

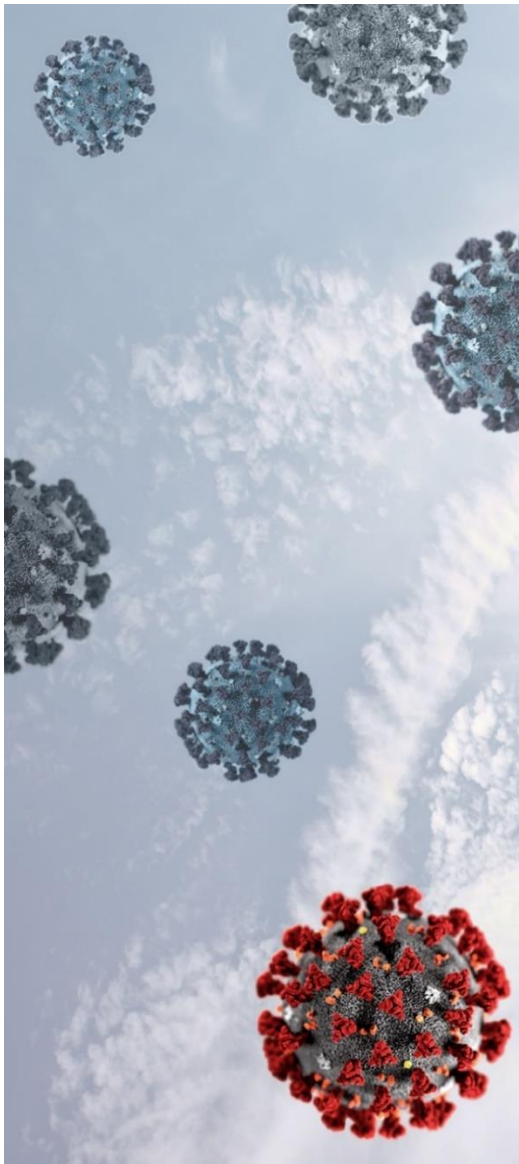


Patronage and the battle against coronavirus: main tax incentives

Legal Flash | Finance and Tax

April 15, 2020

Update on the main tax incentives for patronage granted to those wishing to support the battle against COVID-19



Key aspects

- > Tax incentives are available for donations, whether monetary or in kind, to non-profit entities applying the special tax regime established under Spanish Act 49/2002 on patronage, both in terms of personal and corporate income tax.
- > Individuals that make donations to health care foundations applying the tax regime enacted in Act 49/2002, and are involved in fighting COVID-19 will benefit from a 75% deduction for the first €150 donated, and 30% on any sum above that amount.
- > Companies making donations will be entitled to apply a 35% deduction to their corporate income tax due after adjusting the expense as non-deductible. They may also choose to support the battle against COVID-19 through a business collaboration agreement and receive publicity of their support in exchange.

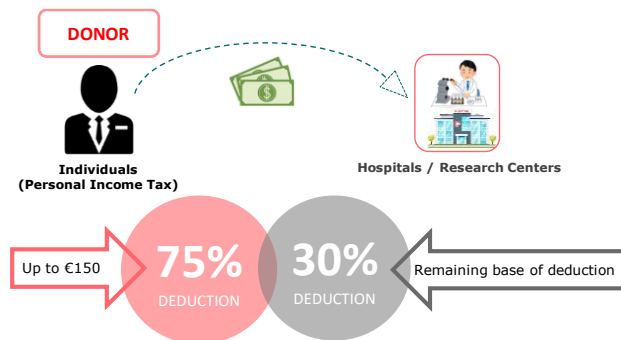


Executive summary of the tax benefits depending on the type of donor

The condensed analysis in the following sections aims to explain the main tax incentives for patronage available to all individuals and legal entities for the purposes of income tax as a result of selflessly giving financial support to any non-profit entities providing health care or conducting research to develop a coronavirus vaccine.

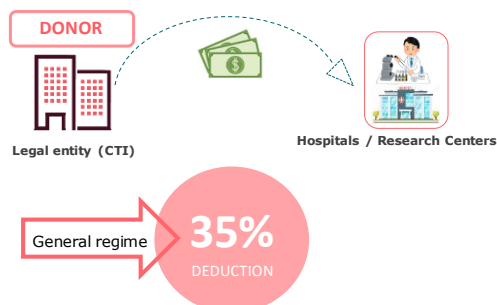
The incentives are shown below.

