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# OVERVIEW OF BEST PRACTICE IN TAX TREATMENT OF CSOs IN THE EUROPEAN UNION

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## 1. Introduction

This document is produced in the framework of the EU funded project "Technical Assistance for improving the enabling environment for Civil Society Organizations in the Republic of North Macedonia". It aims to shed a light upon the best practice in the European Union in establishing a favourable taxation framework for functioning of the Civil Society Organizations (CSOs). The comparative overview of the tax treatment of CSOs in the EU is intended to serve as basis for review and upgrade of the financial framework for civil society development in North Macedonia. It will serve as valuable resource in informing the key stakeholders about the main EU trends and positive practice in tax treatment of the CSOs and in identifying the key aspects and features that need to be taken into consideration when shaping the financial framework for CSOs.

The Governments throughout the European Union recognise the importance of vibrant and sustainable civil society organisations for the development of democratic and free societies based on the principles of equitable socio-economic development, solidarity and safeguarding of human rights. CSOs enable active citizenship, support citizens in achieving their rights and assist people in addressing their needs and improve the wellbeing of their communities. At the same time, their independence and non-profit nature creates continuous strain on the CSOs to develop a stable funding base and ensure sustainability for their missions and programs. In this regard, financial support, including an enabling fiscal and tax framework, can play a significant role in supporting CSOs' sustainability.

Recognising their distinctive role and features, unlike public institutions and businesses and for-profit entities, EU countries are shaping a specific legal framework to support the development of diverse, dynamic, and sustainable CSOs. Having in mind the non-profit features of the sector, this also includes a targeted tax treatment that provides tax benefits and incentives for the CSOs, their operations and their donors and supporters. Along these lines, the OSCE/ODIHR and Venice Commission's Guidelines on Freedom of Association also point out that tax exemptions are one of the avenues of state support for the CSOs and identify different approaches in providing tax exemptions and benefits for the CSOs and their donors<sup>1</sup>. The enabling financial environment, which supports the sustainability of CSOs and includes tax benefits, is also one of the pillars of the Guidelines for EU support to civil society in enlargement countries<sup>2</sup>.

This document provides an overview of the key taxes that affect the work of the CSOs, most notably the associations and foundations, and how they have been addressed across the legislative frameworks of the EU countries. The types of taxes, such as the income tax, value-added tax, and tax on donations and sponsorships, have also been identified as issues that need to be reviewed and

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<sup>1</sup> Guidelines on Freedom of Association, OSCE's Office for Democratic Institutions and Human Rights (ODIHR), Warsaw, 2015 <https://www.osce.org/files/f/documents/3/b/132371.pdf>.

<sup>2</sup> Guidelines for EU support to civil society in enlargement countries 2014 – 2020, European Commission <https://europa.eu/eu-content/uploads/2016/12/Guidelines-for-EU-support-to-civil-society-in-enlargement-countries-2014-2020.pdf>.



potentially reformed within the context of North Macedonia. As such, this document delivers the outputs related to the Activity 1.3. Improvement of the financial framework for civil society development within Component 1: Support the Implementation of Priority I of the Government Strategy for Cooperation with Civil Society 2018- 2020 of the Project for Technical Assistance for improving the enabling environment for Civil Society Organisations in the Republic of North Macedonia.

## **General overview of the tax treatment of CSOs and the scope of the document**

The predominant methodology used in this overview was desktop analysis of the existing research and analysis of the fiscal and tax framework of the targeted taxes in the European Union. Where needed, specific references to the targeted laws were reviewed. In doing so, the document reflects on issues relevant for the policy discourse in North Macedonia. While some taxation aspects in the overview have yet to be considered a priority in the country, this document includes them to provide guidance and outlook on the variety of aspects addressed within the EU in relation to the tax treatment of CSOs.

In line with the identified priorities in regard to the tax treatment of CSOs in North Macedonia, the overview focuses on three types of tax issues:

- Taxation of the income of CSOs, including the income from economic activities (Chapter 2)
- Value Added Tax (VAT), with overview on the input and output as explained in Chapter 3
- Tax treatment of philanthropic giving includes a wide array of taxes, including income tax on individuals and companies that donate to CSOs, gift and inheritance tax, cross-border giving, etc. (Chapter 4).

In general, the tax treatment of CSOs is quite diverse throughout the EU countries and while there are certain commonalities in the taxation principles and approaches, the specific tax solutions often vary significantly among the EU countries. This is due to several factors. Firstly, the legal and taxation systems in the EU countries are diverse (common vs. civic law, progressive vs. flat taxation, diverse entities on the legal spectrum from for-profit to non-profit and hybrid legal forms, different taxation levels and procedures etc.). The governments need to shape the tax treatment of CSOs within their legal and fiscal systems to provide most appropriate tax benefits at the same time maintaining the balance with the taxation of the for-profits and the hybrid forms not to distort the competitiveness and the state budgets. Secondly, the EU countries (in particular between Western and Eastern Europe) have different paths and traditions of development of their respective civil societies which is reflected in the diverse legal forms of the CSOs in the respective jurisdictions. In addition, this has also influenced the different ways the CSOs were predominantly funded within the different EU countries, including state funding, foreign-donor funding, social contracting, economic activities, philanthropic funding, etc., which inevitably has led to diverse taxation models for CSOs. Thirdly, the EU countries also have different philanthropic traditions and cultures, which have shaped the legal forms, especially for the foundations, trusts and endowment funds and have influenced the tax treatment of the philanthropic giving to CSOs.



Finally, the tax exemptions to CSOs are, to a large extent, driven by the notion that a significant segment of the sector contributes to and serves the broader public interest and public good. Thus, in many instances and jurisdictions, the tax exemptions are linked to the CSOs that serve the public benefit. In some EU countries, this discourse is applied broadly to all non-profit CSOs registered by the respective CSO laws. In other countries, the tax exemptions would apply only to CSOs that serve the public benefit, which again is differently regulated and applied among the countries. In some countries, the “public benefit” status is applied to a broader group of CSOs that act for the benefit of the larger society and communities (such as in the UK for example), while in other countries, the “public benefit” status is assigned based on stricter conditions thus limited to a smaller group of CSOs. This is important to understand when evaluating the best practice in tax treatment of CSOs. While in one country, the tax exemptions might be significant, if it applies only to CSOs with restrictive “public benefit” status, then such generous tax benefits would serve only a smaller group of CSOs rather than the whole sector. What constitutes public benefit also differs among the countries – while some have adopted a general referral to a public benefit purpose, some (such as Austria, Romania, Germany, Finland and Malta)<sup>3</sup> have a narrower list of public benefit purposes thus the tax incentives would apply differently to the CSOs based on the public benefit purpose they pursue as their mission. In 37.5% of the countries in Europe, the foundations are allowed to pursue only public benefit purposes (the list includes countries in the Balkan region such as Serbia, Montenegro, Croatia, Albania, Bosnia and Herzegovina and Slovenia). Depending on the legal framework, some countries also have different treatment and tax exemptions for foundations compared to associations.

Consequently, the readers of this overview of best practice should take a cautious approach in comparing the tax treatment of CSOs among the countries. For this reason, this document provides an overview of the broad landscape of tax treatment of CSOs to provide a comparative perspective without pointing out “the best practice”. For each of the tax issues, this document provides a general comparative overview of the particular tax solutions throughout the EU that identifies common features where they exist and points out the differences in the approaches. To further illustrate the diverse approaches in CSOs’ taxation, the document provides country information on several EU countries such as Germany, France, Slovenia, Croatia, and the Netherlands, thus balancing between countries with more developed economies, civil societies and complexity of the taxation systems and countries closer to the Western Balkan region with similar size and CSO traditions which often serve as a reference when drafting legislation in North Macedonia.

Furthermore, the analysis focuses on the legal forms of associations and foundations relevant to North Macedonia and does not cover the tax treatment of other legal forms that are considered as part of the civil society and non-profit sector within the EU countries. Thus, throughout the document, the term CSOs is used to identify associations and foundations. In the last chapter of the overview, the document provides general conclusions and guidance for the process of reviewing and revising the tax framework for CSOs in North Macedonia.

<sup>3</sup> Comparative Highlights of Foundation Laws, The Operating Environment for Foundations in Europe, Donors and Foundations Networks in Europe AISBL (Dafne) and European Foundation Centre AISBL (EFC), October 2021 <https://www.efc.be/uploads/2021/10/Comparative-Highlights-Of-Foundation-Laws.pdf>.



