CHAPTER V
TAX TREATMENT OF CHARITABLE TRUSTS ABROAD

The focus of this chapter is to examine the taxation of charitable trusts and philanthropic institutions abroad in Commonwealth countries, European countries and the United States of America.

THE UNITED KINGDOM

The word "charity" is not defined by any statute in force in England and Ireland. In 1891, a classification\(^1\) of the case law was made by Lord Macnaghten in a leading Pemsel's case.\(^2\) That case was influenced by the preamble of

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1  The classification was based on the argument of Sir Samuel Romilly in *Morice v. Bishop of Durham* (1805) 10 Ves. 522 at p.532;
2  (1891) AC 531
Statute of Elizabeth I. Lord Macnaghten classified charitable trusts under four heads:

(i) Trusts for the relief of poverty;

(ii) Trusts for the advancement of education;

(iii) Trusts for the advancement of religion;

(iv) Trusts for other purposes beneficial to the community not falling under any of the other three heads.

The first head of Lord Macnaghten's classification of charitable trusts is "trusts for the relief of poverty. Poverty is a relative term, and the expression "poor people", is not necessarily confined to the destitute poor, but may extend to comprise persons of moderate means. The "moderate means" are so moderate as to necessitate some contribution from the bounty of the testator of which the recipient might stand in need.

3 The statute commonly called the Charitable Uses Act, 1601, itself was repealed by section 13(2) of Mortmain and Charitable Uses Act, 1888, but in effect preamble remained alive and when this sub-section was itself repealed by the Charities Act, 1960, the preamble was thereby destroyed.

4 In Ireland, the meaning of the term 'charitable purpose' is the same as applicable in England.

5 Re Clarke (1923) 2 Ch. 407; Trustees of the Mary Clark Home v. Anderson (1904) 2 K.B. 645; Re Gardom (1914) 1 Ch. 662;

6 Trustees of the Mary Clark Home v. Anderson (1904) 2 K.B. 645 at p.655.
A gift for the "working class" is not a gift for the relief of poverty, but if the gift has been made to members of the "working class" who are aged or widows, then the object of relieving poverty might be implied. There is no decisive definition of the term "aged". Out of old age and working class, it might be inferred that poverty was a necessary qualification. The aged person in a nursing home might be a person not at all in need of any sort of pecuniary assistance. To conclude, there must be a need which is to be relieved by the charitable gift, such need being attributable to the aged or impotent condition of the person to be benefited. The word "impotent" includes permanent disability, the seriously ill or wounded, and also covers the prevention of cruelty to children.

7 Re Sanders' Will Trusts (1954) Ch. 265;
8 Re Glyn (1950) T.L.R. (Pt-2) 510: A bequest for building cottages for old women of the working classes of the age of 60 years or upwards; Re Cottam (1955) 1 W.L.R. 1299: A trust for the aged of small means;
9 For example: People who are not under the age of fifty are aged: Re Wall (1889) 42 Ch.D.510; Re Payling's Will Trusts (1969) 1 W.L.R. 1595; Re Armitage (1972) Ch. 438; Persons over 65 years are aged persons: Re Cottam (1955) 1 W.L.R. 1299; Re Robinson (1951) Ch.198; women of the age of 60 years or upwards are aged: Re Glyn (1950) 66 T.L.R. (Pt.2) 510;
10 Re Sanders' Will Trusts (1954) Ch 265 at p.272; Re Glyn (1950) 66 T.L.R. 510; Re Lucas (1922) 2 Ch 52: a bequest to the oldest respectable inhabitants amount of gift implied poverty;
11 Re Bradbury (1950) 2 All ER 1150;
13 Re Fraser (1883) 22 Ch.D. 827; Re Lewis (1955) Ch. 104;
14 Re Hillier (1944) 1 All ER 486;
15 Commissioner for Special Purposes v. Pemsel (1891) AC 531 at p.572; Re Cole (1958) Ch 477; Re Sakai's Will Trusts (1958) 1 W.L.R. 1243;
The second head is trusts for the advancement of education. The question of the ambit of 'education' was first considered by Harman J. in Re Shaw that tending to increase of knowledge was not charitable unless combined with provisions for teaching and education. This may now be a somewhat misleading yardstick because the tendency in many of the cases is to widen the scope of education in this context.

All schools of learning, colleges and universities, a bequest for search, or research, and learned societies and institutions are treated as charitable unless they exist purely as profit making ventures.

Students' Union of educational institution to promote social, cultural and athletic activities and comfort of students is charitable.

