

# The Taxation of DHBs and Charities

Dr Michael Gousmett FCIS PhD BCom (Hons) BBS DipCM Dip Tchg

Adjunct Fellow

School of Humanities & Creative Arts (History)

University of Canterbury (2015-2021)

*Independent Researcher and Public Historian*

[michaelgousmettphd@gmail.com](mailto:michaelgousmettphd@gmail.com)

# Topics

- Part 1 The Taxation of DHBs
- Part 2 The Taxation of Charities

# Are hospitals charitable?

- Hospitals are by very fact of their existence charitable
- Yet why do DHBs in New Zealand pay a property tax?
- The issue is not just hospitals – 60% of DHB activity – but hospitals are largely the public face of DHBs which also operate in many other areas such as mental health.
- The issue is the property charge levied on New Zealand's 20 DHB's
- All of which are in deficit 2020 –
  - CDHB est. \$180 million
  - CDHB actual \$243 million

# Drivers of the CDHB's "deficit" 2010-2019

	\$'000
• Total revenue	\$15,373,278
• Operating expenses	\$14,190,505
• Surplus	\$ 1,182,773
• Infrastructure expenses	\$ 1,374,320 Capital charge \$168,648
• Deficit	\$ (191,547)
• Other revenue/expenses	\$ 419,954
• Surplus	\$ 228,407

# CDHB 2020

- Statement of Comprehensive Revenue and Expense 30 June 2020

• Total revenue	\$1,979,505,000
• Total expenses	\$2,222,941,000
• Deficit	\$ (243,436,000)
• Capital charge	\$ 38,136,000

# CDHB 2020

- Holidays Act 2003
- Arrears date back to 2010
- CDHB 2020 deficit includes \$65 million for Holidays Act issue; same in 2019 - \$135 million to date, forecast for 2021 \$18 million.
- Accounting treatment of “extraordinary items” misleading
- As at 30 June 2020 DHB’s owed \$1.15 billion in Holidays Act arrears
- DHB’s unclear how this is to be paid – awaiting response to OIA to Minister Little

# Capital Charge

- Treasury 1987
- “It would be preferable to show the costs of using assets as depreciation over the life of the assets and to recognise the opportunity cost of the funds used to purchase them.”
- “Opportunity cost” is economic-speak for the capital charge.
- A cash payment calculated at 6% p.a. paid quarterly to the MoH on the net assets of the CDHB –and all DHBs.
- Cf current Reserve Bank cash rate 0.25%

# Capital Charge

- Cost to CDHB 2001-2019

- \$329,399,000

- Cost to all DHB's

- 2018      \$323,190,000

- 2019      \$326,732,000

# Capital Charge

- Hon. Annette King - Labour will abolish
- Treasury currently working on issue – do not wish it to be abolished

# Inequity of the Capital Charge

- Charity hospitals:
  - Are exempt from income tax and RWHT
  - Provide surgical services to the CDHB and fee-paying patients at market rates
  - Offers to assist CDHB by Charity Hospital rejected – awaiting OIA response as to why
- Capital charge is not funded ...
  - Paid from Vote Health via PBFF – population-based funding formula – a mystery!
  - Last revised 2015
- Except that from 2019 new builds will be funded - provided DHB not in deficit of which all were in 2020!

# The CDHB's \$180 million "bail-out"

- This injection is a common feature when DHB's run deficits.
- The Government puts aside a pool of funds each year just for equity injections to stop DHBs from going bankrupt
- In 2006 7 DHBs received \$111,849,000 - a mix of capital and deficit support
  - Auckland \$44.5 million in 2006 for deficit support
  - Whanganui \$1.4 million in 2016 for deficit support

# The Crown Monitor

- 2019
- The Treasury and the Ministry of Health
- Two Crown Monitors recommended – clinical and non-clinical
- Only a non-clinical CM appointed
- Signed off by the Hon Grant Robertson and the Hon David Clark
- 5 June 2021 - awaiting response to OIA from the Hon Grant Robertson.

