

Guidance on Tax Deductible Donations



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Agenda

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 - What is a Donation?
 - What donations are tax deductible donations?
2. Sponsorship
 - What is a Sponsorship?
 - Are sponsorships tax deductible?
3. Tax treatment on donations vs sponsorships
4. What IPCs need to do and know

What is a Donation?

- A donation is generally **an unconditional and voluntary contribution** to the recipient without expectation of any benefit in return.
- The main test determining whether a contribution is a donation depends on the intention of the person making the contribution. If a person would not have made the contribution to an IPC but for the fact that he would receive a benefit-in-return, the contribution to the IPC would not be considered a donation.
- The following factors are useful in ascertaining the intent of a contributor:-
 - a) A donation is generally made with no expectation of any benefit-in-return being received by the contributor*
 - 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.

*Notwithstanding a), if the contributor would have made the contribution whether or not he receives the benefit-in-return, the fact that he received some benefits-in-return will not automatically disqualify the contribution as a tax deductible donation.

What donations are tax deductible donations?

Tax deductible donations are donations that qualify for enhanced tax deductions under section 37(3) of the Income Tax Act.

The following 3 criteria can be used by IPCs to determine if a contribution qualifies as a tax deductible donation:-

- a) The contribution must fall within one of the categories of donation specified in section 37(3)(c), (e) and (f) of the Income Tax Act;
- b) The contribution is a free-will gift for which the giver relinquishes and confers all his rights, control and ownership over the gift to the IPC when the contribution is made; and
- c) If the contribution is subject to any condition specified by the donor as to the purpose for which the contribution may be applied, all the 3 requirements under section 37(3C)* of the Income Tax Act must be satisfied.

*See [slide 7](#)

What donations are tax deductible donations?

Criteria (a)

The donation must fall within one of the categories of donation specified in section 37(3)(c), (e) and (f) of the Income Tax Act (see summary table below).

Income Tax Act	Type of Donations	Qualified Recipients
S37(3)(c)	Cash	<ul style="list-style-type: none">• IPC• Singapore Government• Grant-making Philanthropic Organisation (registered by the Comptroller of Income Tax)
S37(3)(e)	Shares and units in unit trusts donated by any individual <ul style="list-style-type: none">• Shares must be of a company listed on Singapore Exchange• Units in unit trust must be traded in Singapore or listed on the Singapore Exchange	<ul style="list-style-type: none">• IPC
S37(3)(f)	Immovable property	<ul style="list-style-type: none">• IPC

What donations are tax deductible donations?

Criteria (b)

The contribution is a free-will gift for which the giver relinquishes and confers all his rights, control and ownership over the gift to the IPC when the contribution is made.

Contributions made under agreements with **any** of the following attributes will not qualify as tax deductible donations as these would not be consistent with a free-will gift where the contributor relinquishes and confers all his rights, control and ownership over the gift to the IPC when the contribution is made:-

- a) The contribution agreement contains a refund clause, where the IPC is obliged to refund (wholly or in part) the contribution or make other compensation arrangements to the contributors;
- b) The contribution agreement contains an 'exclusivity' clause which prevents the IPC from accepting funds/contributions from and/or acknowledging other contributors/donors; or
- c) The contribution arrangement is in substance a commercial arrangement or an exchange of monies for benefits*.

*E.g. sales of goods or services (including contributions with conditions to use the money to buy the contributor's goods or services), instances where the contributor derives substantial commercial benefits from the contribution arrangement, or instances where the contributor retains contractual rights over the sum contributed.

What donations are tax deductible donations?

Criteria (c)

If a donation is subject to any condition specified by the donor as to the purpose for which the contribution may be applied, such donation is tax deductible if (and only if) **ALL** the following 3 requirements under section 37(3C) of the Income Tax Act are satisfied:-

- a) Each specified purpose must be one that advances an objective of the recipient set out in its governing instrument;
- b) None of the specified purposes must be to advance the interests (whether directly or indirectly) of a particular race, belief or religion, or of a particular person or persons; and
- c) The donor did not specify or imply in any manner that any part of the property or money that cannot be used for any of the specified purposes shall revert to him or be given to any other person.

What is a Sponsorship?

- Sponsorships (whether in-kind or in cash) are 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.
- The sponsor will typically support an activity or event by making a contribution to the IPC. In the process, the sponsor receives certain commercial benefits, although the value of the benefits could be lower than the value of the support provided. This is unlike a donation where the intent is to make an unconditional and voluntary gift to the IPC without expectation of any benefit in return, to support its charitable objects.
- Whether the contribution made to an IPC amounts to a sponsorship depends on the facts and circumstances of the case.

What is a Sponsorship?

A contribution will be deemed as a sponsorship if the contribution is governed by an agreement which includes any of the following attributes:-

- a) The contribution agreement contains a refund clause, where the IPC is obliged under prescribed circumstances to refund (wholly or in part) the contribution or make other compensation arrangements to the contributor; or
- b) The contribution agreement contains an 'exclusivity' clause which prevents the IPC from accepting funds/contributions from and/or acknowledging other contributors/donors; or
- c) The contribution arrangement is in substance a commercial arrangement or an exchange of monies for benefits. Such arrangements include outright sales of goods or services, instances where the contributor derives substantial commercial benefits from the contribution arrangement, or instances where the contributor retains contractual rights over the sum contributed.

What is a Sponsorship?

