

Melanesian Trusts (Income Tax Exemption) Amendment Bill

Private Bill

As reported from the Finance and Expenditure
Committee

Commentary

Recommendation

The Finance and Expenditure Committee has examined the Melanesian Trusts (Income Tax Exemption) Amendment Bill and recommends that it be passed with the amendment shown.

This is a private bill. We report that the statements in the preamble have been proven to our satisfaction.

Introduction

This bill amends the Melanesian Trusts Act 1974 to ensure that, from the commencement date of the principal Act, income derived by the Melanesian Mission Trust Board (including income from any business carried on by, or for, or for the benefit of the Trust Board), and distributions of income by the Trust Board are exempt from income tax.

Income tax exemption

We are of the view that it is important to exempt the Melanesian Mission Trust Board from income tax. We note that the sole beneficiary of the Melanesian Mission Trust Board is the Church of Melanesia, which receives more than 94 percent of its funding from the Trust Board. If the Trust Board's incomes were taxable, its

ability to deliver charitable activities would be seriously undermined. We therefore support the passing of this bill, subject to one minor amendment.

To ensure that the income tax exemption for the Melanesian Mission Trust Board is comprehensive, we recommend that new paragraph 4A(2)(c) be inserted into the Melanesian Trusts Act 1974 (clause 5). New paragraph (c) provides that income derived by the Trust Board and distributions of income by the Trust Board are treated as exempt income under the Income Tax Act 2007.

Similar trust boards

We understand that it has become unclear whether trust boards' incomes are taxable since the decision of the New Zealand Court of Appeal in *Dick v Commissioner of Inland Revenue* (2002) 20NZTC 17, 961. While this bill will clarify the tax status of the Melanesian Mission Trust Board, we are concerned that the tax status of other charitable trust boards, which are of a similar nature to the Melanesian Mission Trust Board, remains unclear. We believe these trust boards are likely to promote private bills similar to this one to ensure that their incomes are exempt from income tax.

If all of these trust boards do promote such private bills, not only will they incur substantial legal costs, but Parliament will also have to spend a significant amount of time considering them one by one. The Government should deal with the general effect of the Court of Appeal decision rather than requiring individual trusts that believe they might be affected by it to approach Parliament for a remedy.

Appendix

Committee process

The Melanesian Trusts (Income Tax Exemption) Amendment Bill was referred to the committee on 17 October 2007. We received a submission from the Melanesian Mission Trust Board and also heard evidence from the Trust Board. We received drafting assistance from the Inland Revenue Department.

Committee membership

Charles Chauvel (Chairperson)

Hon Bill English

Jeanette Fitzsimons

Craig Foss

Hon Mark Gosche

Hone Harawira

Rodney Hide

Moana Mackey

Dr the Hon Lockwood Smith (Deputy Chairperson)

Hon Paul Swain

Chris Tremain

Judy Turner

R Doug Woolerton

**Melanesian Trusts (Income
Tax Exemption) Amendment**

Key to symbols used in reprinted bill

As reported from a select committee

New (unanimous)

Subject to this Act,

Text inserted unanimously

Hon Phil Goff

Melanesian Trusts (Income Tax Exemption) Amendment Bill

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Preamble

- (1) The Melanesian Mission Trust Board is incorporated in New Zealand under the Charitable Trusts Act 1957.
- (2) The Trust Board is required by section 4 of the Melanesian Trusts Act 1974 to hold all the property and income of the Trust Board in trust for the Province of Melanesia being the British Solomon Islands Protectorate, the New Hebrides Condominium and New Caledonia. 5
- (3) The Trust Board has always treated its income and distributions of income as exempt from income tax because of—
 - (a) its charitable status; and 10
 - (b) its view that its charitable activities do not involve the carrying on of a business.
- (4) There is some uncertainty about the correctness of the Trust Board's view on the business issue since the decision of the New Zealand Court of Appeal in *Dick v Commissioner of Inland Revenue* (2002) 20 NZTC 17, 961. 15
- (5) The object of this Act is to provide, in order to avoid doubt, that from the commencement date of the Melanesian Trusts Act 1974 the following were and are exempt from income tax— 20
 - (a) income derived by the Melanesian Mission Trust Board (including from any business carried on by, or for, or for the benefit of the Trust Board); and

- (b) distributions of income by the Melanesian Mission Trust Board:
- (6) This object cannot be achieved without legislation:

The Parliament of New Zealand therefore enacts as follows:

1	Title	5
	This Act is the Melanesian Trusts (Income Tax Exemption) Amendment Act 2007 .	
2	Commencement	
	This Act comes into force on the day after the date on which it receives the Royal Assent.	10
3	Principal Act amended	
	This Act amends the Melanesian Trusts Act 1974.	
4	Purpose	
	The purpose of this Act is to amend the Melanesian Trusts Act 1974 to provide, in order to avoid doubt, that from the commencement date of the Melanesian Trusts Act 1974 the following were and are exempt from income tax:	15
	(a) income derived by the Melanesian Mission Trust Board (including from any business carried on by, or for, or for the benefit of the Trust Board); and	20
	(b) distributions of income by the Melanesian Mission Trust Board.	
5	New section 4A inserted	
	The following new section is inserted after section 4:	
	“4A Income tax exemption	25
	“(1) This section applies to amounts of income derived by the Trust Board, including income derived directly or indirectly from any business carried on by, or for, or for the benefit of the Trust Board, and to amounts derived as distributions of income that are made by the Trust Board in accordance with this Act.	30
	“(2) Amounts of income derived by the Trust Board, and amounts derived as distributions of income made by the Trust Board, referred to in subsection (1) are, as the case may require,—	

“(a) exempt from tax under the Land and Income Tax Act 1954, the Income Tax Act 1976, and the Income Tax Act 1994:

“(b) exempt income under the Income Tax Act 2004:

New (unanimous)

“(c) exempt income under the Income Tax Act 2007.

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“(3) This section applies from the commencement date.”

Legislative history

9 October 2007
17 October 2007

Introduction (Bill 160–1)
First reading and referral to Finance and Expenditure
Committee
