

Philanthropy is not a taxable activity

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There is general agreement that the covid-19 crisis will require great effort not only from governments, but also from civil society. Inspiring examples of philanthropy have appeared and should be encouraged.

Philanthropic entities, however, still face serious challenges, some imposed by government itself. In Rio de Janeiro, tax is the serious obstacle, but the solution is simple. This is our appeal.

By providing or supplementing public sector services, non-profit education and social assistance institutions help the state, to the benefit of society as a whole. For precisely this reason, the Constitution encourages such institutions by making them exempt from taxes on property, income and services. Many federal, state, and municipal laws go even further, granting additional tax exemptions.

Since philanthropic entities are supported by contributions from society, those contributions should not be burdened by the state gift tax, ITD (Imposto sobre Doações). By levying gift tax on donations, the state is appropriating private parties' generosity by pocketing part of the money that should go to finance the assistance offered by the recipient organization.

In Rio de Janeiro, with the exception of small value donations, the process for obtaining philanthropic tax exemptions is one of the most bureaucratic in the country. For each donation, the donor must make a formal application to have the right to an exemption recognized by the tax authority, pay filing charges, submit documents, and await a decision, which usually takes significant time. Without the formal approval of the tax authorities, donations attract ITD of up to 8% – the highest rate in Brazil. A possible solution to this situation has existed since 2017, in legislation that promised to simplify the life of philanthropic entities by increasing the list of recipients and providing for automatic recognition of the right to tax exemptions based on objective criteria, which would eliminate the current arduous process.

In the absence of regulations under the law, however, the promise has not been realized. Bureaucracy continues to hold sway, and its grip has grown stronger. In practice, applications for philanthropic tax exemptions have simply received no response from the tax authorities. Some, in fact, have been waiting for a decision for more than six months. The unhappy result is that some entities have established or transferred their base to other states. In São Paulo, for example, a single exemption certificate, issued in advance, will cover all donations made within a certain period.

Informally, Rio de Janeiro's tax authorities explain that recognizing tax exemptions for gifts, and issuing regulations that would make the 2017

legislation effective, would be contrary to the fiscal recovery regime in effect in the state. The argument fails to convince, however. The legislation that deals with the exemptions is the same legislation that almost doubled ITD rates, hitting the national ceiling. Strangling philanthropy was never an objective under the austerity plan that rightly sought to save the state and its population. If the state administration has real questions on this issue, perhaps it should fight it out with the supervisory council charged with overseeing the fiscal recovery plan. That's the attitude we expect of a state government that was a leader in adopting tough measures against the pandemic.

In the upheaval brought about by the pandemic, the regulations are both needed and urgent, because they can save lives. Philanthropic entities depend on donations, and in order to get them, their tax treatment must be clear and certain, for donors as well as recipients. The ideal solution would be to make ITD uniform under national legislation that would guarantee exemptions if clear requirements were met. But the easy solution right now is for Rio de Janeiro to issue regulations under its existing law. Or just deal with exemption status applications quickly. What is unacceptable is leaving things as they are, handicapping donations by those who can or want to help when we most need it.

Update: *In April 2020, shortly after our article "Philanthropy is not a taxable activity" was published, state Decree 47.031 was issued, implementing the regulations we called for. The regulations provide that donors can declare their philanthropic donations to be exempt from ITD, and do not depend on a formal decision by the state tax authorities. This is great news for philanthropic entities and donors in Rio de Janeiro. But there is still some bureaucracy to be overcome. At the time this edition of BMA Review went to press, and thus more than 60 days after the Decree was issued, the state tax authorities still had not updated its electronic systems to allow exemptions on ITD tax slips. As a result, donors still have to apply for an exemption for each donation they make. The State can no longer levy the tax, but unnecessary.*

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