## Tax treatment of CSOs in the EU

### 2. Taxation of income

CSOs can have diverse sources of income such as membership fees, donations, gifts and grants, income from investments and bank interests, income from mission-related and non-mission-related economic activities, etc. The diverse range of income and the non-profit character of the CSOs is reflected in the tax treatment and exemptions which are usually reflected in the Laws on corporate income tax, Laws on profit tax and similar comparable legislation.

As a best practice, in all EU countries, CSOs that in general serve the public benefit are subject to tax exemptions. In most countries, they are tax-exempt on the **income from donations and grants (philanthropic and public funding)**. Only in Denmark such income of the foundations is taxable unless it is used to build the endowment, while in Norway, it might be taxable in the case when the donation or the grant is too closely linked to the economic activities of the CSO<sup>4</sup>.

While there is a mostly unified approach in the tax treatment of the CSOs' income from philanthropic sources (donations, grants and similar), the approaches vary when it comes to the income from economic (commercial) activities<sup>5</sup>. In the first instance, regardless of taxation, there are different approaches to the **type of economic activities CSOs are allowed** to engage in. While in almost all of the EU countries, the CSOs are allowed to engage in economic activities, in a significant number of EU and WB countries, there are certain limitations. In some EU countries, the CSOs are allowed to conduct only mission-related economic activities i.e., they have to support and be linked to the public benefit the CSO pursues (for ex. Austria, Bulgaria, France, Greece, Hungary, Spain, Romania, all WB countries etc.)<sup>6</sup>. The eligibility to conduct only mission-related economic activities is also applied in all Western Balkan countries. In addition, in some of the EU countries, the legislation imposes that the economic activities can only be auxiliary i.e., secondary to the other non-commercial sources of funding (for ex. Austria, Belgium, France, Czech Republic, Italy, Poland, Romania etc.). This limitation is also imposed in some of the Western Balkan countries such as Albania, Montenegro and Serbia. A more liberal approach, where the CSOs are allowed to conduct both mission-related and -unrelated activities with no limitations is adopted in several EU countries such as Germany, Croatia and the Netherlands (even though it might be subject to taxation).

When it comes to **taxation of the economic activities**, an important aspect is what constitutes economic activity that would be subject to tax. In most of the EU countries, the income from **investments in shares, bonds and similar** would not be considered as economic activity and is not

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<sup>4</sup> Ibid.

<sup>5</sup> Economic or commercial activity is defined as business activity including trade, that involves sale of goods and services by CSOs in return for some form of payment.

<sup>6</sup> Comparative Highlights of Foundation Laws, The Operating Environment for Foundations in Europe, Donors and Foundations Networks in Europe AISBL (Dafne) and European Foundation Centre AISBL (EFC), October 2021 <https://www.efc.be/uploads/2021/10/Comparative-Highlights-Of-Foundation-Laws.pdf>.





taxed. In some EU countries, taxation of this type of income would depend on the type of investment (for example, in Slovakia, the asset's income is tax-exempt with the exception of the income from the sale of investments, while in Sweden, an exception is related to the income from the lease of the owned property). Most **of the EU countries provide tax exemption on the income from economic activities with some limitations**. In some countries, the limitations would apply on the type of the economic activities i.e., while mission-related economic activities are not taxed, the mission-unrelated economic activities would be subject to corporate income tax. This, for example, is the case for France, Hungary, Portugal, or Ireland<sup>7</sup>, as well as in some of the WB countries such as Bosnia and Herzegovina, Kosovo and Serbia. In other countries, the regulation introduces thresholds to the income of economic activity that is tax exempt (Germany, Austria, Lithuania, Romania, Netherlands). In Croatia, the income from the economic activities of CSOs is not taxed unless the tax exemption would lead to unfair competition in the market (see below). In Bulgaria and Slovenia, all income from economic activities is taxed.

### **Tax benefits on the CSOs' income in selected countries**

#### **Croatia**

There is no income tax on grants and donations for CSOs in Croatia. Croatian profit tax provides these exemptions, including for grants and donations received from foreign donors.

When it comes to the income from economic activities, Croatia has a so-called liberal approach. This means it is acceptable for CSOs to conduct mission-related and -unrelated economic activities. However, taxes might apply. The reason why taxes might apply in these cases is so that organisations don't have "unjustified benefit in the market." However, there is no official legal definition of what falls under an "unjustified benefit," and in cases when an organization is found to have crossed the "unjustified benefits" threshold, the organisation will be taxed with the regular corporate tax rate (12-18%, depending on the levels of income)<sup>8</sup>.

#### **France**

There is no income tax on grants and donations to CSOs. CSOs can generally receive donations, grants, and other contributions without incurring any income tax liability. The only exceptions are the so called "contractual donations" i.e., grants or conditional gifts that impose certain obligations on the recipient and these can be subject to a special rate. Only certain types of organisations can receive these types of donations.

In France, CSOs can generate income from mission-related and -unrelated activities, directly or indirectly. Only when an organisation's economic activities create unfair competition to the commercial entities, the purpose of the activities might become a relevant issue. The income of CSOs that derives from economic activities is not taxed. Still, this is only in cases where the economic

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<sup>7</sup> Comparative Highlights of Foundation Laws, The Operating Environment for Foundations in Europe, Donors and Foundations Networks in Europe AISBL (Dafne) and European Foundation Centre AISBL (EFC), October 2021 <https://www.efc.be/uploads/2021/10/Comparative-Highlights-Of-Foundation-Laws.pdf>.

<sup>8</sup> For more information see Country Notes: Council on Foundations, available at: [www.cof.org/page/country-notes](http://www.cof.org/page/country-notes).



activities are mission-related and are secondary to the other non-commercial sources of funding. It is important that the CSOs' activities do not compete with the business sector (for them not to become commercial enterprises) and for the revenues collected during the calendar year for this activity not to exceed 72.000 EUR<sup>9</sup>. Also, for the CSOs' economic activities to be exempted from tax, they should not distribute the earnings from these activities as profits i.e., not distribute any income or assets to any private interests. When a CSO's revenues within a year exceed 72.000 EUR, the CSO might be eligible for tax exemption under certain conditions that ensure the organisation does not compete with the business sector and retains its not-for-profit nature, such as that the product is meeting a need that is not being met by the private sector with pricing lower than the commercial price, that the public i.e. the consumers are not able to afford the product offered by the private sector and that the promotion of the public interest mission is not using the same advertising and marketing approaches as the commercial entities<sup>10</sup>.

### Germany

CSOs that exclusively and directly pursue public benefit, benevolent, and church-related purposes are exempt from Germany's corporation tax, commercial tax and gift and inheritance tax.

Similar to Croatia, the liberal approach is applied in Germany as well, where the economic activities of CSOs can be mission-related and -unrelated. When economic activity is necessary for pursuing the mission and does not create significant competition for the business entities, the generated income is tax-exempt<sup>11</sup>. In cases where the economic activities are not related to the public benefit purpose, the tax exception has a threshold of 35.000 EUR of the overall income from such activities on an annual basis<sup>12</sup>. In cases where the exemption is applied, it is relevant to what degree the entity's assets and income are used for public benefit activities.

### Slovenia

Associations, institutes, and foundations do not pay corporate income tax on their not-for-profit activities if they are established for not-for-profit purposes. Income from not-for-profit activities includes, among others, income from donations, membership fees, allocation of public funds etc. Aid received from humanitarian organisations (who hold a public benefit status in the field of social, healthcare, or disability issues) and aid intended for needy persons that is received from charitable foundations are not subject to personal income tax.

CSOs in Slovenia may engage in economic activities only if these activities are clearly noted in their governing documents and are in line with the CSOs' primary mission/purpose. The income from economic activities is taxed, and the earnings can only be reinvested in the organisation's statutory activities.

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<sup>9</sup> Taxation and Philanthropy, OECD and Geneva Centre for Philanthropy, 2020

<https://www.oecd.org/ctp/taxation-and-philanthropy-df434a77-en.htm>.

<sup>10</sup> Article 261,7.1° of the Tax Code. For more information see Country Notes: Council on Foundations, available at: [www.cof.org/page/country-notes](http://www.cof.org/page/country-notes).

