



THE GLOBAL
FOOD DONATION
POLICY ATLAS

ISSUE BRIEF

PROMOTING
FOOD DONATION:
TAX LAW
AND POLICY

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Authors

This report was written by Regan Plekenpol, Emily M. Broad Leib, Melissa Shapiro, and Ata Nalbantoglu at the Harvard Law School Food Law and Policy Clinic with contributions from Douglas O'Brien at The Global FoodBanking Network.

About The Global Food Donation Policy Atlas

The Global Food Donation Policy Atlas is a first-of-its-kind initiative to promote better laws on food donation to help address food loss and food insecurity. This project maps the laws affecting food donation in countries across the globe in order to help practitioners understand national laws relating to food donation, compare laws across countries and regions, analyze legal questions and barriers to donation, and share best practices and recommendations for overcoming these barriers. The project is a collaboration between Harvard Law School Food Law and Policy Clinic and The Global FoodBanking Network. To learn about and compare the food donation laws and policies for the countries FLPC has researched to date, visit atlas.foodbanking.org.

About the Harvard Law School Food Law and Policy Clinic

FLPC serves partner organizations and communities by providing guidance on cutting-edge food system legal and policy issues, while engaging law students in the practice of food law and policy. FLPC focuses on increasing access to healthy foods; supporting sustainable food production and food systems; and reducing waste of healthy, wholesome food. For more information, visit www.chlpi.org/FLPC.



About The Global FoodBanking Network

The Global FoodBanking Network supports community-driven solutions to alleviate hunger in more than 40 countries. While millions struggle to access enough safe and nutritious food, nearly a third of all food produced is lost or wasted. GFN is changing that. GFN believes food banks directed by local leaders are key to achieving Zero Hunger and building resilient food systems. For more information, visit www.foodbanking.org.



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ABOUT THIS ISSUE BRIEF

Excessive food loss and waste (FLW) is a pressing challenge facing global food systems. FLW occurs at every stage of the supply chain and generates significant social, environmental, and economic costs. International estimates predict that more than one-third—or 1.3 billion tons—of food produced is lost or wasted along the supply chain.¹ At the same time, current data indicate that between 720 and 811 million people were hungry in 2020² and that more than 2 billion people were unable to regularly access safe, nutritious food in 2019.³ Thoughtful public policies can help address these troubling trends and augment food system resilience, aiding in food recovery for social benefit and mitigating environmental cost of excess production and loss.

Food donation offers a solution to these parallel issues. Redirecting safe, surplus food to those who need it most both decreases FLW and increases food security. However, scaling food donation requires aligned incentives that motivate individuals and companies to donate rather than discard surplus food. Across the globe, tax law and policy are commonly identified as areas of missed opportunities. Many tax structures fail to adequately encourage donors or, at the very least, enable them to recoup the costs associated with food donation. In the worst cases, tax legislation actively deters donation by placing additional fiscal burdens on donors or food rescue organizations. As a result, the least costly option in many cases is to discard safe, surplus food. Removing such fiscal barriers and strategically leveraging tax law to motivate potential donors can encourage greater food donation and minimize the myriad costs associated with FLW. Yet many countries have not designed, implemented, and enforced taxation schemes that advance these goals and position donation as an economical alternative to discarding food. Drawing from country-specific findings, this issue brief explores the potential for tax law and policy to increase food donation, support innovative food rescue models, reinforce nutrition standards, and afford financial security to farmers and agribusinesses.⁴

This issue brief was developed as part of The Global Food Donation Policy Atlas project, a partnership between the Harvard Law School Food Law and Policy Clinic (FLPC) and The Global FoodBanking Network (GFN) that aims to promote strong food donation policies as global solutions to hunger and FLW.⁵ Across key issue areas—including food safety, date labeling, liability protection, taxes, donation requirements or food waste penalties, and government grants and incentives—restrictive or inadequate laws and policies can undermine the efforts of food rescue organizations and create obstacles for businesses and other private-sector actors seeking to donate food. Such laws may also fail to properly incentivize socially beneficial behaviors. The Atlas project analyzes and compares these national laws and offers tailored recommendations to clarify and optimize the policy landscape for food donation.



RECOMMENDATIONS IN BRIEF

The recommendations contained in this document aim to provide a starting point for stakeholders worldwide to strengthen tax policy frameworks relevant to food donation. Food banks and other organizations whose mission is to reduce food waste and increase food donation (collectively referred to as “food recovery organizations”), donors, and policymakers should consider additional opportunities to advance food donation and reduce food waste. In summary, the recommendations are as follows:

In order to position food donation as an economical alternative to simply discarding safe, surplus food:

- **Include a charitable tax credit or deduction for in-kind food donation, not solely monetary contributions to registered charities.**
- **Ensure that the deductions or credits offered are not limited by deduction caps or other limitations that can severely reduce the significance of tax incentives for donors.**
- **Create a standardized methodology for clarifying fair market value (FMV), and allow donors to utilize FMV as a generous valuation for donated foods.**
- **Consider the additional costs associated with food donation—such as transportation—when designing tax incentives and include benefits that help offset these costs.**

In order to ensure tax benefits are available to smaller-scale businesses and support innovative models of donation and healthier food donation:

