



**PHILANTHROPY
IRELAND**

SHARE TODAY. SHAPE TOMORROW.

SETTING UP A FOUNDATION

A PRACTICAL GUIDE

A philanthropic foundation is a vehicle that distributes donations from an individual, family or corporation to charitable causes. Its aims can be broad in purpose, or more focused on particular causes, needs or interests. This Guide outlines what a philanthropic foundation needs to do in order to register with the Charities Regulatory Authority (the “Charities Regulator”) and obtain tax exempt status from the Revenue by obtaining a CHY number.

In an Irish context, a philanthropic foundation is generally established using one of two legal frameworks. This Guide primarily focuses on the establishment of a philanthropic foundation established as a company limited by guarantee not having a share capital (a “Foundation”). A brief outline of the establishment of a foundation as a charitable trust has also been included.

1. Framework for Giving

Setting up a Foundation

Issues to consider when setting up a Foundation:

- Structure: The majority of philanthropic organisations in Ireland are established as a charitable trust or as a company limited by guarantee not having share capital.
- Regulation: Under the new charities legislation, which was largely commenced in 2014 (the “Charities Act 2009”), organisations with charitable status are now subject to regulation by the Charities Regulator.
- Tax Exemption: A Foundation will need to obtain a CHY number from Revenue to obtain tax exempt status and qualify for the Charitable Donation scheme in order for its corporate donors to treat donations as deductible trading expenses.
- Recordkeeping and Compliance: A Foundation will have to comply with reporting requirements of the Companies Registration Office (the “CRO”), if incorporated, the Charities Regulator. Under the Charities Act 2009, proper books of account are required to be kept and maintained by the trustees of a charitable organisation. An annual report must also be filed with the Charities Regulator. The nature of the annual report will depend on the size of the charitable organisation.
- Governance and Management: In recruiting directors and staff for your Foundation, you will want to consider what skill sets and experience is needed to maximise the impact of your giving.
- Additional Assets: Whether you want to contribute further assets in the future, following a business sale, for example, or through charitable bequests.

2. Establishing your own Foundation

If, having developed a giving strategy, you plan to establish your own Foundation, you will need to consider

- How the Foundation will be funded
- Its Charitable Objects
- The legal structure of the Foundation and tax registration
- Ongoing Compliance
- Other Matters

2.1 Funding

Many Foundations are established with an endowment that is intended to be permanent, thereby ensuring that the Foundation can provide long-term support for its priority causes or organisations. This creates opportunities for involving future generations of your family in giving and ensures that the Foundation is recognised for its long-term support of a particular cause.

It should be noted that you must seek permission from the Revenue if you intend to accumulate income for a period of in excess of two years. It may also be necessary to state, within the request, the reasons why accumulation of funds is required in the circumstances. The Charities Regulator may also raise queries as to the reasons for accumulating funds.

Other Foundations instead adopt a 'spend down' model in which the Foundation's assets are used to make substantial investments in organisations and causes over a set period of time, usually within the donor's lifetime. A time-limited investment period will allow you to focus on achievable, measurable change, giving you the satisfaction of seeing that change take place.

2.2 Charitable Objects

In order for any organisation to be registered with the Charities Regulator and obtain a tax exempt status from Revenue, it must be of public benefit, which means that it must be beneficial in an identifiable way to the general public or a section of the public, and have one of the following charitable objects:

- Relief of poverty or economic hardship
- Advancement of Education
- Advancement of Religion
- Other purpose that is of benefit to the community. A purpose that is of benefit to the community includes:

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

2.3 Legal & Tax

Once you have determined how the Foundation will be funded and what its charitable objects are, you will need to decide which legal form it will take. Foundations in Ireland are typically established as either a private charitable trust or as a company limited by guarantee not having a share capital.

A private charitable trust is established by a trust deed and is subject to trust law. It may be the appropriate structure when there is a once-off transfer of funds and where the Foundation's aims are unlikely to change substantially over time.

