

## EFC COUNTRY PROFILE JANUARY 2011: IRELAND

Drafted by Philanthropy Ireland

### I. Legal framework for foundations

- **Does the jurisdiction have a basic legal definition of a foundation (Description where applicable)? What different legal types of foundation exist (autonomous, non-autonomous without legal personality, civil law, public law, church law, corporate foundations, enterprise foundations)?**

There is no one legal form for foundations in Ireland, and the form that any particular foundation can take is not prescribed in law. They are most likely to be companies limited by guarantee (without share capital) or trusts.

All the information in this document hence applies to all charities, not specifically foundations.

Charitable status does not yet exist in Ireland, but it is on the way (see below).

However, foundations can obtain a 'charity number' from the tax authorities (the Revenue Commissioners) entitling them to tax relief provided they come within the ambit of the law on charity. As in England and Wales, there is no definition of charity but rather four categories based on the purpose of the organisation: The advancement of religion, the advancement of education, the relief of poverty, and 'other purposes' beneficial to the community.

The definition currently used is derived from the Pemsel Case in 1891 based on English jurisprudence, and the Irish Income Tax Act 1967. The latter defines a charity as a body 'established for charitable purposes only'. The Pemsel Case is more helpful as it offers four categories of activities (as listed above), which constitute charitable work.

While the new charities legislation (the Charities Act 2009, hereafter referred to as "the Act") was enacted in February 2009 it has not yet been fully commenced, so the legal definition is not yet in force. In any case the new legal definition is based on the Pemsel Categories.

Only three provisions from the Act have been commenced to date and the remainder are unlikely to be commenced until the new Charities Regulatory Authority (CRA) is in place. It is anticipated that this will be before the end of 2011.

More details available at the Department of Community, Rural and Gaeltacht Affairs website ([www.pobail.ie](http://www.pobail.ie)) or from Philanthropy Ireland ([www.philanthropyireland.ie](http://www.philanthropyireland.ie))

- **What purposes can foundations pursue?**

Public benefit, as defined above.

- **What are the requirements for the setting up of a foundation (procedure, registration, approval)? What application documents are required? Are there any other specific criteria for registration?**

The foundation must draw up their governing document (memorandum and articles of association for a limited company, trust deed for a charitable trust). If a charity number is required for tax purposes, they must register with the Revenue Commissioners.

This still remains the position until the full Act is commenced.

- **Is State approval required? (approval by a State Supervisory Authority with/without discretion? Registration with a state authority or court? Notarisation by a Notary public? )**

No, but see previous question).

- **Do foundations have to register? If yes, in what register?**

Foundations that have charitable tax relief exempt status will be listed by the Revenue Commissioners. This is the only list in existence at present. There will be a register of charities under the Act but this has not yet been commenced.

If foundations are registered, what information is kept at the register?

The Revenue List indicates the name and legal address of the charitable foundation along with its charity tax registration number.

If foundations are registered, is the register publicly available?

The Revenue List, the most recent version of which is July 2008, is available online on the Revenue Commissioners website ([www.revenue.ie](http://www.revenue.ie)).

- **Is a minimum capital required?**

No

- **What governance requirements are set out in the law?**

Is it mandatory to have a supervisory board?

Revenue commissioners require at least three trustees/directors for a charity to be given a charity number, and a majority must reside within the state.

What are the requirements concerning board members? Is a minimum/maximum number of board members specified? What are the rules concerning appointment of board members? And their resignation/removal?

Standard company and trust law applies here with no further restrictions for charities.

What are the duties and what are the rights of board members, as specified by national legislation?

When Act is commenced this information will be specified therein

What are the rights of founders? Can fundamental decisions, such as change of purpose, be made at the discretion of the founder? What are the legal requirements in such circumstances?

In order to maintain charity tax exemption any changes to the charitable purpose have to have prior approval from the Revenue Commissioners. When the act is commenced any changes will have to have approval of the Charities regulatory Authority.

What are the rights of beneficiaries (e.g. right of information)?

Under the new Act charities will have to report annually on both activities and finance. The reports will be made available to the public electronically.

