Tax Working Group Public Submissions Information Release

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The Tindall Foundation
Contributing to a stronger New Zealand

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Tax Working Group Secretariat
PO Box 3724
Wellington 6140
New Zealand

By email: submissions@taxworkinggroup.govt.nz

Submission from The Tindall Foundation to the Tax Working Group

Thank you for the opportunity to present our concerns over the non-refunding of imputation credits to Charities such as The Tindall Foundation (**'TTF'**).

Under current income tax law Charities are tax exempt. However, when Charities receive fully imputed dividends, such as TTF does from The Warehouse Group, they effectively incur tax at the corporate rate, as the imputation credits attached to the dividends, (representing income tax paid by the company paying the dividend) cannot be refunded to the Charity.

As a Charity is exempt from income tax, no value is currently derived from receiving fully imputed dividends, whereas other tax payers can utilise imputation credits against an income tax liability, or convert excess imputation credits to a loss. Neither of these options is available to a tax exempt entity and so in effect imputation credits represent a tax cost suffered by a Charity, this is contrary to Government policy.

The scale is significant. As at 31st March 2017, TTF had total donations of over $164 million, with an additional $129 million, paid in tax arising as a result of the non-refunding of imputation credits.

We would be grateful for the Tax Working Group's consideration of this issue to enable organisations such as TTF and other Charities to obtain a refund of imputation credits. Such action would enable these organisations to increase the level of charitable works performed, and in turn lessen the burden on Government to provide such social services.

I have set out below some of our key tax policy concerns, and possible solutions to the current issue. I would be pleased to meet with you to progress this matter further as necessary.

Yours faithfully
Sir Stephen Tindall
Trustee, The Tindall Foundation

1.0 Summary of Key Tax Policy Issues

The refunding of imputation credits to Charities was raised in the Inland Revenue's discussion document entitled "Streaming and Refundability of imputation credits" published by the Policy Advice Division of the Inland Revenue on 14 August 2008, and attached as an Appendix to this submission. However, little action on this matter has occurred since that time.

Our key submission is that the Government should allow tax-exempt charities to obtain a refund of imputation credits for the reasons set out below:

a. The current rule against refunds of imputation credits, when applied to tax-exempt charities, is contrary to the Government's policy of exempting charities from tax.

b. Charitable organisations like The Tindall Foundation can be more effective than the Government in their ability to allocate their funds to areas of the community in need.

c. The ability to obtain a refund of imputation credits would greatly improve the cash flow position of tax-exempt charities and enable them to invest in more social initiatives. In the absence of these funds, a greater burden falls on the Government and ultimately the taxpayer to deliver these social services.

d. The absence of a rule allowing a refund for imputation credits affects the type of investments a tax-exempt organisation makes. Under the current regime, tax-exempt charities are effectively taxed at the company rate on dividend income received as they are unable to utilise the imputation credits attached. This results in a loss of potential income which motivates tax-exempt charities to invest in interest-bearing securities, bank deposits and shares that do not pay imputed dividends.

   The investment bias against dividend-paying investments skews the investment decisions of tax-exempt charities away from New Zealand company shares thereby resulting in tax exempt charities missing out on potential capital growth experienced by these shares and resulting in unbalanced portfolios. In addition successful New Zealand companies are less attractive as an investment option for charities.

e. The ability of tax-exempt charities to obtain a refund of imputation credits is not discriminatory towards other groups of taxpayers. By their very nature, tax-exempt charities are meant to be exempt from tax.

2.0 Technical Taxation Matters

a. The current rule against refunds of imputation credits, when applied to tax-exempt charities, is contrary to the Government's policy of exempting charities from tax

There is clear Government policy that charities should not be subject to tax. This policy is reflected in sections CW 41 and 42 of the Income Tax Act 2007 ("the Act"). Yet, tax-exempt charities are effectively taxed at the company rate on dividend income received as they are unable to utilise the imputation credits attached. This is contrary to the policy and therefore imputation credits should be refundable to enable charities to truly be tax-exempt entities and not subject to tax.

Excess imputation credits received by the Trustees of the Trust can be converted to a tax loss under section LE 2 of the Act. However this is of course of no value to a tax exempt entity as it does not pay income tax.

3.0 Process for claiming a refund imputation credits

We consider there are two possible preferred alternatives available for charities to claim a refund of imputation credits. In forming these alternatives, we have given consideration potential compliance costs and administrative burden likely to be faced by charities. With these factors in mind, either of the following two alternatives is preferred:

a. The tax-exempt charity files a 6-monthly application form for a refund of imputation credits, attaching copies of the relevant dividend certificates.

b. The tax-exempt charity receives a supplementary dividend for the dividends it receives.

4.0 Enabling a refund of imputation credits is consistent with and supports wider government measures for developing the charitable and non-profit sector

The Government has, in recent years, taken positive strides in developing the charitable and non-profit sector. For example, the formation of the Charities Commission and subsequently Charities Services within the Department of Internal Affairs saw the systematic registration and monitoring of charities to improve the overall accountability and transparency of organisations that receive public monies through private donations or grants. Formation of these entities provided an excellent platform to enable and encourage the expansion of charitable giving by all New Zealanders through initiatives such as:

- voluntary payroll giving;
- the clarification and simplification of the law on how reimbursements and honoraria paid to volunteers in the non-profit sector are to be treated for tax purposes; and
- the removal of the cap on charitable donations.

The refunding of imputation credits would be a very well-received, important, logical and cost-effective next step in this most positive process.

Brief Background on the Tindall Foundation

The Tindall family established The Tindall Foundation ("**TTF**") over 20 years ago to support initiatives in New Zealand which assist communities to help themselves.

The vision for TTF is that it should play a leading, innovative, collaborative and supportive role in the philanthropic and charitable sectors in New Zealand.

TTF collaborates with other organisations and consultants working in the field, as well as drawing on the knowledge and expertise of the not-for-profit sector in the allocation of its donations.

TTF has donated over $160 million to social and charitable causes within New Zealand over its lifetime. Total gross dividends received and applied to donations, costs or reserves that were subject to imputation credits now exceed $400 million, with approximately $129 million of this total representing imputation credits (ie income tax paid to the Government).

All TTF's areas of work fall within the legal definition of charitable purposes.

TTF is currently one of the largest independent private foundations in Australasia. The revenue it has foregone through payment of imputation credits translates to hundreds of additional small local organisations we could have otherwise potentially funded.

TTF Investment Position

As most charities do, TTF has retained an appropriate level of reserves to ensure its longevity and financial security. Because TTF holds a significant percentage of its investment capital with New Zealand company shares, it has suffered more than most from the inability of charitable organisations to access imputation credits on the tax-paid dividends it receives.

APPENDIX

Streaming and Refundability of Imputation Credits – A Submission by the Charities Commission, to the Inland Revenue Tax Policy Discussion Document, August 2008