The advantage to setting up a charitable trust is that it is relatively fast and simple as compared with a company limited by guarantee, it does not require to be registered in the Companies Registration Office and it does not require publication of its accounts, provided it is not funded through donations from the public. It is important to consider, however, that trustees of a private charitable trust do not have limited liability, which the directors/trustees of a foundation

established as a company limited by guarantee do, and therefore, could be exposed to personal liability. Consequently, it may be preferable to establish a Foundation as a company limited by guarantee not having a share capital.

For more information on setting up a charitable trust, you should contact a professional advisor.

Foundations established as companies limited by guarantee not having a share capital operate within the framework of the Companies Acts 2014 and have much the same structure, rights and obligations as a company limited by shares. Foundations are administered according to a governing document known as a constitution (previously, the memorandum and articles of association) under the leadership of unpaid directors.

Notably, the members' liability is limited to the amount they have undertaken to contribute to the assets of the company, in the event it is wound up, not exceeding the amount specified in the memorandum. As a guarantee company does not have a share capital, the members are not required to buy any shares in the company.

Setting up a charity as a company limited by guarantee, registering it as a charity with the Charities Regulator and obtaining tax exempt status involves the following steps, which are explained further below:

1. Draft the Constitution
2. Apply to the Charities Regulator to be registered as a charity and included on the Register of Charities.
3. Incorporate the Foundation
4. Register the Foundation for tax
5. Apply to Revenue for tax exempt status
6. Apply to qualify for the Charitable Donation Scheme

Drafting a Constitution for the Foundation

The Constitution is a Foundation's governing document. It sets out the exclusively charitable objects of the Foundation, its powers and its rules. For the Constitution you will need to:

- x. Determine the name of the organisation
- y. Articulate main and secondary charitable objects of the organisation and the powers of the organisation
- z. Select a minimum of 3 independent and unrelated trustees, the majority of whom must be resident in Ireland in order to ensure that the charity is Irish resident.
- aa. Select a member / members subscribing to the Constitution

The Constitution of a Foundation seeking charitable tax exempt status must include the following standard clauses: -

- a. **Income and Property:** The income and property of the charity shall be applied solely towards the promotion of the charitable objects of the organisation. There is a prohibition on the distribution of income, assets or profits to the organisation's members and on the payment of fees and/or salaries (other

than out of pocket expenses) to the directors for services rendered in that capacity

- b. Additions, Alterations or Amendments: A provision to the effect that the prior written approval of the Charities Regulator must be obtained for any amendments to the Constitution. (Foundations that had a CHY number prior to 16 October 2014 must also seek Revenue approval for amendments to the Constitution)
- c. Winding Up: Provisions governing the distribution of the surplus assets upon dissolution of the company – these must be distributed to a charitable entity with similar objects or, failing that, to some other charitable entity.

There is a link to a model constitution, as provided by the Charities Regulator, in the resources section of this Guide.

Registration of the Foundation with the Charities Regulator

Following the commencement of the Charities Act 2009, charities must register with the Charities Regulator and be placed on a public register of charities, maintained by the Charities Regulator.

Charities that had existing CHY numbers prior to 16 October 2014 were automatically passported onto the Charities Regulator register and had to merely provide some additional information but charities established since October 2014, or who had a DCHY number, must apply to be registered with the Charities Regulator.

It is a criminal offence under section 41 of the Charities Act 2009 for a charitable organisation that is not registered with the Charities Regulator to carry on activities in the State, such as fundraising or advertising.

The steps to registering with the Charities Regulator are as follows:

1. Apply online for a charity account with the Charities Regulator.
2. Once you receive your PIN number from the Charities Regulator (by post), create your charity account online.
3. Log in to your charity account, fill out the details of your Foundation, including setting out what your organisation is set up to achieve, where it will operate, who it will help and how its goals will be achieved, and submit your application to the Charities Regulator, along with a copy of the constitution.

Staff at the Charities Regulator will assess your application for charitable status and they will be in touch if they require any further information from you. You will receive an official letter from the Charities Regulator once a decision on your application for charitable status has been made. Once registered, you will receive a charity registration number (a CRN) and will be listed on the Charities Regulator's public register.

