Ireland

This document summarises information provided by national experts as to the tax treatment by the relevant EU Member State of public-benefit foundations and their donors both domestically and in cross-border scenarios. The information was collected for a joint project of the Transnational Giving Europe network (TGE) and the European Foundation Centre (EFC), "Taxation of cross-border philanthropy in Europe after Persche and Stauffer – from landlock to free movement?", which resulted in a comparative study to be downloaded in full, here. Following the ground-breaking decisions of the European Court of Justice, "Stauffer" (ECJ C-386/04) and "Persche" (ECJ C-381/07), most Member States have adapted their laws in order to comply with provisions of the Treaty on the Functioning of the European Union. The project mapped relevant laws and procedures across the European Union: Does a donor giving to a public-benefit organisation in another EU Member State obtain the same text reliefs as they would get if they donated to a local organisation? What do foreign EU based public-benefit foundations need to do to have their public-benefit status recognised by foreign tax authorities? Are the procedures in place adequate and are they clear for users? How close are we to genuine free movement for philanthropy? And what steps must be taken to bring us closer?

To receive a hard copy of the full study or for further information, please contact: legal@efc.be.

1. Persche: A donor resident in Ireland donates to a public-benefit foundation registered in another EU country – does the donor get a tax incentive?

1.1. Legal situation

Are there tax incentives for giving?

The Irish tax law (Section 848A, Taxes Consolidation Act 1997 with latest changes introduced by the Minister of Finance in the Budget law 2013) foresees tax incentives for donations to public benefit foundations/charities in the following way:

In the case of individual donors (cash donations as well as marketable shares and securities) a tax credit of a blended rate of 31% for donations to charitable organisations (organisations that have obtained a status as an organisation to which tax deductible gifts can be made by the Revenue Commissioners) is given. This 31% is given to the charity rather than to the donors. This means that their donations are deemed to be made under the deduction of rate tax which the charity then reclaims from Revenue (so the donor must actually pay the 31% tax, so that the charity can claim the tax credit). So for example if an Irish taxpayer wishes the charity to receive a total donation of 25,000 EUR, he actually makes a donation of 17,250 EUR to the charity and then the charity claims 7,750 EUR. There is a ceiling of 1 million EUR per annum for the relief and the minimum amount is 250 EUR.

Corporate donations (cash donations as well as marketable shares and securities) to qualifying charities and sporting bodies are deductible without limit (there is a minimum amount of 250 EUR). It should be noted that the corporate tax rate anyway is very low with 12.5%.

Do the incentives apply in cross-border scenarios?

Following a recent reform in 2010, Irish tax law (Section 848A and Schedule 26A of the Taxes Consolidation Act 1997) no longer makes a distinction according to whether the recipient public-benefit organisation/charity is resident in Ireland or in another EU or EEA/EFTA country. However, donations to foundations based in other countries are excluded. The foreign EU/EEA/EFTA based public-benefit foundation must fulfil all legal requirements that a resident charity has to fulfil and must be included in a tax status charity list (as an organisation to which tax deductible gifts can be made) kept by the Irish Revenue. Thus the Irish law corresponds with the Persche decision of the ECJ by requiring a comparability test.

1.2. Procedures for tax incentives/the comparability test

The EU/EEA/EFTA based charity can apply to Irish Revenue to be listed as an organisation to which tax deductible gifts can be made and to hence receive tax repayments of 31% for the donation of the Irish taxpayer. The EU/EEA/EFTA charity must prove to the Irish Revenue that it would satisfy the requirements of Irish tax law in order for the charity to be able to claim the 31% tax.

The responsible Irish tax authority (Irish Revenue) performs the comparability test/charity status test upon the request of the organisation. This decision is kept in a centralised list kept at Irish Revenue. In order for the organisation to be able to gain the status as organisation to which tax deductible gifts can be made, it must have had **tax exemption status (for its own income tax) from the Revenue Commissioners for a period of at least two years.** Only after two years with this status, the authorisation as an organisation to which tax deductible gifts can be made, is possible. Such an authorisation as an organisation to which tax deductible gifts can be made is valid for a period ranging up to five years and upon expiry may be renewed.

