Edited by Frans Vanistendael

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Taxation of Charities

Why this book?
This book comprises the final reports of the annual meeting of the European Association of Tax Law Professors (EATLP) held in Rotterdam, the Netherlands from 31 May – 2 June 2012. This book is divided into two parts. Part One comprises thematic reports that follow the general structure of the tax systems of the Member States: (1) Do non-profit organizations (NPOs) benefit from a special tax status? (2) What is the treatment of various categories of income of the NPOs in the income tax system? (3) Are there incentives for gifts and contributions to NPOs? (4) What is the VAT status of NPO activities and supplies to NPOs? (5) What is the impact of inheritance, estate and gift taxes on contributions to NPOs? (6) How are the problems resolved relating to the increasing cross-border transactions with NPOs and the fundamental freedoms in the European Union? There is a final chapter on the project of a common system for the European Foundation. By way of introduction to these “thematic reports” there is a general introductory report on taxing and regulating NPOs that discusses the policy issues, whether a special tax treatment of NPOs is desirable or necessary and, if so, what the scope of this special tax status should be.

In Part Two the national reports of 15 EU Member States and 4 non-EU countries (Norway, Russia, Turkey and Switzerland) are presented. They contain the full documentation on each national tax regime for charities and NPOs that was collected on the basis of a questionnaire. Although the reports are based on the standard questionnaire, some authors have followed their own national tax system, resulting in some variation in the general order of the national reports.

As governments tend to retreat from the area of culture, education and social aid because of the persistence of economic and financial stagnation in Europe, this book offers interesting suggestions for private non-profit alternatives to government intervention.

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Table of Contents

Preface xxxv

About the Authors xli

Part 1
Thematic Reports

Chapter 1: Taxing and Regulating Non-Profit Organizations 3
Mark Bowler-Smith and Huigenia Ostik

1.1. Introduction 3
1.2. Tax relief for commercial profits 4
1.2.1. The isolated view 5
1.2.2. The merged view 7
1.2.3. Commercial activity 8
1.2.4. Sources of income 10
1.2.4.1. Classification 11
1.2.4.2. The loss of private donations 14
1.2.4.3. Critique 16
1.2.4.4. Outputs 21
1.2.5. Unfair competition 22
1.2.5.1. Predatory pricing 24
1.2.5.2. Rapid expansion and retained earnings 26
1.2.5.3. Product market inefficiency 27
1.2.5.4. Concluding remarks 28
1.2.6. Mission drift 29
1.3. Regulating non-profit organizations 33
1.3.1. An independent regulator 37
1.3.2. One set of rules 39
1.3.3. Certainty 40
1.3.4. Type of government 41
1.4. Conclusion 42

Chapter 2: Income Tax Status of Non-Profit Organizations: Formal Requirements and Business Activities 45
Fabrizio Amatucci and Giuseppe Zizzo

2.1. Formal requirements for tax exemption status of non-profit organizations and non-profit activities 45

2.1.1. Introduction 45
2.1.2. Formal requirements – arguments in favour and against 46
2.1.3. Compatibility of formal requirements with EU law 46
2.1.4. Difficulties concerning use of material conditions 47
2.1.5. Additional requirements in EU law and impact of State aid provisions 49
2.1.6. Extension of formal requirements to non-resident non-profit entities 50
2.1.7. Conclusion 51
2.2. Business activities and the tax status of non-profit organizations and non-profit activities 52
2.2.1. How a business activity affects the tax status of non-profit organizations 52
2.2.2. Institutional activities 53
2.2.3. Non-institutional activities 54
2.2.4. Should the carrying out of a business activity affect the tax status of NPOs? 56
2.2.5. Privileged tax regimes for NOPs' business activities and fair competition 58

Chapter 3: Deduction of Gifts and Contributions and Other Tax Incentives in the PIT and CIT for Non-Profit Entities or Activities 61
Heike Jochum and Aikatarini Savvaidou

3.1. Preliminary remarks 61
3.2. Issues of constitutionality 62
3.3. Limited deductibility 63
3.3.1. Limits in the scope of activities 63
3.3.2. Limits in amount or value 63
3.3.2.1. Limits referring to the amount of the gift or contribution 64
3.3.2.2. Limits concerning the tax value 66
3.3.2.2.1. Limits referring to the value of the gift or contribution 66
3.3.2.2.2. Limiting the tax value by special deduction rates 66
3.3.2.3. Deduction of the donated amount versus tax relief 67
3.3.3. Time limits for deduction of gifts and contributions 67
3.3.4. Limits regarding the status of the donor or contributor 67

3.3.5. Special preconditions regarding the status of the non-profit entity 68
3.3.5.1. Size of the non-profit entity 68
3.3.5.2. Organization of the non-profit entity 69
3.3.5.3. Location of the non-profit entity and place of its activities 69
3.3.6. Formal requirements 70
3.4. License of disproportional deduction 71
3.4.1. Disproportional amounts from 120%-140% in Portugal 71
3.4.2. Multiplier of 125% and of 150% in the Netherlands 71
3.5. Endeavouring for sustainability 72
3.5.1. Promoting periodic gifts and long-term subsidies 72
3.5.2. Promoting trust funds and locked-up basic capital 72
3.6. Indirect benefit compensating for the tax burden 73
3.7. Conclusions 73

Chapter 4: NPOs (Charities) and VAT 75
Ole Gjems Onstad and Peter Melz

4.1. Introduction: No consensus and no clear frame of reference 75
4.2. Structure of VAT 76
4.3. Input VAT 77
4.4. Reduced rates 78
4.5. Wide variation in output VAT for NPOs under the VAT Directive and Member States' VAT legislation 79
4.6. Output VAT: Is a conditional exemption conceptually consistent with VAT? 81
4.7. Conditions for VAT status – harmonization with income tax provisions 83
4.8. Free supplies to the NPO – exemptions for free goods and pro bono services 84
4.9. Cross-border services and supply of goods 85

Chapter 5: Gift and Inheritance Tax with Regard to Charities 87
Rik Deblauwe, Anouck Biesmans, Bianca de Kroon and Frans Sonneveldt

5.1. Introduction 87
5.1.1. Scope of the report 87
5.1.2. Recommendation regarding relief from double taxation 88

5.1.3. Double tax conventions 90
5.1.4. Tax treatment of charities 92
5.2. Countries without gift or inheritance tax 93
5.3. Countries with a general exemption for charitable institutions 94
5.3.1. Hungary 94
5.3.2. Finland 94
5.3.3. Turkey 94
5.3.4. United Kingdom 95
5.3.5. Germany 95
5.3.6. Italy 96
5.3.7. Netherlands 96
5.3.8. Norway 97
5.3.9. Switzerland 97
5.4. Countries that tax charitable institutions 97
5.4.1. Belgium 97
5.4.2. Denmark 98
5.4.3. Greece 99
5.4.4. France 100
5.5. Trusts in civil and common law countries 102
5.5.1. Denmark 102
5.5.2. France 102
5.5.3. Italy 103
5.5.4. Netherlands 103
5.5.5. Switzerland 104
5.5.6. United Kingdom 104
5.5.7. Concluding remarks 104

Chapter 6: Impact of EU Law and ECJ Case Law on Fundamental Freedoms on Cross-Border Non-Profit Activities 107
Edoardo Traversa

6.1. Introduction 107
6.2. Preliminary question: Do charities belong to the internal market? 108
6.2.1. The economic activity requirement in EU treaties 108
6.2.2. The economic activity requirement in ECJ case law 110
6.2.2.1. Economic substance vs legal form 110
6.2.2.2. Economic activity in competition law 111
6.2.2.3. Economic activity in State aid law 112
6.2.2.4. Economic activity in public procurement law 113

6.2.2.5. Economic activity in labour law 113
6.2.3. Economic activity requirement and not-for-profit activities 116
6.3. Application of Treaty freedoms to charities and donors 118
6.3.1. Freedom of establishment (Article 49 TFEU) 119
6.3.2. Freedom to provide services (article 56 TFEU) 121
6.3.3. Free movement of capital (FMC) (article 63 TFEU) 123
6.4. Justifications for territoriality of tax incentives in favour of charities 125
6.4.1. Freedom of Member States to apply “different concepts of benevolence as well as different requirements for recognition” 126
6.4.2. Connection to society (or link with community) 128
6.4.3. Coherence sensu stricto and sensu lato 132
6.4.4. Effectiveness of fiscal supervision 134
6.5. Charities and EU Freedoms: Unresolved issues 136
6.5.1. Need to leave Member States enough room for manoeuvre in designing policies in areas remaining of their exclusive competence 136
6.5.2. Need to avoid too formal distinctions in the control of the compatibility of national measures with EU law 137
6.5.3. Interaction between Treaty freedoms and State aid 139

Chapter 7: The European Foundation Proposal: An Effective, Efficient and Feasible Solution for Tax Issues Related to Cross-Border Charitable Giving and Fundraising? 143
Sigrid J.C. Hemels

7.1. Introduction 143
7.2. Problems related to cross-border charitable giving and solutions within the EU framework 144
7.2.1. Non-applicability of tax incentives is a barrier for cross-border fundraising and giving 144
7.2.2. Defining the terms “effective”, “efficient” and “feasible” 145
7.2.3. Solutions within the framework of the EU 146
7.3. Application of tax incentives on cross-border charitable donations in the EU 148
7.4. The solution of the ECJ: Host country control 149
7.5. The FE Proposal and its solution 151