- **Offer a tax credit as a supplement or alternative to tax deductions to incentivize donation among small-scale, low-margin producers and businesses, such as farmers.**
- **Expand tax benefits to cover donations made to intermediaries and organizations that charge a nominal fee, to support emerging innovative models of food redistribution.**
- **Offer tiered tax benefits that place a higher value on healthy, nutritious food donations.**

In order to alleviate the potential donation barrier posed by the application of VAT and minimize perverse incentives within the tax code to discard safe, surplus food:

- **Exempt food donation from the list of transactions that are VAT-taxable and ensure food donors are allowed to reclaim VAT credits attached to food that is donated.**
- **Restrict opportunities to deduct discarded food as a “business loss.”**

BACKGROUND

Attention toward Food Loss & Waste (FLW) has increased exponentially in the past decade, with the international community committing to halve FLW pursuant to the *2030 Agenda for Sustainable Development* and Sustainable Development Goal 12.3.⁶ FLW occurs at every stage of the food system: during the initial harvest due to fluctuating market prices, high labor costs,⁷ inadequate infrastructure, and demand for flawless produce; by grocery stores and restaurants that overestimate customer demands and misunderstand shelf life and product date labels;⁸ and by consumers that engage in inefficient shopping and cooking practices.⁹ These behaviors have significant environmental, economic, and social consequences. Food that is lost or wasted has a massive carbon footprint of 3.3 gigatons, using roughly 28% of agricultural land and accounting for 8%, or 70 billion tons, of total global greenhouse gas emissions.¹⁰ This damage is estimated at \$700 billion in environmental costs and more than \$900 billion in social costs.¹¹ This waste is expensive,¹² squanders natural resources, causes lasting environmental damage, and presents a missed opportunity to redistribute food to the more than 820 million people experiencing hunger.¹³

Despite the burgeoning efforts to address it, high levels of FLW persist and have been exacerbated by the COVID-19 pandemic. The pandemic disrupted fragile food supply chains, especially those that ordinarily rely on specific customers such as restaurants, hotels, and event venues.¹⁴ Food system actors encountered difficulty reaching alternative consumer markets, and many producers and manufacturers resorted to discarding wholesome food.¹⁵ These costly breakdowns undermine the resilience, sustainability, and equity of food systems worldwide.

While FLW results in economic loss, food donation can generate sizeable economic gains. First, donation reduces the economic and environmental costs of producing food that otherwise goes uneaten¹⁶ and curbs methane emissions caused by food decomposing in landfills.¹⁷ Second, donation alleviates hunger, reducing health care expenses associated with malnutrition¹⁸ and increasing productivity, educational fulfillment, and economic potential.¹⁹ Third, food rescue operations create job opportunities at food banks and intermediaries and stimulate the economy by increasing the spending power of donation recipients. Indirect gains such as reduced hunger costs and more resilient supply chains that flow to society ultimately help build stronger communities. The spectrum of benefits cannot be realized, however, if food donors lack clarity or incentives to donate rather than discard surplus food.

Concrete policy measures, particularly smart tax policies, can help incentivize and offset donation costs. National tax schemes can offer deductions and credits for donation and remove barriers that reposition food donation as a cheaper alternative to throwing away food. Too often, however, tax laws and policies fall short of achieving this goal, offering benefits that are too low to effectively incentivize food donation or failing to remove tax obstacles to donation. During consultations with food donors and food rescue organizations in countries participating in the Atlas project, increasing and expanding tax benefits for donors and removing barriers were overwhelmingly cited as top policy priorities.²⁰

This issue brief provides governments and other policymakers with strategies to strengthen food donation tax law and policy. Drawing from country-specific research and stakeholder accounts, it identifies the most common elements of weak or ineffective tax policies that undermine the potential to increase food donation. It offers best practices for designing taxes that incentivize greater food donation as a solution to FLW and hunger. Constructing a tax scheme consistent with these recommendations will support increased food donation and help countries build mutually beneficial partnerships between food supply chain actors and food rescue operations.

OVERVIEW OF COUNTRY APPROACHES TO FOOD DONATION TAX

Country	Incentive?	Deduction Cap	GST/VAT barrier?	Atlas Ranking
Argentina	YES	Up to 5% of net taxable profit	YES ²¹	Limited Policy
Canada	YES	Up to 75% of total net income ²²	NO	Limited Policy ²³
Chile ²⁴	YES	Up to 5% of taxable net income	NO	Limited Policy
Colombia	YES	No cap ²⁵	NO	Strong Policy
Costa Rica	YES	Up to 10% of taxable net income	YES ²⁶	Moderate Policy
Dominican Republic	YES	Up to 5% of taxable net income	NO	Limited Policy
Guatemala	YES	Up to 5% of annual gross income ²⁷	NO	Limited Policy
India	NO		NO	No Policy
Mexico	YES	Up to 7% of taxable income (individuals) or profit (corporations)	NO	Moderate Policy
Peru ²⁸	YES	Up to 10% of their net income, but deduction is not to exceed 1.5% of value of donor's annual net food sales	NO	Moderate Policy
Singapore	NO		NO	No Policy
South Africa	YES	Up to 10% of annual taxable income	NO	Moderate Policy
United Kingdom	NO		NO	No Policy
United States	YES	Up to 15% of net income ²⁹	NO	Strong Policy

