POLITICAL DONATIONS AND TAX DEDUCTIONS IN AOTEAROA NEW ZEALAND AND AUSTRALIA

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Abstract

This study examines the different approaches to tax concessions for political donations in Australia and Aotearoa New Zealand (NZ). In Australia, a tax deduction may be claimed for a moderate donation to a political party. Conversely, in NZ no tax concessions are available for donations to political parties.

The study concludes that while there are several benefits of using the tax system to facilitate political donations, the two different policies align with the two countries general approaches to using the tax system to influence behaviour. An analysis of tax expenditures is used to support this argument. Reference to tax expenditures in Australia shows a longer timeline of acceptance of tax expenditures, alongside a more comprehensive regime of included activities. In NZ, the absence of tax concessions for political parties is aligned with NZ's general approach to using the tax system to change behaviours, which is minimal state intervention.

I INTRODUCTION

Political parties need funds to access voters and communicate their policies while campaigning. However, who provides the funding, how much funding is generated, and what, if anything, is purchased with the funding makes many components of the funding system contentious.

Political party funding needs to be fair and transparent, encourage electoral participation and, in Aotearoa New Zealand (NZ), uphold the principles of Te Tiriti o Waitangi.[1] It also needs to protect the integrity of government, including preventing corruption or undue influence, support parties to discharge their functions, and respect political freedoms, in particular

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[1] Ministry of Justice, Proactive release – Advancing Electoral Law Reform (15 December 2021) <https://www.justice.govt.nz/assets/Documents/Publications/Advancing-Electoral-Reform-papers-combined.pdf>.

freedom of political expression and freedom of political association.[2] The purpose of regulating political party funding is to achieve at least some of these objectives, and to facilitate a level playing field for parties. As will be discussed in this article, the tax system can also help to achieve some of the aims.

In NZ, political parties in government receive state funding to provide support for parliamentary operations, including communications, research, general office expenditure and support staff. Parliamentary parties received NZ$187 million in annual appropriations and other expenses in the 2021/22 budget.[3] However, for non-parliamentary operations, such as campaigning and policy development, there is only one form of state funding, which is the election broadcasting allocation. This is administered by the Electoral Commission to political parties, who can use it for campaign advertising. For all other non-Parliamentary work, parties need to raise their own funds. Currently the primary mechanism to do this is through private donations. It is these funds that are the focus of discussion in this article.

In Australia, individuals are incentivised to make moderate donations to Federal or State political parties and independent candidates or members, as this expenditure may be claimed as a tax deduction.[4] Donations are capped at A$1,500 for contributions to a registered political party plus a further A$1,500 for contributions to an independent candidate or member.[5] A membership subscription to a registered political party is also allowed as a tax deduction for an individual. These deductions are only available to natural persons and are not available to a company.[6] Additional state funding is provided to registered political parties based on votes received in an election, plus some expenditure reimbursement.

The article questions why political donations are not tax preferred in NZ, as they are in Australia. The article focuses on political donations for campaign funding and does not canvass other tax benefits such as income tax, fringe benefit tax or goods and services tax exemptions. Note that the subject of the research is political party funding, rather than candidate funding. However, from time to time we refer to candidates where it assists with more accurately capturing background information.

Extending donation tax credits or tax deductions to political donations, essentially introduces a partial state subsidy to political party finances. As noted, state funding is largely absent in the NZ environment. We question the NZ approach and show that New Zealanders are open to at least some state funding of political parties.[7] We surmise that NZ's approach follows its characteristic approach to using, or more specifically not using, the tax system to influence

[2] Joo-Cheong Tham, 'Regulating Political Contributions: Another view from across the Tasman' (2010) 6(3) *Policy Quarterly* 26.

[3] New Zealand Government, The Supplementary Estimates of Appropriations 2021/22: Vote Parliamentary Service <https://budget.govt.nz/budget/pdfs/suppestimates/suppest22parser.pdf/>, 707. This includes capital expenditure.

[4] Australian Tax Office, Claiming Political Contributions and Gifts (25 July 2017) <https://www.ato.gov.au/non-profit/gifts-and-fundraising/in-detail/fundraising/claiming-political-contributions-and-gifts/>. There are rules around the timing of contributions or gifts to independent candidates in an election.

[5] Income Tax Assessment Act 1997 (ITAA 1997), s 30.243.

[6] ITAA 1997, s 30.242(3A)(b).

[7] Max Rashbrooke and Lisa Marriott, Money for Something: A report on political party funding in Aotearoa New Zealand (November 2022) <https://www.wgtn.ac.nz/business/research/researchers/more-featured-researchers/supporting-political-party-funding-law-reform/money-for-something-final-report.pdf>.

behaviour, except for a small number of situations. We contrast this position with Australia's, using tax expenditure statements to support our arguments.

The article commences with a discussion on some of the issues that exist with political donations. Many of these issues generate support for greater state funding for political parties. Section three discusses tax expenditure statements in NZ and Australia, as these are used to frame the later discussion. Sections four and five outline the current approach to political party donations in Australia and NZ, respectively. Section six discusses tax and politics within the context of political party donations, drawing on tax expenditure statements in support of arguments made. Conclusions are drawn in section seven.

II POLITICAL DONATIONS

This section commences with a discussion of some of the general trends in political party campaign finance reforms, before discussing the issues related to political donations. This is followed by an outline of the scholarly writing on the advantages and disadvantages of tax concessions for political party funding.

A *Political party campaign finance reform*

There have been significant reforms of campaign finance over recent years. All developed countries regulate the supply of private money to political parties, at least to some extent. This may take the form of a financial cap or, as in New Zealand, it may be in the form of transparency in naming donors who donate above a specified threshold. Some countries only allow donations from natural persons or enrolled voters, while others prohibit donations from types of entities, such as companies with state contracts. Other forms of regulation include demand-side measures intended to promote equality between parties, typically in election years.

Alternative forms of assisting with campaign finance include reimbursement of election expenses. However, this advantages incumbent parties and has the potential to encourage unnecessary spending. The United Kingdom provides policy grants that are earmarked for parties to develop policies. A method used in Australia is per-vote funding, where funds are allocated based on measures typically proportional to votes received at the previous election, with some other adjustments that benefit smaller parties. This method is clear and provides a direct connection between votes and taxpayer funding. The Netherlands allocates funds to political parties partly based on membership numbers. This is beneficial from the perspective of incentivising engagement with a broader public. Yet another method is adopted in Germany, which provides a co-contribution for small individual donations. Tax credits are used successfully in Canada. Small donations are heavily subsidised but higher levels of donation receive smaller tax credits that are fully abated at around NZ$1,600.

