New Zealand

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QUICK FACTS

Legal forms of philanthropic organizations included the law: Cooperative, Limited Liability Company, Trust, and Society.

Five main social issues addressed by these organizations: Primary and High School Education, Religion, Arts and Culture, Basic Needs, Housing and economic development.

Average time established by law to register a philanthropic organization: 31-60 days

Average cost for registering a philanthropic organization: US $500

Charities do not need a legal form to register with Charities Services (the charity regulator). Charitable trusts can incorporate as charitable trust boards for perpetuity and utilize the corporate veil.

Government levels primarily regulating the incorporation of philanthropic organizations: Central/Federal Government

Philanthropic Environment Scores:

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I. Formation/Registration, Operations, Dissolution of a Philanthropic Organization (PO)

The three questions in this section pertain to the laws and regulations governing philanthropic organizations (POs). The scoring questions for this category cover three aspects of regulations: (A) formation and registration, (B) operations, and (C) dissolution.

Question 1: To what extent can individuals form and incorporate the organizations defined?

Score: 4.5

An estimated 60% of POs in New Zealand are unincorporated. The law does not restrict their formation and operation. The remainder are either mainly Trusts (15%) or Incorporated Societies (20%). Some societies are incorporated by specific Acts or a Royal Charter. Part 12 of Te Ture Whenua Māori Act 1993 outlines five different types of trusts for Māori land ownership and management (commercially oriented operations typically using limited liability company structure instead). Therefore, the ease with which these organizations register and are regulated varies.

In the great majority of cases, registration is free but there are filing charges (less than $100) for registered charities. No minimum capital or revenue/expenditure requirements exist. Those organizations with charitable purposes (as described under the Charities Act 2005) may register with the Charities Services and are required to file information annually. Similarly, non-charitable incorporated societies register and file annually under the Incorporated Society Act 1908. No annual fees are imposed, but the Act itself is old and some societies have found a lack of clarity in its contents for operational purposes. To this end, the Act has been reviewed by the New Zealand Law Commission (2013), an Exposure Draft of the Bill has been consulted on, and it may be presented to Parliament during 2017 (to enter into force in 2020). Further, while there are no unreasonable restrictions on who can found such societies, as long as they have legal purposes, incorporated societies must have 15 members before they can register. If a member is a corporation, it is deemed equivalent to three members.

The charities regulator was subsumed into a government department in 2012, but remains relatively apolitical. Charities Services has a three-person board known as the Charities Registration Board, which has the power to review registration decisions, but this is smaller than when the Charities Commission was established.

Question 2: To what extent are POs free to operate without excessive government interference?

Score: 4.6

POs are free to form as they wish, though they are subject to a few regulations. The Incorporated Society Act 1908 requires specific officers to be elected at an Annual General Meeting: a chairperson, treasurer, and secretary. As noted in Indicator Question 1, the Act is in the process of being updated to be more flexible around governance. For their part, trusts and companies can be established by one person, while Charitable Trust Boards can be established by the trustees (forming as a Charitable Trust Board enables a trust to become a separate legal entity). Furthermore, registered charities, which may form as any of the aforementioned organizational types, must advise the registrar as to who the officers are. These organizations are unable to register as a charity if their
officers are disqualified under the Charities Act 2005, such as if they are an undischarged bankrupt, have been convicted of a dishonesty offense within the prior seven years, or the Family Court has decided that they are unable to manage their own property). The Charities Registration Board, however, has the power to ignore these factors in particular cases. Crucially, the law makes no requirements for governance of unincorporated associations.

Advocacy organizations are free to form, and many use the Incorporated Societies legislation to do so. However, they cannot register as charities, and, therefore, miss out on being able to provide tax exemptions to donors. They still are exempt from income tax on almost all revenues.

New financial reporting requirements have come into effect for registered charities for periods beginning on or after 1 April 2015. These were extensively consulted on, but represent a major change to financial reporting and, therefore, a learning curve. A number of semi-government and government actors are actively supporting the sector, but there is some way to go.

