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Charitable Organisations and Charity Policy in Ireland

What is the historical background to charity law and charitable organisations?

Ireland has a long history of charity and charitable giving rooted in a strong religious tradition. In the late 1700s, Protestant philanthropy helped to alleviate the physical and medical needs of the impoverished working classes. Beginning in 1770, the incremental waning of the Penal laws enabled the growth of Catholic charities. Following Catholic emancipation in 1829, greater Catholic clergy involvement in charitable activity emerged with religious involvement in philanthropy becoming more formalized in Irish society. In the late 19th century, religious charities provided many essential services in the fields of health care, education and social welfare. In the 20th century, many of these voluntary organizations partnered with the state to provide these services on its behalf while receiving its funded support. Research studies describe the Irish as a generous nation. Over the past ten years, the World Giving Index (CAF, 2019), drawn primarily from Gallup's World View World Poll data, has ranked Ireland consistently in the top five in the global league of donors in terms of the percentage of people who donate money, volunteer time or help strangers.

Ireland recognizes many different types of non-profit organizations. While the customary division between mutual benefit and public benefit organizations applies, the range of non-profit types includes cooperatives, social enterprises, religious organizations, trade unions, residents' associations, foundations, and self-help groups. Not every nonprofit will enjoy charitable status. Research by Benefacts conservatively estimates that there are over 29,000 nonprofits in Ireland in 2019[1] while the Charities Register reveals that there are just over 10,000 registered charities[2]. Unlike charities, non-profits do not generally enjoy tax exemption although they may be freer to engage in both commercial and political activity as a result.

Is there a legal definition of a »charity«?

With the introduction of the Charities Act 2009, Ireland now has a statutory definition of 'charitable purpose' (s.3 of the Act). This definition builds on the common law *Pemsel* heads of charity (so named after the case of *Commissioners for Special Purposes of Income Tax v Pemsel* [1891] AC 531) and so one will still find reference to relief of poverty, advancement

[1] See http://www.benefacts.ie/
[2] See https://www.charitiesregulator.ie/en

of education and advancement or religion. The fourth common law head 'any other purposes beneficial to the community' also continues but this heading receives statutory elaboration with a series of subheadings identifying for the first time what comprises this catch-all category. Thus, s.3(11) provides for 12 categories which are »included« under any under purposes beneficial to the community. These are:

> (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 organistions,
> (j) the prevention or relief of suffering of animals,
> (k) the advancement of the arts, culture, heritage or sciences, and
> (l) the integration of those who are disadvantaged, and the promotion of their full participation, in society.

While this might seem like quite an expansive list, in truth these subheadings represent areas in which the Irish Revenue Commissioners were previously happy to grant charitable tax exemption prior to the introduction of the 2009 Act and so they do not represent an expansion of the common law definition, as understood in Ireland. Indeed, this list is more notable for its omissions than its inclusions. Unlike its common law neighbours in the British Isles (each of whom also have a statutory definition of charitable purpose), Ireland deliberately chose not to include the promotion of amateur sport, or more controversially, the advancement of human rights as charitable purposes under s.3(11). Having a charitable purpose, however, is only half of the test and to be eligible for charitable status, charities must also show public benefit under the provisions of s.3 (except in the case of gifts for the advancement of religion where statutory (rebuttable) presumption of public benefit applies).

What are the forms of organisations that are used for charitable purposes?

Most charities are established as one of the following legal forms:

- An unincorporated association;
- A trust; or

- A company limited by guarantee (CLG).

An organization in any of these forms, in turn, can qualify for charitable tax exemption if it meets particular requirements. In addition, the Companies Act 2014 created an additional form, the Designated Activity Company (DAC), which organisations wishing to be charities may choose to adopt. Unlike a CLG, a DAC is a company with share capital that can be limited by guarantee. However, both DACs and CLGs are required to include the company's objects (purposes) in their memorandum of association, and for both, their activities are partially limited to these objects and reasonably incidental activities (Companies Act 2014, ss. 967, 972, 973 (DACs); ss. 1176, 1182, 1183 (CLGs)). While charities now have the option to form as DACs, or convert to DACs from CLGs, it is expected that many will continue to operate as CLGs, as it may not suit charities to have a share capital which allows ownership to be transferred.