The organisation has the burden of proof and the authority may require translated documents to prove the donation and the status of the recipient organisation, such as a receipt of the donation, the statutes of the foundation and the financial report of the recipient organisation. The process for claiming the status can be very short or it can take years. The best source for more information is the Irish Revenue Website.

1.3. Criteria for the comparability test:

The tax authority/Revenue Commissioners checks during the comparability test, whether the EU/EEA/EFTA based public benefit foundation/charity fulfils the requirements of Irish tax law, the core elements of which can be summarised as follows:

- The foundation pursues a public benefit purpose and is established for accepted charitable purposes only. This includes that the interest of the public at large (and not just the interest of a small circle of beneficiaries) is promoted. In order for the organisation to be able to gain the status as organisation to which tax deductible gifts can be made, it must have had tax exemption status from the Revenue Commissioners for a period of at least two years.

- The pursuance of the public benefit purpose has to be exclusive. That means, there exists a non-distribution constraint. In case of dissolution the remaining assets have to be used for the public benefit, and the remuneration of board members is not allowed and the administration costs must be reasonable.
- There exists a rule of timely disbursement of income under Irish tax law. If a foundation wishes to accumulate capital for more than 2 years, the foundation must first obtain permission from the Revenue Commissioners.

2. Missionswerk/Gift and inheritance tax: Donor stipulates in their last will that a foreign EU-based public-benefit foundation should inherit a certain amount of money – is the donation subject to gift and inheritance tax?

2.1. Legal situation

Are there tax exemptions for legacies to public-benefit organisations?

A gift/legacy is taxed in Ireland as the state where the testator at his/her last residence.

Irish tax law foresees a gift and inheritance tax. Normally the donee pays the tax.

However, there also exists a tax benefit for approved charities. According to Irish tax law (Section 76 (2) of the Capital Acquisitions Tax Consolidation Act 2003) there will be no gift and inheritance tax.

Do the exemptions apply in cross-border scenarios?

Gifts to foreign EU/EAA/EFTA charities qualify for relief from gift and inheritance tax only if the foreign charity has been registered with the Revenue Commissioners as comparable to a Irish charity (see the above conditions for registration). Following a recent reform the Irish tax law no longer makes a distinction according to whether the recipient public-benefit foundation/charity is resident in Ireland or in another EU/EEA/EFTA country. However donations to foundations based in other countries are excluded. The foreign EU/EEA/EFTA based public-benefit foundation must fulfil all legal requirements that a resident foundation has to fulfil and must be included in a tax status charity list kept by the Revenue Commissioners. Thus the Irish law corresponds with the Missionswerk decision of the ECJ by requiring a comparability test.

2.2. Procedures for tax incentives/the comparability test

The EU/EEA charity must prove to the Revenue Commissioners that it would satisfy the tests for being an Irish charity if it was established in Ireland in order for getting the gift and inheritance tax exemption. The responsible Irish tax authority performs the comparability test upon the request of the organisation.

The organisation has the burden of proof and the authority may require translated documents to prove the status of the recipient organisation, such as the statutes of the foundation and the financial report of the recipient organisation. The process for claiming the status can be very short or it can take years. The best source for more information is the Irish Revenue Website.

2.3. Criteria for the comparability test:

The tax authority checks during the comparability test, whether the EU or EEA based public-benefit foundation fulfils the requirements of Irish tax law, the core elements of which can be summarised as follows:

- The foundation pursues a public benefit purpose and is established for accepted charitable purposes only. This includes that the interest of the public at large (and not just the interest of a small circle of beneficiaries) is promoted.
- The pursuance of the public benefit purpose has to be exclusive. That means, there exists a non-distribution constraint. In case of dissolution the remaining assets have to be used for the public benefit, and the remuneration of board members is not allowed and the administration costs must be reasonable.
- There exists a rule of timely disbursement of income under Irish tax law. If a foundation wishes to accumulate capital for more than 2 years, the foundation must first obtain permission from the Revenue Commissioners.

