ko ngā tāke ka utua e te manatū i raro i tēnei tikanga, ka kīia he tāke pupuri, ko tōna rite, ko ngā tikanga wātea tāke kei runga i ngā kamupene.

## **Ngā rerekētanga hei whakapai ake (wāhanga 5)**

Kei te hiahia anō te Kāwanatanga ki te whakatikatika i ngā take e whai ake nei.

### *He whakamāramatanga hōu o te “ Manatū Māori ”*

Ki tā te Kāwanatanga titiro, me whāiti mai ngā tikanga hōu kei te whakaarohia, ki ērā rōpū, kaipakihī Māori, e tiaki whenua, rawa ana mō te Māori. Ki te pēneki te takoto o ngā tikanga hōu, kua kore e āhei te kuhu mai o ngā rōpū tūmataiti he tokomaha o rātou mema Māori, ki roto i te kaupapa.

Ko tētahi huarahi e tareka ai tēnei, ko te rārangi ko wai ngā momo rōpū ka āhei ki te noho i raro i ngā tikanga hou. Mā te whakamahi i te rārangi nei, ka aukatia te kuhu a ngā rōpū tūpono he tokomaha ā rātou mema Māori, ki raro i ngā tikanga hou.

Tērā ka kuhuna atu ki te rārangi e whakaarohia ana ko:

- ngā rōpū i whakatūria i tā Te Ture Whenua Māori 1993 i takoto (engari kua ko ngā tarahiti kaitiaki);
- ngā rōpū i whakatūria i tā te Ture Poari Kaitiaki Māori i takoto;
- ngā rōpū i whakatūria hei painga mō ngā Māori katoa;
- ngā rōpū i whakatūria hei painga mō te iwi, te hapū rānei (mēnā he wāhi nui o te katoa o ngā tāngata);
- te Kaitiaki Māori;
- ngā marae.

### *Tikanga Pōti ki waho*

Ka taea e ngā manatū Māori te puta ki waho o ngā tikanga manatū Māori kei te whakaarohia, ka hoki ki ngā tikanga kei runga i te tūmatanui – mēnā e hāngai ana rātou ki ngā paearu o ēnei tikanga. Ki te tutuki e te manatū Māori ngā paearu o te kamupene, o te tarahiti o tētahi atu mea rānei, me te whakaaro, he pai atu tāna kuhu ki ērā tikanga, me tuku noa iho.

### *He whakamāramatanga o te “Māori”*

Ka whakarerekēhia te whakamārama o te “Māori” i a ia ka hāngai ki te “manatū Māori”, kia whai wāhi atu ai ko te tangata takitahi, ko ētahi atu manatū. Mā tēnei whakarerekētanga, e mārama ai te kī ko te ‘manatū Māori’, ka taea tōna whakatū hei painga mā te Māori takitahi, mā te manatū Māori, mā rāua tahi rānei.

Ki te nōhia mai ko te tikanga whānui o nāianeī e pā ana ki te manatū Māori, ka pupuritia tēnei o ngā whakarerekētanga. Ki te whakakuhuna ko te whakamārama hou o te “manatū Māori”, kāore he take o te pupuri ki te whakarerekētanga nei, nō te mea kāore he whanaungatanga i waenganui i te whakamāramatanga hou o te “manatū Māori” me te whakamāramatanga o te “Māori”.

He pānga tō ngā whakarerekētanga ki te whakamārama o te kupu “Māori”, ki ngā whakawāteatanga tāke e pā ana ki ngā tohatoha kei te tirohanga tuatahi. Otirā, ka whakaaetia ngā tangohanga ki te manatū Māori mō ana tohatoha ki ngā tāngata takitahi, ki ētahi atu manatū Māori rānei.



## *Te whakamahia o te mana whakahaere o te Kōmihana o Te Tari Tāke*

E toru ngā wāhi whakamahia ai e te Kōmihana tōna mana e pā ana ki ngā tikanga o ngā manatū Māori. I tēnei wā, he kawenga tō te Kōmihana ki te whiriwhiri mēnā kei te ahu mai ngā moni whiwhi a ngā manatū Māori i ngā haupū rawa, i ngā moni puta rānei. Ina tau ana tērā, kua āhei tana whakarite i te tikanga tāke tika mō ngā manatū Māori, i a rātou ka pakari mai i tētahi manatū pakupaku, ki tētahi manatū rahi. Me whakatau anō e te Kōmihana mehemea ka taka ngā tohatoha ka tohaina ki tētahi Māori, ki raro i te haumi, i te toha moni whiwhi rānei.

I raro i ngā whakarerekētanga kei te whakaarohia, tērā ka tangohia ngā momo mana nei, nō te mea kua kore kē he take, kāore hoki i te hāngai ki te hiahia a te Tari Tāke, mā te kaiutu tāke anō a ia e aromātai. Ka noho mā ngā manatū Māori anō e whiriwhiri mēnā ko tā rātou e toha, he toha moni whiwhi, he toha haupū rawa rānei, ā, mēnā ko te toha he haumi taketake, he toha moni whiwhi rānei (ka rite ki ētahi atu mea).

Nō te mea ka whakatūria mai he anga tāke kotahi mā ngā manatū Māori katoa, kua kore e korikori ngā tikanga tāke ina tipu ake he manatū ‘rahi’ i te manatū ‘iti’.

### **Te whakawhānui ake i ngā tangohanga mō ngā oha ki ngā rōpū kua mana kē tā rātou tūranga hei rōpū oha (wāhanga 6)**

I te wā nei, ka taea e ngā manatū Māori ngā tangohanga mō ngā oha ki ētahi rōpū Māori (ko te taumata o ēnei oha kia kaua e kake ki runga ake o te 5% o ngā moni whiwhi more a te manatū). Mai te tau 1952, kua wātea tēnei tangohanga ki ngā manatū Māori. I whakatūria ēneki, kia pai ai te tuku oha a ngā manatū ki ngā Komiti a Te Kaunihera Māori o Aotearoa, i runga i te whakaaro, he nui ngā painga i ngā mahi a aua komiti. I hurihia ngā ingoa o ngā Komiti ki te rōpū Māori i raro i te Ture Whanake Hapori Māori 1964.

Ko tā te arotake, he rapu mēnā kei te hāngai tonu aua tangohanga ki ēnei rā. Ko ngā tirohanga tuatahi kei te whakaatu mai, kei te tāmi te tikanga nei i ngā manatū Māori nā te mea, arā atu kē te maha o ngā rōpū kei te tautokona e ngā manatū.

Kei te whakaaro te Kāwanatanga ki te whakawhānui atu i ngā tangohanga mō ngā moni oha ki ngā rōpū oha whai mana, waihoki, ka uru atu ko te nuīnga o ngā rōpū Māori, tae noa ki ērā rōpū e mahi ana i ngā kaupapa mā te hapori.

Ka rite te tūtohunga nei ki ngā tangohanga oha mā ngā kamupene kei te kōrerohia i roto i te tuhituhinga mō te tāke me ngā rōpū oha.

### **Te unu i te tikanga tāke “kanohi” e pā ana ki te Kaitiaki Māori (wāhanga 7)**

Ko ngā moni whiwhi mai ngā whenua e whakahaeretia ana e te Kaitiaki Māori, ka tākehia i raro i ngā tikanga manatū Māori, hāunga ngā wā ka noho te Kaitiaki Māori hei kanohi kohikohi, kanohi tohatoha i ngā reti, i ngā utu hea, i ngā moni hua mā te hunga nō rātou ngā whenua. I ēnei wā, kua ūtaina ētahi tikanga tāke ake. Ko tā te arotake, he rapu mehemea kei te whai kiko tonu tēnei tikanga, inarā ngā āhuatanga e rerekē ai te noho a te Kaitiaki Māori.

I whakaurua ngā tikanga tāke “kanohi” i te tau 1974, nā te whakapae kei te tōpūhia te tāke o ētahi o te hunga he panga ō rātou e tiakina ana e te Kaitiaki Māori, nō te mea he kaumātua rātou, he hunga moni whiwhi iti rātou. I koneki, ka ūtaina te reiti tāke 7.5 ōrau ki ngā moni whiwhi a te Kaitiaki Māori i mua o te tohatoha ki te hunga whai pānga, hāunga anō te mea tērā pea kāore he kawenga tāke o tēnā, o tēnā tangata takitahi. I koneki ka tōpū te utu i ngā tāke.

Ko tā te Kāwanatanga kia unuhia ngā tikanga nei, nā te mea kua kore e hāngai, me te mea anō, he nui hoki te utu ki te Kaitiaki Māori. Ka hāngai ngā tikanga manatū Māori ki te Kaitiaki Māori i ngā wā katoa.

### **Te tāke i ngā rōpū Māori e tono ana i te wātea tāke “oha” (wāhanga 8)**

Ki te hiahia tētahi rōpū ki te tono kia mahia e ia ngā tikanga wātea tāke oha i te Ture Tāke Moni Whiwhi 1994, me eke ia i te tikanga o te kupu nei o te oha. E rua ngā wāhanga o te whakamātautau oha. Tuatahi, ki te tūria he mea oha, me noho ko tōna tino, ko ngā kaupapa oha; tuarua, me hua ōna painga ki tētahi wāhanga āhua nui o ngā tāngata katoa. Ko tētahi mea tuarua e mōhiotia nei, ko te whakamātautau painga tūmatanui.

#### *Te whakarerekē i te whakamātautau “painga tūmatanui”*

Ko te āwangawanga nui a ngā manatū Māori pēneki i ngā marae e hiahia ana i ngā tangohanga tāke oha, rite tonu tā rātou hinga i te wāhanga ‘painga tūmatanui’ o te whakamātautau.

Ahako te mea ka tae ngā painga taha oha a ngā manatū Māori ki ngā iwi, hapū, kāore pea e whakaaehia tā rātou tono nā te mea, ko aua momo painga, ka ahu kē ki tētahi hunga tūranga whānau, kāore ki ngā tāngata katoa.

I whakatūria te arotake nei ki te wānanga mēnā ka kīia tētahi mea he rōpū oha, ki te hua ngā painga ki ngā uri anake. I hāngai ngā kōrero tuatahi katoa me te Māori ki te take o te hono ā-toto. I roto i te arotake nei, kua whāiti mai te titiro ki ngā hononga ā-toto anake.

Ko te kōrero kua puta i ngā whitiwhitinga kōrero katoa, kāore pea i te tika te whakamātautau “painga tūmatanui” mō Aotearoa, he kore nōna e aro atu ki te āhua ake o te noho ahurei o ngā momo tikanga i Aotearoa.

Ko tā te Kāwanatanga, mēnā e kīia ana e te ture, he rōpū oha tētahi rōpū, me kua e aukati i tana āheinga ki te tangohanga tāke “oha”, i runga noa iho i tana hingatanga i te paearu ‘painga tūmatanui’.

Nō reira, ko te tūtohunga a te Kāwanatanga kia whakarerekēhia te whakamāramatanga o te ‘kaupapa oha’ i te Ture Tāke Moni Whiwhi, kia kore e taea te whakakore i te tono tangohanga tāke i runga noa iho i te mea ka hua ngā painga ki ētahi tāngata whanaunga anake.

Engari me ū tonu te mea ki ētahi atu o ngā paearu o te rōpū oha whaimana, arā, i te ‘kaupapa oha’, me te mea anō kei te hua ngā painga ki tētahi wāhi nui tonu o ngā tāngata katoa.

Ko ngā take hei whakaaroaro i te wā ka whiriwhiria mēnā ka hua he painga o tētahi mea ki “tētahi wāhi nui tonu o ngā tāngata katoa”, ko: te āhua o te mea; tokohia ōna mema; te pānga a tēnā mema ki tēnā.

Ko te mea uaua ki ngā mea Māori e tonu ana kia noho hei rōpū oha whaimana, ka taea te wehe i ngā rawa mai i te Māori. Ina katia tētahi rōpū oha whaimana, ko te tikanga, me tuku kē ōna rawa ki tētahi anō rōpū oha whaimana, e kore e taea te whakahoki ki te hunga nā rātou i tuku atu i te tuatahi. He take tēnei ka pā ki ngā rōpū oha whaimana, waihoki, he take nui tēnei te tuku whenua Māori ki roto rōpū oha whaimana.

### *Te tū o ngā Marae hei mea oha*

I kīia ake i mua rā, kāore e kore ka hinga ngā marae i te wāhanga “painga tūmatanui” o te whakamātautau he aha te rōpū oha, nō te mea ko ngā painga ka hua ake i ngā marae, ka riro e te hapū e te iwi rānei e pā ana ki taua marae. I tua atu, kāore i te tino mārama mehemea ka taka ngā take e tū ai ngā marae ki raro i te whakamārama turenoa o te “kaupapa oha”.

Ko ngā tāngata i kōrero mai i kī me noho ngā marae hei mea tangohanga tāke. Mā tēnei tohu e whakaatu atu he tūranga nui tō te marae i roto i te hapori Māori, ā, ko tōna rite ko ngā whare karakia me ngā hōro tūmatanui, e whiwhi nei rāua i te tangohanga tāke i tēnei wā. He mea nui tēnei ki ngā marae e hiahia ana ki te tonu āwhina i ngā mea tuku oha pēneki i ngā tarahiti hapori.

Ko tā te Kāwanatanga whakaaro, ki te tutuki ngā whakaritenga e tika ana, me tareka e ngā marae te tonu i ngā tangohanga tāke “kaupapa oha”. Ka tirohia ake te tūranga nui o ngā marae i roto i te hapori o Aotearoa, mā te tautoko i tēnei momo oranga e whakanui ana i ngā tikanga, ngā uara Māori mō ngā tāngata katoa o Aotearoa.

I runga i tēnei, ka āhei ngā marae ki ngā tangohanga tāke “oha”, engari me tutuki ngā mea e whai ake nei:

- me hāngai ngā moni whiwhi a ngā marae ki ētahi kaupapa ake, pēneki i te whakapai haere i ngā whare o runga marae, te tautoko rānei i ngā tikanga Māori o runga marae.
- me kaua e noho ngā marae hei wāhi mahi moni mā te tangata ahakoa ko wai.