What rules are in place to ensure against conflict of interest? What is the legal definition of a conflict of interest under your legislation? How is self-dealing prohibited?

Trust law applies.

Can staff (director and/or officers) participate in decision making? How and to what extent?

Informally, there is nothing to prevent this. Ultimately, it is the Charity's trustees that are responsible for the decision making.

➤ **Who can represent a foundation towards third parties? Is this specified in law or is it up to the statutes of the organisation?**

This is dictated by the statutes of an organisation. The board of the foundation has collective responsibility in law for the administration of the foundation. The statutes of the foundation may permit the board to delegate responsibility for individual tasks to third parties, but the board will retain legal responsibility for the supervision of that third party's activities.

Do the director and officers have powers of representation?

See above.

➤ **Liability of the foundation and its organs**

What is the general standard of diligence for board members? Does your country differentiate between voluntary (unpaid) and paid board members?

If a foundation is established as a trust, trust law will govern the general standard of care. Board members of a charitable foundation in Ireland cannot be paid, so there is no difference of standard based on remuneration. Company law covers the standard of diligence for directors. The new Act sets out further details on this matter.

Is there a "business judgment rule", giving a board member a "safe harbour", if she/he (1) acts on an informed basis; (2) acts in good faith, (3) acts in the best interests of the corporation, (4) does not act out of self-interest (duty of loyalty concept plays a role here), and (5) is not wasteful?

No. It was intended that statutory provisions of this nature would be introduced in the new Charities Bill, but the drafters deleted these sections from the general scheme of Bill. Section 90 of the Act has been commenced.

The purpose of this Order is to grant powers in any proceedings to the courts to grant relief to charity trustees from personal liability for breach of trust, where the opinion of the court is that, while the trustee may be liable for the breach, he or she acted in good faith and ought to be excused. In such circumstances, the court may then grant relief in whole or in part under the provisions of section 90 of the Act.

What is the liability the directors and officers?

It depends on the legal structure of the organisation concerned.

Can the founder modify the standard of diligence for board members in the foundation's statutes?

Yes, but any modifications to the foundation's statutes will require prior approval from the Revenue Commissioners. And when Act is fully commenced they will need to get approval from the CRA. Section 91 of the Charities Act 2009, once commenced, will allow a charitable foundation to purchase insurance to indemnify board members against personal liabilities where they have acted in good faith and in the performance of their functions as charity trustees.

Can board members be held **civilly** and/or **criminally** liable in the following cases?

	Yes	Probably yes <sup>1</sup>	Unclear	Probably no	No
The foundation distributes money for a purpose which is a public benefit purpose but not accepted in the foundation's statutes.		X (a)			
The foundation loses its status of a tax benefit foundation (because one requirement in tax law was not fulfilled).		X			
The foundation loses money because a board member has acquired some stocks in a company which unexpectedly went bankrupt.			X		
The foundation sells immovable property to the spouse of a board member. The board member was unaware that the price was too low.		X (b)			
The foundation sells immovable property to a third person. The board member was unaware that the price was too low.			X		

➤ **Are economic activities allowed (related/unrelated)?**

Trading activities are allowed, as long as they are in support of the charitable purposes.

<sup>1</sup> (a) Civil liability would follow for breach of trust but there is no case law available to confirm the extent of liability; (b) Civil liability would most likely be incurred under trust law on the basis of conflict of interest arising from the sale and the strict liability of the board member in dealing with trust property. Again, there is an absence of case law in this area.

➤ **Are there any rules/limitations regarding foundations' asset management?**

No

➤ **Are foundations legally allowed to allocate grant funds towards furthering their public benefit purpose/programmes which (can) also generate income? (recoverable grants; low interest loans; equities)**

Yes, see the question about economic activities.

➤ **What are the requirements for an amendment of statutes/amendment of foundations purpose?**

Amendments to the governing document must be approved by the Revenue Commissioners. When Act is commenced approval by the CRA will also be required.

➤ **What are requirements with regard to reporting, accountability, auditing?**

At present audited accounts must be provided to the Revenue Commissioners if a charity's income is over €100,000.

