



# Ireland

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## QUICK FACTS

**Legal forms of philanthropic organizations included in the law:** Association, Corporation, Company Limited by Guarantee, Society

**Five main social issues addressed by these organizations:** Higher Education, Primary and High School Education, Basic Needs, Housing and Economic Development, Religion

**Average time established by law to register a philanthropic organization:** More than 90 days

**Average cost for registering a philanthropic organization:** US \$0

There is currently no charge to register a charity in Ireland. The register of charities was established in October 2014, so the registration process is still in its infancy and this explains the longer time currently experienced when seeking registration.

**Government levels primarily regulating the incorporation of philanthropic organizations:** Central/ Federal Government

### Philanthropic Environment Scores:

Year	Ease of Operating	Tax Incentives	Cross-Border Flows	Political Environment	Socio-Cultural Environment	OVERALL SCORE
2018	4.7	4.3	4.3	4.0	4.5	4.33

## I. Formation/Registration, Operations, Dissolution of a Philanthropic Organization (PO)

*The three questions in this section pertain to the laws and regulations governing philanthropic organizations (POs). The scoring questions for this category cover three aspects of regulations: (A) formation and registration, (B) operations, and (C) dissolution.*

### Question 1: To what extent can individuals form and incorporate the organizations defined?

Score: 4.5

Individuals are generally free to form organizations in Ireland without State approval. For POs, there are no minimum capital requirements or registration processes other than those required by the nature of the entity created. Thus, if the PO is formed as a corporation it must register with the Companies Registration Office. However, if the PO is unincorporated and is formed by way of a constitution or a set of rules, no registration or approval process is required from an establishment perspective.

The Irish Constitution, *Bunreacht na hEireann*, guarantees individuals the freedoms of association, expression, and assembly. In the interests of public order, the freedom to form associations is regulated for organizations that pursue certain purposes prohibited by section 18 of the Offences against the State Act 1939. Such unlawful organizations would include those established for the promotion or encouragement of treason, violence, criminal or terrorist offenses, or the obstruction of justice.

The treatment of charities differs from other POs. POs desiring tax-exempt charitable status require the approval of their governing instruments by the Revenue Commissioner. The Charities Act 2009, which came into force on October 16, 2014, further regulates charities and requires all charitable organizations to register with the Charities Regulatory Authority (CRA). The CRA has the power to refuse registration to those organizations that fail to meet the new statutory definition for charitable purposes or the public benefit test. No guidance has yet been issued as to how the CRA will interpret section 3 of the 2009 Act, which sets out the definition of charitable purpose. Despite a discussion concerning an annual registration fee for all charities—proportionate to the size and turnover of the charity—none applies to date. It is an offense to hold an organization out as a charity unless it is registered with the CRA.

### Question 2: To what extent are POs free to operate without excessive government interference?

Score: 4.5

Irish law does not impose onerous governance rules on POs, and organizations enjoy freedom to run their own internal affairs. The previous absence of statutory regulations prompted the nonprofit sector to develop voluntary codes to encourage better governance standards among POs. Charities require prior approval from the Charity Regulator before altering their governing instruments. While POs are free to engage in a wide range of lawful activities, charities are more restricted than other POs in undertaking unrelated trading or political activities. No restrictions are placed on the ability of

POs to contact and cooperate with colleagues in civil society, business, or government sectors, both within and outside the country.

Irish POs are also permitted to participate in networks and to use the Internet and all forms of social media. While the government does not impose restrictions on any of these forms of communication, broadcast media restrictions do apply and can affect certain POs. Section 10(3) of the Radio and Television Act 1988, for example, provides: "No advertisement shall be broadcast which is directed towards any religious or political end or which has any relation to an industrial dispute." Advertisements for certain charities (e.g. the Irish Catholic and the Catholic bookseller, Veritas) have been banned, resulting in calls for legislation revision. PO reporting and auditing requirements depend on the legal form.

The Charities Act 2009 dictates the reporting requirements for unincorporated charities; incorporated charities reporting requirements are governed by the Companies Act 2014. Irish tax law requires all charities with annual turnover exceeding EUR €100,000 (US \$114,215) to prepare audited accounts to be available for inspection at Revenue's request. All registered charities must file an annual activity report with the Charities Regulator, regardless of legal form.

