



Inland Revenue
Te Tari Taake

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Gift duty

A guide for legal and tax practitioners

Introduction

This guide provides an indepth explanation of gift duty. It's aimed at tax and legal practitioners who are filling in gift statements on behalf of their clients and it includes references to case law and legislation around gift duty.

All references in this guide are to the Estates and Gift Duties Act 1968 unless otherwise stated.

If you need more information about gift duty after you have read this guide, please contact:

Duties Unit
Inland Revenue
PO Box 2871
Christchurch

Phone 0800 105 654
Fax 03 363 1840

We also have a guide, *Gift duty (IR 194)*, that gives a simpler explanation of gift duty. You can get it from our website www.ird.govt.nz or order a copy from the Tax agents' 0800 self-service line—freephone 0800 456 678.

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Imposition of gift duty

Gift duty is imposed by section 61 of the Estate and Gift Duties Act 1968. Subject to certain exemptions, gift duty is payable to the Crown on dutiable gifts with a total value of more than \$27,000 in any 12-month period, made before 1 October 2011.

In some cases, gifts must be recorded with Inland Revenue even if they are not liable for duty. For example, the donor must complete a *Gift statement (IR 196)* if the donor makes gifts with a combined total value of over \$12,000 in any 12-month period,¹ for gifts made before 1 October 2011. This must take place within three months of the gift exceeding \$12,000.¹

All subsequent section references in this guide are to the Estate and Gift Duties Act 1968 unless otherwise stated.

Under section 63 dutiable gifts are:

- gifts of property situated in New Zealand, and
- gifts of property situated outside New Zealand, where the donor is domiciled in New Zealand or is a body corporate incorporated in New Zealand.

Domicile is determined according to the provisions of the Domicile Act 1976, which adopts and modifies the common law principles of domicile.

A person's domicile is the country where the person's permanent home is located. A person's intention to reside indefinitely in a country will also be considered in determining domicile. A person cannot have more than one domicile at any time. It is presumed that a person's domicile is that of origin unless there is sufficient evidence that one has been acquired by choice.

The situation of certain classes of property is determined as follows:²

- A seagoing ship, or a share or interest in such a ship, is treated as property situated in New Zealand if the ship is registered in New Zealand, and in other cases is treated as property situated outside New Zealand.
- Property at sea, other than a seagoing ship, if in the course of transit, directly or indirectly, to New Zealand, is treated as property situated in New Zealand, and in other cases is treated as property situated outside New Zealand.
- A debt owing by a corporation, whether incorporated in New Zealand or elsewhere, is treated as property situated in New Zealand if the debt was incurred or is payable in New Zealand and the corporation has an office or place of business in New Zealand, and in other cases is treated as property situated outside New Zealand.
- A debt owing by a person or persons other than a corporation is treated as property situated in New Zealand if any of the debtors are resident in New Zealand, and in other cases is treated as property situated outside New Zealand.
- A debt owing by the Crown on behalf of the Government of New Zealand is treated as property situated in New Zealand if the debt was incurred or is payable in New Zealand, and in other cases is treated as property situated outside New Zealand.
- Shares in a company incorporated in New Zealand are treated as property situated in New Zealand.
- Shares in a company incorporated outside New Zealand are treated as property situated in New Zealand if the shares are registered in a branch register in New Zealand under a law in force under another part of the Commonwealth.

¹ Refer to page 22 for more information on the delivery of gift statements.

² Section 63(2).

There are two exceptions to these rules regarding the situation of property, the second of which also overrides the first exception:

1. A debt represented by an instrument which is negotiable in New Zealand is treated as being property situated in the country in which the instrument is, or is treated as being, situated.
2. A debt which is secured by mortgage, charge or otherwise on property situated or treated as being situated in New Zealand is treated itself as being situated in New Zealand, unless the value of the security is less than the debt's value, in which case the debt is treated as being situated in New Zealand to the extent of the value of the security.

The situation of other classes of property not listed in section 63(2) is determined in accordance with common law principles.³

Rates of gift duty

Value of gift	Rate of duty
\$1 – \$27,000	Nil
\$27,001 – \$36,000	5% of amount over \$27,000
\$36,001 – \$54,000	\$450 plus 10% of amount over \$36,000
\$54,001 – \$72,000	\$2,250 plus 20% of amount over \$54,000
Over \$72,000	\$5,850 plus 25% of amount over \$72,000

Definition of gift

Gift is defined in section 2(2) [see glossary]. A gift is any disposition of property made before 1 October 2011, other than by will, without adequate consideration in money or money's worth passing to the person making the disposition. Where the consideration passing is inadequate, there is a gift to the extent that the value of the property exceeds the consideration.

Disposition of property before 1 October 2011

The definition of *disposition of property* in section 2(2) is broad in scope [see glossary]. The general words used to introduce the definition cover what are ordinarily regarded as dispositions:

... any conveyance, transfer, assignment, settlement, delivery, payment, or other alienation of property, whether at law or in equity; ...

Paragraphs (a) to (f) include in the definition transactions that might otherwise not be held to fall within the ordinary meaning of disposition. Examples from these paragraphs include:

- the issue of shares in a company
- the creation of a trust
- the grant or creation of any lease or mortgage
- the release or surrender of any debt, which includes allowing a debt to become statute barred
- the exercise of a general power of appointment in favour of any person other than the holder of the power
- transactions which increase the value of one person's estate and decrease the value of the estate of another person.

³ Refer to Adams and Richardson's *Law of Estate and Gift Duties*, 5th edition [6/5] and [6/6] for examples.

The word *property* is not defined in the Estate and Gift Duties Act 1968 but it would include every proprietary right and every estate and interest in property, whether legal or equitable and whether corporeal or incorporeal, and whether vested or merely contingent or executory.⁴

⁴ *Laws NZ*, Gifts, para 79.

Adequacy of consideration

Valuable consideration is not provided by *natural love and affection*.⁵ This phrase is used to indicate that no consideration is passing for gift duty purposes.

⁵ *Tweddle v Atkinson* (1861) 1 B and S 393.

In order to ascertain whether a disposition of property has been made with or without fully adequate consideration in money or money's worth, the proper approach is to look at the nature of the transaction and consider whether what was given was a fair equivalent for what was received. The arrangement as a whole is looked at rather than an attempt made to place a money value against each element of it.⁶

⁶ *Laws NZ*, Gifts, para 87.

The phrase *consideration in money or money's worth* does not include moral obligations. Nor does it include past consideration.⁷

⁷ Adams and Richardson's *Law of Estate and Gift Duties*, 5th edition [2/80].

A transaction does not involve a gift merely because a good bargain is made. As it is not always obvious whether the parties are at arm's length, Inland Revenue may look at transactions where the consideration for the transaction appears inadequate for the value of the property transferred.

Interest-free or low-interest loans

An interest-free loan for a fixed period constitutes a gift at the time the loan is made.⁸

⁸ *Rossiter v CIR* (1976) 2 NZTC 61,197; [1977] 1 NZLR 195 (CA).

Inland Revenue calculates the value of the gift by applying Table D in the Second Schedule to the Estate and Gift Duties Act 1968. As the tables in the Second Schedule are based on a discount rate of 5%, a low-interest loan of less than 5% per annum for a fixed period will also involve a gift unless the rate of interest is in line with market interest rates prevailing at the time the loan is made.

⁹ Adams and Richardson's *Law of Estate and Gift Duties*, 5th edition [2/91]. *Laws NZ*, Gifts, para 87.

There is no gift where an interest-free loan or low-interest loan is repayable on demand.⁹

There is also no gift where interest is payable if demanded and no demand is made.¹⁰

¹⁰ *Re Marshall* [1965] NZLR 851 (CA).

The provision in loan agreements providing that interest is payable if demanded is commonly referred to as a *Marshall* clause. A *Marshall* clause could be included in agreements for loans repayable on demand or for a fixed period. The failure to make a demand is not a disposition in either instance.

Distributions from trusts

Inland Revenue accepts that distributions from trustees to beneficiaries under the terms of the trust are **not** gifts, regardless of whether the trust is fixed or discretionary. The creation of a trust is a disposition of property. Any distributions made in the performance of the trust are not separate dispositions, for they are incidental to the creation of the trust or flow from it.¹¹

¹¹ Adams and Richardson's *Law of Estate and Gift Duties*, 5th edition [2/35]. *Laws NZ*, Gifts, para 81.

Resettlement of trust

Inland Revenue accepts that a resettlement made in accordance with an express power of advancement or resettlement in a trust deed or in accordance with a valid advancement under section 41 of the Trustee Act 1956 is not a gift. The rationale is the same as for distributions from trusts.

Where it appears that the addition of new beneficiaries results in a fundamental variation of the beneficial ownership compared with the original trust, the taxation consequences, including gift duty, of a resettlement may be examined.

The stamp duty case of *Gray v CIR*¹² proceeded on the basis that the advancements were valid in terms of the decision in the *Pilkington*¹³ case, as that point was not argued.¹⁴ Under that assumption, the fact that the beneficiaries of the advancements were to a wider group than in the original trust did not debar the entitlement to the stamp duty exemption under section 17(f) of the Stamp and Cheque Duties Act 1971. The decision in *Gray* should not be construed as a blanket authority for the proposition that any resettlement to a wider group of beneficiaries is free from gift duty implications.

It is not possible to provide clear guidelines as to when Inland Revenue would consider that a resettlement involved a fundamental variation of the beneficial ownership, as this would depend on the particular circumstances of each case.¹⁵

For more information

Extensive commentaries on disposition of property are contained in Adams and Richardson's *Law of Estate and Gift Duties*, 5th edition, paragraphs [2/21] to [2/73], and in the chapter on gifts in *The Laws of New Zealand*, paragraphs 78 to 86.