7.5.1. Historical background 151
7.5.2. The problems and solutions considered by the European Commission 154
7.5.3. The European legal context of the Proposal 155
7.5.4. The legal features of the FE 157
7.5.4.1. The statutes of the FE 159
7.5.5. Public benefit purposes of the FE 160
7.5.5.1. Exclusion of religion 161
7.5.5.2. Exhaustive list 162
7.5.6. Registration of FEs 163
7.5.7. Supervision of the FE 164
7.5.8. Penalties 167
7.5.9. Entry into force, effective application and review of the Regulation 167
7.5.10. Provisions on tax treatment 168
7.6. Effectiveness, efficiency and feasibility of the Proposal 169
7.7. Conclusion 172

Part 2
National Reports

Questionnaire 177
Frans Vanistendael

Chapter 8: Austria 181
Christoph Urtz

8.1. General questions 181
8.1.1. Are there special (preferential) tax rules for not-for-profit activities in general? Are these given in statutory law or have they been created by case law? 181
8.1.2. Which activities are within the scope of not-for-profit activities benefiting from special tax rules? 182
8.1.3. Are there special forms of legal entities required for non-profit status? 183
8.1.4. Are there special rules for non-resident or international non-profit entities? 183
8.2. Income tax 184
8.2.1. Material conditions for a special tax status 184
8.2.2. What are the formal conditions for special tax treatment? 184

8.2.3. Tax treatment of income from purely non-profit activities and tax treatment of business income used to support non-profit activities 185
8.2 4. Tax treatment of investment income used to support non-profit activities 185
8.2.5. Tax treatment of remuneration or reimbursement of expenses for employees, administrators, voluntary collaborators 186
8.2.6. Tax treatment of gifts, contributions and public subsidies in the tax base of non-profit organizations 186
8.2.7. Special rules for accumulation of income and/or wealth in non-profit organizations 187
8.2.8. Tax treatment of liquidation of a non-profit organization 187
8.2.9. Tax treatment of deductions of gifts and contributions in the person of the donor or contributor 187
8.3. VAT/GST or turnover taxes 188
8.3.1. What are the material conditions for special VAT status? 188
8.3.2. Are there specific formal conditions for special VAT status? 189
8.3.3. Are there any special rules with respect to the operation of the VAT exemption? 189
8.3.4. What are the VAT rules for cross-border services or supply of goods? 189
8.4. Inheritance, estate and gift taxes 190
8.4.1. Inheritance and gift tax 190
8.4.2. Real estate tax 190
8.5. Other taxes 192
8.5.1. Capital transfer tax 192
8.5.2. Stamp duties 192
8.5.3. Municipal tax 192

Chapter 9: Belgium 193
Edoardo Traversa and Barbara Vintras

9.1. General questions 193
9.1.1. Non-profit associations 193
9.1.2. Foundations 194
9.2. Income tax 195
9.2.1. The material and formal conditions for a special tax status 195

9.2.2. Tax treatment of remuneration or reimbursement of expenses for employees, administrators, voluntary collaborators 197
9.2.3. Tax treatment of business and investment income 198
9.2.4. Tax treatment of the deduction of gifts and contributions in the person of the donor or the contributor 198
9.2.5. Special rules for the accumulation of income and wealth 200
9.3. VAT 201
9.3.1. The material conditions for special VAT status 201
9.3.2. Special rules with respect to the operation of VAT exceptions 201
9.4. Inheritance, estate and gift taxes 202
9.4.1. Distribution of taxing powers in the Belgian federal state 202
9.4.1.1. Location of taxable event for transfer of property 203
9.4.1.2. Residence for gift and inheritance taxes 204
9.4.2. Registration taxes 204
9.4.2.1. Registration duties levied on the incorporation of charities (same tax regime for the three regions) 205
9.4.2.2. Registration taxes on donations 205
9.4.2.2.1. Walloon Region 205
9.4.2.2.2. Brussels-Capital Region 206
9.4.2.2.3. Flemish Region 206
9.4.3. Inheritance law and inheritance taxes 207
9.4.3.1. Walloon Region 207
9.4.3.2. Brussels-Capital Region 208
9.4.3.3. Flemish Region 208

Chapter 10: Denmark 211
Søren Friis Hansen and Jacob Graff Nielsen

10.1. General questions 211
10.1.1. Are there special (preferential) tax rules for not-for-profit activities in general? Are they given in statutory law or have they been created by case law? 211
10.1.1.1. Overview 211
10.1.1.2. Introduction to foundations in Danish law 212

10.1.2. Which activities are within the scope of not-for-profit activities? 214
10.1.3. Are there any special forms of legal entities required for non-profit status? 216
10.1.4. Are there special rules for non-resident or international non-profit entities? 217
10.2. Income tax 218
10.2.1. Introduction to tax treatment of charitable entities 218
10.2.2. Foundations covered by the FTA 219
10.2.3. Associations covered by CTA section 1(1)(6) 219
10.2.4. Business income from directly owned corporations – foundations and associations covered by FTA and CTA 220
10.2.5. Interest 220
10.2.5.1. Foundations covered by the FTA 220
10.2.5.2. Associations covered by the CTA 221
10.2.6. Dividends 221
10.2.6.1. Dividend on shares – foundations covered by the FTA 221
10.2.6.2. Dividend on shares – associations covered by the CTA 222
10.2.7. Capital gains 223
10.2.7.1. Capital gains – foundations covered by the FTA 223
10.2.7.2. Capital gains – associations covered by the CTA 224
10.2.8. Gifts 225
10.2.8.1. Gifts to foundations covered by the FTA 225
10.2.8.2. Gifts and donations to family foundations 225
10.2.8.3. Gifts and donations to non-family foundations 226
10.2.8.4. Donations to foreign foundations/trusts based in low-tax states 226
10.2.8.5. Gifts and donations to (labour) associations 228
10.2.8.6. Gifts and donations to associations covered by the CTA 228
10.2.9. Tax treatment of expenses 228
10.2.9.1. Operational expenses – foundations covered by the FTA 228
10.2.9.2. Operational expenses – associations covered by the CTA 230

10.2.9.3. Donations with public benefit purposes – foundations covered by the FTA 230
10.2.9.4. Donations for public benefit purposes – associations covered by the CTA 231
10.2.9.5. Other donations – foundations covered by the FTA 231
10.2.9.6. Provisions for public benefit purposes – foundations covered by the FTA 232
10.2.9.7. Provisions for public benefit purposes – associations covered by the CTA 233
10.2.9.8. Provision for consolidation – foundations covered by the FTA 233
10.2.9.9. The priority provision – foundations covered by the FTA 233
10.2.10. Liquidation of non-profit organisations 234
10.2.11. Tax treatment of remuneration or reimbursement of expenses for employees, administrators and voluntary collaborators 234
10.3. Inheritance, estate and gift taxes 235
10.3.1. Gifts – deductibility for donator 235
10.3.1.1. TAA section 12: Continuous and unilateral payments to charitable associations, etc. 235
10.3.1.2. TAA sec 8A: Donations to associations with public benefit purposes 238
10.3.1.3. TAA section 8H: Donations to research 239
10.3.1.4. TAA section 8S: Donations to cultural institutions 239
10.3.2. Inheritance – charitable institutions exempt from inheritance tax 240
10.4. VAT/GST or turnover taxes 241
10.4.1. Material conditions for special VAT status 241
10.4.2. Specific formal conditions for special VAT status 241
10.5. Explanation of technical terms 242

Chapter 11: Finland 245
Matti Myrsky

11.1. General questions 245
11.1.1. Are there special (preferential) tax rules for not-for-profit activities in general? 245
11.1.2. Which activities are within the scope of not-for-profit activities? 246

11.1.3. Are there special forms of legal entities required for non-profit status? 246
11.1.4. Are there special rules for non-resident or international non-profit entities? 247
11.2. Income tax 247
11.2.1. What are the material conditions of special tax status? 247
11.2.2. Tax treatment of investment income used to support non-profit activities 249
11.2.3. Tax treatment of remuneration or reimbursement of expenses for employees, administrators and voluntary collaborators 249
11.2.4. Tax treatment of gifts, contributions and public subsidies in the tax base of the non-profit organization 250
11.2.5. Special rules for the accumulation of income and/or wealth in non-profit organizations 250
11.2.6. Tax treatment of the liquidation of non-profit organizations 250
11.2.7. Tax treatment of deductions of gifts and contributions in the person of the donor or contributor 250
11.3. VAT 251
11.3.1. Material conditions for special VAT status 251
11.3.2. Special rules with respect to operation of the VAT exemption 252
11.4. Inheritance, estate and gift taxes 252
11.4.1. Inheritance and gift tax 252
11.4.2. Real estate tax 252
11.5. Other taxes 253

Chapter 12: France 255
Emmanuel de Crouy-Chanel

12.1. General questions 255
12.1.1. Introduction 255
12.1.2. The charity model 255
12.1.3. The non-profit model (*organisation à caractère non-lucratif*) 256
12.1.4. A new common (and statutory) exception 258
12.2. Income tax 259
12.2.1. Non-profit activities 259
12.2.1.1. General regime 259
12.2.1.2. Special regime 262