**Question 3: To what extent is there government discretion in shutting down POs?**

POs are free to dissolve/voluntarily terminate their activities. A club registered under the Incorporated Societies Act 1908 may be dissolved voluntarily by its members. Alternatively, a member, creditor, or the society itself may apply to the Supreme Court to be dissolved. In the case of dissolution, the net assets may be distributed to the members at the date of dissolution, as per section 5b of the Incorporated Societies Act or as the Court suggests. Recent feedback on this Act suggests that the existing provisions are generally adequate to enable societies to be dissolved when required.

The overwhelming majority of terminations of societies are achieved through a decision by the Registrar under section 28 of the 1908 Act to dissolve a society because it is no longer operating, which is usually due to non-filing for a long period. Approximately half of the 450 terminations per year are instigated by the Registrar and half by societies themselves. Furthermore, while both trusts and companies can be terminated, personal trusts tend to have a termination date. New Zealand's Charitable Trust Boards--separate legal entities--have perpetual succession, but may choose to voluntarily terminate.

Registered charities may also voluntarily terminate. The registrar may de-register charities that do not file within six months of their balance date, but the general practice is that such de-registration is likely only to take 10-12 months after non-filing and many reminders. For charities that voluntarily terminate their registration, and yet continue to operate, they must start paying tax and stop enjoying charitable exemptions. No statistics are available for how many charities de-register each year.

Those who have been denied charitable registration may appeal (see prior question about Registration Board). Even if denied charitable registration, the entity would still be able to exist.
II. Domestic Tax and Fiscal Issues

The two questions in this section pertain to laws and regulations governing the fiscal constraints of giving and receiving donations domestically.

Question 4: To what extent is the tax system favorable to making charitable donations?

According to LD1 of the Income Tax Act 2007, individual and corporate donors receive tax rebates from donations to registered charities with donee status, provided that they are to be used in New Zealand. Assuming that these conditions are met, one-third of the donation is refundable to the donor. This exemption also applies to charitable bequests. The maximum level of donations that are eligible for these rebates is:

1. For companies, the donation limits for claiming tax rebates are: a) for a donation to a single donee organization, up to $4,000 (US $3,159), or 1% of the company's net income* for the year; b) for total donations to more than one donee organization, up to $1,000 (US $790) or 5% of the company's net income* for the year.

2. Individuals can claim a minimum of: a) 33.3333% of the total donations over $5 to donee organizations or, b) 33.3333% of their taxable income.

Individuals can use 'payroll giving' where they give at the same time as being paid and get an instant tax rebate. This is not that popular due to a lack of advertising and constraints from employers who may choose to support only one charity, for example.

Obtaining overseas donee status can be a lengthy and involved process. In order for charities to be able to provide donors with this benefit when they send funds overseas, the Inland Revenue Department will consult with the charities registrar, the Ministry of Foreign Affairs and Trade, and the New Zealand Police to ensure that illegal activities are not being undertaken, such as money-laundering, human trafficking, or financing terrorism. To receive this status, charities' funds must be applied toward the relief of poverty, hunger, or sickness, the ravages of war or natural disaster, the economy of developing countries recognized by the United Nations, or raising the educational standards of a developing country recognized by the United Nations.

Question 5: To what extent is the tax system favorable to POs in receiving charitable donations?

According to DV8 of the Income Tax Act 2007, POs in New Zealand are exempt from income tax for their first $1,000 of trading income. Other income is not generally subject to income tax. Registered charities are exempt from income tax on all revenue as long as the charity continues to carry out its charitable purpose, as stipulated in CW42 of the Income Tax Act 2007. Only income derived for charitable purposes in New Zealand is exempt, with overseas purposes generally not deemed as exempt.
New Zealand also has a number of smaller—though no less important—exemptions available for specific kinds of POs. In the case of religious institutions, there remains a long-standing exemption from property taxes on places of worship. Charities also receive some tax incentives and are exempt from Fringe Benefit Tax on employees’ benefits, unless employees receive such benefits from employment in a business without charitable purposes, as stipulated in CX25 of the Income Tax Act 2007. Furthermore, the largest exemptions available are for registered charities. As a result, the Charities Registrar liaises with the Inland Revenue Department (tax collector) to confirm donee status and exemption from income tax.