Examples of typical gifts are included in “**Methods of making gifts**” (see page 13).

Gifts by companies

A disposition of property made by a company without adequate consideration is a gift that attracts gift duty in the same way as a disposition by an individual. The definition of *donor* in section 2(2) includes a body corporate. A gift by a company is not a gift by its shareholders,¹⁶ unless a controlled company makes the gift.

Advances to shareholders are not gifts, as they are effectively on-demand loans.¹⁷

The disposition of property by a controlled company is governed by section 65. A *controlled company* [see glossary] is a company that is controlled by or on behalf of one person (“the controlling person”), whether directly or indirectly.

When a controlled company makes a gift to, or for the benefit of:

- any person connected with the controlling person by blood, marriage, or adoption, or
- a company controlled by any person or persons connected with the controlling person by blood, marriage or adoption

the gift is deemed to be made by the controlling person. Refer to *relationships* in the glossary for when persons are connected by blood, marriage, or adoption.

Any gift duty, penalty or interest on gift duty paid by the controlled company in respect of such a gift is not a gift.

¹² (1995) 17 NZTC 12,163.

¹³ *Pilkington v Inland Revenue Commissioners* [1962] 3 All ER 622.

¹⁴ See *Gray* at page 12,167.

¹⁵ Refer to Deham Martin's seminar paper *Advanced Trusts III* (1998) at pages 43–50 for commentary on this topic.

¹⁶ *Young & Davies Ltd v CSD* [1951] GLR 524.

¹⁷ Refer to page 12 for information on the forgiveness or remission of advances to shareholders.

Exemptions from gift duty

Small gifts

Section 71 exempts small gifts where the total value of gifts made by the same donor to the same donee in the same calendar year does not exceed \$2,000. Inland Revenue has to be satisfied that the gifts are made in good faith as part of the normal expenditure of the donor.

A gift is made in *good faith* if there is no intention to avoid payment of New Zealand tax or duty by means of the gift.

What constitutes *normal expenditure* will depend on the donor's circumstances. We consider that *normal expenditure* is that which any person of similar social or religious background could reasonably incur. It need not be normal in the more restricted sense of being recurring, habitual or regular.

Small gifts, such as \$10 or \$100 amounts that a settlor uses to create a trust, are considered normal expenditure. However, we do not regard continually making small gifts to an already established trust as being in good faith.

Gifts for maintenance or education of relatives

Section 72 exempts gifts made for the maintenance or education of relatives. Inland Revenue has to be satisfied that the gift is not excessive in amount, having regard to the legal or moral obligation of the donor to provide the maintenance or means of education.¹⁸

Each particular gift and its surrounding circumstances are considered when deciding whether section 72 applies. However, the following general points can be made about applying section 72:

- The exemption applies to gifts of money as well as gifts of other property.
- The exemption can apply to gifts made to trusts as well as gifts made directly to a relative. Gifts of single capital amounts to a trust can qualify for the exemption.
- *Maintenance* includes everything a person requires to maintain their particular lifestyle. Factors such as the relationship of the parties, their wealth and position, and the environment to which they are accustomed are all relevant.
- *Education* means the process involving the study of certain subjects by way of systematic teaching, training, instruction or research leading to an increase in a person's store of knowledge and/or qualifications.
- *Relative* has a wide meaning and extends to relationships outside of the immediate family.
- Whether a gift is excessive will largely depend on the donor's moral obligations. Whether the donor owes a moral duty to the donee depends on such factors as:
 - the wealth of the donor
 - the donor's position in the community
 - the nature and circumstances of the family, the donee's age, state of health and financial position, and
 - the character and conduct of the donee.

The moral duty owed to a spouse is different from that owed to children.

- Moral obligations may change over time as social attitudes change. This will influence the application of section 72.

¹⁸ Refer to the policy statement in *Tax Information Bulletin*, Vol 6, No 7 (December 1994), pages 10–12 for more detailed guidelines on the application of section 72.

Local and central government

Section 73(2)(jd) and 73(2)(kb) exempts gift duty from gifts made to central government organisations as defined in section 2 of the State Sector Act 1988 (excluding educational institutions), organisations that are local authorities as defined in section 6 of the Local Government Act 2002, or council-controlled organisations and their subsidiaries, provided these organisations are not carried on for the private pecuniary profit of any individual.

No part of any gift that is excessive in amount can qualify for the exemption under section 72. The exemption cannot be given for that part of the gift that is not excessive.

To be exempted a gift must be made for or towards the purposes set out and must fall within the exact terms of the section. Payments or other dispositions made direct to the donee will come within the section only if they are made for the purposes described and are applied to those purposes. Outright gifts to a donee, which can be dealt with as the donee pleases, do not come within this exemption.¹⁹

When a gift is made to a trust, it must be clear that the donor's relatives are the beneficiaries and that the gift is for the maintenance or education of these beneficiaries.

Gifts to charities and certain bodies

Any gift creating a charitable trust, or establishing any society or institution exclusively for charitable purposes, or any gift in aid of any such trust, society or institution is exempt from gift duty under section 73(1).

Section 73(2) lists a number of specific classes of gift which, without limiting the general exemption in subsection (1), are exempt from gift duty. These comprise any gift:

- to the New Zealand Historic Places Trust for the purposes of the Historic Places Act 1993
- of any antiquity, as defined in the Antiquities Act 1975, to the Minister of Internal Affairs on behalf of the Crown, or to any library, museum, or other public institution for the benefit of the public
- to the Museum of New Zealand Te Papa Tongarewa Board for the purposes of the Museum of New Zealand Te Papa Tongarewa Act 1992
- to the Arts Council Toi Aotearoa for the purposes of the Arts Council Toi Aotearoa Act 1994
- to the Health Research Council of New Zealand for the purposes of health research
- to Sport and Recreation New Zealand for the purposes of the Sport and Recreation New Zealand Act 2002
- to the Patriotic and Canteen Funds Board, or any Provincial Patriotic Council for any patriotic purpose, or under the provisions of section 10C of the Patriotic and Canteen Funds Act 1947
- to the Vocational Training Council for the purposes of the Vocational Training Act 1982²⁰
- to the New Zealand Council for Educational Research for the purposes of the New Zealand Council for Educational Research Act 1972
- to the Queen Elizabeth the Second National Trust for the purposes of the Queen Elizabeth the Second National Trust Act 1977
- made in certain circumstances to a community trust established by a local authority in accordance with section 225D of the Local Government Act 1974

¹⁹ Adams and Richardson's *Law of Estate and Gift Duties*, 5th edition, para [72/2].

²⁰ The reference to the Vocational Training Council is spent: Education Amendment Act 1990, section 50(1).

- to the New Zealand Antarctic Institute for the purposes of the New Zealand Antarctic Institute Act 1996.

Section 73(2)(o) exempts gift duty from gifts made to donee organisations that are approved by Inland Revenue and listed at www.ird.govt.nz/donee-organisations or that are approved by parliament and listed in Schedule 32 of the Income Tax Act (ITA) 2007.

Certain elections by members of group superannuation schemes

An election by a member of a group superannuation scheme to accept a reduced pension in consideration of the payment, after their death, of a pension to the surviving spouse or other dependant of the member is exempt from gift duty.²¹

²¹ Section 74; see section 2(1) for definition of “group superannuation scheme”.

Gifts between members of a consolidated group

There is no dutiable gift where the donor and donee are, at the time the gift is made, members of the same consolidated group within the meaning of the consolidation rules in the Income Tax Act 1994.²²

²² Section 74A.

Certain dividends

Section 74B provides an exemption in respect of any payment, distribution, or transaction (whether in money or money’s worth) made by a donor being a company, unit trust, or group investment fund to or with a donee being a company, unit trust, or group investment fund.²³ The exemption is limited to the extent that the payment, distribution, or transaction constitutes a dividend derived by the donee.

²³ See section OB 1 of the Income Tax Act 1994 for the definitions of “company”, “unit trust” and “group investment fund”.

The exemption also applies if the payment, distribution, or transaction would have been a dividend but for the application of subsections (13) and (14) of section CF 2 of the Income Tax Act 1994.

Gifts in respect of amalgamating companies

Section 74C provides an exemption if the gift occurs as part of an amalgamation and is between an amalgamating and amalgamated company. An exemption also applies when a gift arises to an amalgamated company from a shareholder under the short form amalgamation method.

Certain payments by employers

Section 75(1) exempts the following classes of payments by employers:

- Contributions to a group superannuation scheme in respect of employees.
- Payments made to employees on retirement or in recognition of special or faithful services rendered, provided:
 - the employer is a body corporate, other than an incorporated company, or
 - the employer is an incorporated company that is controlled by a person or persons other than the employee, the spouse of the employee, and relatives of the employee of or within the second degree of relationship, or
 - the employer is an unincorporated firm or an individual, and the employee is not a relative of or within the second degree of relationship or a spouse of the employer or any of the employers.
- Payments made to the widow or widower, or to any infant child, of a deceased employee. The tests are identical with those applicable to payments made to a living employee except that, where an employee is an incorporated company or an unincorporated firm or an individual, the control test extends to relatives of the employee’s widow or widower as well as of the deceased employee.

- Payments to an employee or former employee in respect of that person's naval, military or air force service which is allowed as a deduction for income tax or is included in the gross income of any such person.²⁴
- Payment to an employee by way of bonus, gratuity, or retiring allowance on the occasion of that person's retirement, to the extent to which it is allowed as a deduction under section DF 5 of the Income Tax Act 1994.

