Legal Issues: Incentives to Give[2]

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The following is a summary of tax deductible policies in leading tourism countries It was researched and assembled by CREST staff and interns based on government tax documents and other sources. The U.S. sections were reviewed by Keir Gumbs and other lawyers at Covington & Burling LLP. Further details and updates should be checked for each country.

1. How do I Make Sure my Donation is Tax Deductible?

Different countries offer incentives for citizens to make charitable contributions, and some offer the opportunity to deduct the value of donations from personal income taxes.

- **For U.S. Taxpayers**[3]

For a United States taxpayer, a cash donation made to a U.S. charity that is registered under section 501(c)(3) of the Internal Revenue Code is generally deductible for U.S. federal income tax purposes if the donor itemizes his or her deductions. Donations made by a U.S. taxpayer to charities that are outside the U.S. generally may not be deducted. Some charitable projects abroad have established their own charitable organizations in the U.S. or partnered with existing U.S. charities or nonprofits -- like www.travelersphilanthropy.org -- for just this purpose. If the tax deduction is important to you, look for registered charities. In most cases, but particularly for any contribution of $250 or more, donors should seek and retain a written acknowledgement of the contribution from the recipient organization.

- **For Canadian Taxpayers**[4]

Canadians wishing to receive tax deductions from their charitable donations should be sure to only donate to organizations which have been registered with the Charities Listings of the Canadian Revenue Agency (CRA). For a donation to qualify for a tax reduction, the donation (whether goods, property, securities, or other assets) should be fully transferred to one of the CRA's registered organizations, and the transfer must be made voluntarily.

Generally, Canadians cannot receive a tax reduction on their income tax for donations made to registered United States charities. However, if a donor has a source of income from the United States, he or she can claim the fair market value of any donations to United States charities that would be permitted on a U.S. return for up to 75 percent of the net U.S. income for the Canadian return.

- **For UK Taxpayers**[5]

[2] Several CREST staff and interns assisted with the research. The text was reviewed by several lawyers at Covington & Burling.
[3] *Charitable Contributions.,* Department of Treasury- Internal Revenue Service Pub 1771, (Rev. 3-2008) Cataloque number 20054Q.
[4] Canada Revenue Agency. *Non-Profit Organizations,* http://www.cra-arc.gc.ca/E/pub/tp/it496r/it496r-e.html.

In the UK, there are three main ways of donating that ensure tax-efficient contributions to a broad host of organizations. These methods include utilizing Gift Aid, a system that allows charities to gain extra money from taxpayers' contributions, donating directly from a paycheck or pension, or giving/selling assets to charity at no net personal profit.

Gift Aid is a service that expands donations by treating them as though the donor has already deducted the basic rate income tax (20 percent). Charities are then available to reclaim that tax from HM Revenue and Customs – thus allowing the initial donation to grow by 25 percent. Taxpayers that are eligible for Gift Aid are those who have (in that fiscal year) paid the same amount of Income/Capital Gains Tax as the amount of the basic rate tax that the charity attempts to reclaim on the donation. From there, a donor must fill out a Gift Aid declaration form. This form will cover all gifts the donor makes to the charity for whatever desired period. The declaration form should include the donor's full name, home address, the name of the charity, the details of the donation, and confirmation that it is a Gift Aid donation.[6]

Payroll Giving allows employees or pension recipients to donate directly from these sources before any income tax can be deducted. The income tax is then applied only to the remainder of the individual's paycheck or pension – allowing them to receive immediate tax relief on their donation. Those individuals wishing to donate through Payroll Giving must meet the following requirements: that he or she is an employee and is paid weekly/monthly through PAYE (Pay as You Earn), and that his or her company/pension provider deducts tax through PAYE. In order to make a donation, the employee or pension recipient must authorize his or her company/provider to make the deduction. From there, the company/provider will pass that amount on to a Payroll Giving Agency that then delivers the gift to the selected charities.