All POs can register for Goods and Services Tax (GST). Those that have business incomes over $60,000 per annum are required to register and make GST returns at least semiannually. As POs without significant business income that register for GST are able to receive refunds for GST paid on purchased goods and services (which attract GST), many POs find it advantageous to register as a GST organization.

III. Cross-Border Philanthropic Flows

The two questions in this section concern laws and regulations governing the fiscal constraints of giving and receiving cross-border donations. The scoring for these questions pertains to the donor and receiving entities.

Question 6: To what extent is the legal regulatory environment favorable to sending cross-border donations?

Score: 4.0

As noted in Indicator Question Five, only income derived for charitable purposes in New Zealand is exempt from income tax. This is also similar to the donor rebates, as a general exemption applies for charitable purposes in New Zealand, but donors may not receive rebates on funds for overseas purposes, unless the organization has specifically applied for and received authorization from the Inland Revenue Department.

As also noted above (indicator question four), there are no restrictions on sending these charitable donations offshore. When goods, rather than money, is sent offshore there is no Customs or Excise Tax payable for items that are sold for less than $1,000, excluding the freight costs. Naturally, there are restrictions on exporting items of cultural significance.

Question 7: To what extent is the legal regulatory environment favorable to receiving cross-border donations?

Score: 4.2

In general, foreign currency flows to and from New Zealand has no restrictions. New Zealand’s currency is well traded, with the floating exchange rate struck on a basket of currencies of its major trading partners.
However, donations of goods from overseas entities to New Zealand POs are liable for a duty payment if the goods are also manufactured in New Zealand and if they have a value of more than US $120. New Zealand Customs does, however provide an exact list of such items. Goods and Service tax (GST) may also be charged on the value of imported gifts over US $120, including freight and insurance costs to bring the goods to New Zealand. If the gift is a bequest, then no duty is payable. While some imports are not allowed, the list includes expected items, such as drugs, pornography, and certain weapons.

IV. Political and Governance Environment

The three indicator questions in the next two sections concern the political and governance context, socio-cultural characteristics, and economic conditions that influence the environment for philanthropy.

Question 8: To what extent is the political and governance environment favorable for philanthropy?

Score: 4.0

There is continuing push for 'the market' to deliver programs and services. These organizations are not always POs, and for-profit entities can readily be used as service provider as well. Public Private-Partnerships and Social Impact Bonds are actively discussed, yet evidence of their use in the sector is absent.

There is a push for 'more effective social services' (see Nowland-Foreman 2016) as the public sector seeks to downsize. Thus, government funding of the sector has increased, but costs have as well. Advocacy is tolerated, but as noted above, is not a main objective for a charity.

Question 9: To what extent are public policies and practices favorable for philanthropy?

Score: 4.0

New Zealand has historically had few large-scale private philanthropists, but volunteering and giving are essential to the fabric of society. Donors are free to donate to whomever they choose, but only donations to registered charities (i.e. not advocacy entities) are tax deductible. (See also Q10 answers)

V. Socio-Cultural Environment

Question 10: To what extent are socio-cultural values and practices favorable for philanthropy?

Score: 4.2

The level of philanthropy per capita in New Zealand is higher than many other countries, but this includes philanthropy by statutory community trusts (and similar to foundations) and government appointees. Trusts and foundations provide an estimated 36% of total giving to civil society, with
statutory trusts providing about two-thirds of this figure. In their 2011 work on the subject, Slack and Molano noted that the estimated $2.67 billion NZD (US $2.08 billion) given to charitable and community causes in 2011 is double from the 2006 estimate. The removal of the tax rebate cap and responses to natural disasters, particularly the Christchurch earthquakes are suggested as drivers of donations. The 2011 estimate includes contributions from individuals, which comprise 58% of POs' income and from businesses, which comprise 6% (8% if sponsorship is included). Recent surveys about trust and confidence in the sector have shown that trust remains static and is in line with other jurisdictions where these surveys have taken place.

