

Ireland

Legal Environment for Philanthropy in Europe 2024

By Oonagh B. Breen, Sutherland School of Law, University College
Dublin

Contents

I.	Legal framework for foundations	3
II.	Tax treatment of foundations.....	15
III.	Tax treatment of donors.....	25
IV.	Tax treatment of beneficiaries	27
V.	Gift and inheritance tax.....	28
VI.	Trends and developments.....	29
VII.	Further information	32
	Useful contacts.....	32
	Selected bibliography	32
	Selected law texts online	32
VIII.	About.....	33

I. Legal framework for foundations

- 1. Does the jurisdiction recognise a basic legal definition of a foundation? (please describe) What different legal types of foundations exist (autonomous organisations with legal personality, non-autonomous without legal personality, civil law, public law, church law, corporate foundations, enterprise foundations, party political foundations, family foundations, foundations of banking origin as a specific type, companies limited by liability, trusts)? Does your jurisdiction recognise other types of philanthropic organisations?**

As a common law country, the word “foundation” comprises a descriptive label and not a legal form under Irish law. Taking the definition of foundation as described in the [glossary created for this project](#), the common legal forms found in Ireland that fit this description would be companies limited by guarantee (CLGs), trusts and unincorporated associations. A minority of foundations may also take the legal forms of designated activity companies (DACs), or friendly societies. The functional test for a public-benefit foundation in Ireland is based on charity, which is statutorily defined under the Charities Act 2009 and the Charities (Amendment) Act 2024 (yet to be commenced). The elements of this test will be further elaborated upon in the course of this legal note but for the purposes of this question require a foundation to meet at least one of the charitable purposes set out in law, to be for the public benefit (with limited exceptions in the case of religious charities) and to be exclusively charitable. All foundations discussed in the remainder of this note will comprise charities that comply with this test, howsoever legally structured.

- 2. If your jurisdiction provides for different laws for different foundations/philanthropic organisations, please indicate this here and then specify under further relevant questions whether a different answer applies to these types of foundations/philanthropic organisations.**

Depending upon their legal structure, different laws will apply to foundations/philanthropic organisations in Ireland. For those foundations structured as a company (i.e. a CLG or DAC), the Companies Act 2014 will govern their establishment and operation. For trusts, the primary legislation remains the Trustee Act 1893 supplemented by the Trustees (Authorised Investment) Act 1958. Case law will also play a large role in the area of trusts. Unincorporated associations are not statutorily defined in Ireland. Rather, they are creatures of contract law, being created by a contract that exists between the members of the association. Most adopt written rules and a committee structure, but there is no legal requirement for an unincorporated association to have a formal constitution or a set of written rules. Regardless of legal form, if the foundation meets the charity test under the Charities Act 2009 and is required to register as a charity, then requirements of the Charities Acts 1961-2024 will also apply in addition to the statute or common law already mentioned.

- 3. What purposes can foundations legally pursue?¹**

- Only public-benefit
- Both public- and private-benefit

¹ This question focuses only on public-benefit foundations (see the definition in the [glossary](#) developed for this project).

4. 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 requirements for setting up a foundation depend upon the legal form chosen. If a company limited by guarantee (CLG) is in question, the governing documents will comprise a constitution in compliance with the terms of the Companies Act 2014, comprising a memorandum of association and articles of association. If the foundation is a trust, it will require a trust deed. If the foundation is an unincorporated association, its governing document will comprise a constitution or a set of rules. Registration with the Companies Registration Office is necessary in the case of a CLG to bring it into an existence, but no similar registration is necessary in the case of a trust or an unincorporated organisation for them to exist.

5. Is state approval required? (approval by a state supervisory authority with/without discretion)

- Approval by a state authority with discretion
- Approval by a state authority without discretion
- Approval by a court
- Notarisation by a notary public

No, but see the answers above.

6. Are foundations required to register?

a) If foundations must register, in what kind of register?

- Company register
- Foundation register at national level
- Foundation register at the regional/county level
- Beneficial ownership register
- Any other public register (other than a foundation/charity one)

b) If foundations are registered, what information is kept in the register?

The Companies Register provides the following information in a free public register: Company name, Company number, Company Type, Address of registered office, Date of incorporation, Status of company, Date of last annual return filed. Registered companies file a number of document types under company law with the Companies Registration Office (CRO), and these documents (which include Annual Returns, Change of Directors forms etc) can be purchased online from the CRO.

Trusts and unincorporated associations are not required to register per se unless they have charitable status, in which case, along with companies, they will all have to register with the Charities Regulatory Authority, which is discussed further below. Charitable trusts and charitable associations must, however, file their trust deeds or constitutions with the Charities Regulatory Authority. To date, the Charities Regulatory Authority has not made these constitutional documents available on the Charities Register despite providing access to comparable charitable companies' constitutions.

c) If foundations are registered, is the register publicly available?

- Yes, all information publicly accessible - although for the CRO some information is only available upon payment for document access.

- Yes, some information publicly accessible
- Yes, accessible upon request
- No

7. Is a minimum founding capital/endowment required?

- No
- Yes, amount:

8. Is the foundation required to maintain these assets or any other specified asset level throughout its lifetime? Are spend-down foundations allowed?

Spend-down foundations are allowed in Ireland.

9. What governance requirements are set out in the law? Is it a one-tier or two-tier foundation governance model?

a) Is it mandatory to have a:

- Supervisory board
- Governing board

It is mandatory to have a governing board which in the case of a charitable company will be the board of directors, in the case of a trust will be the trustees and in the case of an unincorporated association will be the board or the officers, as variously described. Under the Charities Act 2009, all of these individuals who sit on the governing board and control the charity are defined by law as “Charity Trustees”.

b) What are the requirements concerning board members? Is a minimum/maximum number of board members specified? Does the law regulate the appointment of board members and their resignation/removal, or can this be addressed in the statutes/bylaws?

The requirements regarding board members depends on whether one looks to civil law, charity law or tax law in Ireland. There are no civil law requirements regarding minimum or maximum numbers of board members for either trusts or unincorporated associations. For other types of non-profit company, the technical minimum requirements for a CLG are one member and two directors under company law. Under charity law, there must be at least three charity trustees who are not related to each other and who are independent of one another. Under tax law, in the case of an Irish resident charity a majority of the members must be resident in Ireland.

Charities can generally design appointment, resignation and removal provisions in their statutes or bylaws, subject to the overriding provisions of the Charities Act which sets out circumstances in which a person shall cease to be qualified for, and shall cease to hold, the position of charity trustee of a charity.

c) What are the duties and what are the rights of board members, as specified by national legislation or case law?

The Charities Act 2009, which was commenced in 2014, sets out a myriad of statutory duties on charity trustees regarding the requirement to ensure that charities are registered on the Charities Register, that they keep proper books of account, that they file an annual report with the Charities Regulatory Authority (CRA) on the activities of their charity, and that in the case of unincorporated charities they file an annual statement of accounts directly with the

CRA. These statutory requirements have been further elaborated upon by the CRA Code of Charity Governance and its statutory guidance on matters ranging from fundraising practice, management of conflict of interest, political activities, internal financial controls, and winding up and dissolution. The new Charities (Amendment) Act 2024, when commenced, will codify the fiduciary duties of charity trustees (as defined by the Act) in terms of the duties of good faith, care, skill and loyalty.

