

Overseas donors can't get a break



By Vanessa Holder

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When the Great Ormond Street Hospital in London received a generous bequest from a Belgian donor a few years ago, its gratitude was tempered by frustration. Since the gift was made to a foreign charity, it was subject to tax at a rate of close to 80 per cent. If, by contrast, the donation had been made to a Belgian charity, the tax bill would have been significantly smaller.

Charities face widespread discrimination in the taxation of international philanthropy. Nearly all countries give tax breaks for gifts to domestic charities, which are not available for gifts overseas.

Pressure is building up for change. With the growth in international migration, it is increasingly common for people to want to give money to a cause outside the country in which they are resident. Jim Myers of the European Association for Planned Giving, a cross-border network of charities, advisers and wealth managers, says: "Charitable giving 20 years ago was very local or national. Now there is a lot more wealth and it is moving across borders. People are increasingly wanting to make gifts outside their own countries of residence."

The problem does not stop international giving entirely. Tax incentives, broadly defined, increased charitable giving from the main industrialised countries by some \$7.5bn in 2003, equivalent to 13 per cent of total net aid transfers, according to estimates published last year by the Center for Global Development, a think-tank.

The Charities Aid Foundation cites the UK as an example of a country that has a particularly high proportion of international giving, making donations of about £1bn a year, representing about 13 per cent of charitable giving. Marion Amartey, head of international development at CAF, says that the bulk of the money goes to five big international charities, which are able to harness the government's relatively generous tax relief. But individuals often feel frustrated if they want to make a gift to help a specific cause because the absence of a tax break will make the donation significantly more costly.

A government's reluctance to give the same tax breaks to international causes as they offer domestic charities is sometimes based on a perception that "charity begins at home". But there is also a fear that it is harder to keep tabs on overseas charities. If ethical and accounting standards are low, for example, taxpayers may be, in effect, subsidising causes where money is not well spent. Moreover, revenue authorities are often concerned that the tax breaks made available for charities are unfairly exploited in sophisticated tax planning schemes. Extending their reach to international causes may increase the scope for avoidance. In addition, there are fears that foreign charities could act as financial fronts for terrorists.

These concerns cannot be wholly brushed aside, according to experts on international philanthropy. As they press for relaxations on the tax restrictions on cross-border charitable giving, they dread a scandal that could be used by governments to justify discrimination. But there is a consensus that the risks are overblown. Governments could benefit, as well as lose, from freeing up the tax rules on international donations.

Ineke Koele, a partner at Van Mens en Wisselink, a Dutch law firm, is the author of a newly published book on the international taxation of philanthropy. She has coined the term "landlock" for the imposition of geographical limits for the privileged tax treatment of charitable giving. She says there is no underlying justification for the restrictions. "In principle, there should not be any differences," she says.

Despite the desire of government to keep the beneficiaries of their tax breaks within their borders, there are legal pressures on them to relax their rules – at least within Europe. The European Commission and judges at the European Court of Justice are taking a dim view of the discrimination affecting charities, which appears to breach provisions for the free movement of capital in the Treaty of Rome.

Last September, the ECJ ruled that the Centro di Musicologia Walter Stauffer, an Italian charity, had been unfairly denied an exception from corporation tax in Germany where it received rental income. This judgment was seen as a significant advance for non-profit organisations frustrated by their inability to claim tax exemptions in other European countries.

The European Commission has also made formal requests to a number of European Union countries – Poland, Belgium, Ireland and the UK – asking them to modify their tax rules to prevent discrimination against other countries. This pressure has already yielded results. Poland, after initially proposing to scrap its tax breaks for domestic charities, eventually decided to extend them to other EU countries, after a lobbying campaign by its own charitable sector.

Ludwig Forrest, a philanthropy adviser at the King Baudouin Foundation, a Belgian foundation, says the four countries targeted by the EU are just the tip of an iceberg. The tax codes of the vast majority of European countries discriminate against charities in other countries. Exceptions such as Slovenia, Slovakia and Sweden offer modest or no tax breaks for charitable giving.

For some European countries, donors can sidestep the tax restrictions by using the Transnational Giving Europe network as an intermediary. The TGE network is a partnership between the Charities Aid Foundation, the King Baudouin Foundation, the Fondation de France, Oranjefonds, Maecenata International, the Fondation for Poland and the Community Foundation for Ireland. Partners in several other countries, such as Italy, Hungary and Spain, are expected to join the network soon.

Mr Forrest explains its role using the example of a Frenchman wanting to make a cash donation to a national art gallery. If he gave the donation to the Louvre, no inheritance tax would be paid. But if he gave it to the Tate gallery in London, it would be taxed at a rate of 60 per cent. To get round this using TGE, the Frenchman would give the gift to the Fondation de France, an umbrella organisation for charities, which would then transfer it to the Tate. It charges an administration fee of 5 per cent for gifts of up to £30,000, falling to 1 per cent for larger gifts.

Mr Forrest says that the TGE is particularly aimed at helping small or medium-sized donors who cannot afford the expensive legal advice available for large donors.

Similar mechanisms exist to help non-profit organisations outside Europe give and receive tax-efficient foreign donations. US-based individuals can make payments to an "American Friends" entity in the US – a public charity that can apply to the Internal Revenue Service for tax-exempt status. There are also a growing number of intermediaries that can distribute funds to particular regions or causes.

In May, three of these intermediary organisations – Give2Asia, the King Baudouin Foundation United States (for gifts to Europe and Africa) and the Resource Foundation (for gifts to Latin America) – banded together to create a new philanthropic network. The network, called the Alliance for International Giving, is designed to give US donors a one-stop shop for philanthropic services spanning the world.

But even the champions of intermediaries such as these are hoping that they will eventually be redundant. Mr Forrest says that the slogan of TGE is "to grow as fast as possible to disappear as soon as possible".

Mr Myers of the European Association for Planned Giving compares intermediaries with sticking plasters. He will not be satisfied until the tax rules on charitable giving are liberalised. "There is a movement, but it will take a long time," he says. "The end of the road is a long way away."

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