Ko ngā marae ka taka ki waho o ngā whakaritenga, ka tirohia anō he manatū Māori. Engari, ki te hiahia rātou, ka tareka tā rātou noho ki raro i ngā tikanga tāke whānui – pēneki i te mea hua-kore – engari me ū ki ngā tikanga o tēnei.

Kei te tuhituhinga *Tax and Charities* ētahi tūtohunga mō te whakahou i te whakamārama o ngā kupu “kaupapa oha”, me te whakapai ake i ngā whakaritenga whakatakoto pūrongo a ngā mea oha. Ko te titiro, he pānga tō ngā tūtohunga nei ki ngā rōpū Māori me ngā marae ka tono mō ngā tangohanga tāke “oha” i raro i ngā rerekētanga kei te whakaarohia.

### **Ngā pātai matua rātou ko ngā take hei whiriwhiri**

I mua o te whakatau e te Kāwanatanga ko tēhea o ngā tūtohunga o roto o te tuhituhinga nei ka kawea e ia, e hiahia ana ia ki te rapu he aha ngā tirohanga a ngā hunga whai pānga. Kei ngā wāhanga tuatoru, tuawhā o te tuhituhinga nei ētahi “pātai matua”, etahi “take ake hei whiriwhiri”, hei whakatenatena hoki i ngā urupare e pā ana ki ngā tūtohunga.

### **Ngā Tono**

Ka taea e koe te whakautu mai mā:

- Te tae ā-tinana atu ki ētahi o ngā huihui whakamōhio atu ka whakahaerehia i ngā marama o Here turi kōkā me Mahuru i te tau 2001. Me whakapā atu ki te Tari Taake e tata ana ki a koe, ki tētahi tari ā-rohe rānei o Te Puni Kōkiri mō ngā rā me ngā wāhi o ngā hui nei.
- Te tuku tono ā-tuhi ki:  
Te Tumuaki Whakahaere  
Ratonga Kaupapa Here  
Te Tari Taake  
Pouaka Poutāpeta 2198  
Te Whanganui-a-Tara
- Te whakakī i te wāhanga kei muri o te puka nei, ka tuku ki te wāhi kei runga ake nei.
- Te tuku tono ki konei mā te i-mēra ki:  
[Policy.webmaster@ird.govt.nz](mailto:Policy.webmaster@ird.govt.nz)

Me takoto ngā tono ā tekau mā iwa o Whiri-ā-nuku 2001. Me whakarāpopoto e koe āu take matua. He mea pai mō mātou mēnā e pai ana te whakapā atu o tētahi o te rōpū arotake ki a koe mō tāu tono.

E tika ana kia mārama koe, ko ngā tono katoa ka tukuna mai e koe i roto i te tikanga nei, tērā ka tonoa e tētahi i raro i te Ture Pārongo Ōkawa 1983. Ko tā mātou tono, kia moata tonu tāu whakamōhio mai mehemea e pai ana ki a koe kia tukuna āu kōrero, tūpono ka tae mai he tono pēnā ki a mātou.

## Ngā kupu hou

shareholder	-	kaipupuri hea
withholding tax	-	tāke pupuri
marginal tax	-	reiti tāke tuarua
net income	-	moni whiwhi more
income statement	-	pūrongo moni whiwhi
gross income	-	moni whiwhi peke
credit	-	whakawāteatanga tāke
refundable tax credit	-	whakawāteatanga tāke hokia
capital sources	-	haupū rawa
revenue sources	-	moni puta
entity	-	mea
agent	-	kanohi



# Part I

## Overview

*This part of the discussion document outlines the context of the review of the taxation of Māori authorities and summarises the proposals.*





# Chapter 1

## THE REVIEW

### Purpose of the review

- 1.1 The income of Māori organisations is taxed according to a set of rules that were last revised in 1952. As a result, these rules have not been updated to reflect the evolutionary changes that Māori entities have undertaken or, more importantly, the role that these entities play in facilitating Māori economic and social development. Nor have they incorporated the major tax policy reforms that have occurred in the last 50 years.
- 1.2 This situation has led to repeated calls from various Māori groups for the tax laws applying to Māori organisations to be reviewed. There is growing concern that these laws have become outdated and complex, and may actually inhibit Māori economic and social development. In particular, it is believed that existing tax rules impose unnecessary compliance costs on Māori organisations and their members and that, in some cases, there can be double taxation on the income of these organisations.
- 1.3 In response, the Government has embarked on a review of the income tax laws applying to Māori organisations with a view to developing workable solutions to the problems with those laws.
- 1.4 The review examines the specific rules applying to organisations that are known as “Māori authorities”. It also includes a review of how aspects of the law of charities, such as the “public benefit” test, apply to Māori organisations seeking exemption from tax on the grounds of charitable status. The review focuses on the income tax treatment of Māori organisations. It does not extend to how these entities must account for GST; nor is it concerned with how certain income sources (such as Treaty settlement payments) are to be treated.
- 1.5 This discussion document is the product of the Government’s review so far. It contains policy proposals to amend the specific tax rules for Māori authorities, including the Māori Trustee, and to clarify how the law of charities applies to all organisations, especially iwi-based and hapū-based organisations and marae.

### Objectives of the review

- 1.6 The main objective of this review is to determine whether the income tax laws applying to Māori organisations and businesses are a barrier to Māori economic and social development – and, if so, how those barriers can be removed while allowing Māori organisations and businesses to meet their tax obligations.

- 1.7 This review also forms part of the Government’s programme for simplifying the tax requirements for businesses and individuals and its continued commitment to improving the equity of the tax system.
- 1.8 The package of proposals is intended to improve the way Māori authorities are taxed. Specifically, the proposals would remove the potential for double taxation under the Māori authority rules and address a number of technical problems with those rules. They would also minimise the extent to which individual members of Māori authorities must interact with the tax system.
- 1.9 The proposals dealing with “charitable” tax exemptions for Māori organisations (including marae) should provide greater certainty for those organisations about how the exemption applies in their specific cases. The proposal to relax aspects of the “public benefit” test is not limited to Māori organisations, although it is especially relevant to them.

### **The Treaty of Waitangi in this review**

- 1.10 Under the Treaty of Waitangi, the Government is required to actively protect Māori interests and to consult with Māori on significant matters where there are particular Māori issues at stake. In a law-reform context, this involves the Government in identifying relevant Māori interests, and gathering Māori views on the proposals, so that the views of Māori can be taken into account in informing the Government’s decision-making process.
- 1.11 The Government has already consulted with various Māori groups on the development of the proposed reforms, as part of this tax review. This discussion document represents a further step in the review’s consultative process. It is intended to inform the Government’s decision making on the future tax treatment of Māori authorities and the ways in which the law of charities applies to Māori organisations.

### **Consultative process**

- 1.12 In February last year, a series of focus-group discussions were held with Māori organisations and tax practitioners to seek feedback on initial policy ideas that the review team had developed. These initial ideas considered the appropriateness of applying company and trust taxation to Māori authorities, and the options for retaining and simplifying current Māori authority tax rules. Options for amending the law of charities as it relates to Māori organisations were also canvassed.
- 1.13 The key view arising from this consultation round was that the tax rules for Māori authorities should be simple and flexible in order to accommodate the future development needs of Māori organisations and businesses. It was also believed that the tax rules should be consistent with the Government’s desire to minimise, as far as practicable, the extent to which individuals must interact with the tax system. There was a clear preference for retaining a

separate set of rules for Māori authorities – but in a more efficient and simplified form.

- 1.14 In response to these views, the Government has developed a number of policy proposals to address these issues. It now seeks your views on how these proposals will work in practice and your suggestions on how they can be improved.
- 1.15 It is hoped that this round of consultation will indicate the views held by Māori authorities, their members, tax practitioners, and other interested parties on the most appropriate income tax treatment for Māori authorities and Māori organisations seeking a “charitable” tax exemption.
- 1.16 Once the Government has considered the submissions received on these proposals, it will finalise its policy proposals and look to introduce legislation. As transitional issues may arise from the introduction of these changes, we welcome submissions on how these transitional issues could be addressed.

### **The structure of this document**

This discussion document is in several parts:

- The whakarāpopotonga summarises the discussion document in Māori.
- Part I provides an overview of the contents of this document and its proposals.
- Part II discusses the proposals for:
  - improving the way Māori authorities and the Māori Trustee are taxed; and
  - extending the scope of the specific deduction provision that is currently available to Māori authorities who make donations to Māori associations.
- Part III discusses the policy proposals for clarifying how aspects of the law of charities applies to all organisations, especially Māori organisations (including marae) that seek exemption from tax on the basis of their charitable status.
- The appendix surveys the history of the Māori authority tax rules.

There is also a **glossary** at the back of this document, to explain tax and some Māori terms that are used. These terms are *italicised* when they first appear from this point on, for your easy reference.

### **Other Government tax reviews**

- 1.17 Work is being undertaken in other areas that may also be relevant to the taxation of Māori organisations.

- 1.18 Some Māori organisations may also benefit from the simplification changes that are proposed in the discussion document *More time for business – Tax simplification for small business*, which was released on 3 May 2001. These proposals are aimed at reducing the stress, uncertainty and risk that the requirements of the tax system place on small businesses. The proposals are also aimed at reducing the need for all businesses, irrespective of their size, to communicate with Inland Revenue.
- 1.19 Māori organisations that have a “charitable” tax exemption or that seek to apply for such an exemption should also read about the proposals contained in the discussion document *Tax and charities*, released on 14 June 2001. The proposals contained in this document seek to modernise the definition of a “charity”, and to improve the accountability and reporting requirements for organisations that have a “charitable” tax exemption.

## Chapter 2

### SUMMARY OF PROPOSALS

#### Improving the way Māori authorities are taxed (chapter 4)

2.1 Three options are being considered to replace the current mix of rules applying to Māori authorities. These options are based on the existing tax models used in income tax law, but they have been modified to take into account the specific characteristics of Māori authorities. In all three options, there would be a single set of rules for all Māori organisations that meet a new definition of a “Māori authority”. (See 2.2 for this definition.)

(1) *The current tax treatment for “large” authorities (option one)*

The income of all Māori authorities would be taxed according to the tax rules that currently apply to Māori authorities with more than 20 *members*, and the technical problems with those rules (such as the potential for double taxation) would be addressed. The four-year rule, which limits the ability of an authority to deduct excess *distributions*, would be replaced with a mechanism to allow these distributions to be treated as tax losses that the authority can carry forward for offsetting against its income in future years. Member distributions would still be subject to *resident withholding tax*, but the Government would review the existing rate to ensure it is set at a level that reflects, on average, members’ marginal tax rates.

(2) *Final tax on income at the authority level (option two)*

The income of all Māori authorities would be subject to a final tax at the authority level. Distributions of that “tax-paid income” would be exempt from further tax in a member’s hands.

(3) *Withholding tax and tax credits (option three)*

The income of all Māori authorities would be subject to a withholding tax at the authority level. The withholding tax paid by the Māori authority would be credited to a tax credit account, and the resulting tax credits would be attached to the distributions on a pro rata basis. These tax credits would recognise the tax that the authority has already withheld and paid on that income. Members would use these tax credits to offset their own income tax liability.

## Remedial changes (chapter 5)

### *A new definition of “Māori authority”*

- 2.2 The Government is considering limiting the scope of the proposed rules to those Māori organisations that administer land and other assets held in common ownership for *iwi* or *hapū*. To do this, it would redefine “Māori authority” so that private entities that just happen to have Māori members would not be eligible to apply the Māori authority rules.
- 2.3 The new definition would list the types of organisations eligible to apply the Māori authority rules. The proposed list is likely to include:
- those organisations established in accordance with Te Ture Whenua Māori Act 1993 (but excluding *kaitiaki trusts*), the Māori Trustee Act 1953, and the Māori Trust Boards Act 1955;
  - organisations established for all Māori or for the benefit of *iwi* or *hapū* (if these groups are large enough to constitute an appreciably significant section of the public); and
  - marae.

### *“Electing out” mechanism*

- 2.4 Māori organisations and businesses would have the option of electing out of the proposed Māori authority rules and applying general tax rules instead – but they would have to meet the criteria for those general rules.

### *A possible redefinition of “Māori”*

- 2.5 The definition of “Māori” in “Māori authority” could be clarified, to include individuals and other authorities that are legally or beneficially entitled to any gross income of a Māori authority. This change would make it clear that a Māori authority can be established for the benefit of individual Māori, other Māori authorities, or both. The change would only be required if the current broad definition of “Māori authority” is retained.
- 2.6 The redefinition would also affect the deductibility of distributions under option one – that is, applying the tax treatment for “large” authorities (those with more than 20 members) to all authorities. Māori authorities could then claim deductions for distributions made both to individual Māori and to other Māori authorities.

## *Removing unnecessary discretionary powers of the Commissioner of Inland Revenue*

2.7 At present, the Commissioner of Inland Revenue is required:

- to determine whether Māori authority income is from capital or revenue sources;
- to adjust the tax liability of Māori authorities as they move between “small” authority (those with 20 or fewer members) and “large” authority taxation; and
- to make a determination on whether a distribution from a Māori authority to a “Māori” is a bona fide investment or a distribution of income.

2.8 These discretionary powers are unnecessary, and are inconsistent with the current emphasis on taxpayer self-assessment. They would be removed. Māori authorities would be able to assess whether a “distribution” is a distribution of income or capital, and also whether a distribution is a bona fide investment or a distribution of income (as other entities are able to do). Because a single tax structure would apply to all Māori authorities, there would be no need for any adjustments when authorities move between “small” and “large” categories.

## **Extending the scope of the deduction for donations to organisations with approved donee status (chapter 6)**

2.9 Currently, Māori authorities can obtain deductions for donations they make to *Māori associations*, up to a maximum of 5 percent of the authority’s net income. The Government is considering extending the scope of this deduction to apply to donations of money to organisations with *approved donee status*, which would include most Māori associations and also those Māori organisations operating for community purposes.