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

Upon creating a charitable foundation, the founder conveys all legal title in the property to the charity trustees. The charity trustees may include the founder, but the task of the charity trustees is to pursue the charitable purpose of the foundation as laid down in its governing instrument. Additionally, for tax reasons, in order to reap the benefits of charitable tax exemption, founders need to absolutely and perpetually surrender their gifts to charity. Changes in charitable purpose may not be undertaken unilaterally by either the founder or the charity trustees. All such changes require the advance permission of the CRA. Where a cy-près application is in question, the law provides that the CRA or the court, respectively, reflects on the “spirit of the gift”. This factor allows consideration of the founder’s original intention in making the charitable gift. A cy-près scheme is the process by which the court or the CRA ensures funds intended for charitable purposes remain in the charitable sphere, even when the intended original recipient can no longer carry out that charitable objective.

- e) Can the board or the founder amend the statutes including the purpose of the foundation? If yes, please indicate any particularities. What is the relationship between the powers of the founders, the statutes of the foundation and the power of the board members?

The nature of the governing deed will inform the extent to which the board can subsequently amend its statutes. Some provisions are mandatory and may not be changed. These generally relate to the fundamental essence of what it is to be charitable and ensuring that any surpluses are reinvested for the public benefit rather than being distributed to the charity trustees. To this end, the Charities (Amendment) Act 2024, when commenced, will provide that a registered charitable organisation shall not change its charitable purpose or amend a “specified clause” (being one relating to the objects, the income and property, or the winding up, of the charitable organisation) without the CRA’s consent. Education bodies are specifically exempted from these provisions however.

- f) What are the rights of third parties (e.g. right of information)?

Under the Charities Act, the CRA maintains a public Charity Register. This register, if fully functioning, should provide third parties with access to the governing instruments of each foundation, a copy of their annual report, and access to their statement of accounts along with details of the names of the charity trustees. While information under these headings is received by the CRA from all foundations, to date it has only published these details in relation to charitable CLGs. In the case of charitable trusts and charitable associations, to date, the CRA has not made available their constitutions or their annual statements of account. The Charities (Amendment) Act 2024, when commenced, will introduce a new financial reporting framework for all charities. It is hoped that the much-awaited regulations to give effect to this reporting framework will provide a consistent financial reporting process for all charities so that the information available on the Charities Register will improve incrementally.

- g) 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?

Under guidance issued by the CRA in 2018, a conflict of interest is defined as “any situation in which a charity trustee’s personal interests or loyalties could, or could be seen to, prevent the charity trustee from making a decision in the best interests of the charity. This personal interest may be direct or indirect and can include interests of a person connected to the charity trustee.” The Charities Governance Code, also published by the CRA in 2018, requires charity trustees to behave with integrity and to develop conflict of interest policies for each foundation. The Code requires that declaration/discussion of conflicts of interest should be a standing agenda item at every board meeting. Charity trustees are treated as fiduciaries under charity law and so self-dealing is prohibited. The Charities (Amendment) Act 2024, when commenced, will introduce s54(B)(1)(c) to the effect that it will be the duty of a charity trustee “to avoid any conflict between the charity trustee’s duties to the charitable organisation and the charity trustee’s other (including personal) interests”.

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

The charity trustees are ultimately responsible for decision-making within the foundation. Where a foundation has staff, the charity trustees delegate authority to the senior management or executive to conduct the matters for which they are responsible. The management of this delegation is fundamental to the good governance of the foundation. This requires foundations to put in place good monitoring and reporting arrangements.

10. What is the liability of the foundation and its organs? What is the general standard of diligence for board members? (e. g. duty of obedience, duty of care/prudence, duty of loyalty)? In what type of rule are these criteria established: fiscal, administrative, civil, commercial? Is there a solid case law, if any, regarding the duty of due diligence? Does your country differentiate between voluntary (unpaid) and paid board members? Who is allowed to bring a complaint about breaches of such duties: the other members of the board, the founder/s, the public authorities? If a complaint is brought, which authority has competence in such cases: administrative, tax authority, only the judiciary power (attorney general) or beneficiaries/general public?

The Companies Act 2014 statutorily sets out a statement of principal fiduciary duties of directors. No similar codification of fiduciary duties has taken place in the context of trust law where the primary legislation remains the Trustee Act 1893, which is predominantly silent on matters of due diligence. Trust case law fills these lacunae. The Charities (Amendment) Act 2024, when commenced, will statutorily set out a statement of the principal fiduciary duties of charity trustees, which will apply regardless of legal structure to all charitable organisations.

Does your country differentiate between voluntary (unpaid) and paid board members?

Under Irish charity law, charity trustees cannot be paid for acting as charity trustees so, generally speaking, there are no paid board members in Ireland and there is thus no differentiation in the standards applied. Part 6A of the Charities (Amendment) Act 2024, when commenced, will change the common law in this regard by allowing charitable organisations that are education bodies or public bodies to remunerate charity trustees. More broadly, Part 6A will allow for the appointment of current employees to the board of the charity if this does not contravene the foundation’s constitution and if such appointment is declared to be in the best interests of the foundation by its existing charity trustees.

Who can claim responsibility for breaches of such duties: the other members of the board, the founder/s, the public authorities? In which case who: administrative, tax-authority, only the judiciary power (Attorney General) or beneficiaries/general public?

It will depend on the nature of the breach. The CRA has investigative and enforcement powers in order to protect the charitable assets of foundations. The Irish Revenue Commissioners also have investigative and enforcement powers where a foundation enjoys charitable tax exemption. With the passing of the Charities Act 2009, the *parens patriae* role of the Attorney General was transferred entirely to the CRA. If the breach relates to a breach of company law, the Corporate Enforcement Authority has both investigative and compliance powers. In the case of fraud or embezzlement, the appropriate agency will be An Garda Síochána. Depending upon the sectoral involvement of the foundation in question, other agencies may have rights of action – such as the Health Services Executive or the Health Information and Quality Authority if the matter relates to health, or the Approved Housing Bodies Regulatory Authority if the foundation deals with social housing. The general public and beneficiaries of the charity generally lack *locus standi* to take such actions. In all cases where a sanction is required, an application to court will normally be required by the respective statutory agency due to the separation of powers doctrine under the Irish Constitution.

11. Who can represent a foundation towards third parties? Is this specified in law or is it up to the statutes of the organisation? Do the director and officers have powers of representation based on legislation?

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. Where the foundation takes the form of an unincorporated association, the association lacks separate legal personality and therefore the association as an entity lacks legal capacity to contract. Instead, individual members contracting on behalf of the association may be personally liable or may be acting as agents for the other members. Notably, it is impossible in common law for an unincorporated association to make a valid contract with third parties to bind all persons who are, from time-to-time, members of an unincorporated association. In determining whether an officer had power of representation so as to make the principal liable for their actions, the common law principles of principal and agent will apply.

12. Are purpose-related/unrelated economic activities allowed? If so, are there other types of limitations on economic activities (related/unrelated)?

