



An Overview of U.S. and Israeli Charitable Organizations and Tax Benefits

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American and Israeli citizens can be seen helping their families and neighbors, developing many of the world's cutting-edge medical equipment and treatment, and contributing to charitable organizations that serve each nation (and, in some cases, both nations). In general, United States citizens and permanently domiciled residents (citizens) cannot obtain a charitable income tax deduction if they want to contribute to foreign charities; instead, they typically must contribute to a U.S. charity, such as a "friends of" organization, that can benefit the foreign charity. However, as highlighted in [IRS Publication 526](#), the U.S. has three income tax treaties that afford charitable income tax deductions to citizens in either country: Canada, Mexico and Israel.

As a result, American and Israeli citizens may contribute to a charity in the U.S. or in Israel and still qualify for a charitable income tax deduction. It is the authors' understanding that the Israeli charity must be an approved institution under Article 46 of the Income Tax Ordinance. Charities in the U.S. must be recognized under Section 501(c)(3) of the Internal Revenue Code. Publication 526 offers the following commentary (Pub. 526, p. 3):

Under the U.S.-Israel income tax treaty, a contribution to an Israeli charitable organization is deductible if and to the extent the contribution would have been treated as a charitable contribution if the organization had been created or organized under U.S. law. To deduct your contribution to an Israeli charity, you must have income from sources in Israel. The limits described in Limits on Deductions, later, apply. The deduction also is limited to 25% of your adjusted gross income from Israeli sources.

After the Tax Cuts and Jobs Act (2017 Tax Act), donors making U.S. charitable contributions of cash to public charities (discussed further below) are entitled to use that deduction against up to 60 percent of their adjusted gross income (AGI). However, the 2017 Tax Act also nearly doubled the standard deduction for individual filers and married couples filing jointly. As a result, many commentators have encouraged U.S. donors who make more modest charitable contributions intentionally to "bunch" or aggregate their gifts in order to take advantage of the charitable income tax deduction, resulting in a decision to itemize their deductions in those particular years of aggregated charitable gifts. This change likely is affecting Israeli charities, although it could present the same opportunity that U.S. charities have to receive increased gifts in particular years.

Unfortunately, the U.S.-Israel income tax treaty does not provide reciprocal recognition of a charity's tax-exempt status in both countries. Only two U.S. treaties, namely the income tax treaties with Germany and the Netherlands, afford such reciprocal recognition (although, in the authors' experience, other applicable rules, such as those available in Canada, sometimes allow reciprocal recognition). Even so, this should not present any issues for a donor in the U.S. or Israel who desires to make a charitable contribution and receive an income tax deduction.

The IRS' [Charities and Nonprofits](#) segment of its website provides an excellent overview of nonprofit organizations in the U.S., including charities. In short, U.S. charities are classified as private foundations and public charities. Donors generally may retain more control over private foundations,



but are subject to extensive rules that prevent "self-dealing" and other ways that insiders could attempt to benefit improperly from such an organization. A private foundation is the default classification for all organizations applying to be recognized as tax-exempt in the U.S. Public charities provide more advantageous tax benefits to donors and are subject to less onerous restrictions, but are the exceptions to the default rule.

One of the most helpful aspects of the IRS' Charities and Nonprofits section of its website is its Lifecycle series, which outline each step of the process of creating a new organization, applying for recognition of tax-exempt status, submitting required annual filings, complying with rules on an ongoing basis, and dealing with significant events (such as audits and terminations). The primary landing page is the [Lifecycle of an Exempt Organization](#). This page features links to the other Lifecycle pages in the series at the bottom of the page, including [Public charities](#) and [Private foundations](#).