2.10 This would be consistent with the donation deductions for companies proposed in the *Tax and charities* discussion document.

## **Removing the “agent” tax rules applying to the Māori Trustee (chapter 7)**

2.11 The income from properties administered by the *Māori Trustee* is taxed under Māori authority rules except when the Māori Trustee acts as agent in the collection and distribution of rents, royalties and interest for the property owners. In these circumstances, the income is subject to specific tax rules. The Government proposes to remove these rules, as they are no longer necessary and are a source of *compliance costs* for the Māori Trustee. The proposed Māori authority rules would apply to the Māori Trustee in all situations.

## **Taxation of Māori organisations seeking a “charitable” tax exemption (chapter 8)**

2.12 An entity wishing to take advantage of the “charitable” tax exemptions in the Income Tax Act 1994 must first satisfy the common law meaning of a charity. This imposes a two-step test. Firstly, an entity must be established for a *charitable purpose* and, secondly, it must be for the benefit of the public or an appreciably significant section of the public. The second step is known as the “*public benefit*” test.

### *Changing the “public benefit” test*

2.13 The main concern for Māori authorities (including marae) that wish to use the “charitable” tax exemption is that they will usually fail to meet the “public benefit” test. While Māori authorities often provide benefits of a charitable nature to iwi and hapū and may in fact have charitable purposes, they may not qualify for an exemption because their benefit extends to a group of people connected by blood ties, rather than to the general public.

2.14 The Government considers that if an organisation meets the legal requirements for “charitable purpose”, then it should not automatically be excluded from the “charitable” tax exemption simply because it fails to meet the “public benefit” test.

2.15 The Government therefore proposes to amend the Income Tax Act so that an organisation will not cease to be eligible for *charitable status* simply because its purpose is to benefit a group of people connected by blood ties. However, the organisation must still meet the other requirements of a charity – that is, having a charitable purpose and benefiting an appreciably significant section of the public. Factors to be considered in determining whether the organisation benefited an “appreciably significant section” of the public would include: the nature of the entity; the number of potential members; and the degree of relationship between members.

### *Charitable status for marae*

2.16 As mentioned earlier, marae would generally fail to meet the “public benefit” test for a charity because they are usually established for the benefit of a hapū or iwi that is affiliated to the marae. Furthermore, it is not clear if the purposes for which marae are established meet the common law meaning of “charitable purpose”.

2.17 The Government considers that marae should be able to claim charitable exemptions, provided that certain requirements are met (see 2.18). This would recognise the important role that marae play in New Zealand society by supporting a way of life for New Zealanders within a structure of Māori culture and values.



- 2.18 Marae would qualify for a “charitable” tax exemption if they meet the following requirements:
- The marae must apply its funds to specific purposes. These purposes will include maintaining the physical structures of the marae and supporting activities traditionally carried out on the marae.
  - The marae activities must not be carried on for the private financial gain of any person.
- 2.19 Marae that do not meet these requirements would be treated as Māori authorities. However, if they prefer, they could choose instead to be treated under general tax rules – for example, as a non-profit body – as long as they meet the requirements for this.
- 2.20 The discussion document *Tax and charities* contains proposals for updating the definition of “charitable purposes” and improving the reporting requirements for charities. These proposals are likely to have implications for Māori organisations and marae who seek “charitable” tax exemptions under the proposed changes.

### **Key questions and specific issues for consultation**

- 2.21 Before it makes final decisions on whether to proceed with the various proposals discussed in this document, the Government is seeking the views of interested parties. Parts three and four of this document contain “key questions” and “specific issues for consultation” that are intended to promote feedback on the proposals.

### **Submissions**

- 2.22 You can provide your feedback by:
- Attending one of our consultation hui to be held in August and September 2001. Contact your local Inland Revenue Department office or regional Te Puni Kokiri office for the dates and venues of these hui.
  - Sending a written submission to:  
General Manager  
Policy Advice Division  
Inland Revenue Department  
P O Box 2198  
Wellington
  - E-mailing a submission to the following address:  
[policy.webmaster@ird.govt.nz](mailto:policy.webmaster@ird.govt.nz)

- 2.23 Submissions should be made by 19 October 2001. You should provide a brief summary of the major points and recommendations that you wish to make. It would be helpful if you could also indicate whether it would be acceptable for a member of the review team to contact you about your submission if needed.
- 2.24 Please note submissions may be the subject of a request under the Official Information Act 1982. The withholding of particular submissions on the grounds of privacy, or for any other reason, will be determined in accordance with that Act. If you feel there is any part of your submission which you consider could be properly withheld under that Act (for example, for reasons of privacy), please indicate this clearly in your submission.

## Part II

# The taxation of Māori authorities

*This part of the discussion document discusses policy proposals for improving the way Māori authorities and the Māori Trustee are taxed. It also discusses the proposal for extending the scope of the deduction provision currently available for donations to Māori associations.*



## Chapter 3

### MĀORI AUTHORITY TAX RULES AND THEIR LIMITATIONS

#### History of the Māori authority tax rules

- 3.1 The first specific set of rules applying to Māori authorities appeared in 1939 and formed part of the Land and Income Tax Act 1923. These rules were intended to apply to the various “working” organisations that administered large blocks of farmland owned in common by individual Māori (and not in private ownership). These organisations were the first to become known as Māori authorities. They included the Board of Māori Affairs, the Māori Trustee, the Māori land boards, special statutory trusts (such as the East Coast Commissioner), and various land trusts under Māori land legislation.
- 3.2 Although the rules were largely concerned with the taxation of income from Māori land, they also applied to any income earned by an organisation that administered property, income or reserves in trust for the benefit of Māori. Thus the essential character of all the organisations covered by the term “Māori authority” was that of trustee for the individual members.
- 3.3 In 1952, a new framework for the taxation of Māori authorities was introduced as a result of the recommendations made by a Commission of Inquiry. The Commission had been established to ascertain whether certain Māori farming operations were fully complying with their tax obligations and whether the law on this could be made clearer.
- 3.4 The original framework of the 1952 rules continues to apply today, although it has been modified from time to time to incorporate changes in tax rates and the tax structure (including the introduction of resident withholding tax on distributions made by Māori authorities).

The **appendix** provides an overview of the history of the Māori authority rules.

#### Current context and Māori authorities

- 3.5 Māori organisations and businesses that manage Māori assets have proliferated since the 1950s, and the Māori authority rules now apply to a much wider range of organisations than they did originally. They include Māori trust boards, *rūnanga*, Māori land trusts, and certain Crown/Māori organisations that have been established for the purpose of managing and facilitating the return of assets to Māori in accordance with the Treaty settlements process.

- 3.6 The organisations and businesses covered by the term “Māori authority” are not a homogenous group. The glossary contains descriptions of some of the main organisations that fall within this group. The unique and defining characteristics of Māori authorities that the Government has identified are summarised in the box below.

### **What is a Māori authority?**

Māori authorities provide a range of financial and non-financial benefits. For example, a Māori incorporation may pay dividends to its members in the same way as a company provides dividends to its shareholders, while other authorities provide their members with certain rights to participate in the decision-making process, or to access non-financial benefits. These non-financial benefits are usually collective in nature and not private. They can include the retention of tribal lands, protection of *waahi tapu*, grants to marae, *kōhanga reo* and *kura kaupapa*, and education scholarships.

Māori authorities differ in the definition of their “membership group”. Some Māori land trusts have clearly defined members (this is usually linked to a person’s vested interest in the land), whereas the membership of a Māori trust board is usually defined with reference to an individual’s connection with a particular iwi or hapū. Some Crown/Māori organisations have a pan-tribal membership base.

Most Māori authorities administer *Māori freehold land*. Māori land ownership is generally characterised by multiple owners in a single block of land. Owners of Māori land and associated assets frequently have little or no control over the structure for owning and administering these assets, and the management of these assets is regulated by Māori land legislation. An individual Māori usually inherits an interest in Māori land and must accept the decision of the Māori Land Court on how the property is to be administered. That person also has limited ability to sell his or her interest and little or no control over who the co-owners are.

Māori authorities often have multiple objectives that embrace political, cultural, social, and commercial dimensions. The relative mix of these objectives may vary from authority to authority.

Māori authorities differ in size. Some authorities are small land-owning trusts, while other authorities resemble large corporate structures.

Māori authorities are involved in a broad range of activities. These activities include education and training programmes (which are the most common), property investment, farming, fisheries, tourism, business loan portfolios, and employment schemes. Some authorities such as trust boards have invested in other areas such as the hospitality industry, housing construction, meat processing, broadcasting, orcharding, community welfare, and property administration.

## How the current rules work

### *Key definitions*

3.7 All section references are to the Income Tax Act 1994, unless otherwise stated.

### *“Māori authority”*

3.8 The term “Māori authority” is defined in section OB 1 as:

- the Māori Land Board or the East Coast Commissioner; or
- the Māori Trustee, except when acting as agent in the collection and distribution of rent, royalties or interest; or
- a Māori incorporation created by Court order under the Māori Land Act 1993.

3.9 The definition also includes any person or body of persons (other than an executor of a deceased person’s estate or the trustee of a private trust) who administer or control property or income in trust for the benefit of Māori.

### *“Māori”*

3.10 The term “Māori” is defined in section OB 1 to mean a person belonging to the aboriginal race of New Zealand and a person descended from a Māori.<sup>1</sup> The definition also includes (except for the purposes of the definition of “Māori authority”) any person legally or beneficially entitled to any gross income of a Māori authority.

3.11 This definition is also relevant in determining whether a “distribution” qualifies as a deduction. This is because Māori authorities can only obtain deductions for distributions made to a “Māori”.

3.12 The terms “beneficial owner”, “owners” or “beneficiary” are commonly used in place of the term “Māori”. This discussion document, however, uses the term “member” because of its inclusiveness and because of the express reference to “a person legally or beneficially entitled ...” in the legislation.

### *“Person”*

3.13 Section OB 1 defines a “person” for income tax purposes. A “person” includes both an individual and an incorporated or unincorporated entity such as a company, marae or Māori authority.

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<sup>1</sup> There is a section reference error in the definition of “Maori” in the Income Tax Act 1994. The reference to sections HH 1 to HH 5 should be a reference to sections HI 1 to HI 5.

### *“Distributions”*

- 3.14 Section HI 1 sets out specific rules for distributions made by a “large” Māori authority. (There are no specific rules for distributions made by a “small” authority.)
- 3.15 The term “distribution” includes any amount that is paid, credited or advanced by a Māori authority for the individual personal benefit of a Māori. The definition of distribution also includes any property that is transferred or otherwise disposed of by a Māori authority to a Māori.
- 3.16 The tax treatment of distributions depends on whether the Commissioner of Inland Revenue regards a distribution as being *out of income* or not. If a distribution is out of income, it is treated as a deduction to the authority and as a dividend subject to resident withholding tax in a member’s hands. If a distribution is not out of income (for example, if the distribution represents a distribution of a capital nature), the authority cannot claim a deduction for it and it is not subject to resident withholding tax in the member’s hands.
- 3.17 A further rule applies if the authority is in the course of *termination*. Distributions made in the course of termination of a Māori authority are regarded as out of income, unless they are from amounts derived in previous years and have not been taken into account in calculating the income tax liability of the authority.

### *Two classes of authorities*

- 3.18 The substantive provisions of the Māori authority rules are contained in sections HI 1 to HI 5. The income of a Māori authority is taxed differently depending on the number of members for whom income is derived. There are two classes of Māori authorities for income tax purposes, “small” authorities (those with 20 or fewer members) and “large” authorities (those with more than 20 members).
- 3.19 If the number of members having a *beneficial interest* in a Māori authority changes above or below the threshold of 20 in an income year, then section HI 5 gives the Commissioner of Inland Revenue power to make adjustments that are “just and reasonable”.

### *Tax rules for “small” authorities*

- 3.20 Section HI 4 provides for the assessment of income tax for “small” authorities.
- 3.21 The net income for the year of a “small” authority is allocated to each member on the basis of his or her interest in the assets of the authority. The authority must withhold tax on the income allocated to each of its members and must pay this to Inland Revenue.



- 3.22 The income that is allocated to each member is treated as *beneficiary income* and is taxed as if the member had actually received it. The income allocation must be included in the member's end-of-year tax return, along with any other income received by the member (such as salary and wages). The member can also claim a tax credit for the tax that was deducted and paid by the authority on the member's behalf.
- 3.23 If the authority has deducted too much tax, the member is entitled to a refund. Similarly, if the authority has under-deducted tax, the member is required to pay the shortfall.

#### *Tax rules for "large" authorities*

- 3.24 Section HI 3 provides for the assessment of income tax for "large" authorities. A "large" authority pays tax on the income it retains at the end of the year (that is, net income minus distributions) at the rate of 25 percent.
- 3.25 The distribution rules set out earlier apply specifically to the amounts distributed by "large" authorities. If a distribution is out of income it is treated as a deduction (for the authority) and as a dividend subject to resident withholding tax of 33 percent (for the member).
- 3.26 If the amount distributed is greater than the net income earned in that year, the amount of the excess distribution may be claimed as a deduction from the income retained in any of the four immediately preceding years. When this happens, the Māori authority receives a refund of the tax that was paid on that income in the previous year(s).
- 3.27 Distributions to a member (including the resident withholding tax portion of those distributions) are treated as gross income and are included in the member's end-of-year tax return or income statement. Members also receive a tax credit equal to the 33 percent resident withholding tax that has been deducted from these distributions by the authority. If a member's marginal tax rate is less than 33 percent, the member can apply to Inland Revenue for a refund of the difference. If a member's marginal tax rate is higher than 33 percent, the member must pay the additional tax due.
- 3.28 Table 1 summarises the tax consequences for distributions made by a "large" authority.

