

# NONPROFIT LAW IN IRELAND



Current as of February 2020

This section describes the legal framework governing nonprofit organizations (also known as non-governmental organizations or NGOs) in Ireland, and includes translations of legislative provisions relevant for a foundation or advisor undertaking an equivalency determination of a foreign grantee under IRS Revenue Procedure 17-53.

These reports have been prepared by the [International Center for Not-for-Profit Law](#) (ICNL). Please direct corrections and comments to [Lily Liu](#).

We include hyperlinks to the following information, to the extent available:

- Longer country reports analyzing various aspects of local legislation; and
- Texts of local laws that affect the decision whether or not to qualify a grantee (generally in translation, although ICNL and the Council cannot warrant the accuracy of any translation; in addition, legislative excerpts were selected by in-country contacts, and ICNL and the Council cannot warrant that all relevant provisions have been translated).

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## I. SUMMARY

### A. TYPES OF ORGANIZATIONS

Ireland recognizes many different types of not-for-profit organizations (NPOs). While the customary division between mutual benefit and public benefit organizations applies, the range of NPO types includes cooperatives, religious organizations, trade unions, residents' associations, foundations, and self-help groups.

Most public benefit organizations are established as one of the following legal forms:

- An unincorporated association;
- A trust; or
- A company limited by guarantee (CLG).

An organization in any of these forms, in turn, can qualify for charitable tax exemption if it meets particular requirements.

In addition, the Companies Act 2014 created an additional form, the Designated Activity Company (DAC), which NPOs may choose to adopt. However, it remains to be seen how many organizations will do so. The DAC is briefly discussed alongside CLGs, below. Two other NPO forms are beyond the scope of this Note because they rarely interact with U.S. grantmakers: friendly societies and industrial and provident societies. The majority of these societies pursue mutual benefit objectives, although a few do pursue public benefit objectives and qualify for charitable tax exemption.

## **B. TAX LAWS**

The Irish charitable tax exemption extends to income tax, corporation tax (in the case of companies), capital gains tax, Deposit Interest Retention Tax (DIRT), capital acquisitions tax, stamp duty, and dividend withholding tax. Although charities themselves are not exempt from VAT, many items that relate to charitable activities are exempt.

Corporate donations of cash and/or designated securities to certain “eligible charities” qualify for tax relief in Ireland, which may be relevant to an American corporation doing business in Ireland in deciding whether or not to engage in direct corporate grantmaking. The relevant tax provisions are contained in Section 848A of the Taxes Consolidation Act 1997, as amended by Section 45 of the Finance Act 2001, Section 17 of the Finance Act 2006, and Section 19 of the Finance Act 2013.

## **II. APPLICABLE LAWS**

- [Constitution of Ireland, Bunreacht na hÉireann 1937](#)
- [Charities Acts 1961](#)
- [Charities Acts 1973](#)
- [Charities Act 2009 \[1\]](#)
- [Companies Act 2014 \[2\]](#)
- [Trustee Act 1893](#)
- [Friendly Societies Act 1875](#)
- [Friendly Societies Act 1896 \(as amended\)](#)
- [Friendly Societies \(Amendment\) Act 1953](#)
- [Friendly Societies \(Amendment\) Act 1977](#)
- [Industrial and Provident Society Acts 1893-1978](#)
- [The Taxes Consolidation Act 1997 \(as amended\)](#)
- [Finance Act 2010](#)
- [VAT Act 1972 \(as amended\)](#)
- [Equal Status Act 2000](#)
- [Equality Act 2004](#)

## **III. RELEVANT LEGAL FORMS**

### **A. UNINCORPORATED ASSOCIATIONS**

Unincorporated associations are popular in part because they are relatively easy to form. An unincorporated association is a membership-based organization, created by the oral or written agreement of its members. Its governing instrument, usually termed its constitution or rules, is normally interpreted according to contract law. The association does not ordinarily have legal personality and thus cannot enter into legal relations in its own right. Members are jointly and severally liable for the association's debts.

