

**Irish Charities
Tax Research Ltd
and Philanthropy
Ireland**

**Research into
Tax and
Regulatory
Policy in Ireland
to Encourage
Greater
Philanthropy**

FGS Consulting
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RSM International
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Table of Contents

<u>EXECUTIVE SUMMARY.....</u>	<u>1</u>
<u>1 INTRODUCTION</u>	<u>1</u>
<u>2 REVIEW AND ANALYSIS OF CURRENT POSITION.....</u>	<u>11</u>
<u>3 CONSIDERATION OF PROPOSALS FOR CHANGE.....</u>	<u>23</u>
<u>4 PROPOSALS</u>	<u>30</u>
<u>5 CONCLUDING COMMENTS.....</u>	<u>44</u>
<u>REFERENCES.....</u>	<u>51</u>

Appendices

APPENDICES

APPENDIX 1

APPENDIX 2 – CHARITABLE REMAINDER TRUSTS

EXECUTIVE SUMMARY

Context and Overview

- I. When this report was being commissioned the severity of the economic conditions in Ireland and the world economy were not anticipated. Two views can be taken on this: the first of these could be summarised as “philanthropy can wait”; we cannot afford to give any fiscal or tax concessions at this time. In any case, people are too pre-occupied with their own financial circumstances to do anything regardless of their tax status. The other view acknowledges that demand for services provided by charitable and philanthropic organisations has never been greater and that something has to be done as a matter of urgency.

- II. This report is built upon the premise that for a proper and decent society to function there is a clear role for the voluntary sector within the community. The White Paper on a Framework for Supporting Voluntary Activity and for Developing the Relationship between the State and the Community and Voluntary Sector (2000) acknowledges that ‘an active Community and Voluntary sector contributes to a democratic, pluralist society, provides opportunities for the development of decentralised and participative structures and fosters a climate in which the quality of life can be enhanced for all’.

- III. Indeed, in his presentation to the Irish Charities Tax Reform Group Conference in 2008, Minister of State, John Curran, noted that ‘philanthropy can often respond more creatively, more quickly and can take greater risks than the state [and that] such an approach promotes active citizenship, harnesses considerable private funds for additional public good, promotes fresh thinking and, alongside continuing State schemes, can significantly add to the resources available for community benefit.’

- IV. The key policy imperatives in the above statements are “fosters a climate” and “harnesses considerable private funds for additional public good”. Without a clear recognition of the sentiments arising from these statements and a focussed and constructive public policy response, society is the poorer. Nobody argues against the promotion of “active citizenship” and everyone recognises the intrinsic values arising through activism but policy appears to primarily focus on the cost inputs rather than the explicit and implicit value outputs. It is beyond this report to quantify fully the benefits of developing a philanthropic culture as indeed it is difficult to accurately assess the contribution these recommendations will make to the development of such a culture. However, we can and do argue that these recommendations are a step in that direction. It is our belief that public policy alone cannot create such a culture but it is an imperative that public policy does not act as a gate against the development of a philanthropic culture. This is recognised internationally with a number of countries actively pursuing policies to promote philanthropy within their jurisdictions such as New Zealand’s “Promoting Generosity” or in the UK strategy “A Generous Society”.

V. The report should be seen in the context of the Government decision to establish The Forum of Philanthropy to examine the potential of philanthropy to play an increased role in the development of the community and voluntary sector. It is important that the recommendations in this report are taken to the Government for consideration independently of the usual budgetary round of submissions but as a constructive response to the Government stated objective and strategy regarding philanthropy.

VI. There is a view that in addition to the changes proposed in this report further incentives should be directed towards specific pressing social issues or disadvantaged geographical areas. Such a proposal could have attractions if it results in directing additional philanthropic giving to areas of public policy priorities. There is certainly merit in the argument that any charity tax relief is the transfer, through tax expenditure, the cost from the individual to the public purse and as such should be consistent with public policy priorities.

VII. Such a significant policy change however, would prior to its introduction need to be carefully considered, including inter alia;

- There would be a need to have an objective and non-political way of selecting the geographical areas and the issues that would qualify for any additional relief.
- The issues and geographical areas would be proposed to the Minister responsible for the non-profit sector by the Charity Regularity Authority, following consultation with the sector and require approval of the Minister of Finance.
- There should be a review after five years to ascertain the success of the additional relief, included in this review would be an examination as to whether other charities have been adversely impacted by this additional relief.
- Finally there should provision to facilitate changes in public policy priorities on a regular basis.

Introduction

VIII. Philanthropy Ireland and the Irish Charities Tax Research Group commissioned FGS Consulting to carry out research on tax and regulatory policy relating to charitable and philanthropic giving in Ireland in August 2008. In order to achieve this the two organisations drew up the following terms of reference to guide the work programme of the consultants:

- A succinct overview of the current position with regard to relevant fiscal and regulatory provisions in relation to philanthropy in Ireland.
- A broad review of the operation, objectives and evolution of the relevant instruments applicable in a range of other jurisdictions including the UK, US, Germany, Australia, Canada and New Zealand.
- The Development of proposals for specific incentives which could be introduced in this jurisdiction.
- A review of the likely costs and benefits arising from said proposals.

- An overview of the potential legislative and regulatory changes that would be required on foot of these proposals.

IX. In order to address each of the specific elements of the terms of reference, a number of research methods were used over the course of four phases of work.

1. **Phase 1:** A review of literature and policy documents relating to philanthropy in Ireland. The parameters of this review also extended to an examination of the tax treatment of donations to charity in an international context.
2. **Phase 2:** A comprehensive consultation strategy with key stakeholders in this field of work.
3. **Phase 3:** Drawing on the review of national and international evidence and the experiences of those engaged in this field of work a set of proposals for change to fiscal and regulatory provisions were developed.
4. **Phase 4:** An analysis of the proposals in terms of the identification of recommended pathways towards the future implementation of the proposals.

Current Fiscal and Regulatory Provision for Philanthropic Giving

X. Prior to the enactment earlier this year of the Charities Act 2009, donations to charity were regulated under the 1961 and 1973 Charities Acts and the Street and House to House Collections Act 1961. The provisions within the new Act ensure that going forward there will be greater accountability and protection against the abuse of charitable status and fraud. A robust and transparent regulatory framework is essential in terms of developing a stronger philanthropic culture.

XI. In the context of fiscal provisions, the application of tax relief to donations is provided within taxation legislation. A number of key areas for examination are highlighted within the literature. These include:

- The provision of tax relief is only applicable to donations of cash and shares amounting to a minimum of €250 to charitable organisations.
- A restriction to the amount of tax relief which can be claimed by high earners (those earning over €250,000).
- The lack of provision with regard to the application of tax relief on the donation of property of any other valued assets.
- The restriction on the application of tax relief to donors who have an association (i.e. an employee, trustee, or member) to the eligible charity to no more than 10% of their income for that year of assessment.

XII. Research carried out on donations to charity and philanthropic giving focus on these core issues. In particular recommendations are made in relation to the removal of the minimum threshold below which no tax relief is applied to a donation. Secondly, recommendations are made by a number of stakeholders that the tax relief restrictions pertaining to charitable donations should be removed from

Schedule 25B, S485C of the 2006 Finance Act. Rationale for the removal of this restriction is that donations to charity confer no benefit on the donor other than tax relief.

XIII. The review of literature also highlighted the variety of ways in which wealth may be transferred to charitable organisations. In particular the following are frequently used as a means to facilitate the transfer of wealth:

- Endowments – A fund or funds which are invested in order to generate income, which is disbursed to charitable organisations. The capital element remains within the fund.
- Foundations – An endowment which is established from a single income source which establishes a programme of philanthropic giving run by its Directors and or Trustees.
- Charitable Remainder Trusts – The donor places a property in a trust for a named charity, the trust manages the capital element and provides the donor with an income stream based on the returns from the capital element.
- Donor Advised Funds – A fund which is administered by a third party and set up for the purpose of distributing resources to charity on the behalf of a family / organisation.

Review of Provisions in other Jurisdictions

XIV. The review of international practice in this area has shown that many jurisdictions have a more embedded philanthropic culture. For instance in both New Zealand and the United Kingdom have developed strategies which both encourage potential givers along with providing a supportive environment for those who donate to charitable organisations.

XV. The fiscal provisions in other jurisdictions in many instances are more expansive that in Ireland. For instance, in the UK there is no minimum donation threshold in order to qualify for tax relief. In Germany a change to legislation has increased the tax deduction for donations to foundations to €1million from the previous level of €307,000.

XVI. The application of tax relief to other valuated assets has ensured the setting up of more sophisticated vehicles for transferring wealth. In the US for example, Charitable Remainder Trusts and Split Income Trusts have been established against the backdrop of a more developed philanthropic culture. The development of such vehicles has facilitated donors in becoming more planned and strategic in their charitable giving.

Development of Proposals to Encourage Greater Philanthropy

XVII. The development of the proposals put forward in this report relied heavily on the review of documentation relating to the Irish and international context. This was supplemented with the

completion of a number of face to face consultations with key stakeholders working in this area. To this end the consultations focused on discussing a number of key areas for reform. These were:

- Lowering the minimum tax relief threshold.
- Amendment of the restriction on donations by higher earners.
- Consideration of tax relief to donations of property.
- Introduction of tax benefits in relation to Split / Charitable Remainder Trusts.
- Introduction of a VAT subsidy for charities to compensate for VAT incurred on inputs.
- Relaxation of the rule which restricts those associated with a charity to receiving tax relief on donations to said charity on 10% of their annual income.
- Removal of the two year waiting period on the granting of charitable status in relation to obtaining tax relief on donations.

Review Costs in Relation to Proposals put Forward

XVIII. Included in our Report is an outline of the costs and problems encountered arising from proposals. The report provides a holistic analysis of the potential difficulties and barriers in the implementation of the recommendation developed as part of this research. This analysis goes in some way to address the real or artificial barriers that exist in terms of reforming the fiscal measures currently in place in relation to charitable donations.

XIX. The recommendations will in certain instances require legislative change. In particular many of the proposals, if implemented, will require changes to the Tax Acts. In addition, in our opinion it is important to understand that all of our recommendations if implemented can only benefit those who are tax resident in Ireland. Any potential difficulties in implementing these changes are addressed in our analysis and provide the reader with an understanding of the barriers that may exist in reforming tax and regulatory policy to facilitate a more philanthropic culture. A summary of these issues are contained in the table overleaf.

Summary Recommendations and Implementation Considerations

Recommendation	Implementation Considerations
<p>Recommend that the threshold above which tax relief may be applied be reduced from the current rate of €250 to a new rate of €175.</p>	<p>This reduction should assist in making more donations to charity tax effective and increase revenue for charities both through increased donations and increased use of the tax allow ability. The introduction of a new rate of €175 is on the premise that the charities sector will endeavour to increase their existing donations to this new limit. In our deliberations we discussed different levels including the elimination of the threshold completely. The immediate effect of complete elimination would be the generation of extra income for the charities. However; this would be a direct transfer from the exchequer in the form of tax relief. A concerted effort by the charities to increase their direct income from donations coupled with the reduction in the threshold by government is seen to be a pragmatic approach to this issue.</p>
<p>Currently the Finance Act 2006 limits the use of tax reliefs by higher earners (applying to those who have an adjusted income over €250,000) including relief obtained on donations to charity. Recommend that the tax relief applying to donations to charitable organisations should be decoupled from other tax reliefs as the donor does not receive any benefit from the donation. In keeping with the recommendation of the Commission on Taxation we recommend that this relief be capped at an upper threshold of €500,000.</p>	<p>The introduction of the restriction on higher earners to claim relief on charitable donations was a collateral consequence of the introduction of a general tax avoidance provision for higher earners. Whilst the other reliefs contained within this restriction confer a benefit on the individual, donations to charity only confer a benefit on the recipient.</p> <p>By decoupling tax relief for charitable donations from other tax relief schemes an individual may make a decision regarding charitable donations that is separate from other business decisions. The setting of an upper threshold on which a donor may claim relieve is a secondary factor however, it is envisaged that the threshold will change overtime. An initial threshold of €500,000 is recommended with increases in this threshold applied overtime.</p>
<p>Recommend extending the provision of tax relief on cash and securities donations to charity to include donations of property.</p>	<p>Historically Irish wealth is represented in land, while the recent slump in property values may result in a re-appraisal of this statement it is still probable that a substantial portion of our wealth will be represented by land. The extension of tax relief to include donations of property to charity is an acceptance of this reality. By including property as a designated asset for tax relief we are expanding</p>

Summary Recommendations and Implementation Considerations

Recommendation	Implementation Considerations
	<p>the opportunity to be generous to a greater number of people. This should encourage more philanthropic giving and deepen the culture of giving in Irish society. In particular it provides an opportunity for charities to tap in to the high levels of property ownership in Ireland.</p>
<p>Split Income Trusts involve the donors putting property in trust for a charity with the rights to the capital and income elements being split between the donor and the recipient. Recommend introducing tax benefits in relation to the donation of property through the use of split/charitable remainder income trusts.</p>	<p>The introduction of this measure along with the allowing of property as a gift to charity will encourage sectors of society that heretofore thought them precluded for philanthropic giving. The present general legal and tax regulatory framework in Ireland is a barrier to the introduction of more sophisticated donation vehicles such as those now recommended. However, research has shown that these barriers are not significant and the success of such vehicles in other countries indicates a need to remove such barriers. The introduction of such measures would present alternative models to the more traditional means of giving.</p>
<p>Recommend the introduction of a VAT subsidy for charities to compensate for VAT incurred on inputs. The subsidy system envisaged by us would be similar to the Danish system whereby a charity would receive a subsidy from the State in relation to the VAT that it incurs on its costs (such as utilities, professional fees etc.) with the subsidy based on the proportion of funds received by the charity from the private sector.</p>	<p>This recommendation is relatively straightforward for Charities to implement and could be done as part of their yearly accounts auditing process. At present charities pay VAT on inputs. This means that a significant proportion of every private donation is paid to the exchequer. We are recommending that a subsidy system be introduced whereby of the €18m of VAT presently incurred there would be a reduction in line with the proportion of funds received from the private sector.</p> <p>We estimate that the charitable sector would be entitled to a VAT refund of approximately €4.1m under this recommendation.</p>
<p>Currently charities must wait for two years before being granted charitable status and therefore eligible to claim tax relief on donations. We recommend the removal of the two year waiting</p>	<p>This recommendation will facilitate donors and charities to claim tax relief on donations during the first two years of the charity's existence. The claw-back mechanism outlined in our detailed proposal provides Revenue with assurance in relation to those organisations who may not obtain charitable status.</p>



Summary Recommendations and Implementation Considerations

Recommendation	Implementation Considerations
period on the granting of charitable status in relation to obtaining tax relief on donations	
Where an individual makes a donation to an approved body, they are restricted to donating 10% of their income when they have an association with the organisation.	The introduction of this restriction was to ensure there was not abuse by an organisation of a person's particular circumstances. However, a consequence of this restriction is that it has cut off the possibility of someone making a lifestyle decision in favour of a charity they may support. It is our opinion that the Revenue presently have significant anti-avoidance mechanism that may be used in cases of abuse and that this restriction is overly restrictive in its application.