Under the new Act annual returns and annual activity reports are to be made by charities to the new Authority.

Audited accounts will be required for income above a prescribed threshold of up to a maximum of €500,000 Examination of accounts will be required for income below the prescribed threshold – less onerous and less expensive for smaller charities. Charities with total income/expenditure of less than €10,000 in a given year will not be required to submit audited or examined accounts but will have to include a summary of their finances in their annual activity report. The Act provides that the regulations can vary the level and detail of information to be required from different classes of charities e.g. smaller charities. This information will be publicly available, except in the case of private foundations, where no funding is raised from the public: These will have to make the returns to the Regulator but the information will not be required to be made public.

In the case of charities structured as companies that already make annual returns to the Companies Registration Office (CRO) under company law, the CRO will send these returns to the new CRA to avoid dual reporting.

All charities regardless of legal structure will be required to submit an annual activity report to the CRA.

Reporting requirements: Do annual reports and/or accounts of foundations need to be made publicly available?

Not at present. However, accounts and reports will need to be made public under the new Act.

What type(s) of report must be submitted (annual report including details of finances and activities, public benefit report, tax report/tax return, other reports e.g. on 1% schemes)?

None at present. Under the Act both a financial and an activity report will have to be submitted to the CRA.

Who checks (supervisory/tax authorities)?

The revenue checks at the moment, but the CRA will check on an annual basis when the new Act is implemented.

Where is the required information publicised

This is yet to be decided, but provision has been made in the Act for electronic disclosure.

What are the legal requirements concerning external audit? Is external audit required by law for all foundations?

This currently depends on the legal structure of the foundation. If the foundation is incorporated then it must comply with company law in this regard. The new Charities Act, when commenced, will determine the legal requirements regarding external audit.

By whom should audits be undertaken? Do requirements/guidelines exist regarding international and national auditing agencies and standards?

n/a

➤ **Supervision (which authority – what measures / sanctions?)**

The Revenue Commissioners currently have the power to remove charitable tax exemption. The proposed Charities Regulatory Authority (CRA), to be established under the new Charities Act, has yet to be set up. When established, the CRA is intended to be a public independent body with the power to supervise, inspect and investigate public benefit organisations. Boards of directors will require the CRA's approval before entering into certain agreements with charity trustees or connected persons. The ultimate sanction given to the CRA is the power to remove a charity from the Register (s.43). Exercise of this power in many instances requires the prior approval of the High Court. The CRA may impose intermediate sanctions falling short of removal from the Register and without recourse to the High Court under s.73 Charities Act 2009. Neither of these provisions is yet in force at the time of writing.

Does the supervisory authority comprise of a public administrative body, a public independent body, a combination of a governmental body and a court, or a public body and an independent body?

The CRA will be a public independent body.

What is the extent of the supervision? Does the body review reports and make inquiries? Are public benefit organisations subject to inspection?

See above.

Is approval from the authority required for certain decisions of the Board of Directors?

Yes, see above.

Is it mandatory to have a state supervisory official on the board?

No

What enforcement measures are in place (including compliance measures and sanctions for non-compliance) concerning registrations, governance, reporting, and public benefit status?

See above.

➤ **When and how does a foundation dissolve?**

Charities must inform the Revenue Commissioners of the following:

- The date the organisation ceases to exist officially
- Final set of accounts of the organisation
- Confirmation of how any residual funds, at the time of dissolution, were distributed

➤ **Under what conditions does the civil law in your country recognise a foreign foundation?**

At present they are not recognised. The Charities Act will require that every charitable organisation that intends to operate or carry out activities in Ireland must register with the charities regulator, even if they are headquartered outside of Ireland.

➤ **Does the civil law in your country allow a foundation to conduct (some or all) activities (grant-making, operating, asset administration, fundraising) abroad? Is there any limitation?**

Yes. Foundations may carry out activities or have offices abroad, but must be approved for charitable tax exemption by the Revenue Commissioners in Ireland.

## **II. Tax treatment of the foundation**

➤ **What are the requirements to receive tax exemptions (pursuing public benefit purposes, non-distribution constraint, being resident in the country?)**

Charities must be judged to have charitable purposes, and conform to the restrictions listed in section I of this profile. Tax exemption for donors and for the foundation only applies two years after a charity number is issued.