## **B. TRUSTS**

In a trust, one or more persons operating under the authority of a "deed of trust" hold funds or property on behalf of other persons. The governing instrument is a trust deed or will, and executive power rests with the trustees appointed under the terms of the trust.

Like an unincorporated association, a trust ordinarily has no legal personality; the trustees themselves must enter into legal relations and accept personal liability. Under Section 2 of the Charities Act 1973, however, a qualifying trust may become a body corporate, with the property vested in that body. To seek such a conversion, the trustees apply to the Charities Regulatory Authority (CRA). A body corporate established in this manner has a common seal and power to do any act or thing (including hold land) necessary to administer the trust as a charity. Moreover, the charity may sue or be sued in its corporate name.

## **C. CORPORATIONS LIMITED BY GUARANTEE**

A company limited by guarantee (CLG) is an alternative type of corporation, used primarily for non-profit organizations that require legal personality. It does not have share capital; its members are guarantors instead of shareholders. The guarantors commit to contribute a nominal amount (typically €1) toward winding up the company in the event of a shortfall upon cessation of business. A CLG cannot distribute profits to its members, and it is eligible to apply for charitable tax exemption. The governing instruments of a CLG consist of its memorandum and its articles of association.

With the advent of the Companies Act 2014, a new legal form similar to that of the CLG is now available to charities: the Designated Activity Company (DAC). Unlike a CLG, a DAC is a company with share capital that can be limited by guarantee. However, both DACs and CLGs are required to include the company's objects (purposes) in their memorandum of association, and for both, their activities are partially limited to these objects and reasonably incidental activities (Companies Act 2014 Sections 967, 972, 973 (DACs); Sections 1176, 1182, 1183 (CLGs)). While charities now have the option to form as DACs, or convert to DACs from CLGs, it is expected that many will continue to operate as CLGs, as it may not suit charities to have a share capital which allows ownership to be transferred. If charities do adopt the DAC structure, they might place restrictions on the transfer of shares in their memorandum and articles.

## IV. PUBLIC BENEFIT STATUS

NPOs in Ireland are not required to be established for the public benefit. Most NPOs, in fact, are established for the benefit of their members, including sporting and recreation clubs, professional bodies, political parties, trade unions, cooperatives, and credit unions. An NPO must be established for the public benefit, however, to be eligible for charitable status. All NPO forms discussed here—unincorporated associations, trusts, companies limited by guarantee, and designated activity companies—are eligible for charitable status if formed for a purpose that serves the public benefit.

The [Charities Act 2009](#) establishes a new statutory governance regime for charities operating in Ireland and a new regulatory authority—the Charities Regulatory Authority (CRA)—to supervise the running of charities. The Act has a number of important features that affect a) the definition of charity in Ireland; b) the meaning of public benefit; and c) the determination of tax liability.

### A. THE DEFINITION OF “CHARITABLE PURPOSE” IN IRELAND

The Charities Act 2009 provided the first statutory guidance as to what constitutes a “charitable purpose” in Ireland. According to the Act, the following purposes shall be considered to be charitable:

- a. The prevention or relief of poverty or economic hardship;
- b. The advancement of education;
- c. The advancement of religion; and
- d. Any other purpose that is of benefit to the community.

(Charities Act 2009 Section 3(1))

The final category, “any other purpose that is of benefit to the community,” is broken down into 12 sub-categories:

- The advancement of community welfare, including the relief of those in need by reason of youth, age, ill-health, or disability;
- The advancement of community development, including rural or urban regeneration;
- The promotion of civic responsibility or voluntary work;
- The promotion of health, including the prevention or relief of sickness, disease, or human suffering;
- The advancement of conflict resolution or reconciliation;
- The promotion of religious or racial harmony and harmonious community relations;

- The protection of the natural environment;
- The advancement of environmental sustainability;
- The advancement of the efficient and effective use of the property of charitable organizations;
- The prevention or relief of suffering of animals;
- The advancement of the arts, culture, heritage, or sciences; and
- The integration of those who are disadvantaged, and the promotion of their full participation in society ([Charities Act 2009 Section 3\(11\)](#)).