1 INTRODUCTION

Introduction

- 1.1.1 In the past decade considerable wealth has been generated as a consequence of the booming Irish economy. In 2006, it was calculated that there were 33,000 millionaires with a subset of 330 of these individuals holding wealth in excess of €30 million¹. Against this backdrop there is a growing divide between rich and poor. While the 'at risk' of poverty rate fell from 18.5% in 2005 to 17% in 2006, this is still a significant proportion of the population at risk of experiencing poverty, with slightly below 7% of the population living in consistent poverty (at risk of poverty and experiencing deprivation) in 2006.
- 1.1.2 The descent of the economy into recession will no doubt have a major impact on both those who have gained from the boom in the Irish economy and those who have not. People experiencing poverty will inevitably turn to key services provided by charitable organisations, who are reporting significant increases in the numbers of people accessing their services in 2009. Arts and cultural organisations and educational institutions will also be hampered by severe funding cuts. If these organisations are to continue to deliver services and educational opportunities, there is an even greater need for an increase in planned giving / philanthropy. To facilitate and encourage this, a supportive fiscal and regulatory infrastructure needs to be developed.
- 1.1.3 Philanthropy Ireland defines philanthropy as charitable giving with a deliberate, targeted, long-term perspective, to achieve tangible results². Currently in Ireland, many donations to charity are unplanned and spontaneous, reflecting a culture that does not have philanthropy as an embedded characteristic³. The relatively low level of philanthropic activity is demonstrated by the percentage of GDP involved. The Department of Finance outlines data from the John Hopkins Institute which calculated that charitable and religious giving in Ireland amounted to 0.85% of GDP between 1995 and 2002. Comparing this to the highest giving level of 1.85% of GDP recorded in the United States⁴, it is evident that there is an opportunity to further develop philanthropy in Ireland.

¹ Patrick O'Sullivan. *Wealth of the Nation* (Dublin: Bank of Ireland Private Banking Ltd., 2007), 13..

² Prospectus, *Research on Philanthropy in the Republic of Ireland*. (Dublin: Philanthropy Ireland), 2009 (forthcoming).

³ Prospectus *Endowments in Ireland – Research conducted for Philanthropy Ireland on behalf of the Forum on Philanthropy* (Dublin: Philanthropy Ireland), 2007.

⁴ John Hopkins University, Center for Civil Society Studies. Table 5 from *Global Civil Society, Vol. 2 (2005)*. Available at <http://www.ccss.jhu.edu>.

1.1.4 In recent years, high levels of personal wealth in Ireland have been amassed due to a booming Irish economy. In 2006, there were 33,000 millionaires in Ireland with 2,970 of these being individuals with wealth in the region of between €5 million and €30 million. A further 330 individuals held wealth of in excess of €30 million⁵. Property accounted for a large proportion of the wealth held by Irish households – 71% in 2005 and 72% in 2007. Equities made up 16% of wealth held in 2005 and 16% in 2006 (op cit). Since the downturn in the economy there has been a decline in household wealth. National Irish Bank⁶ outline that the average net worth of households in Ireland has fallen from 2006 to year end in 2008 by almost 30%. However, despite this fall Irish households net worth is still at €426,000, which leaves considerable scope for involvement in philanthropic giving.

1.1.5 A comprehensive examination of the fundraising landscape was carried out by the Centre for Non-profit Management and Irish Charities Tax Research Limited in 2007. This research showed that 23.1% of the total income of not for profit organisations comes from fundraising while 62.2% of income came from public finances. The remaining 15% of income came from fees (9.5%), deposit accounts (3.2%), membership (1.1%) and other sources (0.9%)⁷.

1.1.6 The study further showed that the total amount of money received in real terms from fundraising activities varied from €4 to €25,800,000⁸. There were 105 organisations involved in the study who received over €200,000 in fundraised income. When larger particular organisations were examined as a subset, their characteristics varied from the total study group. These organisations tended to be longer established and had a higher number of paid staff and volunteers⁹.

1.1.7 Unlike Ireland, the US has a deeply embedded culture of philanthropy, with 80% of households donating money to over to 1.5 million charities. According to Giving USA charitable giving in the USA in 2008 was estimated at \$307billion. While this figure was 2 per cent lower than the 2007 figure of \$314 billion, it still represents a significant achievement given the fact that the US was in recession for much of 2008¹⁰.

1.1.8 According to the UK's A Generous Society report, between two-thirds and three-quarters of the British population give a total of over £7 billion per year.

⁵ O'Sullivan, 13.

⁶ National Irish Bank. *The Emerald Isle – Wealth in a Downturn*. (Dublin: National Irish Bank 2009).

⁷ Freda Donoghue et al. *Exploring the Irish Fundraising Landscape: A report on the practice and scale of charitable fundraising from the public in Ireland* (Dublin: Centre for Non-profit Management, Trinity College, 2007), 13.

⁸ Donoghue et al, 6.

⁹ Donoghue et al, 14.

¹⁰ Giving USA. *U.S. charitable giving estimated to be \$307.65 billion in 2008*. (Indiana: Center on Philanthropy at Indiana University, 2009).

UK Giving¹¹ notes that the average monthly donation is £29 per month. Coutts Bank (2007) provides an analysis of data on UK Charitable donations of £1 million or more. This report found that there were 193 donations of £1 million or more with a combined value of £1.618 billion. Excluding donations to higher education institutions, million pound donations provided £1.322 billion to charities, nearly 5% of total income for charities¹².

1.1.9 Notwithstanding the challenges that the current economic environment presents, an opportunity exists to develop a culture of philanthropy within Ireland. While instinctively a tight economic environment would present a difficult climate to encourage philanthropic giving, international research offers a more optimistic insight. Giving USA 2008 looked at the level of giving during recessionary times. The research looked at fifteen separate years during the period 1967 to 2007, where a minimum of one month in each of these years was recessionary. Looking at the amount of giving for each of those years – the research found that giving fell by just 1% on average. Further analysis showed, however, that in nine of the years examined, charitable giving rose or remained stagnant¹³. Furthermore in the UK, during the period 1974 to 1994, an increase in charitable giving was recorded for four years during this period, two of which were recessionary¹⁴.

1.1.10 In the context of the current economic downturn a report published by Philanthropy UK¹⁵ suggests that donors may maintain and in some instances increase their donations during the current recession. The conclusion that monetary support for UK charities would continue was also supported by the 2009 Sunday Times Rich List, the results of which showed that UK philanthropists have increased their donations to charity by £216 million (8%) for a total of £2.82 billion. This is despite a massive decrease in the collective individual wealth of the top 1000 richest people in the UK from £258bn to £155bn¹⁶.

¹¹ NCVO & CAF, cited in Coutts & Co. and The Centre for Philanthropy, Humanitarianism and Social Justice. *The Coutts Million Pound Donors Report* (Kent: University of Kent, 2009), 1.

¹² Coutts & Co. and The Centre for Philanthropy, Humanitarianism and Social Justice. *The Coutts Million Pound Donors Report* (Kent: University of Kent, 2009), 3.

¹³ Giving USA & the Center on Philanthropy at Indiana University. *Giving during recessions and economic slowdowns*. (Illinois: Giving USA Foundation, 2008).

¹⁴ www.philanthropyuk.org/newsletter/Dec2008Issue35/whatgivesinarecession

¹⁵ Philanthropy UK. "The 10.6bn Question". *Philanthropy UK Newsletter*: 35 (December 2008).

¹⁶ Alastair McCall, 'Cure for the world's ills', *The Sunday Times*, 26th April 2009 (<http://business.timesonline.co.uk>)

1.1.11 The challenges involved in growing philanthropy, which include the need for strong partnership between government and the third sector, are not unique to Ireland. Over the last decade, much ground-breaking work has been done in other jurisdictions, including the UK, the USA, New Zealand and many European countries to develop new approaches to setting effective policies, systemic supports, fiscal and regulatory measures as well as collaborative working relationships between government and the third sector across a broad range of interventions designed to create, develop and support a culture of philanthropy. The development of a supportive fiscal and regulatory infrastructure, underpinned by appropriate policies, needs to be advanced with regard to national requirements and to international models of best practice. The advancement of such infrastructure will greatly assist the development of philanthropy and a culture of giving within Ireland.

1.1.12 The focus of this research project was on tax and regulatory policy in Ireland with a view to increasing philanthropy. The research was jointly commissioned by Philanthropy Ireland (representing philanthropic organisations) and Irish Charities Tax Research (representing charities and not for profit organisations). The commissioning of this research represents a holistic approach to the examination of the issue of tax and regulatory policy to increase philanthropy in Ireland with the collaboration of both the giver and recipient of charitable donations. The commissioning organisations in their terms of reference acknowledge that whilst tax and fiscal incentives are not the main motivator for giving, they are critical in ensuring that there is an encouraging environment for giving and also directly influence how much money /resources people give and how they give¹⁷.

Philanthropy Ireland

1.1.13 Philanthropy Ireland is the Association of independent philanthropic organisations in Ireland, including grant-making trusts and foundations. The organisation was founded in 1998 and was formerly known as the Funders Forum. It has 26 members who collectively disburse over €80m per annum to charitable causes in Ireland.

1.1.14 In late 2008, Philanthropy Ireland launched a three-year strategy¹⁸. This Strategy sets out a number of core areas of activity to achieve its goal of growing and supporting philanthropy in Ireland. These areas for activity are:

¹⁷ Philanthropy Ireland, Request for Tender, August 2008.

¹⁸ Philanthropy Ireland, *Charting a new Course, Philanthropy Ireland Strategy 2009 to 2011* (Dublin: Philanthropy Ireland, 2008).



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- Promoting philanthropy.
 - Ensuring an encouraging environment for philanthropic giving.
 - Membership services and supports for existing and new philanthropy.
 - Developing Philanthropy Ireland.

1.1.15 Philanthropy Ireland has identified effective tax and legal frameworks that encourage philanthropy as an important element of ensuring that there is an encouraging environment for philanthropic giving. In its strategy, it commits to advocate for these in collaboration with Irish Charities Tax Research Ltd. and other stakeholders. A commitment was made in the three year strategy that proposals for improving tax and legal frameworks to encourage greater philanthropy would be developed and that Philanthropy Ireland would lobby for the adoption/implementation of relevant proposals.

Irish Charities Tax Research Ltd.

1.1.16 Irish Charities Tax Research (ICTR) is a leadership organisation working on behalf of charities to enhance the conditions for a vibrant and independent charity sector in Ireland. Together with its sister organisation, Irish Charities Tax Reform Group, ICTR promotes the implementation of policies to optimise the financial value of donations (by charity friendly tax reform) and underpin public and donor confidence in charities.

1.1.17 ICTR has carried out research on VAT and Charities, tax relief on donations and a study on how regulation of fundraising by means of Codes of Practice can work in Ireland. Both ICTR and ICTRG take an active role in promoting effective regulation of the charities sector and in this context played a leading role in influencing the development of the Charities Act 2009. The promotion of a policy environment in which philanthropy can thrive is a key objective for both organisations. ICTRG was founded in 1991 and established Irish Charities Tax Research Ltd. in 2000.