Campaign finance reform has also impacted on other aspects of donations. Analysis of 32 developed countries shows that 17 require publication of a donor's identity when donating over NZ$5,000, while nine mandate disclosure for donors giving over NZ$1,500 and three require all donor identities to be disclosed.[8] Many countries set maximum annual donation amounts, with seven of the 32 countries reporting a restrictive cap of NZ$5,000, and a further four of NZ$15,000. The caps can be as low as NZ$850 (Belgium) or NZ$2,100 (Canada). Around one-third of countries (11), including New Zealand and Australia, allow unlimited donations.[9]

A further form of regulation is with reference to who is permitted to donate. Eleven countries ban donations from both corporations and trade unions, while a further four ban them only from corporations and two only from trade unions. Thirteen countries, including New Zealand, have no such restrictions. Another tool is to cap election spending limits. This is in place in 18 out of 32 countries, including New Zealand among them. Australia does not limit political party campaign spending.

Among the many funding choices, the most common method of funding is per-vote funding, although it is not uncommon for countries to combine different funding methods. Funding policies typically consider smaller parties and are structured so that larger incumbent parties are not advantaged. A common method to support smaller parties is the provision of a lump-sum payment alongside the per-vote allocation, where parties have attracted a fairly low level of votes at a previous election or are a new party.

B *The issues with political donations*

Perhaps the most well-established concern with reference to donations to political parties is the potential for these payments to result in influence. This is particularly relevant for larger donations, which have been identified as posing "a risk to democracy because they may allow the giver to obtain undue influence over the political process".[10] The risk associated with donations is captured in the suggestion that "donations open powerful doors", thereby generating access to those who have influence, even if obvious influence cannot be identified.[11]

With reference to larger donors, Australia's political parties rely on a small number of major donors. In 2020-21, 39% and 57% of the Coalition's and Labor's declared donations, respectively, came from five donors, generating the claim that "these donors can achieve significant access and influence".[12] Wood, Griffiths and Chivers also observe the small group of donors that typically contribute the bulk of political party funds or the "pay for access" fundraising events in Australia.[13] Furthermore, highly regulated industries contribute the biggest share of political donations in Australia.[14]

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[8] Ibid.
[9] Ibid.
[10] Shane Leong and James Hazelton, 'Improving Corporate Political Donations Disclosure: Lessons from Australia' (2017) 37(3) *Social and Environmental Accountability Journal* 190.
[11] Kate Griffiths and Owain Emslie, "$177 million flowed to Australian political parties last year, but major donors can easily hide" (February 2022) *The Conversation* <https://theconversation.com/177-million-flowed-to-australian-political-parties-last-year-but-major-donors-can-easily-hide-176129>.
[12] Ibid.
[13] Danielle Wood, Kate Griffiths and Carmela Chivers, *Who's in the room? Access and influence in Australian politics* (Grattan Institute, 2018).
[14] Ibid.

In NZ, there are distinct patterns with who is funding specific parties. Chapple and Anderson report that the National Party receives over half of reported business donations (55%) while Labour receives 29%.[15] Labour receives 88% of the trade union donations, but union donations have declined over the past two decades and are no longer the significant source of political funding they once were. In reporting on donations by "ideological" perspective, Chapple and Anderson show that several businesses donate across the spectrum, usually to National and Labour, but in three instances also to combinations of the Green Party, the ACT Party and the New Zealand First Party. In identifying that these donors are large businesses, operating with "a degree of monopoly in an environment where either government purchasing or regulation is an important consideration", Chapple and Anderson suggest that "[t]he purpose of cross-spectrum donors is unlikely to be ideological. Rather they more likely seek to gain access to politicians to protect some form of vested interest".[16]

Wood, Griffiths and Chivers report on access and influence in Australian politics.[17] Their 2018 study reports that Australia is vulnerable to policy capture, i.e., when special interests manage to influence policy in their favour, at the expense of the public interest. Their justification for this position is because of the resources and incentives of special interest groups, opportunities to influence facilitated by current rules, and weak checks and balances on influence in some areas.[18] As the authors observe, even if policy makers views are appropriately balanced, the perception that some interests may be impacting on policy-making is also problematic, as it undermines trust in government.

A further point is raised by Wood, Griffiths and Chivers concerning undue influence. They suggest that when a small number of large donors have an influence on policy, policy makers may end up with a narrow perspective, which excludes some groups, such as young or disadvantaged groups that may have reduced ability to organise for involvement in policy discussions.[19]

Possible reasons for donating to political parties are offered in the academic literature. For example, purchasing access to politicians through one-on-one meetings or invitations to events.[20] In 2017, the Australian Senate established a Select Committee into the Political Influence of Donations to inquire into the motivations and reasons why entities give donations to political parties and political candidates.[21] By way of explanation for the donations, several donors advised their primary motivation was to support the democratic process.[22] Others expressed a desire to engage in policy discussions as the motivation for their political donations.[23] A further explanation provided was "building and maintaining relationships with key political stakeholders".[24] This included attending business forums and

[15] Simon Chapple and Thomas Anderson, 'Who's donating? To whom? Why? Patterns of party political donations in New Zealand under MMP' (2021) 17(2) *Policy Quarterly* 14.
[16] Ibid, 18.
[17] Wood, Griffiths and Chivers (n 13).
[18] Ibid, 11.
[19] Ibid, 25.
[20] Iain McMenamin, 'Business, Politics and Money in Australia: Testing economic, political and ideological explanations' (2008) 43(3) *Australian Journal of Political Science* 377; Wood, Griffiths and Chivers (n 13).
[21] The Australian Senate, Select Committee into the Political Influence of Donations (Commonwealth of Australia, 2018).
[22] Ibid, at 3.56.
[23] Ibid, at 3.62.
[24] Ibid, at 3.67.

other party or candidate events, that provided the opportunity to "engage with Members of Parliament on matters relevant to their industry".[25] Despite this last motivation for donating, the Select Committee report notes that donors assured the committee that there was no expectation of preferential access or direct benefit.

Notwithstanding the assurances provided by donors to the Australian Select Committee, there is no shortage of academic literature or mainstream media that connects business contributions to political parties to corruption.[26] It has been observed that "donations build relationships and a sense of reciprocity. And the fact that industries in the cross-hairs of policy debate sometimes donate generously and then withdraw once the debate has moved on suggests they believe, perhaps rightly, that money matters".[27] Tham and Young write "the steep fees involved in purchasing political access also mean that ordinary citizens are not in a position to buy such access".[28] Tham and Young argue that businesses should not be permitted to donate: this should be the domain of individuals, as citizens.[29] While there is no maximum amount for business donations to political parties in either Australia or NZ, the tax concession that is available in Australia is not available to businesses.