Section 3 of the Charities Act 2009 was drafted in consultation with the Revenue Commissioners and includes only those purposes for which the Revenue Commissioners currently grant charitable tax-exempt status. In light of this policy approach, the government excluded from the statutory definition the following purposes: the advancement of human rights, and the advancement of amateur sport.

## **B. THE MEANING OF PUBLIC BENEFIT**

To qualify as charitable, a purpose must appear on the list of purposes in Section 3 of the Charities Act and must also be of public benefit ([Charities Act 2009 Section 3\(2\)](#)). The Charities Act 2009 provides some guidance as to what constitutes “public benefit” under Irish law. The Act also defines a gift of “public benefit” by considering both the “public” nature of and the “benefit” provided by that gift. From the “public” perspective, a gift does not qualify as charitable unless (a) it is intended to benefit the public or a section of the public; and (b) in a case where it confers a benefit on a person other than in his or her capacity as a member of the public or a section of the public, any such benefit is reasonable in all of the circumstances, and is ancillary to, and necessary for, the furtherance of the public benefit ([Charities Act 2009 Section 3\(3\)](#)). The “public” requirement is not met if all of the intended beneficiaries of the gift or a significant number of them have a personal connection with the donor of the gift (Charities Act 2009 Section 3(8)).

From the “benefit” perspective, account is taken of (a) any limitation imposed by the donor of the gift on the class of persons who may benefit from the gift and whether or not such limitation is justified and reasonable, having regard to the nature of the purpose of the gift; and (b) the amount of any charge payable for any service provided in furtherance of the purpose for which the gift is given and whether it is likely to limit the number of persons or classes of person who will benefit from the gift ([Charities Act 2009 Section 3\(7\)](#)). The only exception to the public benefit requirement relates to gifts for the advancement of religion. Such gifts enjoy a rebuttable presumption of public benefit ([Charities Act 2009 Section 3\(4\)](#)).

## **C. THE DETERMINATION OF TAX LIABILITY**

The Charities Act 2009 decouples the determination of “charitable status” from the determination of “charitable tax-exempt status.” The CRA is responsible for deciding whether a body qualifies as a “charity” under the 2009 Act and is therefore eligible to be registered in the Register of Charities. The Revenue Commissioners determine whether a charity qualifies for charitable tax-exempt status. To this end, the Charities Act 2009 preserves the Revenue Commissioners’ autonomy in applying tax law ([Section 7](#)). In particular, Section 7(2) provides that the Revenue Commissioners, in the performance of any function under the Tax Acts, shall not be bound by a determination of the CRA as to whether a purpose is of public benefit.

Conceivably, it would be possible for the CRA to decide that an organization is a “charity” under the Charities Act and for the Revenue Commissioners to refuse to grant that body charitable tax-exempt status, or *vice versa*. However, the Charities Act provides that the CRA may enter into memoranda of understanding with other relevant regulators to ensure, as far as practicable, consistency between decisions made or measures taken by the CRA and relevant regulators (Section 33(1)(c)). [3] The CRA and the Revenue Commissioners published a list of their common requirements for charitable organizations in June 2016. [\[4\]](#)

In examining an application for tax exemption, the practice of the Revenue Commissioners has been to consider the objects and the actual activities of the applicant, and how they comport with charity case law.

An organization seeking charitable tax exemption must also have a constitution or other governing instrument that includes particular provisions (detailed in Section VI).

When granting an application for charitable status, the Revenue Commissioners assign the organization a “CHY reference number,” which indicates that it is eligible for charitable tax exemption. This number is separate from the charity registration number issued by the CRA.