Section 75(2) exempts any gift arising from any issue or sale of shares under an employee share purchase scheme made by a company or by the trustee of the scheme to any employee.²⁵

Relationship property dispositions

The Property (Relationships) Act 1976 enables a husband and wife or de facto partners, or any two people contemplating entering into a marriage or de facto relationship, to mutually determine the status, ownership and division of their property. An agreement may be made for the purpose of contracting out of the provisions of the Property (Relationships) Act 1976 or for the purpose of settling any differences that have arisen between them concerning property owned by either or both of them.²⁶ Alternatively, an order of the Court may be obtained under section 25 of that Act.

The rule that relationship property agreements are taken to have been made for valuable consideration does not apply for gift duty purposes.²⁷ However, adequacy of consideration will not have to be proven in most cases due to an exemption contained in section 75A.

The disposition of relationship property under a relationship property agreement is not a gift where it does not result in the person to whom the disposition is made having legal or equitable interests of more than 50% of the total value of the relationship property.²⁸

The exemption is limited where the disposition of relationship property results in the person to whom the disposition is made having legal or equitable interests of more than 50% of the total value of the relationship property. Only the amount of the value of the relationship property disposed of that brings the value of the transferee's interest in the total relationship property up to 50% is not a gift.²⁹ The balance of the disposition is a gift unless adequacy of consideration is proven.³⁰

The exemption for dispositions of relationship property under a relationship property agreement applies only to dispositions made to a party to an agreement. The exemption does not apply to dispositions made to other parties such as children or trustees.

Section 75A(4) sets out the date on which the disposition of relationship property under a relationship property agreement is deemed to take place. This applies only for the purpose of determining when the value of the property is to be taken in reaching a decision as to whether or not the disposition has increased the transferee's interests in the total relationship property beyond 50%. The property is deemed to have been disposed of:

- on the date of execution of the relationship property agreement where the disposition is made within three months after the date of execution of the agreement
- on the actual date of disposition where the disposition is made later than three months after the date of execution of the relationship property agreement.

Any disposition of property by or pursuant to an order of the Court under section 25 of the Property (Relationships) Act 1976 is not a gift to the extent that the disposition is to a spouse or de facto partner, or former spouse or de facto partner, or is solely for the benefit of minor or dependent children of the marriage or de facto relationship.³¹

²⁴ The allowable deduction is that listed under section DF 6(1) of the Income Tax Act 1994 and the gross income is that listed under section CC 2(1) of the Income Tax Act 1994.

²⁵ An employee share purchase scheme is that within the meaning of section DF 7 of the Income Tax Act 1994.

²⁶ Sections 21 and 21A of the Property (Relationships) Act 1976.

²⁷ Section 21K of the Property (Relationships) Act 1976.

²⁸ Section 75A(2).

²⁹ Section 75A(3).

³⁰ CCH's *New Zealand Duties Guide*, 5-550.

³¹ Section 75A(5).

The exemption under section 75A(5) does not generally apply to transfers of property to discretionary family trusts (including trusts whose potential beneficiaries include the spouse or de facto partner, or former spouse or de facto partner, and/or minor or dependent children of the marriage or relationship). The exemption will only apply to fixed and discretionary trusts that are settled solely for the benefit of the spouse or de facto partner, former spouse or de facto partner, and/or minor or dependent children of the marriage or relationship.

A copy of a relationship property agreement must be sent to Inland Revenue, where a disposition of property occurs under the agreement, within three months after the date of disposition of that property.³² This has to be done regardless of the value of the property. Filing a completed *Relationship property dispositions (IR 183)* form with the copy of the agreement should avoid Inland Revenue having to request further information to determine the gift duty position.

³² Section 75A(6).

Forgiveness or remission of liability

Section 75B(2) provides an exemption where any liability under a financial arrangement is forgiven or remitted (in whole or in part).³³ The exemption applies to the extent that the forgiveness or remission is required to be taken into account under the accruals rules of the Income Tax Act 1994 in calculating a person's gross income.

³³ "Financial arrangement" as defined in section EH 22 (1)(a) of the Income Tax Act 1994.

If the amount of debt forgiveness does not constitute accrual income because of the natural love and affection exemption (contained in sections EH 5 and EH 52 of the Income Tax Act 1994) then that debt forgiveness would be a dutiable gift.

Section 75B(3) provides an exemption where and to the extent that any transaction is a dividend within the meaning of section CF 2(1)(b) of the Income Tax Act 1994.³⁴

³⁴ Relates to the forgiveness or remission of loans to shareholders.

Joint family homes

Section 21 of the Joint Family Homes Act 1964 provides that the following dispositions of property are not dutiable gifts:

- Any settlement of property as a joint family home.
- On the cancellation of a settlement while the husband and wife are both living:
 - any vesting of the property in the husband and wife as tenants-in-common in equal shares
 - any vesting of the net proceeds of the sale, transfer, or other disposition of the property in the husband and wife in equal shares
 - any vesting of the net proceeds of the sale, transfer, or other disposition of the property in the sole settlor or, as the case may require, in the settlors pursuant to a notice of consent in the prescribed form signed by both parties
 - any revesting of the property in the sole settlor or, as the case may require, in the settlors pursuant to a notice of consent in the prescribed form signed by both parties.

Special provisions exist to prevent avoidance of gift duty by one spouse settling a property, selling the property and sharing the proceeds, then repeating the process with successive settlements and cancellations. Inland Revenue has to be satisfied that where a settlement has been cancelled, the further property settled:

- has been purchased by the parties with equal contributions, or
- the contributions made by each spouse were equivalent to, or in the same proportion as, the share or interest to which each was entitled on the cancellation of the previous settlement.

Certain dispositions of property under other statutes

Section 75C provides an exemption for certain dispositions of property under the Waikato Electricity Authority Act 1988.

Section 75D provides an exemption for certain dispositions made under the Raspberry Marketing Authorities (Dissolution) Regulations 1999.

An exemption from gift duty may also be contained in another statute, for example, section 151 of the Dairy Industry Restructuring Act 2001 and section 15 of the New Zealand Stock Exchange Restructuring Act 2002.

Methods of making gifts

The Estate and Gifts Duties Act 1968 does not prescribe how gifts should be made. The appropriate method of gifting is a matter of common law or of other statute law.

There are three ways of making a gift during a person's lifetime, by:

- deed or other instrument in writing
- delivery where the property is capable of delivery
- declaration of trust.³⁵

A gift between spouses or de facto partners who have lived in a de facto relationship for not less than three years may be made orally or in writing and need not be made by deed or delivery.³⁶

Deed or other instrument in writing

Land

Land under the Land Transfer Act 1952 may be transferred by either electronic instrument or paper instrument. In both instances the instruments have the effect of a deed.³⁷ The estate or interest in the land specified in the instrument passes only upon registration.³⁸ There is nevertheless a complete gift of land under the Land Transfer Act 1952 if the transfer and certificate of title have been delivered to the donee to enable registration to occur.³⁹

Where the land is not under the Land Transfer Act 1952, a deed is needed to gift the land.⁴⁰

There is also a complete gift of land when the gift creates a valid trust.

Chattels

Gifts of chattels may, but generally need not, be made by deed. Unless the property is required by law to be transferred in a particular way, such as a ship, a gift of chattels may be made by delivery. Actual delivery of the chattels is unnecessary if the gift is by deed.⁴¹

³⁵ *Laws NZ, Gifts*, para 4.

³⁶ Section 21N of the Property (Relationships) Act 1976.

³⁷ Sections 157(3) and 164E(1) of the Land Transfer Act 1952.

³⁸ *ibid*, section 41(1).

³⁹ *Scoones v Galvin* [1934] NZLR 1004 (CA).

⁴⁰ Section 44 of the Property Law Act 1952.

⁴¹ *Laws NZ, Gifts*, para 30.

⁴² *CIR v Morris* [1958] NZLR 1126 (CA) at 1132. “It was not disputed that it is a well-established principle of law that the release of a debt amounts to a gift, and that such a release is ineffective unless it is made under seal, or unless some valuable consideration is given in return for the release.”

⁴³ Sections 62 and 63 of the Bills of Exchange Act 1908.

⁴⁴ Section 92 of the Judicature Act 1908.

⁴⁵ *Gardner v Commissioner of Probate Duties* [1967] WAR 106; *Hawken v CIR* [1960] NZLR 865; *Chambers v CIR* [1943] NZLR 504.

⁴⁶ Section 84 of the Companies Act 1993.

⁴⁷ Securities Transfer (Approval of FASTER system) Order 2001 (SR 2001/238).

⁴⁸ Refer to *Laws NZ*, Gifts, para 33 for details of the statutory provisions.

⁴⁹ Section 43 of the Life Insurance Act 1908.

⁵⁰ Section 130 of the Property Law Act 1952. See also *Laws NZ*, Gifts, para 25.

Forgiveness or voluntary release of debt

As a general rule, a forgiveness or voluntary release of a debt must be made by deed.⁴² The headnote to *CIR v Morris* [1958] NZLR 1126 summarised the position:

“A unilateral release of a debt owing at law, not founded on or accompanied by consideration, if not made by deed, is void both at law and in equity.”

This rule was also dealt with in the later case of *McCathie v McCathie* [1971] NZLR 58 (CA) at 61 to 62:

“There is of course no question that there is an ancient rule of law now too firmly established to be displaced other than by legislation, that in order to support an assertion by a debtor that a debt was released by the creditor it is necessary that the release should be enshrined in a deed unless consideration has passed between the debtor and creditor.”