The question of whether charitable giving is politically motivated has recently been examined in France. In France, charitable and political donations are eligible for a 66% tax credit, but only charitable donations are eligible for a 75% wealth tax credit, up to a limit of €50,000 per annum.[30] Taxpayers may choose which tax credit they apply for. Amendments to the wealth tax credit in 2017 resulted in significantly fewer households being eligible for the wealth tax credit, thereby increasing the price of charitable donations, but not political donations, for those who were claiming the wealth tax credit. As a result of the increased price to these households of charitable giving, the authors show that charitable and political donations are substitutes. The study reports that a one per cent increase in the price of charitable giving results in an increase of around 0.12% in political donations. The authors also show that an increase in the price of charitable donations does not benefit all political parties in a similar way, and mostly benefits pro-business political parties. However, the drop in charitable donations is larger for charities whose purpose is political than for those where it is not political, leading to the suggestion that there is political motivation behind charitable giving. The authors ask if donations to charities are at least partly driven by political considerations, whether it is relevant to have different tax deductions for charitable and political giving, as is the case in NZ.

We note the "cartel party thesis" could be applied to the use of the tax system to support political parties in Australia. For nearly 30 years, this theory has proposed that political parties function like cartels, using state resources to limit political competition and increase

[25] Ibid, at 3.67.
[26] Joo-Cheong Tham and Sally Young, *Political Finance in Australia: A skewed and secret system* (Democratic Audit of Australia, 2006) 32.
[27] Wood, Griffiths and Chivers (n 13) 3
[28] Tham and Young (n 26) 32.
[29] Ibid.
[30] Julia Cage and Malka Guillot, 'Is charitable giving political? New evidence from wealth and income tax returns' (June 30, 2021) < https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3881112>.

their own chances of electoral success.[31] Katz and Mair observe the blurring of the boundaries between parties and the state which, in Australia, supports the presence of political donations for parties, despite them not having charitable status, as donations typically benefit incumbent and larger parties.

III THE TAX SYSTEM AND POLITICAL PARTY FUNDING

There are several ways in which the tax system can support political donations, although we acknowledge the differing positions on whether this is a valid use of the tax system. Tax systems can provide partial subsidies under circumstances and this article examines the different approaches in the two countries. This section starts with a discussion on tax deductions and tax credits. This is followed by a discussion on other options that are used globally to illustrate the range of ways in which the tax system is used to support political parties.

A *How the tax system can support political parties.*

Tax deductions and tax credits are two common methods used to provide support for political parties. Tax deductions allow for the donor to treat the donation as an expense, which reduces taxable income. Tax credits offset income tax that is due to be paid. Table 1 provides an illustration of the difference, under two different tax rate scenarios.

Table 1: Illustration of tax deductions and tax credits

Tax Deduction			**Tax Credit at 33.33c/$**		
Tax rate	**45% tax ($)**	**20% tax ($)**	**Tax rate**	**45% tax ($)**	**20% tax ($)**
Income	10,000	10,000	Income	10,000	10,000
Donation (deduction)	1,000	1,000	Tax payable (calculated on income)	4,500	2,000
Taxable income	9,000	9,000	Donation	1,000	1,000
Tax payable (calculated on taxable income)	4,050	1,800	Tax credit	330	330
Tax – assuming no donation	4,500	2,000	Tax payable (tax - tax credit)	4,170	1,670
Tax ‘saving’	450	200	Tax ‘saving’	330	330
Cost of donation to donor	**550**	**800**	**Cost of donation to donor**	**770**	**770**

[31] Richard S Katz and Peter Mair, “Changing models of party organization and party democracy: the emergency of the cartel party” (1995) 1(1) *Party Politics* 5; Richard S Katz and Peter Mair, “The Cartel Party Thesis: A restatement” (2009) 7(4) *Perspectives on Politics* 753.

This example assumes that the whole donation is eligible for the tax credit or deduction, which may not always be the case in practice. The rate of 33.33 cents for each dollar donated is selected for the tax credit, as this is the current tax credit permitted in NZ for donations to approved charitable organisations.

The benefit to the taxpayer in both scenarios is an overall reduction in the individual's tax paid. However, under the tax deduction, tax is calculated on income after the donation has been deducted, reducing the tax payable. Whereas with the tax credit, tax is calculated on income before the donation is deducted and a tax credit must usually be applied for after the donation has been made. Therefore, there are timing and compliance advantages with a tax deduction. There is some evidence to suggest that many people do not apply for tax credits related to donations made, with nearly half of eligible tax credits unclaimed in Canada.[32]

Table 1 shows that a tax deduction provides a greater benefit to a higher income earner, that is, someone who is paying a higher marginal income tax rate. Whereas the tax benefit from a tax credit accrues equally to all donors. While it may therefore appear that a tax credit is preferable on equity grounds, some have argued that a tax credit system may reduce the financial incentive for wealthier individuals to donate, when compared to a system that involves deductions.[33] However, tax credits for political donations usually have relatively low upper thresholds, so this argument is less relevant for political donations than, say, donations to the arts.

There are several other ways that the tax system is used to support political parties. For example, in Italy, there are no direct state subsidies, but indirect assistance is provided whereby taxpayers can donate 0.2% of their income tax as a contribution to an eligible political party.[34] Indirect assistance is also provided in France, where donors receive up to 66% tax relief on donations, as donations are tax deductible.[35] In Portugal, political parties are exempt from corporate income tax and several other taxes.[36] And, in Finland donations received by political parties and candidate support groups are exempt from tax[37] while in Greece and Malta, political parties also have a tax exemption.[38]

In other situations, countries use the tax system to place constraints on political donations. For example, in Lithuania the total amount of political donations by an individual must be less than 10% of the donor's previous annual income.[39] Another example is visible in Bulgaria where donations are prohibited from persons registered in a preferential tax

[32] Harold J Jansen and Lisa Young, 'State subsidies and political parties' *Policy Options* (2011) <http://irpp.org/wp-content/uploads/assets/po/the-new-normal-majority-government/jansen.pdf>.
[33] David C Throsby and Glenn A. Withers, *The economics of the performing arts* (St Martin's Press, 1979).
[34] European Parliament, Financing of Political Structures in EU Member States: How funding is provided to national political parties, their foundations and parliamentary political groups, and how the use of funds is controlled (June 2021) <https://www.europarl.europa.eu/RegData/etudes/STUD/2021/694836/IPOL_STU(2021)694836_EN.pdf> 26.
[35] Ibid, 87.
[36] Ibid, 108.
[37] Ibid, 186.
[38] Ibid, 208 / 257.
[39] Ibid, 20.