Context for the Research

1.1.18 In order to further both Philanthropy Ireland's and ICTR's vision of creating an environment which would encourage greater philanthropy, FGS Consulting was commissioned to carry out research in this area. The primary aim of the project was to provide a clear and evidence-based analysis of the available qualitative and quantitative data that can usefully inform future decision-making. Consequently, the project involved a comprehensive programme of research with the following objectives:

- A succinct overview of the current position with regard to relevant fiscal and regulatory provisions in relation to philanthropy in Ireland.
- A broad review of the operation, objectives and evolution of the relevant instruments applicable in a range of other jurisdictions including the UK, US, Germany, Australia, Canada and New Zealand.
- The development of proposals for specific incentives which could be introduced in this jurisdiction.
- A review of the likely costs and benefits arising from said proposals.
- An overview of the potential legislative and regulatory changes that would be required on foot of these proposals.

1.1.19 The Terms of Reference of this research project required the consultants to focus on the development of fiscal and regulatory proposals to encourage greater philanthropy in Ireland. Notwithstanding the fact that a good fiscal and regulatory infrastructure is necessary to facilitate the transfer of wealth from high net worth individuals to charitable organisations, it is important to acknowledge that this is only part of the picture.

1.1.20 This research has been undertaken against the backdrop of a number of other relevant policy initiatives, including:

- (a) The Forum on Philanthropy was set up by the Government in late 2006. Its terms of reference set out that taking account of Ireland's tradition of responsive giving, significant increases in wealth in recent years, the potential for philanthropy to play an increased role in addressing local and community development issues and the desirability of achieving the maximum complementarities between public sector funding and private philanthropy, the Forum should:
- Facilitate dialogue between the public sector and those involved in or promoting, philanthropy.
 - Improve access to contacts across public bodies on information and opportunities for philanthropy.
 - Increase understanding among public and private funders of the not for profit sector.
 - Explore ways of influencing wealth advisors so that they include philanthropy as a worthy and desirable option to their clients.

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- (b) The Commission on Taxation was established by the Minister for Finance on the 14th February 2008 to “review the structure, efficiency and appropriateness of the Irish taxation system”. He also indicated that “its work would help establish the framework within which tax policy would be set for the next decade at least, and that it was important that it take a strategic, considered and balanced perspective that recognised the evolving challenges ahead.”

The work of the Commission has taken on an added urgency for government in the current deteriorating economic situation and its recommendations should influence the basis for budgetary policy over the coming years. In September 2009 the Commission published an extensive report on its work. In its review of tax expenditure (Part 8) the Commission gives consideration in relation tax expenditures relating to Philanthropy (Section 11). In the context of the parameters of this research, the following relevant recommendations are made in relation to Philanthropy¹⁹:

Recommendation 8.39

- The threshold on the eligibility of individual donations to charities and approved bodies to attract tax relief should be reduced from €250 to €100.

Recommendation 8.40

- The relief for individuals under Recommendation 8.39 should be at the standard rate in all cases.

Recommendation 8.41

- An upper limit of €500,000 per person on the annual value of donations which may attract tax relief is recommended. This limit should be enforced using the principles of self-assessment and audit.

Recommendation 8.42

- The self-employed should be treated in the same way as PAYE earners under the scheme with the tax relief being paid to the charity or approved body.

¹⁹ Commission on Taxation, *Commission on Taxation Report 2009* (Dublin: Stationery Office 2009)

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- “In light of the recommendation that the tax relief should go to the charity or approved body, the relief should be removed from the scope of the measure to restrict the annual tax relief available to high earners” (S11.7 p.271)
- (c) Another relevant development was an initiative undertaken by the former US Ambassador to Ireland, Mr Thomas C. Foley, who hosted a day-long symposium – A Dialogue on Philanthropy, in February 2008 - which provided a forum for “exploring how the experience with philanthropy in the United States could help policymakers and practitioners promote the development of philanthropy in Ireland” (Unpublished Summary Memorandum, p1). The recommendations put forward from the Symposium included:
- Have law firms standardise documentation for charitable entities such as foundations and other grant making entities in order to facilitate and reduce the expense of forming them.
 - Develop Philanthropy Ireland, or another entity, as an information centre for donors and an advisor to donors about vehicles and methods for giving, rules and regulations governing giving, levels and types of giving and how charitable enterprises are spending their money.
 - Develop ways to facilitate a donor’s ability to direct their giving through foundations, community trusts and participation in governance of institutions they are supporting.
 - Eliminate the two year waiting period for a charitable entity to qualify for charitable exemption (tax relief on the donation scheme for those with eligible charitable status).
 - Minimise red tape and regulations to only those needed to preserve the integrity of public purpose institutions and reasonably establish the legitimacy of tax benefits.
- (Unpublished Summary Memorandum from symposium)

Methodology

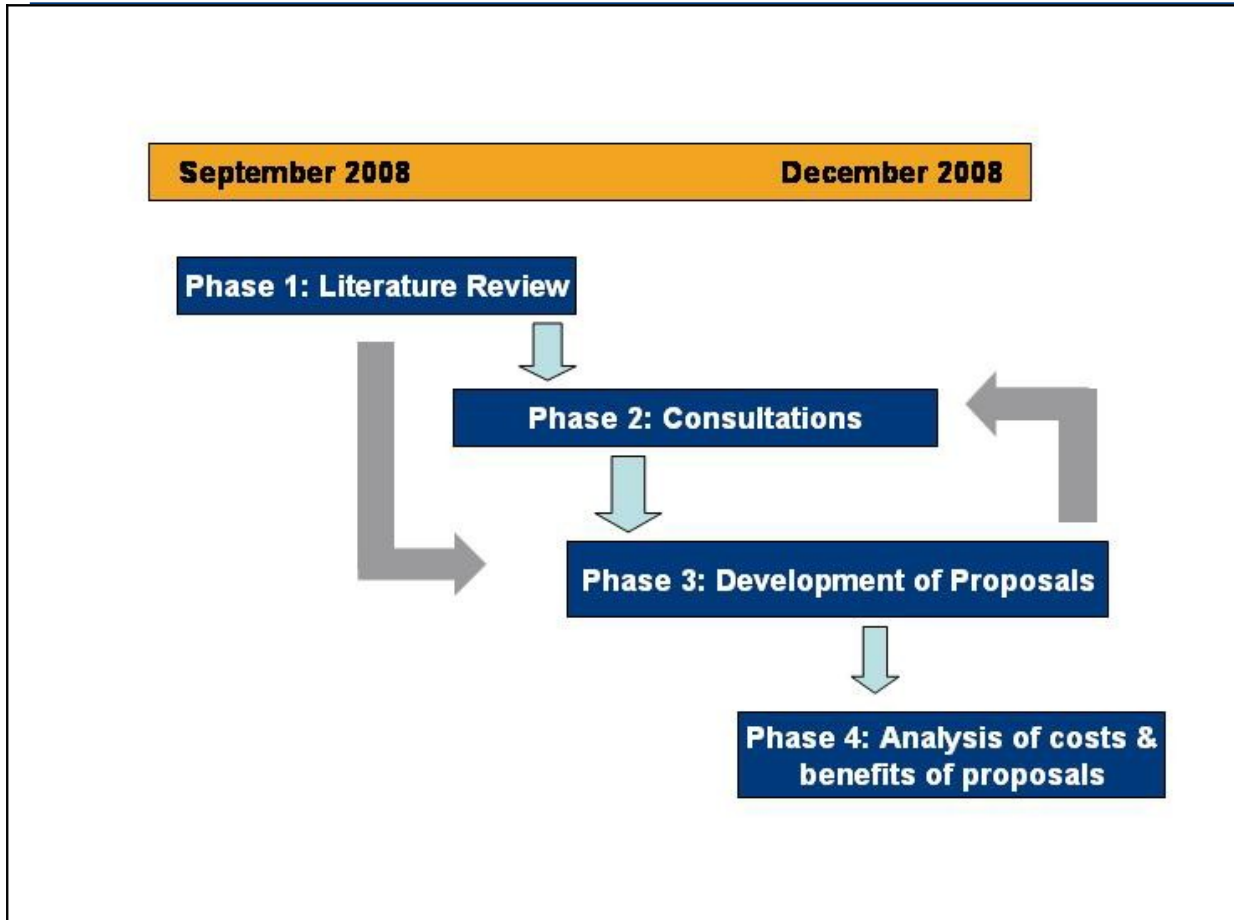
1.1.21 In order to achieve the research aims, a rigorous programme of research was undertaken drawing on a range of research methodologies. There were four main research phases in the project as outlined below:

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- 1.1.22 The first phase related to a review of literature and policy documents relating to philanthropy in Ireland. In addition, the first phase also included a review of international research. The international aspect of the review involved reviewing the tax treatment of donations in other countries and the vehicles used to promote greater philanthropy. This involved examining the type of systems used in other countries and identifying their potential transferability to the Irish situation. This first phase of the research involved the exploration of themes to be explored during the consultation phase as well as informing the initial thinking around the development of proposals.
- 1.1.23 The second phase of the research involved undertaking a number of face-to-face consultations with key stakeholders. A comprehensive consultation strategy was devised to identify the key stakeholders. The list of stakeholders (see Appendix 2) was devised with input from the project working group. A range of topics for discussion at the consultation were identified and a topic guide drawn up. The review of the literature helped to identify the key areas to be explored in the consultations. The topics to be discussed were then adjusted dependent on each of the consultations. The development of the proposals also fed into the discussions at the consultations. The key themes which emerged through the consultations are discussed later in our report.
- 1.1.24 The third phase of the research involved the development of proposals relating to the tax and regulatory environment and what changes may encourage greater philanthropy in Ireland. The development of these proposals was informed by both the review of the literature and by the themes which emerged during the consultation process. The face-to-face consultations facilitated early discussion of the proposals.
- 1.1.25 The final phase of the research involved a review of the cost and benefits associated with the proposals put forward. This was completed following a discussion between the project team and the working group. This element of the project identified the recommended pathways towards the future implementation of the potential legislative and regulatory proposals.
- 1.1.26 An overview of the methodology is presented in Figure 1 overleaf. This figure gives an illustration as to how each of the research phases linked together in an integrative process over the duration of the research project.



Irish Charities Tax Research Ltd and Philanthropy Ireland
Research into Tax and Regulatory Policy in Ireland to
Encourage Greater Philanthropy
September 2009

Figure 1: Overview of Methodology





1.1.27A project working group was set up by the two commissioning organisations. This group was comprised of members of both Philanthropy Ireland and of the Irish Charities Tax Research Group. The working group provided advice at the inception stage on the scope of the project. In addition to this, the consultants gave an interim presentation to the group on the development of the proposals as they emerged. The working group also oversaw the drafting of the report and provided comments on early drafts.

1.1.28In the delivery of this project, FGS deployed an inter-disciplinary team comprising of members of its Management Consultancy and Taxation divisions. The project team met regularly throughout the project reviewing progress and identifying potential proposals for change in tax and regulatory policy to encourage greater philanthropy. The project team was overseen by a senior partner in the firm with additional quality assurance from partners within both the Management Consultancy and Taxation divisions. The skills-mix within the team ensured a systematic and rigorous approach to the research.

Outline of the Report

1.1.29The remainder on the report is structured as follows:

- Section 2: Review of National and International Literature.
- Section 3: Consideration and development of proposals.
- Section 4: Presentation and Analysis of Proposals put forward
- Section 5: Conclusions and Recommendations.

2 REVIEW AND ANALYSIS OF CURRENT POSITION

Introduction

1.1.30 This section of the report focuses on the first two elements of the terms of reference. Firstly, an overview of the current position in Ireland regarding fiscal and regulatory provisions relating to charitable donations is provided. Secondly, in examining these provisions, a broad review of the treatment of charitable donations in a range of other jurisdictions is undertaken. This part of the research process provided a basis for the development of proposals to be discussed during the consultation process. To this end it reviews the key elements of current provisions in this area and presents some of the arguments for change to current legislative provisions as well as an analysis of international practice in this area.

Regulatory Provision

1.1.31 Historically in Ireland, legislation relating to charities dates back to the 1601 Statute of Charitable Uses (Irish version; 1634), the Charitable Uses Act 1888 and defining Charitable Purpose in 1891 (establishment of the Pemsel categories). Post-independence legislation in this regard was introduced in the form of the 1961 and the 1973 Charities Acts. The Street and House to House Collections Act, 1962 provide legislation for fundraising activities.

1.1.32 In the past two decades a number of steps aimed at reforming the regulation of charities in Ireland have been taken. In 1989, the then Minister for Justice set up a Committee on Fundraising Activities for Charitable and other Purposes. A report (known as the Costello Report) from this Committee recommended a significant number of changes including²⁰:

- A system of registration of organisations fundraising for charitable and philanthropic purposes.
- A system of accounting requirements.
- A Registration Authority which would have supervisory and investigatory powers.

²⁰ Recommendations from the Costelloe Report quoted in the Report of the Advisory Group on Charities / Fundraising Legislation (26th November 1996), 1.

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- A prohibition on the sale of lottery lines by house to house visits and on the street. The sale of lottery tickets in the street to be prohibited.
 - Greater controls on private lotteries, occasional lotteries and periodic lotteries.
 - Telethons to operate under approved schemes.
 - Registration and control of professional fundraisers.

1.1.33 Subsequent to the publication of the Costello Report, a change of Government in 1994 saw the setting up of an Advisory Group on Charities/Fundraising Legislation by the then new Minister of State at the Department of Justice. This Group, which was made up of representatives of the charitable sector along with members of Government Departments, reported on its findings and made recommendations relating to:

- The registration of charities.
- Methods of accountability for charities.
- Supervision of registration authorities.
- Permits and licensing for fundraising.

