Tax Changes for Charities and Sports Bodies in Finance Act 2024

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Introduction

This article considers tax changes introduced in Finance Act 2024 that will affect charities and sports bodies.

Charities

Section 16 and 17 of Finance Act 2024 introduced two important changes to the tax rules that apply to charities. The first is a change to the eligibility criteria that a charity must satisfy to qualify for tax relief on donations. The second relates to the tax relief that a charity can avail of on its income and imposes a new time limit within which that income must be applied.

Tax relief on charitable donations

Section 848A and Schedule 26A of the Taxes Consolidation Act 1997 (TCA 1997) provide for tax relief for donations to approved bodies. The list of approved bodies, which is contained in Schedule 26A TCA 1997, includes eligible charities, which are the focus of this article.

The procedure to be followed for a body to be authorised as an eligible charity is set out in Part 3 of Schedule 26A TCA 1997. A body that satisfies the necessary requirements will receive an authorisation from Revenue stating that it is an eligible charity and, accordingly, an approved body for the purposes of s848A TCA 1997, which means that it can qualify for tax relief on donations it receives.

Since 2013, tax relief on donations made by individuals, whether self-assessed or PAYE-only taxpayers, to an approved body is, in accordance with s848A TCA 1997, given to the charity rather than the donor. The relief is calculated by grossing up the donation at the specified rate, which is currently 31%.

Before the Finance Act 2024 changes, a charity would not be issued an authorisation as an eligible body unless it could satisfy the Revenue that:

a. it is a body of persons or a trust established for charitable purposes only,
b. the income of the body is applied for charitable purposes only,
c. before the date of the making of the application it has been granted exemption from tax for the purposes of s207 for a period of not less than two years, or it has received a notice of determination from Revenue in accordance with s208A at least two years before that date,

d. it provides such other information to Revenue as it may require for the purposes of its functions, and
e. it complies with such conditions, if any, as the Minister for Social, Community and Family Affairs may, from time to time, specify.

The requirement at (c) above that the charity must have held a CHY number – or, in the case of a foreign charity, a DCHY number – for at least two years before making the application for an authorisation has now been removed by Finance Act 2024 and is no longer a criterion that must be satisfied where such applications are made on or after 1 January 2025.

This change also applies to restructured or amalgamated bodies, as defined in Schedule 26A TCA 1997, which now also no longer need to satisfy requirement (c) above that the restructured, or amalgamated body, held an authorisation for at least two years before the reorganisation.

The two-year waiting period could have been seen to serve the purpose of ensuring new charities had to establish themselves as legitimate and compliant organisations in their initial start-up phase before benefiting from tax relief on donations. This helped to maintain the integrity of the charitable sector and prevented short-lived charitable endeavours being able to obtain tax relief on donations where the organisation may not survive past infancy.

The Tax Strategy Group looked at this issue before Budget 2025. It pointed out that stakeholders in the area argued that given the bespoke nature of many philanthropic endeavours, there may be grounds to grant tax relief retrospectively for a major philanthropic donation.[1]

In the Dáil the change to the two-year waiting period was described as an enhancement to the current tax arrangements for charities. The removal of the waiting period so that charities can obtain tax relief immediately is to support charities and their work and the wider implementation of a national philanthropy policy.[2]

It is noteworthy that although the *National Philanthropy Policy 2024–2028*[3] refers to the role of fiscal incentives being provided to support philanthropic endeavour to stimulate and accelerate engagement in major giving, there is no specific reference to making any changes to the charity donation scheme, which was overhauled in 2013, arguably to the detriment of the scale of giving to charities.

The *National Philanthropy Policy 2024–2028* states:

> "The 2020 OECD study on Taxation and Philanthropy highlights that countries need to ensure that the design of their tax incentives for philanthropic giving is consistent with their underlying policy goals and that 'countries with a progressive personal income tax system wishing to provide a greater incentive to richer donors in order to maximise total giving, may wish to provide a tax deduction'.

> While it is important in the context of national economic policy that tax changes must be targeted to address needs and add value, they can also play a vital role in removing blockages to philanthropic giving and encourage greater levels of giving. Thoughtful fiscal changes could lead to increased support of charities that have more strategic projects and a major-gifts approach. Targeted measures could further inspire the philanthropic journey of individuals and others to increase their scale of giving and to become more strategic in their giving approach."

Although removing the two-year waiting period might incentivise corporate giving, as a corporate donor can now receive a tax deduction on a donation to a new eligible charity without having to wait two years, it is not clear that such corporate giving would, in any event, be made to such new charitable bodies.

The removal of the waiting period may encourage individuals to set up their own personal charitable foundations to pursue a charitable cause close to their heart where such individuals might be looking to fund the foundation from funds that they hold in personal holding companies, as they can now get an immediate tax deduction for such donations without having to wait two years.