regime.[40] In Cyprus, entities with outstanding tax obligations cannot make donations greater than €5,000 per annum.[41]

A further variation is when a direct connection is made between tax revenue and political party funding. By way of illustration, political parties receive state funding in Croatia. Total available funding is 0.075% of the previous year's tax revenue, which is equally distributed to all members of the Parliament.[42]

IV THE IMPACT OF TAX CONCESSIONS ON DONATIONS

A body of scholarly work has investigated the effect of tax concessions on charitable contributions. Note, however, that this research primarily focuses on donations to charities, rather than donations to political parties.[43] There is general agreement that tax incentives change patterns of charitable donations, with tax incentives increasing the value of donations.[44] By way of example, research on charitable giving to a private liberal arts college in the United States finds that wealthy donors who live in states that allow tax deductions for charitable donations are more generous than donors who reside in states that do not provide tax deductions.[45]

Research from South Korea shows that taxpayers are more sensitive to tax incentives in the form of a tax deduction, rather than a tax credit.[46] This is intuitive because, as noted above, a higher earner can usually gain greater benefit from a tax deduction. However, the authors also report that those who donate larger amounts are less sensitive to tax incentives. This may result from the likelihood that larger donors have higher incomes, which may mean the financial incentive of a tax incentive is not as strong as it may be for someone who is restricted to a modest donation.

A field experiment undertaken in the United States of America compared the impact of a matching contribution and a tax deduction. The study finds that matching subsidies result in larger total donations to charities than tax deductions.[47] This finding is perhaps also intuitive as a matching contribution requires little additional effort by the taxpayer, whereas a tax deduction requires, at a minimum, completion of a tax return along with a time delay in receiving the benefit.

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[40] Ibid, 76.
[41] Ibid, 80.
[42] Ibid, 77.
[43] In particular, there is little scholarly work on tax deductions for campaign finance.
[44] M Almunia, I Guceri, B Lockwood and K Scharf, 'More giving or more givers? The effects of tax incentives on charitable donations in the UK' (2020) *Journal of Public Economics* 183, 104114; T Blumkin and E Sadka, 'A case for taxing charitable donations' (2007) *Journal of Public Economics*, 91 (7-8) 1555.
[45] J Holmes, 'Prestige, charitable deductions and other determinants of alumni giving: Evidence from a highly selective liberal arts college' (2009) *Economics of Education Review* 28, 18.
[46] YoungRok Kim, 'Effects of tax benefits on the price elasticity of charitable contributions in South Korea' (2022) *Pacific Economic Review* (2022) https://doi.org/10.1111/1468-0106.12387.
[47] C C Eckel and P J Grossman, 'Subsidizing charitable contributions: a natural field experiment comparing matching and rebate subsidies' (2008) 11(3) *Experimental Economics*, 234.

Research from Canada, prior to current tax policy changes, finds that individuals are responsive to the "cost" of donating, and donations increase when the cost is reduced.[48] However, the authors also report that when marginal tax rates are reduced, individuals will contribute more to charity than the amount of the tax saving.[49] Similar findings are reported in Singapore, with research showing that the tax price of giving is an important determinant of charitable donations by individuals.[50]

Not all researchers concur that tax concessions impact on donations. For example, Fink explores patterns of donations from businesses to political parties where there are tax concessions. Fink reports that the tax treatment of donations does not explain differences in donation patterns and instead reports that differences seen are more likely to result from the motives of an organisation.[51]

V TAX EXPENDITURES

This study uses the different approaches adopted to tax expenditures by NZ and Australia to support the proposal that the different treatments follow the two countries approaches to using the tax system to change behaviour. This section provides some contextual information on tax expenditures in both countries.

Tax expenditures are foregone revenue.[52] NZ's Tax Expenditure Statement (TES) describes tax expenditures as taking the "form of an exemption, allowance, preferential tax rate, deferral or offset that reduce a tax obligation to achieve a specific policy objective".[53] The New Zealand Accounting Standards Board of the External Reporting Board provide a different definition that perhaps better captures the characteristics of a tax expenditure: "preferential provisions of the tax law that provide certain taxpayers with concessions that are not available to others".[54]

A *New Zealand*

New Zealand started regularly reporting a TES in 2010.[55] The 2010 TES was the first tax expenditure statement since 1985, and it "focused, in the first instance, on a narrow subset of

[48] R Hood, S Martin and L Osberg, 'Economic Determinants of Individual Charitable Donations in Canada' (1977) 10 *The Canadian Journal of Economics*, 653.
[49] Ibid.
[50] V Chua and C Wong, 'Tax incentives, individual characteristics and charitable giving in Singapore' (1999) 26(12) *International Journal of Social Economics* 1492.
[51] Alexander Fink, 'Donations to political parties: Investing corporations and consuming individuals?' (2017) 70.2 *Kyklos* 220.
[52] External Reporting Board, PBE IPSAS 23 Revenue from Non-Exchange Transactions, <https://www.xrb.govt.nz/standards/accounting-standards/not-for-profit-standards/standards-list/pbe-ipsas-23/>, at 74.
[53] New Zealand Treasury, *2010 Tax Expenditure Statement* (New Zealand Treasury, 2010) 1.
[54] External Reporting Board (n 52) at 7.
[55] New Zealand Treasury, *2022 Tax Expenditure Statement* (New Zealand Treasury, 2022). Prior to this time only one was previously released in 1984.

tax expenditures that bear a distinct fiscal cost and represent a clear policy-motivated exemption to current tax practice".[56] This TES was described as a "first step towards providing additional transparency around policy-motivated 'expenditures' made through the tax system".[57] The aim was to increase transparency in government financial reporting and closer align this to OECD best practice. The first document was referred to as a "preliminary list" with the caveat that it "should not be taken as exhaustive or complete list of all current tax expenditures".[58]

Unlike most OECD countries, NZ has no legal requirement to report tax expenditures, but now does so in the annual budget.[59] Moreover, compared to G20 or OECD countries, NZ has few tax expenditures, reported as 10 in 2018, compared to, for example, Latvia's 321.[60]

As tax expenditures are not intended to raise revenue, they have different objectives than those typically attached to Inland Revenue's work. Instead, they are "significantly motivated by non-revenue policy objectives".[61] NZ's TES has social expenditures, business expenditures and 'other' expenditures that are "not expressly introduced to achieve social or business economic policy objectives".[62]

Unlike most tax expenditure statements, NZ's also includes some spending in the list of tax expenditures, such as Working for Families tax credits. The TES clarifies that while they do not meet the definition of a tax expenditure, they are included for transparency purposes.[63] NZ's quantified tax expenditures are in Table 2, which shows actuals for the four periods from 2016/17 to 2019/20, and estimates for the following two years.