➤ **What are reporting/proof requirements to claim tax exemptions?**

n/a

➤ **Is specific reporting required for the use of state funds?**

n/a

➤ **Is there an obligation to report on donors and beneficiaries?**

n/a

➤ **Are there specific accounting rules for foundations?**

The Act makes provision in relation to the keeping of proper books of accounts, as well as the provision of annual statements of accounts, by charitable organisations that are not companies and in relation to the audit, or examination, of such accounts.

In recognition of the fact that many charitable organisations are small with limited resources, both financial and otherwise, a key principle of the Act is to provide for regulation in a proportionate manner. There are varying reporting and audit requirements depending on whether a charity's income or expenditure is above or below a level to be prescribed by the Minister, that level not to be more than €500,000. The Act provides that the Companies Acts will continue to apply to charities that are registered as companies insofar as accounting requirements are concerned. The Act minimises the potential for dual filing by charitable organisations that are incorporated, in that the same documentation will not have to be filed separately with both the CRO and the Authority. The CRO will pass on financial information it receives under the companies acts to the new Authority.

The Act also provides that all charitable organisations will be required to make annual reports on their charitable activities to the Authority (CRA). These reports will be accessible to the public, except those in respect of private trusts that are not funded by donations from the public. The Department of Community, Rural and Gaeltacht Affairs will be consulting with the sector in relation to the annual reports.

➤ **Is there a statutory definition in the civil law (foundation law, trust law) of your country what a public benefit purpose (charitable purpose) is? If yes, please give us the definition.**

The Charities Act 2009 provides a definition of charitable purpose and guidance on the nature of public benefit in s. 3 of the Act. This section has yet to be commenced. Section 3 provides:

“(1) For the purposes of this Act each of the following shall, subject to subsection (2), be a charitable purpose:

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

(2) A purpose shall not be a charitable purpose unless it is of public benefit.

(3) Subject to subsection (4), a gift shall not be of public benefit 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

(4) It shall be presumed, unless the contrary is proved, that a gift for the advancement of religion is of public benefit.

(5) The Authority shall not make a determination that a gift for the advancement of religion is not of public benefit without the consent of the Attorney General.

(6) A charitable gift for the purpose of the advancement of religion shall have effect, and the terms upon which it is given shall be construed, in accordance with the laws, canons, ordinances and tenets of the religion concerned.

(7) In determining whether a gift is of public benefit or not, account shall be 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
- (8) A limitation referred to in subsection (7) shall not be justified and reasonable 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.
- (9) There shall be no appeal to the Tribunal from a determination of the Authority to which subsection (5) applies.
- (10) For the purposes of this section, a gift is not a gift for the advancement of religion if it is made to or for the benefit of an organisation or cult:
- (a) The principal object of which is the making of profit, or
  - (b) That employs oppressive psychological manipulation
    - (i) Of its followers, or
    - (ii) For the purpose of gaining new followers
- (11) In this section “purpose that is of benefit to the community” includes:
- (a) The advancement of community welfare including the relief of those in need by Reason of youth, age, ill-health, or disability
  - (b) The advancement of community development, including rural or urban regeneration
  - (c) The promotion of civic responsibility or voluntary work
  - (d) The promotion of health, including the prevention or relief of sickness, disease or human suffering
  - (e) The advancement of conflict resolution or reconciliation
  - (f) The promotion of religious or racial harmony and harmonious community relations
  - (g) The protection of the natural environment
  - (h) The advancement of environmental sustainability
  - (i) The advancement of the efficient and effective use of the property of charitable organisations
  - (j) The prevention or relief of suffering of animals
  - (k) The advancement of the arts, culture, heritage or sciences, and
  - (l) The integration of those who are disadvantaged and the promotion of their full participation, in society”

➤ **Is there a statutory definition in the tax law of your country of what a public benefit purpose is? If yes, please give us the definition.**

The Taxes Consolidation Act 1997 does not define public benefit purpose. Rather s.207 states that ‘charity’ means any body of persons or trust established for charitable purposes only.” To this end, the Revenue Commissioners apply the common law in deciding whether an organisation is eligible for charitable tax-exempt status. To so benefit, an organisation must provide sufficient “public benefit” and its purposes must come within one of four broad categories considered to be ‘charitable’ for the purpose of taxation:

- Relief of poverty
- Education
- Religious activities
- Other purposes beneficial to the community

➤ **Support of “the public at large”**

Do the activities of a tax-exempt foundation generally have to benefit “the public at large”?