TABLE 1: TAXATION OF DISTRIBUTION

Distributions	Authority level	Member level
From current year's income	Deductible to the authority	Taxed at member's marginal tax rate
From income "retained for between one and four years"	Deductible to the authority, but only in respect of the four immediately preceding years (The authority must apply for a reassessment of the relevant year in which there is sufficient income against which to take the deduction.)	Taxed at member's marginal tax rate
From income "retained for more than four years"	No deduction permitted (The authority is prevented from claiming back the tax that was previously paid on the value of those distributions.)	Taxed at member's marginal tax rate Double taxation can occur

### *Other provisions*

3.29 Section 31 of the Tax Administration Act 1994 requires an authority to provide the following information to each member who has received a distribution:

- the amount of the distribution;
- the individual's obligation to include this amount in their return if they are required to file; and
- the amount that is liable for tax in their hands.

3.30 Section 57 of the Tax Administration Act 1994 requires the authority to provide the Commissioner of Inland Revenue with a complete statement of:

- taxable income;
- the amount distributed to each member;
- the names and addresses of those members; and
- the number, if any, of those members on the Māori electoral roll.<sup>2</sup>

### **Limitations of the current rules**

#### *The distinction between "small" and "large" authorities*

3.31 The 20-member threshold was based on the 1952 figure for the legal maximum number of partners in a partnership. That maximum number has since been repealed. The 20-member threshold is therefore outdated, and is now an arbitrary way of determining how the income of a Māori authority should be taxed.

<sup>2</sup> It is unclear why there is a requirement for Maori authorities to provide the number of members they have on the Maori electoral roll. In practice, this information is not provided.

- 3.32 Furthermore, it is possible that the tax rules for “small” authorities could create cashflow problems for its members. “Small” authority members are taxed on the income earned by the authority each year, regardless of whether that income is actually distributed to its members. So the member might have a tax liability, without having received any cash distribution that would help meet that tax liability.

#### *Double taxation of Māori authority income*

- 3.33 The most significant problem for “large” authorities concerns the potential for double taxation of authority income.
- 3.34 The tax on income that has been retained by a large Māori authority for more than four years cannot be claimed back by the authority when that income is distributed. When it is distributed, it will almost always be treated as a member’s gross income and so will be taxable again in the member’s hands. Since members cannot get a credit for the tax that was previously paid by the authority, double taxation occurs.
- 3.35 While this problem can be avoided if the authority distributes its income within four years, the process of managing these distributions within the four-year window is complex and involves high compliance costs.
- 3.36 Māori authorities must go through a process of reassessment of one or more of the last four income years in which there is undistributed income. The distribution is then allowed as a deduction, and is offset against the undistributed income in that year. The authority receives a refund of the tax already paid, which can in turn be distributed. Māori authorities must usually repeat this process more than once before coming close to distributing the original amount retained, and they often never receive a full refund of the tax that they have paid within the last four years.
- 3.37 This problem has implications for the economic development of Māori authorities. There is an incentive to distribute income within four years to avoid double taxation, and a further incentive to distribute the current year’s income to avoid the high compliance costs of the reassessment process. Therefore Māori authorities may be discouraged from retaining income for long-term development purposes.

#### *The definition of a Māori authority*

- 3.38 A Māori authority is not a legal entity in itself. It is a term used in tax legislation to describe a wide range of Māori organisations. An organisation could be set up as a company or trust and yet meet the criteria for the definition. If an organisation meets the criteria, it has no choice but to apply the Māori authority tax rules, even though other tax rules may be more appropriate for its purposes.

- 3.39 Under the current definition, private entities that just happen to have Māori individuals as their members could also be eligible to apply the Māori authority rules. If they did so, this would undermine the principle that only those entities that hold property in communal ownership for individual Māori should apply the Māori authority rules.
- 3.40 There are also references in the current definition to the East Coast Commissioner and the Māori land boards, both of which no longer exist. These entities were established by the Native Lands Act 1909, but their functions were devolved to the Māori Land Court and the Māori Trustee as a result of the Māori Affairs Act 1953.

*The definition of “Māori”*

- 3.41 The reference to “any person legally or beneficially entitled to the gross income of a Māori authority” in the definition of “Māori” suggests that it can include a corporate body or a marae. It is not clear whether a person other than an individual was intended to be included in the definition of Māori, since the context of the definition and all other references in it refer to individuals of Māori ancestry.
- 3.42 A clear definition is especially relevant to the deductibility of distributions for a Māori authority. To qualify as a deduction for a Māori authority, a distribution must be to a “Māori”. If a “Māori” is restricted to individuals only, then the authority would be unable to deduct distributions made to associated Māori authorities, such as grants.
- 3.43 A further problem concerns the interrelationship between the definitions of “Māori” and “Māori authority”. A Māori authority must be for the benefit of a class of members that includes individuals of Māori ancestry. It seems that an authority cannot be established for the benefit of non-individuals alone. This creates problems for authorities that are established for the benefit of affiliated Māori authorities (even though these affiliated authorities are, in turn, established for the benefit of individuals of Māori ancestry).

*Discretionary powers of the Commissioner of Inland Revenue*

- 3.44 Many income tax provisions give discretionary powers to the Commissioner of Inland Revenue. These discretionary powers permit flexibility in addressing unforeseen situations, and they are generally used when it is undesirable to legislate for matters of detail or for multiple variations. In practice, taxpayers usually apply to Inland Revenue for these powers to be exercised.

- 3.45 There are three instances in which the Commissioner is able to exercise his discretion under the Māori authority rules. These are:
- in determining whether distributions from a Māori authority to a Māori are from capital or revenue sources (because capital distributions are passed on to a member tax-free, whereas revenue distributions are not);
  - in making necessary adjustments to the income tax liability of an authority in the year in which a “small” authority becomes a “large” authority (so that income taxed under the tax treatment for “small” authorities is not taxed again under the tax treatment for “large” authorities); and
  - in determining whether a distribution to a Māori is a bona fide investment or a distribution of income.
- 3.46 In practice, the Commissioner rarely exercises his powers. Māori authorities usually make these decisions themselves as part of the return-filing process. However, as long as legislation allows the Commissioner to exercise his discretionary powers, it treats Māori authorities differently from other taxpayers and undermines the general principle of self-assessment.
- 3.47 The existence of discretionary powers also leads to unnecessary administrative costs for Inland Revenue. Furthermore, it creates compliance costs for taxpayers, because of the uncertainty about whether they must specifically apply for particular discretions to be exercised.
- 3.48 The recently introduced Taxation (Annual Rates, Taxpayer Assessment and Miscellaneous Provisions) Bill removes the discretionary powers of the Commissioner that relate to taxpayers making their annual assessments. However, the bill does not deal with the discretionary powers of the Commissioner in the Māori authority rules.

*Over-taxation of distributions made by a “large” authority*

- 3.49 In most cases, resident withholding tax is imposed on all distributions made to members of “large” authorities at the rate of 33 percent. It is believed, however, that many members have marginal tax rates lower than 33 percent, and that many members are not required to file tax returns. In this situation, the resident withholding tax becomes a final tax and over-taxation occurs.

## Chapter 4

### IMPROVING THE WAY MĀORI AUTHORITIES ARE TAXED

#### Proposed policy

Three options are being considered for replacing the current mix of rules for Māori authorities with a single set of rules that would apply to all Māori authorities. (Māori authorities could also choose to apply general tax rules in appropriate circumstances – see chapter 5.)

#### (1) THE CURRENT TAX TREATMENT FOR “LARGE” AUTHORITIES (OPTION ONE)

Under option one, the current tax rules that apply to Māori authorities with more than 20 members would be extended to all Māori authorities, and the technical problems with those rules would be addressed. The current four-year limit on the ability of an authority to deduct excess distributions would be replaced with a mechanism that allows these distributions to be treated as tax losses that the authority can carry forward for offsetting against its income in future years. Member distributions would be subject to resident withholding tax at an appropriate rate.

#### (2) FINAL TAX ON INCOME AT THE AUTHORITY LEVEL (OPTION TWO)

In option two, a Māori authority’s income for each year would be subject to a final tax at the authority level. Distributions of that income would be exempt from further tax in the member’s hands.

#### (3) WITHHOLDING TAX AND TAX CREDITS (OPTION THREE)

Option three would apply a withholding tax to a Māori authority’s income for each year. The amount of tax paid by the authority would be credited to a tax account, and the resulting tax credits would be attached to distributions on a pro rata basis. These tax credits would recognise the tax that the authority has paid, and members could use these credits to offset their own tax liability.

#### Determining appropriate tax rules for Māori authorities

- 4.1 Tax rules are intended to tax entities in the most appropriate way, taking into account an entity’s specific characteristics, structures, conditions, and activities. This usually means applying tax rules that are consistent with an entity’s legal form, because legal form closely determines an entity’s specific characteristics.

- 4.2 In determining the most appropriate tax treatment for Māori authorities, the Government needs to look at whether Māori authorities should be taxed according to their legal structure.
- 4.3 The organisations and businesses covered by the term “Māori authority” are not a homogenous group. Māori authorities differ in terms of their legal structure and size, the types of activities that they have entered into, the range of benefits they provide, their membership group, and their mix of objectives.
- 4.4 These wide-ranging characteristics make it impracticable, in most cases, to apply to all Māori authorities the tax rules for companies or trusts. For example, Māori authorities that administer assets in trust for the benefit of iwi or hapū generally do not have defined membership lists. As a result, it would be difficult if not impossible to apply the technical requirements of *shareholder continuity* (as may be necessary under the company tax rules) or, in some cases, attribute income to individual members (as may be necessary under the trust rules).
- 4.5 Because of the specific characteristics of Māori authorities and their wide-ranging nature, the Government considers that this basis of taxation may be impracticable for Māori authorities and their members and may lead to unnecessary complexity and cost.
- 4.6 An additional consideration centres on the important differences between the underlying owners of the assets administered by Māori authorities (especially Māori land) and other taxpayers with similar investments. For example, members of a Māori authority have limited ability to sell their interests in the assets of the authority, whereas a shareholder with an investment in the shares of a company can generally dispose of his or her interest without restriction.

The Government has reached the view that there may need to be a separate set of rules for Māori organisations and businesses that derive income from assets held in common ownership.

### **Options for improving the way Māori authorities are taxed**

- 4.7 As stated at the beginning of this chapter, the Government is considering three options for making the current Māori authority rules simpler and clearer. These three options address problems such as the potential for double taxation of Māori authority income and the restrictions that limit the ability of Māori authorities to apply other, more efficient tax rules.

- 4.8 The three options are based on tax models used in existing income tax law (such as the company or trust tax models) but have been modified to take account of the specific characteristics of Māori authorities.
- 4.9 In developing its proposals, the Government is attempting to balance a number of competing objectives including:
- ensuring that members who receive distributions are taxed on that income at their respective marginal rates;
  - minimising the costs for Māori authorities in complying with their tax requirements;
  - minimising the extent to which members who receive financial benefits from Māori authorities have to file returns or complete income statements to correct any underpayment or overpayment of tax; and
  - recognising the specific characteristics, structures and conditions of Māori authorities, and also the activities they undertake.

### **The Māori authority tax rate**

- 4.10 A key feature in each of these options is the applicable tax rate for Māori authorities. For illustrative purposes, the tax rate for authorities in the examples below has been kept at the current rate of 25 percent.
- 4.11 Under option one, the resident withholding tax rate on member distributions is also an important consideration. For illustrative purposes, the rate applied is the current resident withholding tax rate of 33 percent.
- 4.12 The Government has not yet made a final decision on the appropriate tax rates for Māori authorities and resident withholding tax. It welcomes submissions on this issue.

## **(1) THE CURRENT TAX TREATMENT FOR “LARGE” AUTHORITIES (OPTION ONE)**

### **Key features**

- 4.13 This option would have the following features:
- The undistributed income of a Māori authority would be taxed at an appropriate tax rate in the year the income is earned.
  - Distributions to members that are made out of income would be deductible to the Māori authority.
  - Distributions to members that are made out of income would be treated as “dividends” subject to resident withholding tax.



- Members would receive a cash distribution and a resident withholding tax credit. Since the gross value of distributions would be taxed in members' hands, members would be able to use this tax credit to offset the tax they must pay on the distributions.
- If the authority makes a distribution in excess of its current income (that is, a distribution of retained earnings), this excess distribution would be able to be carried forward as a tax loss for offsetting against the authority's future income.

*Link with existing tax model*

4.14 Under option one, Māori authorities would be taxed in a similar manner to a co-operative company – that is, using a tax deduction for distributions (rebates) paid to its members.

**How the proposal would work**

4.15 Table 2 shows the tax effect on the Māori authority and on the member. For illustrative purposes, it is assumed that the authority derives income of \$1,000 each year. It also assumes that the tax rate on the Māori authority's undistributed income is 25 percent, that the resident withholding tax rate is 33 percent, and that the member's marginal tax rate is 21 percent.

TABLE 2: TAX EFFECTS OF OPTION 1

<b>Authority level</b>	<b>Year 1</b>	<b>Year 2</b>
Net income	1000	1000
<i>Less</i> distributions to members	0	(1750)
Taxable income (loss)	1000	(750)
<i>Less</i> tax at 25%	(250)	0
Cash reserves at the end of the year	750	0
<b>Member level</b>	<b>Year 1</b>	<b>Year 2</b>
Cash distribution received		1172.50
RWT of 33% withheld by the authority		577.50
Marginal tax rate of 21%	-	367.50
Refund*		210.00
After-tax amount	-	1382.50

\* See below for the explanation of the tax refund

### *Implications for the authority*

- 4.16 In year one, the authority derives \$1,000 but does not make any distribution. As the authority is taxed on its undistributed income at the rate of 25 percent, the authority must pay tax of \$250. Thus cash reserves available to the authority at the end of year one are \$750.
- 4.17 In year two, the authority distributes the retained income from year one and the \$1,000 earned in year two. Total distribution is \$1,750, which is fully deductible by the Māori authority. The amount distributed in excess of the income earned in year two is \$750. This amount can be carried forward as a loss to the next year and can be offset against any income in that year.
- 4.18 If the loss is offset against year three's income, the following would occur:

Net income	1000
<i>Less</i> income distributed	nil
<i>Less</i> losses brought forward	(750)
Taxable income (loss)	250
<i>Less</i> tax paid at 25%	(62.5)
Cash reserves available	937.5

- 4.19 In year three, the loss would be deducted from that year's net income after taking into account any current-year distributions. The net result (that is, the "taxable income") represents the undistributed income for year three, which is subject to tax at the rate of 25 percent.
- 4.20 Māori authorities would not be subject to the shareholder continuity rules that measure shareholding changes (and they are not subject to these rules currently). So the authority could carry forward its losses until these are fully used. This recognises the practical difficulties that Māori authorities have in keeping up-to-date membership records; and it also recognises the unique nature of Māori land ownership and its process of succession.
- 4.21 The proposed change to the definition of "Māori" would, by itself, have implications for Māori authority distributions under option one. That is, it would allow deductions for distributions made to other Māori authorities as well as to individuals.