## **V. SPECIFIC QUESTIONS REGARDING LOCAL LAW**

### **A. INUREMENT**

Under Irish law, NPOs are not generally subject to any restrictions on inurement. Situations may arise, however, where inurement presents problems, most notably upon dissolution of certain kinds of organizations (*see Section C*).

Section 2 of the Charities Act defines a charitable organization as one that: (a) promotes a charitable purpose only; (b) under its constitution is required to apply its real and personal property in furtherance of its charitable purpose except for monies expended in the maintenance and operation of the body and, in the case of a religious organization or community, on accommodation and care of members of the organization or community; and (c) prohibits remuneration of members of the body other than in accordance with the Charities Act. Under the Charities Act, charity trustees and persons with whom a charity

trustee of the charitable organization has a personal connection are permitted, subject to the provisions of Section 89 of the Charities Act 2009 (which has not yet come into force), to receive remuneration from the charity for work undertaken that is unrelated to their trusteeship.

## **B. PROPRIETARY INTEREST**

*Charities:* For an NPO to receive tax exemption as a charity, the Revenue Commissioners require a clause providing that all income and property of the organization are to be applied solely toward its charitable main objects. In addition, according to the Revenue Commissioners, donations should generally be at arm's-length and with no strings attached. Although the donor may provide advice, the use of the donation is subject only to the charity's governing instrument. Finally, donors cannot receive benefits other than such nominal or incidental ones, such as newsletters, in exchange for donations. Examples of prohibited benefits include free tickets and preferential rights of entry to prestigious events.

*Other NPOs:* Founders may retain a proprietary interest in assets transferred to a non-charitable organization. Specifically, the founders are entitled to reacquire their contributed assets upon the NPO's dissolution.

## **C. DISSOLUTION**

*Charities:* Upon the winding up or dissolution of a charity, any remaining property must not be paid to or distributed among the members of the body. Instead, under the doctrine of *cy près*, as applied either by the CRA or upon application to the High Court, such property must be transferred to another charitable institution or institutions whose main objectives are similar to those of the dissolving body, or, failing that, to some other charitable body. From a tax law perspective, the Revenue Commissioners require a clause to this effect in the charity's governing instrument and sight of the final accounts of the dissolved charity to ensure its implementation. [5]

*Other NPOs:* Upon its dissolution, a non-charitable organization's remaining assets will be distributed according to the governing instrument.

## **D. ACTIVITIES**

### **1. GENERAL ACTIVITIES**

A charity can be established only for a charitable purpose, and its activities must advance that purpose (Charities Act 2009 Section 2(1)). Subject to Section 2(1) of the Charities Act, a charity cannot engage in certain commercial or political activities. As discussed below, these sorts of restrictions are generally limited to charities and do not apply to other NPO forms. Additionally, all charities must be registered with the [CRA](#) in order to carry out activities. It is



a crime for a charitable organization to carry out certain activities in the state if it is not registered (Charities Act 2009 Section 41).

The CRA is in the process of further developing the regulatory framework for charities in Ireland:

- In 2016, the CRA engaged in public consultation on draft accounting and reporting regulations for charities and guidelines for charitable fundraising. The draft accounting and reporting regulations, however, have not yet been adopted.
- In September 2017, the CRA issued new fundraising guidelines for charitable organizations.
- In November 2018, the CRA published its Charities Governance Code. The Code explains the minimum standards for charity trustees to effectively manage and control their charity. The CRA deemed 2019 as a year of learning and preparation for charities to comply with the new Code. Charities will be expected to comply with the Code in 2020, and report on their compliance in their annual reports in 2021.

## 2. ECONOMIC ACTIVITIES

*Charities:* Irish tax law allows a charity to conduct certain economic activities, or "trading," with profits exempt from tax under a "trading exemption." The Revenue Commissioners define trading as "generally involving the sale of goods or services to customers with a view to generating a profit." To qualify for a trading exemption, a body established only for charitable purposes must apply the income derived from its trading solely to advancing those purposes.