What are their advantages/disadvantages of charitable status?

Some of the chief advantages that flow from charitable status relate to the trust and confidence that the public place in registered charities. A charitable organisation that intends to operate or carry on activities in Ireland is required to apply to the Charities Regulatory Authority to be registered in the Charities Register (s.39(3)). The status of a registered charity is protected under Irish law in so far as it is an offence under the Charities Act for a person to hold out a body that is not registered as being registered. Registration with the Charities Regulatory Authority is also a prerequisite for consideration for charitable tax-exempt status with the Irish Revenue Commissioners. However, such registration is not a sufficient condition to guarantee charitable tax-exemption as the Charities Act makes clear that Revenue is not bound by the decision of the Charities Regulatory Authority when it comes to determining whether a purpose is of public benefit or not in deciding on tax exemption (Charities Act 2009, s.7). Some public funders may require registration as a charity as a requirement to an organisation being eligible for funding.

The disadvantage of being a registered charity in Ireland is the extra regulation that then applies to such bodies under the 2009 Act. Registered charities must file an annual report with the Charities Regulatory Authority and are subject to the supervision of the Regulator. In general, there are limits on the political activities and the commercial activities in which a registered charity can engage. Charity trustees must also comply with the governance regime laid by the Regulator in the running of their charities. For example, the Regulator insists upon a minimum number of three charity trustees who must not be remunerated for carrying out their charitable duties.

What are the main regulatory authorities for charitable organisations?

Since the commencement of the Charities Act in 2014, the primary regulator for charities in Ireland is the Charities Regulatory Authority. Those charities that also enjoy charitable tax-

exempt status are subject to the oversight of the Revenue Commissioners. Additionally, incorporated charities (some 44% of all registered Irish charities) must also comply with Irish company law and to this end, must make annual financial and other corporate filings with the Companies Registration Office and in their compliance with company law are subject to the oversight of the Office of Corporate Enforcement. Depending upon the sector in which the charity operates, additional bodies may have regulatory oversight – e.g., housing charities are subject to the housing regulator while health charities, which are often publicly funded are answerable to the Health Services Executive. Like all for-profit and non-profit organisations, charities must comply data protection regulations and are answerable to the Data Protection Commissioner. If engaged in lobbying, charities are also required to register on the Register of Lobbyists and their activities in this regard are then overseen by the Standards in Public Office Commission.

How are charities taxed? Are there any Non-profit organisations that are not charities?

Charities may enjoy charitable tax-exempt status, as explained above. The Irish charitable tax exemption extends to income tax, corporation tax (in the case of companies), capital gains tax, Deposit Interest Retention Tax (DIRT), capital acquisitions tax, stamp duty, and dividend withholding tax. Although charities themselves are not exempt from VAT, many items that relate to charitable activities are exempt.

Corporate donations of cash and/or designated securities to certain »eligible charities« qualify for tax relief in Ireland. The relevant tax provisions are contained in Section 848A of the Taxes Consolidation Act 1997, as amended by Section 45 of the Finance Act 2001, Section 17 of the Finance Act 2006, and Section 19 of the Finance Act 2013. Eligible charities can claim back the tax paid on gifts on annual gifts over €250 from »pay-as-you-earn« donors or individual donors who are self-assessed for tax purposes. Approximately 2,400 charities out of a total of 10,000 registered charities qualify for this additional tax relief. In 2018, the Irish government introduced for the first time a VAT compensation refund scheme that allowed registered charities to reclaim VAT incurred during the financial year of 2018. The compensation fund was capped at €5 million euros and the claims by charities well exceeded €40 million. Compensation was thus paid on a pro-rata basis to qualifying charities in 2019.

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[3] http://www.istr.org/

and former Chair of the International Center for Not-for-Profit Law[4]. She has presented and published extensively on matters relating to charity regulation and governance and is the author of the Enlarging the Space for European Philanthropy Report (DAFNE & EFC, 2018). Recent publications include (with Philip A. Smith) Law of Charities in Ireland (Bloomsbury Professional: Dublin, 2019) and Breen et al (eds.), Regulatory Waves: Comparative Perspectives on State Regulation and Self-Regulation Policies in the Nonprofit Sector (Cambridge University Press: Cambridge, 2017).

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