(Op cit)

1.1.34 While the report informed the development of the Heads of a Bill for a proposed new Charities Act, the subsequent fall of the Government in 1997 saw a delay in the process of legislating for regulation in the sector. However, the publishing of the White Paper on a Framework for Supporting Voluntary Activity and for Developing the Relationship between the State and the Community and Voluntary Sector in 2000 set an agenda for the development of Charities regulation and, in particular, this work has gained momentum since 2002 when responsibility for charities regulation was transferred to the newly created Department of Community, Rural and Gaeltacht Affairs (CRAGA). In 2005, a general scheme for regulation was outlined with establishment of new Heads of a Bill.

1.1.35 The consultative approach adopted by the Department of Community Rural and Gaeltacht Affairs has ensured that the legislation has been developed with involvement from the sector it directly affects. ICTR as a member of the Charity Regulation Study Group had significant influence on the development of the legislation.

1.1.36 The Charities Bill was published in 2007 and, following debate in both houses of the Oireachtas, was enacted in February as The Charities Act 2009. The purpose of the Act is to ensure accountability and to protect against abuse of charitable status and fraud which is essential to the promotion of philanthropy in Ireland. The Act along with the Charities Act, 1961 and 1973 and the Street and House to House Collections Act, 1962 “will provide for a composite regulatory framework for charities through a combination of new legislative provisions and retention of existing charities legislation, with updating where appropriate”²¹.

1.1.37 The key elements of the Act include:

- The provision of a definition of a charity in primary legislation.
- The establishment of a Charities Regulation Authority to regulate the charitable sector. This will involve overseeing effective administrative and accountability structures within the sector including the submission of yearly activity reports by charities to the regulator.
- A register of charities.
- The Regulator will be assisted by consultative panels, as appropriate, involving stakeholders from the charitable sector.

1.1.38 In particular, the Act provides for the “transfer to the Authority of all jurisdictions previously vested in the Attorney General by statute or common law in relation to charities”²². The Authority’s register of charities will provide information for the general public on every organisation regarded as a charity in the State.

1.1.39 With regard to fundraising, there are three core elements within the Act:

- Permits for fundraising, including the modernising of methods of collection to include direct debits and other promises of money.

²¹ Charities Act 2009.

²² Charities Act 2009.

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- Conferring of powers on the Charities Regulator to require annual activity returns by charities on their fundraising activities.
 - Development of Codes of Good Practice in relation to fundraising activities.

1.1.40ICTR assisted in the development of the last element of this bill through the publication of a feasibility study on the development of codes of practice to regulate fundraising by charities.

1.1.41At present the legal structure of charities can take a number of forms. For example current entities include companies limited by Guarantee, Trusts and Friendly Societies etc. The Law Reform Commission published a report on Charitable Trusts and Legal Structures for Charities²³. The report looked at the various forms of charitable organisations and put forward a recommendation to introduce a new form of legal structure – Charitable Incorporated Organisation (CIO).

1.1.42In addition to the proposal put forward by the Law Reform Commission, the Department of Enterprise, Trade and Employment is carrying out a review of Company Law which, puts forward a proposal for a Designated Activity Company (DAC) which could inter alia, be an appropriate structure for charities²⁴.

International Experience

1.1.43In 2005, the Home Office in the UK published a strategy to further develop charitable giving. This strategy, A Generous Society, has at its core the vision to make it as easy as possible for those who want to contribute to do so, and to help develop a culture in which charitable giving is a natural part of everyone's life²⁵. In order to develop a culture of giving the strategy focuses on the following key areas:

- Working with the charitable sector.
- Working with young people.
- Working with the private sector.

²³ Law Reform Commission, *Charitable Trusts and Legal Structures for Charities* (Dublin: Law Reform Commission, 2006).

²⁴ Dóchas "Briefing on Charities Regulation and Legislation", March 2006. Available at http://www.dochas.ie/documents/charities_regulation_briefing.pdf.

²⁵ The Home Office, *A Generous Society*, 2008. Available at http://www.cabinetoffice.gov.uk/third_sector/giving/generous_society.aspx

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- Developing public awareness.
 - Developing the evidence base.

1.1.44 In New Zealand, a cross-sectoral working group of the Office for the Community and Voluntary Sector, Philanthropy New Zealand and Volunteering New Zealand are spearheading a project named Promoting Generosity²⁶ to deliver a vision whereby giving is the norm – “it’s what we do”. Implicit in this project is the facilitation of dialogue to encourage individuals and businesses to think about their giving of time and financial resources. Other features include the recognition of the need to optimize generosity by means of a multi-factorial approach (i.e. promoting giving in a number of ways), the celebration of generosity, a co-ordinated and inter-agency approach to giving and visible government support for giving.

1.1.45 In conducting our research it was clear that many countries, in addition to the UK and New Zealand have now adopted multilateral strategies to promote philanthropic giving. Key elements of these strategies include:

- A clear lead department / lead office role at central government level.
- Government support for key bodies in the sector in building capacity in areas such as research, education database development, promotion, advertising etc.
- Integrated measures supporting active citizenship, volunteering and charitable giving as key instruments of government policy.
- Recognition of profiling of the contribution of the third sector, awareness raising as a key objective.
- Fiscal incentives as one element of a broad range of interventions by government.
- Published policies / strategy statements setting out specific goals / targets for increasing donations and for outcomes to be achieved through partnering with the Third sector.

²⁶ See <http://www.ocvs.govt.nz>.

Review of Recommendations in Relation to Tax Relief on Donations of Cash and Shares to Charity

1.1.46 Before reviewing the research undertaken in relation to proposed changes to tax relief on donations of cash and shares to charity, Table 2.1 presents a brief outline of the tax reliefs available in Ireland and draws comparison with international experience.

Table 2.1 Summary of Tax relief current available in Ireland

Tax Relief	Variations in other countries
<p>Tax relief is applied to a minimum donation threshold. Currently tax relief may only be claimed on donations of €250 or more.</p>	<p>In the UK no minimum donation limits to receive tax relief.</p> <p>In the Netherlands individuals can deduct up to 10% of their gross income. No deduction is possible for donations below 1% of the gross income or 60 euros (2007). In addition, annual payments for a minimum period of five years are deductible.</p> <p>In Luxembourg donations in excess of €120 are eligible for tax relief.</p>
<p>High earners (those earning over €250,000) are restricted in the amount of tax relief they can claim on donations made to charitable organisations.</p>	<p>In Germany the tax deduction threshold for donations to foundations is €1m over a ten year period which can be carried forward for a period of up to ten years. This is a substantial increase on the previous level of €307,000. The tax ceiling for individual donations also increased to 20% of the yearly taxable income.</p> <p>In the UK, the whole of the charitable donation is tax deductible.</p>



<p>There is no VAT relief for charities in Ireland. Charities generally do not make VATable supplies, charities should not be entitled to recover any VAT incurred on costs</p>	<p>In Denmark, the 2006 Danish Finance Bill introduced a VAT subsidy system whereby Danish charities receive a subsidy from the Government in relation to VAT incurred on costs. The VAT subsidy is based on the proportion of funds raised by a Danish charity that relates to private funding.</p>

1.1.47 Different arrangements exist for allowing tax relief on donations made by individuals which depend on whether the donor is a PAYE taxpayer or an individual on self assessment. Where the donation is made by a PAYE taxpayer, relief is granted on a “grossed up” basis rather than by way of a separate claim for tax relief by the donor, e.g. if an individual who pays tax at the higher rate of income tax (41%), makes a donation of €590 to an approved body, the body will be deemed to have received €1,000 less income tax of €410. The approved body will, therefore, be able to claim a refund of €410 from Revenue. The donor must supply an “appropriate certificate” to enable the approved body to reclaim the income tax.

1.1.48 Where the donation is made by an individual who pays income tax on a self assessment basis, the individual will claim the tax relief on submission of the appropriate income tax return, i.e. there is no grossing up arrangement. Tax relief is claimed in a similar manner in the case of a donation made by an individual who pays a portion of his tax under the self assessment system but who also pays tax under the PAYE tax system. In order for the tax relief to apply, the charity must be an eligible charity, i.e.:

- A body of persons or a trust established for charitable purposes only.
- Where the income of the body or trust is applied for charitable purposes only.
- Where the body or trust has been granted exemption from tax as a charity (and assigned a charity number) by Revenue for a period of not less than two years.

1.1.49 In addition to the relief applying to charitable organisations, approved bodies are also eligible for relief on donations. Approved bodies include:

- A body approved for education in the arts.
- An institute of higher education within the meaning of section 1 of the Higher Education Authority Act 1971, or any body established for the sole purpose of raising funds for such an institution.
- An institution in receipt of public funding which provides courses under a scheme approved by the Minister under the Local Authorities (Higher Education Grants) Act, 1968 to 1992, and also applies to any body raising funds for such institutions.
- An institution of higher education which provides courses validated by the Higher Education Training Awards Council.

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- An institution or body which provides primary education up to the end of sixth standard based on a programme prescribed by the Minister for Education and Science.
 - An institution or body which provides post primary education up to the level of either or both the Junior Certificate or Leaving Certificate based on a programme prescribed by the Minister for Education and Science.
 - A body for the promotion of the universal declaration of human rights.
 - US – Ireland Alliance Limited.
 - The Irish Heritage Trust, designated for that purpose by the Minister for Finance.

1.1.50 The Department of Finance in its review of Section 848A, TCA 1997 identified two objectives of tax reliefs as follows: “they encourage individuals and companies to donate to charity and approved bodies, including churches, religious orders and sports bodies, and they allow donors to exercise choice with regard to which bodies benefit from Exchequer support [through the tax relief]”²⁷.

1.1.51 The forthcoming Research on Philanthropy in Republic of Ireland report notes that the total amount of donations received from PAYE donors amounted to €46 million with a further €47.2 million coming from self assessed tax payers.

1.1.52 The cost of reducing the qualifying threshold from €250 to €100 was previously examined in 2005²⁸. This research was based upon responses to a questionnaire distributed to a randomly chosen sample with a reference period spanning the 12 months to December 2003. The research found that donations valued at €250 or more accounted for 42 per cent of all donations from individuals whilst 27 per cent of the total was attributable to donations of between €100 - €249, the remainder of the donations were for under €100. The study also found that currently 13% of the charities surveyed were availing of the tax relief scheme. If the threshold to obtain tax relief on donations was dropped to €100 an additional 32% of the charities in the survey could benefit from the scheme²⁹.

²⁷ Department of Finance, *Review of Tax Schemes Vol. III: Internal Review of Certain Tax Reliefs* (Dublin: Department of Finance, 2006)

²⁸ Irish Charities Tax Reform Group with John Dempsey, *Review of Tax Reliefs and Exemptions for High Earners*: Submission to the Minister for Finance (Dublin: Irish Charities Tax Reform Group, 2005)

²⁹ Op. cit.

1.1.53 The Centre for Non-profit Management³⁰ explored what organisations were most successful in receiving donations. The organisations in the lowest decile (i.e. the ten percent of the sample which received the lowest amount of money in donations) reported receiving a total fundraised income of between €4 and €802. Unpublished data from an un-named not-for-profit organisation shows that 3 in 4 donations that it received for 2007 were for under €200. Only 20% of the donations that the organisation received in 2007 were for over €250³¹.

1.1.54 The ICTR report found that such a reduction in the threshold would expand the benefit of the relief to a further 32 per cent of all charities – up from just 13 per cent – at an estimated cost of €47m including the potential stimulus effect upon fundraising efforts.

1.1.55 A number of charitable organisations have campaigned to have Section 848A removed from the list of restricted tax reliefs that can be claimed by higher earners. In particular, the Irish Charities Tax Reform Group has been to the fore of advocating for this change. In its submission to the Commission on Taxation the ICTRG's primary recommendation is for the Removal of S848A from Schedule 25B, S485C of the 2006 Finance Act to promote Philanthropy, on the basis that by law there can be no other benefit to the donor in charitable donations other than the tax relief³².

1.1.56 Philanthropic organisations such as The Community Foundation for Ireland and Philanthropy Ireland have also campaigned for the removal of Section 848A from the higher earner restriction. There is a clear consensus that the inclusion of this relief is restrictive to the growth of a more philanthropic culture³³.

1.1.57 It has also been argued that Section 848A should be extended to other valued assets such as land and buildings³⁴.

International Experience

³⁰ Donoghue et al, 13.

³¹ Unpublished data obtained by FGS

³² Irish Charities Tax Reform Group, *Submission to the Commission on Taxation* (Dublin: Irish Charities Tax Reform Group, 2008), 4.

³³ Op cit.

³⁴ Higher Education Authority, *Supporting Investment in Higher Education*; Report of the Working Group (Dublin: Higher Education Authority, 2006).