Yes. To be charitable the activity must result in sufficient public benefit. The Revenue Commissioners will consider the quantum of benefit to the public at large, the existence of any private benefit, and the size of the group to benefit in determining this matter. The new

Charities Act 2009 further elaborates on matters to be considered in deciding the public benefit question.

If yes, can a tax-exempt foundation support a small number of disadvantaged/ underprivileged individuals?

Under the new Act, in determining whether a gift is of public benefit or not, account shall be taken of 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 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.

Examples: Do the following purposes promote the public at large?

Once the Revenue has granted charitable tax exemption, a foundation could support activities benefiting certain groups as described below.

	Yes	Probably yes	Unclear	Probably no	No
For benefit of the inhabitants of a city with 1,000,000 inhabitants	X				
For benefit of the inhabitants of a village with 10,000 inhabitants	X				
For benefit of the employees of a company					X
For benefit of the members of a family				X	
For benefit of the students of a university	X				
Award for the best student of a university	X				

➤ **Non-Distribution Constraint**

Does a **tax-exempt** foundation generally have to follow a “non-distribution constraint” which forbids any financial support of the foundation board, staff, etc?

No

What happens with the foundation’s assets in case of dissolution?

In the event of dissolution, a foundation’s assets are given or transferred to some other charitable institution or institutions having similar purposes or goals as those of the foundation under the *cy præs* doctrine. The institution in receipt of these assets must use the assets to help it achieve its purposes and goals as set out in its own governing document. *Cy præs* schemes are drawn up by a statutory body, the Commissioners of Charitable Donations and Bequests. The new charities legislation will dissolve this body and its powers, including the power to draft *cy præs* schemes will be transferred to the new Charities Regulatory Authority (CRA). The High Court enjoys original jurisdiction to give directions on the design or implementation of any *cy præs* scheme.

➤ **“Altruistic” Element**

Is remuneration of board members allowed in **civil law** and in **tax law**? If remuneration is allowed, are there any limits in **civil law** and/or in **tax law**?

Remuneration of Board members is not allowed for organisations seeking charitable tax exemption. They are allowed to be reimbursed for out-of-pocket expenses. The same applies under the new Charities Act 2009.

Does **tax law** allow a donor/funder to receive some type of benefit in return for a donation? (e.g. postcards, free tickets for a concert)

No. A donation must not confer any benefit on the donor or any person connected with the donor if it is to qualify for tax relief.

Is there a maximum amount that can be spent on office/administration costs in **civil law** and in **tax law**? If yes, how are “administration costs” defined?

‘Administration costs’ are not defined at present and no maximum is in place. The Revenue Commissioners do review the expenditure of organisations to ensure that their activities are charitable as per the definition above. The same applies under the new Charities Act, with no maximum amount stipulated.

**Hybrid Structures (elements of private benefit in public benefit foundations)**

Does the **civil law** of your country accept the following provisions/activities of a public benefit foundation?

	Yes	Probably yes	Unclear	Probably no	No
The founder restricts the use of the endowment by specifying that the foundation is required to maintain the founder, his spouse and descendants.					X
The founder retains a beneficial reversionary interest in the capital of a property or other asset for his own continuing use.					X
The gift is of only the <i>freehold reversion</i> (residuary interest) in a residence that is subject to an existing lease (for a term of years, or even for life) in favor of the founder (or another member of her/his family) as tenant.					X
A foundation distributes a (small) part of its income to the founder or his family.					X

Does the **tax law** of your country accept the following provisions/activities of a tax-exempt foundation?