Countries do not offer sufficient tax benefits to position donation as an economical alternative to discarding food

While food donation offers inherent economic benefits to society, it also involves costs for donors that must allocate time and money to harvest, package, transport, and deliver food for donation that would otherwise be discarded free of charge.³⁰ This can undercut profit and revenue for commercial food interests that make donation part of routine business operations. Tax benefits—most often in the form of charitable tax credits or deductions—can therefore help incentivize donation by local producers, food manufacturers, distributors, retailers, restaurants, and other supply chain actors. While most countries offer some form of tax deduction for charitable donations, there are still instances where no tax benefit exists to encourage socially beneficial behaviors. In other countries, an income tax deduction applies to monetary contributions to registered nonprofits but does not extend to in-kind donations like surplus food. In India, for example, these limitations restrict the role that Indian tax policy could play in reducing FLW and incentivizing the donation of otherwise unmarketable foods.³¹

If present at all, many tax incentives are not robust or significant enough to adequately motivate donors or compensate for the costs associated with food donation. Too often, low deduction caps and other rigid limitations undermine the supposed tax incentive. In Argentina, the Dominican Republic, and Guatemala, the deduction is limited to 5% of the donor's taxable income.³² In Mexico the deduction cap is set at 7% of income.³³ In each of these countries, food system actors interviewed through the Atlas project unanimously agreed that the tax benefit was too low to effectively incentivize donation. In addition, countries may place a secondary limit on the cumulative benefit, which further diminishes the incentive. In Guatemala, for example, individual and corporate donors cannot claim more than 500,000 quetzales (approximately US\$65,000) per year in total deductions—a threshold that many food donors reach in just a few months.³⁴ Peru also restricts the deduction to less than 1.5% of the total value of food sales made by the donor in the fiscal term.³⁵ For the largest donors, 1.5% of sales could yield a reasonably high cap, but less so for smaller donors. In these countries, food donors and food recovery organizations have critiqued these limits as undermining the incentive to donate.³⁶

Beyond restrictive caps and limits, additional elements of supposed tax benefits can often further restrict incentives to donate, such as the requirement to account for the value of donated foods in taxable income. In Canada, for example, while the law indicates that corporate donors may claim tax deductions for donations,³⁷ they must add the value of donated goods to their income before claiming the deduction, essentially eliminating any benefit that would be received through the deduction.³⁸ Since the donor's taxable income increases by the value of the donation, when the donor takes advantage of the charitable donation tax deduction, the taxable income is reduced by the same amount. This means the benefit is essentially zeroed out, offering no additional benefit to donating rather than simply discarding the surplus food inventory. Further, when considering costs associated with donating food and administrative costs associated with claiming a charitable donation tax incentive, donating may be net negative.

If tax policy fails to enable a business to recoup the additional costs incurred by in-kind donation, it undermines the business case for food donation as a routine, cost-neutral, or cost-acceptable operational activity. Under most tax schemes—even those that offer deductions or credits to donors—expenses associated with donation are not deductible.³⁹ For example, in the Dominican Republic, Mexico, and South Africa, transportation and storage costs for food donation are not subsidized by the government.⁴⁰ While some food recovery organizations seek to reduce this burden by providing transportation and storage for donated foods, most lack the resources or capacity to do so effectively. Thus, especially if the tax deduction available for in-kind donations is minimal, failure to account for the additional costs of handling and delivering the donation may ultimately deter potential donors from participating in the process. Given this widespread challenge, it is

critical to advocate for and develop tax schemes that reward food donors for assuming the additional time and costs of donation, above solely the value of the food.

Another concern with existing tax incentive structures is the limitation of such incentives to primarily benefit large businesses with high profit margins or to restrict benefits to traditional donation-receiving entities. As methods and actors involved with food donation evolve, so too should the system of tax benefits. This would create a more diverse and inclusive set of food donors and donation-receiving entities.⁴¹ As of yet, most tax incentives that apply to food donation are offered as deductions. While a high-revenue business is likely to benefit, a low-profit margin business may not earn enough to make the deduction worthwhile. Offering only deductions therefore limits the participation of food system actors within the greater donation scheme. Tax schemes have also been slow to adapt to changing food donation methods. Tax benefits are often only available if donors donate to intermediary organizations that distribute the food to end users free of charge. If food recovery organizations charge even a nominal fee for the donation, donors delivering food to these organizations may not be permitted to claim the tax benefit. This is the case in many countries. For example, taxpayers in Colombia can only claim the benefit if they donate unmarketable food to a nonprofit organization that delivers the items free of charge to end users.⁴² On its face, this “no charge” requirement seems to benefit end users. However, it limits the potential growth of innovative food recovery organizations that may charge a nominal fee to support operational costs.