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16 (1957) 1 W.L.R. 729;
17 Re Macduff (1896) 2 Ch. 451;
18 Re Dupree's Deed Trusts (1945) Ch. 16: A trust for the encouragement of chess playing; Re Delius (1957) Ch 299: for the advancement of husband's musical work; Re Shaw's Will Trusts (1952) Ch. 163; Re South Place Ethical Society (1980) 1 W.L.R. 1565: the cultivation of national religious sentiments; Re Mellody (1918) 1 Ch.228: annual school treat; Re Spence (1938) Ch. 96: Collection of arms and antiques; Re Webber (1954) 1 W.L.R. 1500: Boy Scouts; Re Levien (1955) 1 W.L.R. 964: raising musical standards; Royal Choral Society v. IR (1943) 112 L.J. K.B. 648: Choral society; Re Royce (1940) Ch. 514: Church Choir;
19 The Abbey Malvern Wells Ltd v. Ministry of Local Government and Planning (1951) Ch.728;
20 Re Hopkins' Will Trusts (1965) Ch. 669; Re Shaksphere Memorial Trust (1923) 2 Ch. 398; Re British School of Egyptian Archaeology (1954) 1 All E.R. 887;
21 Royal College of Surgeons v. National Provincial Bank Ltd (1952) A.C. 631;
22 Re Girls Public Day School Trust Ltd (1951) Ch. 400: Where the school was not charitable because the shareholders were beneficially interested.
23 London Hospital Medical College v. IRC (1976) 1 W.L.R. 613; Re Bushnell (1975) 1 W.L.R. 1596; IR v. City of Glasgow Police Athletic Association (1953) A.C. 380; Baldry v. Feintuck (1972) 1 W.L.R. 552; Re Coxen (1948) Ch.747;
The third head is trusts for the advancement of religion. Trusts for the advancement of all religions which are "not subversive of all morality will be held to be charitable,"24 but it must be for the benefit of the public.25 A trust requiring ancestor worship was held not charitable.26 Likewise, gifts for ethical or moral societies not founded on belief in a deity are not for the advancement of religion.27 Thus, a trust for the maintenance and repair of a church have been held to be charitable.28

Fourth head is trusts for other purposes beneficial to the community. This is the residuary class in Lord Macnaghten's classification. It presents a most variegated collection of decisions which illustrate a number of purposes allowed admission to this class. In order to determine whether a trust is charitable or not, the court is to see at the circumstances in which the institution came into existence and the sphere in which it operated.29

25 Gilmour v. Coats (1949) A.C. 426; Re Warre's Will Trusts (1953) 1 W.L.R. 725; Neville Estate Ltd v. Madden (1962) Ch. 832; Re Banfield (1968) 1 W.L.R. 846;
26 Yeap Cheah Neo v. Ong Cheng Neo (1875) L.R. 381; Re Hummeltenberg (1923) 1 Ch. 237: gift to college for training spirituallistic mediums; Re Price (1943) Ch. 422; gift for the "Anthroposophical Society".
27 Re South Place Ethical Society (1981) 1 W.L.R. 1565: The objects of the society were, however, upheld as charitable on other grounds, first, they were for the mental and moral improvement of men and were, therefore, beneficial to the community within the fourth head of Lord Macnaghten's classification and secondly, they were for the advancement of education.
28 Re King (1923) 1 Ch. 243; Re Royce (1940) Ch. 514; Re Manser (1905) 1 Ch. 68; Re Pardeo (1906) 2 Ch. 184;
A trust created for the protection and benefit of animals, recreational trusts, trusts for sport and children’s homes are held charitable.

A charitable trust established in the United Kingdom would pay no income tax, Corporation tax or Capital gains tax. The tax privileges provided to the charities are discussed as under:

(a) Income-tax and Corporation Tax

With regard to income-tax, it is necessary to distinguish between the investment income and trading income of the charity. Its investment income is exempt

30 Re Wedgewood (1915) 1 Ch. 113; Re Moss (1949) 1 All. E.R. 415 at pp.497-8: Cats and kittens; Re Douglas (1887) 35 Ch. D. 472: Home for lost dogs; Re Lopes (1931) 2 Ch.130; a Zoological Society; Pettingall v. Pettingall (1842) 11 L J Ch. 176; Re Dean (1889) 41 Ch.D. 552; Re Thompson (1934) Ch. 342: Gifts made for the maintenance of a particular animal or animals are not charitable; See also : National Antivivisection Society v. IR (1948) 16ITR 1 reversing Re Foveaux (1895) 2 Ch. 501; Re Jenkins’s Will Trusts (1966) Ch. 249; Re Grove - Grady (1929) 1 Ch. 557;

31 Section 1(1) of The Recreational Charities Act, 1958; IRC v. Mc Mullen (1979) 1 W.L.R. 130; IRC v. Baddeley (1955) A C 572;

32 Trusts for this purpose fall within The Recreational Charities Act 1958; IRC v. Mc Mullen (1981) AC 1; Contrary view : Re Nottage (1815) 2 Ch. 649; Re Patten (1929) 2 Ch. 276 at pp. 289-290: Cricket; Re King (1931) W.N. 232 : General Sport; IRC v. City of Glasgow Police Athletic Association (1953) AC 380;