It is not clear that the changes will encourage major giving by individual donors to charities, which is a central tenet of the *National Philanthropy Policy 2024–2028*. Not having a two-year waiting period could give a donor pause before making a donation where a charity is just established and has no track record of compliance. Also, the changes introduced in Finance Act 2024 for funding sports bodies, which are considered below, could encourage greater levels of major gifts by individuals to sports bodies rather than charities.

Charitable income

The charitable tax exemption exempts from tax the income of a charity insofar as it is applied for charitable purposes only. The two main relevant sections are s207 and s208 TCA 1997.

Section 207 provides that certain income of hospitals and other charities chargeable to income tax under Schedules C, D and F is exempt from income tax where such income is applied solely for charitable purposes.

Section 208 exempts from income tax certain income arising to charities. The income covered by the exemption is:

- income arising from lands, tenements or hereditaments that are owned and occupied by a charity and
- profits, which would otherwise be taxed under Case I or Case II of Schedule D, where the profits are applied solely for the purpose of the charity, and the trade or profession is exercised in the course of the actual carrying out of the primary purpose of the charity or the work in connection with the trade or profession is mainly carried on by beneficiaries of the charity.

As pointed out by Tom Maguire in *Irish Income Tax 2024*, apart from the profits of any trade that may be taxable on the charity, the view appears to be accepted now that the charitable exemption extends to all types of income from any property or other asset that is chargeable to income tax (or corporation tax) under Schedule D. This, of course, assumes that the income in question is actually applied to charitable purposes only, the overriding condition that must be met irrespective of the type of income or the Schedule or Case under which it normally falls.[4]

Finance Act 2024 has introduced an additional overriding condition that must also now be met for the charitable tax exemption to be available. In addition to the income having to be actually applied to charitable purposes only, there is also now a time limit by which the income must be expended by the charity.

From 1 January 2025 a new cut-off point means that the charity must apply its charitable income no later than the end of the fifth year of assessment after the year of assessment in which the income was received. The cut-off point means that there is a now a statutory time limit within which the income must be used for charitable purposes; otherwise, it will be taxable.

Revenue may allow an extension of the cut-off point, but it must be satisfied that the charity is in the process of applying the income to charitable purposes.

The wording of the new sub-section seems to indicate that it is not sufficient for a charity to have a plan for the use to which the income will be put, and instead the charity must have actually started using the income, at least in part, for its charitable purposes but it has not been fully expended at that time.

Before the cut-off point was put on a statutory footing, the administrative practice was that a charity could accumulate funds for more than two years only if they were for a specific charitable purpose that has been approved by the Revenue charities section and where accounts are submitted and checked regularly.[5]

The Tax Strategy Group considered this issue before Budget 2025, pointing out that changes to the two-year rule could be merited in enabling incremental permanent endowments and perpetual philanthropic legacies in Ireland that invest over the long term.[6]

Although the changes to s207 and s208 TCA 1997 have been described as allowing charities five years to apply tax-relieved funds to their charitable purpose rather than the two-year period that operated on an administrative practice,[7] it is not necessarily clear whether the change clears the matter up entirely for charities.

Although it is now a statutory requirement that the taxable income of a charity must be used within five years, many charities' main source of income will be donations, which are not taxable under s207 or s208, and therefore, on the face of it, not affected by the cut-off point.

It was generally accepted that the reference to funds in Revenue Precedent CHY 9661, which imposed the two-year cut-off point, included donations as well as income. The Finance Act 2024 changes presumably replace this precedent and make clear the cut-off point as it applies to taxable income but not to other income, such as donations, which would not fall to be taxed under s.207 or s208. To address this gap, it would be helpful for the Charities Regulator to issue guidance on charity reserves similar to the guidance published by the UK Charities Commission[8] This guidance would help charities to understand how to manage and report their reserves ensuring they fulfil their statutory obligation to apply all property, including donations in furtherance of their charitable purpose. It would also provide clarity on maintaining reserves as a safety net to balance the needs of future and current beneficiaries of a charity.

Previously, a charity that accumulated funds beyond two years would have been concerned that it could lose its charitable tax exemption/CHY number. Since 1 January 2024 the procedure that must be followed where Revenue is satisfied that a charity has ceased to be eligible for the charitable tax exemption is clearly set out in s208B (7) TCA 1997.

From 1 January 2025 a charity that does not use its income within five years could have to pay tax on these amounts unless it is in the process of spending the funds for its charitable activities and Revenue approval of an extension of the time limit has been obtained.

Charities may decide that they will have to segregate taxable income from all other funds and spend this income first to ensure that there is no issue with the availability of the tax exemption.

Also, whereas the five-year “use it or lose it” test now applies to income earned by a charity, no such time limit applies to gains made by a charity that are exempt from capital gains tax in accordance with s609 TCA 1997, as long as the gain accrues to a charity and is applicable to and applied for charitable purposes, without any cut-off point.