Value-added tax frameworks may place a financial burden on food donors or food recovery organizations and pose a barrier to donation

Even if countries adopt tax schemes that incentivize donation, certain tax schemes may also create barriers to donating safe, surplus food. In many countries, the value-added tax (VAT)⁴³ creates barriers to donation unless the government takes steps to alleviate those barriers. The VAT is imposed at every stage of the supply chain through a series of debits (output VAT) and credits (input VAT).⁴⁴ The output VAT (debit) is the amount that a VAT-registered business will charge on its own sale of the good to businesses downstream or to the end consumer, whereas the input VAT (credit) is the amount the VAT-registered business paid when it acquired the inputs or ingredients. The VAT-registered business subtracts the input VAT that it paid on products from the output VAT that it charged when selling the product and then pays the balance to the government.

The VAT may present a barrier to donating food in several ways. In some countries, food donation itself is considered a VAT-taxable event. This means that the food recovery organization must pay the VAT due on the food to acquire it from the donor unless the donor decides to cover this expense. This is the case at the supranational level in the European Union⁴⁵ as well as in Costa Rica.⁴⁶ In both examples, an actual cost must be paid at the time of donation.

Even in countries that have addressed this initial VAT issue, there may be secondary issues. To circumvent the VAT obstacle, countries have two main options: VAT exemption or zero rating.⁴⁷ In general, if a donation is considered VAT exempt, the government does not tax the transfer of this food, but the food business cannot reclaim the input VAT it paid on business purchases along the value chain to produce it. By contrast, if a good is zero rated, the government does not tax the transfer of the food and still allows the food business to reclaim credit for the input VAT paid on raw materials it acquired. However, there is no rule of thumb, as VAT exemptions can also be created as either “exemptions with a right to deduct” or “exemptions without a right to deduct.”⁴⁸

A challenge for VAT exemption is that some countries permit food businesses to reclaim VAT credits for unmarketable food that is thrown away but not for surplus food that is donated because it is a nontaxable event. For example, under Argentina’s VAT law, donations or free deliveries are VAT exempt. This means they are designated as nontaxable events (i.e., donation-receiving entities do not have to pay the VAT on donated foods). However, the input VAT cannot be recovered by the donor, meaning donors are responsible for paying

the full cost of the input VAT for the donated food. By contrast, if a business throws away unmarketable food, it is entitled to reimbursement from the government for the input VAT it incurred acquiring the product.⁴⁹ The inability to be reimbursed for the input VAT in the event of a donation seems more like a penalty to donors, as the difference between the net VAT owed after an ordinary business exchange and a net VAT owed on food donation could amount to millions of Argentine pesos, especially for large-scale donations. As a result, VAT exemption benefits donation-receiving entities but places a financial burden on food donors that are unable to reclaim the input VAT on the donated food.

The example below illustrates the operation of VAT in Argentina, where the VAT rate is 21%:

- A rice producer will charge the 21% output VAT on the sale of a \$2 bag of rice to a rice manufacturer. Since the producer did not incur any input VAT related to its activity (as it is the first actor in the value chain), it would only owe the amount of the output VAT (\$0.42) to the tax authority.
- The rice manufacturer, having incurred the input VAT of \$0.42 during the purchase from the producer, will charge the 21% output VAT on its own \$4 sale to a local distributor (\$0.84). The manufacturer's net VAT payable to the government would be equal to the output VAT value minus the value of the input VAT ($\$0.84 - \$0.42 = \$0.42$).
- A rice distributor, having incurred the input VAT of \$0.84 during the purchase from the manufacturer, would subsequently apply the 21% output VAT to its own \$6 sale to a local supermarket (\$1.62). The distributor's net VAT payable to the government would be equal to the output VAT value minus the value it paid in input VAT ($\$1.26 - \$0.84 = \$0.42$).
- In the last exchange in this scenario, the supermarket charging \$8 for rice would impose an output VAT of \$1.68 on the sale to a customer and, like the distributor, owe a net VAT payable equal to the difference between the output VAT charged and the input VAT incurred ($\$1.68 - \$1.26 = \$0.42$).
- The final customer pays the accumulated VAT tax as part of the final purchase ($\$0.42 + \$0.42 + \$0.42 + \$0.42 = \$1.68$).

Under Argentina's VAT law, donations are not taxable events, so the associated input VAT is not recovered by the donor as it would be in a sale to a consumer. However, the donor is not allowed to claim reimbursement from the government for the input VAT it incurred. Following the above example, this means a supermarket that decides to donate its surplus at no cost to a local foodbank cannot claim the \$1.26 input VAT credit that it spent.⁵⁰ Over time, \$1.26 per bag of rice on multiple donated goods becomes a large excess tax liability for the donor.

In contrast, governments that zero-rate the VAT set the VAT rate at 0% specifically for food donation, meaning the government does not tax its sale and still allows credits for the VAT paid on inputs. This best practice is described further in the recommendations below.

As illustrated by these challenges, the VAT—and the negative consequences of attempts to exempt donations from the VAT—can be a significant barrier. Many food donors and food recovery organizations agree that resolving concerns related to the VAT will ultimately increase donations.