33 Re Sahal’s Will Trusts (1958) 1 W.L.R. 1243; Re Cole (1958) 3 W.L.R. 447;

34 The Ciba Foundation, a worldwide industry based largely on chemicals, dyestuffs and pharmaceutical products, with its headquarters in Switzerland, has initiated and supported a small scientific and educational charitable trust in the United Kingdom, where the eminent trustees have accepted total responsibility for its integrity, for its conformity with the Trust Deed and, in particular, for its independence in carrying out its policy. The main attraction for the establishment of charitable trust as the trustees realised that certain benefits were to be found amongst the intricacies of the English law governing charities, as developed over three and a half centuries. One of these benefits was fiscal. A scientific and educational charitable trust established in the United Kingdom would pay no income-tax, surtax, corporation tax or capital gains tax. Thus, the Trust Deed of the Ciba Foundation, implemented in 1947.
from income tax provided that it is applied for charitable purposes only.\(^{35}\) If the charity carries on trade, its profits from the trade are exempt from income tax only if they are applied solely for its purpose and either (a) if the purpose or one of the primary purposes of the charity is to carry on that particular trade or if the work in connection with the trade is mainly carried out by the beneficiaries of the charity,\(^{36}\) and (b) the profits are applied solely for the purposes of the charity.\(^{37}\) Where the charity is incorporated, the same principles as for income tax apply to Corporation tax.\(^{38}\)

The question whether a body is established for charitable purposes is a question of law to be decided in accordance with the usual principles, but the question whether or to what extent income is applied for charitable purposes is one of the fact.\(^{39}\) However, in *IRC v. Helen Slater Charitable Trust Ltd.*\(^{40}\) the Court of Appeal held that one charity "applies" its income for charitable purposes if it pays that income to another charity, *albeit* that the terms of the instrument governing the second charity are almost identical to those of the instrument governing the first charity.

**Capital Gains Tax**

A capital gain accruing to a charity will not attract capital gains tax provided that it is both applicable and is in fact applied to the charitable purpose.\(^{41}\) If the charity

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\(^{35}\) Section 360 of *Income and Corporation Taxes Act, 1970.*
\(^{36}\) *Ibid.*
\(^{38}\) Section 360(4) of *Income and Corporation Taxes Act, 1970.*
\(^{39}\) *Williams' Trustees v. IRC* (1947) A.C. 447.
\(^{40}\) (1981) 3 All E.R. 98, C.A.
is incorporated, then it is entitled to exemption from Corporation Tax on its capital gains on the same basis. The Charity will be treated as having acquired the asset at the same price as the donor acquired it for tax purposes, and if the asset is subsequently disposed of by the charity, the whole gain including the gain referable to the period of ownership by the donor - will be exempt. However, no capital gains tax is payable where the disposal is to a charity.

**Capital Transfer Tax**

It has been seen that estate duty has been effectively replaced by Capital Transfer Tax which operates not only on death, but also in respect of lifetime gifts. Compared with other private persons or bodies, charities enjoy important privileges with regard to capital transfer tax:

(i) gifts made to charities, whether by will or inter vivos, are wholly exempt from the tax.

(ii) gifts made to nationally important institutions, such as the National Gallery, the British Museum or the National Trust, are wholly exempt from the tax, whether the gift takes effect on death or inter vivos.

(iii) gifts made to a charity by way of a payment from a discretion trust are entitled to unlimited exemption.

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42 Section 26(3) of Finance Act, 1975; Sched. 6, para 10(1).
43 Ibid, Sched. 6, para 12.
44 Section 119 of Finance Act, 1982.
46 Section 26(3) of Finance Act, 1975; Sched. 6, para 10(1).
48 Section 119 of Finance Act, 1982.
It is all because of the tax privileges provided to the charitable trusts, charity in the United Kingdom is in a developed form and serving the nation in different fields of life.

**CANADA**

Charities, in Canada, are to be exempt from tax, except in certain specifically described taxable situations, while non-profit organisations are to be subject to tax, except on certain specifically described non-taxable situations.\(^{49}\)

The most important statute affecting charities in Canada is the Income Tax Act. It regulates the taxation and activities of "registered charities\(^{50}\) throughout the country. Despite the recent changes to the Act, the law in Canada in this matter is still rooted in common law. "Charitable purposes" and "charitable activities" are not defined exhaustively in the Income Tax Act, although there are statutory provisions deeming certain doubtful activities, such as political activities\(^{51}\) and the carrying on of a related business,\(^{52}\) to be included.

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49 Non-profit organisations are exempt from tax on their incomes under Section 149 (1)(1) of the Income-tax Act of Canada, and registered charities are exempt under section 149 (1) (f) of the Income-tax Act. A tax credit is permitted only for gifts to registered charities under section 110.1(1)(a) of the Income-tax Act.

50 A "registered charity", as defined in section 248 (1) of the Canadian Income Tax Act, is an organization or foundation, or a branch thereof, that has applied to the minister for registration and is registered as a charitable organization, private foundation, or public foundation.

51 Section 149.1(6.1) and (6.2) of the Income Tax Act.

52 Section 149. 1(1)(j) of the Income Tax Act.

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"Charitable purposes" are to include the disbursement of funds to "qualified donees."\textsuperscript{53} The qualified donees are to include charities registered in Canada,\textsuperscript{54} registered Canadian amateur athletic associations,\textsuperscript{55} Canadian government and Canadian municipalities.\textsuperscript{56}

Charitable organisations are considered active and charitable foundations passive.