Economic activity is generally classified by the CRA and by Revenue under one of three headings: primary purpose trading which relates to trading by the foundation as part of its charitable purpose and which would constitute related economic activity; non-primary purpose trading which relates to trading by the foundation for the purposes of raising funds that is not directly linked to its main charitable purpose and would thus constitute unrelated economic activity; and a grey area referred to as ancillary trading whereby ancillary refers to the ancillary nature of the activity to the primary purpose of the charity. In broad terms, with the advance approval of the CRA and Revenue, primary purpose trading is permitted while non-primary purpose trading will raise concerns both from a charity law and tax law perspective such that if it has become the predominant activity of the foundation, it may affect its charitable status and result in the revocation of its tax exemption. Ancillary economic activity will fall on either side of the line: Revenue appears to adopt a quantitative test whereby it is prepared to overlook insignificant trading ventures as ancillary to the charity's primary purpose. If such activity becomes a significant source of revenue for the

charity, however, Revenue would take the view that the charity is carrying on a trade and that this is not a qualifying trade under tax law.

13. Is there any legal/fiscal framework for grantmakers to be able to fund legal entities that are conducting economic activities in addition to their public utility activities? If any, what are the limitations for funding those kinds of legal entities?

No.

14. Are foundations permitted to be major shareholders in a company? Are there any limitations to voting rights? Is this considered as an economic activity? Are foundations allowed to engage in active ownership of companies that they own (for example through board representation, informal strategy discussions or the right to be consulted on key issues such as CEO succession)?

Yes, foundations may hold shares in a company. It is settled case law that the holding of shares constitutes passive activity and is not an economic activity in and of itself. The CRA has expressly recognised that registered charities can make investments and hold shares to achieve a return so that they can further their charity's aims. However, the holding of shares, per se, should not be the motivation and reason for the charity's existence. Common law principles would imply that where a foundation holds a controlling interest in an economic activity, board representation would be necessary to protect the charity's best interests. These are currently matters of persuasive precedent in Ireland and have not been tested before the courts or the CRA.

15. Are there any rules/limitations in civil and/or tax law regarding foundations' asset management (only secure investments/bonds/investments with a certain return)? What, if any, types of investment are prohibited? Are there any limitations on mission-related investments?

No, there are no rules in civil and/or in tax law. Powers of investment will ultimately be determined by the governing instrument of the foundation, which may limit or prohibit certain types of investment. The CRA's internal financial control guidance encourages all foundations to develop an investment policy to inform such decisions.

16. Are foundations legally allowed to allocate grant funds towards furthering their public-benefit purpose/programmes which (can) also generate income – impact investing? (recoverable grants; low interest loans; equities)

Yes, if such activity is already permitted by its governing instrument.

17. Are there any limitations (in civil law/tax law) to political party related or general lobby/advocacy activities?

Yes. The Charities Act 2009 defines as excluded bodies, and thus not eligible to be charities, those bodies that, inter alia, are "a political party, or a body that promotes a political party or candidate" or "a body that promotes a political cause, unless the promotion of that cause relates directly to the advancement of the charitable purposes of the body." The CRA published Guidance on Charities and the Promotion of Political Causes for charities in 2018.

18. What are the requirements for an amendment of statutes/amendment of foundations' purpose?

The charitable purposes of a foundation cannot be changed without the prior consent of the CRA. Under the Charities (Amendment) Act 2024, when commenced, s42A will provide that the CRA shall not give its consent if either (i) the proposed purpose is not a charitable purpose, or (ii) the charitable organisation has not demonstrated that it has or will have the organisational structure or expertise required to advance the proposed charitable purpose.

19. What are requirements with regard to reporting, accountability, auditing?

- a) What type(s) of report must be produced?
- Annual financial report/financial accounts
 - Annual activity report
 - Public-benefit/activity report
 - Tax report/tax return
 - Other reports e.g. on 1% schemes
 - Reports on governance changes (e.g. new board members)
 - Report on conflict of interest (self-dealing and conflict of interest breach cases)

- b) Must all/any of the reports produced by the foundation be submitted to supervisory authorities? If so, to which authorities (e.g. foundation authority, tax authority)?

All foundations must file an annual report with the CRA ten months after the end of their financial year. Unincorporated charities must also file their statements of account as an appendix to their annual report directly with the CRA. Charitable CLGs, while they file their annual charity report directly with the CRA, follow company law in the filing of their statements of account with the Companies Registration Office (CRO). The CRO then shares these files with the CRA at the latter's request. Eighteen months after receiving charitable tax-exempt status, foundations are required to file an audited return with Revenue. Apart from this filing, while all charities with turnover of more than €100,000 must prepare audited statements of account for Revenue, they are not required to submit these unless asked.

- c) Are the reports checked/reviewed? By whom (supervisory/tax authorities)?

In theory, yes; in practice the answer is less clear. Errors often occur in filed documents that are brought to supervisory authorities' attention by public users. The nature of these errors – e.g., missing pages or signatures, would indicate a less than thorough check or review by those agencies which publish filed documents on their registers. Unlike the charity regulators in Northern Ireland, Scotland and England and Wales, the CRA does not report on the percentage of basic compliance checks that it carries out on received returns each year, so no insight into this matter is currently available. The Charities (Amendment) Act 2024, when commenced, will change the financial reporting requirements for all registered charities.

- d) Do any or all of the reports and/or accounts of foundations need to be made publicly available? If so, which reports and where (website, upon request)?

Reports filed by companies are publicly available on the [Companies Register](#), which is an online register. They can be downloaded on payment of a fee. The CRA makes available reports and accounts of charitable companies for free on its [Charities Register](#). The CRA, to date, has not released the statements of accounts for unincorporated charities, nor has it

provided access to their governing documents, despite the requirement under the Charities Act 2009 that these documents be available to the public. In the case of charitable private trusts, which the Charities Act defines as “a charitable trust that is not funded by donations from the public”, the Charities Act provides that the CRA is not required to publicly disclose the annual reports and statements of account of these particular entities, unlike all other charities. Until its dissolution in 2022, [Benefacts](#), a non-profit public-benefit company, provided a free, searchable public website that mapped Irish non-profits and provided governance and finance information on each, including in many cases access to the corporate filings of these foundations.

e) Is external audit required by law for all foundations?

No. The Charities (Amendment) Act 2024, when commenced, will give power to the relevant Minister to set an audit threshold up to €1million. Where foundations have an annual gross income or total expenditure in excess of the chosen threshold, audit will be required. Below the threshold figure, the accounts of all registered charities (subject to certain de minimis provisions) will be required to undergo independent examination in accordance with the Act.

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

Under current law, for Revenue purposes, audits are required by all charities with a turnover in excess of €100,000. For company law purposes, CLGs which do not have a share capital can avail of the audit exemption if they qualify as “small” under the Companies Act. The qualifying conditions for a small company are satisfied by a company in relation to its first financial year if it fulfils two or more of the following requirements: (a) the amount of turnover of the company does not exceed €12 million; (b) the balance sheet total of the company does not exceed €6 million; (c) the average number of employees of the company does not exceed 50. At present, charitable companies comply with company law rather than charity law when it comes both to financial reporting and auditing. Under charity law, unincorporated charities are required to file their annual statements of account directly with the CRA. The Charities Act 2009 requires these accounts to be audited if the gross income or total expenditure of the charitable organisation in the relevant financial year or in any of the two financial years preceding this year exceeds the audit threshold prescribed by the Minister. To date, the Minister has not prescribed an audit threshold under the 2009 Act. Where a foundation receives more than 50% of its funding from the Exchequer, it must make its accounts available to the Comptroller and Auditor General. Many of the financial reporting requirements included in the Charities (Amendment) Act 2024 are similar to the requirements of the Charities SORP (Statement of Recommended Practice). However, the Charities SORP is not explicitly referenced in the 2024 Act, and so charities are not currently required to meet it. The Act, when commenced, leaves room for further regulatory changes that could include introducing the Charities SORP.

