

ISRAEL **LEGAL GUIDE**

FOOD DONATION
LAW AND POLICY

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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 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 the Harvard Law School Food Law and Policy Clinic (FLPC) and The Global FoodBanking Network (GFN). To learn about and compare the food donation laws and policies for the countries FLPC has researched to date, visit www.atlas.foodbanking.org.

About the Harvard Law School Food Law and Policy Clinic

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/food-law-and-policy.



About The Global FoodBanking Network

The Global FoodBanking Network (GFN) 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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INTRODUCTION

Purpose of this Guide

Food loss and waste (FLW) is one of the greatest food system challenges. An estimated one-third of food produced globally is ultimately lost or wasted along the supply chain.¹ This amounts to approximately 1.3 billion tons of food each year that ends up in landfills.² FLW occurs at every stage of the supply chain for a variety of reasons: during harvest and processing (packaging) due to low market prices, high labor costs, and demand for perfect-looking produce; during distribution due to spoilage; during the retail phase due to the overestimating of customer demand by grocery stores and restaurants; and during the consumption phase due to inefficient shopping and cooking practices and confusion and inconsistency around date labels.³

These inefficiencies have significant environmental, economic, and social consequences. Food that is lost or wasted has a huge carbon footprint of 3.3 gigatons,⁴ wasting roughly 28% of agricultural land⁵ and accounting for 8%, or 70 billion tons, of total global greenhouse gas emissions.⁶ Collectively, this damage costs approximately US\$940 billion per year.⁷ Meanwhile, more than 820 million people are undernourished and one in nine is food insecure.⁸ The international community has sought to address this paradox and mobilize efforts to reduce food waste, especially within the framework of the *2030 Agenda for Sustainable Development* and Sustainable Development Goal 12.3.⁹

In many countries, food donation is a popular and logical solution to redirect safe, surplus food destined for landfills into the hands of those who need it most. Most food donations are facilitated through food banks or other charitable, nongovernmental organizations that recover surplus, wholesome food and redirect it to local beneficiary agencies such as soup kitchens, shelters, and community pantries to feed low-income, food-insecure individuals. As food insecurity and FLW continue to rise, new and innovative models of food recovery have emerged around the world.

However, uncertainty surrounds food donation laws and regulations. To help address the most pressing questions, the Harvard Law School Food Law and Policy Clinic (FLPC) and The Global FoodBanking Network (GFN) have partnered to create The Global Food Donation Policy Atlas.¹⁰ This innovative, multiyear partnership maps the laws and policies affecting donations worldwide. The project aims to identify and explain national laws relating to food donation, analyze the most common legal barriers to promoting greater food donation, and share best practices and recommendations for overcoming these barriers.

THE PROJECT AIMS TO IDENTIFY AND EXPLAIN NATIONAL LAWS RELATING TO FOOD DONATION, ANALYZE THE MOST COMMON LEGAL BARRIERS TO PROMOTING GREATER FOOD DONATION AND SHARE BEST PRACTICES AND RECOMMENDATIONS FOR OVERCOMING THESE BARRIERS.

This Legal Guide focuses on Israel, where approximately 2.6 million tons of food is wasted each year, while 19% of the population is food insecure.¹¹ According to the accounting firm BDO, 37% of total food produced in Israel is wasted.¹² FLPC and GFN, in collaboration with partners in Israel,¹³ developed this resource to help food donors, food banks, food recovery organizations, and other intermediaries (hereinafter collectively referred to as “food distribution organizations,” or FDOs, which is the terminology used commonly in Israel) understand the relevant legal frameworks that affect food waste reduction and food donation efforts. It also serves as a resource for individuals and institutions in other countries that are looking to inform their own food donation laws and policies.

