

Tax Treatment: Donations vs Sponsorships



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Agenda

1. Defining donations and sponsorships
 - What is a donation?
 - What is a sponsorship?
2. Telling the difference
 - Tax treatment on donations vs sponsorships
 - Differentiating donation vs sponsorship
3. What to look out for
 - What IPCs need to do
 - Common examples of disqualifying clauses

What is a Donation

A donation can typically be described as **an act of unconditional and freewill giving**. For a contribution of property to be a donation, it is essential that contributor had intended to confer a benefaction on the recipient.

If the contributor is motivated to make the contribution, not to confer a benefaction, but to acquire pecuniary or proprietary benefit for himself, the contribution does not have the essential characteristics of a donation. The intention of the contributor may be gathered from objective circumstances.

The following factors are useful in ascertaining the intent of a contributor:-

- a) Donations are generally made with no expectation of any benefit-in-return being received by the contributor by way of return.
- b) A donation is usually the result of a voluntary contribution of property, and not as the result of a contractual obligation to contribute the property.
- c) Notwithstanding (a), the fact that a contributor receives a benefit-in-return, whether directly or indirectly, may not deny a contribution of property from being a donation if the contributor would have made the contribution whether or not he receives the benefit-in-return, or the contributor, in making the contribution of property, had intended to confer a benefaction on the recipient.

What is a Sponsorship

Sponsorships are usually commercial arrangements which typically entail a defined set of rights, opportunities and benefits to the sponsor to be fulfilled by the IPC (in exchange for the sponsorship monies).

The sponsor will typically support an activity or event in return by making a monetary contribution in return for certain commercial benefits to itself, although the value of the benefits could be lower than the value of the monetary support provided.

This is unlike a donation where the intent of the donor is to make an unconditional and voluntary gift to the IPC without expectation of any benefit in return, to support the IPC's charitable objects.

Whether the contribution amounts to a sponsorship ultimately depends on the unique facts and circumstances of each case.

Tax Treatment on Donations vs Sponsorships

	Qualifying Donations	Sponsorships
Tax Deduction Receipts issued by IPC?	✓	X
Tax deductible?	Yes, enhanced tax deductions under s37(3)(c) of the Income Tax Act	Yes, deductible as expenses under s14 of the Income Tax Act, provided that they are incurred wholly and exclusively for the production of income
Amount of deduction?	250% of contribution amount less value of benefits (if any)	100% of contribution amount
How to claim deductions?	<ul style="list-style-type: none"> • IPCs to transmit information to IRAS • Contributor makes tax adjustments to add back donations as non-deductible expenses[^] 	<ul style="list-style-type: none"> • No additional steps by IPCs • Contributor accounts for contribution as a typical expense

[^]Enhanced tax deductions are granted automatically by IRAS against assessable income based on information transmitted by IPCs.

Differentiating Donation vs Sponsorship

Whether a contribution is a donation or sponsorship is a question of fact, based on the intent of the contributor.

IRAS reviews the terms and conditions of the entire agreement to ascertain the intent of the contributor – i.e. whether the contribution is a free-willed act of giving or the contribution is made as part of a commercial arrangement.

If the contributor would not have made the contribution but for the fact that he would receive a benefit in return, then the contribution is not a donation.

There is no bright line test and we would generally consider the following factors to help us ascertain the intent of the contributor:

- (1) Whether the agreement obligates the IPC to deliver substantial benefits to the contributor and/or fulfil conditions commercially beneficial to the contributor as consideration for the funds to be given to the IPC.
- (2) Whether the agreement grants the contributor substantial rights that indicate the existence of a commercial or transactional relationship.

What IPCs need to do

- Be mindful of clauses that would “disqualify” donations from receiving enhanced tax deductions (e.g. refund clause, industry exclusivity clause) and advise contributors on the implications.
- Understand the intent of a contributor to determine whether the contribution is a donation or sponsorship.
 - E.g. would the contributor have made the contribution if there were no benefits provided to the contributor?
- If in doubt, check with Sector Administrator whether the agreement would qualify for tax deductions.
- **Do not issue tax deduction receipts for non-qualifying donations.**
- MCCY and IRAS have been working on a e-tax guide, in consultation with MOF, to provide formal guidance on this matter. We hope to issue the guide in the coming months.

Common Examples of Disqualifying Clauses

- Refund clauses
 - Agreement contains clause that requires recipient to refund (wholly or in part) the contribution, make other compensation arrangements to the contributor, or renegotiate the terms of the agreement.
- Industry exclusivity clauses
 - Agreement contains an 'industry exclusivity' clause which prevents the IPC from accepting funds from and/or acknowledging other sponsors in the same industry or the sponsor's competitors during the term of the agreement.
- Extensive benefits, or commercial/ transactional clauses
 - Agreement contains requirements for the IPC to procure goods/services from the contributor.
 - Agreement contains requirements for IPC to provide extensive benefits (e.g. exclusive event for contributor).
 - Agreement includes clauses for sharing of income with contributor.

Note that these are examples and the above is not an exhaustive list. The nature of the contribution and the intent of the contributor are assessed based on total facts of the case.