Table 2: Quantified tax expenditures (income tax years April – March)[64]

	Actual	**Actual**	**Actual**	**Actual**	**Estimate**	**Estimate**
	2016/17	**2017/18**	**2018/19**	**2019/20**	**2020/21**	**2021/22**
	$M	$M	$M	$M	$M	$M
Charitable / other public benefit gifts by a company (deduction)	30	46	34	32	32	32
Charitable / other public benefits (tax credit)	262	277	286	289	298	297
Independent earner tax credit	242	243	245	233	211	211
Māori Authority donations	4	4.5	4.9	4.4	5.7	5.7

[56] Ibid 1.
[57] Ibid.
[58] Ibid 2.
[59] Agustin Redonda and Tom Neubig, Assessing Tax Expenditure Reporting in G20 and OECD Economies (November 2018) <https://www.cepweb.org/assessing-tax-expenditure-reporting-in-g20-and-oecd-economies/>.
[60] Ibid, 11.
[61] New Zealand Treasury (n 55) 3.
[62] Ibid 8.
[63] Ibid 5.
[64] Ibid.

Appropriated spending through the tax system (fiscal years July-June)						
Child tax credit	0.9	0.8	0.1	0.1	0	0
Family tax credit	1,728	1,639	2,131	2,189	2,103	2,108
In-work tax credit	548	515	613	621	573	542
Parental tax credit	30	28	8	1	0	
Minimum family tax credit	13	12	14	18	13	15
Best Start payment	0	0	48	184	271	339
KiwiSaver tax credit	743	807	867	885	916	978
R&D tax credit	0	0	40	213	250	497
Interest on income equalisation reserve scheme deposits	5.1	4.6	5	6.5	6.5	7
Interest on environmental restoration account deposits	1.6	1.6	1.5	1.4	1.4	1.4
Unquantified tax expenditures (fiscal years: July-June)						
Bloodstock	0	0	0	0.2	1.9	2.7
M-bovis cull income tax adjustment	0	0	0	0	1.5	0.75
Donated trading stock (COVID-19 concession)	0	0	0	0	2	5
	3,607.6	3,578.5	4,297.5	4,677.6	4,686	5,041.55

It is possible to replicate the NZ TES in Table 2 as it is brief, unlike Australia's which runs to 188 pages.

B *Australia*[65]

In Australia the Tax Expenditure Statement is reported as a Tax Benchmarks and Variations Statement. A tax benchmark variation is when there is a difference in revenue between the actual and benchmark treatments, the benchmark treatment being the "standard taxation treatment that applies to similar taxpayers or types of activity".[66] Following the approach

[65] For a comprehensive discussion of the history of tax expenditures in Australia, refer to Kerrie Sadiq, 'The implementation of social and economic policy through the tax regime: a review of Australia's tax expenditures program' (2008) *Australian Tax Forum* 23: 339.
[66] Commonwealth of Australia, Tax Benchmarks and Variations Statement 2021 (January 2022) < https://budget.govt.nz/budget/pdfs/taxexpenditure/b22-taxexpstmt.pdf>, 1.

typically adopted in the OECD, Australia's approach is to primarily disclose revenues foregone.

In 2008, Sadiq reported that there were over 300 different tax expenditures worth in excess of A$50 billion in the 2006-07 financial year.[67] Sadiq further notes the upward trend in both the real cost and the number of tax expenditures, since the first report in 1986.[68] In the 2021 Tax Benchmarks and Variations Statement, the number remains similar at 298 tax expenditures across a broad range of expenditure types.[69] However, expenditures are now in excess of A$200 billion.[70]

Among the tax expenditures is A$5 million for deduction of expenses by election candidates.[71] This tax expenditure exists because deductions would not typically be available for expenses where there is not a nexus to an income-earning activity. However, some expenses incurred by candidates contesting elections are tax deductible.

Australia's approach does not capture all revenue implications associated with behavioural changes resulting from the tax expenditure.[72] However, estimates of the impact of revenue gain for the 10 largest tax expenditures are included in the TES. Further, not all tax benchmarks can be quantified, usually due to data limitations. In 2021/22 for example, 153 of the 298 tax benchmark variations could not be quantified. In these instances, an order of magnitude is provided instead.

C *Tax expenditures and donations*

Notwithstanding the difficulty in measuring tax expenditures, the value of tax expenditures for charitable donations in NZ and Australia are outlined in Table 3. When adjusting for population size, the Australian tax concessions are two and a half times those of NZ's.

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[67] Sadiq (n 65).
[68] Ibid.
[69] Commonwealth of Australia (n 66) 159.
[70] Ibid 16. Note that corresponding revenue gains for these large, measured benchmark variations were estimated at nearly A$69 billion.
[71] Ibid 24.
[72] Ibid 2.

Table 3: Tax expenditures for charitable purposes ($M)[73]

NZ (NZ$ million)	2017/18 Actual	2018/19 Actual	2019/20 Actual	2020/21 Estimated	2021/22 Estimated
Charitable or other public benefits gifts by a company (deduction)	46	34	32	32	32
Charitable or other public benefits (tax credit)	277	286	289	298	297
Total	**323**	**320**	**321**	**330**	**329**
Australia (A$ million)					
NFP hospitals and public ambulance services	1,550	1,650	1,600	1,750	1,850
NFP private health insurers income tax exemption	115	95	110	30	100
NFP rebate	55	60	60	50	45
Radiocommunication taxes exemptions	9	9	9	9	10
Deduction for gifts to deductible gift recipients	1,625	1,680	2,030	1,950	1,835
Deduction for gifts to private ancillary funds	385	445	240	260	260
Refund of franking credits for certain income tax exempt philanthropic entities	1,575	1,490	2,095	0	0
Total	5,314	5,429	6,144	4,049	4,100

VI AUSTRALIA

This section provides a brief outline of election funding in Australia. The focus of this section is on campaign funding for federal parties. However, we note that there are more detailed regulations and public funding provisions at the state level. It also includes discussion on the general tax treatment of donations.

