

Polish NGOs Join Forces to Save and Extend Tax Benefits for Giving

Overview

Led by the Polish Donors Forum and the Stefan Batory Foundation, an EFC Member, over 1,000 Polish NGOs have joined forces and convinced the Polish government to withdraw a proposal to abolish tax incentives for corporate donors who give to public benefit organisations (PBOs) and certain religious institutions. Currently, corporate income taxpayers are entitled to deduct donations for charitable purposes up to 10% from their pre-tax income.

At the initiative of the Forum and the Batory Foundation, more than 1,000 NGOs signed an open letter to the Prime Minister and Parliament protesting the proposal. The protest action was supported by the Polish Confederation of Private Employers (Lewiatan), the Confederation of Polish Employers, and the Polish Bishops' Conference. The proposal had been sent to the Sejm, the parliament's lower house, without prior public consultation. On September 6, following intervention by a Batory representative on behalf of the Forum and the protest letter signatories, the 37 members of the Sejm's Commission on Public Finance, from both governing and opposition parties, voted unanimously to accept an amended government proposal not only retaining current deductions but extending them to cover donations to PBOs in other European Union states. If the amendment is passed by the Sejm and Senate and signed into law, Poland will be only the second EU country after the Netherlands to allow tax deductions for donations to foreign PBOs.

The open letter cited statistics from 2003 indicating that 39% of Polish NGOs receive donations from legal persons, with such donations accounting for over 10% of all NGO revenues. It called on the government to learn from the experience of other EU countries, most of whom provide tax deductions for corporate donations to PBOs, some even granting 100% deductions (UK, Ireland, Luxembourg); the Czech Republic additionally grants VAT exemptions for SMS giving, while Slovakia allows firms to allocate 2% of their taxes to PBOs instead of granting tax deductions. Indeed, the government's original proposal was contrary to the general trend of increasing tax breaks for giving to charities and foundations everywhere in Europe.

In response to the Polish government's argument that abolition of deductions would bring an extra 11 million euros into the state treasury annually, the letter noted that abolishing deductions could paradoxically force the government to increase its expenditures for social purposes. Polish corporate donors currently give over 60 million euros annually for a wide range of charitable goals.

However, the government's main rationale for its original proposal was that the current tax treatment of donations violates both EU law and the European Economic Area (EEA) Agreement with regard to freedom of establishment and free movement of persons and capital because tax deductions to donors are allowed only for donations to domestic PBOs. On April 4 this year, the European Commission sent a letter to this effect to the Polish government.

According to the Commission's letter, present Polish income tax legislation with respect to tax deductibility of corporate donations is in violation of Articles 12, 17, 18, 43, 48 and 56 of the European Community Treaty. Articles 12, 17 and 18 provide for free movement of persons and prohibit discrimination on the basis of nationality (hence applicable to citizens of other Member States living in Poland who wish to donate to PBOs in their home countries). Articles 43 and 48 guarantee freedom of establishment, while Article 56 guarantees free movement of capital. The

Commission also noted that the legislation violates Articles 31, 40 and 41 of the EEA Agreement. (The EEA comprises all EU states plus Norway, Iceland and Lichtenstein).

The Commission's action follows its request to Belgium in 2002 to change its legislation on gift and inheritance tax, as it discriminated against donations and legacies to entities in other Member States. While the regions of Flanders and Brussels amended their legislation to conform to the Commission's request, Wallonia still maintained certain restrictions. As a result, the European Commission referred Wallonia to the European Court of Justice (ECJ). In July 2006, the Commission also formally requested the United Kingdom to end discrimination against foreign charities. The UK only allows tax relief for gifts to charities established in the UK.

This year the Netherlands amended its legislation and now allows donations to qualifying foreign charitable organisations to be tax deductible for the donor. However, the legislation has not yet taken effect as criteria for defining a "qualifying foreign charitable organisation" have not yet been established.

Action Points

The Polish Donors Forum will monitor the progress of the amendment in the Sejm and the Senate. While the legislative process could last several months, the Forum expects the amendment to be approved and signed into law by the president of Poland.

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For further information on EU developments, EFC members are invited to contact the EFC secretariat at eu@efc.be