Individuals

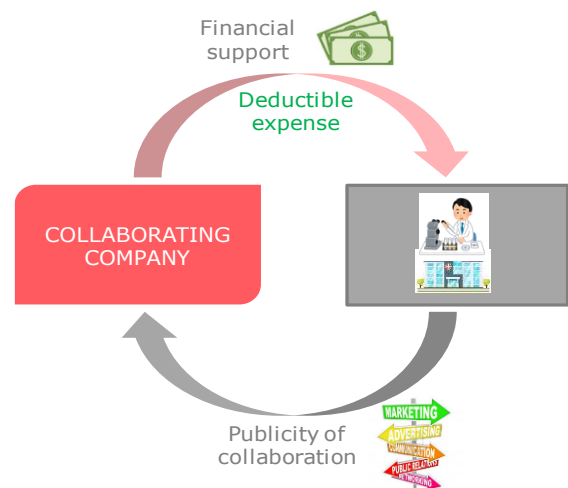


Legal entities (companies)

a) Monetary or in-kind donations



b) Business collaboration agreements





Introduction

In view of the large number of donations from individuals and companies to help tackle the health crisis caused by COVID-19 that Spain is facing, this updated Legal Flash provides the latest information on the version dated March 17 on the main alternatives and tax incentives for patronage available in Spain,¹ regulated under Act 49/2002, of December 23, on the tax regime of non-profit entities and tax incentives for patronage (“Act 49/2002”). These incentives are available to all individuals and companies wishing to make a donation to entities providing health care or performing scientific research activities in relation to coronavirus.

On the date this Legal Flash was drafted, the Spanish Council of Ministers has yet to approve specific tax incentives that would further encourage patronage to tackle COVID-19, although any donation or financial support, whether monetary or in kind—that makes it possible to hire support staff for research teams, handle biological samples, or purchase health care materials or consumables, for example—given to a beneficiary of the patronage for the purposes of Act 49/2002, will entitle donors to a tax incentive for the purposes of their income tax.

Under Act 49/2002,² and without prejudice to any additional tax incentives Spain’s autonomous regions may have approved, the tax benefits will depend on whether the donor is an individual or a company. Therefore, and for a better understanding of this Legal Flash, we will differentiate between individual donors and company donors.

¹ For reasons of space, and since this is merely an informative document, it does not focus on multi-year or recurrent donations and the deduction established for donations made to certain entities, for the purposes of personal income tax, under article 68.3.b) of Spanish Act 35/2006, of November 28, on personal income tax (*Ley 35/2006, de 28 de noviembre, del Impuesto sobre la Renta de las Personas Físicas*). Nor does it analyze the tax incentive regulated under article 27 of Act 49/2002 provided to programs supporting events of particular public interest.

² The Basque Country and Navarre are the only Spanish regions to have approved their own laws to date, applying their own tax regime for non-profit entities and patronage, equivalent to Act 49/2002.



Tax benefits applicable to donations made by individuals

a) Beneficiary entities involved in fighting COVID-19

Under articles 16, 17 and 19 of Act 49/2002, irrevocable, pure and simple donations and contributions made by individuals to the entities described below entitle them to deductions:³

- Foundations and associations declared of public interest that provide hospital or health care services.
- Foundations and associations declared of public interest that carry out scientific and technological research.
- State, regional⁴ and local governments (e.g., town councils), as well as autonomous state agencies and similar regional or local autonomous entities.
Therefore, before donating to a public-sector entity, it is worth checking whether it is considered to belong to one of those listed above. Not all public-sector entities⁵ are valid for the purpose of applying the tax incentives for patronage provided under Act 49/2002.
- The Spanish Red Cross.⁶
- Public universities carrying out scientific and technological research.
- Public research bodies under the authority of the General State Administration.

³ For the purposes of this document, we will assume that foundations and associations declared of public interest are covered by the special tax regime established in Act 49/2002, as they meet the 10 requirements set out in article 3 of that Act.

⁴ The donamadrid.madrid website, which the regional government of Madrid set up on March 30, receives donations that go towards health care in the region, and tackling the health crisis situation caused by COVID-19. The website allows donors to choose the cause they wish to support: (i) protective equipment for health care professionals, (ii) protective equipment for patients, or (iii) medicinal products and medical devices. These donations entitle donors to the tax incentive provided under Act 49/2002.

⁵ For example, in binding ruling no. V0720-11, the Directorate General of Taxation considered that a non-profit consortium set up as a separate legal entity under Act 7/1985, of April 2, providing the Bases for Local Regulation, could not be considered an entity benefiting from patronage under article 16 of Act 49/2002.