A charitable foundation is a corporation or trust constituted or operated exclusively for charitable purposes, and a charitable organisation is an organisation, whether or not incorporated, all the resources of which are devoted to charitable activities carried on by the organisation itself.

Under Income Tax Act exemptions are provided to supply made by the public sector bodies for amateur performances,\textsuperscript{57} for recreational and instructional services for children and the disabled,\textsuperscript{58} for gambling activities,\textsuperscript{59} for relief of poverty and distress,\textsuperscript{60} for public service at no more than direct cost,\textsuperscript{61} for lodging or recrea-

\textsuperscript{53} Section 149.1 (1) (c) of the Income Tax Act.
\textsuperscript{54} Section 149.1 (1)(h) of the Income Tax Act.
\textsuperscript{55} Section 4 of the Income Tax Act exempts "amateur performances".
\textsuperscript{56} Sections 18 to 23 of the Income Tax Act.
\textsuperscript{57} Section 4 of the Income Tax Act.
\textsuperscript{58} Section 5 of the Income Tax Act.
\textsuperscript{59} Section 6 of the Income Tax Act.
\textsuperscript{60} Section 7 of the Income Tax Act.
\textsuperscript{61} Section 8 of the Income Tax Act.
tional services for the underprivileged and the disabled, and for the supply of real property made by a public service body (other than a school or hospital authority that is government-funded).

To qualify for exemption, a club, society, or association must be organized and operated exclusively for social welfare, civic improvement, pleasure or recreation, or for any other purpose except profit. Thus, it appears that an organization’s constituting documents should restrict that permitted activities to activities other than profit-making activities. Taxation of the investment income of dining, recreational, and sporting clubs was introduced to complement the denial of a deduction to business persons for membership fees in such organizations.

To what extent are charities authorized to carry on business activities? The Income Tax Act does allow charitable organizations and public foundations, but not private foundations, to carry on a related business. Charities, especially such large ones as universities, hospitals, and health organizations are being forced to generate additional revenue from fees for services and earned income. The move into business activities will be challenged both by those in the private sector, who will argue unfair competition because of the tax exemptions granted to charities, and by government...

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64 Section 149(1)(1) of the Income Tax Act.
65 Section 149(5) of the Income Tax Act.
66 "Related business" is defined in section 149.1(1)(j) of the Income Tax Act, in relation to a charity, to include "a business that is unrelated to the objects of the charity if substantially all of the people employed by the charity in the carrying on of the business, are not remunerated for such employment."
regulators, who say that under the law it is inappropriate for charities to engage it in extensive business activities.

A registered charity must meet expenditure limitation test allowable under the Income Tax Act. The first is, the general disbursement quota set out, which requires a charity to spend at least 80 per cent of its receipted unrestricted donations of the previous year on charitable activities. The second states that a registered charity must devote "substantially all" of its "resources" to charitable activities.

AUSTRALIA

Certain funds, such as those established by will or trust instrument for public charitable purposes, are specifically exempt from tax in Australia.

Under section 23 of the Australian Income Tax Act, a variety of organisations and funds are specifically exempted from ordinary income-tax on all their income. The exemption from tax is limited to the original recipient of the income. Approval of the organisation or fund as exempt must be obtained. The organisations and funds that are exempt under section 23 are local government

68 The word "Substantially all" is not defined in the Income Tax Act. Revenue Canada interprets "Substantially all" to mean "90 per cent".
69 Section 149.1(6.1) and (6.2) of the Income Tax Act.
70 The exemptions apply equally to resident and non-resident organisations or funds.
71 Section 24 of the Australian Income Tax Act.
bodies, public authorities, religious or scientific institutions, charitable or public educational institutions, hospitals, medical or health benefits organisations, workers' associations, employers' associations, non-profit societies, associations or clubs for the encouragement of music, art, science or literature, non-profit sporting clubs, societies or associations for the encouragement or promotion of athletic games or sports, registered friendly societies, non-profit societies for the promotion or development of aviation or of the agricultural, manufacturing or industrial resources in Australia, saving banks, funds for public charitable purposes, funds, established for scientific research, international organisations

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72 Section 23 (d) of the Australian Income Tax Act.
73 Section 23 (d): Both the Western Australian Turf Club and the Sydney Turf Club have been held not to be public authorities constituted under a State or Commonwealth Act within the meaning of section 23(d): *Western Australian Turf Club v. F.C. of T* 78 ATC 445;
74 Section 23(e) of the Income Tax Act.
75 Section 23(e) of the Income Tax Act.
76 Section 23(ea) of the Income Tax Act.
77 Section 23(eb) of the Income Tax Act.
78 Section 23(f) of the Income Tax Act.
79 Section 23(f) of the Income Tax Act.
80 Section 23(g)(ii) of the Income Tax Act.
81 Section 23(g)(iii) of the Income Tax Act.
82 Section 23(g)(i) of the Income Tax Act.
83 Section 23(h) of the Income Tax Act.
84 Section 23(i) of the Income Tax Act.
86 Section 23(j)(iii) of the Income Tax Act.