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- 1.1.58 Recent changes to German law have increased the tax deduction threshold for donations to foundations to €1m over a ten year period which can be carried forward for a period of up to ten years. This is a substantial increase on the previous level of €307,000. The tax ceiling for individual donations also increased to 20% of the yearly taxable income representing a significant increase on the previous rates of 5% or 10%.
- 1.1.59 The primary policy document in relation to the UK Government's Strategy for encouraging charitable giving, A Generous Society, set out proposals to embed a culture of giving in the country (Home Office, 2005). Under this policy, Gift Aid in England is similar to Section 848A relief given in Ireland. This policy was introduced in 1990 and charities can reclaim tax on donations received at the basic rate of tax. For donors on the higher rate of tax, the individual can claim relief on their donation against this higher rate of tax liability. Under amendments to the scheme in 2000, tax relief is now available on any gift donation to charity. In addition, the scheme was made more accessible by allowing donors to make Gift Aid declarations through a variety of means (for example by post, fax, orally over the phone, by internet etc.). To this end, the amount of tax repaid to charities increased substantially between 2000 and 2006 from €222m to €625m. The Grassroots Grants Scheme has provided grants to numerous community and charitable organisations in the UK. The grants are awarded through the provision of a building endowment fund of £50 million provided under the UK's Treasury Third Sector Review³⁵. The provision of this fund will see an additional £15million in grants each year.
- 1.1.60 In the UK a Community Investment Tax Relief scheme encourages investors to provide funding to disadvantaged areas by investing in accredited Community Development Finance Institutions (CDFIs). The tax relief available to investors as part of this scheme is worth up to 25% of the amount invested in the CDFI. This relief is spread over a five year period commencing with the first year the investment is made.
- 1.1.61 Share Gift in the UK is a Charity set up to assist donors transfer shares to their chosen charity. The Charity exists to realise as much value as possible from unwanted shares by aggregating them, selling them and using the proceeds to make donations to a wide range of other UK registered charities. This was launched in 1996 with the primary aim of solving the problem of unwanted small shareholdings. Small holdings of shares are worthless to their owners but the total amount offers millions of pounds of potential funding for charity. Shares that are donated to Share Gift are transferred to the name of the registered charity which operates this scheme. The organisation combines all those shares which are from the same company and sells them. The proceeds from this are then distributed to charity. Donors can specify their chosen charities or

³⁵ <http://www.navca.org.uk/news/grassroots.htm>

charitable areas. Share Gift then take this on board when distributing the proceeds. Income tax relief is given in relation to the donation of the shares along with the fact that there is no liability for CGT whether a loss or gain is incurred.

1.1.62 In both Belgium and Austria a system of tax deduction based on a system of a percentage deduction of taxable income on donations is applied. In Belgium donations of gifts cannot exceed 10% of the taxable income, with an absolute maximum of €319,580 for the 2005 tax year.

1.1.63 In Luxembourg donations to public utility foundations are deductible up to an annual aggregate maximum limit of 10% of the taxable net income of the donor or €500,000, provided the donations have an aggregate value in excess of €120.

1.1.64 The 2006 Danish Finance Bill introduced a VAT subsidy system whereby Danish charities receive a subsidy from the Danish Government in relation to VAT incurred on costs. The VAT subsidy is based on the proportion of funds raised by a Danish charity that relates to private funding.

Vehicles for the Transfer of Wealth

1.1.65 There are a variety of vehicles to facilitate the transfer of wealth to charities. These are explored here with reference to international examples. Specifically this section looks at:

- Endowments.
- Foundations.
- Charitable Remainder Trusts / Split Interest Trusts.
- Donor Advised Funds.

1.1.66 Prospectus undertook research on behalf of Philanthropy Ireland for the Forum on Philanthropy on the issue of endowments. For the purpose of their research, an endowment was defined as “a fund, or collection of funds, invested to generate income which is used for charitable

purposes. Generally with an endowment, only the income earned (by the fund) is disbursed³⁶. The report identifies three principal endowment types:

- Private foundations / trusts with endowments funded exclusively by a private individual or organisation.
- Private / government matched endowments.
- Local community foundations with endowments (op cit).
- Examples of endowments in Ireland are (Atlantic Philanthropies, Community Foundation for Ireland etc.).

1.1.67 Donoghue (2004) explores the issue of foundations in an Irish context. In order to define a foundation, an international definition is used as follows: “foundations are usually established on the basis of an endowment, commonly from a single source, with a programme which is managed by its own trustees and directors, generally focused on educational, social, charitable, religious or other common welfare purposes” (Donoghue, 2004 p7). The lack of development with regard to foundations in Ireland is also identified as follows: “harnessing of significant private wealth for public good....does not seem to have happened on any great scale in Ireland³⁷. Research undertaken by Donoghue identified a total of 115 foundations in Ireland. Of this number the research determined that only 24 of these were actually grant-making foundations³⁸.

1.1.68 At the American Ambassador’s Symposium, A Dialogue on Philanthropy, held in 2008, the concept of alternative vehicles for the transfer of wealth to charitable organisations was discussed. The discussion centred on structures such as Split-Interest Trusts, and, in particular, Charitable Remainder Trusts (CRTs). One example of a CRT is Charitable Remainder Unitrust which “provides an income based on a percentage of the fair market value of the true assets as determined annually” (Myers, 2008 p4).

1.1.69 The Higher Education Authority explored the issue of Charitable Remainder Trusts (CRTs) in its report Supporting Investment in Higher Education. The report notes that there is no obstacle in Irish law to the setting up of a CRT. However, in order to provide an incentive to this

³⁶ Prospectus, *Endowments in Ireland* (Dublin: Philanthropy Ireland, 2007).

³⁷ Donoghue, 2004, p. 7

³⁸ Op cit

type of donation, amendments would need to be made to current tax laws. It notes that, specifically, there would need to be a provision in tax law in relation to “the element under which some of the income/assets of the trust would be paid out to the donor over the life of the arrangement”³⁹.

1.1.70 An additional vehicle which has been set up by a number of foundations (The Ireland Funds, The Community Foundation for Ireland, Irish Youth Foundation) and which is also offered by financial institutions is a donor advised fund. A donor advised fund “is a charitable giving vehicle administered by a third party such as a community foundation and created for the purpose of managing charitable donations on behalf of a family, individual or an organisation”⁴⁰. The administration costs are relatively low for donor advised funds as compared to the setting up of a private foundation. While the costs are lower, this fund still provides the donor with a means to establishing a charitable legacy that is fully tax efficient within the confines of relevant tax legislation. It is estimated that there are close to 50 donor advised funds in the Republic of Ireland.

International Experience

1.1.71 Charitable Remainder Trusts (CRTs) were introduced in the United States in 1969. CRTs (or Split Income Trusts) split the rights to the capital and income elements of the Trust between the donor and the recipient. Essentially, the donor puts the property in a trust for the charity. The trust then manages this capital element and provides the donor with an income stream based on returns from the capital element. In some instances, a property will be sold and the proceeds will be reinvested. The donation of the capital element is irrevocable and at the end of the donor’s life the capital element of the trust will be owned by the recipient.

1.1.72 There are a couple of tax reliefs in relation to CRTs. Firstly, there are no tax implications on the disposal of the asset to the trust. Secondly, an income tax deduction is available upfront on the disposing of the asset to the Trust.

1.1.73 In the UK, there has been an ongoing campaign around the introduction of split income trusts. To the forefront of this campaign has been the Charities Tax Reform Group (CTRG) along with the European Association for Planned Giving (EAPG) and the Institute of Fundraising (IoF)⁴¹ (see Cassell et al, 2004). The campaign looked at the amendments that would be needed to be made to the tax code in order to provide an

³⁹ Higher Education Authority, p.23.

⁴⁰ <http://www.fundingpoint.ie/knowledgebase/the-language-philanthropy-and-background-community-foundations>

incentive for the donor. Drawing on the experience of UK-based charities that fundraise in the US, the CTRG notes that the option of using a Charitable Remainder Trust may encourage different types of donors to give. It notes that often these donors are “attracted by CRTs because of the security they offer of an assured income during their / or a specified beneficiary's lifetime, after which the capital passes to a charity under the terms of the trust”⁴². Furthermore, they go on to explain that use of CRTs as donation mechanism often presents further donations from the donor.

Conclusion

1.1.74 This section of the report has provided an overview of the treatment of donations to charitable organisations in Ireland and within other jurisdictions. In reviewing the literature in this area, it is apparent that the key areas for potential reform relate to the thresholds around which tax relief is applied to charitable donations. Complimentary to this, the identification of different vehicles used for the transfer of wealth, and the potential they have for increasing philanthropic giving by applying tax relief, was also highlighted. The priority areas identified within this section formed the basis for the topics discussed during the consultations carried out with stakeholders. The next section of the report will build on the issues highlighted in this section and will set out the process involved in developing recommendations.

⁴¹ Cassell, R. Knox, P. & Macdonald, S. *Split-Interest Trusts Campaign (Draft) Executive Summary Paper* (Charities Tax Reform Group (CTRG), the European Association for Planned Giving (EAPG) and the Institute of Fundraising (IoF), 2004)

⁴² Op. cit.

3 CONSIDERATION OF PROPOSALS FOR CHANGE

Introduction

1.1.75 The foregoing section of our report reviewed national and international policy regarding charitable donations. This section of the report begins to address the third point of the terms of reference - the development of proposals to assist in incentivising charitable giving. Implicit in the development of potential areas for reform, was the consultation process, the findings of which are presented here. Through the process of developing robust recommendations a number of other proposals were considered. An analysis of these is presented here with a brief discussion around why these were not included in the final 'cut' of proposals put forward.

Approach to developing proposals

1.1.76 Building on the themes identified in the literature review as already outlined, a consultation strategy was devised. An initial list of organisations was drawn up in conjunction with the project working group established by the commissioning clients during the inception phase of the project. These organisations were identified as having undertaken work in this area or having direct involvement in philanthropy or in the development of the fiscal and regulatory environment in which it is governed. The types of organisations identified fell into four broad categories as follows:

- Statutory organisations.
- Not for profit organisations.
- Philanthropic organisations.
- Stakeholders from the education sector.

1.1.77 Following the inception meeting a definitive list of organisations to consult with was drawn up by the project team and circulated to the commissioning clients. As the consultation process developed, a number of additional individuals were consulted on the recommendation of participants. All consultations took the form of face-to-face meetings. Prior to each consultation a tailored topic guide was developed. A list of some of the questions and topics discussed are outlined in Figure 3.1 below.

Figure 3.1 Questions and topics for discussion at face to face consultations

- What is your organisations experience in relation to Philanthropic giving?
- What successes have you had in relation to attracting donors?
- What are the barriers associated with getting people to give?
- What is the scope to expand the suite of assets covered by the tax relief to include property?
- What have been the trends in philanthropic giving in your sector?
- What changes to current fiscal and regulatory policy would you advocate for to encourage greater philanthropy?
- What potential changes are there in relation to current tax / regulatory policy?
- What are the shortcomings with current regulatory policy in this area?
- What are the benefits in relation to current regulatory policy in this area?
- What is the background to the setting up of your philanthropic organisation / foundation?
- What is the background to the development of regulation in relation to Charities in Ireland?

1.1.78As the project progressed, and as the recommendations for fiscal and regulatory change were emerging, these were discussed at the consultations. The consultations also fed into the review of the fiscal and regulatory environment with individuals consulted identifying sources of good practice and key documents to review. A full list of organisations consulted is contained in Figure 3.2.

Figure 3.2: List of organisations consulted

Statutory Sector	Philanthropic Organisations
Department of An Taoiseach. Charities Section of the Revenue Commissioners. Irish Taxation Institute.	Atlantic Philanthropies. One Foundation. The Ireland Funds.
Not-for-profit Organisations	Education Sector Stakeholders
Barnardos. Concern. Business 2 Arts. Irish Charities Tax Research Ltd. Philanthropy Ireland.	Trinity Foundation. Irish Universities Association.

1.1.79Regular meetings were also held internally by the project team to discuss the proposals and outcomes of the consultations. These meetings assisted with the further development and refinement of the recommendations and were used to tease out issues relating to the advantages and disadvantages of each and to explore what

legislative changes might be needed. Figure 3.3 sets out the 9 principal measures which were identified and explored by us during this phase of the project.

Figure 3.3: List of principal measures examined

<p>A removal or reduction of the €250 small donation threshold.</p> <p>The removal of the €250,000 high earner restriction introduced in 2006.</p> <p>The introduction of a separate tax relief for higher earners in respect of donations made to charitable organisations.</p> <p>The introduction of tax relief on the donation of property as well as the introduction of more sophisticated donation vehicles such as charitable lead trusts and charitable remainder trusts.</p> <p>The introduction of a VAT subsidy for charities to compensate for VAT incurred on inputs.</p> <p>The removal or reduction of the two year waiting period before charitable status is granted in relation to obtaining tax relief on donations.</p> <p>The introduction of tax relief on the 'net benefit' in cases where the donor receives a benefit.</p> <p>The relaxation of the 10% association restriction.</p>
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1.1.80 Each of these 9 measures are explored in detail in Section 4 taking account of:

- The current situation in Ireland.
- The issues which arise in considering change.
- Our recommendation for change.
- The implementation considerations which arise.

Issues Arising from the Consultations

1.1.81 A key finding across the consultations was that philanthropy is still at an underdeveloped stage in Ireland. Comparison was often drawn to the high philanthropic culture in the US. In some instances participants drew on the American experience and provided illustrative examples of successful vehicles for the transferring of wealth. Comparison was also drawn with the high level of donations to charitable organisations in the US.