	Yes	Probably yes	Unclear	Probably no	No
The founder restricts the use of the endowment by specifying that the foundation is required to maintain the founder, his spouse and descendants.					X
The founder retains a beneficial <i>reversionary</i> interest in the capital of a property or other asset to retain for its own continuing use.					X
The gift is of only the <i>freehold reversion</i>					X

(residuary interest) in a residence that is subject to an existing lease (for a term of years, or even for life) in favor of the founder (or another member of her/his family) as tenant.					
A foundation distributes a (small) part of its income to the founder or his family.					X

Are there any other examples from your country (in **civil law** and/or **tax law**) regarding such “hybrid structures” (e.g. law provisions, court decisions, etc.)?

Yes, in common law. Re Lavelle [1914] IR 194, showing that the founder of a charity or a benefactor may lawfully associate his descendants with his bequest to a charitable institution and thus enable them to participate in his liberality. The public benefit requirement in the Charities Act 2009 also makes a narrow exception in s.3 in so far as it allows a gift to be of public benefit notwithstanding that it confers a benefit on a person other than in his capacity as a member of the public provided that such benefit is reasonable in all the circumstances, and is ancillary to and necessary for the furtherance of the public benefit.

➤ **Distributions and Timely Disbursement**

Are foundations allowed to spend down their capital?

Yes

Are they allowed to be set up for a limited period of time only?

Yes

Does the **civil law** and/or the **tax law** of your country require a foundation to spend its income (or a certain amount of the income) within a certain period of time, e.g. within the next financial year?

There is not currently a set amount or percentage of income that must be spent each year. An organisation is, however, required to use its income for the charitable purposes as outlined in its governing document. Failure to pursue the charitable purpose set out in the governing document would result in a foundation losing charitable tax exemption.

If a foundation wishes to accumulate capital for more than 2 years, the foundation must first obtain permission from the Revenue Commissioners. This will remain the same under the new Charities Act 2009.

Does the **civil law** and/or the **tax law** of your country require a foundation to spend a percentage of its overall assets in the form of a “payout rule”?

Not at present.

Example: Does the **civil law** of your country accept the following activities of a public benefit foundation?

	Yes	Probably yes	Unclear	Probably no	No
A foundation accumulates its income for 5 years, only in the 6 <sup>th</sup> year are there distributions for the public benefit purpose of the foundation.			X		

Example: Does the **tax law** of your country accept the following activities of a public benefit foundation?

	Yes	Probably yes	Unclear	Probably no	No
A foundation accumulates its income for 5 years, only in the 6 <sup>th</sup> year are there distributions for the public benefit purpose of the foundation.				X	

Much would depend on the facts of the case but a five year accumulation period would probably be considered excessive without a good reason to support it.

Are there any examples or cases from your country (in **civil law** and/or **tax law**) regarding the question of “timely disbursement” (e.g. law provisions, court decisions, etc.)?

We are aware that this is possible on a case-by-case basis at Revenue’s discretion and with its permission.

➤ **Does activity abroad put the tax-exempt status at risk?**

No

➤ **Income tax treatment**

Grants and donations

Exempt

Investment income (asset administration)

Exempt

Economic activities (related/unrelated)

Economic activities are allowed and exempt as long as they are in support of charitable purposes.

Major shareholding – considered as economic activity and taxed accordingly?

Exempt, as long as they are in support of charitable purposes.

Income deriving from grant expenditure towards public benefit purpose/programme activities (such as loans, guarantees, equities)?

Exempt

➤ **Capital gains tax, where separate from income tax**

Exempt

➤ **Withholding tax on foreign investment income?**

If the selling of shares is liable for capital gains tax or income tax, then they will be exempt from these taxes.

➤ **Gift- and inheritance tax**

Exempt

➤ **Value added tax (VAT)**

Not exempt.

➤ **Capital taxes on value of assets, where applicable?**

n/a

➤ **Taxes on the transfer of assets?**

Exempt

➤ **Other taxes, where applicable (Real property tax)**

There is no property tax in Ireland.