RECOMMENDATIONS

To ensure that donors are financially incentivized to donate rather than discard safe food, national taxation schemes should offer tax benefits for in-kind food donations. Tax benefits can be structured either as a tax credit or tax deduction. A tax deduction is a reduction in an entity's taxable income and lowers overall tax liability. A tax credit is a direct reduction in the amount of taxes owed, and a refundable tax credit can result in a payment to a taxpayer if the credit exceeds the amount of tax owed. Many countries offer deductions

or credits for monetary charitable donations; however, some do not offer any tax benefits for in-kind food donations. In those countries that do offer tax incentives for in-kind food donation, there may yet be room for policy improvement, as certain limitations may impede the generosity of supposed benefits. Such limitations include caps on the incentive that are too low, low or unclear valuation of donated food, or restrictions on the food donation models that are eligible for the benefits. Each issue is explored below. Additionally, tax policy can minimize the deleterious effect of VAT on food donation or galvanize donation of healthy food items, as the recommendations below outline.

IN ORDER TO POSITION FOOD DONATION AS AN ECONOMICAL ALTERNATIVE TO SIMPLY DISCARDING SAFE, SURPLUS FOOD:

1. INCLUDE A CHARITABLE TAX CREDIT OR DEDUCTION FOR IN-KIND FOOD DONATION IN NATIONAL TAX SCHEMES

To maximize tax incentives for food donation, incentives should extend to in-kind donations to qualifying institutions. Qualifying institutions should include food banks and other food recovery organizations that are generally recognized as “tax-exempt.” At least seven EU member states allow tax deductions for food donations, allowing donors to deduct at least part of the value from their tax base to reduce their tax liability.⁵¹ In Canada, charitable donations are eligible for tax deduction (or tax credit) capped at 75% of the donor’s total net income,⁵² generally ranging from 26% to 31% of the fair market value of these donations, depending on the province.⁵³ Other countries, including Chile, Argentina, Costa Rica, the Dominican Republic, Guatemala, Peru, the United States, and South Africa, also provide a charitable deduction for in-kind food donations made to food banks and other food recovery organizations.⁵⁴

2. RAISE TAX DEDUCTION CAPS (TO EXCEED 10% OF TAXABLE INCOME)

Even where tax benefits apply to in-kind donations, they are often constrained by a stringent cap or limit that diminishes the financial benefit for donors, especially considering the myriad costs associated with donating surplus food. Low caps and other limitations undermine policy goals to incentivize greater food donation and allow donors to recover some of the costs of production and donation logistics such as transportation and storage. At a minimum, donors should be permitted to claim a deduction up to 10% of their taxable income, as is the case in South Africa and Costa Rica.⁵⁵ However, best-practice countries utilize caps that exceed 10%, if they implement caps at all. For example, Colombia offers tax deductions and credits equivalent to 25% of the value of donations in the taxable year with no cap.⁵⁶

Given the importance tax deductions play in incentivizing potential donors, it is crucial to raise the caps on deductions for in-kind donations or consider enhanced deductions specifically for donation to nonprofit food recovery groups. The United States offers one of the strongest food donation tax incentives. US taxpayers are eligible to claim both a general tax deduction of the basis value of the food for all in-kind charitable contributions (capped at 10% of income for most corporate donors) and an “enhanced tax deduction” for food donations (capped at 15% of income for most corporate donors).⁵⁷ In addition to the higher deduction cap, the “enhanced deduction” also permits a donor to deduct the lesser of (1) twice the basis value of donated food or (2) the basis value of the donated food plus one-half of the food’s expected profit margin (profit margin = fair market value minus basis value).⁵⁸ The “enhanced tax deduction” for food can offer deductions that are sometimes twice the value of the general deduction scheme for other in-kind donations, therefore providing extra incentive to donate. The US example illustrates how a country can adjust the deduction cap as well as the donated food’s valuation to ensure that the tax benefit effectively incentivizes donation.

3. ALLOW FAIR MARKET VALUE AS THE CLAIMABLE VALUE OF DONATED FOODS, AND CLARIFY HOW FMV SHOULD BE DETERMINED

Most countries value donated food at fair market value (FMV), or the highest price at which a good would sell in an unrestricted marketplace. This is generally a beneficial practice, as FMV is typically higher than the basis value (i.e., the cost to acquire the good), but it nonetheless poses some challenges. Discerning the FMV of donated food can be difficult for donors, particularly as donated items are often surplus or otherwise unmarketable due to labeling or other non-safety-based reasons. For large in-kind donations (such as real estate or artifacts), many countries utilize third-party auditors to determine FMV. For close to zero-value donations such as surplus food, however, the responsibility typically falls on the food recovery organization to ensure that donations are properly valued. This is the case in Canada, where if the FMV of the property is less than CAD\$1,000, a member of the registered Public Benefit Organization with sufficient knowledge of the property may determine its value.⁵⁹ However, if the food is not sellable, its FMV may be at or close to CAD\$0. Using this FMV as the valuation scheme for tax incentives without clarifying language or guidance may deter donation. Indeed, according to stakeholders in Canada, many donors do not benefit practically from tax incentives due to the difficulty in calculating the food's FMV.⁶⁰

