



# efc briefing

## legal and fiscal

8 April 2010 - Ref: befc1025 - Email: eu@efc.be

### UK extends tax incentives to cross-border giving

#### Outline

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On the 24<sup>th</sup> March the UK Chancellor announced the extension of tax incentives to cross-border giving, as part of the 2010 Budget Report. UK charitable tax reliefs will be extended to certain organisations equivalent to UK charities and UK Community Amateur Sports Clubs (CASCs) in the EU, and EEA countries Norway and Iceland. Until now, donations by UK tax payers to foreign based public benefit organisations have not been tax deductible.

The reform follows an EC initiated [infringement procedure](#) that was launched in 2006 and comes in the wake of the European Court of Justice ruling on case C-318/07 (the so called “Persche” case of January 2009), in which German donor Hein Persche was found to be entitled to receive the same tax reliefs on a donation to a Portuguese charity as he would have received for a donation made within Germany. In response to the Chancellor’s announcement, John Low, Chief Executive of the Charities Aid Foundation said: “These changes recognise that disadvantage doesn’t respect borders. It is right that donors are empowered to give tax-effectively where they see the greatest need, regardless of national boundaries.”

The new rules will affect all tax reliefs available to charities, CASCs and their donors, which are administered by the UK tax authority [HMRC](#). These are generally referred to as charitable tax reliefs and include: income tax; Gift Aid; capital gains tax; corporation tax; VAT reliefs and exemptions; inheritance tax; and the various stamps taxes. To be eligible for UK charitable tax reliefs, foreign based organisations in the eligible countries will need to meet the English and Welsh definition of a charity and be registered with any regulators in their home country with which the law requires them to register. Organisations must also have managers that are “fit and proper” persons. More information on the English and Welsh definition of a charity and guidance relating to “fit and proper” persons can be found on the [Charity Commission](#) website.

Donors and organisations affected by these reforms may be able to claim UK charitable tax reliefs retrospectively: Claims to charitable tax reliefs in respect of organisations equivalent to UK charities in the EU, Norway or Iceland on or after the date of the ECJ ruling on case C-318/07 (27<sup>th</sup> January 2009) will be considered by HMRC on a case by case basis. Donors may be able to claim tax relief on gifts made to organisations in the EU, Norway or Iceland on or after the 27<sup>th</sup> January 2009 depending on whether the recipient would be a charity under English and Welsh law at that time. Donors should seek clarification with the organisations concerned and consult the list of organisations whose eligibility has already been confirmed that will soon be published by HMRC.

The EFC welcomes this overall European trend and wishes to recall the responsibility of national legislators to provide for an enabling environment for foundations, taking into account the European reality. It has always called for a more favourable environment for public-benefit foundations and their funders, including in a cross-border context. In 2003, the EFC produced its “[Fundamental Legal and Fiscal Principles for Public Benefit Foundations](#)”, which were translated into a “[Model Law for Public Benefit Foundations in Europe](#)” that aims to influence positively the development of new foundation laws as well as the revision of existing laws at national level. In those documents the EFC suggests that companies and individuals should receive tax incentives with respect to donations made to resident and foreign foundations engaged in activities of public benefit.<sup>1</sup>

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<sup>1</sup> Sources:

Charities Aid Foundation: <http://www.cafonline.org/Default.aspx?page=18995>

Civil Society: <http://www.civilsociety.co.uk/governance/news/content/6327/budget>

Third Sector: <http://www.thirdsector.co.uk/news/Article/992624/Donors-claim-tax-relief-donations-overseas-charities/>

Charity Commission: <http://www.charity-commission.gov.uk/>

## **Action Point**

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The EFC secretariat will continue to monitor and report on national and EU level foundation law developments in the area of cross-border giving.