### **Question 3: To what extent is there government discretion in shutting down POs?**

<b>Score: 5.0</b>
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The governing body of the relevant PO can voluntarily terminate its activities in line with the governing documents of the organization. If the entity in question is a charity, then the Cy Près doctrine will apply, under which the Charities Regulatory Authority (CRA) will frame a scheme transferring any remaining charitable assets of the dissolved organization to another charity whose purpose is as near as possible to that of the original organization, so that these assets remain in the charitable sphere.

Under the Charities Act 2009, the CRA has the power to remove charities from the Register of Charities when those organizations become 'excluded bodies' within the meaning of the Act, at which point they will cease to be charities – but not cease to exist. An excluded body is one whose purposes are: (a) unlawful; (b) contrary to public morality; (c) contrary to public policy; (d) in support of terrorism or terrorist activities; or (e) for the benefit of an organization, membership of which is unlawful. The CRA must consult with the Irish police force prior to exercising this power. The CRA must also provide reasons for revoking the registration of a charity, and these reasons are required to be published in the Register.

A PO that has been formed as a company can also be involuntarily terminated by being struck off the Companies Register under the Companies Act 2014. An involuntary strike off arises at the instigation of either the Registrar of Companies – should the PO fail to file returns – or the Revenue Commissioners. A compulsory winding up of a corporate PO can also occur if either a creditor or a member of the PO petitions the High Court. The resulting procedure of such a petition is regulated by statute. Common grounds for such a petition include instances when a company is unable to pay its debts or where it is just and equitable to wind up the company under section 569 of the Companies Act 2014.

## II. Domestic Tax and Fiscal Issues

*The two questions in this section pertain to laws and regulations governing the fiscal constraints of giving and receiving donations domestically.*

### Question 4: To what extent is the tax system favorable to making charitable donations?

Score: 3.5

Tax incentives for donations are primarily limited to charities, rather than POs more generally. Individual donors do not receive tax deductions or credits for donations, rather the recipient charity can reclaim a percentage value of tax already paid on the gift, provided that the charity qualifies under tax law as ‘an eligible charity.’ This qualification requirement is in addition to being registered with the Revenue Commissioners as a tax-exempt charity. Ireland revised its tax relief scheme for charitable donations in the Finance Act 2013, and this has improved the workability of the regime. In the case of corporate donations, a company claims a deduction for a donation as if it were a trading expense. These deductions are, in turn, given directly to the corporate donor. In the case of an individual taxpayer – whether his or her taxes are paid through payroll or are self-assessed – the relief is given on a “grossed-up” basis at a blended rate of 31 percent to the eligible charity or approved body, as the case may be, rather than by way of a separate claim to tax relief by the donor.

The minimum qualifying donation to a designated charity or other approved body is EUR €250 (US \$250) per year, and donations made in installments also qualify. There are some limits on the amounts that can be donated for tax relief purposes in a given tax year. First, the aggregate of donations to an approved body or bodies in any tax year from 2013 onwards cannot, for tax relief purposes, exceed EUR €1,000,000 (US \$1,142,150). Second, if the donor is associated with either the charity or the approved body to which the donation is made, tax relief is limited to 10 percent of the individual's total income during the year of assessment. A donor is “associated” with an eligible charity if he or she is an employee or member of either that charity at the time of donation or of another approved body that is associated with the charity.

### Question 5: To what extent is the tax system favorable to POs in receiving charitable donations?

Score: 5.0

POs registered as tax-exempt charities receive significant tax exemptions for charities from the following taxes: 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. To be eligible, a PO must first apply to the CRA for charitable status before making an application to Revenue for charitable tax exemption. The Charities Act definition of charitable purpose, while expanding the common law definition, coincides with previous Revenue practice, deliberately excluding certain purposes (e.g., promotion of human rights and sporting activities) that Revenue has not recognized as meriting charitable tax exemption. S.7 of the Charities Act expressly provides that when deliberating upon any charitable application for tax exemption, the Revenue is not bound by any determination of the CRA as to whether a purpose is for the public benefit or not. In principle, this means that the CRA could register a body as charitable and yet Revenue could refuse its tax-

exempt status. Revenue and the CRA have agreed and published common requirements for charities to ease the likelihood of differing approaches.

Section 848A of the Taxes Consolidation Act 1997 provides for a scheme of tax relief for certain “eligible charities” and other “approved bodies” with respect to donations received on or after April 6th, 2001. A charity may apply for authorization as an “eligible charity” under the provisions of this scheme after it has been granted exemption from tax by the Revenue Commissioners for a period of not less than 2 years. There is no general exemption with respect to Value Added Tax (VAT) for organizations that are granted charitable tax exemption. Specific reliefs from VAT may, however, apply in certain circumstances, such as in cases involving humanitarian aid and medical equipment.