In order to encourage a better understanding of the various forms of charities in Israel, the Council on Foundations has provided an excellent overview of [Nonprofit Law in Israel](#). Israel recognizes multiple legal forms, several of which are quite similar to U.S. charities. These legal forms include the association (an "amutot" or "amuta"), nonprofit corporations that may seek classification as a public benefit company (PBC) or a public benefit foundation, and public trusts (governed by the Israeli Trust Law of 1979). Much like the U.S., Israel mandates that these organizations satisfy certain requirements in order to be recognized as tax-exempt under the Income Tax Ordinance (in Paragraph A of Section VI):

There are six criteria that an organization must satisfy in order to qualify for a tax exemption:

1. The organization does not have to be an association (amuta), but must consist of a collection of people operating together;
2. There must be at least seven members (individuals and/or corporations);
3. The majority of the members may not be related to each other;
4. The organization must have a public purpose;
5. The income and resources of the organization must be used in pursuit of the public purpose; and
6. The organization must provide annual reports (financial and director's report), detailing, inter alia, its expenditures, resources, and income to assure compliance with its public purpose.

Also paralleling the U.S., Israeli law prohibits its charities from providing private benefits or inurement, particularly the distribution of net profits, to any members of an amuta, a PBC or a public trust. A cooperative society, which is comparable to a U.S. nonprofit organization that is permitted to provide benefits to its members (such as a business league, a homeowners association or a social club), and public trusts that serve any private interest do not qualify for tax-exempt status under the Income Tax Ordinance. Finally, members cannot own proprietary interests in any of the tax-exempt organizations above, and the net assets of any such organization must be transferred upon dissolution or termination to a comparable tax-exempt organization.

One significant difference between U.S. and Israeli tax-exempt organizations is the extent to which such an organization may participate in the political process. In the U.S., charities are altogether prohibited from direct campaign activities, although an insubstantial degree of lobbying is permitted. In contrast, the Council of Foundations article (in Paragraph E of Section V) explains that Israeli tax-exempt organizations largely are uninhibited in the political context:



There is no express provision governing the extent to which [a not-for-profit organization (NPO)] an NPO may participate in the political process. The Law of Associations does not prohibit amutot from lobbying or any other political activity, so long as these activities are not aimed at achieving representation of the NPO in the Israeli parliament (the Knesset). An NPO may work to influence the legislative process as well as the outcome of political elections. It may publicly support a political candidate or party and call on the public to vote for a particular candidate or party. However, the law prohibits a minister or a member of parliament being a member of an NPO.

The 2017 Tax Act contained a series of provisions that could adversely affect a number of U.S. charities. First, the 2017 Tax Act imposes a 21 percent excise tax on "excess" compensation to a U.S. charity's highly-compensated employees (generally those compensated more than \$1 million per year). Second, the 2017 Tax Act specifically punishes certain private tax-exempt colleges and universities by imposing a 1.4 percent excise tax on these organizations' net investment income. Third, unrelated business income now is computed separately for each trade or business activity of a U.S. charity. (The 2017 Tax Act originally increased a U.S. charity's unrelated business income based on the provision of qualified parking and transportation benefits to employees, but this was retroactively repealed in late 2019.)

These 2017 Tax Act provisions applicable to U.S. charities tend to put them at greater disadvantages when compared to Israeli charities. Indeed, a donor might decide to contribute additional charitable gifts to an Israeli charity because the funds do not face some of these additional U.S. excise taxes and the unrelated business income tax, i.e., a greater charitable return on a donor's gift or "investment." Donors and charities in both countries should be aware of these changes, which could require additional planning in order to navigate.

In conclusion, the U.S. and Israel share many attributes, including their devotion to help others by affording tax benefits to donors who contribute to charities. The U.S.-Israel income tax treaty allows a donor to make contributions to a U.S. charity or an Israeli charity, although certain limitations and requirements must be met. Tax-exempt organizations in each country are comparable, from their basic legal forms to the exclusive public benefit requirements to their reporting and termination obligations. The 2017 Tax Act created some additional tax benefits for U.S. charitable gifts, but it also imposed some additional taxes on U.S. charities to which Israeli charities are not subject. If you have a corporate or private client interested in this or similar planning, please contact the authors or another member of Holland & Knight's [Nonprofit and Tax-Exempt Organizations Team](#), who can coordinate as needed with the firm's [Israel Practice Team](#).

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