Incorporation of the Foundation

Once the draft Constitution is approved and the application is approved in principle by the Revenue, the Constitution, along with a Form A1, must be submitted to the CRO in order for the company to be incorporated. Incorporation generally takes ten days from the date that the application is submitted to the CRO. There is a link to Form A1 in the resources section of this guide.

Registering for Tax

An application for a tax registration number should be made by the Foundation, now incorporated as a company limited by guarantee not having a share capital, to its local Revenue district.

A company should register for PAYE/PRSI if it intends to hire staff in Ireland. To register for tax, complete form TR2 and return to your local Revenue District.

There is a link to form TR2 in the resources section of this guide.

Application for charitable tax exemption

To obtain charitable tax exemption for the Foundation, you will need to apply to the Revenue, using the CHY1 form – this is a separate application to registering with the Charities Regulator. To complete the CHY1 application, you will need to provide the following details, at a minimum:

1. Identifying the organisation
 - a. Name of the body applying for exemption
 - b. Name and role of applicant
 - c. Contact information of the Foundation
 - d. Tax reference number (If a tax reference number has been allocated to the body this should be stated. You may apply for charitable exemption before obtaining a tax reference number. Details on registering for tax are available below under item 4.)
 - e. Registered charity number
 - f. Charitable Activity for which the exemption is sought:
 1. Relief of Poverty
 2. Advancement of Education
 3. Advancement of Religion
 4. Other purpose of Benefit to the Community
2. Details of at least 3 proposed Directors, to include their names, addresses, occupations and PPS numbers.
3. Finance and Funding
 - i. Details of accounts where charitable funds are held
4. Signed declaration

You must also provide Revenue with your latest financial accounts or details of your financial plan, a statement of your activities and future plans and a copy of the Foundation's constitution.

Once Revenue has approved the application in writing and a CHY number has been obtained, the Foundation will qualify for exemption from Corporation Tax, Income Tax, Capital Gains tax, Capital Acquisitions Tax, DIRT on deposit interest received and Dividend Withholding Tax on dividends received from Irish Companies, provided all of its income and gains are applied solely for its charitable purposes.

The Foundation will further be exempt from stamp duty on the purchase of property required to further its charitable aims.

There is a link to guidance on completing an application for charitable tax exemption in the resources section of this guide.

Tax Relief on Donations

Notably, a Foundation that has held a CHY number for two years, can apply to become an ‘eligible charity’ for the approved donation Charitable Donation Scheme. This will mean that if an individual makes a donation of over €250 in the year, the Foundation can claim a refund of tax paid on that donation by the donor. Furthermore, if a company makes a donation of over €250 in the year, the company can claim a tax deduction as if the donation was a trading expense. There is a four-year time limit for making a claim under this scheme.

2.4 Ongoing Compliance

Once the Foundation receives the tax exemption it does not need to be renewed each year as long as you continue to meet the conditions for claiming the exemption. However, there are certain compliance requirements in order to maintain the exemption:

The Foundation must:

- a. remain tax compliant
- b. maintain its charitable status with the Charities Regulator
- c. comply with the Charities Act 2009
- d. use all income for its main charity purpose only
- e. keep proper records and accounts.
- f. submit a copy of its first year’s financial accounts within 18 months of receiving the exemption
- g. keep audited accounts if its annual income is over €100,000
- h. notify Revenue’s Charities Section in writing of any change of address.

As noted above, the Foundation must also request prior approval from the Revenue Charities Section if it intends on:

- i. accumulating funds for over two years
- j. starting a trade.

If the above conditions are not maintained, Revenue may withdraw the exemption. If this happens, the exemption can be withdrawn from the date it was originally granted.

The Foundation must also carry out certain compliance steps for the Charities Regulator:

- It must keep proper books of account, with entries from day to day of all money received and paid out. A record of the assets and liabilities must also be maintained.
- An annual report should be submitted to the Charities Regulator regarding its activities in the last financial year. This annual report is due within ten months after the end of each financial year and should also include the financial accounts of the Foundation.
- A Foundation with a gross annual income of more than €100,001 is required to provide a full set of audited accounts, including directors and auditors reports for the reporting period.
- A Foundation with a gross annual income of €10,001 - €100,000 is required to provide a profit and loss account (or income and expenditure account and statement of assets and liabilities) for the reporting period.
- A Foundation with a gross annual income of less than €10,000 may choose to submit a profit and loss account (or income and expenditure account and statement of assets and liabilities) for the reporting period.