20. Supervision: Which authority, what measures?

a) What type of body is the supervisory authority? (multiple answers possible)

- A public administrative body
- A public independent body
- A combination of a governmental body and a court
- A court
- A public administrative body and an independent body
- A tax authority
- Other

b) Does the supervisory body review reports?

- Yes
 No

c) Are foundations subject to inspection?

- Yes
 No

d) Is approval from the authority required for certain decisions of the governing board?

- Yes, formal approval is needed
 Yes, needs just to be informed
 No

If yes, please specify which type of decisions:

Changes of a charity's name and changes of a charity's purpose by the board require advance CRA approval. In certain cases, the CRA's permission is also required for charities to enter into certain agreements with charity trustees or connected persons, as defined by the Act. Where a charitable organisation is dissolved, the property, or proceeds of the sale of the property, of the charitable organisation shall not be paid to any of the members of the charitable organisation without the consent of the CRA, notwithstanding the terms of the foundation's constitution. The Charities (Amendment) Act 2024, when commenced, will update these provisions relating to the occasions requiring advance CRA approval.

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

- Yes
 No

Can a government official be appointed to the governing board by a state authority, if so please mention:

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

It is a statutory offence for an unregistered charitable organisation to carry on activities in Ireland. Equally, it is an offence for a person to hold out a body that is not registered in the Charities Register as being registered. Breaches of the Charities Act relating to the proper keeping of accounts, the filing of annual statements of account (in the case of unincorporated charities), the auditing of a foundation's accounts and the filing of a foundation's annual report with the CRA all constitute offences under the Charities Act. The CRA in each of these instances has the option to apply to the High Court, which if it is satisfied that a breach has occurred may make such order as it deems appropriate. The CRA also has the power to impose intermediate sanctions in lieu of bringing proceedings for an offence. These intermediate sanctions include the removal of the charitable organisation from the register for such period as the CRA shall determine, or the publication of particulars of the contravention concerned on the CRA's website. The Charities (Amendment) Act 2024, when commenced, will create new offences under the Charities Act relating to the violation of registration or change of purpose requirements. In its extension of the financial reporting requirements to corporate charities, the 2024 Act will also extend enforcement measures for the first time to these entities if they fail to keep proper books of account or fail to meet the Act's reporting requirements.

21. When and how does a foundation dissolve?

A charity may be wound up for one of several reasons, including where it:

- a) Has achieved or completed the specific charitable purpose for which it was formed
- b) Wishes to merge with another charity with similar objectives (e.g. to increase efficiency by avoiding duplication of administration)
- c) Cannot afford to continue its activities
- d) Wishes to change its legal form, for example to convert from an unincorporated status to a body corporate to avail of limited liability

Revenue requires that charities with tax-exempt status intent on winding up must file a final set of accounts and submit a notice of winding up to the Revenue, confirming the details of the wind-up and the identity of the recipients of any residual funds or assets of the charity. Charity trustees also have a statutory obligation to inform the CRA of the completion of a wind-up. In practice, advance notification of the CRA occurs and charities will be requested to provide copies of the charity's audited accounts and a clear plan of how the charity intends to deal with any surplus or remaining assets or funds. As noted above, any surplus in the charity's assets or funds may not be paid to the members of the charity without the Charities Regulator's prior consent. If the charity takes corporate form, it will also need to engage with the CRO to ensure that dissolution occurs in compliance with company law.

22. Is there a maximum that can be spent on office/administration costs in civil law and/or tax law? If yes, what is the amount?

No.

23. Does civil and/or tax law require a foundation to spend a certain percentage of its overall assets within a certain period of time (e.g. within the next financial year)? In particular, can a foundation accumulate these expenses over a period of time (and if so, what kind of authorisation is required to do so)?

Under tax law, a foundation cannot accumulate funds for a period in excess of two years without the permission of Revenue, whose decision will be informed by the reason for the proposed accumulation.

24. Under what conditions does the civil law in your country recognise a foreign foundation? Do they have to register? Does your law recognise the concept of trusts?

Under Irish charity law, it is an offence to carry on activities in the state or to hold an entity out as charitable if that entity is not registered in the Charities Register. This requirement applies equally to foreign foundations active in Ireland unless they fall within the defence set out in s.46 of the Act.

To avail of this defence, the foreign foundation must prove that it is established under the law of a place other than the Irish state and under that law, it is entitled to be described as a charity or charitable organisation; its centre of management and control is outside the state; it does not occupy any land in the state, or carry on any activities in the state; and finally, and the notice, advertisement, promotional literature or other published material containing the description of which the offence is alleged to consist also contains a statement as to its place of establishment. So, foreign foundations active in Ireland are recognised and required to register. Under tax law, if a foundation is not established in Ireland but is established in an EEA or European Free Trade Association (EFTA) state, it can seek a determination from Revenue to the effect that, if the body were to have income in Ireland, it would be

comparable to a domestic charity and would qualify for charitable tax exemption on such income.

As a common law jurisdiction, Ireland recognises the concept of the trust.

25. Does the law in your country allow a foundation to conduct (some or all) activities (grantmaking, operating, asset administration, fundraising) abroad? Is there any limitation?

Yes. Irish foundations may carry out activities or have offices abroad, subject to the registration provisions of the Charities Act 2009, as amended by the Charities (Amendment) Act 2024.

26. Does the law in your country impose any restrictions on ability to receive donations from abroad? If so, please describe.

An unintended consequence of amendments to the Electoral Acts 1997-2012 in Ireland is that a foundation may not receive a political donation from an individual (other than an Irish citizen) who resides outside Ireland and may not receive a donation from an entity that does not have an office in Ireland from which a principal activity is directed. Political donation is broadly defined to include the influencing of public policy.

27. Does the civil law in your country allow the transfer of the seat of a foundation (in the EU) and/or cross-border mergers?

Yes.

II. Tax treatment of foundations

1. What are the requirements to receive tax exemptions?

- Pursuing public-benefit purposes
- Non-distribution constraint
- Being resident in the country

Note, however, that an overseas charity that is established in an EEA or EFTA Member State, or in the United Kingdom, can apply to Revenue to seek a determination that if it had rental or trading income in the State that person or trust would qualify for the charitable tax exemptions provided under Irish tax legislation to domestic charities.

- Other

2. What are reporting/proof requirements to claim tax exemptions? What does the foundation have to submit to the authorities (statutes, financial reports, activity reports, other?)

In the case of Irish resident foundations, registration with the CRA is a prerequisite to registering for charitable tax exemption. To apply for domestic charitable tax-exempt status, a foundation must prove a minimum of three trustees, the majority of whom are unrelated, independent and resident in the state. Applicant charities must attach to their applications: a copy of the foundation's latest financial accounts or details of its financial plans; a statement of the foundation's activities and plans; and a copy of the foundation's constitution. Revenue may request further documentation to support the application. Once a foundation has been granted tax exemption, Revenue will issue a Charitable Tax (CHY) Exemption Number. Once Revenue grants tax exemption, a foundation must continue to remain tax compliant; maintain its charitable status with the CRA; comply with the Charities Act 2009; use all income for its main charitable purpose only and keep proper records and accounts. To remain in good standing with Revenue, foundations enjoying charitable tax exemption must submit a copy of their first year's financial accounts to Revenue within 18 months of receiving the tax exemption. They must keep audited accounts if annual income is over €100,000 and must request prior Revenue approval if they intend to accumulate funds for more than two years.