1.1.82 While in most instances the US was seen as somewhere Ireland could learn from in terms of the development of its philanthropic culture the opposite was also articulated. For instance, one participant cautioned drawing comparisons with the US as their culture of philanthropy is more organised and advanced than Ireland. While this culture may be aided by the US tax system it must be noted that the American tax system and public expenditure profile differed greatly from Ireland. An additional comparison was made with the occupation of fundraising in the US which is seen to be a high profile profession. This was in comparison to Ireland where there is not such a high attachment.

1.1.83 The low level culture of philanthropy in Ireland was seen to be the principle issue that needed to be addressed. However, the way in which this could be improved was multi-layered of which tax was only one ingredient. In some instances it was felt that there was a need for a major policy shift to be undertaken to move towards a richer philanthropic culture. However, others were more optimistic indicating that it may just take one change or one event to be the catalyst for the further development of philanthropy. It was noted that there was a need to create something that people would want to be involved in. One example given, by a philanthropic organisation, was the development of an informal forum of Irish and American Philanthropists with meetings taking place in alternate locations of the US and Ireland twice a year. This would provide networking opportunities amongst high net worth individuals at both sides of the Atlantic which in itself would present networking opportunities beyond those relating to philanthropy.

1.1.84 The practical implications of the low level philanthropic culture were also noted. There was a sense that there is a gap in the provision of professional services relating to philanthropy in Ireland with no infrastructure around professional philanthropic advice. In particular it appeared to be difficult to receive advice on setting up vehicles for the transfer of wealth which provided both legalistic and financial perspectives. There was also a sense that the lack of philanthropic culture meant that there was often a suspicion regarding the setting up of trusts / foundations as it was often wondered if this was a means of avoiding tax.

1.1.85 The introduction of more sophisticated vehicles for the transfer of wealth would assist in embedding a more philanthropic culture. These vehicles would help to promote a more structured and targeted approach to giving. The introduction of tax relief for these vehicles would provide an incentive for their use and development (see Appendix 2 for further details).

Measures not Considered or outside the Scope of this Report

1.1.86 A number of measures identified through the literature review were not considered to be viable within the Irish context.

1.1.87 Firstly, within some European countries a percentage tax deduction on taxable income is awarded on donations given to approved organisations. The system of giving a deduction based on a percentage of taxable income was considered however it was felt that rather than propose a new system of tax relief for donations it may be more successful to lobby for change based on the current structure.

1.1.88 In the UK, Share Gift provides a convenient means of donating shares to charitable organisations. Consideration was given to the introduction of such a body in Ireland which would assist with the administering of the donation of shares to charity. However, this proposal was not considered viable due to the low level of share holding in Ireland in comparison to the UK.

1.1.89 The higher and lower thresholds for claiming tax relief on donations to charity are more extensive in Luxembourg than Ireland. An extension of the Irish thresholds to make them similar to Luxembourg was considered. However, it was felt that a more attainable threshold extensions should be proposed than those given in Luxembourg.

Sectoral-based Fiscal Incentives

1.1.90 As part of the fieldwork undertaken by our team, we considered proposals for the introduction of a graduated system of fiscal incentives which would target enhanced relief at a schedule of specific causes. In other words, any enhanced fiscal incentives would only be available where the donor opted to support charitable organisations working in the specified fields (e.g. child protection, social housing). The specification of the sectors would be determined by political nomination.

1.1.91 There is a view that in addition to the changes proposed in this report further incentives should be directed towards specific pressing social issues or disadvantaged geographical areas. Such a proposal could have attractions if it results in directing additional philanthropic giving to areas of public policy priorities. There is certainly merit in the argument that any charity tax relief is the transfer, through tax expenditure, the cost from the individual to the public purse and as such should be consistent with public policy priorities.

1.1.92 Such a significant policy change however, would prior to its introduction need to be carefully considered, including inter alia;

- There would be a need to have an objective and non-political way of selecting the geographical areas and the issues that would qualify for any additional relief.
- The issues and geographical areas would be proposed to the Minister responsible for the non-profit sector by the Charity Regularity Authority, following consultation with the sector and require approval of the Minister of Finance.
- There should be a review after five years to ascertain the success of the additional relief, included in this review would be an examination as to whether other charities have been adversely impacted by this additional relief.
- Finally there should provision to facilitate changes in public policy priorities on a regular basis.

Area-based Fiscal Incentives

1.1.93 There is also a precedent for positive discrimination through the Tax Code in favour of designated geographic areas. For instance, under the Rapid (Re-vitalising Areas by Planning, Investment and Development) initiative, measures were introduced to target the 46 most disadvantaged urban areas and provincial towns in the State. The objectives of the initiative are as follows:

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- Increase investment made by Government Departments and State Agencies.
 - Improve the delivery of public services through greater coordination and integration.
 - Enhance the opportunities for communities to participate in the strategic planning for their areas.
- 1.1.94 Strand 1 of Rapid was introduced in 2001 whereby a series of integrated social inclusion measures were targeted at 25 urban areas. These measures included the Sports Capital Grant. In 2002, Strand 2 was introduced for a number of provincial towns with populations over 4,000 persons whilst a separate programme (CLAR) was also introduced for selected disadvantaged rural areas. As part of the efforts to tackle disadvantage effectively, Rapid funded a range of area-based measures including the regeneration of the social, physical and community infrastructure.
- 1.1.95 Parallel to this funding, a series of area-based tax incentive renewal schemes were also introduced for many of the same urban centres and towns. For instance, an Urban Renewal Scheme (often referred to as Section 23) was re-introduced in 1998 – building upon an earlier scheme in 1986 – for designated inner-city areas throughout the State. The objectives of these schemes included the pursuit of urban renewal and redevelopment via the promotion of investment, employment and reconstruction.
- 1.1.96 Similarly, the Town Renewal Scheme promoted the restoration, consolidation and revitalisation of the built fabric for 100 designated small towns (i.e. towns with populations ranging between 500 and 6,000 persons).
- 1.1.97 Although these incentives have been found to have made many positive contributions to the designated areas we do not consider that there is similar scope to link increased Exchequer support to philanthropic giving to support for charitable organisations operating in certain geographic areas only. For instance, many of the main charities operate on a country-wide basis already and the types of problems which they seek to alleviate are not restricted to certain cities or towns but are common to those amongst the lower socio-economic strata within society (i.e. are affecting families across the State).
- 1.1.98 Since the mid-1980's, a series of area-based tax incentive renewal schemes have been introduced including the Urban Renewal Scheme, Town Renewal Scheme and the Rural Renewal Scheme. The objectives of these schemes included the pursuit of renewal, restoration and redevelopment via the promotion of investment and reconstruction in designated areas.
- 1.1.99 These schemes have been scaled back in recent years on foot of both criticism centred on whether such interventions had inflated an already booming property market and research which indicated that, over time, such schemes incurred a high deadweight cost and displaced investment from non-designated areas.
- 1.1.100 However, it must be noted that such schemes have been highly successful in attracting investment to designated areas. For instance, McGreal et al (2002) found that
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'tax incentives have played an important role and there is little doubt that the scale of physical renewal in Dublin would not have been achieved in their absence'. Moreover, the Review of Area-based Tax Incentive Renewal Schemes undertaken on behalf of the Department of Finance found that the Urban Renewal Scheme 'had resulted in a high level of investment in the designated areas' and had delivered local community gain in some cases (Goodbody Economic Consultants, 2005).

Conclusion

1.1.101 This section of the report builds on the desk-based research undertaken in the previous section by exploring the issues raised during the consultation process. During the course of the research process, consideration was given to other proposals which were either beyond the scope of the report or considered to not have significant potential to drive an increase in philanthropy. The consideration of these proposals contributed to the teasing out of the final recommendations by refining thinking around the key areas where potential exists to drive an increase in giving. The proposals for change in fiscal and regulatory provisions to increase philanthropy are presented in the next section.

4 PROPOSALS

Introduction

- 1.1.102 The penultimate section of our report focuses on the proposals developed during the different phases of the research process. The proposals put forward relate to the issues identified within the review of literature and the consultations carried out with key stakeholders. In putting forward these recommendations it is felt that these proposals are robust and implementable given the current fiscal and regulatory environment. These proposals are discussed having regard to the remaining points within the terms of reference. In this regard, the likely costs and benefits are presented for each of the proposals along with the potential legislative and regulatory changes that would be required if they were introduced.
- 1.1.103 The reduction in the minimum threshold for the application of tax relief on charitable donations can be seen as the first step in terms of developing a more philanthropic culture. The proposal put forward here, presents an opportunity to begin to change the underlying philanthropic culture by incentivising lower level donations. The restriction on higher earners applying tax relief to charitable donations was highlighted frequently during the consultation and literature review phases of the research. In this regard, it was felt that this is a key area for reform and presents an opportunity for increased giving amongst higher earners.
- 1.1.104 An examination of provisions in other jurisdictions has shown that a more expansive approach to tax relief on charitable donations has been applied. In this regard the consultation process also highlighted the potential for the introduction of tax relief on other means of giving outside of the donation of cash and shares. Proposals have been developed in relation to the introduction of tax relief on donations of property and the introduction of tax relief when donations are made through split income trusts.
- 1.1.105 Notwithstanding the need to expand the parameters of the application tax relief to donations, other issues have been identified through the research process which could facilitate the more efficient use of donated funds. For example, the provision of a VAT refund scheme, similar to that introduced in Denmark, would enable charities to apply the funds received by private donors solely for charitable use and it would avoid the effective redirection of a portion of funds towards the exchequer in the form of VAT returns.
- 1.1.106 The research process also highlighted a number of issues which may create a barrier to giving. In particular, an issue raised during the consultation process related to the restriction in the level of donation an associated individual may give to a charity. The relaxation of this rule presents an opportunity for increased giving amongst individuals

who are involved with individual charities. Re-consideration of the two year wait for charitable status also provides an opportunity for the facilitation of donations to charity.

Tax Relief Thresholds for Charitable Donations

Minimum Threshold

Current situation

1.1.107 Section 848A, TCA 1997 provides for relief from income tax and corporation tax in respect of cash donations made to charities and approved bodies. Relief may be claimed where the minimum aggregate donations made to a particular charity or approved body in a particular year amounts to €250. With effect from 1 January 2006, relief also applies to donations of quoted securities.

1.1.108 The Department's Review of this Scheme⁴³ provides some information on the costs associated with tax relief on PAYE donations. In 2004, €14.8m was refunded under the donations scheme with respect to PAYE donors. This figure includes relief claimed at the higher and standard rate. However, it should be noted that not all donations eligible for tax relief are submitted to the Revenue Commissioners as charities must ensure that the submission for a refund is signed by the PAYE donor. The Department calculated that if relief was only given at the standard rate the cost would have been reduced by approximately €7m. For those donors who are self employed, and who therefore received the benefit of the tax relief, the cost to the exchequer in 2002 was €5.1m⁴⁴. This is relatively low given the potential benefits that a vibrant philanthropic environment presents for society as a whole.

Issues

1.1.109 The issue of the lowering of the minimum was discussed during many of the consultations and a number of key points arose. Firstly it was acknowledged that the setting of the threshold was arbitrary in nature. Secondly, many felt that the lowering of this threshold would be seen as a progressive move. However, while lowering the threshold may be a progressive move it should be part of an overall plan to promote and develop philanthropic giving in Ireland rather than a mere stand alone measure which could otherwise be viewed as a deadweight cost to the Exchequer. Thirdly, while many stakeholders were vocal in their support for the lowering of this threshold they did, acknowledge an advantage of the current scheme which is that donations eligible for tax relief can avail of it at the marginal rate (41%) of tax rather than the standard rate (20%).

1.1.110 The authors recognise that a complete removal of a minimum threshold for receiving tax relief on charitable donations could produce a deadweight cost to the exchequer. By

⁴³ Department of Finance, *Review of Tax Schemes Vol. III: Internal Review of Certain Tax Reliefs* (Dublin: Department of Finance, 2006)

⁴⁴ Op cit

dropping the threshold by €75, this would incentivise charities to target those donors giving just below €175 to bring their donations up to €175 in order to receive tax relief. Further reductions could be introduced based on the success of charities increasing their lower level donations to this target.

Recommendation

1.1.111 We recommend that the threshold be lowered to €175.

The proposed amendment would be as follows:

Section XXX, Finance Act 20XX

Proposal Section 848A(1)(a) to the Principal Act is amended by changing the reference from “€250” to “€175”.

Implementation considerations

1.1.112 It is important to note that this recommendation to lower the minimum threshold to €175 should be seen as a starting point in terms of reform in this area. The reduction in the minimum threshold by €75 is an achievable short to medium term target. However, it is imperative that subsequent reductions are periodically examined and any proposed changes implemented on an evidential basis.

1.1.113 The lowering of the minimum threshold should continue to evolve overtime. It is envisaged that a drop to €175 is a more achievable target in the short to medium term.

1.1.114 To reduce the deadweight cost to the introduction of the reduction of the lower threshold, charitable organisations should engage in an active campaign to encourage low level donors to donate a minimum of €175 in a full year. Further reductions could be introduced based on the success of charities in increasing their lower level donations to this target.

1.1.115 The reduction in the threshold should be introduced as part of a number of fiscal measures aimed at philanthropic giving across all income levels. Putting individual tax relief measures into a strong integrated policy framework, supported by budgetary strategy, is, we believe a key requirement. Such an approach has been successfully adopted by many other countries.