Citizens of the United Kingdom can receive tax-relief by giving or selling assets (at less than their market value) to charities. Those assets which are applicable for tax-relief include shares listed or dealt on the United Kingdom's or another recognized stock exchange, units in an Authorized Unit Trust (AUT), shares in a United Kingdom Open-Ended Investment Company (OEIC), systems outside of the United Kingdom that are similar to AUT's and OEIC's, and other land and property in the UK The donor should always contact the charity and confirm that it can/will accept his or her proposed donation. If the charity accepts and/or buys the donors assets, the donor can then calculate his or her tax deduction. If the asset was presented as a gift, then the donor should add the market value of the asset and any associated costs (such as legal fees). From there, the donor should deduct any value he or she (or any related persons) would receive as a result of the donation. This number is the amount of the deduction. If the donor sold the asset to the charity for less than the market value (a requirement for the transaction to be considered tax-deductible), the procedure for determining the deduction is the same as that for a gift, but the donor must also deduct the amount of money he received for the asset.

- **For German Taxpayers**[7]

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[5] "480 Expenses and benefits, A tax guide," 2010, http://www.hmrc.gov.uk/guidance/480.pdf.
[6] "Directgov - Gift Aid, 2010," http://www.direct.gov.uk/en/MoneyTaxAndBenefits/ManagingMoney/GivingMoneyToCharity/DG_1001509.
[7] Bundesfinanzministerium Deutschland (German Ministry of Finance), www.bundesfinanzministerium.de.

A donor can receive tax-relief for donations of up to 20% of his or her annual taxable income. Such donations may be claimed as tax-exempt. Donations exceeding the limit above can be carried over into the following fiscal years.

For donations made in member countries of the European Union:

German citizens can receive a tax-deduction for donations made to organizations based in other nations that are members of the European Union. The receiving organization, however, must be acknowledged by the German government to be adequately benefitting the public before a tax-deduction can be confirmed. The German taxpayer should be given the opportunity to provide proof that the receiving organization pursues initiatives that would qualify it as an equivalent 'public-benefit' organization by the government of Germany.

For donations made in countries that are not members of the European Union:

The receiving international organization must be based in/have a receiving platform in Germany in order for donating taxpayers to receive a deduction on charitable donations.

- **For Australian Taxpayers**[8]

Tax concessions may be claimed by the donor. This is the person, organization, company, trust or other type of tax payer that makes the gift. In order to claim a tax deduction, the donation must be made to what is known as a 'Deductible Gift Recipient' (DGR). These are the organizations that are endorsed by the Australian Taxation Office in their own right, or in relation to a particular fund. In order to claim a tax concession, your donation must 'truly be a gift'. That is, the donation must hold the following characteristics:

  - there is a transfer of money or property
  - they are made voluntarily
  - the transfer arises by way of goodwill and good intention, and
  - no material benefit or advantage is received by the donor.
  - Money valued at AU$2 or more.

- **For French Taxpayers**[9]

French citizens are eligible for a form of tax-relief when they donate to charitable organizations. In order to receive a deduction on a tax bill, the individual must have donated before December 31st of the previous year. In France, tax relief as a result of philanthropic giving is determined according to a two-tier system.

The upper tier is composed of recognized organizations which feed, accommodate, provide medical and/or dental care, or otherwise assist people in need either in France or abroad. 75% of donations to organizations which have proven to pursue these causes can be deducted from an individual's annual tax bill. However the 75% only applies to the first 510 Euros of a donation; any additional value is deducted at a rate of 66% up to 20% of an individual's yearly taxable income.

[8] Australian Taxation Office (2010), *Making tax deductible donations.* http://www.ato.gov.au/nonprofit.
[9] CIC Tax System in France. https://www.cic.fr/en/bank/personal-banking/settling-in-france/tax-system-in-france/index.html#I3.

The second tier includes recognized, non-profit organizations which are considered to be the French equivalents of English charities or have proven to benefit or stimulate the public – such as humanitarian, familial, religious, environmental, cultural, sportive, artistic, educational, scientific, or community-driven bodies. 66% of any donations made to organizations that have proven to pursue these causes can be deducted from an individual's yearly taxable income.

In these cases, donations include (but are not limited to) monetary donations from either vocational or investment-driven income, the allowance of a charity to use private property or premises, subscriptions to charities, and/or expenses incurred while volunteering at a charitable organization.

If an individual's gift exceeds the limits noted above, a donation may be carried over for deduction purposes for up to five years.

2. Is There a Tax Deduction for Donated Goods or Items?

- **For U.S. Taxpayers**

Yes. U.S. donors generally can deduct the fair market value of the donated item for federal income tax purposes, provided that the organization accepting the donation is going to use the property in carrying out its exempt activities. Fair market value is the price the item would sell for on the open market if it were sold in its current condition. Be sure to collect and retain documentation of your donation and any accompanying appraisals (required for donations of property other than marketable securities greater than $5,000).