After providing initial commentary on food loss and recovery in Israel, this Legal Guide provides an overview of the legal frameworks most relevant to food donation at the national and local levels. The subsequent sections look more closely at the laws generally applicable to food donation: food safety laws and regulations, date labeling laws, “Good Samaritan” or liability protection laws, tax incentives for food donation and/or tax policy disincentives, food waste deterrence laws that penalize food waste or require recovery, and government grants or other incentives.

State of Food Insecurity, Food Loss, Waste, and Recovery in Israel

Israel faces a unique set of challenges regarding food production, food insecurity, and food waste. As a small country with an arid climate and relatively high population density, both water and land are valuable and limited resources in Israel.¹⁴ Despite these challenges to agricultural production, Israel ranks higher than much of the world on issues such as food safety, sufficiency, and adequacy of food supply.¹⁵ However, Israel falls below the global average on food security.¹⁶ An estimated 16.2% of Israelis were food insecure in 2021.¹⁷ Further, Israeli citizens spend more on food than much of the world.¹⁸ This, coupled with significant income disparities and a relatively high poverty rate, makes food insecurity a particularly severe issue for Israeli families.¹⁹

APPROXIMATELY 37% OF FOOD PRODUCED IN ISRAEL IS WASTED. THE ECONOMIC VALUE OF FOOD WASTE IN ISRAEL THROUGH ALL STAGES OF THE VALUE CHAIN EQUATES TO 21.3 BILLION NEW ISRAELI SHEKELS (NIS), OR US\$5.6 BILLION.

Amid high rates of food insecurity, Israel also has high rates of FLW, an estimated 2.6 million tons.²⁰ Approximately 37% of food produced in Israel is wasted. The economic value of food waste in Israel through all stages of the value chain equates to 21.3 billion new Israeli shekels (NIS), or US\$5.6 billion, without factoring in environmental costs.²¹ If the unnecessary waste of natural resources like land and water and the costs of greenhouse gas emissions and pollutants are factored in, the economic loss of food waste in Israel grows to NIS23.5 billion (US\$6.1 billion).²² Wide disparities exist between levels of FLW across categories of foods produced and consumed in Israel, though rates are highest overall (approximately 44%) for fruits and vegetables, according to the Ministry of Agriculture and Rural Development (hereinafter shortened to the Ministry of Agriculture).²³ While some FLW happens during agricultural production, the majority (80%) occurs during distribution and consumption.²⁴ According to the United Nations Environment Programme, nationwide household food waste estimates were 105 kilograms (about 231.49 lbs) per capita in 2019.²⁵ Another study just in the city of Haifa shows household food waste estimates at 94 kilograms per capita in 2018.²⁶ Food waste rates are also high in Israeli institutions such as hotels, Israel Defense Forces military bases, hospitals, and schools, with an estimated 215,000 tons of food wasted in 2021.²⁷ A third of food wasted at these institutions is rescuable, totaling about 63 million meals.²⁸ According to estimates by Leket and BDO, 50% of total food wasted is recoverable and could feed those who are food insecure.²⁹

In response to rising food waste and food insecurity, the Israeli government took legislative action, passing the Food Donation Encouragement Law in 2018.³⁰ The law offers liability protection for each actor in the food donation chain.³¹ Under the law, food donors, nonprofit food recovery organizations, employees, and volunteers are protected from damages that may result from donated food, thereby encouraging more donation activity.³² The law also introduces a mechanism to publicly recognize donors, though this has not yet been implemented.³³

Besides the food donation law, in recent years many government agencies have introduced initiatives to reduce FLW. Most notably, the Ministry of Environmental Protection (MoEP) actively partners with Leket, the largest food rescue group in Israel, to compile annual FLW data reports and conduct research, including on the causal

relationship between date labeling and rates of food waste and potential solutions.³⁴ MoEP was also a strategic partner in a food waste working group led by social enterprise The Natural Step (TNS) Israel, which resulted in a voluntary agreement to reduce food waste in organizations, businesses, and local authorities.³⁵ MoEP, the Ministry of Agriculture, and the Ministry of Economy all expressed support for the voluntary agreement.³⁶ The “Green Badge”—a collaboration between MoEP, the city of Tel Aviv-Jaffa, and the Israel Standards Institute—was introduced in 2016. It acknowledges particularly sustainable cafes and restaurants, with ongoing efforts to reduce food waste as one of the requirements.³⁷