➤ **Can a foreign foundation get the same tax benefits as a national foundation according to the wording of the tax law in your country? If yes, under what conditions?**

This was changed under Finance Act 2010. Charities based in European Economic Area /European Free Trade Association countries can apply for tax exemption. A two year waiting period applies before a charity can access the donations relief scheme (s 848A).

➤ **What is the tax treatment (inheritance and gift tax) of legacies to non-resident public benefit foundations?**

Non resident public benefit foundations situated in either the EEA or EFTA can apply to the Irish Revenue Commissioners for a determination under the provisions of section 23 of the Finance Act 2010 (sections 208a and 208b Taxes Consolidation Act 1997) to the effect that if such a body were to have income in the State it will be eligible for tax reliefs available currently to domestic resident charities. In practice, an alternative solution may be for the donor to obtain relief by making the gift to an Irish intermediary charity, which then makes a matching grant to the foreign foundation.

- **Are there current discussions about the question of whether cross-border activities of foundations or other non-profit organisations are protected by the fundamental freedoms of the EC Treaty? Especially: Are the consequences of the Stauffer decision of the European Court of Justice and/or the current infringement procedures of the European Commission discussed by legal scholars or by practitioners? (e.g. publications in law journals) / Have there been any resulting changes to your country's legislation, or are changes being discussed?**

Yes, the effects of the Stauffer and Hein Persche judgments can be seen both in civil law and in tax law. Under the provisions of s.39(5) of the Charities Act, non-resident charities with principal places of business in EEA states are treated more favourably than other non-resident charities under the registration provisions of the Act. In tax law, s.23 of the Finance Act 2010 takes account of Stauffer and Hein Persche and amends Irish tax law to allow a qualifying non-resident EEA charity to seek a determination entitling it to the same tax relief as a domestic resident charity. The consequences of the European Court's decisions have been discussed in an Irish context (see Breen, EU Regulation of Charitable Organizations: The Politics of Legally Enabling Civil Society, (2008) 10(3) *International Journal of Not-for-Profit Law* 50; see also Breen, Ford and Morgan, Cross-Border Issues in the Regulation of Charities: Experiences from the UK and Ireland, (2009) 11(3) *International Journal of Not-for-Profit Law* 5)

### **III. Tax treatment of donors**

- **System of tax credit or tax deduction?**

If a donor is 'taxed at source' (also known as PAYE: 'pay as you earn'), the charity claims the tax back. If a donor is self-assessed for tax, the donor claims the tax back.

- **Tax treatment of individual donors**

What types of donations (cash, shares, securities, real-estate, in-kind-donations)

Cash and publicly-quoted shares can be donated.

Limit of tax incentive

Minimum donation of €250 . The total tax relief claimed (includes charitable donations as well as other tax incentive schemes for business) may not be over 50% of gross income. However, any excess over the 50% cap can be carried forward.

Donations to non-resident public benefit foundations

Donations must be to charities with an Irish Charity number. EEA based organisations are eligible to apply for a charity number under the same conditions as a domestic organisation.

- **Tax treatment of corporate donors**

What types of donations (cash, shares, securities, real-estate, in-kind-donations)

Corporate donations to approved bodies must be of at least €250. The company can deduct the donated amount as if it were a trading expense. Cash and publically quoted shares can be donated tax effectively.

Donations to non-resident public benefit foundations

Donations must be to charities with an Irish Charity Number.

➤ **Tax treatment of donations to non-resident public-benefit foundations**

If they are EEA based and have had a charity number for at least two years, they will be treated the same as domestic charity.

➤ **Other frameworks such as percentage law systems**

None

➤ **What are reporting/proof requirements to claim tax benefits?**

For the PAYE donor, tax relief is calculated by “grossing-up” the donation at the donor’s marginal rate of tax to determine the tax associated with the donation. The charity or approved body then reclaims the “grossed-up” amount of tax associated with the donation directly from the Revenue Commissioners. Thus the PAYE taxpayer makes the donation and the charity or approved body gets a payment directly from the Revenue Commissioners representing the tax relief. In order for the charity or approved body to reclaim the “grossed-up” amount of tax associated with any donation, the individual PAYE donor must complete an “Appropriate Certificate” and forward it to the charity or approved body. The information provided is then forwarded by the charity or approved body to the Revenue Commissioners in order for the claim to be validated and the repayment made.