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like the United Nations, ILO, FAO etc.\textsuperscript{87}

Tax Treatment of charities

Every fund or organisation claiming exemption must make an application to the commissioner setting out its character, purpose, activities and the nature and sources of its income, indicating the manner in which its income is disbursed and whether or not any part of it may ensue to the benefit of its members and promoters, and all other facts which may affect its entitlement to exemption. A copy of its articles of incorporation rules, declaration of trust, or other governing documents must be submitted with the application.

Approval of the exemption of the fund or organisation is notified in writing by the commissioner to the fund's management. Such written approval not only exempts the fund or organisation from tax but usually also from the obligation to file returns of income.

FRANCE

Most charitable and welfare organisations in France are established under a special law governing non-profit associations. In some cases, income-tax exemption

\textsuperscript{87} Section 23(x) of the Income Tax Act.
for such organisations is provided by a specific provisions of law, or by special administrative action. As a general rule, income from the charitable or welfare activity of a non-profit association is exempt, but income from any profit-making activity of an industrial or commercial nature is taxable, even if the profits are devoted to the charitable purpose. As a practical matter, drawing the line between taxable and non-taxable activities of non-profit groups is difficult. Unlike Anglo-Saxon tax laws, French tax law contains only a few measures specifically applying to charitable or philanthropic organisations, although some recent provisions have been enacted in this respect.

Tax Treatment of Charities

Non-profit associations and therefore charitable organisations are normally not subject to corporate income tax when they act within the scope of their activity (i.e. non-profit activity). However, they can be subject to corporate income tax at the full 42 per cent rate on their income from profit-making activities only when

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88 Article 167-3 of Code General Des Imports (CGI) Annexure IV provides tax exemption for a number of organisations, many of a semi-public nature.

89 For example, Article 29 of circular 2256, 10 Aug. 1949 grants exemption to organisations of family gendeners. Circular 2,186, 23 May 1942, grants exemption to societies to aid musers. Such organisations are exempt only to the extent that they engage in the activity for which they were established; if they engage in profit making activity, they are subject to the corporation income tax on income from that activity.

90 CGI Article 206-1.

such earnings are not exempt by law or administrative regulations. The effect of those exemptions is usually to allow some tax free commercial like activities when the activities are an extension of the non-profit purposes of the associations.\textsuperscript{92}

Certain organisations are exempt from income-tax not only on the income from their primary activity, but on income from real property, farms and forests, and movable capital. These organisations are for example, certain agricultural credit associations.\textsuperscript{93} Agricultural associations and cooperatives formed for purchase of farm supplies,\textsuperscript{94} companies building or financing low-cost rental housing,\textsuperscript{95} certain non-profit cooperative home building groups,\textsuperscript{96} organisations of war veterans, with respect to income from the sale of lottery tickets, provided that no part of such income accrues to the benefit of third parties.\textsuperscript{97}

**GERMANY**

In Germany, the general status of non-profit organisation depends primarily on the purposes it pursues i.e. public benefit purposes, charitable purposes and support of churches, and how such purposes are pursued altruistically, exclu...
ly and directly. If these preconditions are not met the organisation as a whole will not qualify as a non-profit organisation.

The term "Charitable purposes" means that the organisation must dedicate itself altruistically to help persons in need. "Persons in need" can be divided into two groups (a) persons who need the help of others because of their physical, mental or emotional condition, and (b) persons who need support because of their economic situation.

Donations by individuals to non-profit organisations are generally tax deductible for income tax purposes.

Non-profit organisation in Germany are exempt from corporate taxes. This exemption does not apply to income derived from an unrelated business operated by the non-profit organisation. The same applies with respect to trade tax.

Certain charitable, medical and cultured services rendered by non-profit organisations are exempt from turnover tax.

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98 Section 51 of the Tax Code.
99 Section 53 of the Tax Code.
100 Section 10 (d) of Income Tax Act.
101 Section 5 (1) No.9 of Corporate Tax Act.
102 Section 4 NO. 16 18, 22, 25, of Turnover Tax Act.
THE UNITED STATES OF AMERICA

In the United States, there are large number of schools, hospitals, social welfare agencies and other religious and charitable institutions which have no formal affiliation with the Government. These institutions are resting for financial support upon charitable contributions from individuals and corporations. 103

The Rockefellers Foundations, the Ford Foundations, the Russell Sage Foundation, Carnegie Foundation have great impact on charities in the United States. They have done a tremendous job in the field of education, health and medical care.

The United States Internal Revenue Code state the types of organisations which are exempt from taxation and the requirements for exemption. 104 According to section 501 (c) (3) of the Code :

"Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which enures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or

103 Irish, Charlas R. Gifts without Borders : U S Tax Treatment of International Charitable Contributions - Bulletin for International Bureau of Fiscal Documentation (1989) p.544 cited data published in Special Analysis, Budget of The United States Government, Fiscal year, 1988 at G-44 as : In 1988, individuals donated 86.7 billion dollars in charitable contributions; charitable bequests from estates totalled 6.2 billion dollars; and charitable contributions by corporations amounted to 4.7 billion dollars. The income-tax deduction for charitable contributions by individuals and corporations is estimated to have reduced federal government revenues by more than 11.7 billion dollars.