In 2017 the Ministry of Social Affairs and Social Services launched the National Food Security Program in partnership with Eshel Jerusalem and Leket Israel to increase food access for those in need.³⁸ Through this initiative, each month nearly 11,000 food-insecure families receive benefit cards with NIS500 (US\$145) to purchase food, with half of the funds allocated for purchases at the supermarket and the remainder earmarked for rescued produce.³⁹ The large-scale program was the first of its kind in Israel, as the ministry moved away from previous models that only provided food or financial aid to families during the holidays. Instead, the program supports families consistently throughout the year.⁴⁰ With half of the program funds dedicated to rescued food, the Israeli government elevated the role of food donation in addressing the issues of hunger and food insecurity.⁴¹ A new government contract for operating the National Food Security Program was issued in May 2021, increasing the participation to 26,000 families with home delivery of NIS150 worth of rescued fruits and vegetables in addition to a NIS350 benefit card.⁴²

In 2018 the MoEP collaborated with TNS to establish a “Food Waste Reduction Week,”⁴³ which occurs every year in March. During the week, TNS hosts a one-day conference for stakeholders such as restaurant owners, sustainability advocates, farmers, and executives from food systems-focused technology companies to share ideas for FLW reduction.⁴⁴ Further, the MoEP and the Ministry of Education in Israel hold various educational programs to educate students about “smart consumption” of produce and food waste prevention. Nearly 100,000 students participate every year.⁴⁵ To raise public awareness, the Ministry of Agriculture issued guidelines on proper storage of produce, funded public workshops on how to prevent food waste at home and at retailers, and formulated marketing strategies to encourage the sale and purchase of “ugly” fruit and vegetables and the establishment of farmer’s markets.⁴⁶

In 2019 the Ministry of Agriculture released a plan to help reduce loss of fresh agricultural produce. The plan includes provisions such as requiring marketing chains to sell in different package sizes to suit various household sizes, measures to preferentially support multiuse packaging, research into extending shelf life, and information on how to work with retailers directly to reduce food waste and earn points in the ministry’s pilot program.⁴⁷ Also in 2019, the Government Companies Authority, the administrative agency that oversees all state-owned companies, published guidance for corporate social responsibility, which includes information on recovering surplus food from catering companies and donating it to Israelis in need.⁴⁸

Various government policies and national plans also address FLW. The Waste Management Policy published by the MoEP in January 2021 includes sections related to reducing food loss at the early stages of production and food waste at the later stages of production and distribution. In October 2021 the Israeli government approved a 100-Step Climate Action Plan, which includes a chapter about resilient food systems. In 2022 the MoEP led an interministerial Committee on Preparing Food Systems for Climate Change, which includes representatives from the Ministries of Agriculture, Health, Intelligence, and Education as well as from the Institute for National Security Studies (INSS). The committee’s objective is to develop targets and a medium-range action plan (through to 2030) to prepare food systems for climate change (both adaptation and mitigation), including a working group specifically on reducing food waste.⁴⁹ Alongside increasing government attention to FLW, a dense network of nonprofit organizations (NPOs) are working toward alleviating hunger in Israel and rescuing food fit for human consumption. Leket Israel, the largest of these, operates as an umbrella organization and partners with a network of more than 250 other NPOs, organizations, and municipalities throughout the country to rescue agricultural surplus and prepared meals for redistribution.⁵⁰ In 2021 Leket rescued approximately 1.7 million prepared meals from Israel Defense Forces military bases, hotels, catering companies, and other

sources. It also received 25,000 tons of surplus fruits and vegetables directly from agricultural producers.⁵¹ Each week, this surplus food is distributed to approximately 223,000 people in need.⁵²

As Israel seeks to reduce FLW and mitigate food insecurity, food distribution organizations like Leket and current and potential food donors must recognize and understand the laws that apply to food donation. The remaining sections of this Legal Guide provide an overview of Israel's food donation legal framework and address the issues most likely to arise for food donors, food recovery organizations, policymakers, and other interested stakeholders.