While valuing food at the FMV rather than at the lower basis value is the best practice, it is vital for countries to clarify how the FMV should be calculated. Offering specific clarification can better enable donors to claim the available benefit, thus more effectively incentivizing donation. In Mexico the value of noncash donations is equal to the original investment amount (i.e., basis value), adjusted for the effects of inflation until the month immediately prior to donation.⁶¹ Operationally, valuation is determined by the food bank at the time of receipt.⁶² Such explanation avoids the calculation questions and issues that arise when using the FMV, but the problem remains that this adjusted basis value is generally much lower than the FMV. As such, this is a much smaller benefit than what is available in most countries that base the incentive on the food's FMV. The best practice in this regard is the United States, which allows donors to calculate the FMV of certain unmarketable products—including those that do not meet quality-based standards (e.g., cosmetic blemishes), lack an available market, and are produced for the sole purpose of donation—at the same price as identical or similar food items that a business is offering for sale.⁶³

Even better would be to value the food donation higher than the FMV. In Portugal, for example, food donations are valued at 140% of the value of the food at the time of donation.⁶⁴ Allowing donors to value food at anything above 100% is exceptionally rare; values are usually capped at well under 100%. However, Portugal does have a low cap on the deduction—only 0.8% of a corporation's revenue.⁶⁵ When designing tax policy for greater food donation, the best practice is to value the food donation at its FMV and to clarify valuation methodology to streamline the donation process and minimize stakeholder confusion. Where possible, offering even more generous valuation can provide an even larger incentive to donors.

4. OFFER A TAX BENEFIT THAT ALSO OFFSETS ASSOCIATED COSTS OF DONATION

To ensure that donation is not cost-prohibitive for donors and that food recovery organizations do not incur the costs associated with donation, tax schemes should broadly define deductible expenses. Specifically, tax benefits should explicitly allow donors to claim a deduction or credit for the storage and transportation of food to receiving entities.⁶⁶ In France, for example, the national tax scheme provides charitable donation tax credits, which individual or corporate donors can claim not just for the value of the donated food but also for costs associated with transportation and storage of the donated items.⁶⁷ The tax scheme looks to the “cost price” of the service, which focuses on the total cost the donor accumulates for the item's storage or delivery.⁶⁸ Accounting for the logistical expenses has already made a significant difference in the total costs a potential donor has to incur to send food items to a nonprofit organization in the country. E.Leclerc supermarkets in

France has calculated that the tax break lowers the cost of shipping one ton of produce to a food recovery organization from €372 to €65.⁶⁹ As few countries currently account for these operational expenses, future tax reform should emphasize these costs as recoverable.

IN ORDER TO ENSURE TAX BENEFITS ARE AVAILABLE TO SMALLER-SCALE BUSINESSES AND SUPPORT INNOVATIVE MODELS OF DONATION AND HEALTHIER FOOD DONATION:

5. OFFER TAX CREDITS TO INCENTIVIZE DONATION AMONG SMALL-SCALE FARMERS AND OTHER LOW-MARGIN BUSINESSES

Offering tax credits instead of or as an alternative to deductions for donated food will help to incentivize donation among a broader group of supply chain actors, particularly small businesses and farms. A tax credit reduces a person's tax liability directly and is often a more suitable financial incentive for low-profit margin businesses. Unlike deductions, which lower a donor's taxable income and whose ultimate benefit depends on what bracket the tax payer is in,⁷⁰ a tax credit applies evenly across tax brackets and is a direct subtraction from the amount of taxes owed⁷¹ (e.g., if a donor receives a \$500 tax credit in exchange for donated food, it can reduce the amount of taxes owed by \$500).⁷² Further, in some cases a tax credit may be deemed "reimbursable," meaning taxpayers could receive a payment from the government if they have credits that exceed their tax liability. Like deductions, tax credits are often limited by the value donors can assign to the food and a cap on the total amount of the credit. However, offering a tax credit as an alternative to a tax deduction for smaller businesses may therefore incentivize donation from these actors, which could be defined in law to include farms, small retailers, local restaurants, and other low-profit margin businesses.

A handful of countries have already capitalized on this type of tax benefit. Colombia provides a 25% tax credit to donors on qualifying contributions to nonprofit entities.⁷³ Canada offers individual donors both a 15% tax credit for the first CAD\$200 donated⁷⁴ and a 29% credit thereafter at the federal level.⁷⁵ If an individual donor has a taxable income of more than CAD\$214,368, then the effective tax credit is 33% for donations above CAD\$200.⁷⁶ By contrast, corporations in Canada can claim a tax deduction. To support smaller businesses and farmers, several Canadian provinces have enacted tax credits for those that donate wholesome agricultural products.⁷⁷ State governments in the United States have taken similar action, offering tax credits to farmers who donate qualified commodities to food banks or tax credits to individuals or business taxpayers who donate food supplies to eligible food recovery organizations.⁷⁸ In both Canada and the United States, these state tax credits supplement the deductions offered at the national level.

6. EXPAND TAX BENEFITS TO COVER DONATIONS MADE TO INTERMEDIARIES AND ORGANIZATIONS THAT CHARGE A NOMINAL FEE

Tax policy should support innovative food donation models. Accordingly, governments should strategically remove no-charge requirements that preclude donors from claiming a benefit for donations made to innovative organizations that may charge a nominal fee for donation. In Europe, for example, "social supermarkets" sell excess food products at highly reduced prices.⁷⁹ All revenue generated is invested back into the organization to cover operational costs. This model ultimately supports a more sustainable approach to donation, as the social supermarkets and other innovative nonprofits do not have to rely on private gifts or monetary donations to finance operations.⁸⁰ Recognizing the emergence of innovative food recovery and distribution models that may involve nominal fees for surplus or close-to-expiration foods, France ensured that tax benefits are not conditioned upon "free" food distribution.⁸¹ Incentivizing donations to these innovative, self-sustaining models will ultimately help mitigate FLW and food insecurity and build food system resilience.