A *Election funding*

[73] New Zealand Treasury (n 55); Commonwealth of Australia (n 66).

Election funding in Australia comes from three primary sources: public funding (roughly one-third), private funding – donations and other receipts, such as income from investments or payments from fundraising events (roughly one-quarter), and "unitemised" funding (around 40%).[74] Australian political parties receive higher levels of donated funds than NZ, A$177 million in 2020-21.[75] In the same period, NZ political parties received NZ$2.7 million in donations.[76] With adjustment for the different population sizes, Australia has approximately 13 times the value of political donations than NZ.

Election funding is payable to a registered political party for an endorsed candidate who receives at least four per cent of the total formal first preference votes cast in the election.[77] The amount of funding payable is calculated by multiplying A$3.125 by the number of formal first preference votes given for the candidate in the election.[78] Funding over A$11,426 is capped at the amount of actual expenditure incurred by the candidate or the registered political party endorsing the candidate.[79] Funding is also available in a Senate election to candidates who are not endorsed by a registered political party, where the person receives at least four per cent of the total number of formal preference votes case in the Senate election. The same amount of funding applies for endorsed candidates.

B *Charities*

The definition of charity is provided in the Charities Act 2013 as: a not-for-profit entity; and all the purposes of the entity are charitable purposes that are for the public benefit; or purposes that are incidental or ancillary to, or in furtherance of, this; none of the purposes are disqualifying purposes; and the entity is not an individual, a political party or a government entity.[80] Therefore, a political party is explicitly excluded from the definition of a charity. In addition, the purpose of promoting or opposing a political party or a candidate for political office is included in the definition of a disqualifying purpose.[81] However, this exclusion does not apply where the purpose is distributing information, or advancing debate, about the policies of political parties or candidates for political office, such as assessing, critiquing, comparing or ranking those policies.[82]

C *Deductible gift recipient*

74 Wood, Griffiths and Chivers (n 13).
75 Griffiths and Emslie (n 11).
76 Electoral Commission, Party Donations and Loans by Year (January 2023) <https://elections.nz/democracy-in-nz/political-parties-in-new-zealand/party-donations-and-loans-by-year/>.
77 Commonwealth Electoral Act 1918, Part SS, s 292G.
78 Australian Electoral Commission, Election Funding Rates (January 2023) <https://www.aec.gov.au/Parties_and_Representatives/public_funding/Current_Funding_Rate.htm>. This rate is for the period covering 1 January 2023 to 30 June 2023.
79 Ibid.
80 Charities Act 2013, Part 2, Div 1, s 5.
81 Charities Act 2013, Div 3, s 11.
82 Ibid.

A deductible gift recipient (DGR) is an organisation that can receive donations that are tax deductible to the donor.[83] Not all charities may have DGR status: this decision is made by the Australian Tax Office. However, from December 2021, most DGR organisations are required to be registered charities. To receive DGR endorsement, the eligibility criteria must be met or, in exceptional cases, the entity may have their name specifically identified in tax law.[84]

Tax deductions can usually only be claimed for donations to organisations that have DGR status. Political parties are not DGR's. When a DGR is a registered charity, it risks its DGR endorsement if it promotes or opposes a political party or a candidate, as this is a disqualifying purpose under the Charities Act 2013.[85] The entity's charity registration would also be at risk, along with its income tax exemption and related tax concessions.[86]

A further category of donations is a "contribution". A contribution is when a material benefit is received in return for the amount given, such as paying to attend a fundraising dinner. Similar eligibility requirements apply for a contribution, i.e., it must be made to a DGR, for an "eligible fundraising event", and also comply with any extra conditions that apply to some DGRs. Tax deductions for contributions may only be claimed by an individual taxpayer. Fundraising events held by political parties are not eligible for this concession.

There are several restrictions to natural person's claiming income tax deductions on contributions to political parties, candidates and members. First, the recipient must be one of the following:

- A political party registered under the Commonwealth Electoral Act 1918 or
- An independent member[87] of, or an independent candidate[88] for, the Commonwealth Parliament, a state Parliament, the Legislative Assembly of the Northern Territory or the Legislative Assembly of the Australian Capital Territory

The deduction is only available to individuals. Business taxpayers are not permitted to claim deductions for gifts or contributions to political parties, independent members and independent candidates.[89]

At December 2022, there were 34 registered political parties.[90] Some of the larger parties, e.g. the Australian Greens, the Australian Labor Party, the Liberal Party and the National

[83] Australian Charities and Not-for-profits Commission, Deductible Gift Recipients and the ACNC, https://www.acnc.gov.au/tools/factsheets/deductible-gift-recipients-and-acnc.
[84] Ibid.
[85] Australian Tax Office, *Australian Taxation Office Submission: Inquiry into and report on all aspects of the conduct of the 2016 Federal Election and matters related thereto* (2018) < https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Electoral_Matters/2016Election/2016_election_report>.
[86] Ibid.
[87] An independent member is not a member of a registered political party.
[88] An independent candidate is one who is not endorsed by a registered political party or under state or territory electoral legislation. It includes an endorsed candidate of an unregistered political party. Australian Tax Office, Giving to independent candidates and members, https://www.ato.gov.au/Non-profit/Gifts-and-fundraising/In-detail/Fundraising/Claiming-political-contributions-and-gifts/.
[89] Commonwealth of Australia (n 66).
[90] Australian Electoral Commission, Register of Political Parties https://www.aec.gov.au/Parties_and_Representatives/Party_Registration/Registered_parties/index.htm.

Party, have state registrations, although these are not counted separately in the count of 34 registered parties.

VII NEW ZEALAND

While regulation has limited the use of money or goods and services at election time since 1858, up until the mid-2010s election financing in NZ remained relatively light touch.[91] There were no constraints on political party funding sources or limits on donations to political parties, with disclosure only required of a donor's identity if they had donated more than NZ$10,000 in the previous year.[92]

In 2005, the government reviewed the existing arrangements for charitable giving. The effect of the changes resulted in the ability for people and companies to claim rebates and deductions for charitable donations up to the level of their annual income. The purpose of the changes was to encourage greater giving to charities and to encourage "a culture of generosity in New Zealand".[93] The forecast cost of the concession was around NZ$25 million a year in foregone revenue from 2009/10.[94] As shown in Table 3, the concession is now more than ten times this original forecast. Note that donations for political purposes did not attract any tax concessions.