OVERVIEW OF ISRAEL'S RELEVANT LEGAL FRAMEWORK

The Israeli system of government is based not on a written constitution but on “basic laws,” legislation, parliamentary practice, and executive orders.⁵³ The Israeli government is a multiparty parliamentary democracy.⁵⁴ There are three branches of government: (1) legislative, (2) executive, and (3) judicial.⁵⁵ The legislative branch consists of the Knesset (house of representatives), the parliament of the country, comprising 120 members elected for four-year terms.⁵⁶ The Knesset enacts or amends basic laws and legislation and oversees the executive branch.⁵⁷ The executive branch (the government) comprises the cabinet of ministers and the prime minister.⁵⁸ The government administers internal and foreign affairs and may act on any issue not delegated to another authority.⁵⁹ The president is elected for a seven-year term by a simple majority of the Knesset.⁶⁰ Under the judicial branch, the Israeli secular court system consists of district and magistrate's courts that oversee criminal and civil matters, specialized courts (such as traffic and military courts), and the supreme court that decides appeals from lower courts and is a court of first and last instance (where both the initial action is brought and serves as the court of appeals).⁶¹

Israeli law recognizes three types of local authorities: (1) city councils (or municipalities), which provide the framework for urban centers with populations of more than 20,000; (2) local councils, which manage towns with populations of between 2,000 and 20,000; and (3) regional councils, which are responsible for several villages grouped within a certain radius.⁶² As of 2019, there are 77 municipalities, 124 local councils, and 54 regional councils.⁶³ Each local authority is administered by a mayor or chairperson and a council, the size of which is determined by the Ministry of the Interior according to the authority's population.⁶⁴ Local governments are responsible for education, culture, health, social welfare, road maintenance, public parks, water, and sanitation.⁶⁵ Each local authority functions through bylaws complementing national laws, which must be approved by the Ministry of the Interior, and is represented in national government on a voluntary basis through a central body called the Union of Local Authorities.⁶⁶

PUBLIC HEALTH (FOOD) PROTECTION LAW

The 2015 Public Health (Food) Protection Law (PHPL), which replaced the 1983 Public Health Ordinance (Food) Law,⁶⁷ regulates all food production, importation, and sale in Israel.⁶⁸ The PHPL grants the Ministry of Health the broad authority to promulgate regulations to guarantee the quality, standard, and safety of food products in Israel.⁶⁹ It includes labeling and food marking standards, production licensing requirements, and the broad regulation of additives, contaminants, health claims, hygiene and food safety, imports, and many other items that concern the integrity of the Israeli food supply.⁷⁰ Notably, section 11 of the PHPL specifically regulates the use of leftover food. Section 160–162 carves out exemptions for FDOs.⁷¹ In addition to the PHPL, the Ministry of Health issued a number of specific food regulations. These include the Protection of Public Health (Food) (Declaration of Sensitive Food) 2019, determining which food products are considered “sensitive,”⁷² and the Regulations for the Protection of Public Health (Food) (Nutritional Labeling) 2017,

requiring front of pack labeling for most prepackaged food products to identify excess sodium, sugar, or saturated fat.⁷³ Others are listed on the National Food Control Service Legislation (FCS, part of the Ministry of Health) website.⁷⁴