# CDHB Annual Plan 2020/2021

- Not yet signed off
- Financial year ends 30 June 2021
- Deficit forecast at \$180 million

# Current research

- Working title
- “A short history of deficits in the delivery of public health care in New Zealand: 1993 to 2020”
  - CHEs (Healthlink South Limited and Canterbury Health Limited)
  - DHB’s 2001 – 2020

# Health New Zealand

- Abolition of DHBs – Health New Zealand
- Recommendation by the Transition Unit which sits inside the DPMC.
- Expected establishment cost in excess of \$450 million.
- Hon Andrew Little: “[i]t’s about a structure that enables better decisions and a better flow of patients through the health system. It’s about improving the service and the accessibility of the service.”
- NZ Council of Trade Unions -Craig Renney “... any savings made through the reforms were likely to be offset by the cost of the transition and ‘historical DHB deficits’ which were currently about \$800 million.”

# Charities: An Historical Perspective

- Statute of Elizabeth 1
  - 43 c. 4 [1601]
    - Commissioners appointed to enquire into misuse and abuse of charitable funds
- *The Vision of Piers the Ploughman*
  - William Langland
  - AD 1362
- Chaucer's *Canterbury Tales*

# Charities:

## An Historical Perspective

- "Relief of the aged, impotent, and poor people; maintenance of sick and maimed soldiers and mariners, schools of learning, free schools, and scholars in universities, repair of bridges, ports, havens, causeways, churches, seabanks, and highways, education and preferment of orphans, for or towards relief of stock, or maintenance for houses of correction, **marriages of poor maids**, supportation, aid, and help of young tradesmen, handicraftsmen, and persons decayed, relief or redemption of prisoners or captives, aide or ease of any poor inhabitants concerning payments of fifteens, setting out soldiers of soldiers and other taxes."

# An Historical Perspective

- The origin of the charitable purposes exemption from income tax
  - William Pitt the Younger
  - Napoleonic Wars 1793-1815
  - Assessed Taxes 1798
  - Duties upon Income 1799

# An Historical Perspective

- Genghis Khan c. 1158 - d. 1227
- Kublai Khan 1215 – 1294
- “The Guinea Pig Club”

# An Historical Perspective

- 1799 Duties upon Income
- “No corporation, fraternity, or society of persons established for **charitable purposes only**, shall be chargeable under this Act, in respect of the income of such corporation, fraternity, or society.”
- No definition of “charitable purposes”
- Resolved in 1891 in *Pemsel*

# An Historical Perspective

- 1803      Addington - deduction at source
- 1805      Pitt - Special Commissioners
- 1816      “Income” tax abolished
- 1842      “Income” tax reintroduced – Peel
- 1853      Charity Commissioners

# An Historical Perspective

- 1863 – Gladstone challenges the exemption – and loses.
- Governors of St Barts “feast” - £220 = 150 beds
- 1888 – 1891
  - *Pemsel* - The Moravians - refund of £73 8s 3d.
    - Claim based on exemption in the Act of 1842
  - Lord Macnaghten
    - “four principle divisions ... .”

# An Historical Perspective

- Lord Macnaghten
  - Relief of poverty
  - Advancement of education
  - Advancement of religion
  - “Other purposes beneficial to the community.”

# Charity Commissions

- **England**

- 1414 Henry V
- 1601 Elizabeth I
- 1786 Gilbert
- 1818-1837 Gilbert enquiry continues
  
- 1853 Charity Commissioners
  
- 2016 Charity Commission for England and Wales

# Charity Commissions

- **New Zealand**
- 1869-1870 Enquiry into religious, educational and charitable trusts
- 1871 “a body analogous to that which had dealt with a similar matter in the mother country”
- 1989 New Zealand Working Party on Charities and Sporting Bodies
- 2005 Charities Act 2005 - Charities Commission
- 2012 Charities Services

# An Historical Perspective

- The origins of Fiscal Concessions in New Zealand
  - Income Tax
    - Land and Income Assessment Act 1891
    - Land and Income Assessment Act Amendment Act 1892

# An Historical Perspective

- The origins of Fiscal Concessions in New Zealand
- LD 3 Income Tax Act 2007
- Donations – special exemption
  - Keith Holyoake
  - Announced in 1960
  - Introduced in 1962
    - “Special exemption”
    - £25
  - “To encourage a greater degree of community self-help and initiative.”