In addition, the organization ordinarily must satisfy one of the following two conditions:

(a) The trade must occur in the course of carrying out a primary purpose of the charity (Taxes Consolidation Act 1997 Section 208(2)(b)(i)). Examples include the following:

- An art gallery or museum holding an exhibition and charging an admission fee;
- A school providing an educational service for a fee;
- A theatre selling tickets to its productions; and
- A hospital providing health care services for a fee.

Economic activities that would not otherwise qualify may nonetheless fall under the trading exemption if they are ancillary to pursuing the charity's primary purpose. Examples include a theatre selling food and drink to its patrons, or a hospital selling papers, flowers, and toiletries to patients and visitors. The Revenue Commissioners make determinations on a case-by-case basis in these circumstances.

(b) The work in connection with the trade must be carried on mainly by beneficiaries of the charity (Taxes Consolidation Act 1997 Section 208(2)(b)(ii)). Many charities engage in activities where the charity's beneficiaries carry out work. The work usually has an

educational or remedial purpose and thus often falls under category (a). However, even if the work does not advance the charity's primary purpose, it can still qualify for tax exemption. In order to obtain this form of exemption, the organization must prove that the greater part of its trade is undertaken by the beneficiaries, particularly where non-beneficiaries (such as employees or volunteers) also participate. With regard to commercial activities generally, a charity must apply to the Revenue Commissioners for specific exemption, and each application is considered on a case-by-case basis.

*Other NPOs:* The economic activities of non-charitable organizations are not restricted.

### **3. FUNDRAISING ACTIVITIES**

The 2017 [Guidelines for Charitable Organizations on Fundraising from the Public](#) cover the duties of a charity's trustees, management, and fundraisers towards donors and charitable donations. The Charities Regulator monitors how trustees apply these guidelines within their specific charity.

## **E. POLITICAL ACTIVITIES**

*Charities:* A charity can never be formed for the primary purpose of promoting a political cause. The Charities Act 2009 specifically excludes such bodies (along with political parties or bodies promoting a political party) from charitable status. However, a charity may promote a political cause when the promotion of that cause directly relates to the advancement of its charitable purposes (Charities Act 2009 Section 2(1)). In February 2018, the CRA issued further guidance in a publication titled "Guidance on Charities and the Promotion of Political Causes."

*Other NPOs:* Other NPOs may freely engage in political and legislative activities subject to electoral law and broadcasting law restrictions.

## **F. RACIAL DISCRIMINATION**

Section 7 of the Equal Status Act 2000 prohibits universities and other educational establishments, whether or not supported by public funds, from discriminating on the basis of race. In addition, the Equality Act 2004 transposes into Irish law the European Commission's Race Directive (Directive 2000/43/EC), which outlaws racial discrimination in the provision of goods and services generally, though it does allow asylum seekers to be treated differently in the provision of public services, including education.

## **G. CONTROL OF ORGANIZATION**

Irish charities may be established by natural or legal persons, both domestic and foreign. Therefore, it is possible that an Irish NPO may be controlled by a for-profit entity or by an American grantor charity (which requires that the charity specifically so provide in the affidavit).

Ireland has traditionally welcomed UK NPOs that have opted to establish branches within the jurisdiction. There are many such NPOs, particularly in the area of health and social care service provision. As a nation sharing a land boundary with an adjoining UK jurisdiction, Ireland has become accustomed to dealing with practical issues relating to cross-border NPO activity, such as fundraising. Furthermore, as a full member of the European Union, Ireland is obliged to facilitate the freedom of movement of NPOs and their capital between member states. This is reflected in Section 39 of the Charities Act 2009, which facilitates the registration of charities established in other European Economic Area (EEA) jurisdictions.