### *Implications for members*

- 4.22 Member distributions would be subject to resident withholding tax at 33 percent. In year two, members would receive a distribution of \$1,750. That distribution would comprise a cash amount of \$1,172.50 and resident withholding tax credits of \$577.50. Because the marginal tax rate of each member is assumed to be 21 percent, which is lower than the withholding rate of 33 percent, each member could claim a refund of the difference. The tax refund is \$210.

## **Resident withholding tax rate on member distributions**

- 4.23 As mentioned earlier, the current resident withholding tax rate of 33 percent can lead to over-taxation of distributions. To address this problem, the Government is considering adjusting the resident withholding tax rate so that, on average, the correct amount of tax is withheld.

### **Key question for option one**

How should an appropriate resident withholding tax rate be set for distributions from a Māori authority?

### **“Deemed distribution” rules**

- 4.24 As detailed later in this discussion document, the Government proposes to clarify the definition of “Māori” so that it includes both individuals and other Māori authorities (see chapter 5). It also proposes to extend the donations deduction so that this applies to all donations to organisations with approved donee status (see chapter 6). These proposed changes have particular implications for Māori authority distributions under option one.
- 4.25 If a Māori authority member has approved donee status, the authority would be faced with a choice in claiming a deduction for distributions. It could claim the deduction either as distributions of income to members, or as donations to Māori organisations with approved donee status. (The latter deduction would be capped at 5 percent of the net income of the authority.)
- 4.26 The Government proposes to remove the element of uncertainty from this. Māori authorities would be required to treat their distributions as distributions of income to members, rather than as donations.

### **Advantages and disadvantages**

- 4.27 The main advantage of option one is that it involves the least change to existing rules. Māori authorities that have administrative methods in place to manage the current rules should not have to change these substantially. Also, they should not incur any costs associated with setting up new compliance systems. “Small” authorities could opt out of the Māori authority rules under the proposed “electing out” mechanism (discussed in chapter 5) if they wished.

- 4.28 Māori authorities would not have to distribute income within four years in order to avoid double taxation, since they would be able to carry forward any excess distributions as a tax loss and would benefit from a lower tax liability in a subsequent year. Māori authorities would also be relieved of the requirement to apply for reassessments of past income years to claim refunds for tax paid when retained earnings are distributed.
- 4.29 However, option one is still complex and may be difficult to operate in practice. This is because Māori authorities would still have to:
- claim deductions for distributions they make;
  - deduct resident withholding tax from these distributions; and
  - issue resident withholding tax certificates to those members who receive distributions.
- 4.30 Option one could still result in some double taxation if the Māori authority is unable to use its losses in future years.

#### **Alternative approach considered for the four-year limit**

- 4.31 The Government also considered removing the four-year limit and allowing deductions for distributions beyond the four immediately preceding years. Although this would have provided an up-front cash refund of tax paid in previous years, it would have been more complex (and possibly impractical) to administer.
- 4.32 Removing the four-year limit would have required Māori authorities to keep more extensive records; and there would never be certainty of closing the books off, as there would always be the possibility of reassessment. Administrative costs for Inland Revenue would also have been higher. As a result, the removal of the four-year limit was not pursued further.

#### **Transitional issues**

- 4.33 Transitional rules would probably not be necessary under option one. This is because the Māori authority would be able to claim a deduction for all distributions made out of income, with any excess distribution being carried forward as a loss and offset against net income in the following year(s).

## (2) FINAL TAX ON INCOME AT THE AUTHORITY LEVEL (OPTION TWO)

### Key features

- 4.34 This option would have the following features:
- The income of a Māori authority would be taxed (in the year the authority earns it) at an appropriate final tax rate.
  - This final tax rate would serve as a substitute for members' marginal tax rates.
  - Distributions to members would not be deductible by the authority.
  - The final tax would apply to authority income regardless of whether it is distributed.
  - All member distributions would be tax-free in members' hands.

### *Link with existing tax model*

- 4.35 Under option two, the Māori authority would pay tax on behalf of its members. The tax paid would be a final tax. This is similar to what is done by a superannuation fund (in respect of income earned from its members' investments) or by a trust (in respect of income retained by the trustee).

### How the proposal would work

- 4.36 Table 3 shows the tax effect on the Māori authority and on the member when the authority has retained income in one year for distribution in a subsequent year. For illustrative purposes, it is assumed that the authority derives income of \$1,000 each year, that the final tax rate is 25 percent, and that the member's marginal tax rate is 21 percent.

TABLE 3: TAX EFFECTS OF OPTION TWO

<b>Authority level</b>	<b>Year 1</b>	<b>Year 2</b>
Taxable income	1000	1000
<i>Less</i> tax at 25%	(250)	(250)
Income after tax	750	750
Accumulated cash reserves available for distribution	750	1500
<i>Less</i> distributions to members	0	(1500)
<b>Member level</b>	<b>Year 1</b>	<b>Year 2</b>
Cash distribution received	0	1500
After-tax amount	0	1500

### *Implications for the authority*

- 4.37 In this example, a final tax rate of 25 percent is applied to the income of the authority as it is earned in each income year. The authority pays tax of \$250 in year one and \$250 in year two, and makes a distribution of \$1,500 in year two.

### *Implications for members*

- 4.38 The member receives a tax-exempt cash amount of \$1,500. In this example, there is over-taxation because the tax rate of the Māori authority is higher than the marginal tax rate of the member. If the member's tax rate was higher than 25 percent, there would have been under-taxation.

### **Advantages and disadvantages**

- 4.39 Under option two, there are likely to be compliance cost savings for the Māori authority and for its members. Māori authorities would not have to undertake the current reassessment-and-refund process associated with the four-year rule. Nor would they have to deduct resident withholding tax from distributions. The potential for double taxation of income would be avoided because the tax at the authority level is final, and members who receive distributions from the authority would receive them free of any further tax requirements.
- 4.40 This option could, however, lead to over-taxation of income distributed to members with lower marginal rates and under-taxation of income distributed to members with higher marginal rates. The extent of this problem would vary over time, and would depend on both the numbers of individuals who are under-taxed and over-taxed and the degree to which they are affected. If distributions are for small amounts, the benefit of taxing this income at the correct rate would be outweighed by the costs of compliance. But if distributions are large, the potential for under-taxation or over-taxation would become more of an issue.
- 4.41 A key feature of this proposal is therefore the establishment of a tax rate that will allow the members of a Māori authority to minimise underpayment and over-taxation.

### **Distribution threshold**

- 4.42 Because of concerns about the potential for under-taxation and over-taxation, the Government is also considering whether a "distribution threshold" should be adopted to help address this problem.

- 4.43 For example, a threshold of \$200 a year per person would mean that the final tax would apply to distributions up to \$200, but distributions over \$200 would have tax credits attached to them. Members could either receive a refund (if the distribution is over-taxed) or pay tax (if the distribution is under-taxed).

**Key question for option two**

If a distribution threshold is supported, what would be an appropriate threshold level and what compliance issues would arise?

**(3) WITHHOLDING TAX AND TAX CREDITS (OPTION THREE)**

**Key features**

- 4.44 This option would have the following features:
- The income of a Māori authority would be taxed in the year the authority earns it, at an appropriate withholding tax rate.
  - The tax paid by the Māori authority would be credited to a tax credit account and this tax could be attached to distributions that are made out of income.
  - Distributions to members that are made out of income would have tax credits attached, to reflect the tax paid at the authority level.
  - The tax credit account would not be subject to the shareholder continuity rules.
  - The cash amount of the distribution and the value of the tax credit would be included in a member's gross income.
  - Tax credits would be fully refundable.
  - Distributions would not be deductible by the authority.

*Link with existing tax model*

- 4.45 Option three employs a model similar to that of the company imputation tax credit but with a slight modification. The tax credit mechanism would act in a manner similar to imputation tax credits that are attached to company dividends. But option three's tax credits would be fully refundable (whereas imputation tax credits that cannot be used must be converted into a tax loss).

- 4.46 The reason for making option three's tax credits fully refundable is that members would often not have enough other income against which to offset tax losses. Given this, and also the fact that the distribution amounts involved are usually small, it seems unnecessarily burdensome to require that small tax losses be carried forward from year to year.

### How the proposal would work

- 4.47 Table 4 shows the tax effect on the Māori authority and on the member when the authority has retained income in one year for distribution in a subsequent year. For illustrative purposes, it is assumed that the authority derives income of \$1,000 each year, that the withholding tax rate is 25 percent, and that the member's marginal tax rate is 21 percent.

TABLE 4: TAX EFFECTS OF OPTION THREE

<b>Authority level</b>	<b>Year 1</b>	<b>Year 2</b>
Taxable income	1000	1000
<i>Less</i> tax at 25%	250	250
Income after tax	750	750
Accumulated cash reserves available for distribution at year end	750	1500
Accumulated tax credits available for distribution at year end	250	500
Distributions to members with tax credits attached	0	1500
	0	500
<b>Member level</b>	<b>Year 1</b>	<b>Year 2</b>
Cash distribution received	0	1500
Tax credits attached	0	500
Tax payable on \$2,000 (cash plus tax credit) at 21%	0	420
After-tax amount	0	1580
		(\$1500 cash plus \$80 excess-tax credit)

### *Implications for the authority*

- 4.48 The authority derives \$2,000 over years one and two, and distributes that amount to the members in year two in the form of a cash amount of \$1,500 and tax credits of \$500.



- 4.49 The shareholder continuity rules that apply to companies operating an imputation credit account would not apply to Māori authorities. These rules restrict the tax benefit of imputation tax credits to those people who have paid the original tax. Applying these rules to Māori authorities would give rise to practical difficulties. For example, membership lists are often incomplete for a variety of reasons – people may not have succeeded to their interest or be aware of the need to do so, or they may simply have lost touch with the authority.
- 4.50 To ensure that a Māori authority has paid sufficient tax to attach to member distributions, the tax credit account would be required to operate in a way similar to an imputation tax credit account – that is, it must not be in a debit balance at the end of year. Otherwise, the authority would be able to attach more tax credits than what it has actually paid.

#### *Implications for members*

- 4.51 Members can use tax credits to offset their personal tax liability. Therefore the member could receive a refund (if the member's tax rate is lower than the authority's tax rate) or pay additional tax (if the member's tax rate is higher than the authority's tax rate).

#### **Advantages and disadvantages**

- 4.52 Māori authorities would not have to undertake the current reassessment-and-refund process associated with the four-year rule. Nor would they have to deduct resident withholding tax from distributions. Option three also avoids the inequitable outcomes that could arise under option two, because the tax credit mechanism eliminates over-taxation and under-taxation of individual members' income. The tax credit mechanism ensures that Māori authority income is not subject to double taxation.
- 4.53 However, the costs for Māori authorities and their members may be higher under option three than they are under option two. Māori authorities would incur the costs of tracking the tax paid and attaching tax credits to distributions. Members would also be required to file tax returns or complete income statements in order to claim the tax benefit of the tax credits (as they must do currently in relation to resident withholding tax).

#### **Key question for option three**

What difficulties could arise for organisations using a tax credit account?

#### **Specific issues for consultation (chapter 4)**

The Government seeks your views on the following matters:

- What option is most preferred?
- What compliance issues would arise under each of the options and how could these be addressed?
- Under option one, how should an appropriate resident withholding tax rate be set for distributions from a Māori authority?
- Under option two, what would be an appropriate threshold level?
- Under option three how difficult would it be for Māori authorities to use a tax credit account?

## Chapter 5

### REMEDIAL CHANGES

#### Proposed policy

The following remedial changes to the tax rules for Māori authorities would apply under each of the options outlined in the previous chapter:

- The definition of “Māori authority” would be clarified to ensure that only those Māori organisations and businesses that administer Māori property in common ownership could apply the Māori authority rules.
- Māori authorities would also have the option of electing out of the Māori authority rules and applying general tax rules (provided they meet the criteria for those general rules).
- The definition of “Māori” would be clarified so that for tax purposes a “Māori” could be an individual or another authority.
- The Commissioner of Inland Revenue’s discretionary powers over the Māori authority rules would be removed.

#### Definition of “Māori authority”

- 5.1 As mentioned earlier, the main policy reason for retaining a separate tax treatment for Māori authorities is to recognise the unique characteristics of Māori organisations and businesses and, in particular, their role in administering Māori land and assets held in common ownership for Māori. The Government therefore considers that the scope of the proposed rules should be limited to those organisations that administer land and other assets held in common ownership for Māori.
- 5.2 One of the ways of achieving this would be to list those organisations that would be eligible to apply the new rules. The list would be used to ensure that private organisations that just happen to have members of Māori ancestry would not be eligible to apply the new rules.
- 5.3 The proposed list could include:
- organisations established in accordance with Te Ture Whenua Māori Act 1993 (but excluding kaitiaki trusts);
  - organisations established in accordance with the Māori Trust Boards Act;

- organisations established for the benefit of all Māori;
- organisations established for the benefit of iwi or hapū (if these groups are large enough to constitute an appreciably significant section of the public);
- the Māori Trustee; and
- marae.

5.4 The Government proposes to exclude kaitiaki trusts from the list of Māori authorities because these trusts administer assets on behalf of individuals. They do not administer assets held in common ownership for Māori. (All other organisations established under Te Ture Whenua Māori are likely to meet the criteria of “administering assets held in common ownership for Māori”.)