104 Section 501 of the Internal Revenue Code : Exemption from tax on corporations, certain trusts etc.;
otherwise attempting to influence legislation, and which does not participate in, or intervene in (including the publishing and distribution of statement), any political campaign on behalf of any candidate of public office.

The term "charitable" is used in section 501 (c) (3) in its generally accepted legal sense. Although the courts have had to decide literally thousands of individual cases by determining whether or not a particular activity or objective is "charitable", they have not developed more precise criteria. 105

Foundations in the United States, can be established in three ways. The first is by a special Act of Congress or of a state legislature. 106 The second way of establishing a foundation is by setting up a charitable trust. 107 The third way is by setting up a corporation, in compliance with the laws of the state in question, and it

106 The Smithsonian Institution received a special charter from Congress in 1846, as did the (Rockefeller) General Education Board in 1903, the Carnegie Institution of Washington in 1904, and the Carnegie Foundation for the Advancement of Teaching in 1906. The Carnegie Foundation, The Rockefeller Foundation and the Russell Sage Foundation were created through special legislative enactments in the State of New York; The procedure of special enactment is now only very rarely followed, and at present time some states specifically prohibit the passage of a special Act to establish a philanthropic foundation.

107 The legal provisions for setting up charitable trusts differ from state to state, but seldom require more than the execution of a simple trust agreement.
requires in all cases, "some resort to state action and some form of registration with a state agency."

Although all the charitable organizations are entitled for tax exemptions or deductions, the tax laws further divide these organizations into "public charities" and "private foundations".

Public charities generally are non-profit, charitable organizations that are either directly involved in charitable activities or else draw their support from the public at large, and receiving more favoured tax treatment than the private foundations. Private foundations are charitable organizations that draw their support from only a few sources, such as a single family or corporation and are not directly involved in charitable activities.

Some of the tax exempt organisations under section 501 (c) of the United States Internal Revenue Code are: Civic leagues, labour and agricultural organisations, business leagues, clubs organised for pleasure, recreation and other non-profitable purposes, fraternal beneficiary societies, voluntary employees

108 Section 501(c) of the Internal Revenue Code.
109 Section 170(c) of the Internal Revenue Code.
110 Supra note 103 p.546; Non-profit schools, such as Harvard, Stanford and Columbia, are public charities because they are directly engaged in educational activities.
111 Section 501 (c) (4) of the Internal Revenue Code.
112 Section 501 (c) (5) of the Internal Revenue Code.
113 Section 501 (c) (6) of the Internal Revenue Code.
114 Section 501 (c) (7) of the Internal Revenue Code.
115 Section 501 (c) (8) of the Internal Revenue Code.
beneficiary associations, domestic fraternal societies, teachers’ retirement fund associations, benevolent life insurance associations, cemetary companies, credit unions operated for mutual purposes and without profit, insurance companies, organisations of past or present members of the Armed forces of the United States etc.

Individuals and corporations generally are allowed a federal income-tax deduction for gifts of cash and other property to charitable organisations. But this deduction is subject to several qualifications, mainly:

(i) Is the donee organization a qualified recipient for the purposes of the income-tax charitable contribution deduction?

(ii) Does the nature of the property interest given preclude a charitable contribution deduction, or require a reduction in amount of deduction, or require a reduction in the amount of deduction?

116 Section 501 (c) (9) of the Internal Revenue Code.
117 Section 501 (c) (10) of the Internal Revenue Code.
118 Section 501 (c) (11) of the Internal Revenue Code.
119 Section 501 (c) (12) of the Internal Revenue Code.
120 Section 501 (c) (13) of the Internal Revenue Code.
121 Section 501 (c) (14) of the Internal Revenue Code.
122 Section 501 (c) (15) of the Internal Revenue Code.
123 Section 501 (c) (19) of the Internal Revenue Code.
124 Section 170(a)(1) of the Internal Revenue Code.
125 Section 170(c) of the Internal Revenue Code.
126 Section 170(f) of the Internal Revenue Code.
127 Section 170(f) of the Internal Revenue Code.
128 Section 170(e)(3)(B) of the Internal Revenue Code.
(iii) Do the ceilings on the amount deductible keep the donor from obtaining the full deduction in the year the gift is made? 129

In order to be a qualified recipient for the purposes of the income tax charitable contribution deduction, the organization must be a non-profit corporation or trust that is engaged in charitable activities. 130 At the time of formation of the organization as a non-profit corporation or trust, it is mandatory to notify the authorities that they are applying for recognition of tax-exempt status. 131 These non-profit corporation and trust laws generally require that the assets of the organization and the income from the organization's operations be devoted to public or charitable purposes in perpetuity. 132

129 Section 170(d) of the Internal Revenue Code.

130 Section 170(c) of the Internal Revenue Code: Many organizations like the United States Chamber of Commerce, the League of Women Voters, the American Medical Association, the American Bar Association, most labour unions and social clubs and similar organizations are exempt from the federal income-tax but they are not qualified recipients of charitable contributions because their activities are not charitable.