### III. Cross-Border Philanthropic Flows

*The two questions in this section concern laws and regulations governing the fiscal constraints of giving and receiving cross-border donations. The scoring for these questions pertains to the donor and receiving entities.*

#### **Question 6: To what extent is the legal regulatory environment favorable to sending cross-border donations?**

<b>Score: 4.0</b>
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Cross-border charitable donations can be sent without incurring additional costs. Cross-border donations are not, however, eligible for the same tax incentives as domestic donations unless they are sent to a resident charity of either the European Economic Area or the European Free Trade Association that has been recognized by the Office of the Revenue Commissioners as tax equivalent to a domestic charity.

As part of its efforts to comply with the Financial Action Task Force’s (FATF) 40 recommendations and nine special recommendations, Ireland has strengthened the frameworks of its anti-money laundering and terrorism financing interdiction apparatuses with the enactment of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 and the Criminal Justice Act 2013. These Acts address, inter alia, customer due diligence provisions and other preventive measures, which have been brought into line with FATF’s recommendations. In 2012, the Irish financial services industry issued guidelines intended to prevent the use of the financial system for money laundering or terrorist financing, and expanded upon the provisions of the 2010 Act. These guidelines address the treatment of nonprofits and charities by designated financial service providers and set out clear and consistent processes. The combination of the new statutory regulation and the non-statutory guidelines resulted in Ireland being removed from the FATF’s regular follow-up process for partially compliant countries in 2013.

**Question 7: To what extent is the legal regulatory environment favorable to receiving cross-border donations?**

Score: 4.5

EU law guarantees free movement of capital between member states and non-discrimination on grounds of nationality in the cross-border tax treatment of PO funds. To this end, the Charities Act 2009 recognizes European Economic Area (EEA)-established POs that meet the Irish statutory test for charitable purposes and requires them to apply for registration.

A charity established in an EEA or EFTA State may seek a determination by the Office of the Revenue Commissioners as to whether it would qualify for the exemptions, provided that it had taxable income in Ireland. To date, the Office has recognized 9 such UK charities. Ireland participates in the Transnational Giving Europe project (TGE). Operating at a European level, TGE is a practical solution to support a beneficiary located in a foreign country with all the tax advantages in the country of residence of the donor. Donors can give their gifts to the national TGE partner that transfers the gift to the foreign beneficiary and provides all the national fiscal advantages to the donor. This enables income tax deductible gifts for foreign donors and tax efficient fundraising campaigns in other TGE countries.

For US tax equivalency purposes, the United States International Grantmaking Project covers Ireland. Section 23(A) (2) of the Electoral Act 2001 provides that a third party – including POs – may not accept a "foreign donation" for political purposes, including advocacy related activities. A foreign donation is a donation from an individual – other than an Irish citizen – who resides outside Ireland or a donation from a corporate body or an unincorporated body of persons who do not keep an office in Ireland. If a foreign donation is received, the third party must return the donation to the donor and keep a record of its return or remit it to the Standards in Public Office Commission. Failure to do so is an offense.

**IV. Political and Governance Environment**

*The three indicator questions in the next two sections concern the political and governance context, socio-cultural characteristics, and economic conditions that influence the environment for philanthropy.*

**Question 8: To what extent is the political and governance environment favorable for philanthropy?**

Score: 4.0

Collaboration between the government and the philanthropic sector exists in Ireland. A history of such formal collaboration was established with the creation of a community and voluntary pillar in Ireland's Social Partnership Governance Model in 1997, which saw PO representatives join business, government, and trade union representatives to agree on an economic and social progress program for Ireland. With the collapse of social partnership during the financial crisis and the severe public funding cuts to charities that ensued, the economic climate threatened the sustainability of a number of POs and forced them to seek other forms of funding outside of State funding. As economic



stability begins to return in 2017, the AIB Report on Governance and Growth reveals that POs are now seeking to keep their operations on a sustainable footing, while also funding growth opportunities.

Since the early 1990s, politically, the nonprofit sector has worked constructively with the government to advocate for the introduction of a proportionate yet robust regulatory system for charities – a goal achieved only in 2014 with the commencement of the Charities Act 2009. Paradoxically, governance scandals in the charity sector forced the government to find the resources to establish the Regulator and to give it investigatory powers. Recent research by Atlantic Philanthropies (AP) examined the extent to which the AP approach of working with government to influence policy and practice – with a particular focus on public service reform – can be considered innovative and successful. Findings made by AP made a significant contribution to influencing government policy and practice between 2003-2014, AP explored the development of a partnership approach, the development and use of evidence, and the reform of service delivery, and shared lessons that will be useful for other POs engaged in collaboration with the government or who are intent on acting as agents of change.