12.2.2. For-profit activities of a non-profit entity 263
12.2.2.1. General principles 263
12.2.2.2. Standard taxation of for-profit activities of a non-profit entity 263
12.2.2.3. Special exemptions 264
12.3. Local business tax 264
12.4. VAT 265
12.4.1. Introduction 265
12.4.2. Goods or services supplied by a non-profit entity of social or philanthropic nature (article 261(7)(1°)(b) CGI). 266
12.4.3. Social, educational, cultural or sports services supplied to members of the entity (article 261(7)(1°)(a) CGI) 266
12.4.4. Supplies to members of philosophical, religious or political associations (article 261(4)(9°) CGI) 267
12.4.5. Exemption of six charitable or fundraising events a year (article 261(7)(1°)(c) CGI) 267
12.4.6. Non-profit entities with annual turnover below EUR 60,000 (article 261(7)(1°) CGI) 268
12.5. Inheritance, estate and donation taxes 268
12.5.1. Inheritance and donation taxes 268
12.5.1.1. General regime 268
12.5.1.2. Exemptions 269
12.5.1.3. Manual gifts 270
12.5.1.4. Duty on money paid by insurance companies in application of insurance contracts in case of death 271
12.5.1.5. 3% tax on real estate held by non-residents 272
12.5.1.6. Trusts 272
12.6. Other taxes 273
12.6.1. Local taxes 273
12.6.1.1. Land taxes 273
12.6.1.2. Residence tax (*taxe d’habitation*) 274
12.6.1.3. Local urbanism tax (*taxe locale d’équipement*, TLE) 274
12.6.1.4. Other local taxes 274
12.6.2. Various taxes 275
12.6.2.1. Salary tax 275
12.6.2.2. Registration fees 275
12.6.2.3. Registration duty and sales tax on auctions 276
12.6.2.4. Tax on performances 276

12.7. Deductions of gifts and contributions to a charity for the person of the donor or contributor 277
12.7.1. Income tax deduction for natural persons 277
12.7.2. Corporate tax or income tax deduction for legal entities 279
12.7.3. Wealth tax deduction 279
12.7.4. Inheritance tax allowance 280

Chapter 13: Germany 281
Heike Jochum and Steffen Lampert

13.1. General questions 281
13.1.1. Are there special (preferential) tax rules for not-for-profit activities in general? Are they given in statutory law or have they been created in case law? 281
13.1.2. General requirements of tax privileges according to section 51 et seq. Fiscal Code: Corporations 282
13.1.3. Which activities are within the scope of not-for-profit activities benefiting from special tax rules? 283
13.1.3.1. Public benefit purposes 283
13.1.3.2. Charitable purposes 283
13.1.3.3. Religious purposes 283
13.1.4. Further objective and subjective requirements of tax-privileged status 284
13.1.4.1. Directness 284
13.1.4.2. Exclusivity 284
13.1.4.3. Altruistic activity (selflessness) – extent of permitted economic purposes 285
13.1.4.3.1. Preliminary remarks 285
13.1.4.3.2. Interpretation of the term “own economic purposes” and the “Four-spheres-model” 286
13.1.4.3.3. Permitted extent of “own economic purposes” 287
13.1.4.3.4. Losses resulting from economic activities 289
13.1.4.4. Prompt use of funds 290
13.1.4.4.1. Use of funds in general 290
13.1.4.4.2. Prompt use 291
13.1.4.5. Further requirements 291
13.1.5. Formal requirements and proceedings 292

13.1.5.1. Material requirements to be met by the statute 292
13.1.5.2. Formal requirements to be met by the statute 292
13.1.5.3. No qualification procedure required 292
13.1.6. Excursus: Cross-border issues 293
13.2. Tax privileges in special tax provisions 294
13.2.1. Taxation of corporations 294
13.2.1.1. Corporate income tax and local business tax 294
13.2.2. VAT 296
13.2.3. Real estate tax 297
13.2.4. Wealth tax 297
13.3. Treatment of donations 298
13.3.1. Inheritance and gift tax 298
13.3.2. Personal income tax/corporate income tax 298

Chapter 14: Greece 301
Konstantinos Finokaliotis

14.1. General questions 301
14.1.1. Are there special (preferential) tax rules for not-for-profit activities in general? Are these given in statutory law or have they been created by case law? 301
14.1.2. Which activities are within the scope of not-for-profit activities benefiting from special tax rules? 302
14.1.3. Are there special forms of legal entities required for non-profit status? 303
14.1.4. Are there special rules for non-resident or international non-profit entities? In that respect are there tax rules for non-resident non-profit organizations that may raise problems under the application of the basic EU treaty freedoms? 304
14.2. Income tax 305
14.2.1. What are the material conditions for special tax status? 305
14.2.2. What are the formal conditions for special tax treatment? 305
14.2.3. Tax treatment of income from purely non-profit activities 306

14.2.4. Tax treatment of business income used to support non-profit activities 307
14.2.5. Tax treatment of investment income used to support non-profit activities 308
14.2.6. Tax treatment of remuneration or reimbursement of expenses for employees, administrators, voluntary collaborators 309
14.2.7. Tax treatment of gifts, contributions and public subsidies in the tax base of the non-profit organization, possibility of transferring gifts or contributions from one tax exempt organization to another 310
14.2.8. Special rules for the accumulation of income and/or wealth in a non-profit organization 310
14.2.9. Tax treatment of the liquidation of a non-profit organization 312
14.2.10. Tax treatment of deductions of gifts and contributions in the person of the donor or contributor 313
14.2.10.1. Tax treatment of donations and sponsorships made by individuals 313
14.2.10.2. Tax treatment of donations and sponsorships made by legal entities 316
14.2.10.3. Tax treatment of ”cultural sponsorships” of Law 3525/2007 made by natural or legal entities 317
14.2.10.4. Other forms of tax relief 318
14.2.10.4.1. Donations of movable monuments to museums 318
14.2.10.4.2. Donation of food 319
14.2.10.4.3. Donations to non-profit civil partnerships 319
14.2.10.4.4. Donations to unions 320
14.2.10.4.5. Donations to charitable fundraising committees 320
14.3. VAT/GST or turnover taxes 321
14.3.1. Material conditions of special VAT status 321
14.3.1.1. Sports and physical education 321
14.3.1.2. Political, social, religious and philanthropic activities 321
14.3.1.3. Cultural and educational activities 321
14.3.1.4. Religion and philosophical activities 322

14.3.1.5. Political, social and philosophical activities 322
14.3.1.6. Mount Athos 322
14.3.2. Specific formal conditions for special VAT status 323
14.3.3. Special rules with respect to operation of the VAT exemption 324
14.3.3.1. Transactions subject to VAT 324
14.3.3.2. Deduction of input VAT 325
14.3.4. VAT rules for cross-border services or supply of goods 326
14.4. Inheritance, estate and gift taxes 327
14.4.1. Inheritance tax for non-profit legal entities 327
14.4.2. Gift tax on non-profit legal entities 329
14.5. Other taxes 330
14.5.1. Real property tax 330
14.5.2. Municipal property tax 331
14.5.3. Special state tax on electrical power for residential or commercial buildings 332
14.5.4. Special immovable property tax 333
14.5.5. Specific formal conditions for the tax status of these other taxes 334
14.5.5.1. Immovable property tax 334
14.5.5.2. Special immovable property tax 335
14.5.6. Immovable property transfer tax (FMA) 336
14.5.7. Stamp duty 337

Chapter 15: Hungary 339
Éva Erdős, Máté Lakatos and Petra Mihályi

15.1. General questions 339
15.1.1. Are there special (preferential) tax rules for not-for-profit activities in general? Are these given in statutory law or have they been created by case law? 339
15.1.2. Which activities are within the scope of not-for-profit activities benefiting from special tax rules? 339
15.1.3. Are there special forms of legal entities required for non-profit status? 340
15.2. Income tax 342
15.2.1. Material conditions for special tax status 342
15.2.2. Formal conditions for special tax treatment 342
15.3. VAT 343
15.3.1. Material conditions of special VAT status 343
15.3.2. Specific formal conditions for special VAT status 346

15.3.3. VAT rules for cross-border services or supply of goods 347
15.4. Inheritance, estate and gift taxes 348
15.4.1. Specific definitions or conditions of non-profit activities or organizations with respect to inheritance, estate and gift taxes 348
15.4.2. Specific formal conditions for special inheritance, estate or gift tax status 350
15.4.3. Specific tax rules for wills, gifts, or transfer of assets to domestic or foreign non-profit activities, or organizations 350
15.4.4. Annual wealth tax or other tax in replacement of the inheritance, estate or gift tax on non-profit organizations or charitable trust arrangements 351

Chapter 16: Italy 353
Fabrizio Amatucci

16.1. General questions 353
16.1.1. Are there special (preferential) tax rules for non-profit activities in general? Are these given in statutory law or have they been created by case law? 353
16.1.1.1. Company tax (IRES) exemption for non-profit organizations 353
16.1.1.2. Other special schemes for non-profit organizations in the field of direct taxation 354
16.1.1.3. Rules relating to direct taxes for non-profit organization of social utility (ONLUS) 355
16.1.1.4. Tax treatment of gifts, contributions and public subsidies to non-profit organizations 356
16.1.2. Which activities are within the scope of not-for-profit activities benefiting from special tax rules? 356
16.1.2.1. Direct taxes 356
16.1.2.2. VAT 357
16.1.2.3. Are there special forms of legal entities required for non-profit status? 358
16.1.2.3.1. Special tax rules in general 358
16.1.2.3.2. Provisions for constitutive acts and statutes of ONLUS 359

