

DCHY 1

June 2010

NON RESIDENT CHARITIES (resident in and
operating in an EEA/EFTA state) SEEKING A

DETERMINATION

UNDER THE PROVISIONS OF SECTION 23 OF THE
FINANCE ACT 2010 (SECTIONS 208A AND 208B
TAXES CONSOLIDATION ACT 1997)

Revenue 

INTRODUCTION

This booklet has been produced in order to:

- describe how a charity established in an EEA/EFTA state may seek a Determination to the effect that if the body were to have income in the State of a kind referred to in Section 207 or 208 Taxes Consolidation Act 1997 it would qualify for the exemptions provided by those sections
- explain what constitutes a 'charity' for Determination purposes
- provide guidance on completing the application form
- set out the conditions attaching to the Determination

NB The application and all supporting documentation submitted must be in an official language of this state (English/Irish). All subsequent correspondence in connection with the application / determination must be in an official language of this state (English/Irish).

The accounts submitted in connection with the application and subsequently in connection with the application / determination should be in the official currency of this state.

WHAT BODIES ARE ELIGIBLE TO APPLY FOR NOTICE OF DETERMINATION?

A body established in an EEA state or in an EFTA state seeking a Determination:

- must be legally established in an EEA State or in an EFTA State and have its centre of management and control therein. There should be a minimum of three directors/officers/trustees the majority of whom must be resident within the EEA or EFTA State and the organisation must have a permanent establishment and some operations therein, and
- must ensure that its objects and powers are so framed that every object to which its income or property can be applied is charitable, and
- must be bound, as to its main object(s) and the application of its income or property, by a Governing Instrument

A foreign body which is issued a Notice of Determination will be given a charity reference number e.g. DCHY 1111, and this DCHY number should be quoted in all future correspondence with Revenue

In the first instance, an application for a Determination is examined having regard to whether the body concerned is engaged in an activity under either one or more of the following headings:-

- Relief of Poverty
- Advancement of Education
- Advancement of Religion
- Other works of a charitable nature beneficial to the community. (**N.B.** Not all purposes which may be beneficial to the community are charitable in law e.g. the promotion of sport and amateur games is not accepted as being legally charitable in this state.

NOTES FOR GUIDANCE ON HOW TO COMPLETE THE APPLICATION FORM FOR NOTICE OF DETERMINATION

Please read these instructions carefully before you complete the application form attached. **We have numbered each paragraph below to correspond with the number of each item on the application form.** You must answer all the questions on the form and submit it, when completed, with the information and documentation requested. **Omissions and errors can lead to delays in the processing of the application.**

If you need any help in completing this form, please contact Charities Section, Government Offices, Nenagh Telephone: 00 353 67-63377

Part A - IDENTIFICATION

1. Name of the body applying for a Determination - This refers to the legal name of the organisation, association, corporation, trust, etc. that is seeking a Determination. The name entered on the form should be identical to the name of the body as it appears on its Governing Instrument (see Part B below). A Notice of Determination is normally only issued in this name.

2. Any other name e.g. a trade name - If the organisation operates under another name, please attach a statement indicating why this is necessary.

3 & 4 Name and Role of Correspondent – Name of Applicant on behalf of the body and position held i.e. secretary, chairperson, solicitor, accountant etc.

5, 6,7,8 & 9 Permanent addresses, phone and fax numbers for future contact - These should reflect where the organisation is based and/or operates from. A post box number is not sufficient.

10. Correspondence address – only complete this if the address for correspondence is different to that given at no. 5.

11. Employees – Please indicate whether the Charity has employees:

- a) in this state.
- b) in the state of residence.

12. Details of charity registration in State of residence. If the applicant body is already registered as a charity or is recognized as being a charity in its own State, Documentary evidence should be forwarded with the application for the Determination .

13. Details of tax registration and tax exemption (if applicable) in State of Residence. A letter of Residence must be completed by the Tax Authorities in the State of Residence and submitted with the application for the Determination

14. **Tax reference number** - If a tax reference number has been issued to the Charity by the Office of the Revenue Commissioners in Ireland, this should be stated. Such a number would have been obtained from the Non-Resident Registration Section, City Centre District, 9/15 Upper O'Connell Street, Dublin 1. Telephone 00 353 1 8655000, email: dublincitycentrecusserv@revenue.ie. If the body does not have a tax reference number already, it should apply for it on form TR1 at the above contact address. This is a separate requirement over and above the granting of Notice of Determination. However the body may make an application for a Determination in advance of acquiring a tax reference number but it should be noted that the tax reference number is a prerequisite to the Notice of Determination being issued.