### **Key questions**

If a list is an appropriate way to define Māori authorities for tax purposes, what other organisations should be added to this list? What organisations should not be on the list?

If you consider a list is not appropriate, what other ways are there for defining a “Māori authority”?

### *Removing redundant references*

5.5 The definition of “Māori authority” would also be updated to remove redundant references to the East Coast Commissioner and the Māori land boards. These entities no longer exist.

### **“Electing out” mechanism**

5.6 Māori authorities would also have the option of electing out of the proposed rules and applying general tax rules instead – but only if they meet the criteria for these rules. If a Māori authority does meet the criteria for a company or trust or some other entity type and considers it more efficient to apply those rules, then it should be able to do so.

5.7 The concept of “electing out” received considerable support during the policy-testing consultation round. Those consulted were of the view that “election” provides flexibility and, in turn, a recognition that the nature and purpose of Māori organisations is likely to evolve over time.

- 5.8 However, the Government is concerned that entities might move in and out of the Māori authority rules in order to avoid tax. For this reason, it is proposed that if Māori authorities elect out of the Māori authority rules they would not be able to elect back in. This should reduce compliance costs for entities moving in and out of tax rules; it should also reduce administrative costs for Inland Revenue.
- 5.9 Depending on which of the three options is adopted, transitional rules may be required when a Māori authority elects to be taxed under general tax rules. For example, if option three is adopted, transitional rules may be required to deal with debit and credit balances in the tax credit account.

### **Definition of “Māori”**

- 5.10 The focus of the Māori authority rules is on an appropriate tax treatment for organisations that administer Māori land and other assets held in common ownership for Māori. The Government considers that the members of these organisations should be:
- individual Māori;
  - entities (such as other Māori authorities) that have Māori members as their ultimate beneficiaries or shareholders; or
  - both.
- 5.11 The definition of “Māori” as it relates to the definition of “Māori authority” would be clarified, to include individuals and other authorities. This change would make it clear that a Māori authority can be established for the benefit of individuals of Māori ancestry, other Māori authorities, or both.
- 5.12 This change would only be required if the current broad definition of “Māori authority” is retained. It would not be required if the proposed new definition of “Māori authority” is adopted, because the new definition of “Māori authority” is independent of the definition of “Māori”.
- 5.13 The proposed change to the definition of “Māori” would have implications for the deductibility of distributions under option one. That is, it would allow deductions to a Māori authority for distributions made to individuals and to other Māori authorities.

### **Application of the discretionary powers of the Commissioner of Inland Revenue**

- 5.14 The Commissioner’s discretionary powers under Māori authority tax rules would be removed. These powers relate to:
- determinations on whether a distribution is of a capital nature;

- adjustments to the income tax liability of a “small” authority when it becomes a “large” authority; and
- determinations on whether a distribution is a bona fide investment or a distribution of income.

5.15 As discussed in chapter 3, these powers are no longer necessary. Furthermore, the Commissioner of Inland Revenue does not have the same discretionary powers in relation to other taxpayers – and to continue them would be inconsistent.

**Specific issues for consultation (chapter 5)**

What difficulties are likely to arise from the proposed remedial changes, and how could these difficulties be addressed?

## Chapter 6

### EXTENDING THE SCOPE OF THE TAX DEDUCTION FOR DONATIONS TO MĀORI ASSOCIATIONS

#### Proposed policy

The deduction available to Māori authorities for donations to Māori associations would be extended to include donations to organisations with “approved donee status”. This deduction would be the same as the deduction that is proposed for companies in the *Tax and charities* discussion document.

#### Section DI 2 deduction provision

- 6.1 Under section DI 2 of the Income Tax Act 1994, Māori authorities may claim a deduction for donations that they give to Māori associations. The extent of the deduction is limited – up to 5 percent of the authority’s net income (calculated before taking into account the donation).
- 6.2 A “Māori association” is defined in the Māori Community Development Act 1962. It means a Māori Committee, a Māori Executive Committee, and a District Māori Council. All of these bodies are committees of the New Zealand Māori Council.
- 6.3 This deduction was introduced as part of the 1952 rules. In recommending it, the 1952 Commission of Inquiry commented that such a deduction recognised the social and community service provided by Māori associations and that Māori authorities should be encouraged to make donations to them. The Commission also commented that the deduction was consistent with the principle “that to the extent that the income of an authority is applied for this purpose it may be considered to have been derived for charitable purposes”.

#### Problems with section DI 2

- 6.4 Those consulted were of the view that this deduction no longer reflects current practice. There are other entities aside from Māori associations that provide community benefits and that are supported by Māori authorities – for example, affiliated marae, kōhanga reo, kura kaupapa, and local charities. The general view was that the deduction provision should be updated to reflect the greater range of community benefits that are assisted by Māori authority funding.

- 6.5 The Government considers there is merit in changing the deduction so that it applies to a wider range of donations that Māori authorities currently make.

### **Proposed change**

- 6.6 The current deduction would be extended to apply to donations of money to all organisations with approved donee status (including Māori associations). The maximum level of deduction would remain at 5 percent of the authority's net income (calculated before taking into account the deduction).
- 6.7 To qualify for approved donee status, an organisation must be established for charitable, benevolent, philanthropic, or cultural purposes within New Zealand or must be specifically listed in section KC 5 of the Income Tax Act 1994. As only organisations can qualify for donee status, Māori authorities would not be able to claim this deduction for distributions to individuals.
- 6.8 This proposal is the same as the deduction that is proposed for companies in the *Tax and charities* discussion document.

### **Advantages and disadvantages**

- 6.9 This proposal recognises a greater range of community benefits that are assisted by Māori authority funding. Many Māori groups could be eligible for donee status, as the criteria for donee status are very broad. Māori entities that currently possess approved donee status include the Māori Women's Welfare League, the New Zealand Māori Council, the Waitangi National Trust, and many kōhanga reo. Most entities that have a "charitable" tax exemption will also have donee status.
- 6.10 Those organisations that currently do not have approved donee status would incur a small initial cost in determining whether they satisfy the criteria.
- 6.11 There could be a disadvantage in this proposal for Māori groups that do not have constituting documents (such as constitutions, trust deeds, or written governing rules). Inland Revenue's administrative practice is to review an entity's constituting documents to determine if donee status should be granted. This might be a problem for unincorporated groups since they generally do not have such documents.

### **Specific issues for consultation (chapter 6)**

Should the current deduction for donations to Māori associations be extended so that it includes donations to organisations with approved donee status?



## Chapter 7

### TAXATION OF THE MĀORI TRUSTEE

#### Proposed policy

- The “agent” tax rules applying to the Māori Trustee would be removed.
- The proposed Māori authority rules would apply to the taxation of income from all properties administered by the Māori Trustee.

#### The tax rules applying to the Māori Trustee

- 7.1 The Māori Trustee is an independent “corporation sole” created by the Māori Trustee Act 1953 to act for Māori as trustee or agent in the administration of their properties. The Māori Trustee is in a unique position because the properties he manages may fall within three very different sets of tax rules.
- 7.2 The income of the properties administered by the Māori Trustee is taxed in one of three ways:
- When the Māori Trustee acts as a trustee for properties with 20 or fewer members, the tax treatment for “small” Māori authorities applies.
  - When the Māori Trustee acts as a trustee for properties with more than 20 members, the tax treatment for “large” Māori authorities applies.
  - When the Māori Trustee acts as an agent for the collection and distribution of rents, royalties and interest, the Māori Trustee is specifically excluded from the definition of a Māori authority. Income dealt with in this role is taxed under section HK 14 of the Income Tax Act 1994.

#### Section HK 14

- 7.3 Under section HK 14, the income derived from properties administered by the Māori Trustee is subject to tax at the rate of 25 percent unless it constitutes beneficiary income. If the income constitutes beneficiary income, then it will be taxed in the hands of the individual owners (on whose behalf that income was collected) and at their marginal tax rates.
- 7.4 The beneficiary-income rule applies when the Māori Trustee acts as agent for another trust (for example, when an interest in the land is held by the executors of a deceased estate) and the other trust’s arrangements for vesting or distributing income means that the income is deemed to be beneficiary income.

## **Policy intention under section HK 14**

- 7.5 Before 1974, the income derived from properties administered by the Māori Trustee was taxed under the Māori authority rules. So it was taxed at a flat rate of 7.5 percent before it was distributed to the owners of the properties.
- 7.6 This treatment gave rise to inequitable outcomes, because some of the property owners were superannuitants on low incomes who were not in fact required to pay tax on that income (and so were over-taxed).
- 7.7 Furthermore, other agents were not required to deduct tax before passing on payment to their principals. This inconsistency was made worse by the fact that many of the property owners did not have a choice about whether the Māori Trustee administered their lands or not.
- 7.8 The Ministry of Māori and Island Affairs, the Māori Trustee, the New Zealand Māori Council, and some tax practitioners dealing with Māori land viewed this inequity as a form of discrimination. They sought to have the Māori Trustee excluded from the definition of Māori authority when he acted as agent in the collection and distribution of rents, royalties and interest. This was put into effect in the Land and Income Tax Amendment Act 1974.
- 7.9 The legislation was later amended so that the Māori Trustee could account for retained rent, royalty or interest income at a flat rate; and so that subsequent distributions could be treated as capital distributions (which were tax-exempt) in the hands of the owners.

## **Practical difficulties with section HK 14**

- 7.10 Compliance costs are now the main problem for the Māori Trustee. Unlike other Māori authorities, which are affected by only one set of Māori authority rules, the Māori Trustee is confronted with both sets of rules for Māori authorities as well as the rules applying in his capacity as an agent. So when properties move between all these sets of rules, a number of practical difficulties (and compliance costs) arise.
- 7.11 Owners who receive distributions from the Māori Trustee under section HK 14, receive these with tax of 25 percent already deducted unless the distribution is regarded as beneficiary income. Owners do not have to include this income as part of their taxable income; it is tax-exempt for individual taxpayers. However, if the owner's marginal tax rate is lower than 25 percent, these distributions are over-taxed. Conversely, if their marginal tax rate is over 25 percent, they are under-taxed. This is a problem because the owners cannot correct this over-taxation and under-taxation.
- 7.12 The Government considers that the "agent" tax rules for the Māori Trustee are no longer necessary and should be removed.

### **Proposed reform**

- 7.13 The Government proposes to remove the “agent” tax rules applying to the Māori Trustee in his role as collector of rents, royalties and interest. The new Māori authority rules would apply to the Māori Trustee in every instance.
- 7.14 The taxation of income from properties administered by the Māori Trustee would depend on which Māori authority rules and remedial changes are put into effect. Since Māori authorities would be able to elect out of the Māori authority rules under these proposals, the Māori Trustee could also choose to administer his properties under the general tax rules (provided he meets the criteria for those general rules).

### **Advantages and disadvantages**

- 7.15 The main advantage from the removal of the “agent” tax rules is the compliance cost savings. The Māori Trustee will no longer have to determine what tax treatment applies to the different types of properties he administers.
- 7.16 Any other advantages and disadvantages for the Māori Trustee and the owners he represents would depend on which option for Māori authority tax rules is adopted.

### **Consultation with the Māori Trustee**

- 7.17 Initial discussions with the Māori Trustee on this issue have already taken place. The Māori Trustee agrees with the proposed reform in principle, subject always to the new Māori authority tax rules being both administratively manageable and equitable.

#### **Specific issues for consultation (chapter 7)**

What are your views on removing the Māori Trustee “agent” tax rules?



## Part III

# Taxation of Māori organisations seeking “charitable” tax exemption

*This part of the discussion document discusses the policy proposals for clarifying how aspects of the law of charities apply to Māori organisations (including marae) that seek a “charitable” tax exemption.*



## Chapter 8

### THE “CHARITABLE” TAX EXEMPTION

#### **Proposed policy**

##### *Changing the “public benefit” test*

An entity would not cease to be eligible for charitable status simply because its purpose is to benefit a group of people connected by blood ties.

##### *Charitable status for marae*

Marae would be eligible for a “charitable” tax exemption, provided that:

- They apply their funds to specific purposes. (These purposes would include maintaining the physical structures of the marae and supporting activities traditionally carried out on the marae.)
- Their activities are not carried on for the private financial gain of any person.

#### **Māori organisations seeking a “charitable” tax exemption**

8.1 The Government recognises a need to clarify the “public benefit” test for charitable status, and to develop options for amending that test to give greater certainty to iwi-based or hapū-based structures and other entities seeking a “charitable” exemption for tax purposes. In particular, the tax status of marae needs to be made clearer. Although it was not specifically mentioned in the review’s terms of reference, the status of marae was one of the issues raised most consistently during the various consultation hui. Those consulted strongly believed that the tax status of marae should be considered as part of this review.

#### **The wider review of charities**

8.2 The proposals contained in the discussion document *Tax and charities* are also relevant to Māori organisations that currently have or are seeking a “charitable” tax exemption. The core proposals relate to redefining what constitutes a “charity” for tax purposes and what reporting requirements there should be for entities with a “charitable” tax exemption.

## Acquiring a “charitable” tax exemption

8.3 An entity wishing to take advantage of the “charitable” tax exemption in the Income Tax Act 1994 must first satisfy the common law meaning of a charity. The common law meaning of charity imposes a two-step test on most entities. Firstly, the entity must be established for a charitable purpose. Secondly, it must exist for the benefit of the public or an appreciably significant section of the public. This second step is known as the “public benefit” test.

### First step: charitable purpose

8.4 A charitable purpose is a purpose for:

- the relief of poverty;
- the advancement of education;
- the advancement of religion; or
- any other purpose that is beneficial to the community.

These categories of charitable purpose are prescribed by case law and may appear to be quite wide. However, “any other purpose that is beneficial to the community” is restricted to purposes similar to those listed in the preamble to the United Kingdom’s Charitable Uses Act 1601.

### Second step: public benefit

8.5 All entities other than those established for the relief of poverty must meet the “public benefit” test. Although the question of whether an entity meets this test is considered on the facts of each case, the courts have developed a number of general tests for determining whether the benefiting group is the public – or at least an “appreciably significant section” of the public.