<sup>11</sup> For more information see Country Notes: Council on Foundations, available at: [www.cof.org/page/country-notes](http://www.cof.org/page/country-notes).

<sup>12</sup> Fiscal Code, Article 64 [https://www.gesetze-im-internet.de/englisch\\_ao/englisch\\_ao.html](https://www.gesetze-im-internet.de/englisch_ao/englisch_ao.html).



## The Netherlands

There is no income tax on grants and donations, and CSOs are allowed to conduct mission-related and -unrelated economic activities. The income from economic activities is not taxed. This exemption applies if a CSO's surplus is below €15,000 a year or less than €75,000 combined with the previous four years<sup>13</sup>.

### 3. Value Added Tax

When considering the way the Value Added Tax (VAT) affects CSOs, two aspects need to be taken into consideration: a) the VAT on the CSOs' input, which refers to the VAT that CSOs pay when they purchase goods and services, and b) the VAT on the output i.e., the VAT that the CSOs would need to include when they are providers of goods and services (CSO registered for VAT purposes<sup>14</sup>)<sup>15</sup>. In principle, CSOs are obliged to pay the VAT on the goods and services they purchase as they often are considered the end-consumer of the good/service. In case the CSO is registered for VAT purposes, similar to the business entities, the CSO would be able to recover the VAT paid on the input. Nevertheless, even if a CSO does engage in economic activities, the output provided by the CSO might not be subject to VAT (such as some specific services as defined in the VAT legislation) or the CSO is out of the scope of VAT (for ex. if the income from economic activities is lower than the VAT threshold). This creates a burden on the input VAT for the CSOs. In principle, only the CSOs that are registered for the VAT purposes and charge VAT on their sales would be able to recover the VAT paid on their input.

In such cases, the countries might introduce VAT exemption or preferential treatment on the **CSOs' input** (to recover some of the paid VAT when CSOs purchase goods and services) or on the output (to exempt from VAT of the outputs i.e. the goods and services provided by CSOs as part of their economic activities). However, this is not a usual practice in the VAT legislation in the EU and in very few instances, the countries apply VAT recovery schemes for non-profit organisations on the irrecoverable VAT costs. Such examples include Ireland and Hungary. For example, in 2019, Ireland introduced a compensation scheme for charities which enables qualified charities to partially recover the VAT they have paid in the previous calendar year<sup>16</sup>. VAT can be reclaimed if the charity was not entitled to VAT deduction or refund on any other basis and applies only to the input related to their charitable purpose/activities (capped at 5 mil. EUR per year). In addition, they can reclaim the VAT when purchasing specific appliances and transportation vehicles for persons with disabilities, donated medical equipment, rescue craft and equipment etc. In Hungary, a CSO can obtain VAT refund at a rate that matches the percentage that the donation represents in the total costs for carrying the public benefit activities.

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<sup>13</sup> Taxation and Philanthropy, OECD and Geneva Centre for Philanthropy, 2020  
<https://www.oecd.org/ctp/taxation-and-philanthropy-df434a77-en.htm>.

<sup>14</sup> In the terminology used in North Macedonia "DDV obrvrznik".

<sup>15</sup> Taxation and Philanthropy, OECD and Geneva Centre for Philanthropy, 2020  
<https://www.oecd.org/ctp/taxation-and-philanthropy-df434a77-en.htm>.

<sup>16</sup> Taxation and Philanthropy, OECD and Geneva Centre for Philanthropy, 2020  
<https://www.oecd.org/ctp/taxation-and-philanthropy-df434a77-en.htm>.



In regard to the **output VAT**, providing preferential treatment to CSOs' goods and services might create unfair competition in particular in cases where similar outputs are provided by the business/commercial entities. Some EU countries do provide VAT exemptions on particular services provided by CSOs in specific public benefit areas such as cultural, sports promoting, health, education, services provided to CSOs' members pursuing charitable, religious or philosophical purposes, fundraising activities (registration fees, advertising space and similar) etc. Such exemptions to a varied extent and scope have been introduced for example in Austria, Greece, Portugal and Romania.

## VAT benefits in selected countries

### Croatia

In Croatia, VAT is required to be collected by all entities if their turnover exceeds approximately 40.000 EUR in a given year. This applies to CSOs as well. Subject to VAT are also goods and services paid with foreign monetary donations. The VAT rate depends on the type of goods/services and varies between 25%, 13% and 5%.

In Croatia a service provided by an NPO to its members is exempt from VAT if the members are paying membership fees or real expenses for the service<sup>17</sup>. Nevertheless, it needs to be ensured should be taken into consideration that the tax exemption will not violate principles of market competition.

### France

The standard VAT rate in France is 20%. There are VAT exemptions, but only for specified types of activities or goods. In these cases, a reduced VAT rate of 10% is applied when it comes to certain goods, including medicine, pharmaceutical products, equipment for persons with disability, the provision of housing and food at elderly care facilities, and other goods relevant to CSOs. However, in cases where a CSO is using its assets further on for-profit and not-for-profit activities, any exemptions of VAT to which it is entitled are calculated as a pro-rata ratio of the CSO's income from its VAT-exempt and non-exempt activities.

### Germany

In general, in Germany, most sales of goods and services are at a VAT rate of 19%. VAT exemptions apply to services for public benefit, such as health-related, educational, cultural, and scientific services. A reduced VAT rate is given to CSOs that exclusively and directly pursue public benefit, benevolent, and church-related purposes. If an activity of a tax benefited CSO is subject to VAT and it falls under the organisation's statutory purposes, then the VAT rate is reduced to 7%<sup>18</sup>.

If a grant to a CSO complements VAT-taxable services, the VAT included in the project's expenditure might be recoverable. If a grant does not fall under any VAT-taxable service, the VAT included in the expenditure will not be recovered, and it falls on the burden of the CSO.

There are a number of goods and services that can be either exempt from VAT or where a reduced tax rate can be applicable, e.g., income from cultural events and institutions (museums, orchestras, archives) or educational institutions, as well as scientific lectures and events.

<sup>17</sup> For more information see Country Notes: Council on Foundations, available at: [www.cof.org/page/country-notes](http://www.cof.org/page/country-notes).

<sup>18</sup> Ibid.



## Slovenia

In Slovenia, there are VAT recovery schemes for CSOs on the irrecoverable VAT costs. The general VAT rate is 22%, whereas certain goods and services are taxed at a lower rate of 9.5%. There are several categories of goods and services that are exempt from VAT among which are “*goods and services provided by not-for-profit organisations with political, trade union, religious, patriotic, philosophical, humanitarian, or civil aims, in return for a membership fee, unless such exemption would distort competition*”; “*sport or physical education activities provided by not-for-profit organisations*”; “*goods and services provided in connection with occasional fundraising events on behalf of organisations that perform exempt (above-mentioned) activities, unless such exemption would distort competition*”<sup>19</sup>. With exception of the occasional fundraising activities, the VAT exemptions apply only under the condition that the good or services is not provided for profit purposes and that any earned surplus will be reinvested and will not be distributed. Another condition is that the goods and services should not create unfavourable market position for the taxable entities.

Also, VAT exempt are imports of goods (including donated goods) by charitable organisations not for commercial intention and for the purpose of distribution to the needy, for education, training and employment of persons with disabilities or for distribution to victims of disasters and wars.

## The Netherlands

In the Netherlands, VAT does not apply to non-commercial activities, and therefore, the VAT paid on inputs is not deductible. If a public benefit organisation (PBO) is located in the Netherlands and has sales of no more than €20,000 a year, the PBO can choose to be exempt from charging VAT, like any other small business, but will not be able to deduct or claim VAT on inputs.

## 4. Tax treatment of philanthropic giving

### 4.1. Tax benefits for individual and corporate donors

The tax benefits provided to the individual and corporate donors that give to CSOs which pursue public benefit activities are probably the most diverse type of taxation within the EU and the most challenging in terms of comparison. **As a general best practice, most of the EU countries provide some kind of tax relief for the philanthropic donors.** They recognize that by donating to public benefit and non-profit purposes, individuals and companies are partners of the government in advancing the public good and addressing the needs of the citizens and the communities. Furthermore, they recognise the importance of philanthropic sources of income for the sustainability of the CSOs.