In NZ, a company is allowed a deduction for a charitable or other public benefit gift made to a donee organisation.[95] The total deduction allowable in an income year is limited to the amount of the company's net income in the corresponding tax year.[96] As this section supplements the general permission in the Income Tax Act 2007, there is no need for a company to demonstrate a nexus with the income earning process. A similar provision applies for Māori authorities.[97]

A tax credit is available for charitable donations made by an individual to an organisation with donee status. To qualify for donee status, the charity must be registered with Charities Services. In addition, the donation must be to "a society, institution, association, organisation, or trust that is not carried on for the private pecuniary profit of an individual, and whose funds are applied wholly or mainly to charitable, benevolent, philanthropic, or cultural purposes within New Zealand".[98] Other entities, such as tertiary education institutes are specifically referred to in the legislation.[99]

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[91] Andrew Geddis, *Electoral Law in New Zealand: Practice and policy, 2nd edition* (LexisNexis, 2014).
[92] Ibid. Geddis writes that "in practice this disclosure regime was so riddled with loopholes as to operate on a virtually voluntary basis; any donor who wishes to keep her or his identity secret could do so easily and completely legally" (Ibid, 156).
[93] Inland Revenue, Greater tax incentives for charitable donations, https://www.taxtechnical.ird.govt.nz/en/new-legislation/act-articles/other-policy-matters/greater-tax-incentives-for-charitable-donations.
[94] New Zealand Government, Fostering a culture of charitable giving (May 2007) <https://www.beehive.govt.nz/release/fostering-culture-charitable-giving>.
[95] Income Tax Act (ITA) s DB 41(2).
[96] ITA s DB 41(3).
[97] ITA s DV 12.
[98] ITA s LD3(2)(a).
[99] ITA s LD 3(2)(bc).

The credit is 33.33 cents for every dollar donated to an approved charity.[100] Donations can be claimed up to the amount of the taxable income of the person during the tax year.[101] However, while NZ legislation does not allow for income splitting, it is possible to split donations with a spouse or partner, where donations are more than taxable income.

Tax credits may be claimed when the donation is NZ$5 or more, was made to an approved charity, did not provide any direct benefit to the donor or their family, and was not the result of a bequest in a will or by way of debt forgiveness.[102] Tax credits may be claimed by an individual. Specific exclusions include a company, a public authority, an unincorporated body and a trustee liable for income tax.[103]

In NZ, political parties cannot be a charity and therefore cannot be an approved donor for the purposes of receiving tax credits. Nor would donations to political parties qualify as a tax deduction in NZ, as the expenditure would not meet the required nexus with the income earning process.

VIII TAX AND POLITICS

There is a body of literature supporting the politicised nature of taxes both in Australia and globally.[104] Martin has written of the political influence on tax and charitable donations in Australia.[105] However, the topic is not one well canvassed in NZ. Martin suggests that the tax deductibility of donations in Australia arose in an ad hoc manner, influenced by the personal concerns and ideologies of influential politicians.[106] Martin also suggests that public opinion on charities was important, and the tax deductibility introduction was influenced by views that tax deductions would motivate donations, as well as valuing the public good of charities and a desire to encourage their activity.[107] However, there is little known about why tax deductions are provided for political parties. We acknowledge that in the two cases we examine in this study that campaigning in the Mixed Member Proportional voting system in NZ is likely to be less resource intensive than in Australia where a party contests 151 seats in the House of Representatives and eight Senate elections.

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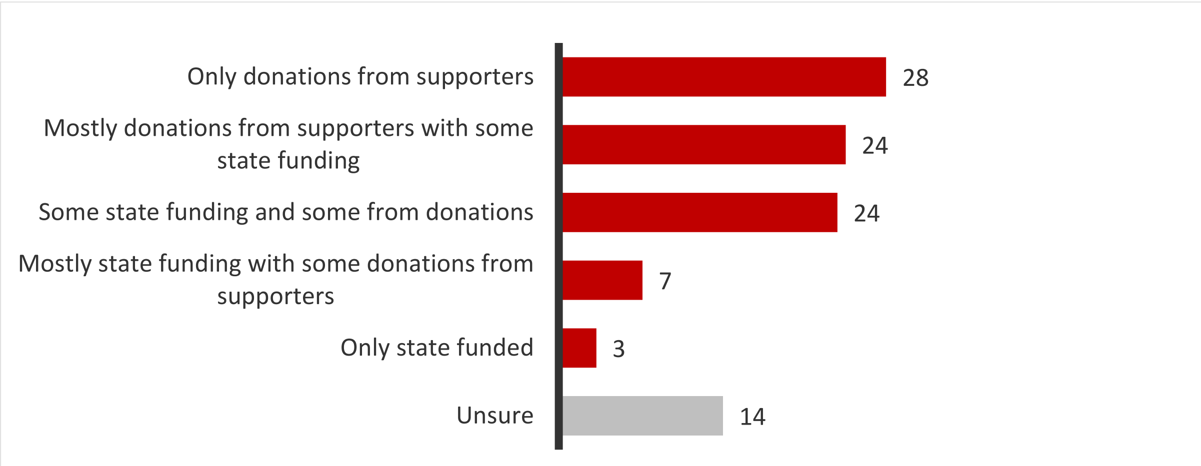
[100] ITA s LD 1(2).
[101] Tax Administration Act 1994 (TAA) s 41A(3).
[102] ITA s LD 3.
[103] ITA s LD 2.
[104] See, for example, Richard Eccleston, *Taxing Reforms: The politics of the consumption tax in Japan, the United States, Canada and Australia* (Edward Elgar Publishing, 2007); E Sainsbury, R Magnusson, A M Thow and S Colagiuri, 'Explaining resistance to regulatory interventions to prevent obesity and improve nutrition: a case-study of a sugar-sweetened beverages tax in Australia' (2020) 93 *Food Policy* 101904; Richard Eccleston, 'The tax reform agenda in Australia' (2013) 72(2) *Australian Journal of Public Administration* 103; C Alley, D Bentley and S James, 'Politics and tax reform: a comparative analysis of the implementation of a broad-based consumption tax in New Zealand, Australia and the United Kingdom' (2014) 24(1) *Revenue Law Journal* 1; S Wilson, 'Not my taxes! Explaining tax resistance and its implications for Australia's welfare state' (2006) 41(4) *Australian Journal of Political Science* 517.
[105] Fiona Martin, 'Tax deductibility of philanthropic donations: Reform of the specific listing provisions in Australia' 2018 33 *Australian Tax Forum* 533.
[106] Fiona Martin, 'The socio-political and legal history of the tax deduction for donations to charities in Australia and how the public benevolent institution developed' (2017) 38(1) *Adelaide Law Review* 195.
[107] Ibid.