The National Food Services (NFS), a unit of the Israeli Ministry of Health, is the regulatory agency responsible for assuring food quality and safety for consumers. NFS sets standards, prepares and publishes regulations, and issues licenses for all locally produced and imported food in Israel.⁷⁵ NFS sets and enforces policies to supervise food factories, businesses, and transport operations; monitors food safety through surveys and studies; distributes relevant guidelines; and conducts trainings for employees.⁷⁶ The Environmental Health Department within the Ministry of Health approves food business applications and supervises the sanitary conditions of restaurants, institutional kitchens, food markets, and grocery stores.⁷⁷

FOOD DONATION ENCOURAGEMENT LAW

The 2018 Food Donation Encouragement Law civilly and criminally protects food donors, provided they follow applicable laws and are not “negligent.”⁷⁸ The legal protection also extends to FDOs’ employees and volunteers, removing civil or criminal liability for damage caused by the “transport, possession, or distribution” of food donations if they follow applicable laws and are not negligent.⁷⁹ The law encourages businesses to donate food by requiring the Ministry of Health to award businesses that donate to FDOs signs of appreciation annually.⁸⁰ The Ministry of Health also keeps records and publicly displays the list of businesses on its website.⁸¹

OTHER RELEVANT NATIONAL LAWS

Other relevant laws include Israel’s Value Added Tax Law⁸² and Israel’s Income Tax Ordinance,⁸³ which introduce tax incentives for donation. In addition, the Consumer Protection Order (Marking and Packaging of Food Products) is the main legislation authorizing Standard No. 1145, which regulates the labeling of prepackaged food sales and relates to date labeling.⁸⁴

LEGAL ISSUES RELEVANT TO FOOD DONATION

Food Safety for Donations

In many countries, a key barrier to the donation of surplus food is the lack of knowledge or readily available guidance regarding safety procedures for food donation. Potential donors are often uncertain as to which food safety regulations apply to donated food, as opposed to purchased food, as well as the steps necessary to safely donate food in compliance with applicable regulations to avoid liability. It is also often unclear if licensing or permitting requirements—germane to food offered for sale but potentially cumbersome for donated food—still apply when food is distributed free of charge. As a result, safe, surplus food that could be redirected to populations in need is instead often destined for landfills.

Charities and nonprofit organizations in Israel that distribute donated food are bound by the general food handling provisions in the aforementioned PHPL, which include sections that specifically address the activities of FDOs.⁸⁵ Section 159 exempts FDOs that are either nonprofits or public benefit corporations (registered on the Ministry of Health’s website) from the requirement of obtaining a production license for manufacturing, transporting, and storing food.⁸⁶ To qualify for this exemption, a main purpose of these FDOs must be to provide food for the needy.⁸⁷ The FDOs may provide food for a small token of payment, but they must not refuse to

provide food for those who cannot pay the nominal fee.⁸⁸ They may not sell food otherwise (e.g., a nonprofit catering service would not be eligible).⁸⁹

By including food donation activities in the law, the Israeli government makes it clear that food donation is legally permissible. However, short of removing licensing requirements for FDOs, the law does not elucidate specific food safety guidance or handling practices that apply only to FDOs or indicate which safety procedures are pertinent only to food destined for sale, not donation. Section 160 indicates that the minister will establish instructions regarding the applicability of chapters 3 through 7 of the law (which broadly cover regulation of food production, export, sale, and enforcement) to FDOs,⁹⁰ though at the time of this writing, these instructions have not yet been drafted or disseminated.

Date Labeling

Date labels affixed to food products are a major driver of food waste and can also be an obstacle to food donation. As explained in the previous section, most food donors and food recovery organizations are appropriately cautious about donating food that does not meet safety standards, but it is not always clear which standards relate to food safety. While fresh products like fruits and vegetables will appear visibly spoiled when they are no longer safe to consume, this can be difficult to gauge with packaged foods. Many donors interpret date labels affixed to such food products as indicators of safety and will therefore throw away food once the “expiration date” passes. Intermediaries may refuse to accept donated food after this date, deeming the food product unfit for human consumption.