In principle, the tax benefits to individual and corporate donors are connected to the personal income tax and the corporate/profit tax, respectively. There are two distinct models of tax relief on the donations: **tax deduction** and **tax credit**. Tax deduction reduces the tax base for the donated amount i.e., it reduces the gross amount on which the tax is calculated which leads to lower tax owed. Tax credit reduces the actual tax to be paid for the whole or portion of the donated amount. Hybrid approaches are also applicable. The majority of the EU countries have adopted the model of tax

<sup>19</sup> VAT Act. For more information see Country Notes: Council on Foundations, available at: [www.cof.org/page/country-notes](http://www.cof.org/page/country-notes).



deduction. Only four countries (France, Cyprus, Hungary and Spain) have adopted the tax credit model. Some of the EU countries have adopted a hybrid model where for one type of donor, they apply the tax credit model (mostly for the individual donors) while for another, the tax deduction model (Belgium, Estonia, Portugal, Romania, Latvia, Slovakia). Tax deduction is considered to incentivise the donors in progressive tax systems as the reduction of the tax base might put the individual or corporate donor in a different tax bracket thus reducing their overall tax rate.

Within these two general models for tax benefits on donations, there is a whole spectrum of criteria and thresholds on the tax incentives. They can be summarised as follows:

➤ **Forms of donations.** Almost all EU countries that provide tax incentives on monetary donations also allow tax incentives on non-monetary donations. The approaches vary in assessing the value of the non-monetary donations, ranging from not requiring valuations to applying valuation rules for different assets, requiring valuation above a certain threshold, valuations through audits, etc.

➤ **Eligibility of the recipients.** In most countries, the recipients are required to have some public benefit status or pursue public benefit activities. The comparative study of Dafne and EFC has noted that none of the EU countries covered by the survey offers “*tax subsidies to gifts made directly to individuals in need*”<sup>20</sup>. As discussed in the introduction chapter, the public benefit criteria for the CSOs are applied differently across the EU countries. Thus, in some EU countries, the tax incentives of donors apply to donations to all CSOs under a certain legislation that serves public benefit activities in stipulated areas (education, health, culture, religion, philanthropic culture, etc.). In some countries, the eligibility is strictly tied to a list of eligible CSOs with a public benefit status which again might be applied more liberally with an extended list of CSOs or more exclusively with a limited scope of eligible recipients. In some countries, higher tax relief is allowed for donations in specific areas. For example, in the Netherlands, for cultural entities, or in Bulgaria, for the areas of healthcare, education, housing, and local authorities.

➤ **Thresholds of the value of the tax relief (deduction or credit)**

In all EU countries, there is a certain threshold, i.e., a limit on the value of the tax relief usually defined as a percentage from the donor’s taxable income or the tax (in the case of a tax credit). The thresholds are quite diverse and, to a large extent, depend on the overall taxation system in the country, the scope of the beneficiaries, other criteria that might apply to the value of the donation, etc. In the case of tax deduction, some countries define the ceiling as a percentage from the total taxable income or the profit, some as a percentage from the total revenue, and some from the total turnover and salaries paid. Usually, the percentage of the allowed deduction is higher when it is applied on the taxable income or profit, and lower when it is applied on the total turnover. In the case of tax credit, besides a percentage from the tax owed there is often also a threshold on the percentage of the donation that can be relieved and/or percentage from the turnover (see the examples on France and Romania below). Sometimes, in addition to the percentage, there is an additional ceiling expressed in a maximum amount (see Netherlands, for example). Some countries allow the tax relief

<sup>20</sup> Comparative Highlights of Foundation Laws, The Operating Environment for Foundations in Europe, Donors and Foundations Networks in Europe AISBL (Dafne) and European Foundation Centre AISBL (EFC), October 2021 <https://www.efc.be/uploads/2021/10/Comparative-Highlights-Of-Foundation-Laws.pdf>.



to be carried forward into the next few years in case the donor hasn't reported a profit in a given year or the donations amounted to a value higher than the threshold (see France).

To illustrate the diversity in the thresholds of the value of the tax relief, below are a few examples from various EU countries:

- **Individual donors** – for the *tax deduction model*, in Austria, the ceiling is 10% of the taxable income; in Croatia, 2% of the taxable income; in the Czech Republic, 15% of the taxable income; in the Netherlands, 10% of the donor's gross income. In the *tax credit model*, in Spain, the ceiling is 10% of the taxable income; in Belgium (with an additional limit of 45% of the amount of the donations), 15% of the donor's total income tax.
- **Corporate donors** – for the *tax deduction model*, in Belgium, the threshold is 5% of the taxable income, in Austria 10% of the taxable income, in Lithuania, 40% of taxable income, in Estonia, it is 3% of the sum of the labour costs made during the year, or not to exceed 10% of the calculated profit of the latest fiscal year, in the Netherlands 50% of the profit. In the *tax credit model*, no limits apply in Cyprus, and in France 0.5% of the annual turnover.

#### ➤ **Thresholds in the portion of the donation to be credited/deducted**

In some countries, there is also a threshold on the portion of the donation that can be subject to tax relief, which is usually defined as the percentage of the donation. These thresholds vary. For example, Spain allows corporations to deduct 35% of all donations in the given year; in Hungary, it's 20% from the value of the donation and 50% if the donation is provided to specific national funds; in France, 60% and in Portugal 120%-140% of the value of the donation.

#### ➤ **Eligibility of donations based on the level of donations**

In addition to the ceiling on the amount of tax relief that individual and corporate donors can enjoy, some countries also introduce thresholds on the lowest and highest amount of donation that can be subject to tax benefit, respectively. The limits to the lowest amount are usually introduced to reduce the administrative burden of processing very small donations. However, it certainly discourages the lower-income individual donors. For example, for individual donors in the Czech Republic, the minimum donation for individual donors is 35 EUR; in Greece, 100 EUR; in the Netherlands, 60 EUR. Regarding corporate donors, in Belgium, the minimum donation to be exempt from tax is 60 EUR, 850 EUR in Finland, and 250 EUR in Ireland. The maximum amounts of donations in the year that can be subject to tax relief also vary. For ex. for corporate donors in France it is 10.000 EUR, in Finland 50.000 EUR, in Ireland 1 million EUR. For individual donors, Estonia has a maximum limit of 1.200 EUR, Denmark 2.250 EUR, Finland 500.000 EUR. Many EU countries do not impose such limitations.

A few countries have also embarked on stimulating long-term donations by introducing additional tax incentives for multiple-year donation pledges. Such examples include the Netherlands, where for recurring gifts, the tax relief can reach up to 100% of the income, and Hungary, which provides a double benefit for long-term donations.

When it comes to utilising specific tools for giving, such as crowdfunding platforms, public requests, and door-to-door or street fundraising, EU practices vary. As a best practice, in some of the countries, the legislation does not exclude any giving tool in providing tax benefits for the donors (the Netherlands, Spain, Luxembourg); thus, the donors can receive tax benefits when they donate, for example, through crowdfunding platforms. Some countries apply specific rules for utilising the tax



benefits through such mechanisms. For example, to receive tax relief on donations through crowdfunding, in Italy, the donor must obtain a certificate. In Poland and Portugal, such donations, as well as donations via media campaigns, are eligible for tax relief if they go to CSOs via a bank transfer.

### **Percentage tax designation approach**

Several Central and Eastern European countries have adopted a different approach in supporting public benefit purposes through non-profit entities, the so-called percentage tax designation. The system provides decentralised decision-making in the allocation of taxes by allowing citizens to designate 1%, 2%, or 3% of their paid income tax to non-profit entities that pursue public benefit purposes. This mechanism exists in Poland, Slovakia, Lithuania, Hungary, and Romania. The taxpayer communicates its decision on the tax designation (if s/he wishes so) regarding the preferred beneficiary while the authorities administer the designations and make the monetary transfer to the beneficiary organisation. In Slovakia, the companies also have the possibility to designate a certain percentage of their taxes.

This mechanism was often referred to as “percentage philanthropy” which is not accurate as philanthropy stipulates donating one’s own private resources while the tax designation is from the tax that has already been paid to the state i.e. it is public money. In addition, philanthropy is available to every individual and not only the taxpayers, as is the case with the percentage tax designation. In some countries, it has led to the abolition of the tax benefits on donations. Nevertheless, analysis<sup>21</sup> shows that the tax designation model has provided valuable support to the CSOs (even though it represented only 2% of the overall income of the sector) and has been the primary source of funding for many CSOs. It also enabled some CSOs to access public funding, which normally would not be available to them. Probably the largest benefit was the improved image and visibility of the CSOs. However, this mechanism should not be used as a replacement for the tax incentives for private donations but rather could be considered as more transparent and decentralised decision-making in allocating public funding to CSOs and public benefit purposes.