The annual reports and accounts submitted to the Charities Regulator will be available for public inspection with the exception of those submitted by private charitable trusts, which have not been funded by donations from the public.

A link to information on the Charities Act is available in the Resources section of this Guide.

2.5 Other Matters for Consideration

Other matters to consider are as follows:

- Registering trade names, trademarks or other trading symbols
- Registering Internet or email names and the information regarding the Foundation which is required to be displayed on the website
- Setting up bank accounts and obtaining board approval for signing authorities, limits and mandates.
- Printing company stationery, which must have the following information displayed:
 - Name of company and its legal form
 - Directors' names and confirmation of nationality, if not Irish
 - Place of registration and registration number
 - Address of registered office
 - Business name
- Data Protection Policies

A Note on Corporate Foundations

While many businesses have a corporate social responsibility (CSR) or other giving programme, there are very few charitable foundations established by corporate businesses operating in Ireland (“Corporate Foundation”).

Whether such a Corporate Foundation is established as a company limited by guarantee not having a share capital or as a trust, it will be subject to the same laws and regulation as those imposed on private charitable Foundations. While they share the same challenges and advantages outlined in Section 2 of this guide, Corporate Foundations offer additional benefits for company leaders by

- Strengthening a company’s brand through excellence in giving
- Focusing on achieving the maximum return on the social investment from the parent company
- Facilitating a more long-term investment strategy for charitable giving, rather than a preoccupation with short term activities and non strategic “pet projects”
- Offering a mechanism for shielding the company from individual approaches for money/support
- Providing tax relief for donations once two years have passed from the date that the Corporate Foundation was assigned its CHY number, which allows donations from the company to be offset against corporation tax.

Corporate Foundations are typically started with a large single gift that can become the endowment, which may be added to on an annual basis as profits allow. The Board of a Corporate Foundation is usually comprised of representatives from the parent company, including key executives and interested employees. There is also the opportunity to include some independent members, in particular persons with expertise in areas where the Corporate Foundation is likely to be active.

Corporate Foundations may also be funded by a donation of shares. The dividends payable in respect of those shares would then be the income of the Foundation and, provided the Foundation has been assigned a CHY number, the charitable exemption from dividend withholding tax may be availed of. Provided the Foundation has already been assigned its CHY number, no stamp duty will be payable by the Foundation on the transfer of the shares, nor will capital gains tax be payable by the company donating the shares.

4. Resources

4.3 Tax and Legal Forms and Information

Constitution

The Constitution is the governing documents of a Foundation established as a company limited by guarantee. Further guidance and model constitutional documents are available at https://www.charitiesregulatoryauthority.ie/en/Charities_Regulator/pages/wp16000065

CHY1 Form

CHY1 is the form submitted to the Revenue for organisations seeking charitable tax exemption. The form and accompanying guidance are available at <http://www.revenue.ie/en/companies-and-charities/documents/charities/form-chy1.pdf>

CRO Form A1

A1 is the Application to Incorporate a Company that is submitted to the Companies Registration Office. The form is available at <https://www.cro.ie/publications/company-forms>

CRO Form A1 Guidance

Before completing CRO Form A1, review Information Leaflet 1 available at <https://www.cro.ie/publications/publications/information-leaflets>

Form TR2

TR2 is the tax registration form for new companies that is submitted to the Revenue. <http://www.revenue.ie/en/self-assessment-and-self-employment/documents/form-tr2.pdf>

Company Law Guidelines prepared by the Citizens Information Bureau

http://www.citizensinformationboard.ie/publications/voluntary_sector/downloads/CompanyLawGuidelines.Nov07.doc.

Charities Regulator

www.charitiesregulator.ie

PHILANTHROPY IRELAND

SHARE TODAY. SHAPE TOMORROW.

Philanthropy Ireland

29 Mount Street Upper Dublin 2

T: +353 (0)1 676 875

E: info@philanthropy.ie

W: <http://philanthropy.ie>

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