3. Is specific reporting required for the use of public funds (grants received from public bodies/state/municipality/etc.)?

Yes. Any foundation that receives government funding is required to submit audited financial statements to its funder in line with DPER Circular 13/2014. Additionally, any charity that receives more than 50% of its income in grants from the state is subject to inspection by the Comptroller and Auditor General.

4. Is there an obligation to report to public authorities on donors and beneficiaries? If so, to which authority and what type of information?

No.

5. Is there a statutory definition of what a public-benefit purpose (charitable purpose) is in the civil law (foundation law, trust law) of your country? If yes, please give us the definition. If so, is the determining definition that subsequently links to tax benefits?

Yes. A charitable purpose is defined by the Charities Act 2009. Charitable purposes include:

- (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

The final heading (d) is further expanded upon by the Act to include the following specific purposes:

- (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
- (l) The integration of those who are disadvantaged, and the promotion of their full participation, in society

In all cases, a purpose shall not be a charitable purpose unless it is of public benefit. This statutory definition of “charitable purpose” was developed with Revenue’s input such that only those headings for which Revenue was happy to potentially grant tax relief were included in the Act. The Charities (Amendment) Act 2024, when commenced, will amend this statutory definition to include “the advancement of human rights”.

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

The Charities Act 2009 definition of charitable purpose was developed based on Revenue’s then existing practice in recognising certain purposes as being charitable such that nothing in the Charities Act 2009 definition of charitable purpose for civil law purposes fell outside Revenue’s understanding of charitable purpose for tax law purposes. It should be noted however that divergence between civil and tax law is possible in this regard as the Charities Act 2009 provides that nothing in the Act shall operate to affect the law in relation to the levying or collection of any tax or the determination of eligibility for exemption from liability to pay any tax.

7. Please indicate whether the following purposes would or would not be accepted for tax privileges in your country (noting that the tax status often depends on additional requirements):

Public-benefit purpose	Accepted in tax law (for tax privileges)			
	Yes	Probably yes	Probably no	No
Arts, culture or historical preservation	x			
Environmental protection	x			
Civil or human rights	x under other provisions of the tax code when certain conditions are fulfilled.			x under Charity Law tax exemption (the 2024 Act, when commenced, will change this)
Elimination of discrimination based on gender, race, ethnicity, religion, disability, sexual orientation or any other legally prescribed form of discrimination	x			
Social welfare, including prevention or relief of poverty	x			
Humanitarian or disaster relief	x			
Development aid and development cooperation	x			
Assistance to refugees or immigrants	x			
Protection of, and support for, children, youth or elderly	x			
Assistance to, or protection of, people with disabilities	x			
Protection of animals	x			
Science, research and innovation	x			
Education and training	x			
European and international	x			

understanding (e.g. exchange programmes/ other activities aimed at building bridges between nations)				
Health, well- being and medical care	x			
Consumer protection	x			
Assistance to, or protection of, vulnerable and disadvantaged persons	x			
Amateur sports	x under other tax provisions			x under Charitable tax exemption law
Infrastructure support for public-benefit purpose organisations	x			
Party political activity				x
Advocacy		x within the boundaries of the Charities Act		
Advancement of religion	x			
<i>Other – please list other purposes accepted in tax law for tax privileges in your country</i>				

8. Support of “the public at large”

- a) Do the activities of a foundation with public-benefit status for tax purposes generally have to benefit “the public at large”?

Foundations must meet the Charities Act test for public benefit to be considered charitable. The Act provides that a gift shall not be of public benefit unless:

- (i) It is intended to benefit the public or a section of the public, and
 - (ii) In a case where it confers a benefit on a person other than in their 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.
- b) If yes, can a foundation with public-benefit status for tax purposes support a closed circle in a sense that beneficiaries can be identified based on legal or family affiliations?

In determining whether a gift is of public benefit or not, the Charities Act 2009 requires the CRA to take account of:

(i) 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

(ii) 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.

Even in these cases, a limitation as referred to in (i) or (ii) above is not considered to 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. Non-distribution constraint

a) Does a foundation with public-benefit status for tax purposes generally have to follow a “non-distribution constraint” which forbids any financial support of the foundation board, staff, etc.?

Yes. The Charities (Amendment) Act 2024, when commenced, will introduce a new Part 6A to the Charities Act, setting out the specific instances where a foundation with public-benefit status may provide remuneration to, or on behalf of, a relevant person (which will include charity trustees). To this end, it will permit foundations to appoint employees as charity trustees and it will allow, subject to prior approval by the CRA, foundations to enter agreements for remuneration of charity trustees for services (defined by the Act as not including “a function ordinarily carried out by a charity trustee of a charitable organisation”).

b) What happens with the foundation’s assets in case of dissolution? Can the assets revert to private ownership, or do they have to stay in the public-benefit sphere?

See answers to questions above. The assets must remain in the public-benefit sphere.

10. “Altruistic” element

a) 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 is not generally permitted under civil law or tax law. Reimbursement for properly incurred expenses is allowed, however. The Charities (Amendment) Act 2024, when commenced, will for the first time permit the appointment of employees as charity trustees (s88B). See above.

b) 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.

c) 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? Please indicate which of the following types of expenditures would/would not be considered as “administration costs”:

No, there is no maximum amount that can be spent on office/administrations costs in civil law or in tax law.

- Personnel costs (staff salaries/payroll costs)
- Board remuneration
- Costs of external audit
- Other legal/accounting costs

- General office overheads (rent/mortgage payments, utilities, office materials, computers, telecommunications, postage)
- Insurance
- Publicity and promotion of the foundation (e.g. website, printed promotional materials)
- Asset administration costs
- In the case of an operating foundation – costs related to programmes/institutions run by the foundation
- Costs related to fundraising

11. Hybrid structures (elements of private benefit in public-benefit foundations)

- a) 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, their spouse and descendants.					X
The founder retains a beneficial reversionary interest in the capital of a property or other asset for their own continuing use.			X		
The gift consists only of 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 favour of the founder (or another member of their family) as tenant.			X		
A foundation distributes a (small) part of its income to the founder or their family.					X

- b) 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, their 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 their own continuing use.					X
The gift consists only of 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 favour of the founder (or another member of their family) as tenant.			X		
A foundation distributes a (small) part of its income to the founder or their family.					X

12. Distributions and timely disbursement

a) Are foundations allowed to spend down their endowment?

Yes, if their governing instruments permit it.

b) Are they allowed to be set up for a limited period of time only? If so, is there a minimum length of time for which the foundation must exist?

Yes, they are allowed. No, there is no minimum length prescribed.

c) Does the **civil law** and/or **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? If yes, is there a specific amount/percentage of the income that must be spent within this time? Which resources would be considered as income? E.g. would donations/contributions designated for building up the endowment be included in/excluded from the income to be spent? What expenditures would count towards the disbursement of income (e.g. would administration costs be included/excluded?)?