### **Procedure and reporting on tax benefits**

The procedure and administration of the tax incentives on the donations are also critical in the full utilisation of the tax benefits for the donors. Even if the tax legal framework provides tax incentives for individual and corporate donors, the burdensome administrative procedures might discourage them from utilizing the benefits. Consequently, if the country aims to encourage philanthropic giving, they should make efforts to alleviate the administrative burden of proof for the donors. This is particularly important for the individual donors who do not have the resources to administer the procedure requirements.

In all EU countries, the proof of the donation eligibility for tax benefit purposes by individual and corporate donors is conducted ex-ante i.e., after the donation is made. Existing analysis does not identify practices within the EU where the donors need to prove their eligibility for tax relief on the donation ex-ante, i.e., prior to making the donation.

In terms of procedure, the systems vary. The most liberal approach is adopted in the Netherlands, where the donors need to provide proof of the donation only upon request from the tax

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<sup>21</sup> Assessment of the Impact of the Percentage Tax Designations: Past, Present, Future, Edited by Boris Strečanský and Marianna Török, Erste Foundation and Center for Philanthropy, 2016  
[https://www.erstestiftung.org/wp-content/uploads/2020/02/tax\\_percentage\\_study\\_web.pdf](https://www.erstestiftung.org/wp-content/uploads/2020/02/tax_percentage_study_web.pdf).





authority (see below)<sup>22</sup>. In Croatia, for the in-kind donation, the donors only need to provide a receipt for the transfer of goods, a delivery note (ispratnica) or other relevant supporting document. In other countries such as Germany, Poland, Czech Republic, or Bulgaria, the individual donor provides supporting documents with their annual Personal Income Tax report. In some cases, for example in Bulgaria, a written contract is required as well as a protocol for the accepted donation. In Germany the requested document is a contribution receipt from the recipient while in the Czech Republic a document of proof identifying the recipient, donated amount, purpose and effective date of the donation is required. For corporate donors, similarly, the company would attach proof of the donations subject to tax relief with the annual tax statement. In Poland companies submit a list of all donations made in a given year with information on the recipient, donation amounts etc., in Hungary they are also obliged to obtain a certificate for tax purposes from the recipient of the donation.

Regarding reporting, reporting requirements that are too burdensome and go beyond the capacities of the donor and the receiving CSO might create disincentives for the stakeholders to utilize the tax incentives. While transparency and accountability of the CSOs is important for building trust among the donors and the authorities, obliging the CSOs to fully disclose names of their donors and details on each donation would discourage the donors to give and might infringe on the human rights of privacy of the donors. In this regard, most of the EU countries do not introduce any special, additional reporting requirements for the donor beyond the information and documents provided with the annual tax statement. Many countries apply the same principle for the CSOs as well. Additional requirements for reporting from the CSOs exist in some countries such as Poland, Hungary and Bulgaria. In Poland, CSOs need to provide a list of all corporate and institutional donors that gave a donation above appx. 3.570 EUR with the annual tax statement and report donations that exceed appx. 8.330 EUR annually. In Bulgaria, the annual reports of the CSOs need to include information on the type, amounts and purpose of the donations.

## Tax benefits for donors in selected countries

### Croatia

In Croatia, the Law on Profit Tax<sup>23</sup>, Law on VAT<sup>24</sup> and Law on Personal Income Tax<sup>25</sup> regulate the possibility of tax benefits.

#### Available tax incentives and thresholds

- **Businesses and other legal entities** may deduct donations to NPOs for public benefit activities up to **2% of the entity's gross income realised in the previous year**. In-kind and monetary donations can be included in business expenses (which will decrease the tax base). However, **the threshold may be raised** if the donation is made on the basis of the decision of the relevant ministry for the pursuit of specific programs and actions.
- Donations are deductible up to **2% of taxable income for individual donors** giving to a public benefit. **In-kind donations are not deductible for individuals**. As in the case of corporate

<sup>22</sup> Tax Benefits Stimulating Philanthropy, Comparative research, European Center for Not-for-profit Law, May 2021.

<sup>23</sup> Law on Profit Tax, Official Gazette No. 177/2004, 90/2005, 57/2006, 146/2008, 80/2010, 22/2012, 148/2013, 143/2014, 50/2016, 115/2016, 106/2018, 121/2019, 32/2020.

<sup>24</sup> Law on VAT, Official Gazette No. 73/2013, 99/2013, 148/2013, 153/2013, 143/2014, 115/2016, 106/2018, 121/2019.

<sup>25</sup> Law on Personal Income Tax, Official Gazette No. 115/2016, 106/2018, 121/2019, 32/2020.



donations, the **tax-exempt percentage may be higher**, pursuant to a decision of the line ministry on financing.

- **The import of donated goods** for the fulfilment of basic human needs such as food, medicine, clothes, etc. **is exempted from VAT**. This applies for equipment donated by registered humanitarian and charity organisations.

#### Eligibility criteria

- Deductions are related to **public benefit activities**, including cultural, scientific, educational, health, humanitarian, sports, religious, ecological, and other activities.
- For all NPOs, including associations and foundations, specific activities are recognized as significant to the public benefit and, consequently, are entitled to some tax benefits and other minor advantages. These activities are in the areas of culture, education, science, health, humanitarian aid, human rights, children, ecology, and social welfare.

#### Notes on procedures and reporting

- The CSOs that have received donations that were tax-exempt have no additional reporting requirements as beneficiaries except for the general annual reports.
- In-kind donations in Croatia are proven if the donor submits the receipt for the transfer of goods, delivery note or other credible supporting documents<sup>26</sup>.

## France

#### Available tax incentives and thresholds

- In general, NPOs are exempt from income tax when receiving donations, grants, and other contributions (with the exception of “contractual donations”). Contractual donations (grants or conditional gifts that impose certain obligations on the recipient) are subject to a special levy. Only certain types of organisations may receive contractual donations, and of those eligible, only certain ones are exempt from paying tax on the donation.
- In France, the **principle of tax credit** is implemented to obtain tax benefits. After calculations, legal entities and individuals are allowed to deduct all or part of their donations up to a limit from the amount of the actual tax to be paid.
- **Legal entities may receive tax credits worth up to 0.5 % of their annual income** for donations and the deduction can be carried forward over the next 5 years. **Individuals may receive tax credits worth up to 20 % of their annual taxable income** for donations.

#### Eligibility criteria

- All foundations, except for corporate foundations, are entitled to tax credits for their donations to NPOs with **general interest** or **public utility status**.
- There are three forms of public benefit status in France: (1) general interest, in which the organisation’s donors are eligible for tax benefits; (2) public utility, which provides the

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<sup>26</sup> For more information see Country Notes: Council on Foundations, available at: [www.cof.org/page/country-notes](http://www.cof.org/page/country-notes).



organisation with the same benefits as for the general interest status as well as additional tax and fiscal preferences. To obtain this status, there are additional requirements and (3) “solidarity enterprise of social utility” status, which can be granted to commercial companies whose economic activity has a social utility purpose.

- **Donors that provide support to organisations with general interest status are able to receive a tax credit** for their donations. Activities that qualify as general interest<sup>27</sup> include philanthropic, educational, scientific, social, humanitarian, sporting, family and cultural activities, as well as activities aimed at the promotion of artistic heritage, environmental protection, and the promotion of French culture, language, and scientific knowledge<sup>28</sup>.
- Tax benefits for donors are not granted if the organisation does not conduct **the main part of their activities in France**. Donors get the same tax incentive if the public benefit organisation is established in the European Economic Area (EEA) and is comparable to a French public-utility organisation in terms of purpose and legal form<sup>29</sup>.

#### Notes on procedures and reporting

Besides the annual financial report/financial accounts, an annual activity report, public benefit/activity report, and **tax report/tax return** are obligatory for NPOs.

#### **Germany**

In Germany, donors to NPOs that are based in the country or in EU member states receive tax benefits. The tax regime in the Income Tax Law<sup>30</sup>, Corporate Tax Law<sup>31</sup>, and Commercial Tax Law<sup>32</sup> enables **both individual and corporate donors** to deduct taxes.