Despite this interpretation, for the vast majority of foods, date labels indicate freshness or quality rather than food safety. Manufacturers use a variety of quality-based methods to determine the time frame for label dates, most of which reflect when the food will be at its “peak quality.”⁹¹ Nevertheless, global research indicates that consumers generally misconstrue date labels as indicators of safety rather than quality. In the United Kingdom, for example, researchers found that consumers discarded about 22% of food that they could have eaten due to confusion over date labeling.⁹² Similarly, 84% of Americans report that they throw away food after the expiration date passes due to safety concerns, even if there is a minimal risk of foodborne illness at that time.⁹³

Israel mandates date labeling for food products.⁹⁴ The central legislation regulating food labeling is the 1998 Consumer Protection Order (Marking and Packaging of Food Products), which states that prepackaged food products must be labeled in accordance with Standard No. 1145 of the Standards Institute.⁹⁵ Standard No. 1145 provides labeling requirements for prepackaged food—excluding unprocessed fruits and vegetables—intended for retail sale, industrial production, and wholesale packaging.⁹⁶ Manufacturers generally determine the shelf life, date of expiration, and manner of marking for prepackaged food products, with a few exceptions.⁹⁷ However, for many animal products (e.g., meat, fish, and eggs), the shelf life is established by law.⁹⁸

Israel uses a dual date labeling scheme with one of two date labels used on products: (1) “use by” (שומישל דע ריראט דע) is a safety-related date used on food that is sensitive to microbial spoilage and may be a danger to human health after a short period (called “sensitive foods”⁹⁹), and (2) “best before” (ינפל שמתשהל פידע) is used for nonsensitive foods.¹⁰⁰ The Ministry of Health’s website clarifies that even after this “best before” date, food is often still safe to consume if stored correctly without damaged packaging, though it may begin to lose characteristics such as taste or texture.¹⁰¹

Food cannot be sold past the expiry date, but Section 162 of the PHPL permits a FDO to use or distribute food that has passed the “recommended last date of use” (שומישל קלמומה ונרחאה ריראתה) if it is not a “sensitive” or “designated” type of food and if the FDO has received written authorization from the manufacturer to use the food after the date. “Designated” foods are those foods adapted to special health or nutritional needs.¹⁰² Therefore, while food cannot be donated past the “use by” date, it may in certain circumstances be donated past the “best before” date with approval from the manufacturer.

Liability Protections for Food Donation

A significant barrier to food donation is the fear among donors that they will be found liable if someone becomes sick after consuming donated food. To combat these concerns, Israel has established protections for both food donors and food recovery organizations to limit the likelihood of liability.

Israel imposes strict liability on the manufacturers of defective products, meaning that the defendant need not have intent or negligence to be held liable for harm caused.¹⁰³ Therefore, providing liability protection for food donation is even more significant to assuage potential fear of liability among donors. Through the Food Donation Encouragement Law of 2018, Israel offers civil and criminal liability protection to those who donate to FDOs, provided the donor follows all applicable laws and is not negligent.¹⁰⁴ Israel's liability protection does not extend to direct donation to individuals, but it still covers food distributed for a nominal fee. FDOs and their volunteers and employees are also not liable for any damage to the recipient of the donated food that occurs through transportation, possession, or distribution as long as the organization or individual follows any applicable law and is not negligent.¹⁰⁵

The law protects food donated to a FDO that distributes that food to those in need; it does not state that the food must be provided to those in need for free, so it should offer protection for food distributed for free or for a nominal fee, as FDO's are allowed to make distributions for a nominal fee under PHPL.¹⁰⁶ Israel's liability protection does not offer protection for direct donation made from a food donor to individuals in need, it only covers donations made by a food donor to a FDO that then distributes the food to those in need. There is no additional guidance provided on the Food Donation Encouragement Law, and there is no specific guidance in the law as to what qualifies as negligent behavior such that a food donor or FDO would lose their protection.¹⁰⁷

Taxes

Reducing FLW results in sizable economic benefits to society, as it minimizes the costs associated with producing and discarding food that is never consumed. Food donation also helps mitigate the costs of hunger and stimulates the economy: food recovery organizations provide jobs or sponsor community development, and recipients of donated food can spend limited financial resources on other basic goods and services.