There is not currently a set amount or percentage of income that must be spent each year. A foundation 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 Revenue. The Finance Act 2024 will allow for the accumulation of income for a 5-year period by a foundation which qualifies for charitable tax exemption. The new 5-year period can be extended should the Revenue Commissioners be satisfied a charity is in the process of applying the income to a charitable purpose.

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

No.

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

	Yes	Probably yes	Unclear	Probably no	No
A foundation accumulates its income for 5 years: Only in the 6 th year are there distributions for the public-benefit purpose of the foundation.					x

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

	Yes	Probably yes	Unclear	Probably no	No
A foundation accumulates its income for 5 years, only in the 6 th year are there distributions for the public-benefit purpose of the foundation.				x*	

*Unless part of a capital campaign for which advance Revenue approval for such accumulation had been obtained

13. Are activities abroad in another country compatible with the public-benefit tax status?

Yes.

14. Can public-benefit organisations with a tax-exempt status also support/give grants to for-profit organisations (such as a small green start-up)?

No, not in the normal course. Charities are restricted to using their funds to make grants which promote their charitable purposes. The public-benefit provisions of the Charities Act 2009 require public benefit, and not private benefit, to flow from any charitable gift or grant. This is subject to a statutory provision that in a case where a gift confers a benefit on a person other than in their 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.”

15. Corporate income tax treatment. How are the following types of income treated for corporate income tax purposes? Are they taxable or exempt?

- a) Grants and donations – exempt
- b) Investment income (asset administration)
 - Interest from fixed rate bonds – exempt
 - Equities – exempt
 - Income from leasing of a property that belongs to the foundation – exempt
- c) Economic activities (related/unrelated)
 - Income from running a hospital/museum/opera – treated as primary purpose trading so exempt
 - Income from producing/selling books (e.g. art books sold by a cultural foundation) – treated as primary purpose trading so exempt
 - Income from running a bookshop inside a museum/opera run by the foundation – it will depend on the nature of the books and whether they relate to the charitable nature of the foundation, so probably yes if related to museum or opera.
 - Income from running a café in the hospital/museum run by the foundation – treated as an ancillary purpose trading, so likely to be exempt
 - Income from selling T-shirts (activity not related to the pursuance of the public-benefit purpose) – amounts to unrelated trading, so possibly not exempt unless it fits within one of the small-scale fundraising exemptions.
 - Income from intellectual property (e.g. royalties and licence fees) - exempt
- d) Income deriving from grant expenditure towards public-benefit purpose/programme activities (such as loans, guarantees, equities)? Exempt.
- e) Is major shareholding in a business undertaking considered as an economic activity and taxed accordingly?

The purpose of the shareholding would be considered by the CRA. If it is supportive of the foundation's charitable purposes, dividend income would be exempt from dividend withholding tax.

16. Are capital gains subject to tax? If so, are they liable to corporate income tax or to a separate tax?

No.

17. Does any kind of value added tax (VAT) refund scheme for the irrecoverable VAT costs of public-benefit foundations exist in your country?

Yes.

18. Is capital tax levied on the value of assets, where applicable?

No.

19. Are there taxes on the transfer/ sale of assets by foundations?

No.

20. Are there any other taxes to which public-benefit foundations are subject to (e.g. real property tax)?

Yes, charities pay VAT on goods and services.

21. Can a foreign foundation (EU and other) 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? If they have to fulfil exactly the same requirements as locally based public-benefit foundations, please refer to above but indicate which documents need to be provided and translated:

- Statutes (translation required?)
- Last annual financial report (translation required?)
- Documents providing evidence for certain tax law requirements e.g. that income was actually spent for public-benefit purposes, which may not be required by the organisation's country of seat but are required according to the legislation of the country from which tax benefits are sought?
- Other

Yes, in line with European law, the Finance Act 2010 made provision for foreign foundations located in an EEA or an EFTA state to seek a tax determination from Revenue to the effect that, if the person or trust were to have income in Ireland of a kind defined by that Act, it would qualify for the exemptions provided for by those sections. Foreign foundations must apply to Revenue for a DCHYI determination. Applications must be verified by a document corresponding to an affidavit sworn in Ireland or by an equivalent sworn statement, and proof of the claim may be given by the treasurer, trustee or any duly authorised agent. Applicants must meet normal tests for charitable exempt status that it would expect of a domestic applicant charity, with the exception of the establishment requirement. It is currently unclear whether the foreign foundation would also be required to register with the CRA, as a prerequisite. A two-year waiting period applies before a charity can access the donations relief scheme (s. 848A of the Finance Act 2013).

All required documentation must be in English.

22. Does your country have signed bi-lateral tax treaties, which provide for reciprocal tax treatment of public-benefit organisations? If so, with which countries?

Ireland has 76 double taxation treaties, 74 of which are in force. Not all of these reference public-benefit organisations. However, the double taxation treaties between Ireland and the United Kingdom and between Ireland and the United States both specifically cover charities.

23. Does your country apply withholding tax to the income from local investments held by domestic and/or foreign-based foundations? If so, can domestic or foreign-based foundations reclaim all or part of the withholding tax under domestic law?

In certain circumstances, Dividend Withholding Tax does not have to be deducted from distributions to charities. Foreign-based foundations must register with the CRA in order to operate in Ireland. In respect of charitable tax-exempt status, the foundation can register for charitable tax-exempt status with Revenue. Foreign-based foundations can then avail of the tax exemptions provided their purposes could be regarded as exclusively charitable under Irish law.

Non-resident foundations established in an EEA/ EFTA State, or in the UK, can be authorised as an “approved body” for the purposes of the charity donation scheme provided that the requirements for an approved body are met.

III. Tax treatment of donors

1. Is there a system of tax credit or tax deduction or other mechanisms such as tax allocation systems or matching grants?

Unlike other countries, Ireland does not provide tax reliefs or credits to individual donors who donate to public-benefit foundations. Instead, under Revenue's Charitable Donation scheme, tax relief is allowed on qualifying donations made to "approved bodies". If an individual donates €250 or more in a year, the approved body can claim a refund of tax paid on that donation. If a company donates €250 or more in a year, the company can claim a tax deduction as if the donation were a trading expense. There is a four-year time limit for making a claim under this scheme. A charity requires a separate tax authorisation before it is considered an approved body for the purposes of this scheme.

2. Tax treatment of individual donors

a) What tax relief is provided for individual donors? Is there a minimum and/or a ceiling to a contribution on which tax incentives can be claimed?

None. See answer to question 1. The tax incentive, which benefits the charity, has a minimum amount of €250 and a maximum cap of €1 million per annum. The relief is grossed up to the recipient charity at a blended rate of 31%.

b) Which assets qualify for tax deductibility (e.g. cash, real estate, in kind or other)

Qualifying assets for the Charitable Donation Scheme include money or designated securities or a combination of money and shares.

3. Tax treatment of corporate donors

a) What tax relief is provided for corporate donors? Is there a minimum and/or a ceiling to a contribution on which tax incentives can be claimed?

When a company makes a donation to an approved body, it is the company that claims the relief. There is no grossing up arrangement in this case. The company simply claims a tax deduction on the donation as if it were a trading expense. The same minimum threshold applies in that the donation must be at least €250.

b) Which assets qualify for tax deductibility? (e.g. cash, real estate, in kind, or other)

Qualifying assets for the Charitable Donation Scheme include money or designated securities or a combination of money and shares.