#### Available tax incentives and thresholds

- **Individuals and corporate donors** receive a **deduction of up to 20% of their annual taxable income** for income tax, corporate tax, and municipal commercial tax.
- An alternative basis for calculation of the maximum **deduction for corporations is up to 0.4 % of the sum of the turnover, wages, and salaries**. Donations exceeding the deductible limits may be carried forward to **subsequent fiscal years**.
- **Individual donors** are able to deduct **up to 1.000.000 EUR** for a donation to the endowment of a foundation with qualifying purposes. The deduction can be taken in the year of donation and/or divided over the following **nine years**.
- In-kind donations are recognised for the purposes of the tax incentive for donations.

#### Eligibility criteria

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<sup>27</sup> To obtain the general interest status an organization must primary implement activities in at least one of the listed activities. Additionally, the services must be non-for-profit and provided to a large, undefined group of individuals in France.

<sup>28</sup> Tax Code Articles 200 and 238 in Country Notes: Council on Foundations, available at: [www.cof.org/page/country-notes](http://www.cof.org/page/country-notes).

<sup>29</sup> According to: Comparative Highlights of Foundation Laws: The Operating Environment for Foundations in Europe, Donors and Foundations Networks in Europe (Dafne) and European Foundation Centre (EFC), 2021.

<sup>30</sup> Einkommensteuergesetz.

<sup>31</sup> Körperschaftsteuergesetz.

<sup>32</sup> Gewerbesteuergesetz.



- As a result of the ECJ Persche Case<sup>33</sup>, eligible beneficiaries of the tax exemptions are **companies that have their legal seat in Germany or in another EU member state**.
- Regarding taxation on the income of tax-exempt organisations, German income tax law<sup>34</sup> foresees different sources of funds that are eligible for exemption. Among those, **donations are** considered to be non-material (“idealistic”) earnings that, as a form of income, are **generally exempted from income tax**.
- A tax deduction is granted if the requirements for donating to a **Public Benefit Organization** (PBO) are met. PBO status requires that the organisation’s “activities aim to support the general public materially, intellectually, or morally<sup>35</sup>.” The beneficiaries must not be limited to a closed circle of people, such as members of one family or employees. The Fiscal Code also includes 25 areas that are regarded as supporting the general public<sup>36</sup>. Additional requirements are set to become a tax-exempt organization, such as asset lock, timely disbursement, avoiding promotion of the economic interests of its members, etc.
- Federal law is used to determine whether an organisation is eligible to receive tax benefits, but it is the local tax office that makes the determination.

#### Notes on procedures and reporting

To obtain tax privileges, the CSO’s tax report/tax return reports must be submitted to the relevant financial authorities<sup>37</sup>.

### **Netherlands**

The regulation regarding tax incentives for philanthropy is provided by the Collective Tax Law<sup>38</sup>, the Income Tax Law<sup>39</sup> and the Corporate Income Tax Act<sup>40</sup>.

#### Available tax incentives and thresholds

- Gifts/ donations given to CSOs by **corporate donors** are **deductible up to a maximum of 50%** of the profit with a **maximum of 100,000 EUR**.

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<sup>33</sup> Prior to the decision of the European Court of Justice (ECJ) in the Persche Case eligibility for tax exemptions in Germany were exclusive to companies based in Germany. See more: Brief on Persche case (C-318/07) by ERA: Academy of European Law <<link>>

<sup>34</sup> See German Corporate Tax Act §5 part 1(9); Fiscal Code §14 & §65.

<sup>35</sup> See German Fiscal Code §52 (gemeinnützige Zwecke).

<sup>36</sup> See German Fiscal Code §52: ( 1) science; (2) religion; (3) public health care; (4) youth and older persons; (5) arts and culture; (6) historical preservation; (7) education; (8) environmental protection; (9) public welfare; (10) victims, handicapped and politically persecuted people; (11) lifeguards; (12) the prevention of injuries; (13) international understanding and tolerance; (14) animal protection; (15) development aid; (16) consumer protection; (17) rehabilitation of prisoners; (18) emancipation of genders; (19) marriage and family; (20) crime prevention; (21) sports (including chess); (22) local history and geography; (23) animal husbandry, plant breeding, allotments, traditional customs (including Carnival), troop entertainment, amateur radio, model airplane and dog sports; (24) the democratic political system in Germany; and (25) civic commitment for public benefit purposes.

<sup>37</sup> For more information see Country Notes: Council on Foundations, available at: [www.cof.org/page/country-notes](http://www.cof.org/page/country-notes).

<sup>38</sup> Fiscale Verzamelwet.

<sup>39</sup> Wet Inkomstenbelasting.

<sup>40</sup> Wet op de vennootschapsbelasting.



- Gifts/ donations given to CSOs by **individuals are deductible between 1% to 10% of the donor`s gross income**. No deduction is possible for donations below 1% of the gross income or if the total value is less than 60 EUR.
- As additional support to the development of philanthropy in the Netherlands, there is a **special incentive** for the so-called **periodic gifts**. Periodic gifts are gifts which the donor is, by notarial or private gift deed, obliged to pay annually for at least five years while they are alive<sup>41</sup>. These gifts are fully deductible without a threshold and **up to 100% of the income of a certain year**. Also, if the periodic gift exceeds the income of a certain year, the remainder can be deducted in the following year.<sup>42</sup>
- Donations **to certain types of public benefit causes** are encouraged more by providing a higher tax deduction rate. For example, gifts to cultural entities in the Netherlands can be taken into account for between **125% (for individuals) and 150% (corporations)**. **The maximum additional deduction is 2.500 EUR**.
- **In-kind donations are recognised** for the purposes of the tax incentive for donations.
- There is a **special VAT exemption for CSO fundraising activities** in the Netherlands.
- The gift and inheritance tax is, in principle, paid by the beneficiary in the Netherlands. However, no tax is due if the beneficiary is registered as a Public Benefit Organisation (PBO).

#### Eligibility criteria

Gifts received from an ANBI (public benefit organisation) registered in the Netherlands are exempt from gift and inheritance tax. Gifts received from SBBl (social interest-promoting institutions) or other foundations are not exempt.

#### Notes on procedures and reporting

**For periodic gifts** in the Netherlands a **notarial or private deed evidencing the gift must be available** and **for other gifts just a written proof of the donations** (such as bank statements) suffices. This information **only has to be provided upon a request** of the Dutch tax authorities.

### **Slovenia**

Donation tax incentives are regulated under the Slovenian Income Tax Act or Corporate Income Tax Act.

#### Available tax incentives and thresholds

- The maximum deductible amount for legal entities is **0.3 % of the donor`s taxable income** for the fiscal year. The deductible amount **cannot exceed the amount of the total tax base**.
- An **additional deduction of up to 0.2 % of taxable income** is available if the donation is provided for **cultural purposes** or is given to a **public benefit organisation** established for **protection from natural and other disasters**.
- In cases where the percentage exceeds, the deduction can be used within three years.
- **Individuals** liable for personal income tax can **designate 0.5 % of their tax owed** for financing **activities in the public interest** or for financing political parties or representative trade

<sup>41</sup> <https://www.belastingdienst.nl/wps/wcm/connect/nl/aftrek-en-kortingen/content/verschil-periodieke-giftengewone-giften> in Berna Keskindemir, Eszter Hartay, Ivana Rosenzweigova and Luben Panov, Tax Benefits Stimulating Philanthropy European Center for Not-for-Profit Law: 2021.

<sup>42</sup> Ibid.



unions. They can allocate the donations to one or more (up to five – in this case 0.1% each) organisations but they have no other tax incentives.

#### Eligibility criteria

- In order for the donor to receive a deduction for the donation, the recipient organisation should: 1) pursue humanitarian, disabled persons' assistance, social, charity, scientific, sport, cultural, health, educational, ecological, religious, or public benefit purposes; and 2) be registered to pursue said activity as not-for-profit activity<sup>43</sup>. **Eligible beneficiaries**, according to a decree on the appropriation of personal income tax for donations, are: NPOs that acquire the status of an organisation in the public interest; associations that acquire the status of a disability organisation; associations and other organisations that acquire the status of a humanitarian organisation; foundations; religious communities; political parties and representative trade unions.
- Donations are treated as income from not-for-profit activities and NPOs are exempt from corporate income tax.

