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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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 duty2 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.
5.1. Introduction

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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.

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1. Member States marked with * are not included in this general report.
2. E.g. Malta and Portugal.
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. 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

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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, therefore, 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 de-
ceased. 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 in-
heritances 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 deter-
mine 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 signifi-
cantly 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

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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.

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. 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.

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. 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. 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

11. Para. 4.4.2. of the Recommendation.
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.\(^1\)\(^4\)

The gift and inheritance tax was abolished in 2003 in Portugal\(^1\)\(^5\) and in Sweden in 2005.\(^1\)\(^6\) In the Russian Federation, there is no special tax on gifts or on inheritances.\(^1\)\(^7\) The tax was abolished in Italy in 2001 but reintroduced (against much lower rates) in 2006.\(^1\)\(^8\) 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.\(^1\)\(^9\)

\(^{14}\) 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.
Chapter 5 - Gift and Inheritance Tax with Regard to Charities

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. The following purposes are generally exempt from gift and inheritance tax: scientific, artistic, educational (public), cultural and public welfare in Hungary. It is questionable whether this is in accordance with EU rules.

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.

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.

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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%.\(^{27,28}\)

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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, 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. 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. 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. 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

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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. Belgium35

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.”

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

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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.
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.  

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.

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.

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, *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.

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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.
Countries that tax charitable institutions

(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 Rennes47 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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