- **For Canadian Taxpayers**

Yes. If the fair market value cannot be easily determined, the donor and/or the receiving registered charity may need to have the property appraised to verify this value. In general, this is the amount of the tax deduction, provided that the donor receives no benefits as a result of his or her contribution. If such benefits are given, the donor must be sure to deduct their value from the fair market price of the assets or property to determine the modified tax deduction.

- **For UK Taxpayers**

As noted in the above section, UK citizens can receive a tax deduction for donated goods or assets. If the asset was presented as a gift, then the donor should add the market value of the asset and any associated costs (such as legal fees). From there, the donor should deduct any value he or she (or any related persons) would receive as a result of the donation. This number is the amount of the deduction. This form of tax-relief can only be claimed in the year that the gift was given. Donors should be sure to collect and keep share transfer documents, a certificate from the charity or organization which certifies that the assets have been transferred over to them, and any written requests from the organization to sell the goods or assets on its behalf.

- **For German Taxpayers**

Like U.S. citizens, Germans can also deduct the fair market value of donated item(s) from their income. However, these material donations must comply with the same rules and restrictions that have been established for monetary donations; i.e. tax relief is capped at 20% of an individual's annual taxable income (or equivalent), and donations must be made to organizations in Germany or in other E.U. member nations and must be approved by the German government, etc. Donors must also be sure to present appropriate documentation of their donations to the Ministry of Finance when necessary.

- **For Australian Taxpayers**

Yes. As in the case of donations of money, tax concessions are permitted in the case of donations made to a Deductible Gift Recipient. Once again, the donation of goods or items must 'truly be a gift'. In order to claim tax deductions on goods or items, the donation must be one of the following types:

- Property valued at more than AU$5000 and must be owned by the donor for less than 12 months
- Shares that are valued at AU$5000 or less at the time of donation and owned by the donor for less than 12 months
- Trading Stocks which are disposed of outside of the usual course of business
- Cultural Gifts, donated under the Cultural gifts program
- Heritage Gifts, which include places that are recognized in the National Heritage list, the Commonwealth Heritage list or the Register of the National Estate.

- **For French Taxpayers**

French citizens can receive a tax-deduction for the market value of property and items in good condition. The limits and percentage of deduction for these goods should correspond with the tier system as noted above. In order to ensure the deduction, donators should be sure to obtain valid documentation of the gift from the beneficiary organization.

3. Can I Deduct the Value of My Time Spent Volunteering?

- **For U.S. Taxpayers**[10]

No. U.S. taxpayers may not deduct the value of time spent volunteering for purposes of federal income taxation. They may, however, deduct unreimbursed expenses incurred as a direct result of volunteering activities, but the expenses must be ones the charity would otherwise have to incur, not personal expenses of the volunteer. For example, volunteers may deduct the cost of materials they donate for use in repairs to a health clinic, or supplies they use in leading activities at a day care center. However, volunteers may not deduct personal expenses such as meals eaten during a break in a local service project, or transportation to and from a school where they donate their time.

- **For Canadian Taxpayers**

[10] Conrad Teitell, *Tax Deductions for Volunteers,* 2007, http://www.tgci.com/magazine/Tax%20Deductions%20for%20Volunteers.pdf.

Like the U.S., Canadian volunteers currently cannot deduct the cash value of time spent volunteering from their income taxes, but they can deduct out-of-pocket expenses directly related to volunteer work in exchange for the reimbursement of cash or a check. However, in order for the expenditures to become tax deductible, the volunteer/donor must provide the charity with a written statement expressing his or her desire for a donation receipt instead of reimbursement. At this point, the donation receipt is valid for deduction on the volunteer/donor's income tax.

- **For UK Taxpayers**

Citizens of the United Kingdom, similar to those of the United States, cannot claim a tax deduction for time spent volunteering but are capable of receiving tax relief for any expenses incurred as a direct result of volunteering activities – expenses that the charity would otherwise have to incur and/or expenses for which the charity did not reimburse the volunteer. Again, like the United States, these expenses must be directly related to the operations of the organization and the individual's work as a volunteer.