7. OFFER TIERED BENEFITS THAT PLACE HIGHER VALUE ON HEALTHIER FOOD ITEMS

Fiscal policy offers a concrete solution to increasing access to affordable, healthy food. While tax benefits offered for donation do not hinder the donation of nutritious foods, they may not create an incentive to donate foods that meet minimum nutrition requirements or expand dietary diversity. Tax incentives generally do not distinguish between nutritionally rich and nutritionally deficient foods. Rather, they provide equal benefits for all donated food items regardless of nutritional value. Rising rates of obesity and diet-related diseases, in conjunction with rising rates of food insecurity and hunger, demonstrate the need to financially incentivize the donation of healthy, nutritious foods.⁸²

Governments should consider constructing a more dynamic tax policy that incentivizes the donation of healthy food items above other products with less nutritional value. Tiered deduction schemes, or supplemental tax credits for example, could ensure that all donors are eligible to claim some benefit but would restrict the additional benefit to donations of healthy, wholesome food. Fruits, vegetables, or healthy proteins should qualify for the highest deduction or additional credit, while processed or less healthy items would get lesser deductions or credits.⁸³ In Canada the province of Quebec offers tax credits to not just agricultural products but also to “higher-value” items such as “milk, baby food, oil, flour, sugar, pasta, frozen vegetables, baby formula, and prepared meals”⁸⁴ that may be more nutritionally valuable and more difficult to affordably acquire. By including a broader array of products and donors in its tax incentive scheme, Quebec has secured more than 460,000 kilograms of additional food donations and 100 new farm donors.⁸⁵

Countries could refer to national nutritional or dietary guidelines to define higher-value items. In Colombia, for example, while there is not a tiered tax incentive, the Ministry of Health and Social Protection recently leveraged its “Food-Based Dietary Guidelines for the Colombian Population” to draft guidance promoting the donation of more nutritious food during the pandemic.⁸⁶ Similarly, Food from the Heart, a food bank in Singapore, restricts what foods are accepted, discouraging donation of ultraprocessed junk food to promote public health for its recipient communities.⁸⁷ Countries could use similar standards to inform the development of a tiered tax donation policy.

IN ORDER TO ALLEVIATE THE POTENTIAL DONATION BARRIER POSED BY THE APPLICATION OF VAT AND MINIMIZE PERVERSE INCENTIVES WITHIN THE TAX CODE TO DISCARD SAFE, SURPLUS FOOD:

8. EXEMPT FOOD DONATION FROM THE LIST OF TRANSACTIONS THAT ARE VAT-TAXABLE AND ENSURE FOOD DONORS ARE ALLOWED TO RECLAIM VAT CREDITS ATTACHED TO FOOD THAT IS DONATED

VAT policy frameworks impose donation barriers in many countries where donating food is a VAT-taxable event or where donors are not able to claim credits for the input VAT they paid when acquiring the products. As described above, VAT-taxable donation creates a financial obligation for either the donor organization or the receiving food recovery organization to pay the VAT at the time of the donation. Exempting food donation from the VAT scheme ensures that food recovery organizations are not required to pay the VAT debit on the donated foods; however, it creates a cost burden on donors, who are left with a negative balance. To reiterate, input VAT is usually reimbursed either when they sell the product to the end consumer, or receive credit from the government for the VAT paid on goods that are discarded and considered a “business loss.” To mitigate these VAT concerns—and thereby reduce barriers to food donation—countries should enact policy either to exempt food donation from VAT with a right to deduct or apply a zero rating (i.e., a VAT rate of 0%) on donated food items.⁸⁸

In Guatemala, for example, the VAT law exempts all contributions and donations made to legally registered nonprofit educational, social assistance, or religious associations, foundations, and institutions.⁸⁹ The government has specifically constructed the VAT law to clarify that donors are made whole for the input VAT they paid to acquire food they later donated, provided the donation is made to a food bank or other food recovery organization that has registered as a social assistance organization.⁹⁰ Similarly, the Chilean government amended its VAT law to allow donors to recover a VAT credit for food donations,⁹¹ expressly permitting taxpayers to claim the tax credit on the donation of unmarketable food.⁹² Accordingly, businesses that donate safe, surplus food free of charge may still recoup the VAT credit that they would otherwise recover through the sale of the food, if the food was still commercially viable. As the following section discusses, the ideal policy solution is to prohibit reclaiming credits for discarded food unless the taxpayer demonstrates an attempt to donate the food first, further incentivizing donation and minimizing any appeal to waste safe, surplus food.