16.1.2.4. Are there special rules for non-resident or international non-profit entities? In that respect are there tax rules for non-resident non-profit organizations that may raise problems under the application of the basic EU treaty freedoms? 360
16.2. Income Tax 360
16.2.1. Material conditions for special tax status 360
16.2.2. Formal conditions for special tax treatment 362
16.2.2.1. General formal requirements 362
16.2.2.2. Other formal conditions requested for favourable tax treatment of ONLUS 362
16.2.2.3. Voluntary associations 363
16.2.2.4. *Pro loco* association 363
16.2.3. Tax treatment of income from purely non-profit activities 363
16.2.4. Tax treatment of business income used to support non-profit activities 364
16.2.5. Investment income used to support non-profit activities 364
16.2.6. Reimbursement of expenses 364
16.2.7. Treatment of gifts, contributions and public subsidies in the tax base of non-profit organizations 365
16.2.8. Liquidation of a non-profit organization 365
16.2.9. Deduction of gifts and contributions 365
16.3. VAT 366
16.3.1. Material conditions for special VAT status 366
16.3.2. Specific formal conditions for special VAT status 367
16.3.3. Special rules with respect to operation of the VAT exemption 368
16.3.4. VAT rules for cross-border services or supply of goods 369
16.4. Inheritance and gift taxes 371
16.4.1. Specific and formal definitions or conditions 371
16.4.2. Exemptions for non-profit-organizations 371
16.4.3. Trusts 372

Chapter 17: Netherlands 375
Sigrid J.C. Hemels

17.1. General questions 375
17.1.1. Are there special (preferential) tax rules for not-for-profit activities in general? 375

17.1.2. Quantitative public benefit requirement 376
17.1.3. Qualitative public benefit criterion 376
17.1.4. Cultural PBEs 378
17.1.5. Integrity requirement 378
17.1.6. Formal requirement for special tax treatment as a PBE 379
17.1.7. Legal form 379
17.1.8. Additional requirements in ministerial regulation 380
17.1.9. Tax treatment of business income used to support non-profit activities 381
17.1.10. Non-resident and international PBE 381
17.2. Income tax 383
17.2.1. Corporate income tax treatment: Limited tax liability of foundations and associations in general 383
17.2.1.1. Exemptions 383
17.2.1.2. Investment reserve 384
17.2.1.3. Deduction for fundraising activities 384
17.2.1.4. Tax treatment of remuneration or reimbursement of expenses for employees, administrators or voluntary collaborators 384
17.2.2. Tax treatment of deductions of gifts and contributions in the person of the contributor 385
17.2.2.1. Personal income tax 385
17.2.2.2. Corporate income tax 386
17.3. VAT 386
17.3.1. Activities out of scope of VAT 386
17.3.2. Exemptions for the public benefit 387
17.3.3. Special rules with respect to operation of the VAT exemption 387
17.3.3.1. Public postal services (article 132(1)(a) VAT Directive) 387
17.3.3.2. Hospital and medical care and closely related activities (article 132(1)(b) VAT Directive) 388
17.3.3.3. Supply of human organs, blood and milk (article 132(1)(d) VAT Directive) 388
17.3.3.4. Dental supplies (article 132(1)(e) VAT Directive) 389
17.3.3.5. Supplies to members by independent groups with exempt or out of scope activities (article 132(1)(f) VAT Directive) 389
17.3.3.6. Welfare and social security work (article 132(1)(g) VAT Directive) 390

17.3.3.7. Protection of children and young persons (article 132(1)(h) VAT Directive) 391
17.3.3.8. Education (article 132(1)(i) and (j) VAT Directive) 392
17.3.3.9. Supplies to members by certain non-profit-making organizations (article 132(1)(l) VAT Directive) 393
17.3.4. VAT exemption not for public benefit (article 133 VAT Directive) 396
17.3.4.1. Not aiming to make a profit 397
17.3.4.2. No distortion of competition 398
17.3.4.3. Formal requirement regarding bookkeeping 399
17.3.5. Conclusion regarding VAT 399
17.4. Inheritance, estate and gift taxes 400
17.4.1. Definitions and conditions (both specific and formal) 400
17.4.2. Inheritance and gift tax 401
17.5. Other taxes 402
17.5.1. Partial refund of energy tax 402
17.5.2. Exemption of real estate transfer tax in case of merger or transfer of tasks 402

Chapter 18: Norway 403
Ole Gjems-Onstad

18.1. Income and net wealth taxation 403
18.1.1. Material conditions for special tax status 403
18.1.2. Formal conditions for special tax treatment 404
18.1.3. Tax treatment of business income used to support non-profit activities 405
18.1.4. Tax treatment of investment income used to support non-profit activities 406
18.1.5. Tax treatment for net wealth taxation 407
18.1.6. Tax treatment of deductions of gifts and contributions in the person of the donor or contributor 407
18.2. VAT 409
18.2.1. VAT reform 2001 409
18.2.2. Material conditions for special VAT status 410
18.2.2.1. Exempted services 410
18.2.2.2. Exempted goods – books and periodicals 411
18.3. Inheritance and gift taxes 411
18.4. Other taxes 412

Chapter 19: Poland 413
Alicja Majdańska

19.1. General questions 413
19.1.1. The position of non-profit organizations as part of the civic society in Poland 413
19.1.2. The legal framework of non-profit organizations 414
19.1.3. Are there special forms of legal entities required for non-profit status? 416
19.1.4. Are there special rules for non-resident or international non-profit entities? 418
19.1.4.1. Non-resident non-profit organizations 418
19.1.4.2. International non-profit organizations 419
19.2. Income tax 420
19.2.1. Material conditions for a special tax status 420
19.2.2. Formal conditions for special tax treatment 423
19.2.3. Tax treatment of income from purely non-profit activities 424
19.2.4. Tax treatment of business income used to support non-profit activities 425
19.2.5. Tax treatment of investment income used to support non-profit activities 426
19.2.6. Tax treatment of remuneration or reimbursement of expenses for employees, administrators, voluntary collaborators 428
19.2.7. Tax treatment of public subsidies in the tax base 428
19.2.8. Special rules for the accumulation of income and/or wealth in non-profit organizations 430
19.2.9. Tax treatment of the liquidation of a non-profit organization 430
19.2.10. Tax treatment of gifts and contributions on the person of the donor or contributor 431
19.3. VAT 433
19.3.1. Material conditions for special VAT status 434
19.3.2. Special formal conditions for special VAT status 436
19.3.3. Special rules with respect to operation of VAT exemption 437
19.3.4. VAT rules for cross-border services or supply of goods 439
19.4. Inheritance, estate and gift taxes 440
19.4.1. Inheritance and gift taxes 440
19.4.2. Estate tax 441
19.5. Other taxes 442

19.5.1. Registration fees 442
19.5.2. Civil acts tax 443
19.5.3. Stamp tax 444
19.5.4. Miscellaneous taxes 444
19.6. Conclusion 444
Annex: List of abbreviations 445
References 446
Literature 446
Judgments 447
Internet publications 447
Individual interpretations of Minister of Finance 448

Chapter 20: Portugal 449
João Félix Pinto Nogueira

20.1. General questions 449
20.1.1. Introduction 449
20.1.2. Which activities are within the scope of not-for-profit activities benefiting from special tax rules? 450
20.1.3. Are there special forms of legal entities required for non-profit status? 452
20.1.3.1. Legal status of non-profit collectives 452
20.1.3.1.1. Associations 453
20.1.3.1.2. Foundations 453
20.1.3.1.3. Religious legal entities 454
20.1.3.1.4. "Irmandades da Misericórdia" or "Santas Casas da Misericórdia" 455
20.1.3.2. Other legal forms 455
20.1.4. Are there special rules for non-resident or international non-profit entities? 456
20.2. Income Tax 457
20.2.1. Formal and material conditions for tax status 457
20.2.1.1. Exemption for income derived from certain activities 457
20.2.1.2. Exemption for qualifying non-profit entities 458
20.2.2. The concept of "public utility" 459
20.2.2.1. General material conditions for the exemption 459
20.2.2.2. General formal conditions for exemption 460
20.2.2.3. Specific conditions for exemption 460
20.2.2.4. Other subjective exemptions 462

20.2.3. Tax treatment of income from purely non-profit activities 463
20.2.4. Tax treatment of business or investment income used to support non-profit activities 464
20.2.5. Tax treatment of remuneration or reimbursement of expenses for employees, administrators and voluntary collaborators 465
20.2.6. Tax treatment of gifts, contributions and public subsidies in the tax base of non-profit organizations 465
20.2.6.1. Contributions and public subsidies 465
20.2.6.2. Tax treatment of gifts and contributions 466
20.2.7. Special rules for accumulation of income and/or wealth in non-profit organizations 466
20.2.8. Tax treatment of the liquidation of a non-profit organization 467
20.2.9. Tax treatment of deductions of gifts and contributions in the person of the donor or contributor 467
20.2.9.1. The notion of donation 467
20.2.9.2. Deductions under the Statute for Tax Benefits 469
20.2.9.2.1. Corporations 469
20.2.9.2.2. Individuals 471
20.2.9.3. Tax treatment of donations under the scientific patronage regime 472
20.2.9.4. Tax treatment of donations under the Religious Freedom Act 473
20.3. VAT 473
20.3.1. Material rules for special VAT status 474
20.3.2. Further (objective) exemptions 475
20.3.3. Special rules with respect to operation of the VAT exemption 476
20.3.4. Rules for cross-border services and supply of goods 477
20.4. Inheritance, estate and gift taxes 478
20.4.1. No inheritance or gift tax 478
20.4.2. Stamp tax 478
20.4.2.1. Subjective exemptions 478
20.4.2.2. Objective exemptions 479
20.5. Other taxes and special regimes 479
20.5.1. Real estate tax (RET) 479
20.5.2. Real estate transfer tax (RETT) 481
20.5.3. Road circulation tax 482
20.5.4. Tax on vehicles 483