4. Tax treatment of donations to non-resident public-benefit foundations: Do donors get the same tax incentive?

If the non-resident public-benefit foundation holds DCHY status for two years, it would then be eligible to apply to Revenue to become an approved body under the Charitable Donation Scheme such that an Irish corporate donor could get the same tax incentive as if donating to an approved Irish charity. In the case of an individual donation, as noted above, the tax incentive does not flow to the donor, it flows to the charity. Ireland used to be a fully participating member in the TGE (Transnational Giving Europe) network but since 2018, the Irish TGE partner has only facilitated inwards donations to Irish charities and has ceased assisting in the outward transfer of donations to non-resident public-benefit foundations, thereby closing off this previous avenue of relief.

5. Other frameworks such as percentage law systems, whereby the donating taxpayer may assign part of the tax due to a public-benefit organisation?

See above.

6. What are the requirements that the donor must fulfil and/or what is the information they must provide in order to claim tax benefits? What information must donors provide to their tax authority in order to receive tax incentives for their donation (e.g. submitting details on the organisation they support: statutes, annual financial report, documents providing evidence for certain tax law requirements, for instance to show that income was actually spent for public-benefit purposes)?

What information do donors have to provide to their tax authority in order receive tax incentives for their donation (e.g. submitting details on the organisation they support: statutes, annual financial report, documents providing evidence for certain tax law requirements e.g. that income was actually spent for public-benefit purposes?)?

To enable a recipient charity to claim back the tax previously paid on a donation by an individual donor, the recipient charity requires the donor to complete either an annual tax certificate (CHY 4) or an enduring tax certificate (CHY 3), which lasts five years providing their tax details. The recipient charity, which must hold approved body/eligible charity status, then uses these details to make a tax refund claim to Revenue.

7. Are there any different or additional requirements to be fulfilled when a donor is giving to a foreign-based foundation? What information must donors to foreign-based organisations provide in order to receive tax incentives for their donation (e.g. statutes, annual financial report, documents providing evidence for certain tax law requirements, for instance to show that income was actually spent for public-benefit purposes)? Are translations of documents required?

No. To reclaim tax at present as a foreign-based foundation, in the absence of a reciprocal TGE scheme in Ireland, that foreign foundation must have both DCHY status and approved body status.

8. Do donors get tax incentives when donations are done via specific tools such as:

No. See above.

- Requesting money in public (street, door-to-door)
- Via TV and radio campaigns
- Via sms
- Crowdfunding

Do they have to follow any kind of particular process? If so, which one?

IV. Tax treatment of beneficiaries

(i.e. those receiving a grant or other benefit from a foundation)

1. **Individuals: Are individual beneficiaries of grants required to pay taxes or are the grants tax exempt?**

It will depend on the tax status of the individual recipient. Individuals cannot register as charities, and so are not tax-exempt. Unincorporated non-profit organisations (which are not otherwise charities), such as community groups or sports clubs, are registered for income tax purposes but on a “periodic basis of assessment”, meaning they are not liable to file tax returns on an annual basis as with all other entities, but are only required to file a return approximately every 5 years: This is just for Revenue to satisfy itself that they are still a non-profit as declared on Registration. Groups/entities such as these are normally kept live for income tax purposes if they draw down grants from public bodies etc., as they would be required to get tax clearance for such applications. In the case of an individual recipient, it is possible in some instances also to receive a tax clearance certificate if you receive more than €10,000 in a year in grants, subsidies or similar payments from public sector bodies.

2. **Legal entities: Is there any legal/fiscal framework for beneficiaries conducting economic activities so that they can be eligible for foundation funding? Are there any limitations on the economic activities of the beneficiaries?**

As long as the legal entity has a charity number from the Revenue Commissioners, it will be exempt from tax on grants and donations.

3. **Are there any different or additional requirements that must be fulfilled by a beneficiary receiving funding from abroad?**

No.

V. Gift and inheritance tax

1. Does gift and inheritance tax/transfer tax exist in your country and, if yes, who has to pay the tax in the case of a donation/legacy to a public-benefit organisation (the donor or the recipient organisation)?

Capital Acquisitions tax does exist in Ireland and is normally payable by the recipient of an inter vivos gift or inheritance. However, registered charities that have been granted charitable tax exemption are exempt from this tax.

2. What are the tax rates? Is there a preferential system for public-benefit organisations (PBOs)? Which PBOs qualify? Is there a difference according to the region or the legal status of the PBO?

As stated above, a registered charity will not be liable for gift or inheritance tax. This is a preferential system for these recognised public-benefit organisations. Only those organisations which are registered on the Charities Register under the provisions of the Charities Act or are recognised by the Revenue Commissioners as an EEA/EFTA or UK charity that meets the Irish Charities Act requirements qualify (DCHY status). There are no regional differences in Ireland, but it is important to note that Northern Ireland is a separate legal jurisdiction to Ireland and has its own Charities law and its own separate regulatory system.

3. Is there a threshold (non-taxable amount) from gift and inheritance tax for donations/legacies to public-benefit organisations?

See above.

4. Is there a legal part of the estate that is reserved for certain protected heirs and which a donor cannot give to third parties?

Where an individual dies testate but fails to make proper provision for their surviving spouse or children, it is open to those individuals to challenge the will. A surviving spouse is entitled to a fixed share of a deceased spouse's estate. This is known as the legal right share. It is a right to one-third of the estate if the donor is survived by children, and to 50% of the estate if the donor is not survived by children. Children are not entitled to any fixed percentage share of a deceased parent's estate. However, they can invoke the discretion of the court to vary their deceased parent's will in their favour if they satisfy the court that the deceased parent failed to make proper provision for the child in accordance with the deceased parent's means.

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

This will depend upon whether they have DCHY status or not. See above.

VI. Trends and developments

- 1. Are there current discussions about the question of whether cross-border activities of foundations or other non-profit organisations and their donors are protected by the fundamental freedoms of the EC Treaty? Have there been any changes to your country's legislation, resulting from the [Persche](#), [Stauffer](#), [Missionswerk](#) or other relevant ECJ judgments, or are changes being discussed? Any changes being discussed with regard to the free movement of trust structures resulting from the [Panayi Trust](#) and [Olsen and Others](#) cases?**

Since 2018, the Irish TGE partner has ceased to act in a reciprocal manner in the TGE network and while it facilitates inward donations to Irish charities from foreign donors, it no longer facilitates outward donations by Irish donors to non-resident foreign foundations in the EU. Changes to Irish legislation in light of the Pesche, Stauffer and related EU cases have been made in the Charities Act 2009 (see s.39), and in the Finance Act 2010 (s.23). The Charities (Amendment) Act 2024, when commenced, will recognise that the UK is now neither an EFTA or EEA country and will give equivalent recognition to UK residents for the purposes of qualifying as a charity trustee.