8.6 Through cases such as *Re Compton*<sup>3</sup> and *Oppenheim v Tobacco Securities*<sup>4</sup>, it has been established that the number of beneficiaries must not be negligible. In addition (and even if the number of beneficiaries is large), those beneficiaries must not be determined on the basis of a personal relationship such as blood or contractual ties. If they are, the entity will not be for the public benefit. Instead, it will be for the benefit of private individuals and therefore not “charitable”.<sup>5</sup>

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<sup>3</sup> [1945] 1 All ER 198

<sup>4</sup> [1951] 1 All ER 31

<sup>5</sup> In *Oppenheim*’s case a gift for the education of the children of the employees and former employees of the company and its subsidiaries failed to qualify as a charity because the employees of a firm were not a public class. This was in spite of the fact that at the testator’s death the number of employees exceeded 110,000.



- 8.7 The House of Lords (Lord Cross) in *Dingle v Turner*<sup>6</sup> has questioned the *Re Compton* and *Oppenheim* tests, suggesting that the existence of a personal connection such as blood ties or contract should not be determinative of whether an entity provides a public rather than a private benefit. Rather, consideration should also be given to the nature of the entity and the charitable purpose for which it was established, the number of beneficiaries, and the degree of connection between the beneficiaries.
- 8.8 Although the *Re Compton* and *Oppenheim* tests have continued to be applied in the English courts, Lord Cross's comments have been noted with approval in two recent New Zealand cases.<sup>7</sup> Consequently, there is now a degree of uncertainty in New Zealand about whether trusts whose beneficiaries are determined by a blood or a contractual relationship will satisfy the "public benefit" test.

#### *Problems with the "public benefit" test*

- 8.9 The inability of an entity to qualify for charitable status when its beneficiaries are determined on the basis of bloodlines has been raised by the Māori community as a major concern, although it is by no means an issue limited to Māori. Although Māori authorities often provide benefits of a charitable nature to iwi and hapū, they might not qualify for an exemption because their benefit extends to a specified group of people connected by blood ties.
- 8.10 Those consulted considered that the general view of the "public benefit" requirement is inappropriate to New Zealand society because it fails to recognise New Zealand's unique cultural groupings.
- 8.11 The issue of members connected by contract has been referred to the wider review of charities as it was considered to be an issue of more widespread interest, whereas the blood-ties issue is likely to be of most relevance to Māori organisations.

#### **Changing the "public benefit" test**

##### *Proposal*

- 8.12 The Government considers that if an entity provides charitable benefits, then it should not automatically be excluded from the "charitable" tax exemption simply because it fails to meet the "public benefit" requirement.

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<sup>6</sup> [1972] AC 601

<sup>7</sup> *New Zealand Society of Accountants v CIR* [1986] 1 NZLR 147; *Educational Fees Protection Society Incorporated v CIR* (1991) 12 NZTC 8,203.

- 8.13 This review was intended to consider whether entities could be “charitable” if they benefited persons connected by a personal relationship, such as blood ties or contract. Initial consultation with Māori groups, however, focused solely on the issue of blood ties; and so the review has limited its consideration of this issue to blood ties only.
- 8.14 The Government therefore proposes changing the requirement for charitable status so that an entity will not cease to be eligible for this simply because its purpose is to benefit a group of people connected by blood ties.

#### *How this proposal will work*

- 8.15 This proposal will apply to both Māori and non-Māori entities, and it is especially relevant to iwi-based and hapū-based entities. However, it should be noted that to obtain charitable status an entity must still meet the other requirements of a charity – that is, it must have a “charitable purpose” and it must be for the benefit of the public or an appreciably significant section of the public.
- 8.16 In determining whether an entity benefits an appreciably significant section of the public, it will be necessary to consider other factors such as the nature of the entity, the number of potential beneficiaries, and the degree of relationship between beneficiaries.
- 8.17 For example, whānau trusts may qualify for a “charitable” tax exemption if their pool of beneficiaries is large enough and inclusive enough to constitute an appreciably significant section of the public, or if the purposes for which they are established confer a wide public benefit. However, if the entity benefits a few family members only (so that it is actually a private family trust), it will not be regarded as benefiting an appreciably significant section of the public.
- 8.18 In practice, the application of this proposal will require some guidance so that an entity can determine whether it benefits an appreciably significant section of the public. We seek your views on what guidance should be provided and in what form such guidance should take.

#### *Advantages and disadvantages*

- 8.19 The main benefit of this proposal is that it will remove the barrier that some Māori entities have come up against when applying for a “charitable” tax exemption. The proposal will also recognise that when an iwi-based or hapū-based organisation is established for charitable purposes and confers a public benefit, that entity should be able to satisfy the “public benefit” requirement.
- 8.20 One potential disadvantage with this proposal is that any land or income included in a charitable entity must always be retained for charitable purposes. If the entity is wound up or dissolved, the land and any remaining assets must be applied to further charitable purposes. This creates potential for the alienation of any assets associated with the “charity”.

### **Key question**

What factors should be taken into account in determining whether an entity has sufficient “public benefit”?

### **Charitable status for marae**

- 8.21 As mentioned earlier, marae will generally fail to meet the “public benefit” test for a charity and therefore will not be able to access a “charitable” tax exemption. This is because marae are usually established for the benefit of hapū or iwi affiliated to the marae. A further complicating factor is that it is not clear if the purposes for which marae are established meet the common law meaning of “charitable purpose”.
- 8.22 Those initially consulted favoured giving marae a “charitable” tax exemption. They considered that an exemption would recognise that marae are institutions serving the cultural needs of the Māori community and have similar functions to churches and public halls (both of which are likely to qualify for a “charitable” tax exemption).
- 8.23 This issue has become a matter of priority for marae that wish to access funding from other charitable entities such as community trusts. Charitable entities can only apply their income to charitable purposes – if they fail to do so, they risk losing their tax exemption. Therefore charitable entities will often only fund other entities that have a “charitable” tax exemption. If marae do not have this exemption, they generally cannot access this funding.

### *Proposal*

- 8.24 The Government considers that marae should be recognised as “charitable” for tax purposes, provided that certain requirements are met. This recognition acknowledges the important role marae play in supporting a way of life for New Zealanders within a structure of Māori culture and values. It also acknowledges that marae have a function similar to that of churches and public halls.

### *How the proposal would work*

- 8.25 It is proposed that marae be given a “charitable” tax exemption if they meet certain requirements. These requirements are:
- Marae must apply their funds to specific purposes. These purposes will include maintaining the physical structures of the marae and supporting activities traditionally carried out on the marae.
  - Marae activities must not be carried on for the private financial gain of any person.

- 8.26 If a commercial business is carried out on the marae and the income for that business is applied towards the maintenance and upkeep of the marae premises and no individual member associated with that marae or any other person is able to derive a private financial benefit, then that marae will be regarded as “charitable” for tax purposes. If a member receives some private financial benefit from the marae such as a dividend payment, share of profits, or other payment and that member has not provided any services in return, the marae’s charitable tax exemption would cease to apply. Marae would need to ensure that payments to members for services rendered are reasonable and do not exceed what would normally be paid for those services. In practice, the marae would determine whether it meets these requirements by applying them to its particular facts.

### **Key question**

What “specific purposes” should be included in the requirements that marae must meet to get a “charitable” tax exemption?

### *Advantages and disadvantages*

- 8.27 Most marae should be able to gain a “charitable” tax exemption, provided they meet the new requirements. However, as noted earlier, one disadvantage of charitable status is the potential for alienation of property. When property is vested in a charity, that property must be applied to another charitable purpose when the original charity is dissolved or wound up. The property cannot be returned to its original members.

### *Treatment under the proposed Māori authority rules*

- 8.28 If marae meet the requirements for a “charitable” tax exemption, they would not be treated as a Māori authority.
- 8.29 Marae that do not meet the requirements for a “charitable” tax exemption will be treated as a Māori authority – but they could elect to be treated as a non-profit body if they meet the requirements for “non-profit”. Non-profit bodies can claim a tax deduction each income year of an amount equal to the lesser of its net income or \$1,000. As non-profit bodies tend to derive little (if any) income, most of them do not pay tax.

### *Proposed registration proposal*

- 8.30 One of the proposals that could emerge from the wider review of charities is a requirement for entities to register their charitable status with the Inland Revenue Department. This requirement would also apply to marae that meet the requirements for a “charitable” tax exemption.

# Appendix



## **HISTORY OF THE MĀORI AUTHORITY TAX RULES**

A survey of the history of the Māori authority tax rules is useful for an appreciation of how Māori authorities are taxed today.

The first specific set of rules applying to Māori authorities appeared in 1939 and formed part of the Land and Income Tax Act 1923. The 1939 rules were subsequently replaced in 1952, as a result of the recommendations made by a Commission of Inquiry. The Commission was established mainly in response to assertions that some Māori authorities were not complying with the prevailing tax law. The original scheme of the 1952 rules has remained largely unchanged, with only minor changes such as increases in the Māori authority tax rate.

### **Pre-1939 tax rules**

Before 1939, two separate taxes were levied on income: income tax and a social security charge. The social security charge (including the national security tax from 1940 until 1947) was payable at a flat rate, while the income tax was payable at graduated rates.

Māori had always been subject to these taxes in the same way as any New Zealand resident taxpayer. However, section 550 of the Māori Land Act 1931 contained restrictive provisions that effectively prevented trust monies from being used for paying tax on the income derived by some Māori authorities on behalf of their members. Because there were considerable numbers of reserves, funds and lands administered by Māori land boards and the Māori Trustee, this presented a problem for Māori in satisfying their income tax obligations.

This problem persisted from 1929 (when farming profits became subject to income tax for the first time) until the 1939 rules were introduced.

### **The 1939 tax rules**

The 1939 rules came into force on 7 October 1939 (section 29 of the Land and Income Tax Act Amendment Act 1939).

These rules were aimed at defining tax obligations for Māori authorities and facilitating the collection of tax by charging it at source. The authority was responsible for paying income tax on behalf of individual members; and the tax was based on their respective shares of the net income earned by the authority, regardless of whether that income was distributed as a dividend or not. The authority was also responsible for the collection and payment of the social security charge for its members.

In effect the authority was assessed as agent on behalf of its members. This placed the authority in the same situation as an ordinary trustee.

### *Key features of the 1939 rules*

The 1939 rules applied to the various working entities that administered blocks of farmland owned in common – that is, they were not within the ownership and responsibility of any individual or their immediate family. These entities included the Board of Māori Affairs, the Māori Trustee, the Māori land boards, special statutory trusts (such as the East Coast Commissioner), and land trusts established under the Māori Land Act. These entities were specifically included in the definition of “Māori authority”.

The definition of “Māori authority” also included any other body, authority, or person administering or controlling property in trust for the benefit of Māori.

The restrictions in section 550 of the Māori Land Act 1931 were overridden so that any income tax liability could be met from income earned by the authority.

The income was treated as being earned by the authority as “agent” for individual members. In effect, the members were regarded as “partners” in the authority and the authority was responsible for calculating and paying income tax (on behalf of members) on each member’s respective share of the whole of the income earned by the authority.

There was a clear intention on the part of the original policy makers to avoid assessing Māori authorities as trusts or companies as this would have meant higher-than-expected taxation.

These rules were largely concerned with, but not limited to, revenue from Māori land.

### *Non-compliance with those rules*

Most Māori authorities experienced practical difficulties in calculating their income tax liabilities in accordance with the new rules. Some authorities ignored the new requirements altogether.

The East Coast Commissioner and various corporate bodies assumed that their obligation was limited to paying only the social security charge and the national security tax – and to doing this only on the amounts actually paid to members.

The Māori Affairs Department also had difficulties in complying with section 29. The rules could be applied relatively easily to properties that had a small number of members. But, as the number of members grew, satisfying the requirements of the rules became more of a burden. The department considered that because there was little income tax payable on the income from Māori land, the work that was required to calculate and pay tax on behalf of each member was not justified.



Initially there was little loss of revenue to the Government. Māori authorities were earning moderate sums of income and, owing to the large number of members in many authorities, little (if any) income tax was payable on an individual's share of the authority's income.

By 1950, however, the development of land began to be reflected in increased levels of income, at which point the Commissioner of Taxes made a determined effort to enforce the Māori authority tax rules. This action was resisted by Māori authorities and led directly to the establishment of the Commission of Inquiry.

### **The 1952 tax rules**

The Luxford Commission of Inquiry was set up to investigate the situation that had resulted from certain Māori farming concerns not complying with their tax obligations.

In its report *The Working of the Law relating to the Taxation of Māori Authorities*, published in 1952, the Luxford Commission made a number of recommendations to reform the 1939 rules.

The Commission found that while the purpose of the 1939 rules was to treat members as partners in relation to their property and so minimise their tax burden, the rules were unworkable and ineffective so far as income tax was concerned. The main reasons for this finding were:

- Most properties that came under the control and management of Māori authorities involved a large number of members.
- The move from leasing land to being owner-farmers meant that Māori authorities accumulated wealth; but this was only possible by retaining (that is, not distributing) a considerable proportion of the authority's income.

#### *Key features of the 1952 rules*

From 1952, Māori authorities that derived income from properties for 20 or fewer members were treated as "agents". The authority was responsible for the collection and payment of tax for each member according to their share of the authority's income. This continued the 1939 tax treatment.

The number "20" was chosen because a small group was analogous to a partnership, and at that time the legal maximum number of people in a partnership was 20. Although the Commission realised a flat rate of tax could impose an undue burden on members whose landholdings were small, it considered that any disadvantage to them would be outweighed by the benefits that would accrue by working the land as part of a larger unit.

Māori authorities that derived income from properties with more than 20 members were treated as separate tax-paying entities and were assessed for income tax on “undistributed income” at a flat rate.

A flat rate equivalent to the existing social security charge of 7.5 percent was applied to the net income of the authority. The rate of tax on “undistributed income” was set at the minimum rate then in force (12.5 percent), making total tax on undistributed income 20 percent. These rates in effect represented a “composite” low rate of income tax that recognised the low-income levels of Māori-land owners.