20.5.5. Some preliminary remarks regarding local authorizations 483
20.5.6. The percentage regime 484
20.6. Some conclusions 484

Chapter 21: Russia 493
Danil V. Vinnitskiy

21.1. General questions 493
21.1.1. Are there special (preferential) tax rules for not-for-profit activities in general? 493
21.1.2. Which activities are within the scope of not-for-profit activities benefiting from special tax rules? 495
21.1.3. Are there special forms of legal entities required for non-profit status? 496
21.1.4. Are there special rules for non-resident or international non-profit entities? 498
21.2. Income Tax 501
21.2.1. Material conditions for special tax status 501
21.2.2. Formal conditions for special tax treatment 502
21.2.3. Tax treatment of income from purely non-profit activities 504
21.2.4. Tax treatment of business income used to support non-profit activities 506
21.2.5. Tax treatment of investment income used to support non-profit activities 507
21.2.6. Tax treatment of remuneration or reimbursement of expenses for employees, administrators or voluntary collaborators 507
21.2.7. Tax treatment of gifts, contributions and public subsidies in the tax base of non-profit organizations 508
21.2.8. Special rules for the accumulation of income and/or wealth in non-profit organizations 508
21.2.9. Tax treatment of liquidation of a non-profit organization 509
21.2.10. Tax treatment of deductions of gifts and contributions in the person of the donor 509

Chapter 22: Spain 511
Andrés Báez and José Pedreira

22.1. Introduction 511
22.1.1. The main regime: The Charities and Patronage Tax Act 511
22.1.2. The special regime of partially exempt entities for company taxation purposes 512
22.2. The Charities and Patronage Tax Act 514
22.2.1. Conditions for application of the CH.P.Tax Act benefits 515
22.2.1.1. Material requirements for application of the CH.P. Tax Act benefits to article 2 listed entities 515
22.2.1.1.1. The pursuit of goals of public interest 515
22.2.1.1.2. Use of the income for social purposes 516
22.2.1.1.3. No economic activity beyond the social purpose 517
22.2.1.1.4. No benefits to members 518
22.2.1.1.5. Remuneration of board members and management 518
22.2.1.1.6. Dissolution and liquidation 519
22.2.1.1.7. Registration 520
22.2.1.1.8. Keeping records and accounts 520
22.2.1.2. Formal requirements for application of the CH.P. Tax Act benefits to article 2-listed entities 520
22.2.2. Tax benefits for income tax 521
22.2.2.1. Exempt income for corporate taxation on CH.P. Tax Act entities (different from those in article 7 CH.P. Tax Act) 521
22.2.2.2. Income from business activities (article 7 CH.P. Tax Act) 522
22.2.2.3. Tax base 523
22.2.2.4. Tax rate 525
22.2.3. Tax treatment of the deduction of gifts and contributions in the person of the donor 525
22.2.3.1. Donations that give rise to a deduction 525
22.2.3.2. The base for calculation of the deduction 527
22.2.3.3. Calculation of deduction/rates 528

22.2.3.3.1. Donations made by resident natural persons 529
22.2.3.3.2. Donations made by resident companies 529
22.2.3.3.3. Donations made by non-resident taxpayers 530
22.2.3.4. Capital gains generated for donators 530
22.3. VAT/GST or turnover taxes 530
22.3.1. Non-profit activities as non-economic activities outside the scope of VAT 531
22.3.1.1. What is to be considered "free of charge"? The problem of symbolic considerations 532
22.3.1.2. "Business collaboration agreements for projects in the public interest" and sponsorship agreements 532
22.3.2. Treatment of mixed activities 534
22.3.3. Exemptions 536
22.3.3.1. Compulsory or voluntary exemptions 536
22.3.3.2. Management and administration on an essentially voluntary basis 537
22.4. Other taxes 538
22.4.1. Tax on immovable property acquisitions and stamp duties 538
22.4.2. Local taxes 538
22.4.2.1. *Impuesto sobre Bienes Inmuebles* (Local Wealth Tax, LWT) 539
22.4.2.2. *Impuesto sobre Actividades Económicas* (Tax on the Performance of Economic Activities, TPEA) 540
22.4.2.3. *Impuesto sobre el Incremento de Valor de Terrenos de Naturaleza Urbana* (Tax on the Increase in Value of Urban Land, TIVUL) 540

Chapter 23: Sweden 541
Richard Arvidsson

23.1. General questions 541
23.1.1. Are there special (preferential) tax rules for-not-for profit organizations? 541
23.1.2. Which activities are within the scope of not-for-profit activities benefiting from special tax rules? 542

23.1.3. Terminology and general description of non-profit organizations 542
23.2. Income Tax 544
23.2.1. General comments on the taxation of legal entities 544
23.2.2. Taxation of foundations 546
23.2.2.1. First-degree tax relief 546
23.2.2.2. Second-degree tax relief 547
23.2.2.3. Third-degree tax relief 547
23.2.3. Taxation of non-profit associations 549
23.2.3.1. Purpose requirement 549
23.2.3.2. Activity requirement 550
23.2.3.3. Fulfilment requirement 550
23.2.3.4. Openness requirement 551
23.2.4. Special rules for non-resident or international non-profit entities 554
23.2.5. Taxation of withdrawals, liquidation, etc. 555
23.2.6. Tax treatment of deductions of gifts and contributions in the person of the donor or contributor 556
23.3. VAT 559
23.4. Inheritance, estate and gift taxes 560
23.5. Other taxes 561
23.5.1. Real property tax 561
23.5.2. Wealth tax 561
23.5.3. Social security contributions 562

Chapter 24: Switzerland 563
Madeleine Simonek

24.1. General questions 563
24.2. Income tax 564
24.2.1. Material conditions for a special tax status 564
24.2.1.1. Legal provisions 564
24.2.1.2. Charitable purposes 565
24.2.2.2. Public purposes 568
24.2.2.3. Auxiliary business purposes 569
24.2.2.4. Partial tax exemption 570
24.2.2.5. Irrevocable and exclusive destination of the profit 570
24.2.3. Formal conditions for special tax treatment 572
24.2.4. Tax treatment of gifts and contributions in the person of the donor or contributor 572
24.3. VAT/GST or turnover taxes 574

24.4. Inheritance, estate and gift taxes 577
24.5. Other taxes 578

Chapter 25: Turkey 581
Billur Yalti

25.1. General questions 581
25.1.1. Definition of charities 581
25.1.2. Purpose 582
25.1.3. Procedure for establishment 583
25.1.4. Types of foundations 584
25.1.5. International relations 584
25.2. Tax-exempt status 585
25.2.1. Conditions 585
25.2.2. Tax consequences 587
25.2.3. Constitutional consequences 588
25.3. Income tax 589
25.3.1. Tax treatment of business income 589
25.3.2. Tax treatment of investment income 590
25.3.3. Tax treatment of remuneration or reimbursement and provident benefits 592
25.3.3.1. Employees' remunerations 592
25.3.3.2. Provident benefits and others 592
25.3.4. Tax treatment of gifts, donations and contributions 593
25.3.4.1. Foundations receiving gifts 593
25.3.4.2. Donors making gifts 593
25.3.5. Tax treatment of liquidation 594
25.4. VAT/GST or turnover taxes 595
25.4.1. Scope 595
25.4.2. Exemptions 596
25.5. Inheritance, estate and gift taxes 598
25.5.1. Inheritance and transfer tax 598
25.5.2. Real estate tax 599
25.6. Other taxes 599
25.6.1. Customs duties 599
25.6.2. Stamp duties 600
25.6.3. Motor vehicle tax and special consumption tax 600
25.6.4. Municipal taxes 600
25.6.5. Fees for notarial deeds or registration 601

Chapter 26: United Kingdom 603
Mark Bowler Smith

26.1. General questions 603
26.1.1. The concept of charity 603
26.1.2. Non-resident or international charities 605
26.1.2.1. The legal persons test 606
26.1.2.2. The charitable purposes test 607
26.1.2.3. The jurisdiction test 607
26.1.2.4. The registration test 608
26.1.2.5. The management test 609
26.2. Income tax 609
26.2.1. Tax treatment of gifts, contributions and public subsidies in the tax base of charities 609
26.2.2. Deductible business expense 611
26.2.3. Accumulation of income and wealth 612
26.2.4. Capital gains 613
26.2.5. Liquidation 613
26.3. VAT/GST and turnover taxes 613
26.3.1. Charities and the scope of VAT 613
26.3.2. Rate relief for charities 615
26.3.3. Exempt supplies 615
26.3.3.1. Education 616
26.3.3.2. Health and welfare 617
26.3.3.3. Subscriptions 618
26.3.3.4. Sports 619
26.3.3.5. Fundraising events 620
26.3.3.6. Cultural services 622
26.3.4. Cross-border supplies 623
26.3.4.1. Goods 623
26.3.4.2. Services 625
26.3.5. Shared services 626
26.4. Inheritance tax 627
26.4.1. Inheritance tax in general 627
26.4.2. The main charity exemption 628
26.4.3. Inheritance tax on charities 630
26.4.3.1. Permanently charitable trusts 630
26.4.3.2. Temporary charitable trusts 631
26.4.3.3. Members of charitable company 631
26.4.4. Gifts to national institutions 631
26.4.5. A new incentive for charitable giving 632
26.5. Stamp duty 632

26.5.1. Stamp duty land tax 632
26.5.2. Stamp duty reserve tax 633
26.6. Rating relief 634
26.6.1. Mandatory relief 636
26.6.2. Discretionary relief 636
26.6.3. Places of public religious worship 636
26.7. Conclusion 638

Sample chapter

Gift and Inheritance Tax with Regard to Charities

Rik Deblauwe, Anouck Biesmans, Bianca de Kroon
and Frans Sonneveldt

5.1. Introduction

5.1.1. Scope of the report

For this report on gift and inheritance taxes, 19 contributions were received from the following countries: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Hungary, Italy, the Netherlands, Norway, Poland, Portugal, Russia, Spain, Sweden, Switzerland, Turkey and the United Kingdom. Of these countries, 15 are Member States of the European Union; 16 are Members of the European Economic Area.