1.1.116 Moreover, it is also our view that any reduction in the threshold would be timely given the Department of Finance’s 2005 Internal Review of Certain tax Schemes had recommended that the extant threshold be retained as charitable organisations required more time to make donors aware of the existence of the various current schemes. However, four years have now elapsed since this review was undertaken and much progress has been made in terms of publicising these schemes in the intervening period.

1.1.117 The impact of such a change is a function of a number of factors and in particular, the proportion of donors – and the value of these donations – currently giving between €175 and €249.99 per annum and whose donations would become subject to the tax relief. In endeavouring to estimate the potential costs to the Exchequer of amending Section 848A in this manner, it is necessary to emphasise that we have made a number of assumptions as follows.

1.1.118 The ICTR-John Dempsey report referred to earlier noted that those persons donating sums of between €100 to €249 accounted for 27% of all monies donated (and equivalent to €31.2m of the fundraising total in 2008). In addition, based on unpublished data provided to us on the stratification of donations (see Section 2), we know that just 34.2% of all those making donations did so within this range.

1.1.119 Of this cohort, just 4.9% made donations ranging from €200 to €249 whilst we estimate that approximately 12% of donors made donations ranging from €175 to €249⁴⁵. Consequently, we will assume that these donors accounted for one-third of the total value of funds donated on foot of donations between €100 and €249. When we assume that this stratification of donations is broadly representative of the entire sector, and that all such donors were PAYE taxpayers, we can estimate that this cohort of donors gave €10.4m of the fundraising total in 2008.

1.1.120 Consequently, when the current formula for calculating refunds (i.e. the “grossed up” basis) is applied to those currently donating between €175 and €249.99 the charitable sector would be deemed to have received more than €17.6m and would be eligible for a refund of approximately €7.2m⁴⁶ under our recommended lowering of the threshold. However, this does not include the impact of any stimulus to fundraising that might result from such a change (a higher cost in tax foregone on foot of increased donor activity). It is also important to recognise that there is a likely rise in the transaction costs in relation to the processing of claims which cannot be quantified at this stage and which therefore we have not factored into our calculations.

Higher Earner Restriction

Current situation

1.1.121 The Finance Act 2006 provided for a limit on the use of tax reliefs by certain high income individuals commencing with the 2007 tax year whereby the individual is restricted in the extent to which “specified reliefs” can be applied to reduce the individual’s tax bill. The “specified reliefs” used in any particular year are limited to 50% of the individual’s “adjusted income”. The restriction will only apply to those individuals whose adjusted income is over €250,000 per annum. In addition, a tapering relief will apply for incomes between €250,000 and €500,000. The relief to be restricted includes

⁴⁵ This assumes that the 29.34% of donors who gave between €100 and €199.99 in 2008 were evenly distributed.

⁴⁶ This is an estimate based upon the data available to the authors at the time of writing. If we assumed that those giving between €175 and €249 accounted for 50% of the value of all donations, the estimated cost to the Exchequer would rise to €10.8m.

tax relief on donations to charities. Any relief denied in a particular year may be carried forward to the following tax years.

Issues

- 1.1.122 When stakeholders were asked about the main changes they would like to see with regard to the tax system, the primary recommendation was in relation to the removal of tax relief applying to charitable donations from the €250,000 high earner restriction introduced in 2006. Overwhelmingly, this was recommended by almost all of the organisations which were consulted.
- 1.1.123 Unlike many of the other tax reliefs that fall under the restriction, no other benefits are associated with obtaining tax relief on donations to charities or associated bodies in comparison to (say) where investors claim capital allowances (which may be subject to the restriction) but also receive rental income when investing in (say) a hotel. It was also noted that including donations to charity within the tax relief restrictions was mixing up business decisions with decisions relating to philanthropic and charitable giving.
- 1.1.124 It was also felt that the removal or amendment of the €250,000 high earner restriction may promote awareness in the middle to high income earners of the tax relief available in respect of philanthropic giving.

Recommendation

- 1.1.125 Our primary recommendation relating to this issue is that tax relief applying to charitable donations should be removed from the list of restricted tax reliefs for higher earners.
- 1.1.126 Secondary to this, a maximum threshold above which tax relief will not apply should be set. In this respect the Commission on Taxation's recommendation that "an upper limit of €500,000 per person on the annual value of donations which may attract tax relief" should be applied. It is envisaged that this limit, similar to the minimum threshold will evolve over time.

The proposed amendment would be as follows:

Section XXX, Finance Act 20XX

Section 848A is removed from Schedule 25 of the Principal Act

Implementation considerations

- 1.1.127 The introduction of the restriction on higher earners to claim relief on charitable donations was a collateral consequence of the introduction of a general tax avoidance provision for higher earners. Whilst the other reliefs contained within this restriction confer a benefit on the individual, donations to charity only confer a benefit on the recipient.

1.1.128 By introducing a separate relief for charitable donations, an individual can make decisions regarding charitable giving separate to those financial decisions which may be seen as business related or where the individual receives benefit. The primary advantage of this recommendation is that it will encourage more philanthropic giving from a specific cohort of the donor population which, based on the experience in other countries, has the potential to increase charitable giving significantly above current levels. A possible disadvantage of this proposal may be that the public would view it as only benefiting the wealthy. Again, therefore, it should be emphasised that measures such as that now recommended should only be introduced as a part of a structured policy and budgetary framework which is accompanied by appropriate information and education campaigns in the context of a national drive in support of philanthropic giving.

1.1.129 The application of tax relief on donations should continue to be applied at the marginal rate. The introduction of any changes to the way in which tax relief is applied should be carefully considered. The Commission on Taxation has recommended that donations to charity by the self-employed should be treated in the same way as PAYE earners, that is that the tax relief is paid directly to the charity or approved body. This recommendation should be carefully considered.

1.1.130 While it is acknowledged that evidence suggest that tax is not a motivator for giving there may be a certain cohort of givers where this does not apply. Our view is that the introduction of this recommendation could have a profound impact on behavioural patterns and thus there needs to be further investigation regarding the prevalence of tax relief as a motivator for charitable giving at the time that the donor makes the decision. If there was evidence of seasonality in donations this could suggest that donors consider giving at the time of their tax returns. Therefore, if tax relief is part of a motivator for giving the level of donations may fall and thus the introduction of this recommendation has the potential to have a negative effect on philanthropic giving.

Consideration of extension of tax relief to donations of property

Current situation

1.1.131 As outlined in Section 2, Section 848A, TCA 1997 provides for relief from income tax and corporation tax in respect of donations made to charities and approved bodies and, with effect from 1 January 2006, relief also applies to donations of quoted securities. This relief does not apply to other valued assets.

Issues

1.1.132 Many participants in the consultations process suggested that current tax reliefs on donations of cash and shares should be extended to all valued assets and, in particular, to property. Stakeholders in the education sector were particularly vocal in respect to this issue. However, some pointed to potential difficulties in valuing the donations of property. The potential for an increased administrative burden on Revenue was also noted. However, the current economic climate presents challenges with regard to the introduction of this type tax relief on donations. Central to the decline in the Irish

economy has been the severe reduction in the value and price of property. The latest data from the ESRI House Price Index (permanent tsb/ESRI House Price Index, May 2009) shows that from April 2008 to April 2009 house prices fell by just over 10%.

Recommendation

1.1.133 At present, TCA 1997 provides for relief from income tax and corporation tax in respect of donations of cash and quoted securities (or equities) made to charities and approved bodies. We recommend that the interpretation of relevant donation be extended to encompass property.

The proposed amendment would be as follows:

Section XXX, Finance Act 20XX

Section 848A(1)(a) to the Principal Act is amended by inserting the following into the definition for “relevant donation”:

“(iii) land in the State valued at its market value at the time the donation is made.”

Implementation consideration

1.1.134 The main advantage of the extension of the income tax relief to property is that it will encourage more philanthropic giving and also encourage donors to donate through Split Income Trusts (see next sub-heading).

1.1.135 While the implementation of tax relief on donations of property may be difficult to implement, we believe that it should be pursued given its success in encouraging additional philanthropic giving in other countries where it is a major instrument of government support to the third sector.

1.1.136 Ireland has traditionally had a marked cultural pre-disposition towards property ownership. This is reflected in rates of owner-occupation which tend to be higher than those in other jurisdictions. Indeed, residential property has been a key driver of Irish wealth creation in the past – notwithstanding current events – with property (residential plus commercial) accounting for 72% of all assets held by Irish households.

1.1.137 Indeed, this accumulation of wealth via property and the consequent dominance of property as an asset class in Ireland – compared to just 15% for equities and 10% for cash – implies that, in time, property could potentially act as a more effective vehicle for the transfer of wealth to charitable organisations than either of the asset classes which are currently eligible for relief under the extant legislation.

1.1.138 Arriving at an exact quantification of the costs associated with this proposal is not possible as it is difficult to estimate what the take up rate would be for an innovative

measure of this nature. However, we have set out an estimate of the potential cost on the basis of 'high' and 'low' rates of donations of residential properties.

1.1.139 According to Census 2006, there are almost 1.5m permanent housing units in the State. Almost 15% of the total has been deemed to be vacant by the CSO with the highest rate of vacancy occurring in the North-West (i.e. 30% in Leitrim). The two scenarios set out below assume a 'high' (or 0.1% of residential units) and a 'low' (0.01% of residential units) rate of take-up of this measure in a given year.

Figure 4.2: Overview of Scenario Estimates

	Low		High	
# Properties	N=15		N=150	
Region	Dublin	Non-Dublin	Dublin	Non-Dublin
Prices	€351,096	€223,984	€351,096	€223,984
Cumulative Value	€1,527,267	€2,385,429,	€15,272,676	€23,854,296
Tax Relief	€626,179	€978,026	€6,261,797	€9,780,261
Note: Assumes that donated properties are distributed in accordance with actual housing stock – Dublin (29%) and non-Dublin (71%) – and that tax relief is available at 41%. These estimates also assume that properties donated are not encumbered with any debt. Source: Census 2006 and Permanent tsb/ESRI House Price Index (year-end 2008)				

1.1.140 Assuming that tax relief was available at 41% and using the scenarios outlined above, the cost of extending tax relief to donations of property would range from a low of €1.6m to a high of almost €16m. However, if one assumes that take-up was substantially higher than estimated here (say 1,500 properties) the cost would likely rise to approximately €160m. When considering the potential cost of any such reform it is important to note that these proposals were formulated at a time of uncertainty in the Irish property market. Although year-end 2008 figures were taken as a base, the Irish property market has been in a state of flux for over a year at the time of writing. For instance, house prices fell nationally by an average of 9.1% in 2008 – compared to 7.9% in 2007 – with prices falling further in the Greater Dublin Area (ESRI, 2008) and have continued to fall into 2009.

1.1.141 The scenarios outlined here are indicative of the initial introduction of this measure and it is expected that these would grow over time.

Introduction of tax benefits in relation to Split/Charitable Remainder Trusts

Current situation

1.1.142 Split Income Trusts involve donors putting property in trust for a charity with the rights to the capital and income elements of the trust being split between the donor and the recipient. The trust then manages this capital element and provides the donor with an income stream based on returns from the capital element.

Issues

1.1.143 The potential to introduce Split Income or Charitable Remainder Trusts in Ireland was broadly welcomed during the consultations. The support for the extension of tax relief to all valuated assets further supports the idea of introducing tax benefits to vehicles used for the transfer of wealth. Participants were generally interested in the development of a proposal around such trusts. The introduction of this option would provide professional advisors an opportunity to introduce their clients to a broader range of giving options and could also encourage significant donations by individuals and families of relatively modest means.

Recommendation

1.1.144 We recommend that tax relief be made available for donations made through Split Income and / or Charitable Remainder Trusts. The development of legislation in respect of this issue would be complex and therefore for the purpose of this report we have not provided the actual legislative change.

Implementation consideration

1.1.145 Implementation of this recommendation should also consider the possibility of incentivising the use of Charitable Lead Trusts on the lines of the approach adopted in the United States. A Charitable Lead Trust differs from a Charitable Remainder Trust in that the income stream is received by the charity and the capital element passes to the beneficiary after a period of time.

1.1.146 The general legal and tax regulatory framework in Ireland is a barrier to the introduction of more sophisticated donation vehicles such as those now recommended. However, research has shown (see HEA, 2007) that these barriers are not significant and the success of such vehicles in other countries indicates a need to remove such barriers.

1.1.147 Again, it is not possible to determine at this stage the likely level of donations or the likely cost of implementation of this recommendation. However, we have developed a series of scenarios in order to estimate the indicative cost to a Trust holding donations of residential property.

1.1.148 For instance, where a Dublin-based property is settled on a trust the donor would receive an annuity of €10,533 p.a. for (say) 10 years. In present value terms, this would be worth €89,846. Therefore, the cost to the Exchequer in tax foregone on this stream of income would be €4,319 (or €36,837 over the full period in present value terms).