Owners were required to include their share of the “distributed income” from the authority in their personal returns and pay any tax liability on that income themselves.

#### *Reasons underlying the Commission’s recommendations*

The tenor of the Luxford Commission’s report was one of practicality. The Commission accepted the fundamental premise that Māori ownership of land had a particular character that required a special system of taxation. So its recommendations were aimed at achieving simplicity of administration within the framework of the existing taxation system.

The Commission considered that, although it might appear that the treatment proposed for Māori authorities was more favourable than that for companies or trustees, there were good reasons for such a “concessionary” treatment. Having regard to all the circumstances, the Commission believed that the proposed system of levying income tax at minimum rates on income retained by a Māori authority was fair and reasonable.

# Glossary



### **Allowable deductions**

Business expenses and costs. Further defined in section BD 2 of the Income Tax Act 1994.

### **Approved donee status**

To qualify for donee status an entity must meet the requirements in section KC 5(1) of the Income Tax Act 1994, which includes entities established for charitable, benevolent, philanthropic, or cultural purposes within New Zealand **or** that are specifically listed in this section. Entities interested in obtaining donee status must apply to the Inland Revenue Department.

### **Beneficial owners**

The owner of a beneficial interest in land. If the land is vested in trustees, those trustees own the land as legal owners on behalf of the beneficiaries who hold their individual shares in the land.

### **Beneficiary income**

For tax purposes, beneficiary income means income derived by a trustee in a given income year which:

- vests in the beneficiaries in terms of the trust deed during that year; or
- is paid to (or applied for the benefit of) the beneficiary during that year or within six months after the end of that year.

### **Charitable purpose**

A charitable purpose is a purpose for:

- the relief of poverty;
- the advancement of education;
- the advancement of religion; or
- any other purpose that is beneficial to the community.

These categories of charitable purpose are prescribed by common law and may appear to be quite wide. However, the courts in determining whether the purpose of an entity is for “any other purpose that is beneficial to the community” have restricted the purposes similar to those listed in the preamble to the United Kingdom’s Charitable Uses Act 1601.

Modern examples of type of activities that come within this purpose are:

- providing public halls, public recreational facilities, botanical gardens, parks, libraries and museums;
- social rehabilitation – integrating people back into the community;
- providing an ambulance service, district fire brigade or life saving service;
- repairing highways and bridges, providing a water supply, paving and lighting a town; and
- the afforestation or making of public domains or national parks.

### **Charitable status**

An entity has charitable status when it meets the legal requirements for a “charity”. Charities are exempt from income tax.

### **Company**

The definition of a “company” for tax purposes is broad. It includes any body corporate or other entity that has a legal personality or existence distinct from those of its members, whether that body corporate or other entity is incorporated or created in New Zealand or elsewhere. Certain entities such as unit trusts are deemed to be companies for tax purposes, whereas Māori authorities are specifically excluded from that definition.

### **Company tax rules**

Key features of company tax rules in the Income Tax Act 1994 are:

- Companies are subject to a flat tax at a rate of 33 percent.
- Companies are separate legal entities, and the members have an “interest” in the company, usually defined by shareholding.
- The benefit of tax paid by a company can be passed on to shareholders as imputation tax credits attached to dividends. Gross dividends are included as gross income of the shareholder, but individual tax liabilities are satisfied in part by the amount of any tax credits that have been allocated to the dividend.
- If a taxpayer receives a dividend that has more imputation credits attached than the level of tax payable on that dividend, and the taxpayer has other income, the excess tax credit can be used to satisfy this tax liability.

- Tax losses can be carried forward to be offset against the future income of the company, subject to maintaining certain membership requirements from the beginning of the year of loss to the end of the year of carry forward.
- Charitable gifts may be deductible if they are provided to organisations with approved donee status. (This concession is not available to closely held companies.) The deduction is subject to certain limits.
- Capital gains are taxable when distributed to shareholders but not when distributed in the course of liquidation.
- Available subscribed capital for initial investment in a company is defined as capital, and is non-taxable when distributed.

### **Compliance costs**

Compliance costs are the other costs that people and businesses incur when they pay their tax, over and above the actual amount of tax they pay. These other costs can have a money value, in that they may involve time, fees paid to tax advisers, and other costs. They can also be “psychological” costs, such as the stress that comes from not being certain that you have met all the rules correctly, or even what those rules are.

### **Court order**

A document prepared by and signed under the seal of a court to give effect to a decision of a judge of the court.

### **Distribution(s)**

The term “distribution” includes any amount that is paid, credited or advanced by a Māori authority for the individual personal benefit of a Māori. The definition also includes any property that is transferred or otherwise disposed of by a Māori authority to a Māori.

### **Hapū**

Subtribe or kin group linked by a common ancestor.

### **Hui**

Meeting or conference.

## **Imputation tax credits**

Imputation tax credits reflect the tax paid by a company. When companies pay dividends to their shareholders they can attach imputation tax credits to the dividends. The dividends are taxed in the hands of the shareholders, who can use those credits to offset their personal tax liability. If the credits cannot be used, they can be converted into a tax loss by shareholders and used in the next income year.

## **Income statement**

Most individuals who receive salary, wages, interest, or dividends will have their final income tax liability determined by means of an income statement instead of being required to file an annual tax return. These statements are commonly referred to as “personal tax summaries”. The personal tax summary is a summary of a taxpayer’s income and tax information. It tells you whether you will need to pay tax or if you are due a refund.

## **Individuals**

Natural persons.

## **Iwi**

Traditional Māori tribal hierarchy and social order made up of hapū (kin groups) and whānau (family groups) having a founding ancestor and territorial (tribal) boundaries.

## **Kaitiaki trust**

See Māori land trusts.

## **Kōhanga reo**

Māori language nests or pre-schools.

## **Kura kaupapa**

Māori educational institutions, usually primary and secondary schools.



## **Māori**

The term “Māori” is defined in section OB 1 of the Income Tax Act 1994 to mean a person belonging to the aboriginal race of New Zealand and a person descended from a Māori.<sup>8</sup> The definition also includes (except for the purposes of the definition of “Māori authority”) any person legally or beneficially entitled to any gross income of a Māori authority.

### **“Large” authorities**

Māori authorities with more than 20 members.

### **Māori associations**

A “Māori association” is defined in the Māori Community Development Act 1962 and means a Māori Committee, a Māori Executive Committee or a District Māori Council. All of these bodies are committees of the New Zealand Māori Council.

### **Māori freehold land**

This is land whose beneficial ownership has been determined by the Māori Land Court (that is, the Māori Land Court has created a title for the land and has determined the beneficial owners of that land). Under current law, the status of the land will continue to be Māori land unless the Māori Land Court makes an order changing the status of the land.

### **Māori incorporations**

A Māori incorporation is a structure similar to a company established to facilitate and promote the use and administration of Māori freehold land on behalf of the owners. Māori incorporations were designed to manage whole blocks of land and are some of the most commercial types of Māori-land management structures. Māori incorporations are established under Te Ture Whenua Māori Act 1993 (also known as the Māori Land Act 1993).

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<sup>8</sup> There is a section reference error in the definition of “Maori” in the Income Tax Act 1994. The reference to sections HH 1 to HH 5 should be a reference to sections HI 1 to HI 5.

## Māori land trusts

Māori land trusts referred to in this discussion document are those trusts established under Te Ture Whenua Māori Act 1993. The purpose of these trusts is to reduce the high transaction costs of managing fragmented lands with numerous owners, by amalgamating the land titles under a single entity and by delegating the management of the entity to a committee of owner representatives.

The different types of Māori land trusts established under the Act are:

- *Ahu whenua trust* – the most common Māori land trust. It is designed to promote the use and administration of land in the interest of its owners. These trusts are often used for commercial purposes.
- *Whenua tōpū trust* – an iwi-based or hapū-based trust designed to facilitate the use and administration of the land in the interest of the iwi and hapū. This type of trust is used for receiving Crown land as part of any settlement.
- *Kaitiaki trust* – established solely for individuals who are minors or have a disability, and who are unable to manage their own affairs.
- *Whānau trust* – a whānau-oriented trust. It allows the whānau to bring together their Māori land interests for the benefit of the whānau and their descendants.
- *Pūtea trust* – allows owners of small and uneconomical interests to pool their interests together.

Ahu whenua and whenua tōpū trusts are land-management trusts and involve whole land blocks. Whānau and pūtea trusts are share-management trusts and relate primarily to specified shares in land. Kaitiaki trusts are for minors or persons with a disability, and can include all their assets.

Whenua tōpū and pūtea trusts allow spending for “Māori community purposes”. Māori community purposes are defined in Te Ture Whenua Māori Act as purposes that are for the promotion of education and vocational training, health, and social, cultural and economic welfare.

Whānau and ahu whenua trusts may also use funds for Māori community purposes, if their trust orders allow and if the owners agree. The trust order will define who will benefit from Māori community-purpose funds.

## **Māori trust boards**

Māori trust boards are established under the Māori Trust Boards Act 1955 to manage tribal assets for the general benefit of their members. The boards are able to provide money for the benefit or advancement of their members and to apply their funds towards the promotion of health, social and economic welfare, and education and vocational training. Some boards were set up to administer compensation received as settlement of grievances by Māori against the Crown, while other boards were established to secure Government recognition (in order to take up service contracts), or to secure a mandate in order to pursue Treaty of Waitangi claims.

Treaty settlements have led to significant increases in the level of assets held by these entities.

## **Marae**

Meeting place for the Māori community. Often an area of land set aside for the use of hapū or iwi, with buildings on it, such as a meeting house and dining hall.

## **Marginal tax rates applying to individuals**

“Marginal” tax rates are the rates that apply to the last dollar earned by a taxpayer. These rates take into account the low-income rebate. This means that a taxpayer has an “effective” tax rate of 15% when his or her gross income is less than or equal to \$9,500. The low-income rebate abates progressively until the taxpayer earns \$38,000. The marginal tax rates for individuals are:

0 – 9,500	15%
9,501 – 38,000	21%
38,001 – 60,000	33%
60,001 and over	39%

## **Member**

In relation to Māori authorities, the terms “beneficial owner”, “owner” or “beneficiary” are commonly used in place of the term “Māori”. In this discussion document, however, the term “member” is used because of its inclusiveness and the express reference in the Tax Act to a Māori including “a person legally or beneficially entitled to any gross income of a Māori authority”.

## **Out of income**

This expression is only used in the Māori authority rules and describes an amount that is revenue in nature (and therefore subject to tax).

## **Partnership**

There is no definition of “partnership” in the income tax legislation. The Partnership Act 1908 defines a “partnership” as the relationship between persons carrying on a business in common with a view to a profit.

## **“Public benefit”**

All entities other than those established for the relief of poverty must satisfy the “public benefit” test. This means they must be established for the benefit of the public or at least an “appreciably significant section” of the public.

In determining whether an entity benefits “an appreciably significant section of the public”, it will be necessary to consider factors such as the nature of the entity, the number of potential beneficiaries, and the degree of the relationship between beneficiaries.

## **Resident withholding tax (RWT)**

Resident withholding tax is the tax that is withheld by a Māori authority from distributions it makes to its members – it is not a final tax. If the tax withheld is higher than a taxpayer’s marginal tax rate the difference in tax withheld is refunded. Similarly, if resident withholding tax is lower than a taxpayer’s marginal tax rate that taxpayer will have additional tax to pay.

## **Rūnanga**

A board, assembly, caucus or council.

## **Shareholder continuity rules**

Rules in the Income Tax Act 1994 that involve measuring a shareholder’s economic interest in a company by reference to his or her voting rights, or market value interests.

## **“Small” authorities**

Māori authorities with 20 or fewer members.

## **Tax return**

A form that is completed by a taxpayer that shows his or her income and other tax information.

## **Termination**

Winding up a business. Liquidation. Ceasing to operate as a business.

## **Trust**

A trust is an equitable obligation under which a person (the trustee) who has control of a property is bound to deal with that property either:

- for the benefit of identifiable persons (referred to as “beneficiaries”) and any other person who may enforce the obligation; or
- for some object or purpose permitted by law.

The property concerned is referred to as “trust property”. The person who created this trust relationship is referred to as the “settlor” and is the source of the trust property. The trustee has legal ownership of the trust property while the beneficiaries have a beneficial entitlement to that property.

The trustee may also be one of the beneficiaries in a trust.

## **Trust tax rules**

There are three types of trusts for tax purposes: qualifying, foreign and non-qualifying. The most common trust is a qualifying trust, which is defined for tax purposes as a trust that has been continuously liable for tax in New Zealand since being settled and which has met all of its tax liabilities.

Trusts can also be “discretionary” or “non-discretionary”. Under a discretionary trust, a trustee has the power to determine who the beneficiaries are and the amounts distributed to them.

The key features of the trust tax rules are:

- A trust’s annual income is separated into two classes: “beneficiary income” and “trustee income”. “Beneficiary income” is the annual income earned by the trustee that is paid or applied to the beneficiary in that year or six months after, or that vests in the beneficiaries in terms of the trust deed. “Trustee income” is annual income earned by the trustee that is not beneficiary income – that is, income earned by the trust that has not been distributed within that timeframe or has not been vested in the beneficiaries.

- Trustee income is taxed at 33 percent, while beneficiary income is taxed at the beneficiary's marginal tax rate (unless it is beneficiary income of a minor, in which case it is taxed in some circumstances at the trustee rate of 33 percent).
- Losses cannot be passed on to beneficiaries.
- Income retains its nature when it is distributed. Capital gains are distributed tax-free, and dividends with imputation credits attached may be distributed to beneficiaries.
- Any income that is taxed as trustee income or that is added to the trust's "corpus" can be subsequently distributed to beneficiaries tax-free.
- Trustees are obliged to deduct tax from beneficiary income at an appropriate rate as agent for the beneficiary.

### **Waahi tapu**

An area (usually of land) that is sacred to Māori.

### **Whānau**

Family – extends beyond the concept of immediate family (parents and siblings). "Whānau" links people of one family to a common tipuna or ancestor.