Yet food donation can be expensive, as food donors must allocate time and money to glean, package, store, and transport surplus food that otherwise would be discarded at no cost. As a result, it is often easier and less expensive for farmers, businesses, and private individuals to throw away food instead of donating it. Some countries have sought to address this issue by offering tax incentives and removing financial barriers to food donation.

INCENTIVES

Tax incentives can provide significant support for food donation efforts and for the reduction of FLW. For example, corporate donors may be more likely to donate surplus food to FDOs if they receive a charitable deduction to offset the cost of transportation and logistics.

In Israel, both monetary and in-kind donations are eligible for a tax credit. According to the Israel Income Tax Ordinance (ITO), a taxpayer that contributes an amount more than NIS200 (in the year 2023) to a national fund or to a certified public institution¹⁰⁸ (e.g., FDOs) in a certain tax year is eligible to receive a tax credit for a percentage of the value of the donation—35% of the value if the taxpayer is an individual or 23% of the value for a corporation (the current corporate tax rate in the year 2023). In a single tax year, the tax credit cannot exceed 30% of the taxpayer's chargeable income or exceed NIS10,019,808 (in the year 2023), whichever amount is less (the tax credit ceiling).¹⁰⁹ If taxpayers donate more than the credit ceiling, they can use the remaining

tax credit over the following three tax years.¹¹⁰ According to the Israeli Tax Authority, taxpayers who make in-kind donations (like food) are also eligible for tax credits, using the fair market value of the in-kind donations to determine the amount of the credit.

BARRIERS

While certain tax schemes may encourage food donations, they may also stand as potential deterrents. In many countries, the Value-Added Tax (VAT) or Goods and Services Tax (GST) presents a financial barrier to donating food if donation is treated as a taxable event, or if the donor cannot reclaim VAT that they paid when acquiring the inputs for food that is later donated. VAT is a national tax (or in some countries state-level tax) that is levied on a good at each stage of the supply chain, from production to the point of sale, whenever value is added.¹¹¹

Israel imposes a VAT at a rate of 17%.¹¹² Fruits and vegetables are exempted from VAT, meaning the tax only applies to cooked and processed food donations.¹¹³ The Israeli VAT Law applies equally to gifts, as the definition of a “sale” includes among other things bestowing goods as a gift or donation.¹¹⁴ The VAT Law grants “malkar” (“Not for Profit Institution”) status to organizations that 1) do not engage in for-profit business activities and 2) and are not a financial institution.¹¹⁵ Entities with “malkar” status still pay the 17% VAT upon purchasing goods and services, but do not collect VAT from their customers. In order for donors to receive the tax credits mentioned above, as well as not pay VAT at the time of donation, the donation must be made to a registered “malkar”.¹¹⁶

To specifically deal with VAT in relation to donations, the VAT Authority published a Circular (1/2003).¹¹⁷ According to the circular, for a dealer, donation is considered a “transaction” subject to VAT.¹¹⁸ The donation is treated differently depending on if the donated goods are “valueless” (unsaleable), or if the goods retain market value.

Where the donated item is “valueless” (“it cannot be sold and is intended for destruction”) the price of the donated property would be considered zero and no effective VAT would apply, thus no VAT is due at the time of transfer to the non-profit organization.¹¹⁹ Further, the input tax deducted by the donor at the time of originally purchasing the good is treated as a legally deducted tax and the donor will not be required to return the input tax deducted.¹²⁰ This is subject to the following conditions: 1) the goods must be inventory or equipment in the donor’s business and not designated in advance as donations, 2) the goods must be damaged, worthless, outdated, unsaleable, have a very low chance of sale, would sell at a loss price, (when the value of the goods is 50% lower than the cost of the property) or, in the case of food specifically, unsaleable due to proximity to expiration, 3) the goods must be donated to an organization with *malkar* status and are designated for distribution for free distribution to those in need, 4) the donor must make a list of the goods that were donated with a declaration as to why they are valueless with an approval from a CPA, and 5) the donor must receive a notification from the “*malkar*” that the goods were registered in its books.¹²¹