⁶ This entity can benefit from patronage under the Fifth Additional Provision of Act 49/2002.



b) Donations giving rise to a tax credit

Donations, grants and contributions that will give rise to a tax credit may be in cash, goods, rights or the establishment of an *in rem* right of usufruct on goods, rights or securities without consideration.

Within the category of goods, tax incentives are granted to the donation of medicinal products, ventilators, respirator masks for health care professionals, coronavirus test kits, hand sanitizers and health care equipment.⁷

With respect to rights, this would include the free assignment of space, or the free use of premises or a commercial establishment for health care purposes. Currently, many hotels are allowing the free use of their rooms to house patients and health care workers, also becoming “hospitals” to fight against COVID-19. Based on binding rulings nos. V1524-11 and V4750-16, offering the free use of their space would qualify as a donation of a right, and would therefore be eligible for a tax deduction.⁸

The free provision of services does not give any right to a tax incentive. In binding rulings nos. V1481-05 (free design of websites), V1403-07 (free food transportation) and V2047-17, the Directorate General of Taxation rejected this possibility, considering that free services are not expressly envisaged in article 17 of Act 49/2002.

c) Deduction percentage

Individuals making donations or contributions to one of the above beneficiary entities can apply a deduction on the amount of their personal income tax due.⁹ The taxpayer can apply a 75% deduction on the first €150, and 30% on any sum above that amount. The base of this deduction cannot exceed 10% of the taxpayer's net taxable base.¹⁰

⁷ In all of these cases, it is highly advisable to enter into a donation agreement with the entity benefiting from it.

⁸ However, if a hotel wished to give support to the state, allowing its facilities to be used free of charge, it would be advisable to ascertain beforehand whether it has been declared an essential service for the purposes of Order TMA/277/2020, of March 23, declaring certain tourism establishments to be essential services and adopting additional provisions.

⁹ All without prejudice to the deductions that the autonomous regions with regulatory authority may establish.

¹⁰ Unlike corporate income tax, if the deduction cannot be applied in full, any excess cannot be applied to subsequent tax periods.



To prove this deduction, taxpayers that are individuals must request and obtain a certificate issued by the benefiting entity. The basic contents of this certificate are set out in article 24 of Act 49/2002, and vary depending on whether the donation is monetary or in kind.¹¹

If the donation is in kind¹² (e.g., health care materials), the eventual capital gains that the individual donor may generate will be exempt for personal income tax purposes.¹³

Tax benefits applicable to donations made by legal entities

a) Beneficiary entities involved in fighting COVID-19

As with individuals, irrevocable, pure and simple donations and contributions made by a legal entity (e.g., a company) to the entities described below entitle it to deductions:

- Foundations and associations declared of public interest that provide hospital or health care services.
- Foundations and associations declared of public interest that carry out scientific and technological research.
- State¹⁴ regional and local governments (e.g., town councils), as well as autonomous state agencies and similar regional or local autonomous entities.¹⁵
- The Spanish Red Cross.
- Public universities carrying out scientific and technological research.

¹¹ In the case of in kind donations, the certificate must specify the deed or other authentic document substantiating delivery of the donated good. Under article 24.3.d) of Act 49/2002, invoices and delivery receipts that are reliable and made out in writing may be considered authentic documents.

¹² Under article 18.1.b) of Act 49/2002, the base of deduction of donations in kind will be determined under the wealth tax regulations. However, the value of the donations will be capped at the maximum limit of the regular market value of the good or right transferred at the time of the transfer.

¹³ This is provided in the first section of article 23 of Act 49/2002.

¹⁴ In the case of monetary donations, or donating movable property (equipment and supplies) or real estate property to the state, it will be necessary to take into consideration the provisions set out under article 47 of Royal Decree-Law 11/2020, of March 3, adopting additional emergency measures to tackle the social and economic impact of COVID-19. This article aims to centralize the donations of companies and individuals wishing to support the state in tackling the health crisis caused by coronavirus.

¹⁵ Please refer to the comments in the above section on public sector entities.



- Public research bodies under the authority of the General State Administration.

b) Donations giving rise to a tax credit. VAT: a tax to be taken into account

Donations, grants and contributions that will give rise to a tax credit may be in cash, goods, rights or the establishment of an *in rem* right of usufruct on goods, rights or securities without consideration.