15. Charitable Activity -

- a) Please indicate under which of the charitable headings - *Relief of Poverty, Advancement of Education, Advancement of Religion, Other purpose of Benefit to the Community*, the application is being made
- b) Give a brief summary of the activities which are or will be carried on by the body to further the main object as set out in its governing instrument.

Part B - DETAILS OF OFFICERS/TRUSTEES/DIRECTORS

The full name and address of every officer /trustee/director should be stated clearly. Also, any involvement or connection by any such person with another charity should be specified. It should be noted that there should be a minimum of three officers /trustees/directors and who are not related. The majority of the directors/officers/trustees must be resident within the EEA or EFTA State of residence and should not be employed by the body or in receipt of any remuneration or benefit there from. Please sign the declaration in this respect.

Part C - OBJECTIVES AND ACTIVITIES - SUPPORTING INFORMATION

1. **Governing Instrument** - A body seeking a Determination as a charity must be established formally by a Governing Instrument. An official up to date copy of the Governing Instrument in an official language of this state (English/Irish) must be submitted with the application.

It should be noted that prior to a Notice of Determination being issued, it will be necessary for the Governing Instrument to comply with Revenue's requirements e.g. there must be a specified main object(s) clause, which is legally charitable in this state. The Governing Instrument should also include Revenue's four standard clauses for Charities, which are attached.

2. **Statement of activities to date and of activities proposed** - This statement must fully describe all aspects of the operation or intended operation of the body seeking a Determination. If the description of the body's activities is vague or incomplete, or only a reiteration of the objects or purpose, this will delay the processing of the application as Revenue will need to contact the body for more details. The statement should refer to the objects or purposes set out in the Governing Instrument and explain in full how the body intends to accomplish each of these objects or purposes. If the body has brochures,

advertising or other published material, samples should be attached, as directed on the application form.

3. **Affidavit sworn in the State of residence**-A sworn affidavit completed by the treasurer, trustee or any duly authorized agent, confirming the accuracy of the information included in the application and any additional supporting documentation. A sample affidavit is attached to this information leaflet.

Part D - FINANCE AND FUNDING

1.

- a) **Financial Statements** - Financial statements normally include a Statement of Income and Expenditure as well as a Statement of Assets and Liabilities. These statements should relate to the most recent complete accounting period. **Where the annual income exceeds €100,000, accounts must be audited.**
- b) Please provide details of the accounts where charitable funds are held i.e. name, number and type of account.
- c) If the body engages professional fundraisers please provide details of same i.e. names and addresses.

Part E - PROPERTY

Provide details of property owned by the body i.e. House/Office etc.

Part F – ENCLOSURE CHECKLIST

This checklist is provided for your assistance to ensure that all of the details required are provided with the initial application. Please remember that incomplete applications can lead to delays and further correspondence.

Part G - DECLARATION

The Revenue Commissioners need accurate information to carry out their functions. Please take care to ensure that the information you are giving is correct. The provision to the Revenue Commissioners of information, which you know or suspect to be false in a material way, may be an offence.

Part H - ADDRESS FOR COMPLETED APPLICATION FORMS

Completed application forms should be forwarded to the Charities Section at the address provided.

CONDITIONS ATTACHING TO NOTICE OF DETERMINATION

- The income and property of the charity must be applied solely towards the promotion of its main object as set out in its Governing Instrument.
- In all instances a copy of the first years financial accounts together with a report on activities must be submitted to Charities Section within 18 months of the date that the Notice of Determination was issued. Furthermore, it should be noted that a body holding a Notice of Determination may be reviewed periodically towards ensuring that the income of that body continues to be applied for charitable purposes only.
- If it is proposed to make any changes to the Governing Instrument of the organisation, advance notice in writing of the proposed changes must be given to the Revenue Commissioners for their approval.
- If upon the winding up of the organisation there remains any funds or property the same must be transferred to some charitable body having similar main objects, or failing that, to some other charitable body. Notification of winding up should be forwarded to the Revenue Commissioners together with a final set of accounts and details of how any residual funds at the time of dissolution were distributed.
- Prior permission must be obtained from the Revenue Commissioners where it is intended to accumulate funds over a period in excess of two (2) years specifying the reason(s) why such funds are being accumulated rather than applied for charitable purposes.
- No Director/Trustee/Officer shall receive any remuneration or other benefit in money or money's worth from the Charity.
- The Revenue Commissioners can make available to any person the name and address of any charity, which has been issued a Notice of Determination.
- The Revenue Commissioners to be notified in writing of any change of address of the organisation