# An Historical Perspective

- The origins of Fiscal Concessions in New Zealand
- 1962
- CORSO
- Red Cross
- Lepers' Trust
- Mission to Lepers
- ITA 2007 Schedule 32: Now 157 (2019: 151) entities

# An Historical Perspective

- The origins of Fiscal Concessions in New Zealand
  - 2007 - 2008/2009 (Labour/United Future)
  - Cap removed
  - Charitable or other public benefits 2021
  - Extent of taxable income
  - Previously \$1,500/\$1,890(\$630)
  - Tax credits
  - Increase in cost to the revenue - \$98 m to \$283 m

# An Historical Perspective

- The origins of Fiscal Concessions in New Zealand
  - Companies and Maori Authorities
  - Extent of taxable income (previously 5%)
  - Deductions
    - DB 41 – Tax expenditure 2020 \$28 million
    - DV 12 – Tax expenditure 2020 \$3.5 million

# An Historical Perspective

- RWT (National)
- 1989
- Evasion
- Imputation Credits
- Not available to charities but being reconsidered - unlikely

# An Historical Perspective

- IRD and the (former) Charities Commission
- OS 06/02 (December 2006)
- Interaction of tax and charities rules

# Taxation Reviews in New Zealand

- 1967 Ross Committee (National)
- 1982 McCaw Report (National)
- 1987 Douglas – Govt. Economic Statement (Labour)
- 1998 Committee of Experts on Tax Compliance (National)
- 2001 McLeod Report (Labour) & “Tax and Charities”
- 2018 Tax Working Group

# Unrelated Trading Activities - NZ

- “Sanitarium”
- “Mission Estate”
- NAIT - M. bovis!
- The Trevor Wilson Charitable Trust Group (Wilson Bulk Transport)
- Pioneer Energy Ltd
- Wright Family Foundation (BestStart Educare)

# Unrelated Trading Activities - NZ

- Ngai Tahu
- Waikato-Tainui
- Musgroves
- Trinity Lands

# Unrelated Trading Activities - NZ

- June 2017 - Personal correspondence from The Hon Judith Collins :
- “Inland Revenue’s Tax policy Work programme does not include a review of charities that undertake commercial activities ... .
- Commercial activities were last considered in the 2001 review of tax and charities in New Zealand.
- However, I am aware that there are public comments about the current policy settings. This is an area that Inland Revenue policy officials actively monitor.”
- Labour – on Tax Policy Programme; no progress to date.

# Unrelated Trading Activities - UK

- 1920's
- Public school – Brighton College
- “Trading” case
- Judgment rejected by Winston Churchill
- Finance Act
- “Unrelated trading” taxable in the UK

# A basis for a tax policy?

“He who does not perform that part assigned him toward advancing the benefit of the whole, in proportion to his opportunities and abilities, is not only a useless but a very mischievous member of the public; **because he takes his share of the profit and yet leaves his share of the burden to be borne by others ... .**”

Jonathan Swift (1710) *On Mutual Subjection*

cited in William Kennedy, *English Taxation 1640-1799*

(London, G. Bell & Sons Ltd, 1913) at 189.

# Tax Expenditures

- “Government Management [:] Brief to the Incoming [Lange] Government 1987” (The Treasury, Volume 1)
- “Expenditure estimates do not include tax expenditures ... Government expenditure by way of tax relief, as opposed to direct spending.”
- Muldoon rejected concept
- Reintroduced by labour in 2010

# Tax Expenditures

- Income Tax Act 2007
- 2021: 47 classifications
  - Ministers of religion
  - Bloodstock – accelerated deductions
  - Bodies promoting amateur sport
  - **Charitable or other public gifts by a company**
  - **Charitable or other public benefit by an individual**
  - Charities: Exempt income [business and non-business]
  - **Maori Authorities**
  - TAB and racing clubs: Exempt income
  - Veterinary services bodies: Exempt income

# Tax Expenditures

- GST Act 1985
- 2021: 1 classification
  - S 20 3K - Input tax recovered by registered non-profit bodies

Q & A