If the donor qualifies as an entrepreneur or professional under articles 4 and 5 of Act 37/1992, of December 28, on Value Added Tax, it will be necessary to ascertain whether the donation of the good or service linked to the donor's business activity is considered external self-consumption of goods or services for VAT purposes, respectively.¹⁶ If self-consumption is involved, the donor is obliged to issue an invoice and charge the applicable VAT to the beneficiary.¹⁷

c) Deduction percentage

Taxpayers of corporate income tax that make donations or contributions will be entitled to deduct 35% of their base of deduction from their full tax due, regardless of their nominal tax rate.¹⁸

The base of deduction will be limited to 10% of the tax base for the tax period, but amounts exceeding this limit can be applied to tax due in the immediately following 10 years.

To prove the deduction, the company making the donation must request and obtain a certificate issued by the benefiting entity. The certificate must include the basic contents set out in article 24 of Act 49/2002.

¹⁶ See articles 9.1. b) and 12.3 of the Spanish VAT Act, respectively.

¹⁷ According to the ruling of the Spanish Central Tax Tribunal, of October 8, 2019, if it is agreed that the beneficiary will not pay VAT (which is standard practice in these cases), condoning this payment will result in a larger base of deduction under article 18.1.b) of Act 49/2002.

¹⁸ In any case, the amount donated is a non-tax-deductible expense under article 15, e), of Spanish Act 27/2014, of November 27, on Corporate Income Tax.



Finally, if the donation made by the company is in kind¹⁹ (e.g., health care materials), note that any resulting positive income the company making the donation may generate will be exempt for corporate income tax purposes.²⁰

d) A first alternative to donation: business collaboration agreements²¹

All companies that,²² without losing sight of their altruistic intentions, also seek profitability through publicity or image by offering to support the battle against COVID-19, can choose to enter into a business collaboration agreement for general-interest activities under article 25 of Act 49/2002.

The collaboration agreement is set out in writing, stating that an entity benefiting from the patronage (e.g., a hospital foundation),²³ in exchange for financial support provided by the company, is obliged to publicize the partially disinterested support of that company (patron) on carrying out its general-interest activities.

Unlike donations, grants and contributions, any financial support delivered will be considered a deductible expense to determine the corporate income tax base of the company giving support. Therefore, unlike donations, for example, the main benefit resulting from giving financial support lies in the taxable base, not as a way to reduce the tax due. Also, no limit is imposed on the amount.

Financial support may take several forms, whether monetary or in kind, by the collaborator delivering health care material or even through providing services.

The beneficiary entity will be obliged to publicize the collaborating company's cooperation by any means (e.g., television, press release, mention on the website or radio). Publicity of collaboration is not subject to VAT.

¹⁹ Under article 18.1.b) of Act 49/2002, the deductible base of donations in kind will be determined based on the net bookvalue of the goods or rights at the time they are transferred, without overlooking the market value limit explained above. This case includes individuals that carry out an economic activity, insofar as the donated good is linked to that activity.

²⁰ This is provided in the first section of article 23 of Act 49/2002.

²¹ The deduction of expenses is incompatible with all other tax incentives specified under Act 49/2002.

²² In the case of personal income tax, this incentive is only available to entrepreneurs or professionals taxed under the direct assessment regime on conducting their economic activity.

²³ Note that entities benefiting from the patronage are mostly listed in article 16 of Act 49/2002.



e) A second alternative to donation: expenses on general-interest activities²⁴

Article 26.1 of Act 49/2002 establishes that to determine the tax base of corporate income tax or the net return of the economic activity of taxpayers operating under the direct assessment regime for the purposes of personal income tax, expenses arising from general interest purposes specified under article 3.1 of this Act will be considered deductible (e.g., health care and scientific research).

This article seeks to encourage companies and entrepreneurs to make direct expenses without the mediation of a non-profit entity, and yet contributing to a general interest activity such as the battle against COVID-19.

The tax benefit resulting from this alternative type of patronage lies in the all the amounts the company puts towards a general-interest activity being considered a deductible expense. One example would be a project the company itself carries out to develop a vaccine against COVID-19, which it then distributes free of charge.

For additional information, please contact Cuatrecasas.

©2020 CUATRECASAS

All rights reserved.

This legal flash is a compilation of legal information prepared by Cuatrecasas. The information or comments included in it do not constitute legal advice.

Cuatrecasas owns the intellectual property rights over this document. Any reproduction, distribution, assignment, or any other full or partial use of this document is prohibited, unless with the consent of Cuatrecasas.



²⁴ The deduction of expenses is incompatible with all other tax incentives provided under Act 49/2002.