Exceptions to this rule are:

- A debt is released when a holder of a bill of exchange or promissory note unconditionally renounces the holder’s rights in writing or when the holder intentionally cancels the bill or note.⁴³
- A debt is released when a creditor acknowledges in writing the receipt of part of the debt in satisfaction of the whole debt.⁴⁴

Entries in books of account are insufficient to make a gift by way of forgiveness or voluntary release of a debt.⁴⁵

A variation or discharge of a mortgage over land under the Land Transfer Act 1952 is a deed.

Shares

Shares are transferred by entry in the share register and for that purpose a transfer must be delivered to the company or its agent who maintains the share register.⁴⁶

Section 7 of the Securities Transfers Act 1991 provides that securities (including shares in a company) may be transferred in accordance with a system of transfer approved by the Governor-General by Order in Council. The electronic transfer system controlled by the New Zealand Stock Exchange and known as the FASTER system has been approved for the transfer of listed securities.⁴⁷

Government and local authority stock

Statutory provisions govern the registration and transfer of treasury bills, government stock, local authority stock, and any other securities for which the Reserve Bank is registrar.⁴⁸

Life insurance policies

An assignment of a life insurance policy by way of ordinary transfer must be by transfer in statutory form endorsed upon the policy and signed by both transferor and transferee and registered by the issuer of the policy. Such an assignment has the effect of vesting the policy absolutely in the assignee.⁴⁹

Voluntary assignment of choses in action

A voluntary assignment of a chose in action must be in writing but not necessarily in the form of a deed. Written notice of the assignment must be given to the person liable, in order to give the assignee legal title to the chose in action assigned.⁵⁰

Delivery

Chattels

Gifts of chattels are more often made by delivery than by deed. If the gift is not made by deed, there must be an expression of intention by the donor to make the gift, an assent to the gift by the donee and the actual or constructive delivery of the property to the donee. Mere words of gift alone will not pass the property.⁵¹

An example of a valid gift of a chattel being made without actual physical delivery involved an organ lent to a church. The owner of the organ placed his hand on the organ and said in the presence of witnesses that he gave it to the organist. This was held to be a sufficient delivery.⁵²

Choses in action

Some choses in action, such as bills of exchange and promissory notes, cheques to bearer, and bonds and debentures to bearer, may pass by delivery. In such cases gifts may be validly made by delivery to the donee.⁵³

Declaration of trust

The beneficial ownership of property may be transferred by a declaration by the intending donor that the property is now held on trust for the donee.

A declaration of trust involving land must be evidenced in writing signed by the settlor.⁵⁴

A trust of personalty may be declared orally and, except in the case of chattels, it does not matter whether or not the donee has been advised of the declaration of trust.⁵⁵

Presumption of gift

The presumption of advancement or gift does not apply between husband and wife. Nor does the presumption of resulting trust apply between husband and wife or de facto partners.⁵⁶

There is a presumption of gift where a purchase or transfer is taken in the name of a child whose father provides the purchase money. The presumption extends to a grandchild whose father is dead where the grandfather has placed himself in loco parentis, and to an adopted child. The presumption of gift does not extend to a nephew or niece or to a son-in-law unless the alleged donor is in loco parentis.

Where it is a mother who has provided the purchase money or made the transfer in the name of her child, the presumption is technically in favour of a resulting trust, unless there is evidence of the mother's intention either to place herself in loco parentis or to make a gift.

In the light of accelerating social changes and the enactment of the Property (Relationships) Act 1976 it may be doubted whether a New Zealand Court would now see reason to differentiate a mother from a father in respect of the presumption of gift to a child.⁵⁷

Evidence showing that the technical presumptions do not reflect the true position may rebut the presumptions of gift or resulting trust. The issue is treated as one of fact, and it is generally only in the absence of any evidence that the technical presumptions prevail.⁵⁸

⁵¹ *Williams v Williams* [1956] NZLR 970, following *Irons v Smallpiece* (1819) 2 B & Ald 551; 106 ER 467 and *Cochrane v Moore* (1890) 25 QBD 57 (CA).

⁵² *Rawlinson v Mort* (1905) 93 L.T. 555.

⁵³ *Laws NZ, Gifts*, para 37.

⁵⁴ Section 49A of the Property Law Act 1952.

⁵⁵ *Laws NZ, Gifts*, para 38.

⁵⁶ Section 4 of the Property (Relationships) Act 1976.

⁵⁷ *Laws NZ, Gifts*, para 45.

⁵⁸ *ibid*, paras 40 and 47.

When gifts are complete

It is always necessary to establish the actual date a gift is made for the purposes of determining:

- the dates by which a gift statement has to be filed and any gift duty paid
- whether the gift aggregates with any other gifts made within 12 months of that gift
- the date the property gifted has to be valued for gift duty purposes.

The decision as to whether a gift is complete is made in accordance with common law. Inland Revenue does not have any discretion to make an administrative decision to accept an incomplete gift as complete.

We do, however, take a dual approach to gifts made by way of cheque. We will accept the position taken by the donor that such gifts are complete either on the date:

- when the cheque is given to the donee, on the basis that a cheque is the equivalent of cash, or
- when the cheque is cashed, on the basis that until then it can be stopped and valuable consideration must have been given for a cheque before it can be enforced.⁵⁹

We expect the donor to adopt a consistent basis each year if a series of gifts is being made by cheque.

Presumed acceptance of gift

Express acceptance by the donee is not necessary to complete a gift. Acceptance by the donee of a gift, even of an onerous nature, is presumed until otherwise established.⁶⁰

Disclaimer of gift

An intended donee has the right to disclaim a gift on becoming aware of the gift. A disclaimer is not effective if the person disclaiming has already by words, writing, or conduct accepted the gift.⁶¹

The disclaimer must be absolute. Directions as to how the subject matter of a gift is to be disposed of are incompatible with a mere disclaimer which becomes, in effect, an acceptance and an assignment.⁶²

A disclaimer of a gift must be of the entire benefit. A donee cannot accept part of the gift and disclaim the balance.⁶³ If there is a burden attached to a gift, the donee cannot accept the gift and renounce the burden.

A disclaimer of land, or of any interest in land, must be made by deed or by matter of record;⁶⁴ in other cases there is no requirement of law as to form.⁶⁵

Incomplete gifts

The donor can revoke an incomplete gift at any time.⁶⁶ In general, a promise or intention to give or to forgive cannot be enforced.⁶⁷ A mere assertion that agreement had been reached to make the gift is insufficient to make the gift effective.⁶⁸

The delivery of a gift statement, or even the payment of gift duty, does not prevent the intended donor or Inland Revenue from asserting that the gift had not been completed.⁶⁹

For a gift to be valid the donor must have done everything that was within the donor's power to do which, according to the nature of the property comprised in a gift, was necessary to be done by the donor to transfer the property.⁷⁰

⁵⁹ Butterworths *Commercial Law in New Zealand*, 3rd edition, paras 23.4.3 and 23.6.4.

⁶⁰ *Laws NZ*, Gifts, para 49.

⁶¹ *Bence v Gilpin* (1868) LR 3 EX 76.

⁶² *CIR v McLaren* [1961] NZLR 338 (CA).

⁶³ *Laws NZ*, Gifts, para 50.

⁶⁴ Section 12 of the Property Law Act 1952.

⁶⁵ *Laws NZ*, Gifts, para 50.

⁶⁶ *Standing v Bowring* (1885) 31 Ch D 282 (CA) at 290.

⁶⁷ *Gray v CSD* [1939] NZLR 23; *Chambers v CSD* [1943] NZLR 504 (CA); *CIR v Morris* [1958] NZLR 1126 (CA). See also *Laws NZ*, Gifts, para 63 for details of other cases.

⁶⁸ *Sanders v CIR* (1982) 5 NZTC 61,380.

⁶⁹ *Commissioner of Stamps v Erskine* [1916] NZLR 937; *Gould v CSD* [1934] NZLR 32 and *Gray v CSD* [1939] NZLR 23.

⁷⁰ *Scoones v Galvin* [1934] NZLR 1004 (CA). See also *Laws NZ*, Gifts, para 63 for details of other cases.

A deed of forgiveness or release of debt cannot purport to have made the gift on an earlier date to the date on which the deed is executed. This form of gift is not effective until the deed is executed.⁷¹ It was stated in *Case T20* at page 8,117 that:

“It contains all of the ingredients of the intention to make the gift and the effecting of the gift. That inevitably follows from the wording because the deed speaks from the day it is executed.”

Equity will not assist in completing an imperfect gift by holding that the intending donor is a trustee for the intended donee.⁷²

Subsequent actions of the intending donor may entitle the intended donee to enforce an incomplete gift. For example, where improvements are made to land by the donee with the donor’s permission in reliance of a promise by the donor to gift the land to the donee, the Court will compel the donor to complete the gift.⁷³

⁷¹ *Case T20* (1997) 18 NZTC 8,116.

⁷² *Milroy v Lord* (1862) 4 De GF & J 264 at 274; 45 ER 1185; [1861–73] All ER Rep 783.

⁷³ *Laws NZ*, Gifts, para 66.

Common forms of gift and their completion dates

Type of gift	When complete
Cash	When physically handed over.
Chattels	When there has been actual or constructive delivery of the chattels, or there is a deed of assignment.
Cheque	On the date either: <ul style="list-style-type: none"> • when the cheque is given to the donee, or • when the cheque is cashed. (Inland Revenue expects the donor to adopt a consistent basis each year.)
Forgiveness or voluntary release of debt	On the date a legally effective deed of forgiveness or release is executed.
Land	The earlier of these two dates: <ul style="list-style-type: none"> • when the transfer is registered at the Land and Information New Zealand (LINZ) Office, or • when the donee has all the documents needed to register the transfer. (If the same solicitor or agent is acting for both the donor and the donee, the gift will not be complete until the transfer is registered at the Land Information New Zealand (LINZ) Office.) For a gift of land that creates a valid trust, the gift is complete on the date the trust is created in writing.
Shares	As for land, except when the transfer is registered by the company. For a gift of shares that creates a valid trust, the gift is complete on the date the trust is created, but this need not be in writing.

