

Corporate tax treatment of donations (3/49/19)

With the year nearing its end, donors usually spring into action, so this article will remind our MindLink subscribers of the three types of relief under the Corporate Income Tax (CIT) Act.

Donations

The relief given by section 12 of the CIT Act is available on donations made to public benefit organisations (having been granted this status under the Public Benefit Organisations Act), to state-funded institutions, or to state-owned companies performing national culture functions delegated by the Ministry of Culture. Before donating and considering ways of claiming relief, it is important to verify the donee's status.

Each donation should be covered by a written deed, and the assets or cash should be handed to the donee free of charge, i.e. the donee must not have any resulting obligation towards the donor and must not be publicising the donor's brand. So if the deed of donation puts the donee under a counter-obligation to do something in the way of a consideration, the donor will forfeit the entitlement to CIT relief.

Three types of relief

Section 12(1) of the CIT Act allows a taxpayer to choose one of the three reliefs for the financial year:

1. Excluding from the tax base any donations up to 5% of the taxpayer's after-tax profit for the past year;
2. Excluding from the tax base any donations up to 2% of the taxpayer's total gross wage for the past year on which national insurance contributions have been paid; or
3. Deducting 75% of the donation from the amount of CIT charged on dividends, capped at 20% of that charge.¹

The first and the second relief limit the amount of donation that can be treated as a tax-deductible business expense, meaning there is no further CIT to pay on the donation. Since these calculations are based on the data for the past financial year, they can be performed and the more appropriate of the two reliefs identified at the beginning of the year.

The third relief actually reduces the CIT liability as the donation is deducted from the CIT charge on dividends. In practice, however, this relief can be claimed where the taxpayer distributes any profit made after 2017, because only then there is a CIT liability the donation can be deducted from. Under the transition rules of the CIT Act, any profit made before 2018 does not go into the tax base, so there is no CIT charge and no way to claim any relief.

Claiming relief

The taxpayer can evaluate the three types of relief and choose one for the financial year. The chosen relief should be disclosed on the CIT return for the month in which the donation was made. It is important to note that the relief claimed initially may be changed during the financial year. The taxpayer then needs to correct the CIT returns filed and adjust the information reported initially.

The first and the second relief are available on donations made in the financial year until their total

exceeds the threshold for the year. From the date it is exceeded, the excess is treated as a non-business expense and should be entered on the CIT return for the month in which the donation was made, with CIT payable on the amount of donation.

When claiming the third relief, the amount of donation is initially treated as a non-business expense and added to the tax base. The CIT charge on dividends is then reduced according to the statutory cap.

In summary, a taxpayer making donations can evaluate the statutory reliefs and choose the most appropriate of the three.

¹ In 2020, 2021 and 2022, 85% of the donation, capped at 30% of the CIT charge on dividends.