- **For German Taxpayers**

Taxpayers working on a voluntary basis can earn up to 500 tax-free Euros per year. The work must be part time and should not be the individual's primary source of income.

Taxpayers working on a voluntary basis in areas of child or adolescent skill development (such as coaching a sport or instructing art or music lessons) can earn up to 2,100 tax-free Euros per year. Again, this work must be part time and should not be the individual's primary source of income.

- **For Australian Taxpayers**

Volunteering is not considered a donation of goods (money or property) and therefore, the time spent volunteering is not considered a tax deductible item. However, any expenses incurred while volunteering for an organization that is listed as a Deductible Gift Recipient may be tax deductible. In this case, any expenses incurred are considered 'a gift' and should be consistent with those characteristics previously mentioned as tax deductible gifts.

- **For French Taxpayers**

French citizens, like those of several nations listed above, cannot claim a tax reduction for the cash-value of their time spent volunteering. They can, however, receive tax-relief for any necessary and unreimbursed expenses incurred while volunteering.

4. What Kind of Documentation Do I Need?

- **For U.S. Taxpayers**

For U.S. taxpayers, a donor cannot claim a tax deduction for any single contribution of $250 or more unless the donor obtains a written acknowledgment of the contribution from the recipient organization. Donors should seek written acknowledgement that includes:

a. the name of the organization a donation was made to,
b. amount of cash contribution,
c. description (but not the value) of non-cash contributions,
d. a statement that no goods or services were provided by the organization in return for the contribution, if that was the case

It is not necessary to include either the donor's social security number or tax identification number on the acknowledgment.

For contributions of less than $250 where the donor does not have a written acknowledgement from the charity, the donor must maintain a bank record (such as a cancelled check) as proof of the contribution.

- **For Canadian Taxpayers**

If the donor files tax returns electronically, he or she must keep official donation receipts from registered charities in the event that the Canadian Revenue Agency should ask to see them. If the donor files tax returns manually, he or she should submit donation receipts with their completed paperwork. Official donation receipts should indicate the eligible amount (fair market value) of the gift subtracted by the value of any benefits received in exchange for the donation. Donors are also encouraged to keep any documents related to their donation, including checks, pledge forms, and proof of payment.

- **For UK Taxpayers**

Because the UK methods of making charitable donations are often completed via organizations which are directly integrated with taxation offices such as Gift Aid and Payroll Giving, donors should keep careful records of their contributions but may not be required to present these records or other forms of documentation in order to receive a tax deduction. Payroll Giving yields an immediate tax deduction when it subtracts an individual's donation from his or her salary (and therefore decreases the amount to be taxed) before an income tax is calculated. Gift Aid works intimately with taxation offices, as a donor must meet certain annual tax requirements before a gift can be made. The necessary documentation for donation of assets has been included above, but, to reiterate, records of those transactions should include share transfer documents, a certificate from the charity or organization which certifies that the assets have been transferred over to them, and any written requests from the organization to sell the goods or assets on its behalf.

- **For German Taxpayers**

Donations up to 200 Euros require donation confirmations of either an accounting record or a cash deposit receipt. Donations exceeding 200 Euros require a donation receipt from the receiving organization.

- **For Australian Taxpayers**

Donors wishing to receive a tax deduction on donations made to Deductible Gift Recipients should ensure that they keep a record of all gifts made. This will be of use in lodging a tax return, and should be kept for 5 years in case of auditing. In the case of Property donations, additional valuations may be required and recorded. Any claims made cannot create a tax loss for the donor; however, claims may be spread over a period of up to 5 years. If this is the case, then additional documentation is required from the Australian Taxation Office.

- **For French Taxpayers**

Individuals wishing to receive a tax-deduction for their donation should be sure to obtain either a donation receipt or certificate to present to his or her local tax office. Taxpayers who declare online do not need to submit documentation, but should keep all record of donations in the event that proof is requested.

The discussion of the U.S. federal income tax treatment of charitable donations, which was reviewed by Covington & Burling LLP, is not intended to be, nor should it be construed to be, legal or tax advice to any particular person. Accordingly, you are urged to consult your own tax advisors with respect to the U.S. federal income tax treatment of charitable donations. Similarly, please be advised that the preceding information on other countries does not constitute legal advice and is not meant to provide a complete discussion of tax compliance issues. Please consult legal counsel if further assistance or a more detailed analysis is needed.