## VI. TAX LAWS

### A. TAX EXEMPTION

The Charities Act 2009 differentiates between the granting of charitable status per se (which falls within the remit of the Charities Regulatory Authority) and the granting of charitable tax exemption (which remains the decision solely of the Revenue Commissioners) (Charities Act 2009 [Section 7](#)). As noted above, the Revenue Commissioners are not bound by the CRA's decisions regarding whether a body has demonstrated sufficient public benefit ([Charities Act 2009 Section 7](#)).

The Revenue Commissioners may also grant tax exemptions equivalent to charitable tax exemptions to human rights organizations that have consultative status with either the United Nations or the Council of Europe, and (a) have as their sole or main object the promotion of observance of the Universal Declaration of Human Rights, or the implementation of the European Convention for the Protection of Human Rights and Fundamental Freedoms, or both; and (b) are precluded by their rules or constitution from the direct or indirect payment or transfer, other than for valuable and sufficient consideration, to any of their members of any of their income or property by means of dividend, gift, division, bonus or otherwise by means of profit ([Taxes Consolidation Act 1997 Section 209](#)).

A body with charitable tax exemption will have a charity reference number (i.e., a "CHY" number) issued by the Revenue Commissioners. Under Sections [207](#) and [208](#) of the Taxes Consolidation Act 1997, the income of charitable bodies or trusts established for charitable purposes is exempt from income tax, subject to a number of conditions.

The Revenue Commissioners do not normally consider the following activities charitable:

- Lobbying for the reform of law or political activities;
- An organization whose main object is to benefit the members rather than a section of the community;
- Provision of social and recreational activities;

- An organization set up solely to fundraise; and
- Illegal activities.

In addition, an applicant for tax exemption must satisfy the following conditions:

- It is legally established in Ireland;
- Its center of management and control is in Ireland;
- The majority of its directors are Irish residents;
- It has a permanent establishment and some operations within Ireland;
- Its objects and powers are so framed that every object to which its income or property can be applied is charitable; and
- Its main objects and the application of its income or property are bound by a governing instrument, such as a memorandum and articles of association, a deed of trust, or a constitution.

If a charity is not established in Ireland but is established in an EEA or European Free Trade Association (EFTA) state, it can now seek a determination from the Revenue Commissioners to the effect that, if the body were to have income in Ireland of a kind referred to in Section 207 or 208 of the Taxes Consolidation Act 1997, it would qualify for the exemptions provided by those sections (Finance Act 2010 Section 24 (inserting Section 208A and 208B to the 1997 Act)). To qualify, the body must:

- Be legally established in an EEA or EFTA state and have its center of management and control therein. There should be a minimum of three directors/officers/trustees, the majority of whom must be residents within the EEA or EFTA state, and the organization must have a permanent establishment and some operations therein; and
- Ensure that its objects and powers are so framed that every object to which its income or property can be applied is charitable; and
- Be bound, as to its main object(s) and the application of its income or property, by a governing instrument (See [Revenue Guidance](#) DCHY 1 of April 2015).

If a non-resident charity receives a notice of determination (“DCHY”) from the Revenue Commissioners, a number of conditions attach to its award. The charity must:

- Remain tax compliant;
- Maintain, where applicable, charitable status with the [Charity Regulatory Authority \(CRA\)](#) and be compliant with the Charities Act 2009;
- Use the charity’s income for charitable purposes only;
- Keep proper financial records and accounts at all times, available for inspection by the Revenue Commissioners on request;

- Submit a copy of the first year's financial accounts to the [Charities Section](#) within 18 months of the exemption being granted;
- Have the accounts audited in accordance with the Charities Act 2009 if the annual income is over €100,000;
- Notify the Revenue Commissioners in writing of any change to the charity's address;
- Request permission from the Revenue Commissioners if it intends to accumulate funds for a period in excess of two years (the request should include the reason why).