Figure 4.3: Overview of Scenario Estimates

	High		Low	
# Properties	N=1,500		N=150	
Region	Dublin	Non-Dublin	Dublin	Non-Dublin
Prices	€351,096	€223,984	€351,096	€223,984
Annuity at 3%	€4,581,855	€7,156,800	€458,186	€715,680
Tax Relief	€1,878,561	€2,934,288	€187,856	€293,429
<p>Note: Assumes that donated properties are distributed in accordance with actual housing stock – Dublin (29%) and non-Dublin (71%) – and that tax relief is available at 41%. These estimates also assume that properties donated are not encumbered with any debt.</p> <p>Assumes an ordinary, fixed with reference to the amount of the initial contribution by the donor to the trust.</p>				

1.1.149 Using the same assumptions vis-à-vis potential take-up of this measure, we have estimated that the cost to the Exchequer in Year 1 at almost €4m under the 'high' scenario compared to €400,000 under the 'low' scenario. However, For instance, where a Dublin-based property is settled on a trust the donor would receive an annuity of €10,533 p.a. for (say) 10 years. In present value terms, this would be worth €89,846. Therefore, the cost to the Exchequer in tax foregone on this stream of income would be €4,319 (or €36,837 over the full period in present value terms).

1.1.150 It should be noted that this assumes that the annuity is fixed at 3% of the contribution made. However, where the annuity payable is not fixed the amount due – and the associated tax relief arising – will fluctuate in line with the value of the asset.

VAT Refund Scheme

Current situation

1.1.151 A person (company, individual etc.) that makes VATable supplies can in general recover the VAT that it incurs on its costs. However, as charities generally do not make VATable supplies, charities should not be entitled to recover any VAT incurred on costs. Accordingly, VAT incurred by charities is a real cost.

Issues

1.1.152 The implementation of a form of VAT subsidy system may be difficult, given the potential administrative issues and costs which would have to be addressed. However, as one participant in the consultation process pointed out, if a donor gives a charity €100,000 and if this money is used for the purpose of costs subject to VAT, essentially 21.5% of the donation has gone to the exchequer rather than to the charity. There is enormous potential benefit, therefore, to the sector in introducing a VAT subsidy.

Recommendation

1.1.153 We recommend the introduction of a VAT subsidy for charities to compensate for VAT incurred on inputs. The subsidy system envisaged by us would be similar to the Danish system whereby a charity would receive a subsidy from the State in relation to the VAT that it incurs on its costs (such as utilities, professional fees etc.) with the subsidy based on the proportion of funds received by the charity from the private sector.

Section 20(3)(a) of the Irish VAT Act provides that “the Minister (of Finance) may by order provide that a person who fulfils to the satisfaction of the Revenue Commissioners such conditions as may be specified in the order shall be entitled to be repaid so much, as is specified in the order, of any tax borne or paid by him as does not qualify for deduction under section 12.”

Implementation considerations

1.1.154 The main advantage of the recommended subsidy system would be that it will release more funds into the charitable sector. We believe that there is merit in pursuing such a system given that VAT is a key tax cost incurred by charities.

1.1.155 Research undertaken on behalf of the ICTR found that the VAT incurred by charities in Ireland totalled approximately €18m in 2001 and that this VAT related to a series of costs including office overheads, promotional costs and professional fees.

1.1.156 We are recommending that a subsidy system be introduced whereby the €18m of VAT incurred would be reduced in line with the proportion of funds received from the private sector. We estimate that the charitable sector would be entitled to a VAT refund of approximately €4.1m under this recommendation.

Relaxation of 10% Association Rule

Current situation

1.1.157 Where the aggregate of the amounts of all donations made by an individual in any year of assessment to an approved body or approved bodies with which the individual is associated is in excess of 10 per cent of the total income of the individual for that year of assessment, the amount of the excess shall not be treated as a relevant donation for the purposes of this section. An associated person for these purposes is an employee, trustee, or member of the eligible charity.

Issues

1.1.158 The introduction of this rule was mainly to do with an anti-avoidance measure which meant that members of the church could not donate their salaries back to their order.

However, this measure is draconian and the authors feel that this rule should be relaxed. The consultations highlighted the importance of the relaxation of this rule as many people involved directly with charities, for example through Board membership, feel enthusiastic about the charity and therefore tend to donate over 10% of their income to charities they are involved in.

Recommendation

The proposed amendment would be as follows:

The relaxing of the '10% association rule' to (say) 50% would involve replacing "10 per cent" with (say) "50 per cent" in Section 848A (3A)(a), TCA 1997.

1.1.159 Regarding any concerns involving (say) an example where a priest received an increase in salary which was donated back to the church and tax relief was claimed while receiving an increase in benefits (e.g. accommodation, car etc.), as outlined above Section 848A (3)(b), TCA 1997 provides that a donation will qualify for tax relief where "neither the donor nor any person connected with the donor receives a benefit in consequence of making the donation, either directly or indirectly". Accordingly, the scenario described above should not result in tax relief being available on the donation by the priest to the church.

Removal of the two year waiting period on the granting of charitable status in relation to obtaining tax relief on donations

Current situation

1.1.160 Organisations who apply to the Revenue Commissioners for charitable status must wait for two years before being given charitable tax relief status.

Issues

1.1.161 The two year period gives a sufficient period of time for charities to produce a set of audited accounts and for Revenue to review the charity's activities etc. The waiting period was reduced from three years to two years a number of years ago and it is likely that there would be some opposition to the further reduction of this time period. The current 2 year rule can, however, result in a "catch 22" situation for charities i.e. they can't fully carry out their charitable activities until they are in receipt of charitably donated funds, but donors may be reluctant to donate until they can get tax relief on the donation (after 2 year period).

Recommendation

1.1.162 We recommend that the two year waiting period for eligible charity status be removed. As part of this removal a tax relief claw back system should be introduced so that if the charity is subsequently found to be in breach of the conditions on which it obtained charitable exemption then the relief granted can be clawed back.

The proposed amendment would be as follows:

Section XXX, Finance Act 20XX

Paragraph 3(c) of Part 3 of Schedule 26A to the Principal Act is amended by replacing “2 years” with “6 months”.

Implementation considerations

1.1.163 A claw back in the relief could be applied should a breach of conditions be identified by Revenue when they are in receipt of accounts, or through some other form of inspection or event by whatever third party of the state as part of their charitable regulatory function. This could be akin to how firm relief and the business expansion scheme (BES) relief can be clawed back if the respective firm or BES company fails to carry on the required activities. Precedent for this exists in respect of industrial buildings capital allowances where the building ceased to be used for the purposes of manufacturing and in other circumstances.

Conclusion

1.1.164 This section of the report has developed the issues highlighted during the literature review and the consultation process. In this regard it presents proposals which can help to develop an enriched culture of philanthropy. Each proposal has its own merits in terms of the contribution it makes towards this development. However, when taken together the proposals present an opportunity to create a fundamental change in the facilitation of charitable giving.

5 CONCLUDING COMMENTS

- 1.1.165 In looking at the financial implications of the various recommendations made a number of key considerations need to be borne in mind.
- 1.1.166 Our international research in conducting this project as well as feedback from the stakeholders consulted, indicates strongly that tax considerations on their own, are not a very strong motivator of individual giving nor do they, in isolation, necessarily lead to substantially increased income in the third sector. While, therefore, tax incentives are a necessary and indeed, integral element of public policy on the stimulation of a culture of philanthropic giving such incentives need to be promulgated, promoted and actioned in the context of a coherent integrated and multi-faceted strategy implemented in partnership by the State, by corporate entities and individuals in the private sector and by the third sector itself. Moreover, such an approach – positioning tax relief within a suite of measures – will also serve to reduce any potential deadweight cost. In the first instance, the risk of deadweight must be recognised. This loss could occur where any increase in the relief available does not stimulate a commensurate rise in philanthropic giving but rather, simply results in an increased cost to the Exchequer.
- 1.1.167 Where we have identified measures which have the effect of increasing income to beneficiary charitable organisations, we have not, in the analysis of each individual measure factored in the multiplier effect associated with such increased income. Therefore, it is appropriate to point out that there is an important secondary benefit to be obtained from increased activity (e.g expenditure on wages, goods and services) by charitable organisations.
- 1.1.168 The final table overleaf summarises the nine fiscal recommendations arising from this research project and sets out positive implementation considerations for each.



Table 5.1 Summary Recommendations and Implementation Considerations

Recommendation	Implementation Considerations
Minimum donation threshold	Should assist in making more donations to charity tax effective and increase revenue for charities. There needs to be a concerted effort to bring up those donations under €200 to this level in order to reduce the deadweight cost to this proposal.
Removal of tax relief on donations to charity from the current restrictions for higher earners.	Decoupling of tax relief on donations of charity away from tax relief where a benefit is incurred by the recipient of the relief.
Consideration of extension of tax relief to donations of property	Encourage more philanthropic giving by providing more options for giving. In particular it provides an opportunity for charities to tap in to the high levels of property ownership in Ireland.
Introduction of tax benefits in relation to split/charitable remainder income trusts.	Should encourage more philanthropic giving and subsequently the introduction of sophisticated vehicles of wealth transfer such as split income trusts.
VAT proposal.	This will release more funds into the charitable sector. This proposal should be administratively straight forward for Charities to implement and could be done as part of their yearly accounts auditing process.



Removal of two year waiting period on the granting of charitable status in relation to obtaining tax relief on donations	Will facilitate donors and charities to claim tax relief on donations during the first two years of the charity's existence. The claw-back mechanism provides Revenue with assurance in relation to those organisations who may not obtain charitable status.
Relaxation of net benefit rule	The effective implementation of the relaxation of this rule would still leave revenue with significant anti-avoidance weapons.

The implementation of the recommendations outlined in the table will go in some way towards the development of a donor friendly culture. While there are some administrative and legislative obstacles to overcome in many instances the implementation considerations take cognoscente of the administrative responsibilities of stakeholders involved. For example, our recommendations in relation to the relaxation of the net benefit rule still leave the revenue with significant anti-avoidance weapons. The VAT proposal if implemented would be quite straight-forward for charities and could be done as part of their yearly accounts auditing process.



APPENDICES



APPENDIX 1

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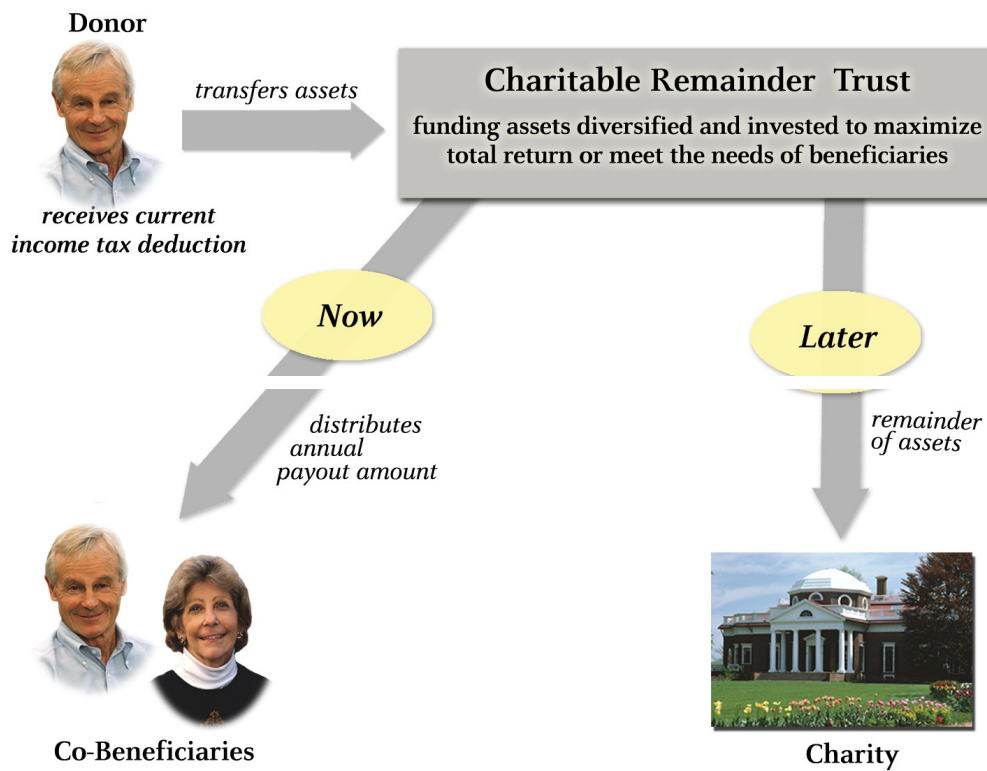
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APPENDIX 2 – CHARITABLE REMAINDER TRUSTS

Charitable Remainder Trust Example – taken from Ganzert, R (2007) Vehicles for Transferring Wealth presentation at the American Ambassador’s symposium A Dialogue on Philanthropy





Worked Example of Charitable Remainder Annuity Trust for a Certain Term

(Taken from Split-Interest Trust Campaign by The Charities Tax Reform Group (CTRG) the European Association of Planned Giving (EAPG) and the Institute of Fundraising (IoF).

Charitable Remainder Annuity Trust for A Certain Term	
Date of Transfer	28 May 2004
Term of Trust	10 Years
Fair market value of marketable securities property	US \$1,000,000
Annuity Rate	5%
Payment frequency	Quarterly
IRC 7520(a) election for 3/2004	4%
Date of first payment	30 June 2004
Annual income	US\$50,000
Charitable Deduction	[US\$588,412.38]



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