When voluntary contracts are deemed gifts

⁷⁴ Defined in section 2(2) [see glossary].

⁷⁵ Section 64(2).

⁷⁶ Adams and Richardson's *Law of Estate and Gift Duties*, 5th edition, para [64/2].

⁷⁷ *Norman v FC of T* (1963) 109 CLR 9.

⁷⁸ *Hawken v CIR* [1965] NZLR 979 (CA).

⁷⁹ *Laws NZ, Gifts*, para 57.

⁸⁰ *ibid*, para 59.

⁸¹ *ibid*, para 60.

⁸² Lord Reid in *De Vigier v Inland Revenue Commissioners* [1964] 2 All ER 907 at 909: "But the Revenue do not and probably should not have any discretion to remit tax legally due on the ground that the innocent taxpayer has fallen into a trap."

⁸³ See *Benefit reserved to transferor*, page 21.

⁸⁴ *Sanders v CIR* (1982) 5 NZTC 61,380, where the remedy of rectification was declined in a gift duty situation.

⁸⁵ *Commissioner of Stamp Duties (NSW) v Carlenka Pty Limited* 95 ATC 4620.

A disposition of property pursuant to a voluntary contract⁷⁴ is deemed under section 64 to be a gift. A voluntary contract does not in itself constitute a gift, but becomes a gift when it has attached to or affected the legal or equitable title to any property to which it relates.⁷⁵

The consideration provided for entering into the voluntary contract constitutes consideration for subsequent dispositions pursuant to the voluntary contract only to the extent of the consideration given when the voluntary contract was entered into.⁷⁶

An example of a voluntary contract is a contract to assign future property for consideration. Such a contract is enforceable when the assignor acquires the legal ownership of the property.⁷⁷ The disposition of the property pursuant to the voluntary contract is a gift to the extent that the value of the property exceeds the consideration given for entering into the voluntary contract. The date of the gift is the date the assignor acquires the legal ownership of the property.

A voluntary contract may itself be a disposition of property. An example is a voluntary mortgage, where the date of the gift is the later of the date the mortgage is registered or the date the mortgagor had done everything to enable the mortgagee to register the mortgage.⁷⁸

Revocation and avoidance of gifts

In general, the donor cannot revoke a completed gift.⁷⁹

Donors, although of full age and capacity, are entitled to set aside their gifts if induced by fraud, coercion, or undue influence, by the donee.⁸⁰

A gift may be set aside on the ground of mistake alone, even in the absence of fraud, undue influence, or inducement of the mistake, by the donee. The mistake must be sufficiently serious to induce the Court to order the donee to restore the gift.⁸¹

Setting aside gifts on the ground of mistake alone does not apply to the situation where a donor has unwittingly incurred a liability for gift duty. Inland Revenue must assess the amount of gift duty it considers is properly payable. Inland Revenue cannot interfere between parties as to the way they carry out their transactions, even if a liability for gift duty has been incurred.⁸² The only exception to this rule concerns documents evidencing a gift to which section 70 applies.⁸³

The Court has discretion to rectify a document where it is satisfied that the document does not carry out the intention of the parties. Rectification cannot be granted where there is a mistake in the transaction rather than a mistake in the way the transaction is expressed in writing.⁸⁴ Rectification does not permit the parties' mistaken view of the liability to gift duty to be remedied.⁸⁵

While the *Carlenka Pty Ltd* case dealt with the liability to stamp duty, the following principles expressed at page 4,633 would apply to gift duty:

"In general, the remedy of rectification of an instrument is available where it is established by clear and convincing proof at the time of execution of the instrument the relevant party or parties as the case may be had an actual intention (if more than one party, a common intention) as to the effect which the instrument would have which was inconsistent with the effect which the instrument as executed did have in some clearly identified way. In this context 'effect' means the legal and factual operation of the instrument according to its true construction, but does not include legal or factual consequences of the operation of the instrument of a more remote, or collateral kind (eg its liability to stamp duty)."

Valuation of gifts

Documents transferring property between related parties often contain a sliding value clause, that is the consideration shall be a fixed amount or such amount as is acceptable to Inland Revenue for gift duty or stamp duty purposes. There is no gift where the consideration is altered as a result of the operation of a sliding value clause.⁸⁶

Every dutiable gift is valued for gift duty purposes as at the date of making the gift.⁸⁷

Subject to the following specific provisions, property must be valued in a manner acceptable to Inland Revenue.⁸⁸ In general, the valuation of property calls for an enquiry as to the value at which a willing but not anxious vendor would sell and a willing but not anxious purchaser would buy.⁸⁹ We will accept valuations by generally recognised valuers who deal with the particular type of property.

Land

For gift duty purposes *land* has the meaning set out in the Rating Valuations Act 1998. It includes all trees growing or standing thereon. The value of land is determined:

- by agreement between the donor and Inland Revenue, or
- by using an up-to-date rating valuation together with the cost of any improvements not included in the valuation, or
- a special valuation.⁹⁰

Inland Revenue will accept valuations from a registered valuer or an associate member of the Real Estate Institute of New Zealand. This does not include those real estate agents who are salepersons only.

Generally we will not accept the rating valuation if it is more than six months old.

Shares

Any restrictive provisions as to the transfer or alienation of shares in the company's constitution, or other document, are not taken into account in valuing shares, unless Inland Revenue is satisfied that those restrictive provisions are reasonable having regard to all relevant matters. The relevant matters include the contribution made by any relevant shareholder by way of services, management, capital, or otherwise; and the benefits received from the company by that shareholder.⁹¹

Debt owing by connected person or controlled company

A debt must be valued disregarding the fact that the debt, or any part of it, may not be due and payable before the date on which it is to be valued where the debt is owing to the donor or to a controlled company by:

- any person connected with the donor by blood relationship, marriage, or adoption, or
- any controlled company, or
- any trustee for any such person or for any controlled company.

This provision prevents any discounting to present value, in the above circumstances, where the debt or any part of it is not presently payable.

This provision does not apply where Inland Revenue is satisfied that, in relation to the debt, the donor or the controlled company and the debtor were at all relevant times dealing with each other in an arm's length manner.

⁸⁶ See Adams and Richardson's *Law of Estate and Gift Duties*, 5th edition, para [70/5] for an example of a sliding value clause.

⁸⁷ Section 66.

⁸⁸ Section 67.

⁸⁹ *Hatrick v CIR* [1963] NZLR 641 (CA) at 661. This case concerned the sale of shares but this test of value would apply to other property: see *Public Trustee for NSW v CIR* [1966] NZLR 257 at 258-9.

⁹⁰ Section 68A.

⁹¹ Section 68C

Controlled company has a different meaning for the purposes of this provision than for the purposes of dispositions of property by a controlled company (see page 7). A controlled company is any company that is controlled by or on behalf of:

- the donor, or
- any person or persons connected with the donor by blood relationship, marriage, or adoption, or
- the donor and any such person or persons

whether directly or indirectly, and whether through holding a majority of shares in the company or in any other company or in any other manner whatever.⁹²

⁹² Section 68D.

Refer to *relationships* in the glossary for when persons are connected by blood, marriage, or adoption.

Share or interest in a partnership

Any provisions in any agreement or arrangement by the partners, which in any way restrict the value of the share or interest in the partnership, are not taken into account, unless Inland Revenue is satisfied that those restrictive provisions are reasonable having regard to all relevant matters. The relevant matters include the contribution made by the respective partners by way of services, management, capital, or otherwise; and the benefits received from the partnership by the respective partners.⁹³

⁹³ Section 68E.

Life interests and interests for other periods

The value of:

- any annuity or other interest for the life of any person, for widowhood, or for any other period, or
- the value of any interest expectant on the death of any person, on the termination of widowhood, or on any other event

is calculated using Tables A, B, C and D in the Second Schedule to the Estate and Gift Duties Act 1968.⁹⁴

⁹⁴ Section 68F.

Interests affected by contingencies

Every contingency affecting the interest of the donee in, or the value of, any property comprised in a gift is deemed to have been determined in the manner in which Inland Revenue considers it probably will determine. If the contingency is subsequently determined in a manner different from that assumed, the interest is revalued on the basis of the actual event as at the date of the gift. The possibility that a widow may remarry is not a contingency.⁹⁵

⁹⁵ Section 68G.
Refer to Adams and Richardson's *Law of Estate and Gift Duties*, 5th edition, para [68/1] to [68/6] for more information on this subject.

Property subject to encumbrances

When property is gifted subject to any encumbrance, such as a mortgage, no deduction is allowed from the total value of the property if and so far as the donee has a right of contribution or indemnity against the donor or any other person in respect of that encumbrance.⁹⁶

⁹⁶ Section 69.

Benefit reserved to transferor

Before section 70 can apply there must first be a disposition of property which is *in whole or part a dutiable gift*. The section does not operate to create a gift.⁹⁷

Section 70(2) sets out the method by which a gift is to be valued when a disposition of property is made in consideration of, or with the reservation of, any benefit or advantage in favour of the transferor. No deduction is made in respect of that benefit or advantage in calculating the value of the gift.