- 2. Has the fight against terrorism and financial crime led to the introduction in recent years of new laws/rules affecting the foundation sector (e.g. implementation of EU Anti Money Laundering Directive, or reactions to recommendations of the Financial Action Task Force)? Has it for example become more difficult to:**

- Set up a public-benefit foundation
- Obtain permission to transfer funds across borders
- If able to transfer of funds across borders, has the process become more burdensome administratively
- Open a new bank account
- Maintain a bank account
- Fund certain activities
- Fund certain regions/countries
- Fund certain organisations (please explain the reason - foreign funding restriction?)
- Report to authorities/deal with administration
- Other

The Information Accompanying Transfers of Funds Regulations 608 of 2017, entered into force in December 2017. The majority of 4AMLD was transposed by the Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2018. Regulations on beneficial ownership of corporate entities and trusts entered into force in 2019, and external registers are held by the Companies Registration Office and the Revenue Commissioners, respectively. The 2019 National Risk Assessment on Money Laundering and Anti-Terrorist Financing found the overall ML/TF risk in the Non-Profit Organisation sector to be Medium-Low although it acknowledged the incomplete nature of this finding, based on ongoing work to populate the national Charities Register and the absence of an official register of non-profits more generally. In its 2017 Mutual Evaluation Report, the FATF rated Ireland as being partially compliant with Recommendation 8. The "PC" rating has remained to date following both Ireland's enhanced Follow-up Report & Technical Compliance Re-Rating in 2019 and FATF's more recent regular Follow-up Report & Technical Compliance Re-Rating in February 2022. Neither of these reports provide any updates on NPO oversight. While Ireland

had taken steps to promote accountability and transparency in NPOs, there had not been specific outreach to NPOs on TF issues or the development of best practices.

3. Does the national law consider foundations as obliged entities as defined by the Anti-Money Laundering Directive?

Yes.

4. Does the national law define/specify who is considered as a Beneficial Owner (BO) of a foundation?

There are two sets of relevant regulations under Irish law: the European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2019 and the European Union (Anti-Money Laundering: Beneficial Ownership of Trusts) Regulations 2019. The beneficial owners in the case of the former are “those natural persons who ultimately own or control the corporation,” while in the case of the latter are “any natural person(s) who ultimately owns or controls the customer and/or the natural person(s) on whose behalf a transaction or activity is being conducted.”

5. Does your country have a specific register for BO of legal entities/foundations or does the foundation/company/association register serve as a BO register?

It depends on the legal structure of the foundation. The BO register for corporate charities is maintained by the Companies Registration Office, separately to the Companies Register. Since the transposition of 5AMLD into Irish law, a similar central registry of beneficial ownership exists for trusts and is held by the Revenue Commissioners.

6. Are there any other recent trends or developments affecting the legal and fiscal environment for public-benefit foundations in your country such as one or more of the following?

a) Law revision in the pipeline

The Charities Act 2009 requires the effectiveness of the legislation to be reviewed 5 years after its commencement. This independent review was due to begin by October 2019, but it was never undertaken. Instead, the Government enacted a Charities (Amendment) Act in July 2024 which, when commenced, will introduce new financial reporting requirements for all registered charities; increase the regulatory powers and sanctions of the CRA; and codify the fiduciary duties of charity trustees.

b) Discussion about the role of supervisory authorities (civil law, charity regulator, tax authority) and collaboration among them? Decentralisation or centralisation of supervisory structures? Use of watchdog/rating agencies?

c) Tendency towards more transparency requirements?

d) Tendency towards more self-regulation? Self-regulation replacing hard law regulation?

e) Tendency to use alternative forms to classic public-benefit foundations

f) Other?

7. Public fundraising: Are there any specific laws that regulate fundraising, and do they affect foundations?

Fundraising is regulated by the House and Street to Street Collections Act 1962 and by the Gaming and Lotteries Act 1956. Provisions to update the 1962 legislation which were included in the Charities Act 2009 have not been commenced. In 2017, the CRA published a Report of the Consultative Panel on Charitable Fundraising and on the basis of the recommendations made in this report, it subsequently released its Guidelines for Charitable Organisations on Fundraising from the Public (2017).

VII. Further information

Useful contacts

Oonagh B. Breen, Professor of Law, Sutherland School of Law, University College Dublin:
oonagh.breen@ucd.ie

Selected bibliography

- Oonagh B. Breen and Carolyn J. Cordery, [“Cross-Border Tax and Philanthropy: Avoiding the Icebergs in the Sea of Generosity”](#) (2022)
- Oonagh B. Breen and Philip A. Smith, *Law of Charities in Ireland* (Bloomsbury: Dublin, 2019).
- Oonagh B. Breen, “Redefining the Regulatory Space? The First Forays of the Irish Charities Regulatory Authority” in Picton and Sigafos (eds) *Debates in Charity Law* (Hart: London, 2020).
- Oonagh B. Breen, Alison Dunn, Mark Sidel, (eds.). *Regulatory Waves: Comparative Perspectives on State Regulation and Self-Regulation Policies in the Nonprofit Sector* (Cambridge University Press: Cambridge, 2017).
- Oonagh B. Breen, Patrick Ford and Gareth G. 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*.
- Oonagh B. Breen, [“EU Regulation of Charitable Organizations: The Politics of Legally Enabling Civil Society.”](#) (2008) 10(3) *International Journal of Not-for-Profit Law*.

Selected law texts online

- [Charities Act 1961](#)
- [Charities Act 1973](#)
- [Charities Act 2009](#)
- [Charities \(Amendment\) Act 2024](#)
- [Companies Act 2014](#)
- [Street and House to House Collections Act 1962](#)

VIII. About

About Philea

Our vision is for philanthropy to use its full potential to co-shape and support a pluralistic, just and resilient society that centres people and planet. To achieve this, our mission is to enable, encourage and empower the philanthropic community to build a better today and tomorrow.

We nurture a diverse and inclusive ecosystem of foundations, philanthropic organisations and networks in over 30 countries that work for the common good. With individual and national-level infrastructure organisations as members, we unite over 7,500 public-benefit foundations that seek to improve life for people and communities in Europe and around the world.

We galvanise collective action and amplify the voice of European philanthropy. Together we:

- **Co-create knowledge and learn** from effective practices
- **Collaborate** around current and emerging issues
- **Promote enabling environments** for doing good

In all we do, we are committed to enhancing trust, collaboration, transparency, innovation, inclusion and diversity.

philea.eu

Policy and advocacy at Philea

Philea champions the interests of its members vis-à-vis the EU and multilateral organisations. Through [our policy and advocacy work](#), we strive towards an enabling operating environment for European philanthropy by monitoring and analysing policy and regulatory trends at national, European, and international level, and engaging around this agenda with policymakers and other stakeholders. We position philanthropy as a key actor on societal issues and facilitate strategic engagement and collaboration opportunities, including public-private partnerships.

About this project

This country profile is part of a [larger analysis project](#), ongoing since 2002, which includes regularly updated profiles on the legal and fiscal landscape for philanthropy in some 40 countries across the wider Europe; and a comparative overview of the profiles compiled in our “Comparative Highlights of Foundation Laws”.

Legal Affairs Committee

Philea’s [Legal Affairs Committee](#) consists of legal and public affairs experts from Philea members, composed of both national associations and foundations, across Europe. The members of the LAC advise on Philea’s policy and advocacy work.

Philea 2024

This work is licensed under a Creative Commons Attribution – Non-Commercial No Derivatives 4.0 International License. Quotation is subject to full identification of this source. The views expressed in this report are those of the authors and should not be interpreted as official positions of Philea. Philea disclaims all liability for damages of any kind arising out of the use of the information given in this publication.

For further information, please contact:

Philea, Philanthropy House
Rue Royale 94, 1000 Brussels, Belgium
T +32 2 512 89 38 – info@philea.eu – www.philea.eu