Currently, there is no EU-wide law in the area of inheritance, estate and gift tax. Therefore, Member States' rules on the taxation of inheritances vary considerably. Eighteen of the 27 EU Member States levy specific taxes upon death, whereas nine do not do so. The latter Member States are Austria, Cyprus,*[1] Estonia,* Latvia,* Malta,* Portugal, Romania,* Slovakia* and Sweden. Some of these nine Member States tax inheritances under other headings such as stamp duty[2] or income tax.[3] An overview of relevant taxes upon death in Member States without inheritance and estate tax may be found in documentation provided by the European Commission.[4]

1. Member States marked with * are not included in this general report.
2. E.g. Malta and Portugal.
3. Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee. Tackling cross-border inheritance tax obstacles within the EU. COM(2011) 864, para. 3.
4. Commission Staff Working Paper. Impact Assessment Accompanying the document Commission Recommendation regarding relief for double taxation of inheritances, SEC(2011)1489, p. 105.

5.1.2. Recommendation regarding relief from double taxation

Recently, the European Commission has launched a package which deals with issues of double taxation and discriminatory tax treatment in the area of inheritance and estate tax. This package consists, among other documents, of a Recommendation regarding relief for double taxation of inheritances.[5] The Recommendation mentions the following considerations:

(1) Most Member States apply taxes upon the death of a person, notably inheritance and estate taxes while some Member States may tax inheritances and estates under other tax headings, such as income. All taxes applied upon the death of a person are hereafter called inheritance taxes.

(2) Most Member States that apply inheritance taxes also apply taxes to gifts between living persons.

(3) Member States may tax inheritances on the basis of varying "connecting" factors. They may do so on the basis of a personal link such as the residence, domicile or nationality of the deceased, or the residence, domicile or nationality of the heir, or both. Some Member States may apply more than one of these factors or may apply anti-abuse measures that entail an extended concept of domicile or residence for tax purposes.

(4) In addition to taxing on the basis of a personal link, Member States may apply inheritance tax to assets located in their jurisdictions. Tax may be applied on this basis even if neither the deceased nor the heir has a personal link with the country of location.

(5) Increasing numbers of citizens of the Union are moving during their lifetimes from one country to another within the Union to live, study, work and retire, and are purchasing property and investing in assets in countries other than their home countries.

(6) If these cases result in inheritances across borders upon the death of an individual, more than one Member State may have the right to apply inheritance taxes to those bequests.

(7) Member States have few bilateral conventions to relieve double or multiple taxation of inheritances.

(8) Most Member States provide, through legislation or administrative practices adopted unilaterally at national level, for double taxation relief for foreign inheritance taxes.

(9) However, those national systems of relief for foreign inheritance tax generally have limitations. In particular they may have a limited scope as regards

5. Commission Recommendation regarding relief for double taxation on inheritance taxes, 2011/856/EU of 15 December 2011, O.J. L336/81 of 20 December 2011.

the taxes and persons covered. They may not allow credit for previously paid gift taxes on the same inheritance or for taxes applied at local or regional rather than national level, or for all taxes levied by other countries upon death. They may only grant relief for foreign taxes paid on certain foreign property. They may not grant relief in respect of foreign tax on a property situated in a country other than that of the heir or deceased. They may exclude foreign tax on assets located within the territory of the Member State granting relief. The national systems of relief may also fail because they do not have regard to mismatches with inheritance tax rules in other Member States, particularly regarding what is to be considered as a local compared to a foreign asset, and regarding the timing of the transfer of assets and the date when tax is due. Finally, tax relief may be subject to the discretion of the competent authority and may not, herefore, be guaranteed.

(10) The absence of appropriate ways of relieving cumulative taxation of inheritances may lead to overall levels of taxation that are appreciably higher than those applicable in situations that are purely internal to one or other of the Member States involved.

(11) This may hinder EU citizens from benefiting fully from their right to move and operate freely across borders within the Union. It may also create difficulties for the transfer of small businesses on the death of owners.

(12) While revenues from inheritance taxes represent a relatively low share of the overall tax revenue of Member States, and cross-border cases alone account for far less, double taxation of inheritances may have a major impact on the individuals affected.

(13) Double taxation of inheritances is not currently being resolved comprehensively at national or bilateral level, or on the basis of Union law. In order to ensure the smooth functioning of the Internal Market a more comprehensive system for granting relief for double inheritance tax in cross-border cases should be encouraged.

(14) An order of priority of taxing rights or, conversely, of granting relief should be provided in cases where two or more Member States apply inheritance taxes to the same inheritance.

(15) As a general rule, and in line with the practice predominantly followed at international level, Member States in which immovable property and business property of a permanent establishment is situated should, as the State with the closest link, have the primary right to apply inheritance tax to such property.

(16) Since movable property that is not the business property of a permanent establishment can easily shift location, its link to the Member State where it happens to be located at the time of death is, in general, considerably less close than the personal links that the deceased or the heir may have with another Member State. The Member State where such movable property is situated

should, therefore, exempt the property from its inheritance taxation if such taxation is applied by the Member State with which the deceased and/or the heir has a personal link.

(17) Inheritances have often been accumulated over the lifetime of the deceased. Moreover, the assets contained in an inheritance are more likely to be located in the Member State to which the deceased has personal links than in the Member State to which the heir has such links, if different. When taxing inheritances on the basis of personal links to their territory, a majority of Member States refers to the links of the deceased rather than to those of the heir, albeit several also or only tax if the heir has a personal link to their territory. Because of the said nature and importance of the personal links of the deceased as well as for practical reasons, double taxation due to the fact that the deceased and the heir have personal links to different Member States should be relieved by the Member State to which the heir has personal links.

(18) Conflicts of personal links to several Member States could be solved on the basis of a mutual agreement procedure involving tie-breaker rules to determine the closest personal link.

(19) Since the timing for the application of inheritance tax may differ in the Member States involved and cases with cross-border elements may take significantly longer to be resolved compared to domestic inheritance tax cases due to the necessity of dealing with more than one legal and/or tax system, Member States should allow claims for tax relief for a reasonable period of time.

(20) This Recommendation promotes the fundamental rights recognised in particular by the Charter of Fundamental Rights of the European Union, such as the right to property (Article 17), which specifically guarantees the right to bequeath lawfully acquired possession, freedom to conduct business (Article 16) and EU citizens' freedom to move freely within the EU (Article 45).

5.1.3. Double tax conventions

Under consideration (7) of the Recommendation it is mentioned that Member States have few bilateral conventions to relieve double or multiple taxation of inheritances. This is indeed the case. As the table below shows, there are only 33 bilateral inheritance tax treaties in place between EU Member States out of a possible 351.

Table 1. EU Member States' double tax conventions on inheritances

	BE	BG	CZ	DK	DE	EE	IE	EL	ES	FR	IT	CY	LV	LT	LU	HU	MT	NL	AT	PL	PT	RO	SI	SK	FI	SE	UK
BE										√																√	
BG																											
CZ																			√*								
DK					√						√														√	√	
DE				√				√		√*																√	
EE																											
IE																											√
EL					√				√		√														√		
ES								√		√																	
FR	√				√*				√		√								√		√				√	√	√
IT				√				√		√																√	√
CY																											
LV																											
LT																											
LU																											
HU																			√							√	
MT																											
NL																			√*						√	√	√
AT			√*							√						√		√*								√	
PL																											
PT										√																	
RO																											
SI																											
SK																											
FI				√				√		√								√								√	
SE	√			√	√					√	√					√		√	√						√		√
UK							√			√	√							√								√	

Note: √ means in force since before 1 January 2000; √* means new since 1 January 2000. The treaties between the Nordic countries are part of a multilateral agreement signed by the Nordic countries in 1983: Nordiska skatteavtalet (Nordic convention), signed in Helsinki on 22 March 1983. In the matrix each treaty is shown twice, e.g. a treaty between UK and SE is marked for both SE-UK and UK-SE.

Source: Copenhagen Economics based on IBFD, Tax Treaties database.[6]

With regard to the four countries that are not EU Member States, the following should be noted. Norway has concluded inheritance tax treaties with the United States and Switzerland. In addition, a multilateral estate and inheritance tax treaty was entered into by Denmark, Finland, Iceland, Norway and Sweden in 1989 (the Nordic Convention).[7] Russia has no inheritance tax treaties.[8] Switzerland, on the contrary, has concluded no less than 13 inheritance tax treaties and a number of reciprocity agreements.[9] Lastly, Turkey has no inheritance tax treaties.

6. Annex II of Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee. Tackling cross-border inheritance tax obstacles within the EU. COM(2011) 864.
7. *Cahiers de droit fiscal international*, vol. 95b (*Norway*, L.H. Walby), p. 608.
8. Id. (*Russia*, V. Matchekhin & I. Rousakova), p. 670.
9. Id. (*Switzerland*, J-B. Eckert), pp. 767 and 768.