As a gift is, in general terms, a disposition of property for inadequate consideration, the section in effect limits the types of benefit or advantage that may constitute consideration within the meaning of the definition of gift.⁹⁸

The term *benefit or advantage*⁹⁹ includes every type of consideration within the meaning of the definition of gift. It does not, however, include any annuity or other payment, whether periodical or not, if and so far as the annuity or payment satisfies two requirements. First, it must be of a fixed or ascertainable amount in money payable over a fixed or ascertainable period, or for life, or at a fixed or ascertainable date or dates, or on demand. Second, it must be secured to the transferor either by:

- a mortgage or charge over the property comprised in the disposition, or
- an agreement for sale and purchase of land comprised in the disposition, or
- an agreement in writing to lease land comprised in the disposition, or
- deed, in each case executed by the person acquiring the beneficial interest under the disposition.

Benefit retained by transferor when real property transferred

An example of where section 70(2) applies is where a person transfers real property to another person for inadequate consideration with a reduction in the price of the property because the other person grants back to the transferor either:

- a life estate (including a lease for life), or
- a lease for a term of years, or
- a licence to occupy.

Section 70(2) does not apply, as there is no reservation of an interest in the property transferred, where:

- A person grants himself a life estate (including a lease for life) or a lease for a term of years, and then subsequently transfers the balance of the property to another person.
- A person grants himself a life estate (including a lease for life) or a lease for a term of years, and simultaneously transfers the balance of the property to another person.
- A person purports to grant himself a licence to occupy, the person then purports to transfer the balance of the property to another person, and the transferee then grants a licence back to the transferor.
- A person purports to grant himself a licence to occupy, the person simultaneously purports to transfer the balance of the property to another person, and the transferee grants a licence back to the transferor.

The *other person* in all of these examples includes a person or persons acting in their capacity as trustees of a trust.

⁹⁷ Adams and Richardson's *Law of Estate and Gift Duties*, 5th edition, para [70/4].

⁹⁸ *ibid*, para [70/3].

⁹⁹ Defined in section 70(1).

A simultaneous transfer includes the situation where it is the intention of the transferor that only the balance or interest in reversion in the property is transferred, even though in conveyancing law terms the whole property initially transfers, and

- there is an immediate equitable obligation on the transferee to grant the life estate, lease or licence back, and
- the transferor does not obtain any benefit out of the balance or interest in reversion that was transferred, and
- the transferor's intention to retain the life estate, lease or licence is evidenced in the documents and in the surrounding circumstances.¹⁰⁰

¹⁰⁰ Refer to the commentary on public rulings BR Pub 02/02 to 02/10 published in *Tax Information Bulletin*, Vol 14, No 12 (December 2002) for a detailed analysis on the application of section 70.

Cancellation or amendment of documents

Under section 70(3), Inland Revenue may permit the cancellation or amendment of any document creating or evidencing a disposition of property to which section 70 applies. Application in writing must be made within six months of the date of the document, or within such extended time as Inland Revenue thinks fit to allow in the special circumstances of the case.

Donee covenants to pay gift duty

Where a gift is made to donees who covenant to pay the gift duty on it, the payment covenanted to be made is an ascertainable amount in money payable at an ascertainable date, but there is no benefit or advantage to be disallowed. The value of the gift is the value of the property gifted less the amount of the gift duty.¹⁰¹

¹⁰¹ *Baigent v CIR* (1979) 4 NZTC 61,628; [1979] 2 NZLR 483 (CA).

This table will help with this calculation:

Gross gift	Net gift
\$27,000 – \$36,450	\$27,000 plus 95.2381 cents per \$ of gross gift over \$27,000
\$36,451 – \$56,250	\$36,000 plus 90.9091 cents per \$ of gross gift over \$36,450
\$56,251 – \$77,850	\$54,000 plus 83.3334 cents per \$ of gross gift over \$56,250
Over \$77,850	\$72,000 plus 80 cents per \$ of gross gift over \$77,850

Example

A donor made a gross gift of \$135,000 subject to the donee paying the gift duty. The dutiable gift is \$117,720 ($\$72,000 + [\$57,150 \times 0.8 = \$45,720]$). Gift duty on \$117,720 is \$17,280, giving a total of \$135,000.

Delivery of gift statement

The donor must complete a *Gift statement (IR 196)* when:

- the value of the gift is over \$12,000, or
- the value of the gift takes the total value of gifts made by the donor in the last 12 months to over \$12,000.

The gift statement must be filed within three months of making the gift.

The gift statement should be sent to Inland Revenue in Christchurch, together with any document that created or evidenced the gift, or a verified copy.¹⁰² Any other supporting documentation such as a valuation of property should also be sent.

¹⁰² Section 79.

If the donor fails to deliver the gift statement, every donee and the trustees (if any) of any donee must do so within one month after the expiry of three months of making the gift. Any document that created or evidenced the gift, or a verified true copy, must also be sent. This requirement does not remove the donor's liability to file a gift statement.¹⁰³

¹⁰³ Section 80.

Late filing penalties imposed under section 139A of the Tax Administration Act 1994 do not apply to gift statements. However, it is an offence to fail to file a gift statement (see page 31).

Documents presented to Inland Revenue may be held while enquiries are made to find out whether the document creates or evidences a gift. The document may be impounded until any gift duty due has been paid.¹⁰⁴

¹⁰⁴ Section 78.

Calculation of gift duty

Gift duty is calculated under section 62 on each dutiable gift using the following formula:

$$\frac{a}{b} \times c$$

- Where
- a is the value of the dutiable gift
 - b is the value of the dutiable gift together with any other dutiable gifts made at the same time or within 12 months subsequently or previously by the same donor to the same or any other donee
 - c is the amount of gift duty payable on item "b" at the rate prescribed (see page 5 for rates of gift duty).

Where gifts are made on the same day and the same month in successive years, time begins to run for aggregation purposes on the same day as the gift is made. Therefore, a gift made on 30 September is not aggregated with a gift made on the following 30 September.¹⁰⁵

¹⁰⁵ *McGrath v CSD* [1939] NZLR 950.

Gift duty is calculated on complete dollars. It is each dutiable gift, and not an aggregation, which attracts gift duty, but the rate of gift duty depends on the value of all dutiable gifts made by the same donor during any period of 12 months.¹⁰⁶

¹⁰⁶ *Foster v CIR* [1954] NZLR 688.

Example

Gifts made on 16 February 2003: \$30,000 (A) and 7 August 2003: \$10,000 (B).

Gift duty on A:

$$\frac{\$30,000}{\$40,000} \times \$850 = \$637.50$$

Before Gift B was made, the gift duty payable was \$150. A credit for this amount is allowed if it has already been paid.

Gift duty on B:

$$\frac{\$10,000}{\$40,000} \times \$850 = \$212.50$$

Where there is a series of gifts over a period greater than 12 months, and a gift is capable of being aggregated with different gifts, Inland Revenue must assess to yield the greatest revenue.

Example

A further gift of \$35,000 (C) is made on 23 March 2004.

$$\begin{array}{r} \text{Amended gift duty on B:} \quad \$10,000 \\ \hline \quad \quad \quad \quad \quad \quad \quad \quad \$45,000 \end{array} \times \$1,350 = \$300.00^*$$

* A credit of \$212.50 is allowed for the gift duty already paid.

$$\begin{array}{r} \text{Gift duty on C:} \quad \$35,000 \\ \hline \quad \quad \quad \quad \quad \quad \quad \quad \$45,000 \end{array} \times \$1,350 = \$1,050.00$$

Reliefs

Subsequent gift of reserved benefit

Relief is allowed to avoid the double impost of gift duty where gift duty has been paid on a gift valued under section 70 (see page 21), and a gift is subsequently made of the whole or part of the benefit or advantage reserved on the making of the original gift.

The amount deducted from the gift duty otherwise payable on the subsequent gift is the proportion of the gift duty paid on the original gift that is applicable to the value of that benefit or advantage included in the subsequent gift. The value of that benefit or advantage is the lesser of its value at the date of the original gift or at the date of the subsequent gift.¹⁰⁷

Rebate for foreign gift duty

If gift duty is payable to a foreign country which has a similar rebate provision there is a rebate of half of the amount of the New Zealand gift duty or half of the amount of the foreign gift duty, whichever is the lesser.¹⁰⁸

There is no foreign jurisdiction with reciprocal provisions.

Assessment of gift duty

A notice of assessment of gift duty will be issued on receipt of the gift statement. An assessment of gift duty may be made if the donor fails to file the gift statement by the due date. If no gift duty is payable, the copy of the gift statement returned to the donor will be certified to this effect.

Gift duty may be reassessed at any time if Inland Revenue considers that the gift duty was incorrectly assessed. Refer to page 27 for information on gift duty investigations.

An assessment of gift duty is final and conclusive unless it is challenged under Part VIIIA of the Tax Administration Act 1994 (see page 31 for information on the disputes resolution process).¹⁰⁹

¹⁰⁷ Section 76. See example of the calculation in *Tax Information Bulletin*, Vol 14, No 12 (December 2002) at page 38.

¹⁰⁸ Section 77.

¹⁰⁹ Section 82.

Payment of gift duty

A taxpayer has a number of tax obligations, including the obligations to correctly determine the amount of tax payable by the taxpayer under the tax laws and to pay tax on time.¹¹⁰

In general, gift duty has to be paid within six months of the date of the gift (the original due date) to avoid late payment penalty or interest being payable.

A new due date will be set for the amount of any increase in gift duty if:

- a reassessment is issued increasing the gift duty payable, or
- the donor's calculation of the gift duty payable is increased

after the original due date for payment or less than 30 days before the original due date for payment.¹¹¹

If the donor does not calculate the amount of gift duty payable on the gift statement, gift duty will be payable by the original due date on the value of the gift stated on the gift statement.

The new due date for payment of any increase in gift duty will be two months from the date of the notice of assessment.

There will be no late payment penalty payable on the amount of the increase in gift duty if the gift duty is paid by the new due date. However, interest will be payable from the day after the original due date.