Failure to maintain these conditions could result in the withdrawal of the exemption. NPOs with charitable tax exemption are exempt from paying income tax on interest, annuities, dividends and shares, rents on property, and profits from trade (subject to the limitations noted above) or land owned and occupied. The tax exemption applies only to funds, or the proportion of funds, used exclusively for charitable purposes (Taxes Consolidation Act 1997 Section 207(1)(b)(iii)) (spending funds for non-charitable purposes may endanger a charity's tax-exempt status). "Charitable purposes" encompass the normal expenses of running a charity, including proper remuneration of employees ([Charities Act 2009 Section 2\(b\)\(2\)](#)). If funds are to be accumulated for more than two years, then the charity must obtain prior permission from the Revenue Commissioners.

The Revenue Commissioners conduct reviews to ensure that a recognized charity continues to satisfy the conditions for exemption. Within eighteen months of the date the exemption was granted, a copy of the charity's financial accounts for the first year and a report on its activities must be submitted to the Revenue Commissioners. Financial statements normally include a Statement of Income and Expenditure as well as a Statement of Assets and Liabilities. Accounts must be audited if the annual income exceeds €100,000 (See CHY 1, April 2015). In addition to the initial eighteen-month review, the Revenue Commissioners may conduct periodic reviews thereafter. If they conclude that an organization has not complied with its own governing documents or with the Commissioners' requirements, the Commissioners can withdraw its tax exemption – retroactively, if necessary.

## **B. DEDUCTIBILITY OF DONATIONS TO IRISH NPOS BY INDIVIDUALS AND CORPORATIONS BASED IN IRELAND**

Tax relief is available for donations to "approved bodies," including "eligible charities" and various educational and other named organizations ([Taxes Consolidation Act 1997 Section 848\(a\), Schedule 26A, Part 1 \(added by Finance Act 2001 Section 45\)](#)).

An "eligible charity" is not simply an organization with charitable tax exemption. Rather, an eligible charity must hold "authorization" from the Revenue Commissioners, which requires, among other things, at least two years of tax-exempt status. Authorizations are valid for up to five years, and, upon expiration, may be renewed ([Taxes Consolidation Act 1997 Section 848A, Schedule 26A, Part 3 \(amended by Finance Act 2001 Section 45\)](#)).

To be eligible for a deduction, the minimum donation to a designated charity or other approved body is €250 per year ([Taxes Consolidation Act 1997 Section 848\(1\)\(a\)\(6\)\(e\)](#), [Schedule 26 \(amended by Finance Act 2001 Section 45\(3\)\)](#)). Donations made in installments also qualify.

There are some limits on the amounts that can be donated for tax relief purposes in a given tax year. First, the aggregate of donations to an approved body or bodies in any tax year from 2013 onwards cannot, for tax relief purposes, exceed €1,000,000. Second, if the donor is associated with the charity or approved body to which the donation is made, tax relief is limited to 10 percent of the individual's total income during the year of assessment. A donor is "associated" with an eligible charity if he/she is an employee or member of either that charity at the time of donation or of another approved body that is associated with the charity.

A donation must also satisfy the following conditions in order to be deductible. It must:

- be in the form of money;
- not be repayable;
- not confer any direct or indirect benefit on the donor or any person connected with the donor; and
- not be conditional on, or associated with, or part of an arrangement involving the acquisition of property by the approved body from the donor or any person connected with the donor.

In the case of corporate donations, the company claims a deduction for the donation as if it were a trading expense ([Taxes Consolidation Act 1997 Section 848A\(4\)\(a\) \(amended by Finance Act 2001 Section 45\(1\)\)](#)). In the case of an individual taxpayer – whether his/her taxes are paid through payroll or are self-assessed – the relief will be given on a "grossed-up" basis at a blended rate of 31 percent to the eligible charity or approved body, as the case may be, rather than by way of a separate claim to tax relief by the donor (Taxes Consolidation Act 1997 Section 848A(7-9) (amended by Finance Act 2001 Section 45(1)) and Finance Act 2013 Section 19).