#### Notes on procedures and reporting

Besides the annual financial report/financial accounts, an annual activity report, public benefit/activity report, and **tax report/tax return** are obligatory for NPOs.

## 4.2. VAT benefits on donations

When the donors provide in-kind donations in material goods and services, Value Added Tax (VAT) would normally apply for those goods and services unless VAT tax benefits are provided for these types of donations. In comparative practice of the EU, the countries provide some kind of VAT incentives on particular donated goods/services. In many jurisdictions, **charitable SMS donations** are VAT exempt. Relevant analysis indicates that these types of tax exemptions need to be clearly regulated as it might create confusion about whether such services are subject to VAT or not. This was the case in Bulgaria and the Czech Republic (as it was in North Macedonia) for many years until it was explicitly regulated in the VAT regulation.

In addition to SMS donations, **donation of food** has been a focus of many tax jurisdictions within the EU as well as by the European Commission. The regulatory aspects in relations to the food donations are addressed within the EU Food Donation Guidelines<sup>44</sup> from 2017 as part of the Circular Economy Action Plan. The guidelines identify that the VAT can significantly impact food donations from donors to food banks and other charitable organisations. Acknowledging the obstacles the VAT National regulation can present, the document recommends that *"In adapting the rules applicable to goods handed out for free (under Articles 16 and 74 of the VAT Directive), Member States can facilitate the donation of food surplus for charitable purposes"*. The VAT has agreed that the donated food

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<sup>43</sup> Corporate Income Tax Act Article 59 in Country Notes: Council on Foundations, available at: [www.cof.org/page/country-notes](http://www.cof.org/page/country-notes).

<sup>44</sup> EU Food donation guidelines, Official Journal of the European Union C 361/1, 25.10.2017 [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017XC1025\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017XC1025(01)&from=EN).



should be treated as a supply of goods for consideration unless it is treated as a gift of small value. The taxable amount should be the purchase price of the donated goods adjusted to the state of the food at the time of donation (as provided in the Article 74 of the VAT Directive)<sup>45</sup>. The guidelines further recommend that *“in the determination of VAT for the donation of foods, the value of those goods should be adjusted according to the circumstances and the state of the goods at the time of donation. When food donations are made close to either the ‘best before’ or the ‘use by’ date or the goods are not fit for sale but can be safely consumed, these circumstances should be taken into account by Member States when determining the VAT due, which could even be zero in cases where the food genuinely has no value”*.

Most EU countries do not charge VAT on food donated to food banks and similar organisations under certain conditions. Some EU countries have introduced special provisions within the tax legislation pertaining to the VAT on food donations (Belgium, Croatia, Denmark, Italy, Germany, Greece, the Netherlands, Poland and Portugal)<sup>46</sup>. For example, Croatia exempts VAT on donated food if its annual value does not exceed 2% of the total income of the taxable person.

Some countries, such as Hungary, provide VAT exemption on all donations provided for public benefit activities of the CSOs with Public Benefit Organization status, others for the import of donated goods that go to charitable, philanthropic organisations (Bulgaria), or for basic human needs of food, medicine etc. (Croatia).

### **4.3. Inheritance and gift tax**

In cases when the CSOs receive donations of material of a monetary nature or property as a gift, inheritance or legacy, depending on the country’s legislation, these might be subject to taxation of the CSO as a recipient. In some jurisdictions, this might not be an issue if the gift and inheritance tax is imposed only on natural persons. In comparative perspective of best practice, in most EU countries CSOs registered as public benefit organisations are exempt from the gift and inheritance tax. In Croatia, only the humanitarian organisations and the Red Cross are exempt from the gift and inheritance tax. In Bulgaria, the tax exemption applies to legacies below 125.000 EUR, while legacies above this amount are subject to taxes in accordance with the act on local taxes and charges<sup>47</sup>.

### **4.4. Cross-border philanthropy**

With the process of globalisation, many of the societal and sustainable development issues have expanded beyond the national borders. CSOs become increasingly internationally engaged, and philanthropic individual and corporate donors expand their giving strategies beyond their countries to support public benefit causes such as environmental protection, alleviating poverty, humanitarian aid,

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<sup>45</sup> Ibid.

<sup>46</sup> Ibid.

<sup>47</sup> Tax Benefits Stimulating Philanthropy, Comparative research, European Center for Not-for-Profit Law, May 2021.



equitable development, etc. Within the EU, the Single Market provides free movement of capital and people. In such circumstances, in principle, the tax incentives on donations should also be applicable for cross-border giving when a donor from one EU country gives to a CSO in another EU country. Nevertheless, this was not the case in most EU countries until the landmark ruling of the European Court of Justice (ECJ) in 2009 introduced the non-discrimination principle for philanthropy underlying the principle of free movement of capital. As a result of this ruling, many countries revised their tax legislation to allow tax incentives on donations their natural and legal entities provide to comparable organisations in other Member States pursuing public benefit activities. To date, only few EU countries such as Romania, Croatia, Slovakia and Portugal have not complied with the ECJ rulings and do not provide tax incentives on cross-border giving.

In this regard, the challenge of the policymakers was the determination of the comparability principle, i.e., the applicable criteria for determining the comparability of two EU-based CSOs pursuing public benefit, a domestic and a “foreign” one (meaning the latter having its seat in a different EU country than the first). There are two general approaches to this issue adopted by the EU countries. Some EU countries (Belgium, Bulgaria, Czech Republic, Germany, Estonia, and Hungary) apply the comparability principle on a case-by-case basis. This requires the donors to provide a translation of relevant documents for each case and obtain approval from the authorities. However, this approach is comparatively costly and burdensome for the taxpayers. The other approach adopted by countries such as Austria, Ireland, Netherlands, Norway, or Sweden requires that the recipient only once demonstrates either comparability or that they are also registered in the “foreign” state in addition to their registration in the home jurisdiction. While this approach provides legal predictability and easy access for the donors (as once the recipient has demonstrated comparability, all donors can utilise the status for tax benefit), it often creates difficulties for the organisations to demonstrate comparability and thus is seldom used by the CSOs.

Overall, the tax incentives on cross-border philanthropy remain a challenge in the EU in spite of efforts to comply with the non-discrimination principle for over a decade.

## **5. Concluding remarks on improving the tax treatment of CSOs in North Macedonia**

The overview of the comparative practice of fiscal regulation for CSOs across Europe indicates that while there are certain common principles in the tax treatment of CSOs, the fiscal rules vary across the countries. Furthermore, different tax rules might apply to different segments of the civil society organisations, which largely depends on how organisations pursuing public benefit purposes are defined, as most tax incentives apply for these types of entities. Finally, the regulatory and tax framework across EU countries is dynamic and constantly evolving to adapt to new realities and trends in the development of the sector as well as tax legislation.

As a principle, most of the EU countries provide preferential tax treatment of CSOs, in particular for those that engage in public benefit activities. When trying to learn from the EU fiscal legislation and practice, a cautious approach is required when it comes to copying regulation from specific EU





countries as there is no “one size fits all”. While the comparative EU experiences provide valuable insight into the basic principles of tax incentives for CSOs and their donors, shaping the tax treatment of CSOs in North Macedonia would require additional analysis of the context, traditions, the existing development of the CSO sector as well as the philanthropic culture, the policy objectives and the overall fiscal framework. Nevertheless, the insight into the various fiscal solutions the EU countries have adopted (in particular, their diversity when it comes to tax incentives on donations) provides inspiration for potential solutions and hybrid approaches in the tax treatment of CSOs and their donors.

Based on the analysis provided in this overview, several aspects and principles need to be considered when revising the fiscal framework for CSOs in North Macedonia:

### ***Tax benefits and public benefit activities***

In the context of North Macedonia, where the CSO sector is still growing and the philanthropic culture is just emerging with significant challenges in terms of resources and sustainability in particular, the primary objective of the fiscal framework should be to support the growth and sustainability of the sector in all its forms.