If a gift first becomes liable to gift duty because the donor makes a subsequent gift, the gift duty on the first gift has to be paid immediately after making the subsequent gift.¹¹²

Similarly, where a gift on which gift duty is payable becomes liable to additional gift duty because the donor makes a subsequent gift, the additional gift duty has to be paid immediately after making the subsequent gift.¹¹³

Example

Gifts made on 16 February 2003: \$30,000 (A) and 7 August 2003: \$10,000 (B).

Gift duty on A:	\$30,000	
	_____	× \$850 = \$637.50
	\$40,000	

Before Gift B was made, the gift duty payable was \$150. A credit for this amount is allowed if it has already been paid.

Gift duty on B:	\$10,000	
	_____	× \$850 = \$212.50
	\$40,000	

The due dates for the payment of gift duty are:

Gift A	16 August 2003 for the original gift duty payable of \$150.00
	7 February 2004 for the additional gift duty payable of \$487.50

Gift B	7 February 2004
--------	-----------------

The donor is primarily liable for the payment of gift duty. A donee or trustee, if the gift is by way of trust for any donee, is also liable for payment of the gift duty, but has a right of indemnity against the donor unless the terms of the gift provide otherwise.¹¹⁴ Gift duty is a charge on all property comprised in the dutiable gift.¹¹⁵

¹¹⁰ Section 15B of the Tax Administration Act 1994 lists a taxpayer's tax obligations. "Tax" is defined in section 3 of that Act to include gift duty.

¹¹¹ *ibid*, section 142A.

¹¹² Section 85(2).

¹¹³ Section 85(3).

¹¹⁴ Section 86.

¹¹⁵ Section 87.

Late payment penalty

The initial late payment penalty applies in two stages:

- an initial 1% late payment penalty charged on the day after the due date
- a further 4% penalty charged if there is still an amount of unpaid tax (including penalties) at the end of the 7th day from the due date.

Incremental late payment penalties are charged at 1% of the amount still owing, including any late payment penalties, on the monthly anniversary of the charging of the initial 1% late payment penalty.¹¹⁶

Late payment penalty is not payable on any unpaid interest,¹¹⁷ nor is it payable if the amount owing (gift duty and penalties) does not exceed \$100.¹¹⁸

Example

Gift duty of \$850 is payable by 12 October 2011 on a gift of \$40,000 made on 12 April 2011. Payment is not made until 21 December 2011.

Date	Penalty calculations	Penalty amount
10 October 2011	Initial late payment penalty @ 1% on \$850.00	\$8.50
17 October 2011	Further initial late payment penalty @ 4% on \$858.50 (\$850.00 + \$8.50)	\$34.34
10 November 2011	Incremental penalty @ 1% on \$892.84 (\$858.50 + \$34.34)	\$8.92
10 December 2011	Incremental penalty @ 1% on \$901.76 (\$892.84 + \$8.92)	\$9.01
		\$60.77

Interest

Interest is calculated on a daily basis on the amount of unpaid or overpaid gift duty, including penalties. Interest does not compound and is not included in the calculation of penalties. Payments made are applied towards interest first.

Interest on underpayments of gift duty starts on the day after the original due date for payment of the gift duty, and ends on the day of payment (both days inclusive).

Interest on overpayments starts on the latest of the day after:

- the original due date for payment, or
- the date payment is made, or
- the date the gift statement is filed

and ends on the day the gift duty is refunded or applied towards payment of other tax (both days inclusive).¹¹⁹

Interest is not charged or paid on amounts of \$100 or less of underpaid or overpaid gift duty and penalties.¹²⁰

¹¹⁶ Section 139B of the Tax Administration Act 1994.

¹¹⁷ "Tax" as defined in section 3 of the Tax Administration Act 1994 excludes interest.

¹¹⁸ *ibid*, section 183F.

¹¹⁹ Sections 120C–120F of the Tax Administration Act 1994.

¹²⁰ *ibid*, section 183F.

The rates of interest, which apply from 16 January 2011, are 2.18% for overpayments and 8.81% for underpayments.¹²¹

Example

Refer to the example on the previous page.

Interest at 8.81% on:

\$858.50 (\$850.00 + \$8.50) from 10 October 2011 to 16 October 2011 (7 days)	\$1.45
\$892.84 (\$858.50 + \$34.34) from 17 October 2011 to 9 November 2011 (24 days)	\$5.17
\$901.76 (\$892.84 + \$8.92) from 10 November 2011 to 9 December 2011 (30 days)	\$6.53
\$910.77 (\$901.76 + \$9.01) from 10 December 2011 to 18 December 2011 (9 days)	\$1.98
	\$15.13

Interest as gross income

Interest paid on overpayments of gift duty is gross income of the donor¹²² and is subject to resident withholding tax or non-resident withholding tax.

Cancellation of interest

Interest will be cancelled when Inland Revenue issues:

- A notice of assessment, and the full amount of gift duty, late payment penalties and any interest accrued before the date of the assessment is paid by the due date specified in the notice.
- A statement of account (issued subsequent to a notice of assessment) and the full amount of gift duty, late payment penalties and interest accrued before the date of the statement is paid within 30 days of the date of the statement or the due date of the gift duty, whichever occurs first.

In these circumstances the interest applying from the date of the notice or statement until the date of payment is cancelled.¹²³

Refer to page 30 for remission of interest.

Gift duty investigations

Tax administration in New Zealand is based on a system of substantial self-assessment.

In line with other revenues, Inland Revenue's normal practice is to assess gift duty based on the value of the gift shown in the gift statement and to conduct investigations on some gift transactions at a later date. Investigations on some gift statements may however be commenced at the time the gift statements are filed.

The original documentation, including valuations, supporting the gift statement should be retained so that it is readily available in the event of the gift transaction being selected for investigation.

¹²¹ Current rates at the date this guide was published.

¹²² Section ED 5 of the Income Tax Act 1994.

¹²³ Section 183C of the Tax Administration Act 1994.

Shortfall penalties

A shortfall penalty is a percentage of a deficit or understatement of gift duty resulting from an incorrect position taken by a donor on the payment of gift duty.

Example

A donor files a gift statement showing that no gift duty is payable because the value of gifts made in the past 12 months does not exceed \$27,000. Inland Revenue must consider whether a shortfall penalty should be charged if it is subsequently discovered that the value of the gifts in the past 12 months had exceeded \$27,000 and gift duty was in fact payable.

The law divides the actions of a donor into five categories of fault, or breach, with a specified penalty rate for each category as listed below:

Lack of reasonable care	20%
Unacceptable tax position	20%
Gross carelessness	40%
Abusive tax position	100%
Evasion	150%

Lack of reasonable care

The law requires donors to take reasonable care in meeting their gift duty obligations. Under general law principles, this means that a donor must take the same care that a reasonable person in the same circumstances would take.

Donors will usually have discharged their obligation to take reasonable care by seeking professional advice. However, they may still be charged a penalty for not taking reasonable care if, for example, they provided inadequate information when seeking advice or relied unreasonably on wrong advice.¹²⁴

¹²⁴ Section 141A of the Tax Administration Act 1994.

Unacceptable tax position

The legal definition of an unacceptable tax position is one that fails to meet the standard of being, viewed objectively, about as likely as not to be correct. This means that the tax position must be one to which a Court would give serious consideration, but not necessarily agree with. The argument must be sufficient to have a reasonable chance of succeeding in Court.

The standard is completely objective in that it is irrelevant whether or not the donor believed the position taken was acceptable. Nor does it take into account the donor's efforts to clarify matters. Instead, it concentrates on the merits of the argument in support of the position taken.

A donor does not take an unacceptable tax position merely by making a mistake in the calculation or recording of numbers in a gift statement. The donor could however be liable to a shortfall penalty for lack of reasonable care.

The shortfall of gift duty has to exceed both \$50,000 and 1% of the total gift duty payable before the unacceptable tax position shortfall penalty applies.¹²⁵

¹²⁵ Section 141B of the Tax Administration Act 1994.

Gross carelessness

In gift duty matters, gross carelessness is behaviour that demonstrates a high degree of carelessness and disregard of the consequences. It is conduct that creates a high risk of a gift duty shortfall occurring if a reasonable person in the same circumstances would have foreseen the risk and its consequences.

Gross carelessness does not require intent to pay less than is owed, but will require more than mere carelessness.¹²⁶

¹²⁶ *ibid*, section 141C.

Abusive tax position

An abusive tax position is one that:

- is based on an unacceptable tax position, and
- results in a tax shortfall of more than \$20,000, and
- has the avoidance of tax as a dominant purpose.¹²⁷

¹²⁷ *ibid*, section 141D.

The penalty also applies to a tax position taken that is incorrect under a technical provision or a general or specific anti-avoidance provision. The penalty does not explicitly require an anti-avoidance provision to have been applied.

Evasion

This category of shortfall penalty applies when, as the word implies, a donor evades the assessment or payment of gift duty. With evasion there is intent to cheat Inland Revenue.¹²⁸

¹²⁸ *ibid*, section 141E.

How penalties can be reduced or increased

A shortfall penalty may be reduced by 75% if a full voluntary disclosure is made before receipt of the first notice of a pending Inland Revenue investigation, or by 40% if made after the first notification but before the investigation begins.¹²⁹

¹²⁹ *ibid*, section 141G.

A shortfall penalty for an unacceptable tax position or an abusive tax position may be reduced by 75% if the donor makes adequate disclosure of the tax position when the gift statement is filed.¹³⁰

¹³⁰ *ibid*, section 141H.

A shortfall penalty may be increased by 25% for obstructing an Inland Revenue officer.¹³¹

¹³¹ *ibid*, section 141K.