131 Secton 508(a) of the Internal Revenue Code:

508 (a) New Organisations must notify Secretary that they are applying for recognition of Section 501 (c)(3) status - Except as provided in sub-section (c) an organization organised after October 9, 1969, shall not be treated as an organization described in section 501(c)(3)- (1) unless it has given notice to the Secretary, in such manner as the Secretary may by regulations prescribe that it is applying for recognition of such status, or (2) for any period before the giving of such notice, is such notice if given after the time prescribed by the Secretary by regulations for giving notice under this sub-section.

132 When it is stipulated in the will, trust agreement, or articles of incorporation as well as upon board policy that some or all of the capital sum i.e. corpus, be retained indefinitely, then fund is a perpetuity. If the trustees are, by the trust agreement, given discretion to use or to keep capital funds as they see fit, then the fund is an optional perpetuity.
Non-profit organizations, engaged in charitable activities, like a state, a possession of the United States, any political sub-division of a state or possession, and the United States,\textsuperscript{133} or religious, charitable, scientific, literary, and educational organizations,\textsuperscript{134} or organizations formed to promote national and international amateur sports events,\textsuperscript{135} or organizations for the prevention of cruelty to children or animals,\textsuperscript{136} or posts or organizations of war veterans,\textsuperscript{137} or cemetery corporations,\textsuperscript{138} or in certain circumstances, domestic fraternal societies operating under a lodge system,\textsuperscript{139} or organizations relating to educational institutions,\textsuperscript{140} or hospitals and medical research organizations,\textsuperscript{141} or organisations supporting government schools,\textsuperscript{142} or organisations publicly supported by charitable contributions,\textsuperscript{143} or organizations relating to churches,\textsuperscript{144} etc., are qualified recipient of charitable contributions.\textsuperscript{145} As a result, to assist the public in identifying qualified recipient charitable organizations, the Internal Revenue Code annually publishes an updated

\textsuperscript{133} Section 170(c)(1) of Internal Revenue Code.
\textsuperscript{134} Section 170(c)(2)(B) of Internal Revenue Code.
\textsuperscript{135} \textit{Ibid.}
\textsuperscript{136} \textit{Ibid.}
\textsuperscript{137} Section 170(c)(3) of Internal Revenue Code.
\textsuperscript{138} Section 170(c)(5) of Internal Revenue Code.
\textsuperscript{139} Section 170(c)(4) of Internal Revenue Code.
\textsuperscript{140} Section 170(b)(1)(A)(ii) of Internal Revenue Code.
\textsuperscript{141} Section 170(b)(1)(A)(iii) of Internal Revenue Code.
\textsuperscript{142} Section 170(b)(1)(A)(iv) of Internal Revenue Code.
\textsuperscript{143} Section 170(b)(1)(A)(vi) of Internal Revenue Code.
\textsuperscript{144} Section 170(b)(1)(A)(i) of Internal Revenue Code.
\textsuperscript{145} Section 170(c) of Internal Revenue Code.
list of qualified recipient in the Cumulative list of organisations described in Section 170(c) of the Internal Revenue Code.\textsuperscript{146}

For gifts to public charities, the ceiling on deductible contributions is generally 50 per cent of the individual donor’s net income.\textsuperscript{147} For private foundations, the ceiling generally is 30 percent of individual donor’s net income.\textsuperscript{148} But the contributions must not be designed to achieve some ulterior motive, such as to benefit some close relative or to directly increase business.\textsuperscript{149} The individual donors can carry forward contributions to public charities for five years which are not deductible because they exceed the prescribed limit in a particular year.\textsuperscript{150} The corporations can also carry forward such contributions for five years whether the contributions are made to public charities or private foundations.\textsuperscript{151}

As discussed earlier, the charitable trusts and institutions abroad, are playing a vital role in the field of education, science and medical care. The charity in these countries, is largely developed in the present century. A new philosophy for charitable trusts began to develop at this time, based on the concept that they should

\textsuperscript{146} A large number of the qualified charitable organizations are well known to the general public. There are, however, many other non-profit exempt organizations whose status as qualified recipient is not widely known.

\textsuperscript{147} Section 170(b)(1)(A) of Internal Revenue Code.

\textsuperscript{148} Section 170(b)(1)(B) of Internal Revenue Code.

\textsuperscript{149} Supra note 103, p.546: It is common place in the United States for businesses to contribute to charities for the purpose of enhancing their image in the community. The enhanced image, it is thought may lead to an increase in business profits; but so long as the connection between the contribution and the possibility of increased business profits is indirect, the contribution is deductible;

\textsuperscript{150} Section 170(d)(1) of the Internal Revenue Code;

\textsuperscript{151} Section 170(d)(2) of the Internal Revenue Code;
turn their attention to the causes of inequity and suffering. Moreover, tax incentives and concessions were also the encouraging force in charitable and financial investing. For example in the United States, the Tax Exemption Act of 1913 was a major encouragement to the establishment of charitable trusts. The most significant development has been the emergence of the Ford Foundation, the Robert Wood Johnson Foundation, the Rockefellers etc.