Sports Bodies

Section 20 of the Finance Act 2024 has made changes to s847A TCA 1997, which deals with tax relief on donations to approved sports bodies for funding approved capital projects. Before these changes, an individual who is a chargeable person (i.e. a self-assessed individual) could claim an income tax deduction for the amount of the relevant donation to the sports body. To constitute a relevant donation the following criteria must be satisfied:

- it is made to the approved sports body for the sole purpose of funding an approved project;
- it is or will be applied by that body for that purpose;

- it is not otherwise deductible in computing the profits or gains of a trade or profession or deductible as an expense of management in computing the profits of a company;
- it is not a relevant donation for the purposes of s848A TCA 1997 (donations to approved bodies, such as charities);
- it is not subject to repayment;
- neither the donor nor any person connected with the donor receives a benefit, whether directly or indirectly, as a result of making the donation (for example, a person will be regarded as receiving a benefit where a donation is in substitution in full or in part for an annual membership fee or where a donation entitles the donor to rights or enhanced rights or facilities etc. not available to members who have not made a donation – s10 TCA 1997 sets out the circumstances where a person is regarded as "connected with" another person for tax purposes);
- the donation is not conditional on, or related to, the acquisition of property by the approved sports body from the donor or any person connected with the donor, other than as a gift;
- where the donor is an individual, that individual is resident in the State for the year of assessment in which the donation is made, makes a donation, in the case of a PAYE-only taxpayer, gives an appropriate certificate to the approved sports body in relation to the donation, has paid the tax referred to in the certificate and is not entitled to a repayment of any of that tax; and
- the donation is the payment of a sum or sums of money to an approved sports body amounting to at least €250 in a year of assessment for a donation by an individual, and at least €250 in an accounting period for a donation by a company. Where an accounting period is less than 12 months, the €250 is proportionally reduced – for example, if the accounting period is six months, the donation must be at least €125.[9]

A relevant donation by an individual who was not a chargeable person (i.e. a PAYE-only taxpayer) was grossed up at the individual's marginal rate of tax, and the sports body could benefit from the tax relief.

Changes introduced in Finance Act 2024, which apply from 1 January 2025, mean that an individual, regardless of whether they are a self-assessed individual or a PAYE-only individual, can now elect either:

- to take a tax deduction for the relevant donation or
- to allow the sports body to benefit from the tax by re-grossing the donation at the taxpayer's marginal rate of tax (and not the 31% blended rate that applies to charities).

The election is now included in sub-section 9(a) for self-assessed individuals and in sub-section 11(a) for PAYE-only individuals. Self-assessed individuals who elect to take a tax deduction for the relevant donation must include a claim for this in their tax return.

PAYE-only taxpayers who elect to take a tax deduction for the relevant donation will be required to make an electronic claim for the refund. The claim, which will likely have to be made through PAYE Anytime, must include:

- full particulars of the relevant donation,
- a receipt from the sports body, which shall include certain prescribed information, and
- any other relevant information that may be reasonably required by Revenue to determine whether the requirements of s847A have been met.

Conclusion

The differences between the tax relief rules that apply to donations to charities and donations to sports bodies were considered by the Tax Strategy Group.[10] Finance Act 2024 has added to the differences by allowing individual donors to sports bodies to choose who benefits from the tax relief. This choice is not available for donations to charities.

The new right of election, which applies equally to PAYE and non-PAYE taxpayers, is nonetheless a welcome development. It empowers donors to decide whether they or the sports body should benefit from the tax relief, potentially encouraging larger donations.

Although charities benefit from tax relief on donations, the lack of a tax deduction for individual donors to charities could be a disincentive to major giving. To level the playing field and promote major giving to charities, it is suggested that the right of election should be extended to donations to charities. This change would align with the *National Philanthropy Policy 2024–2028* and encourage greater levels of charitable giving.

Footnotes

[1] “Income Tax: Tax Strategy Group – 24/01” (July 2024), page 41, https://assets.gov.ie/static/documents/tsg-24-01-income-tax.pdf.

[2] See https://www.kildarestreet.com/debates/?id=2024-10-16a.208.

[3] See https://www.gov.ie/pdf/?file=https://assets.gov.ie/280970/9db88719-c3b3-49ba-ab4b-0a0683d32021.pdf#page=null.

[4] See https://www.bloomsburyprofessionalonline.com/view/irish-income-tax/IIT-0121254.xml

[5] Revenue Precedents, file reference CHY 9661 (originally published on 30 November 1990).

[6] "Income Tax: Tax Strategy Group – 24/01" (July 2024), page 41, https://assets.gov.ie/static/documents/tsg-24-01-income-tax.pdf.

[7] See https://www.kildarestreet.com/debates/?id=2024-10-16a.208

[8] See https://assets.publishing.service.gov.uk/media/5a7c88c840f0b626628acbc8/rs3text.pdf

[9] See https://www.revenue.ie/en/tax-professionals/tdm/income-tax-capital-gains-tax-corporation-tax/part-36/36-00-14.pdf

[10] "Income Tax: Tax Strategy Group – 24/01" (July 2024) page 30, https://assets.gov.ie/static/documents/tsg-24-01-income-tax.pdf.

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