## **C. VALUE ADDED TAX**

Organizations granted charitable tax exemption do not enjoy a comparable general exemption from Value Added Tax (VAT). Charities are not generally regarded as supplying goods or services in the course or furtherance of a business, so they are neither obliged nor entitled to register and account for VAT on their income. They are therefore not entitled to a repayment of VAT incurred on purchases, other than in certain circumstances. Charities carrying on a trade, such as selling publications or operating a restaurant, however, are obliged to register for VAT with respect to those trading activities if they exceed the

threshold for registration, currently €37,500 for the supply of services or €75,000 for the sale of goods.

Specific items exempt from VAT may relate to charitable activities: a) the purchase and adaptation of vehicles for use by organizations to transport severely and permanently disabled persons; b) the purchase of radio broadcasting reception apparatus intended for use by blind persons; c) the purchase of appliances for use by disabled persons; d) the purchase of sea rescue craft and equipment; e) goods purchased for exportation by philanthropic organizations for humanitarian, charitable, or teaching activities abroad; and f) donated research equipment and donated medical equipment.

Charities are also entitled to a refund of a proportion of their VAT costs, under a VAT Compensation Refund Scheme introduced by the Minister for Finance in the 2018 budget. This scheme aims to compensate charities for the VAT that they incur in the course of their charitable activities. The fund for 2019 was capped at €5 million.

A charity's refund is based on the amount of non-public funding that the organization receives. For example, where 30 percent of a charity's gross income is comprised of funding from State/EU/international organizations and 70 percent from privately sourced income including fundraising, subscriptions, and donations, the charity may claim 70 percent of their VAT input costs for the year. VAT incurred on private non-charity-related expenses, subject to an existing VAT refund order, or that is otherwise deductible is not eligible for relief under the Refund Scheme. Qualifying charities must be registered with the Charities Regulator, have tax clearance, and provide a set of audited accounts for the year in which the claim is being submitted.

Further information can be found in the [Revenue Commissioners' information leaflet on VAT](#).

## **D. DOUBLE TAX TREATY**

A double taxation treaty exists between Ireland and the United States. When such a treaty is in existence, dividends, interest, and royalties arising in one country and paid in another are subject to tax only in the country where paid.

## **VII. KNOWLEDGEABLE CONTACTS**

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## **FOOTNOTES**

[1] The Charities Act 2009 entered into force on October 16, 2014, with the exception of Section 89 and Sections 93-98, which as of February 2020 have yet to be commenced. Part 4 (relating to statutory investigations) was commenced on September 5, 2016. The Act established the Charities Regulatory Authority (CRA), which in turn established the [Register of Charities](#). All existing, tax-exempt charities maintain their registered status under the Act but must supply additional information to the CRA. All other charities were due to register with the CRA before April 16, 2015. Due to delays in such charities' response, the Minister for Justice extended the deadline for registration until April 16, 2016.

[2] Company law has undergone considerable reform in Ireland. A new Companies Act 2014, consolidating into a single piece of legislation 16 existing Companies Acts and numerous statutory instruments, entered into force on June 1, 2015. The Act provides charities with two legal forms: the company limited by guarantee (CLG) (Part 18); and a new entity, the designated activity company (or DAC) (Part 16).

[3] The Charities Act 2009 (Section 33) Order 2017 lists the Revenue Commissioners as a relevant regulator for the purposes of such memoranda of understanding. In March 2016, the CRA and Revenue Commissioners agreed to an MOU outlining each agency's role as well as their relationship to each other. This MOU has not been published.

[4] [Charities Regulator and Revenue Commissioners' common requirements for charitable organizations](#)

[5] The Charities Regulatory Authority [issued new guidance](#) on winding up a charity in 2019.