An even simpler approach, and the best practice in this respect, is to zero rate food donations so they do not trigger a VAT in the first place. Zero rating is often done for categories of goods and services. For example, to enhance food security among low-income consumers some countries like South Africa zero rate basic staple and essential food items, thereby eliminating the VAT.⁹³ Other nations specifically zero rate donated food. In the Czech Republic, for example, the law set a zero rate of VAT on donated food⁹⁴ instead of the usual 15% paid on staple food.⁹⁵ In addition, to clarify the issue of VAT for donations, the Czech Directorate of Finance issued guidelines explaining how to apply VAT when donating goods to food banks.⁹⁶ In Estonia, food donated to charities benefits from a zero rate of VAT as long as the donor “writes off” the products in a report by declaring its inability to sell the food.⁹⁷ Mexico has adopted a similar scheme, zero rating food donation to ensure that no VAT is due at the time of donation and maintaining the donor’s ability to reclaim input VAT paid along the value chain in obtaining the food inputs.⁹⁸ This design of tax policy removes the VAT burden from both the donor business and the recipient organization.

Creating flexibility in the VAT scheme ensures that food donors are not deterred from donating food. As a result, the tax will help increase donations and reduce the waste of safe food still suitable for human consumption.

9. RESTRICT OPPORTUNITIES TO DEDUCT DISCARDED FOOD AS A “BUSINESS LOSS”

While most governments do not seek to incentivize food waste, they can unintentionally and perversely increase FLW by permitting food donors to claim a credit or deduction for unmarketable food under the guise of a “business loss,” regardless of whether the food is donated or thrown away. Even when governments create a level playing field for donation and waste, supply chain actors are less likely to take on the costs and trouble to donate and will instead opt for the easier alternative of filing for the loss. Tax schemes should instead reinforce the food recovery hierarchy used in many countries to guide food rescue priorities,⁹⁹ permitting donors to only claim such credits/deductions if they have first demonstrated a good faith effort to donate food that is still suitable for human consumption. Structuring tax benefits to make food donation more financially attractive entails restricting tax benefits available for discarding food and augmenting the benefits offered for donated food.

Mexico and Chile have both implemented this best practice. Under the Mexican Tax Code,¹⁰⁰ donors may claim a 7% deduction for food that is disposed (the same deduction they can claim for food that is donated), citing a “business loss.” However, the taxpayer must first demonstrate an attempt to donate the food to a qualified nonprofit.¹⁰¹ Donation-receiving entities may decide to not accept the donation if it does not meet safety standards or for other reasons. In such circumstances, once the donation is declined, the taxpayer may still claim the deduction. Chile’s reformed Tax Law goes one step further.¹⁰² First, the law does not permit taxpayers to claim voluntarily discarded food products that are unmarketable but still suitable for human consumption as a

deductible expense.¹⁰³ Second, to further deter discarding food, Chile also places a 40% tax penalty on taxpayers' income if they voluntarily and unnecessarily throw away food.¹⁰⁴ These amendments reinforce food donation as an economical alternative to throwing away food and penalized unnecessary waste of safe, surplus food.

CONCLUSION

Taxes are a powerful policy instrument that governments can leverage to increase food donation and reduce FLW. However, depending on which policies a government adopts, taxes can either be an obstacle to donation or an incentive for the donation of wholesome foods. Tax benefits can offset the costs of making donations, which incentivizes taxpayers and ensures that donation is an economically competitive alternative to discarding suitable food. Furthermore, tax policy can promote innovative food recovery models and reinforce other policy goals such as national nutritional guidelines. Restrictive and narrow tax benefits, however, can undermine this potential incentive. Tax schemes should also eliminate barriers such as the VAT, which may deter donation. While this issue brief highlights issues and best practices, it is not exhaustive. Policymakers should examine their respective national tax policies to identify new opportunities for donation incentives and use the extensive library of country- and issue-specific research and resources available through the Atlas project (atlas.foodbanking.org).

ENDNOTES

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- ²⁰ See *Library*, THE GLOBAL FOOD DONATION POLICY ATLAS, <https://atlas.foodbanking.org/atlas.html> (last visited July 23, 2021).
- ²¹ In Argentina, donors can claim credit to be reimbursed for the VAT paid for discarded food but not for donated food.
- ²² For individual donors, the tax credit is equal to 15% of the first \$200 of total donations. The tax credit increases in value to 29% of donations over CAD\$200. If an individual’s total taxable income exceeds \$214,368, then the credit is 33% of donations over CAD\$200. There is a tax deduction for corporations for the value of gifts they make to a registered charity, which can result in federal and provincial tax assistance generally ranging from 26% to 31% of the fair market value of these donations, depending on the province.
- ²³ Despite the high cap, Canada is ranked as “limited policy” because the fair market value of donated food derived from a donor’s inventory will count as taxable income, making the charitable donation tax incentives unattractive and essentially valueless to the donor.
- ²⁴ A 2020 Chilean tax reform clarified that the voluntary destruction of unmarketable food that is still suitable for human consumption is not a deductible expense and may be subject to a tax penalty.
- ²⁵ The tax credit available in Colombia is equivalent to 25% of the value of donations in the taxable year.

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27 In Guatemala, the charitable deduction is limited to 500,000 quetzales (about US\$65,000) annually.
28 The Peruvian Food Donation Law also provides for additional benefits to help promote donation, including in states of emergency.
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