

The tax challenges of crowdfunded donations

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New technologies and social media have become important allies to philanthropic entities. They have revolutionized access to and communication with donors, allowing fundraising strategies to be implemented effectively through digital media. An increasingly common example are donation programs based on crowdfunding. Brazil's tax laws have not kept up with this evolution, however, and pose risks that merit attention.

Digital donation campaigns usually employ crowdfunding platforms. Just as with any type of e-commerce, the platforms connect the interested parties – donors and recipients – making it possible to fund projects sponsored by entities or individuals. Along with its flexibility, its low cost makes crowdfunding a particularly efficient means to finance small-value projects and projects based in remoter locations, since crowdfunding platforms offer extensive reach, both geographically and in terms of potential donors. Like most kinds of charitable giving, crowdfunded donations have grown during the covid-19 pandemic, and with them, tax-related concerns.

Donations in general, including crowdfunded donations, can be taxed according to rules that vary from one state to another, at rates of up to 8%, and the place where the donor is domiciled will determine which state can charge gift tax (ITD – Imposto sobre Doações). Most legislation on gift tax makes the recipient of the gift primarily responsible for paying the tax, with the donor being jointly liable if the tax is not paid. Other aspects that can be relevant for tax purposes include the value of the donation, the status of the recipient, and even the location of the donor.

Digital platforms should also be aware of applicable law, especially in light of the total volume of transactions made through the platform, and check for tax treatment of donations and potential risks and formalities required by state tax authorities. For example, it is common for state laws to make persons (either individuals or entities) that have possession of donated property, or that are involved in the transfer of amounts donated, jointly liable for payment of ITD. The legislation of the states of São Paulo, Rio de Janeiro, Paraná and Goiás all have such provisions, although with some variation, and without referring expressly to digital platforms.

Because of their reach and nature, virtual crowdfunding campaigns have the potential to generate conflicts of jurisdiction over gifts tax, especially if the campaigns are poorly managed. The problems arise because donors, recipients and platforms may be located in different states, or even in different countries, even though they are all involved in raising funds for the

same philanthropic cause. Good first steps to avoid disputes and manage risks include maintaining detailed records of donors' personal information and residence, and adopting clear rules on the role and obligations of the crowdfunding platform. Recipients and platforms have the additional challenge of determining if applicable law provides for secondary liability of intermediaries in donation transactions, and if so, whether the donations made will be subject to tax, given the expected amount of the donations.

Many states exempt small donations from gift tax, but not all. The limits vary from one state to the next, and may refer to the transaction or to the recipient. Depending on the recipient, donations may be tax exempt because the recipient is an accredited social assistance and education entity or other not-for-profit organization. Examples include beneficent entities in Espírito Santo, organizations for the promotion of human rights and the environment in São Paulo, and research and development entities in Rio de Janeiro. Usually, the tax exemption is conditional on compliance with certain formal requirements, such as filing statements and prior confirmation by the tax authorities. These requirements should be checked in advance by crowdfunding platforms, in their own interest and in the donors'.

Brazilian tax law tends to contemplate an analogical world, contemporary to the time when it was enacted. Players in the digital economy have the challenge of finding answers to new questions in old law, avoiding legal traps and promoting the kind of debate that allows the law to evolve. The same is true for funding in the third sector. Crowdfunding for philanthropic causes looks like it has come to stay, as one of the most efficient options for financing social projects of all sizes. But attention must be paid to state tax rules, to ensure that they do not become an obstacle to philanthropic campaigns, at a time when the country is so much in need of them.

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