**Question 9: To what extent are public policies and practices favorable for philanthropy?**

**Score: 4.0**

There is a strong State support for national and international philanthropy in Ireland. Ireland's overseas development budget for 2017 is EUR €651 million (US \$743 million), an increase of EUR €10 million (US \$11.42 million) from 2016. Of this, EUR €486 million (US \$555 million) will be managed by Irish Aid, a division of the Department of Foreign Affairs, with a further EUR €165 million (US \$188.45 million) due to come from other government departments.

Ireland has an international commitment to spend 0.7 percent of national income on helping the world's poorest people. According to the government's own growth projections, the 2017 aid budget will leave overseas aid at approximately 0.3 percent of national income. Ireland is the 12th largest Development Assistance Committee (DAC) in terms of ODA as a percentage of GNI, and the 19th largest in terms of volume. Ireland is one of the best performing donors when it comes to directing its development aid to the world's neediest countries, according to OECD 2014 peer review findings.

At a national level, the government established the Forum on Philanthropy in May 2006 in order to promote a culture of philanthropy in Ireland. In 2011, the responsibility of the Forum was transferred to the Department of the Environment, Community, and Local Government and its focus broadened. The Forum's vision for the period 2011-2016 aimed to reinforce that the role of and the legitimacy of the contribution of philanthropy and strategic charitable fundraising in Irish society, as well as ensure that it was properly understood and valued. In order to make progress on the goals of the Forum, responsibility was assigned to three existing organizations – Philanthropy Ireland, Fundraising Ireland, and Irish Charities Tax Research Ltd (now Charities Institute Ireland) – and a new organization, the Social Innovation Fund Ireland, which was established in 2013. The Department provides funding to the four organizations on a 50:50 matched funding basis. Donors and funders of POs are free to support any philanthropic cause or organization without government pressure in Ireland.

## V. Socio-Cultural Environment

**Question 10: To what extent are socio-cultural values and practices favorable for philanthropy?**

Score: 4.5
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Ireland has a long history of philanthropy with a strong tradition of charitable giving and has traditionally been perceived as a generous nation. Over the past five years, Ireland has ranked consistently in the top ten countries on the World Giving Index in terms of the percentage of people who donate money, volunteer time, or help strangers. In 2011, Ireland ranked as the number one nation for giving donations, with 79 percent of those surveyed donating money in the previous month. By 2016, this fell to 66 percent, and Ireland dropped to 10th in the rankings. The past absence of a modern charity regulatory framework and recent charity scandals have weakened public trust and have adversely affected charitable donations. Irish philanthropy tends more toward the spontaneous ad hoc nature of unplanned charitable giving with only an estimated 15 percent of donors engaged in continuous planned giving. The lack of planned giving in Ireland is cultural, with only 34 percent of Irish residents making a will. Of those making a will in 2012, three in ten respondents were likely to make a bequest to charity, representing a notable increase of 100 percent in this finding since 2006. Using Lester Salamon's and Helmut Anheier's typology, the relationship between the Irish State and its nonprofit sector can be classified as corporatist in nature; Irish nonprofits work closely with the State in the provision of public services and are largely funded by the State. This has, in turn, resulted in extensive government social welfare spending and a sizeable nonprofit sector, based on numbers employed. Since 2005, the Irish government has spent between 15-22 percent of GDP on public social expenditure (16.1% in 2016). Given this high level of public spending, it is not surprising that the Global Civil Society Project reveals that Irish POs rely heavily on public sector income—from which between 40-50 percent of nonprofit revenue is derived in many cases.

## VI. Future of Philanthropy

*These questions are used to provide a general picture of the future of philanthropy in this country as well as recommendations to improve the philanthropic environment.*

### **Current state of the philanthropic sector**

Informal, non-institutionalized philanthropy is prevalent in Ireland. Culturally, Irish people are generous by nature and ad hoc public collections in aid of good causes are common. The sector (comprised of 19,355 nonprofits – of which 8,300 are registered, active charities – Public Register, April 2017) is not yet well-organized. The greater focus of the Charities Act 2009 on financial reporting, good governance and higher fundraising standards is spurring professionalization. In 2016, Fundraising Ireland merged with the capacity building organization ICTR (Irish Charities Tax Research Ltd) to form the Charities Institute Ireland (CII). CII encourages charities to actively demonstrate openness, transparency, and integrity to beneficiaries and donors by operating to 'triple lock' standards – transparent reporting, good fundraising, and good governance. While CII membership is restricted to charities, The Wheel, a support and representative network for the community and voluntary sector in Ireland, accepts broader membership and act as secretariat for the sector-developed Governance Code.