➤ **Self-assessed individuals (The taxpayer benefits from the scheme of relief)**

Charities do not claim tax relief under the “grossing-up” arrangement discussed above, but rather individual donors claim the relief themselves as a deduction from taxable income in their annual tax return. This method also applies to individuals who pay tax under both the PAYE tax system and under the self-assessment system (i.e. who have PAYE income but file a self-assessed income tax return), regardless of the relative size of PAYE and non-PAYE income. For donations made by such individuals, there is neither a “grossing up” arrangement nor a requirement to submit an “Appropriate Certificate” to the charity.

Companies claim tax relief by deducting the donation (which is otherwise non deductible) as if it were a trading expense or a management expense for the financial accounting period in which it is made. Where the donation is made in a short accounting period (less than twelve months) the deduction is reduced proportionately. There is neither a “grossing-up” arrangement nor a requirement to submit an “Appropriate Certificate” to the charity.

**IV. Tax treatment of the beneficiary (receiving a grant or other benefit from a foundation)**

**Individuals**

Taxed as income.

**Legal entities**

As long as the legal entity obtains a charity number from the Revenue Commissioners, it will be exempt from tax on grants and donations (see section II of this profile).

## V. Trends and developments

### ➤ **Recent trends or developments affecting the legal and fiscal environment for public benefit foundations**

The Government has published a new Charities Act 2009 as discussed in the answers above. Most of the sections have not yet been commenced. For an update, visit [www.pobail.ie](http://www.pobail.ie) (government department) or [www.philanthropy.ie](http://www.philanthropy.ie) (Philanthropy Ireland).

### ➤ **Impact of anti-terrorist debate**

Is there a specific national/regional anti-terrorism act (legislation) in your country, (which one and date of entry into force or adoption)?

Yes. The main legislation in this area is the Offences Against the State Acts 1939-1998; the Criminal Justice (Terrorist Offences) Act 2005 and the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010

If so, has this law introduced new legal and regulatory requirements for foundations (please describe)?

The 2009 Charities Act addresses recommendations arising from the Financial Action Task Force (FATF) mutual evaluation report on Ireland's efforts to combat money laundering and terrorist financing, which was published in 2006, and the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime and on the Financing of Terrorism. Ireland's current anti-money laundering legislation is contained, primarily, in the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010. This Act gives effect to the recommendations of the third mutual evaluation report on Ireland of the Financial Action Task Force. Under this legislation, foundations wishing to open bank accounts in Ireland must furnish prescribed documents, including governing instruments, lists of directors and mandate authorisations.

Has the foundation supervisory authority introduced new regulatory/oversight requirements to comply with counter terrorism measures/law?

Not at present, since the CRA has not yet been set up.

Has the foundation supervisory / regulatory authority(ies) introduced guidance tools to assist foundations to comply with counterterrorism measures/law?

Not at present.

If so, did the foundation supervisory authority engage in a consultation with the foundation sector on counter terrorism measures/ does it plan such a consultation?

The absence of a dedicated foundation regulatory/supervisory authority(ies) in Ireland makes this difficult. Further discussions around anti-terrorist requirements for foundations have taken place in the context of the Charities Act 2009, which provides for greater collaboration with overseas law enforcement and regulatory bodies. These initiatives will be part of a general move toward greater transparency and good practice among charitable organisations.

➤ **Public fundraising**

Are there any specific laws that regulate fundraising and do they affect foundations?

Not yet commenced. Existing law is the 1962 Street and House to House collections Act requires a *Garda* permit for all collections of cash from the public in public places. The Act updates the Street and House to House Collections Act 1962. The main changes, when the relevant provisions are commenced, include, for the first time, bringing “non-cash” collections (ie “promises of money”), and collections where tokens are exchanged in return for contributions, into the permit system administered by *An Garda Síochána* (the Police force of the Republic of Ireland). Once the relevant provisions are commenced, such collections will require a permit from *An Garda Síochána*.

**Useful contacts**

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