5.1.4. Tax treatment of charities

In order to improve the situation within the European Union, the Recommendation sets out how Member States can apply unilateral measures or improve existing measures. The Recommendation also relates to gift taxes.[10] In one instance it refers to charities. This is the case when it deals with tax relief in cases of multiple personal links of a single person. A personal link is described as "the link of a deceased or heir with a Member State, which may be based on domicile, residence, permanent home, centre of vital interests, habitual abode, nationality or centre of effective management". In most cases, the personal link will apply to an individual, but it can also apply to a person other than an individual, such as a charity. In that case, the closer personal link could be deemed to be with the Member State in which its place of effective management is situated.[11]

The package launched by the European Commission also contains a Staff Working Paper that examines the problem of discrimination in the field of inheritance tax.[12] The paper discusses ten cases in which the European Court of Justice (ECJ) examined the inheritance tax rules of Member States. In 8 out of the 10 cases, the Court concluded that the Member States in question breached EU rules on the free movement of capital and/or freedom of establishment. The Court also dealt with inheritance tax rules in another case that concerned higher succession duties for legacies made to charities in other Member States.[13] In the paper, the Commission sets out the non-discrimination principles flowing from case law. With regard to the inheritance tax treatment of charities, it stipulates that Member States' inheritance tax provisions cannot apply less favourable inheritance tax treatment for legacies made to a charity on the sole basis that the charity is established in another Member State rather than in the taxing Member State.

In this regard it is worth mentioning that in the Commentary of the 1982 OECD Model Double Taxation Convention on Estates and Inheritances and on Gifts, hardly any reference is made to charitable foundations or trusts. Although the Commentary touches upon foundations and trusts in general as special features of the domestic law of certain member countries, charitable foundations and trusts are not mentioned at all in this respect. In the

10. Para. 1.2. of the Recommendation.
11. Para. 4.4.2. of the Recommendation.
12. SEC(2011) 1488.
13. C-25/10, 10 Oct. 2011, *Missionswerk Werner Heukelbach*. The Court extended the non-discrimination principles set out in *Stauffer*, C-386/04, 14 Sept. 2006, and *Hein Persche*, C-318/07, 27 Jan. 2009, to Member States' inheritance tax legislation.

Commentary on article 4 of the OECD Model Convention (concerning fiscal domicile) and article 10 (concerning non-discrimination) hardly any attention is given to charitable institutions and non-profit-making institutions whose activities are performed for purposes of public benefit. Generally speaking, the EC Recommendation is in line with the Commentary of the OECD Model.

From the above, the conclusion can be drawn that rules on the taxation of inheritances and gifts vary considerably, even within the European Union. This also affects charitable institutions in various ways. The national reports submitted for this congress all deal in their own way with the gift and inheritance tax treatment with regard to charities in the respective countries. Hereunder, we will try to give some general conclusions and describe selected particularities from the contributing countries. A distinction will be made between three country types:

- countries that do not levy any gift or inheritance tax;
- countries that levy a gift or inheritance tax and apply a general exemption for charitable institutions; and
- countries that levy gift or inheritance tax and do not apply a general exemption for charities.

5.2. Countries without gift or inheritance tax

In some countries, gift and inheritance tax has been abolished completely. This is the case in *Austria*, where these taxes have been repealed by the Constitutional Court as of 31 July 2008. However, in order to eliminate tax evasion, there remains an obligation to notify the tax authorities of a gift.[14] The gift and inheritance tax was abolished in 2003 in *Portugal*[15] and in *Sweden* in 2005.[16] In the *Russian Federation*, there is no special tax on gifts or on inheritances.[17] The tax was abolished in *Italy* in 2001 but reintroduced (against much lower rates) in 2006.[18] In *Poland*, the object of taxation is acquisition of equity by natural persons; consequently, non-profit organizations do not fall within the scope of the Inheritance and Gift Tax Act.[19]

14. *See Austrian report*, .ch. 8, sec. 8.4.1.
15. *See Portuguese report,* ch. 20, sec. 20.4.1.
16. *See Swedish report, ch*. 23, sec. 23.4.
17. *See Russian report,* ch. 21, sec. 21.2.7.
18. *See Italian report,* ch. 16, sec. 16.4.1.
19. *See Polish report,* ch. 19, sec. 19.4.1.

5.3. Countries with a general exemption for charitable institutions

5.3.1. Hungary

In *Hungary*, a non-profit organization can request a statement from the national tax authorities to receive a special inheritance, estate or gift tax status. It is understood that this exemption can only be applicable to organizations that have not incurred any corporate tax liability for revenues from entrepreneurial activities.[20] The following purposes are generally exempt from gift and inheritance tax: scientific, artistic, educational (public), cultural and public welfare in Hungary.[21] It is questionable whether this in accordance with EU rules.[22]

5.3.2. Finland

In *Finland*, charitable institutions are able to receive gifts and inheritances without gift or inheritance tax consequences as a result of a general exemption.[23]

5.3.3. Turkey

In *Turkey*, there is also a general exemption applicable for legal entities established for public purposes such as science, research, culture, arts, health, education, religion, charity and sports. Furthermore, gifts and donations *made by* such qualified foundations are exempt from inheritance and transfer tax, provided they are compatible with the purpose of the foundation specified in its charter.[24]

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20. *See Hungarian report,* ch. 15, secs. 15.4.1. and 15.4.2.
21. *See Hungarian report,* ch. 15, sec. 15.4.3.
22. See the *Persche* case (C-318/07) as discussed in the Danish report, p. 226, sec. 10.2.8.4. and the UK report, pp. 606 and 607, sec. 26.1.2.1., n. 22.
23. *See Finnish report*, ch. 11, sec. 11.4.1.
24. *See Turkish report,* ch. 25, sec. 25.5.1.

5.3.4. United Kingdom

The *United Kingdom* has two exemptions for charities: a main charity exemption as well as a number of listed exemptions. The main charity exemption provides that transfers of value are exempt to the extent the values transferred are attributable to property given to charities. However, if any part of the property given to charities is applicable for non-charitable purposes, the exemption will not be applied. There must be an acquisition of the property by the charity.[25] Both UK and EU, as well as some EEA, charities can qualify for the relief.

Additionally, exemption is provided for property transferred to museums, libraries, art galleries, local authorities, government departments, universities and health service bodies. Some institutions are listed by name, such as the National Gallery and the British Museum.[26] It should be noted that there is a remarkable incentive for charitable giving in the UK: for deaths on or after 6 April 2012, estates that make charitable legacies of 10% or more of the net estate will be granted a reduced rate of inheritance tax.

5.3.5. Germany

Germany also provides an exemption for charities. Donations and inheritances received by a *domestic* corporation, association or estate that exclusively and directly serve public benefit, charitable or religious purposes are exempt from inheritance and gift tax. The same is true for donations to *foreign* corporations if their state of residence retroactively exempts donations to German charitable corporations from taxation (reciprocity).

A special and interesting rule states that in case assets received as a lifetime gift or by inheritances on account of death are transferred within 2 years to a foundation that, according to its statutes and effective management, exclusively and directly serves public benefit, charitable or religious purposes, the recipient is exempt from inheritance and gift tax with retroactive effect. These tax exemptions are of significant relevance for NPOs as donations would otherwise be taxed at a rate of up to 50%.[27,28]

25. *See UK report*, ch. 26, sec. 26.4.2..
26. *See UK report*, ch. 26, sec. 26.4.4..
27. *See German report*, ch. 13, sec. 13.3.1.
28. This appears to show a certain resemblance to the concept of variation of wills in England.

5.3.6. Italy

Italy reintroduced gift and inheritance taxes in 2006, [29] but at relatively low rates: 4% (direct line), and 6% or 8% (non-related persons).

Exemptions apply, however, in case of transfer to legally recognized *foundations or associations* with exclusive purposes of assistance, study, scientific research, education or any other *purpose for public benefit* and also to so-called ONLUS (*organismo non lucrativo (di) utilità sociale*). The status of ONLUS can be recognized only to associations, foundations, committees, social cooperatives and other private bodies. The exemption also applies to transfers to legally recognized public bodies, foundations and associations, if the transfers are made for purposes previously mentioned.[30] In addition, the exemption applies to foreign public bodies, associations and foundations established abroad if the requirement of reciprocity is met.

5.3.7. Netherlands

In *the Netherlands*, qualifying charitable organizations are exempt from gift and inheritance tax. This exemption applies to both incoming gifts and inheritances and to outgoing donations that are in conformity with the statutory purpose of the organization. In order to qualify, the charity needs to be registered by the Dutch tax authorities. The obligation to register applies to all entities whether or not resident in the Netherlands.[31] Without this listing a charitable organization in principle is liable to gift and inheritance tax, unless the organization is a so-called social benefit entity. The latter entities are also exempt from gift and inheritance tax, but are granted fewer other tax allowances.

Furthermore, it is possible to "pay" inheritance tax with moveable works of art.[32] This tax incentive is similar to the UK "acceptance in lieu of tax" and the French "*dation*". An important difference, however, is that instead of 100%, 120% of the value of the work of art is taken into account in the Netherlands. Only works of art that are on the list of protected objects, which are deemed indispensable or irreplaceable or which are of great national cultural-historical or art-historical value, can qualify. The Minister

29. *See Italian report*, ch. 16, sec. 16.4.1..
30. *See Italian report*, ch. 16, sec. 16.4.2.
31. Additional requirements apply to foreign entities, *see Netherlands report*, ch. 17, sec. 17.1.10.
32. *See Netherlands report*, ch. 17, sec. 17.4.2. second paragraph.

of Finance decides whether a work of art is accepted in lieu of inheritance tax. A small committee consisting of an art historian, a civil servant of the Ministry of Finance and a former Minister of Finance advises the Minister. If a work of art is accepted, the state becomes the owner of the work of art. The state may decide to give the work of art on loan to a museum. Unlike the United Kingdom and France, the Dutch government does not disclose which (or even how many) works of art have been obtained through this incentive.