If the donation is of goods that retain value—such as those that are from the “regular” inventory of the donor and remain saleable—and the above conditions (minus condition 2) are met, then the taxable price is determined not by the market price, but just the cost of production (excluding profit).¹²² In such cases, if the donor decides not to issue and invoice and deduct the input tax for the purchase of the donated good, they will not need to charge VAT tax at the time of transferring the goods to the “*malkar*” or nonprofit organization.¹²³

Thus, under the conditions outlined in the circular, VAT will typically not pose a barrier to donors seeking to redistribute surplus that is “valueless” or where the value of foods is lower than 50% of the cost of the property, which is the most common case for donated foods.

Donation Requirements or Food Waste Penalties

To address FLW, some countries are taking steps to push food waste generators to divert their waste from landfills by passing food waste deterrence laws and policies such as organic waste disposal bans, food donation requirements, or food waste tax penalties. Food waste deterrence laws are the universe of laws or policies that aim to reduce food waste and increase food recovery by making food waste financially burdensome for food waste generators, such as policies that restrict food waste going to landfills, mandate food donation or diversion, or use economic penalties on food waste. These policies influence business behavior and promote sustainable food systems. In Israel, no current national or local laws in any way require food donation or penalize food waste.

Government Grants and Incentives

Grants and incentive programs funded at the national or local level offer another important resource for food donation initiatives. This is particularly true in countries where donors consider tax incentives insufficient to offset the costs of donation or where a lack of infrastructure limits food recovery efforts. For example, government grants can help food donors and food recovery organizations acquire equipment and resources necessary for recovering, storing, processing, and transporting food for donation. Government funding can also support innovations and emerging technologies that will make food donation more efficient and sustainable.

No specific government grants support food donation activity or infrastructure in Israel. However, some national food security programs strategically include rescued food, such as the aforementioned National Food Security Project—funded by the Ministry of Social Affairs and Social Services—which earmarked half of the program’s budget for rescued food to address the dual burden of FLW and food insecurity.¹²⁴

Beyond financial incentives, Israel also intends to use public recognition to encourage food donations. As part of the 2018 Food Donation Encouragement Law, businesses that donate food to FDOs are awarded annual signs of appreciation from the Ministry of Health.¹²⁵ The Ministry of Health also publishes records of businesses that donate food as well as records of the awarded certificates on its website.¹²⁶ However, as of the time of this writing, no food donor has been given certificates of appreciation from the Ministry of Health as part of the 2018 Food Donation Encouragement Act.

CONCLUSION

This Legal Guide outlines Israel’s current laws, policies, and programs that relate to FLW and food donation. While the government is primarily responsible for guaranteeing food security and advancing sustainable food systems, FDOs acting in a private capacity provide an additional social safety net. In Israel, food donation is protected from liability and there are sensible laws around donation past quality-related date labels.

This Legal Guide provides a starting point from which policymakers, private-sector actors, and civil society may better understand the current laws and policies relevant to food donation. It also offers a foundation for a dialogue about FLW prevention and the value of food recovery to Israel’s food security, economic stability, and environmental sustainability. To contribute to the discussion, a separate document produced under The Global Food Donation Policy Atlas project sets forth policy recommendations specific to Israel. In the meantime, food donors and food recovery organizations should consider the laws, policies, and legal issues discussed in this Legal Guide when donating food or distributing donated food to those in need. To better understand the regulation of food donation in Israel, donors, intermediaries, and policymakers should investigate the laws identified in this Legal Guide and seek additional legal counsel, if necessary.

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