ADDRESSES FOR CONTACT

Office of the Revenue Commissioners

Charities Section

Government Offices

Nenagh

Co. Tipperary

Tel: 00 353 67 63400 or (direct dial): 00 353 67 63377

Fax: 00 353 67-32916 email:charities@revenue.ie

STANDARD CLAUSES REQUIRED IN THE GOVERNING INSTRUMENT OF A BODY SEEKING A NOTICE OF DETERMINATION

Income and Property

The income and property of the charitable body shall be applied solely towards the promotion of its main object(s) as set forth in this Governing Instrument. No portion of the charitable body's income and property shall be paid or transferred directly or indirectly by way of dividend, bonus or otherwise howsoever by way of profit to members of the charitable body. No Director/Trustee/Officer shall be appointed to any office of the Charitable body paid by salary or fees, or receive any remuneration or other benefit in money or money's worth from the charitable body. However, nothing shall prevent any payment in good faith by the charitable body of:

- a. reasonable and proper remuneration to any member or servant of the charitable body (not being a Director/Trustee/Officer) for any services rendered to the charitable body; interest at a rate not exceeding 5% per annum on money lent by Directors/Trustees/Officers or other members of the charitable body to the charitable body;
- b. reasonable and proper rent for premises demised and let by any member of the charitable body (including any Director/Trustee/Officer) to the charitable body;
- c. reasonable and proper out-of-pocket expenses incurred by any Director/Trustee/Officer in connection with their attendance to any matter affecting the charitable body;
- d. fees, remuneration or other benefit in money or money's worth to any Company of which a Director/Trustee/Officer may be a member holding not more than one hundredth part of the issued capital of such Company.

Additions, alterations or amendments

No addition, alteration or amendments shall be made to or in the provisions of the Governing Instrument for the time being in force unless the same shall have been previously submitted to and approved in writing by the Revenue Commissioners.

Winding-up

If upon the winding up or dissolution of the charitable body there remains, after satisfaction of all its debts and liabilities, any property whatsoever, it shall not be paid to or distributed among the members of the charitable body. Instead, such property shall be given or transferred to some other charitable institution or institutions having main objects similar to the main objects of the charitable body. The institution or institutions to which the property is to be given or transferred shall prohibit the distribution of its or their income and property among its or their members to an extent at least as great as is imposed on the charitable body under or by virtue of the Income and Property Clause hereof. Members of the charitable body shall select the relevant institution or institutions at or before the time of dissolution, and if and so far as effect cannot be given to such provisions, then the property shall be given or transferred to some charitable object.

Keeping of Accounts

Annual accounts shall be kept and made available to the Revenue Commissioners on request.

While every effort is made to ensure that the information given in this leaflet is accurate, it is not a legal document. Responsibility cannot be accepted for any liability incurred or loss suffered as a consequence of relying on any matter published herein.

June 2010

AFFIDAVIT

I insert name being the treasurer/trustee/duly-authorized agent of the charity
insert name and address of body

aged eighteen years and upwards make Oath and say as follows:

I am the treasurer/trustee/duly authorised agent of the Charity insert name and as such have personal knowledge of the facts included in the application for a determination to the Irish Revenue Commissioners under Section 208A and 208B of the Taxes Consolidated Act (as amended in the Finance Act 2010) and hereby make this affidavit confirming that to the best of my knowledge the information contained in the application is correct and accurate.