Refund clause vs statutory obligation to refund

- Refund clause: a contractual clause that binds the contracting parties to refund/request for refunds under specified scenarios
 - Contractual obligation that is commercial in nature
 - Inconsistent with a free-will gift where the contributor relinquishes all rights over the property

- Statutory obligation to refund: the law obliges the IPC to refund the monies under specified scenarios
 - E.g. Regulation 11(7) of the Charities (Institutions of A Public Character) Regulations requires an IPC to return the donated funds if it is unable to carry out the project for which it has specifically raised funds for
 - Failure to comply is a breach of the regulations, and the contributor does not have any right of enforcement
 - Can only be enforced by regulatory authority (i.e. Commissioner of Charities)

Note: The regulation does not impose a requirement on the IPC to include a refund clause in the contribution agreement.

Are sponsorships tax deductible?

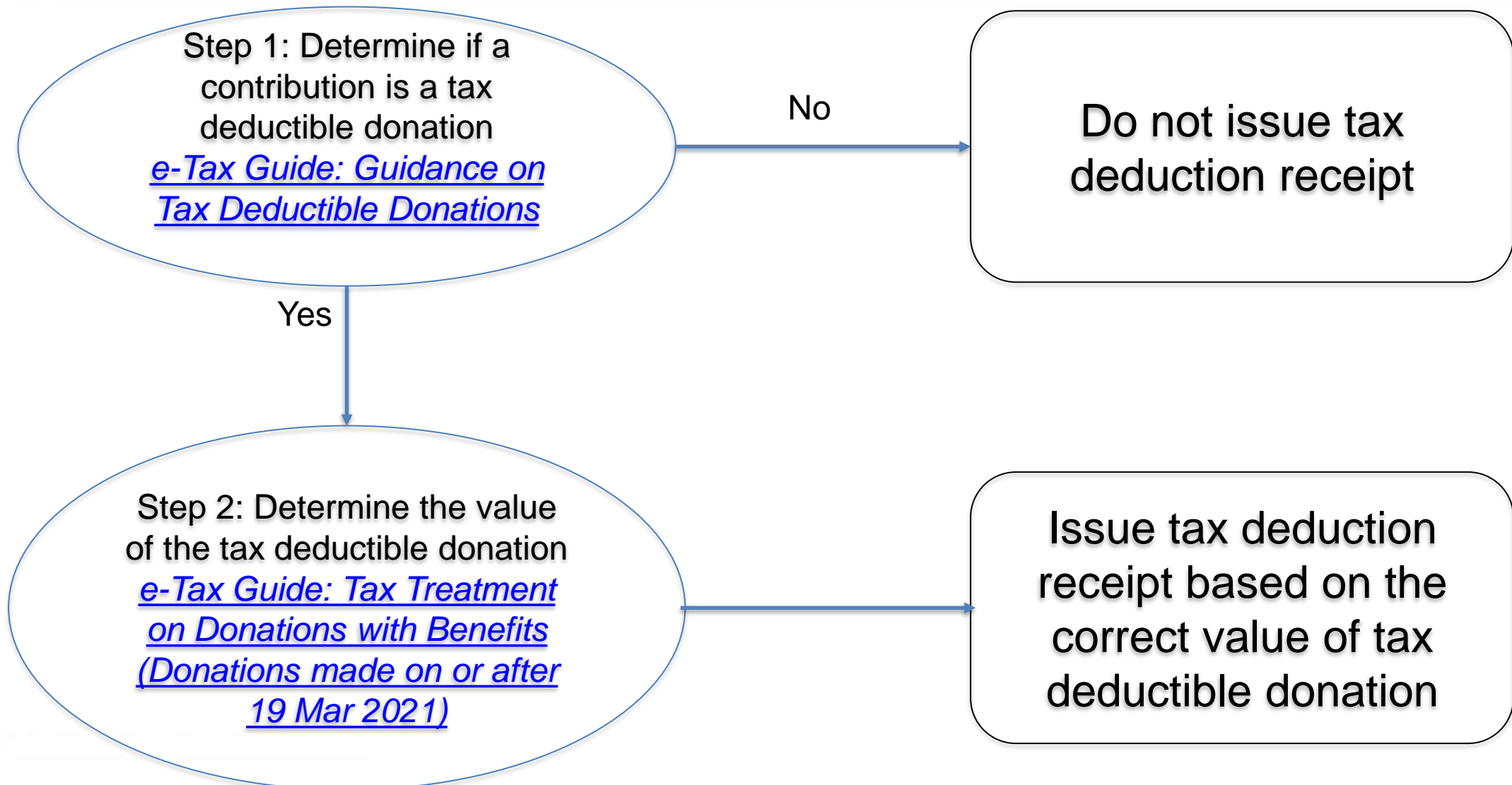
- Sponsorships are not eligible for enhanced tax deduction under section 37(3) of the Income Tax Act.
- Sponsorships may be claimed as allowable expenses for tax deduction under section 14 of the Income Tax Act if:
 - a) Such expenses are considered as being incurred wholly and exclusively in the production of the sponsor's income; and
 - b) The deductions are not explicitly prohibited under section 15 of the Income Tax Act.
- Sponsors may claim these sponsorship expenses when they file their income tax returns.

Tax Treatment on Donations vs Sponsorships

	Tax Deductible 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.

What IPCs need to do and know



What IPCs need to do and know

- Be mindful of clauses that would “disqualify” contributions 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?
- Issue tax deduction receipts to donors only in respect of contributions that meet all the 3 criteria for tax deductible donations.
- If in doubt, check with Sector Administrator whether the agreement would qualify for tax deductions.

Do not issue tax deduction receipts for non-tax deductible donations

In the event of wrongful issuance of tax deduction receipts, the enhanced tax deductions claimed by the sponsors will be recovered by IRAS and the IPCs may be liable for penalties imposed by the Commissioner of Charities.

Further references

IPCs may refer to the following 2 e-Tax Guides from IRAS website for reference:-

- 1) [Guidance on Tax Deductible Donations](#)
- 2) [Tax Treatment on Donations with Benefits \(Donations made on or after 19 Mar 2021\)](#)

Questions?



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