3. Stauffer: Foreign EU-based public-benefit foundation generates income in Ireland – does the foreign foundation get a tax exemption?

3.1. Legal situation

According to the applicable double tax treaties a foreign-based foundation is taxed in Ireland as far as it generates income in Ireland. Examples are:

- Income generated from purpose-related economic activities (e.g. Museum which promotes the foundation's public benefit purpose (art and culture).
- Income generated from purpose-unrelated economic activities (e.g. noodle factory which just generates income that is used to promote the public-benefit purpose, but does not in itself directly promote the public-benefit purpose).
- Income generated from renting out property, fixed rates bonds, dividends

Irish tax law foresees (partial) tax incentives for public-benefit foundations in the following cases according to sections 207 and 208 of the Taxes Consolidation Act 1997:

Foundations/charities established exclusively for charitable purposes and registered/listed as tax exempt organisations with the Revenue Commissioners are generally exempt from tax on all capital gains and most forms of income, provided they are spent on charitable activities. Purpose unrelated economic activity is taxed. Exempt income includes:

- Rental income from lands and buildings
- Interest and other investment income
- Capital gains/dividends
- Economic activity that is related to and furthers the purpose of the charitable organisation

Following a recent reform, Irish tax law no longer makes a distinction according to whether the income generating public-benefit foundation is resident in Ireland or another EU/EEA/EFTA country (they get the same tax status as Irish charities according to section 207 or 208 of the Taxes Consolidation Act 1997) . However foundations/charities based in other countries are excluded. The foreign EU/EEA/EFTA based public-benefit foundation must fulfil all legal requirements that a resident foundation has to fulfil and must be included in a tax exempt status charity list kept by the Revenue Commissioners. Thus the Irish law corresponds with the "*Stauffer*" decision of the ECJ by requiring a comparability test.

3.2. Procedures for tax incentives/the comparability test

The EU/EEA charity must prove to the Revenue Commissioners that it would satisfy the tests for being an Irish charity if it was established in Ireland in order for getting tax exemption. The responsible Irish tax authority performs the comparability test upon the request of the organisation. The checks are done on the establishment of the organisation as a qualifying body for Irish purposes. The application form produced by the Revenue Commissioners has to be filed together with a copy of the governing instrument and certain background information concerning the charity and its activities including financial accounts.

The organisation has the burden of proof and the authority may require translated documents to prove the charitable status of the organisation such as the statutes of the foundation and the financial report. The process for claiming the status can be very short or it can take years. The best source for more information is the Irish Revenue Website. After this tax exempt status is granted, the only ongoing requirements are to annually submit accounts and to respond to any questions that might be asked from time-to-time by the authorities.

3.3. Criteria for the comparability test:

The tax authority/Revenue Commissioners checks during the comparability test, whether the EU/EEA/EFTA based public-benefit foundation fulfils the requirements of Irish tax law (section 207 or 208 of the Taxes Consolidation Act), the core elements of which can be summarised as follows:

- The foundation pursues a public benefit purpose and is established for accepted charitable purposes only. This includes that the interest of the public at large (and not just the interest of a small circle of beneficiaries) is promoted.
- The pursuance of the public benefit purpose has to be exclusive. That means, there exists a non-distribution constraint. In case of dissolution the remaining assets have to be used for the public benefit, and the remuneration of board members is not allowed and the administration costs must be reasonable.
- There exists a rule of timely disbursement of income under Irish tax law. If a foundation wishes to accumulate capital for more than 2 years, the foundation must first obtain permission from the Revenue Commissioners.

4. Practical information

4.1. Useful contacts

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