In NZ the justification for exclusion of political activity from inclusion as a charity was established in submissions to a recent review of the Charities Act 2005. These submissions generally concurred that charitable organisations should not undertake partisan political activities, or advocate for a purpose that is outside their stated charitable purpose.[108]

Survey data from NZ, as replicated in Figure 1, shows support for state funding. The response with the largest support (28%) was that political parties should only get funding from supporters. However, 58% indicated at least some support for state funding.

Figure 1: What is the right balance for where political parties should get their money?[109]



Australia's approach to allowing small tax concessions for political donations is aligned with its approach to tax expenditures. The 298 tax expenditure items cover a broad range of activities with quantification of the estimate where possible. In contrast, NZ has few tax expenditures and no tax concessions for political donations. However, when it comes to political donations and tax concessions, as Australia provides state funding for political parties, it might be expected that a tax concession is not also needed. In contrast, it might be expected that NZ would use the tax system to encourage political donations, due to the relative absence of state support.

There are several other policies that can be highlighted to support NZ's lack of appetite for using the tax system to influence behaviour, in contrast to that of Australia. These include retirement savings, where the 2021 Australian TES documents: A$2.6 billion in concessional taxation of capital gains for superannuation funds; A$20.5 billion in concessional taxation of employer superannuation contributions; A$1.4 billion in concessional taxation of personal superannuation contributions; A$22.6 billion in concessional taxation of superannuation entity earnings; A$660 million in concessional taxation of unfunded superannuation; and A$160 million in superannuation measures for low-income earners.[110] By way of contrast,

[108] Department of Internal Affairs, Modernising the Charities Act 2005: Summary of submissions (December 2019) <https://www.dia.govt.nz/diawebsite.nsf/Files/Modernising-the-Charities-Act-2005-Summary-of-submissions/$file/Modernising-the-Charities-Act-2005-Summary-of-submissions.pdf>.
[109] Rashbrooke and Marriott (n 7).
[110] Commonwealth of Australia (n 66).

NZ's TES discloses NZ$978 million in KiwiSaver tax credits. Adjusted for population size, Australia's tax concessions for retirement savings are approximately nine times that of NZ's.

While the difference in dollar values is significant, equally significant is what is included in the TES. The broad range of activity outlined in the Australian TES, together with attempts to quantify most of these activities, shows a greater tendency to use the tax system for purposes other than revenue generation. The fact that NZ does not have a legal obligation to report a TES and has only done so for just over 10 years, compared to Australia's 37-year history, is indicative of the ways in which the tax system is used to influence behaviour.

Many of the Australian tax expenditures are intended to change behaviours or, in some cases, facilitate behaviours that are generally considered pro-social, such as working. As well as the concessions for retirement saving mentioned in the previous paragraph, there are various concessions related to childcare, to facilitate parents returning to work; or an exemption of payments made under the First Home-Owner Grant scheme, to facilitate purchase of an owner-occupied home. The Australian TES also includes non-expenditures, such as where taxes are increased to aim to change behaviour. One example is the luxury car tax, which is included in the TES, as certain vehicles are subject to a luxury car tax of 33%.

There are some well-established advantages from allowing tax credits or deductions for political donations, such as the potential to encourage small donations and diversification of the funding base.[111] While the tax advantage is gained by the taxpayer, rather than the political party,[112] to the extent that new donations arise from the presence of the tax benefit, there is a gain to the political party.

Many of the concerns with reference to private donations to political parties arise due to the potential for greater access to decision-makings by donors or actual influence on policy. However, research tends to show that access or influence may result from large donations, whereas there is no research to suggest that small donations achieve the same result.[113]

However, there are also several issues, including that the ability to donate to political parties is typically those who have higher disposable incomes. Therefore, this potentially leads to a lack of representation among those who are donating. Where donations are small, this is less problematic. It is when they become larger that the potential for policy influence arises.[114] Therefore, a large number of small donors is preferable to a small number of large donors. The provision of a tax deduction for a political donation can assist with greater political engagement. Membership of political parties has been declining in NZ[115] and in Australia.[116]

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[111] Tham (n 2) 138.
[112] Ibid.
[113] James Gluck and Michael Macaulay, 'Trading in influence: a research agenda for New Zealand?' (2017) 13(2) *Policy Quarterly* 49.
[114] Kate Griffiths and Iris Chan, 'Big money was spent on the 2022 election – but the party with the deepest pockets didn't win' (February 2023) *The Conversation.*
[115] Simon Chapple, C P Duran and Kate Prickett, *Political donations, party funding and trust in New Zealand: 2016 to 2021* (2021) Institute for Governance and Policy Studies working paper 21/14, 5
[116] Anne Davies, 'Party hardly: why Australia's big political parties are struggling to compete with grassroots campaigns' *The Guardian,* 12 December 2020 <https://www.theguardian.com/australia-news/2020/dec/13/party-hardly-why-australias-big-political-parties-are-struggling-to-compete-with-grassroots-campaigns>.

Reducing the "cost" of a political donation has the potential to broaden the donor base and thereby potentially increase participation in political issues.

One of the aims of a tax deduction is to encourage donations to approved organisations. However, the extent to which the presence of a tax concession elicits greater donations than would otherwise exist, is not clear. However, Canada can be used as an example of a natural experiment. In 2004, the upper limit of the 75% political contribution tax credit doubled from C$200 to C$400, along with other upward adjustments to the scale of credit for donations above the C$400 value.[117] This resulted in "a huge increase in funding available to parties, despite their reduced capacity to attract large contributions from unions, corporations or individuals".[118] Therefore, there appears to be at least some potential for increased support for political parties from individuals where a tax incentive is provided.

IX CONCLUSION

NZ provides minimal state funding for political parties and there are no deliberate tax concessions, in contrast to Australia. However, political parties need funds to develop policies and to communicate these to the public, not only in an election year. The involvement of "big money" in politics has historically in NZ led to suggestions of political corruption.[119] However, encouraging small donations to political parties can be facilitated through the tax system. To the extent that robust policy development, and the ability for political parties to communicate these policies to potential voters, is valued, NZ may wish to review the way it supports political parties.

[117] Antony M Sayers and Lisa Young, Election Campaign and Party Financing in Canada (January 2004) <https://www.researchgate.net/profile/Anthony-Sayers/publication/228457739_Election_Campaign_and_Party_Financing_in_Canada/links/53d7d7f80cf2e38c632de558/Election-Campaign-and-Party-Financing-in-Canada.pdf>.
[118] Ibid.
[119] Rashbrooke and Marriott (n 7).