Philanthropy Impact

Ireland

Charity formation and legal framework

At present, charities are the sole recognised non-profit organisation unrestricted to specific activity (there are separate special exemptions for community organisations and certain sporting bodies). Charities in Ireland must fall under four main 'heads' of charitable purpose which the Office of the Revenue Commissioners uses to decide whether or not to allow tax exemption. These are the same categories that trace their lineage to Elizabeth I's 1601 statute (in England), applied to Ireland in 1634 (education, religion, relief of poverty and public benefit). An expanded set of purposes has been enacted in the Charities Act 2009, however at the time of writing the relevant statutory provisions have yet to be commenced. While the current lack of charity registration and regulation means that new charities possess few obligations - except the usual requirements when applying for charitable recognition to the Revenue authorities for tax exemption purposes - this will alter drastically with the creation of the proposed new supervisory authority, the Charities Regulatory Authority.

Governance and compliance issues

The Charities Act 2009 was enacted in Ireland on 28 February 2009, however few of its provisions have come into operation as yet. Until recent upheavals the first stage of commencement was scheduled for 2011. The extent to which this proceeds remains to be seen. The Act contains a revised definition of charitable purpose which is very similar but not identical to the definitions applicable in each of the three UK jurisdictions. The Act also includes a number of key proposals which will affect non-profit entities which are charities. These are similar to the current arrangements in England & Wales. The Act provides for the establishment of a statutory body for the regulation and supervision of charities (the Charities Regulatory Authority), a register of charities independent of the Revenue authorities and also provides for statutory reporting and accounting obligations. The Act specifies that it is mandatory for all charities 'operating' in Ireland - including foreign non-profits - to register with the new body, regardless of where they are legally established or their head offices are located.

Taxation

Under Section 848A of the Taxes Consolidation Act, 1997 tax relief is available on donations to 'eligible charities' and other 'approved bodies', with a minimum payment to any one charity in an annual period of 250 Euros. Charities become 'eligible' by holding tax exempt status for at least two years. Donations made by instalment - such as via a standing order - also qualify, and there is no maximum qualifying donation so long as there is no association between the donor and charity. However, in cases where there is an association between the donor and the charity or approved body at the time the donation is made - where the donor is an employee or member of the charity for example - relief will generally be restricted to 10% of the total income of the individual for the relevant year of assessment.

A form of income tax relief also applies to the donation of publicly-quoted shares and other interest bearing securities to eligible charities since 1 January 2006. Donors can also choose to claim CGT relief, where the sale of shares is treated as a 'no profit, no loss' sale, (as if the shares were sold for exactly the same price as was paid for them). It should be noted that there is currently no 'double tax relief', meaning that a donor cannot claim both income tax and capital gains tax relief on the same gift. At present, there is no specific relief for donations of property or land. The interaction of the available reliefs with each particular case is likely to depend on the specific circumstances and therefore obtaining advice is key to deciding the most tax efficient way forward. The forthcoming establishment of a new regulatory authority and legislative framework for Ireland's charitable sector may lead to changes in the existing structure of taxation of non-profit organisations which are considered charities under the Charities Act 2009.

Cross-border giving

In general Irish donors will receive tax relief on donations to Irish based charities including foreign charities with a significant base in Ireland. Irish charities (and Irish bases of foreign charities) may apply their funds to charitable purposes overseas. Recent legislation permits charities who are resident in a member state of the European Economic Area or the European Free Trade Association to apply to Revenue authorities for an authorisation that their donations are eligible for tax relief. As with Irish resident charities, relevant foreign charities become eligible by holding tax exempt status for at least two years.

Overseas donors may make donations to Irish charities. Those donations will be tax free in the hands of the Irish entity. The tax implications for the donor are a matter for local advice (and in many cases will be less favourable than a local donation to the overseas base of an Irish charity).

The Community Foundation for Ireland is a member of the Transnational Giving Europe network, allowing donors overseas to receive the same tax reliefs for a donation to an organisation in Ireland as they would in giving a national charity, if their country possesses a participating organisation. There is a fee for this service. Through this mechanism Irish donors can obtain the national tax reliefs outlined above when making a gift to an international charity in other European states such as the UK, the Netherlands, France, Belgium, Germany and Poland. When donating to particular charities, US taxpayers may be able to have their charitable gifts credited through registered 501(C)3 not-for-profit organisations in the United States, whereby all contributions are fully tax deductible in accordance with US federal regulations.

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