Reduction of penalties for previous behaviour

A shortfall penalty for evasion of gift duty is reduced by 50% if the donor has not previously been liable to a shortfall penalty that:

- related to evasion of gift duty, and
- was not reduced for voluntary disclosure, and
- was eligible for this reduction.

The other rates of shortfall penalty are also reduced by 50% if the donor has not previously been liable for a shortfall penalty, within four years of the date on which the donor becomes liable to the current penalty, that:

- related to gift duty, and
- if the current penalty is for:
 - gross carelessness or taking an abusive tax position, was for evasion or for gross carelessness or taking an abusive tax position, or
 - not taking reasonable care or taking an unacceptable tax position, was a shortfall penalty, and
- was not reduced for voluntary disclosure, and
- was eligible for this reduction.¹³²

¹³² Section 141FB of the Tax Administration Act 1994.

Voluntary disclosure of a shortfall does not affect a donor's record of previous behaviour.

The combined effect of the reductions for a voluntary disclosure or a disclosure of an unacceptable tax position and for previous behaviour is that, for example, a penalty for not taking reasonable care could be reduced to as low as 2.5%. For example, a penalty for not taking reasonable care could be reduced from 20% to 2.5% (voluntary disclosure prior to notification of an investigation and previous behaviour reductions).

Remission of late payment penalty or interest

All applications must be in writing. There are two grounds for remission:

- Remission for reasonable cause.¹³³
- Remission consistent with collection of highest net revenue over time.¹³⁴
Interest remissions can only be considered under this ground.

There is no right to dispute Inland Revenue's decision.¹³⁵ A donor's financial position is not a ground for remission.

Remission for reasonable cause

Remission may occur if an event or circumstance provides the donor with reasonable justification for not meeting the donor's obligations. Donors are responsible for filing gift statements and paying gift duty, so specific action or inaction by an agent will not constitute reasonable cause unless an event or circumstance beyond the control of the agent caused the act or omission.

Remission consistent with collection of highest net revenue over time

Inland Revenue recognises that the collection of penalties in some situations will not promote voluntary compliance. This provision allows for genuine circumstances that do not qualify under reasonable cause. A late payment penalty may be remitted if the failure to pay in time was due to a genuine oversight or a one-off situation involving a compliant taxpayer.

A late payment penalty and interest may be remitted if wrong advice given by Inland Revenue directly resulted in the failure. Interest is remitted only in exceptional circumstances, as it is compensation to Inland Revenue for the loss of use-of-money.

Relief from payment of gift duty

Gift duty is included among the taxes that may qualify for financial relief.¹³⁶ The donee or trustee, if the gift is by way of trust for any donee, is also liable for payment of the gift duty (see page 25). Inland Revenue would seek to recover the gift duty from the donee or trustee before considering an application from the donor for relief.

Refund of gift duty

Where Inland Revenue is satisfied within eight years from the date of payment, or if a written application is received within that period, that gift duty, penalty, or interest has been overpaid, the overpayment may be refunded.¹³⁷ Interest is payable for gifts made on or after 1 April 1997.

Where the overpayment arises because a contingency determines differently from what was assumed at the time of assessment, the eight years' time limit does not apply. The gift duty, penalty, or interest overpaid is refunded together with interest at the overpayment rate (see page 26).¹³⁸

¹³³ *ibid*, section 183A.

¹³⁴ *ibid*, section 183D.

¹³⁵ *ibid*, section 138E(1)(e)(iv).

¹³⁶ Refer to definition of "tax" in section 3(1) of the Tax Administration Act 1994 for the purposes of sections 176, 177, 177A to 177D and to the Standard Practice Statements RDC 610 (on instalment) arrangements for payment of tax debt, and RDC 620 (on granting financial relief by permanently writing off tax debt), published in *Tax Information Bulletin*, Vo1 13, No 4 (April 2001) at pages 24–28.

¹³⁷ Section 89(1).

¹³⁸ Section 89(2). The rate of interest is 5% per annum for gifts made before 1 April 1997.

Disputing an assessment or notice of proposed adjustment

Inland Revenue will normally try to obtain agreement if we consider that more gift duty than is indicated by the gift statement is payable. If agreement cannot be reached, we will issue a notice of proposed adjustment (NOPA) setting out what we intend to change, to begin the disputes resolution process. If you disagree with this notice, you must issue us a notice of response within two months of the date of the NOPA.¹³⁹

If we issue an assessment of gift duty without first issuing a NOPA, and you disagree with the assessment, you must issue us with a NOPA within two months of the date of the assessment.¹⁴⁰

There is deemed acceptance of the proposed adjustment or the assessment if you do not respond in time.¹⁴¹

You may dispute the imposition of a shortfall penalty, but not the amount of the penalty.¹⁴²

Refer to the guides *Disputing an assessment (IR 776)* and *Disputing a notice of proposed adjustment (IR 777)* for more information on the disputes resolution process, including the subsequent stages of the process.

Offences

Part IX of the Tax Administration Act 1994 applies to offences committed in relation to the Estate and Gift Duties Act 1968 on or after 1 April 1997.¹⁴³ Possible offences in respect of gift duty include:

- Failure to file a gift statement. The maximum fines on conviction are \$4,000 for the first offence, \$8,000 for the second offence, and \$12,000 for every subsequent offence.¹⁴⁴
- Knowingly providing altered, false, incomplete, or misleading information. The maximum fines on conviction are \$25,000 for the first offence and \$50,000 for every subsequent offence.¹⁴⁵
- Knowingly providing altered, false, incomplete, or misleading information with the intent to evade the assessment or payment of gift duty. The penalty on conviction is imprisonment for up to five years, and/or a fine of up to \$50,000.¹⁴⁶
- Obstructing Inland Revenue in carrying out its lawful duties, or in exercising its lawful powers. The maximum fines on conviction are \$25,000 for the first offence and \$50,000 for every subsequent offence.¹⁴⁷

¹³⁹ Sections 89B, 89C and 89G of the Tax Administration Act 1994.

¹⁴⁰ *ibid*, section 89D.

¹⁴¹ *ibid*, section 89H.

¹⁴² *ibid*, section 138L.

¹⁴³ Section 95.

¹⁴⁴ Tax Administration Act 1994, section 143.

¹⁴⁵ *ibid*, section 143A.

¹⁴⁶ *ibid*, section 143B.

¹⁴⁷ *ibid*, section 143H.

Glossary

(These terms are as defined in the Estate and Gift Duties Act 1968)

Controlled company

For the purposes of section 65 only (disposition of property by controlled company), means any company that, at the time when the disposition of property is made, is controlled by or on behalf of any one person (in this section referred to as the controlling person), whether directly or indirectly, and whether through holding a majority of the shares in the company or in any other company, or in any other manner whatever.

Disposition of property

Means any conveyance, transfer, assignment, settlement, delivery, payment, or other alienation of property, whether at law or in equity; and, without limiting the generality of the foregoing provisions of this definition, includes:

- (a) The issue of shares in a company.
- (b) The creation of a trust.
- (c) The grant or creation of any lease, mortgage, charge, servitude, licence, power, or other right, estate or interest in or over any property.
- (d) The release, discharge, surrender, forfeiture, or abandonment of any debt, contract or thing in action, or of any right, power, estate or interest in or over any property; and for this purpose a debt, or any other right, estate, or interest shall be deemed to have been released or surrendered when it has become irrecoverable or unenforceable by action through the lapse of time.
- (e) The exercise of a general power of appointment in favour of any person other than the holder of the power.
- (f) Any transaction or series of related or connected transactions entered into by any person with intent thereby to diminish, directly or indirectly, the value of their own estate and to increase the value of the estate of any other person; and for this purpose the passing by a company of a resolution which, by the extinguishment or alteration of the rights attaching to any shares or debentures of the company, results, directly or indirectly, in the estate of any shareholder or debenture holder of the company being increased in value at the expense of the estate of any other shareholder or debenture holder shall be deemed to be a transaction entered into by that other shareholder or debenture holder, if they could have prevented the passing of the resolution by voting against it or otherwise.

It does not include a disclaimer of an interest under a disposition made inter vivos or by will or of an interest under an intestacy.

Donee

- Means
- (a) Any person becoming entitled to any beneficial interest under a gift, or
 - (b) Any person to whom property passes under a gift to be held for the purposes of creating a charitable trust, or for the establishment of any society or institution exclusively for charitable purposes, or to aid any such trust, society or institution; or
 - (c) Any trust, society or institution which receives a gift

and includes a body corporate and, unless the context otherwise requires, the administrator of a deceased donee.

Donor

Means the maker of a gift; and includes a body corporate and, unless the context requires otherwise, the administrator of a deceased donor.

Gift

Means any disposition of property made before 1 October 2011, wherever and howsoever made, otherwise than by will, without fully adequate consideration in money or money's worth passing to the person making the disposition.

Provided that where the consideration in money or money's worth is inadequate, the disposition shall be deemed to be a gift to the extent of that inadequacy only.

Relationships

For the purposes of this Act, this means:

- (a) Persons are connected by blood relationship if within the fourth degree of relationship.
- (b) Persons are connected by marriage if one is married to the other or to a person who is connected by blood relationship to the other.
- (c) Persons are connected by adoption if one has been adopted as the child of the other or as the child of a person who is within the third degree of relationship to the other.
- (d) Illegitimate relationship shall be equivalent to legitimate relationship.

Voluntary contract

Means any contract entered into, whether with or without an instrument in writing, without fully adequate consideration in money or money's worth.

Provided that where the consideration in money or money's worth is inadequate, the contract shall be deemed to be voluntary to the extent of that inadequacy only.

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