It is revealed from the comparative study of all these countries that the income of the charitable trusts is exempt from taxation provided it is applied for charitable purposes only.

If the charitable trust carries on business, its profits from such business are exempt from tax only if they are applied solely for its purpose. This position is prevailing in the United Kingdom, Canada, Australia, Germany and the United States of America. In France, income from the charitable or welfare activity of a non-profit association is exempt but income from any profit making activity of an industrial or commercial nature is taxable, even if the profits are devoted to charitable purposes.

In India similar provisions are introduced in the Income-tax Act 1961, by the amendment of Finance Act, 1991 with effect from 1st April 1992 that any income of a trust or institution, being profits and gains of business would be exempt from income-tax if the business is incidental to the attainment of the objectives of the trust.

152 Section 360 of the Income and Corporations Taxes Act, 1970
153 Section 149.1(1)(j) of the Canadian Income-tax Act.
154 Section 65 of the Tax Code.
155 Article 206-1 of Code General des Imports.(CGI)
and separate books of account are maintained by such trust or institution in respect of such business.156

Almost all countries very rightly recognise the tax incentives for charitable contributions in different forms. Australia,157 Ireland,158 Switzerland159 and England160 give a fully deductible tax allowance for such contributions. The incentive in the same form but subject to a ceiling in terms of a fixed proportion of taxable income of the contributor is given in Canada,161 France,162 Germany163 and the United States of America.164 Japan and the Netherlands have a

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159 On the federal level, charitable gifts donated by individuals do not normally qualify for a deduction in taxable income. If such individuals, however, are required by statute to keep books of accounts of their commercial activities, then they qualify for deduction of charitable gifts from their net income: Art.22 of the Federal Tax Law Act of Switzerland: Ehrat, Felix R National and International Tax Aspects of Charities and Charitable Contributions (Swiss Report) Bulletin for International Bureau of Fiscal Documentation, 1989, p. 572
164 Section 170 (1)(a) of the US Internal Revenue Code;
partially deductible tax allowance subject to a ceiling. Spain has a partially deductible tax credit. In India, both fully and partially deductible tax allowances are allowed depending on the character of the beneficiary (which are discussed in detail in the next chapter).

In the United States of America the public charities and private foundations are entitled for tax exemptions and deductions. Private foundations are charitable organisations that draw their support from only a few sources, such as a single family or corporation and are not directly involved in charitable activities. The Rockefellers foundation, the Carnegie foundation, The Ford foundation are the significant examples of private foundations. For gifts to private foundations, the ceiling generally is 30 percent of individual donor's net income whereas for public charities the ceiling on deductible contributions is generally 50 percent.

The above study reveals that in the United States of America, charitable contributions are subject to a ceiling which in the case of Individuals is 50 per cent of the Individual's net income for the year and in case of private foundations it should

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166 The State's Budget Act for 1989 provides for a 15 percent deduction for donations to the State. Similarly, the same deduction is also set up for individuals who donate to non-profit organisations, such as entities of social provisions, etc. In both cases, however, the deduction can increase to 30 percent of the individual taxable income: Enric Enric and Girbau Ramon *International Tax Aspects of Philanthropic and other Non-profit Organisations: Spain*, Bulletin for International Bureau of Fiscal Documentation 1989, p. 576 at p 578;

167 Section 35 & 35AC of the Indian Income tax Act provides exemption on charitable contributions if invested on specified areas.

168 Sections 80G and 80GGA of the Income-tax Act.
not exceed 30 per cent of the Individual donor's net income. A percentage limitation is applicable on corporate donors is 10 per cent of donor's net income. Not only this if the donor contributes more, he can carry forward his donation for five years and adjust the excess contribution against his succeeding year's income.

In India, we can emulate healthy part of these provisions. Under section 80G the ceiling prescribed is 10 percent. Looking to the need of society, if a fresh look can be given to raise this ceiling to at least 30 per cent and further the carry forward provisions in the United States law can also be incorporated in Indian law because an assessee who is to make more donations in one year be not debarred of the benefit simply because he has exceeded the ceiling prescribed under the Act.

Further, as in the United States of America, donations to private foundations also qualifies for deduction out of the taxable income. Under section 35AC, we too have permitted public sector company, a local authority, an association, or institutions to undertake programmes approved by the National Committee for Promotion of Social and Economic Welfare, for carrying out any eligible project or scheme and contribution made by an assessee to the company is 100 per cent exempt from income tax. As envisaged in the section, such organisations will have to use their own funds and will get 100 per cent deduction out of their income. Some times the extent of their activities may be much larger and they may not have ample funds to achieve their goal. With the approval of the National Committee for Promotion of Social and Economic Welfare, these private organisations may be permitted to have funds from other assessees and contributions received should not be exempt in their hands but the donor should be allowed 100 per cent deduction. The committee while
giving the approval should ensure that such funds are used for the purposes for which they are contributed. However, a ceiling for such contributions should be prescribed as is there in the Internal Revenue Code of the United States of America.