Thirdly, Benefacts, a nonprofit established in 2014 with government and philanthropic support, maintains and publishes a nonprofit database derived from publicly-available sources augmented by voluntary disclosures. The database, focused on nonprofit entities established for public benefit, however constituted, aims to better assist the government, nonprofit sector, and stakeholders in order to understand the objects and performance of POs by providing reliable and rich empirical data on the sector for the first time.

Inter-sectoral collaboration is common, particularly between the POs and the State in the areas of education, health, housing, and social welfare. Charities act as public service providers, heavily funded by the State. In terms of intra-sectoral collaboration, POs have collaborated to develop codes of good practice in the areas of fundraising practice and good governance in 2010 and 2012.

### **Three major recent events affecting the philanthropic landscape between January 2014 and December 2016**

- Revelation of Console Charity Scandal in June 2016: Media investigations revealed the related directors of a national bereavement charity allegedly benefitted by almost EUR €500,000 (US \$571,075) in salaries and cars over three years, and that the family allegedly spent thousands of euro of Console money on designer clothes, restaurants, and holidays. The charity was ultimately dissolved;
- Commencement of the Charities Act 2009 in October 2014 with the establishment of Charities Regulatory Authority and the creation of Register of Charities; and
- Central Remedial Clinic Charity Scandal in January 2014: The Central Remedial Clinic used charitable funds to top up the salaries of senior staff members, resulting in a Public Accounts Committee Hearing and the resignation of the Board of this charity.

### **Future development trends in the philanthropic landscape**

Ireland has entered a new era of charity regulation with a focus on registration, and a promised focus on financial and narrative reporting to come. Coupled with the development of the Benefacts (the database of civil society in Ireland), which is providing a growing and rich knowledge base on the sector for the first time, this regulation should lead to higher standards of behavior within the nonprofit sector, improve our overall understanding of the sector, and shine a light on poor practices of the past. When it comes to government-nonprofit hybrids, to date, Ireland has not engaged in the creation of new legal forms to assist social enterprise growth. There are no equivalents to the CIC (community enterprise company), bencorp (benefit corporation) or L3C (low profit limited liability company) in Ireland. So, room for growth exists here.

More generally, the Growth and Governance in the Nonprofit Sector Report (AIB, 2017) revealed that, while 64 percent of the surveyed 175 respondents from the nonprofit sector expected their organization to expand the scope of their services and activities (with 14 percent planning to expand internationally), 32 percent expected to merge with other organizations. 78 percent of respondents viewed themselves as low-risk investors. Interestingly, however, investment decisions were made by the board on only 59 percent of cases, while less than half (47%) of the organizations with

investment, assets had a documented investment policy in place. Ireland's small foundation sector has shrunk over the past decade with major grant making foundations either closing (e.g., One Foundation) or currently engaged in spend down mode (e.g. Atlantic Philanthropies). The European Foundation Centre estimates the existence of approximately 40 public-benefit foundations in Ireland with total assets of approximately EUR €725 million (US \$828 million). New research by the Harvard-led Global Philanthropy Study should provide current data on the health of the foundation sector in 2017.

### **Three key recommendations to improve the environment for philanthropy**

- Ensuring the accuracy of the Register of Charities is essential. Of the 7,890 charities registered, more than 3,000 have yet to engage with the regulator to update their details. Building a robust register of reliable charity data is key to the successful regulation of and an improved environment for philanthropy in Ireland;
- Amendment of the Charities Act 2009 and/or the Companies Act 2014 is required to introduce uniform financial reporting standards for charities, which at present differ greatly depending upon whether a charity is incorporated or unincorporated. Incorporated charities can, under company law, file abridged accounts, avail of an audit exemption threshold, and are not obligated to follow the Charities Statement of Recommended Practice when preparing their accounts; and
- As we develop a modern framework for the regulation of charities in Ireland, guidance from the regulator on matters ranging from the interpretation of the statutory charitable purposes, the meaning of public benefit, and the essentials for good trusteeship of charitable assets would be welcome.