5.3.8. Norway

There is no general gift tax in *Norway*. However, inheritance tax is also payable on certain gifts. Organizations with a charitable purpose are exempt from inheritance tax.[33]

5.3.9. Switzerland

Switzerland levies inheritance, estate and gift tax only on a cantonal level. Concerning the exemption of charities from inheritance, estate and gift taxes, most cantonal laws either refer directly to the provisions on the exemption from income taxation or use ones identical to those used in the provisions on the exemption of income taxation. The exemption is not limited to charitable organizations that carry out their activities within the boundaries of Switzerland nor is the exemption restricted to organizations having their statutory seat in Switzerland. Legal entities incorporated in another country that is organized similarly to Swiss legal entities may request tax exemption for their permanent establishment in Switzerland.[34]

5.4. Countries that tax charitable institutions

5.4.1. Belgium[35]

In *Belgium*, substantial normative competences on gift and inheritance taxes have been transferred to the Regions.

33. *See Norwegian report*, ch. 18, sec. 18.3
34. *See Switzerland report,* ch. 24, sec. 24.5
35. *See for the overview of gift and inheritance taxes, Belgian report,* ch. 9, sec. 9.4.2. and 9.3.4.

To avoid double (non) taxation, the territorial criteria for the allocation of regional taxing competences are either the location of the taxable event (i.e. source) or the residence of the taxable person. For example, inheritance tax applicable to Belgian residents on their worldwide estate is due in the Region where the deceased had his domicile for tax purpose at the time of his death. If the deceased moved his domicile within Belgium during the 5 years preceding his death, the tax is due in the Region where he resided for the longest period of time during these 5 years.

In all three regions of Belgium, charities benefit from preferential rates of gift taxes (7% in the Flemish Region, 6.6% for public interest foundations or 7% to other charities in the Brussels-Capital Region and 7% in the Walloon Region). A specific fixed duty applies when the donator is a charity.

Charities also benefit from preferential rates of inheritance taxes:
- 8.8% rate in the Flemish Region;
- in the Brussels-Capital Region a 6.6% rate applies for public interest foundations, a 25% rate for other charities, but then 12.5% will be applied when these entities have federal approval for donation deduction in income taxes; and
- 7% in the Walloon Region. One of the conditions imposed by the Walloon Region was found in breach of EU law by the ECJ in the *Missionswerk Werner Heukelbach* case: "Article 63 TFEU precludes legislation of a Member State which reserves application of succession duties at the reduced rate to non-profit-making bodies which have their centre of operations in that Member State or in the Member State in which, at the time of death, the deceased actually resided or had his place of work, or in which he had previously actually resided or had his place of work."[36]

A compensatory tax for inheritance tax is levied annually on the total assets which non-profit-making companies (ASBL/VZW and foundations, except public interest foundations) own in Belgium when there assets reach a certain threshold. The tax rate is 0.17%.

5.4.2. Denmark

In *Denmark,* gifts and donations are in principle taxable, but there are several specific rules. Foundations with public benefit purposes only

36. C-25/10, 10 Feb. 2011, *Missionswerk Werner Heuklebach*, para. 37.

have to declare gifts and donations *if the donator has decided* that the gift or donation has to be allocated to donations by the foundation. Gifts and donations that are allotted to the trust funds/locked-up basic capital of the foundation are exempt from taxation.[37,38] This is not the case if it is decided in the foundation's statute that the gift or donation has to be used for donations by the foundation within a specific period. Gifts or donations to the foundation's locked-up capital are exempt from taxation since distribution of this capital in the form of donations will be taxed.

The above-mentioned regime is only applicable to foundations with public benefit purposes. As a result, so-called family foundations and foundations based in low-tax countries cannot benefit from this tax treatment. Donations to foundations or similar entities based in foreign states with *low taxation* of foundations are taxed by a 20% rate in so far as the yearly contribution exceeds DKK 10,000. The purpose of this provision is to reduce the incentive to allocate assets to foundations in foreign states with low taxation. The contributor may apply for dispensation from this provision if the donation is made to a foreign foundation with public benefit purposes, in which case the burden of proof regarding the purpose rests with the contributor.

The overall effect of this provision is that contributions to foundations in foreign states – including other EU Member States – by individuals or entities fully subject to tax in Denmark are taxed if the taxation of foundations in the foreign state is low compared to Danish taxation, while contributions and gifts to Danish foundations are – as a rule – tax exempt. According to the Danish report, this seems to infringe European freedom rules.[39,40]

5.4.3. Greece

Greece does not apply an exemption either. Since 2010,[41] Greece imposes a very low gift and inheritance tax rate of 0.5% to charities. The rate is applicable to legal entities receiving assets by way of inheritance, which have been incorporated or are under incorporation in Greece, as well as by the respective foreign legal entities on the condition of reciprocity, as long as

37. *See Danish report,* ch. 10, sec. 10.2.8.3.
38. Therefore, we could have mentioned Denmark also in the second category of countries, with a general exemption for charity.
39. C-318, *Hein Persche*.
40. *See Danish report*, ch. 10, sec. 10.2.8.4.
41. Before law 3812/2010, there was a full exemption from inheritance tax of non-profit legal entities subject to certain conditions: *See Greek report,* ch. 14, sec. 14.4.1.

these entities are proven to pursue national or religious or in a wider sense charitable, educational or artistic purposes, and furthermore to churches, monasteries, the sacred space of the Holy Sepulchre, the Holy Monastery of Mount Sinai, the Ecumenical Patriarchate Kostantinoupoleos, the Jerusalem Patriarchate, the Patriarchate of Alexandria, the Church of Cyprus and the Orthodox Church of Albania. A foreign tax credit is provided for.[42]

The deduction of the bequests from the assets of the inheritance is subject to the attachment in the inheritance tax return of a certification by the executors or administrators of the bequest or by the foundation, to which the bequest has been made or by the persons exercising its management, certifying that the bequest has been deposited together with any overdue interest.[43]

Cash donations in excess of EUR 1,000 are subject to the same rate of 0.5 %. Foreign legal entities qualify on condition of reciprocity.[44]

An interesting point in the Greek report is the taxation of donations that are characterized as *sponsorships*. According to the opinion issued by the legal counsels of state and accepted by the Minister of Finance,[45] sponsorships are identified as donations as long as they are not accompanied by some sort of obligation on behalf of the non-profit organization receiving the sponsorship. Therefore, if a sponsorship consists of a sum that is not associated with some sort of consideration in return, it is recognized by the Donations Tax Code as a donation. If, however, the sponsor receives some sort of reimbursement for the sum, then it is noted as a reciprocal agreement. In this case, only the difference between the sponsorship and the return, if any, is considered a donation qualifying for privileged tax treatment.

5.4.4. France

France is rather strict on charities, both from a civil law and a tax point of view. The only legal persons (other than public bodies) entitled to receive a legacy or a donation (besides manual gift) are the associations declared of public utility, liturgical associations, congregations, the associations of charity and similar associations. These must make a declaration prior to the acceptance of the donation or the legacy to the local state representative

42. *See details in the Greek report,* ch. 14, sec. 14.4.1., third paragraph.
43. *See Greek report,* ch. 14, sec. 14.4.1. fourth paragraph.
44. *See Greek report*, ch. 14, sec. 14.4.2. first paragraph.
45. *See Greek report*, ch. 14, sec. 14.4.2. last paragraph.

(the *préfet*) who may forbid the entity to accept the donation or legacy if he considers that the legal entity is not one of those entitled to receive a donation or legacy, or that the legal entity is unable to use the said donation or legacy in conformity with its purpose.

The general gift and inheritance tax rate is 60%. The foundation or association declared of public utility benefits from a reduced rate of 35% and 45 % for the part in excess of EUR 24,430. It is understood that in addition to this, various exemptions apply to specific entities.

Manual gifts are not taxed as such, but the act by which they have been disclosed to the tax authorities is subject to gift tax. This may result in unwanted situations as illustrated by a court case introduced in 1997. The association "the Jehovah's Witnesses" was subject to a tax audit and produced its accounts to the tax authorities. The tax authorities considered that this was a "disclosure" of the manual gifts received by the association and applied the donation tax at the rate of 60 %. The Jehovah's Witnesses were not granted the exemption as a liturgical association as they had not been authorized to receive these donations.[46]

This case has raised high concerns among the non-profit associations. The tax authorities and the government tried to calm the situation, first, by issuing a guideline according to which the new case law would not be applied to associations of general interest; second, through the vote of a statute exempting the taxation of the manual gifts received by an association of general interest (benefiting from income tax deduction for donors).

In 2011, the Court of Appeal of Rennes[47] decided that a manual gift is subject to tax only if it is effectively "disclosed", meaning an active action from the discloser. This case law will probably be overruled by the *Cour de cassation*, which has already validated disclosure through tax audit, and a statute of 2011 has confirmed this. Lastly, the European Court of Human Rights condemned France in the Jehovah's Witnesses case.[48]

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46. *Tribunal de grande instance de Nanterre*, 4 July.2000 and *Cour d'appel de Versailles*, 28 Feb. 2002.
47. *Association de l'Arche de Marie*, *Cour d'appel de Rennes*, 02.11.2011.
48. *Association les Témoins de Jéhova v. France,* application 8196/05, decision 5 July 2011.

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