In 2004, volunteering was shown to be practiced by approximately 6.4% of the total economically active population. The strength of volunteering shows the high level of engagement with POs in New Zealand society. The government partially funds volunteering centers nationally and regionally, but this funding has been reduced in recent years.

Culturally, the giving by Maori as koha has particular significance in New Zealand. Generally, koha is perceived as a duty, with an obligation of reciprocity. Therefore, koha is excluded from the definition of philanthropic giving in most analyses, but amounts may be significant in some POs. The figures used above also exclude membership- and subscription-based giving, which suggests that the true extent of philanthropy is greater than is commonly believed.

VI. Future of Philanthropy

*These questions are used to provide a general picture of the future of philanthropy in this country as well as recommendations to improve the philanthropic environment.*

**Current state of the philanthropic sector**

New Zealand has strong informal links to philanthropy through volunteering and (small) donations. The Charities Aid Foundation (2016) shows that New Zealand is the fourth most giving nation studied, with 71% donating money, 61% helping a stranger, and 44% formally volunteering.

Foundations/trusts are supported by Philanthropy New Zealand, which has approximately 90-100 members, and are a mix of large statutory trusts, corporate foundations, and smaller grant makers. The gaming machine societies have had a strong impact on POs in the past; but with the decline in use of gaming machines and a 'sinking lid' on application approvals for these (i.e. when a hotel with a gaming machine closes down, no new ones are authorized) this avenue of funds is declining. This and likely lower lottery funding will impact arts/culture and sport and recreation POs in coming years. The face of fundraising is changing. The rise of online giving is evidenced through, for example, ‘Give A Little,’ which is sponsored by New Zealand’s major Telco. Spark and promoted through print and online media.

At the professional end, social services, housing, and such continue to receive significant government funds, but, as noted, this is also tightening and is resulting in collaborations and new ways of working. A strong center-right government prefers the market.

However, in general, Transparency International (2016) reports high levels of trust in the philanthropic sector, and high level ranks in the Index (lowest levels of corruption perceptions) in
perceptions of public sector corruption, including administrative and political corruption in 2012, 2013, and 2016.

Three major recent events affecting the philanthropic landscape between January 2014 and December 2016

- New financial reporting requirements on POs that are registered as charities, and new legislation in health and safety that has changed the environment for risk and management of volunteers;
- The fallout from the 'Panama Papers,' which has caused concern about trusts and how they are used and managed by others; and
- Reduced government funding in the sector.

Future development trends in the philanthropic landscape

'Social impact bonds' are being discussed by the government, but there have been many issues that affect the launch of these as a way of funding. The Prime Minister (prior Finance Minister) is strongly in favor, though.

Social Enterprise is increasingly a topic of discussion. Following a sector-government sponsored report, the government has established a cross-agency working group to coordinate different public sector agencies and engage with external organizations. They are to produce data on social enterprise, overview funding for capability-building services, take actions to encourage investment, and encourage participation in the September 2017 Social Enterprise World Forum in Christchurch. Further, Maori Trusts continue to strengthen as a result of Treaty of Waitangi Tribunal settlements and these trusts are variously involved in commercial and philanthropic activities. Online giving and volunteering are expected to rise.

Three key recommendations to improve the environment for philanthropy

- Government policies should recognize that few POs are professionalized, and many POs find it difficult to manage a proliferation of laws and regulations of voluntary activities;
- To recognize the support of volunteers in building civil society through increased/adequate support of capacity builders such as volunteer centers; and
- Increase the tax rebates for companies to increase the ability of companies to support their local POs.