Sworn before me by insert name
of affiant
this day of 2010-
at insert location and address
before me insert status
empowered to
administer Oaths and I know the
affiant

Affiant

Commissioner For Oaths
insert status

APPLICATION FOR NOTICE OF DETERMINATION

BEFORE COMPLETING THIS FORM PLEASE READ CAREFULLY THE ATTACHED NOTES FOR GUIDANCE

A. IDENTIFICATION

1. Name of Body

2. Any other name if applicable
e.g. a trade name

3. Name of Correspondent

4. Role of Correspondent e.g. secretary, accountant, solicitor etc

5. Main address of Charity

N.B. Please note that a post box number is not sufficient

6. Main Phone number

7. Fax number

8. Email address (where available)

9. Website address (where available)

10. Correspondence Address
(If different from 5 above)

11. Does the organisation have Employees:
a) in this state. Yes No
b) in the state of Residence Yes No

12. Details of charity registration in State of Residence.

13. Details of tax registration and tax exemption in State of Residence.

14. Tax reference number issued by Revenue Commissioners in Ireland. _____

15. (a) Which charitable heading(s) best describes the activities either being, or to be, undertaken by the applicant body? (See Note 3, Page 2 on Information Leaflet)

- Relief of Poverty
- Advancement of Education
- Advancement of Religion
- Other purposes of Benefit to the Community.

(b) Please provide a brief summary or attach a report describing the activities which are/will be carried on by the organisation to further its main objects and as set out in its Governing Instrument.

(c) Is the body aware of any other organisation/charity which is engaged in similar activities. If 'Yes' please specify the name and address of such body including any links therewith formal or otherwise.

B. DETAILS OF OFFICERS/TRUSTEES/DIRECTORS

Please list the individuals who will be responsible for running the body e.g. trustees, officers, directors. (If more than 6 please provide details on separate page) If any of the persons listed has an involvement or connection, either current or in the past, with another charity please provide details.

Name	<input type="text"/>	Name	<input type="text"/>
Address	<input type="text"/>	Address	<input type="text"/>
	<input type="text"/>		<input type="text"/>
	<input type="text"/>		<input type="text"/>
Occupation	<input type="text"/>	Occupation	<input type="text"/>
Tax No..	<input type="text"/>	Tax No.	<input type="text"/>
	<input type="text"/>		<input type="text"/>
Name	<input type="text"/>	Name	<input type="text"/>
Address	<input type="text"/>	Address	<input type="text"/>

Occupation		Occupation	
Tax No.		Tax No.	

Name		Name	
Address		Address	
Occupation		Occupation	
Tax No		Tax No.	

Please confirm that none of the above named are employed by or in receipt of remuneration or benefits from the applicant body. Signature

C. OBJECTIVES AND ACTIVITIES

- a. Please **attach** a copy of the body’s Official Governing Instrument in an official language of this state.
- b. Please **attach** a detailed statement of activities, if any, which have been carried out by the body to date and of the activities, which will be carried out during the next 12 months.
- c. Please **attach** any publications available, which will help explain the work of the body or indicate the activities undertaken by it including any annual reports, leaflets for fundraising or newspaper cuttings.

D. FINANCE AND FUNDING

1. (a) Please attach a copy of the latest set of financial accounts including a detailed breakdown of income and expenditure. Please indicate the main source(s) of income and provide details regarding any Government or other Public Funded Grants receivable.

(b) Please provide details of bank accounts where the organisation’s funds are held

(c) Indicate whether professional fundraisers are engaged by the body. If “yes”, please provide details i.e. Name and address.

Name and Address of Financial Institution	Type of Account	Account Number

E. PROPERTY

Does the organisation own property? If so provide details

Type of Property	Address	Value
House/Office/Factory/ other		

F. ENCLOSURE CHECKLIST

Please examine the following checklist to ensure that you have included all of the material required in support of your application.

- Copy of the Governing Instrument.
 - Statement of activities to date and plans for next 12 months, including any trading activities undertaken/proposed.
 - Annual reports, other documentation, if applicable.
 - Latest Financial Statements
 - Sworn Affidavit
 - Letter of Residence from your Tax Authority.
-

G. DECLARATION

I certify that the information given is correct to the best of my knowledge and belief.

Signed on behalf of the body by:

e.g. Chairperson/Secretary/Treasurer/Agent

H. ADDRESS FOR APPLICATION FORM

This form and all relevant enclosures should be sent to:

Office of the Revenue Commissioners
Charities Section
Government Offices
Nenagh
Co. Tipperary

Tel. 0035367 63400 Fax 0035367 32916 Email: <mailto:charities@revenue.ie>

It should be noted that the Revenue Commissioners can make available to any person the name and address of any charity which has been assigned a Determination.