Consequently, a careful approach is needed when applying the principles of public benefit so that they do not restrict the tax exemptions and benefits only to a small group of CSOs. Article 7 of the Law on Associations and Foundations (LAF) defines the general principle that the entities registered under the LAF have tax and customs benefits according to the law. Under the LAF (Section XI – Status of Public Benefit Organization), CSOs can obtain a status of PBO and, according to Article 88, can receive additional tax and customs benefits. Nevertheless, the existing legislation does not provide any additional tax incentives for the PBOs. Furthermore, at present there are only three CSOs with a PBO status thus even if such additional benefits would exist, they would only affect a very small number of CSOs. The Law on Donations and Sponsorships in Public Activities (LDSPA) provides tax incentives to public benefit activities defined through a broader list of activities regardless of the recipient’s legal status. One of the analyses of the LDSPA<sup>48</sup> identified that beyond the LDSPA, 47 of the existing sectoral laws define activities considered of public benefit in the different sectors. The analysis also identified a lack of consistency between the LAF and the LDSPA in terms of procedures for determining the public interest and the definition of public benefit activities.

As both laws are under a process of revisions, it will be of utmost importance to coordinate the processes and ensure that:

- a) A broader spectrum of CSOs can access different types of tax exemptions (on profit tax, VAT, donations and sponsorships etc.);
- b) Where additional tax benefits are provided to PBOs they are not limited to only a small group of exclusive CSOs. If the status of PBO is to be operationalized, it has to introduce such additional tax benefits. The status of PBO should help identify the CSOs that provide the greatest service for public benefit purposes and are committed to a high level of transparency and accountability, and it should strive to be inclusive rather than exclusive. The additional reporting, transparency and oversight requirements have to be proportionate to the additional tax benefits for PBOs. This is not the case as the PBOs have significant responsibilities without any fiscal or other incentive.

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<sup>48</sup> Analysis of the implementation of the Law on donations and sponsorships in the public activities 2007-2011, Association Konekt and European Center for Not-for-profit Law, 2012

[https://www.nvosorobotka.gov.mk/sites/default/files/analiza\\_na\\_sproveduvanje\\_to\\_na\\_zakonot\\_za\\_donacii\\_i\\_sponsorstva\\_vo\\_javnite\\_dejnosti\\_low\\_res\\_0.pdf](https://www.nvosorobotka.gov.mk/sites/default/files/analiza_na_sproveduvanje_to_na_zakonot_za_donacii_i_sponsorstva_vo_javnite_dejnosti_low_res_0.pdf).



c) The tax benefits on philanthropic giving for public benefit are clearly linked to the non-profit character of the recipients, which is not reflected in the existing LDSPA. While additional benefits might be introduced for the PBOs, the revisions of the LDSPA have to ensure that all CSOs that pursue public benefit activities are able to receive tax-exempt donations.

### ***Taxation of income***

In North Macedonia, the LAF enables CSOs to generate funding from diverse sources of income such as membership fees, founding deposits, charitable contributions, donations, gifts (in the form of money, goods, property rights), wills, legates, income-generating activities, rents and leases, as well as income from investments, dividends, interests, loans etc<sup>49</sup>. Economic activities are allowed if they are in line with the statutory purposes of the organisation. The revisions on the Law on Profit Tax in 2018<sup>50</sup> identified the CSOs as entities exempt from the profit tax. There is no income tax on the revenues from membership fees, charitable contributions, donations, grants, gifts (in money, goods, property rights), wills, legates, revenues from dividends from trade companies established with the funds of the association, and revenues from the Budget of the Republic, the budgets of the units of local self-government, and the Budget of the City of Skopje<sup>51</sup>. Income from economic activities is non-taxable, up to 1.000.000 denars (approx. 16.000 EUR) per year. To avoid unfair competition with entities whose income from economic activities is taxable, income above the threshold of 1.000.000 denars in a calendar year is subject to income tax of 1% only for the amount that exceeds 1.000.000 denars (profit tax is paid on the difference).

Reflecting on the EU practice, the tax treatment of economic activities needs to be reviewed to ensure that it sufficiently encourages CSOs to generate unrestricted income from economic activities (mission and non-mission-related) to strengthen their sustainability and diversification of resources. This is of particular importance for the emerging social entrepreneurship initiatives of the CSOs. Additional analysis should review the implementation of the changed tax regime introduced in 2018 and its impact on the CSOs. A comparison with the taxation of for-profit companies, in particular micro and small enterprises, would also be valuable to ensure more favourable taxation of the CSOs' economic activities due to their non-profit nature, i.e. the asset/distribution lock. Based on the comparative EU practice, the policy analysis and proposals could look into several aspects for clarifications and revisions of the legal framework for economic activities in order to:

- provide clearer guidance on what constitutes mission and non-mission-related economic activities;
- consider clearer provisions on allowing CSOs to pursue non-mission-related economic activities;
- provide a clearer definition and specific criteria on when a CSO would create unfair competition, which could be subject to taxation;
- consider providing tax exemption on mission-related economic activities and tax only the non-mission-related economic activities;
- introduce higher tax exemptions for the CSOs with Public Benefit Status.

All these aspects have to be reflected upon consultations with the CSOs and considered only with a purpose of providing a more favourable and clearer framework for the CSOs to pursue economic activities to improve sustainability as well as to safeguard their non-profit nature.

<sup>49</sup> Article 48, Law on associations and foundations.

<sup>50</sup> Law on profit tax, "Official Gazette of the Republic of North Macedonia" no. 112/14, 129/15, 23/16, 190/16, 248/18, 158/19, 232/19, 275/19, 290/20 and 151/21.

<sup>51</sup> Ibid.



## Value Added Tax

The standard VAT rate in North Macedonia is 18% while reduced rates of 5% or 10% apply to certain goods and services. CSOs are obliged to pay VAT when they purchase goods and services. There are two types of VAT exemptions for CSOs based on their source of income. The Law on VAT provides VAT exemptions on goods and services purchased within projects funded by international institutions that have signed donation agreements with the Government of North Macedonia which stipulates that the taxes will not be paid with the donor funds<sup>52</sup>. It also applies for the co-funding provided by the National budget of RNM within the Instrument for Pre-Accession Assistance (IPA) under the decentralized funding<sup>53</sup>. These are the types of tax exemptions mostly used by the CSOs in the country<sup>54</sup>. The second type of VAT exemption is provided by the Law on donations and sponsorships in the public activities for the donations from domestic and foreign individual and corporate donors that have received the confirmation of being in public benefit activities from the Ministry of Justice (see below). This VAT exemption applies for material and in-kind donations as well as for purchases obtained with donated money. There are no additional VAT recovery schemes. The VAT exemptions on international donor funded projects also do not apply to the co-financing portion of the contract that the CSO provides as contribution in EU projects (and those of other donors, where applicable).

Regarding the output VAT, there is generally no preferential treatment of the goods and services provided specifically by the CSOs. However, the VAT law prescribes VAT exemptions for specific types of services which are often provided by CSOs, such as: cultural institutions (ustanovi) that provide cultural services in line with the law or entrance tickets for public cultural events of national interest, health services provided by hospitals, clinics and similar entities, services provided by institutions for social protection and care including hospitalisation and care for elderly, as well as institutional accommodation of children and youth and their education. In general, as for other types of entities, CSOs become registered for VAT when, within a year, their total turnover from economic activities that are subject to VAT reaches the threshold of 2.000.000 MKD (approx. 32.520 EUR).

Further analysis and policy proposals are needed regarding the VAT treatment of CSOs (input and output VAT). Existing analysis and practice have already identified challenges about definitions of taxpayers, economic activities and similar<sup>55</sup>, the law capacities of the CSOs to administer the VAT

<sup>52</sup> Article 24-a from the Law on VAT, "Official gazette of the Republic of North Macedonia No. 44/99, 59/99, 86/99, 11/00, Constitutional court No. 93/00, 8/01, 21/03, Constitutional court No. 17/04, 19/04, 33/06, 45/06, 101/06, 114/07, 103/08, 114/09, 133/09, 95/10, 102/10, 24/11, 135/11, 155/12, 12/14, 112/14, 130/14, 15/15, 129/15, 225/15, 23/16, 189/16, 198/18, "Official gazette of RNM" No. 98/19, 124/19, 275/19, 267/20 и 163/21.

<sup>53</sup> Ibid.

<sup>54</sup> Simona Ognenovska, Monitoring Matrix on Enabling Environment for Civil Society Development Country Report for North Macedonia 2019, Macedonian Center for International Cooperation, March 2020 <https://www.balkanicsd.net/mcic-published-the-monitoring-matrix-on-enabling-environment-for-civil-society-development-csdev-report-2019-for-north-macedonia/>.

<sup>55</sup> Elena Georgievska and Goce Kocevski, Novelties in the implementation of the Law on Value Added Tax and their impact on the work of Civil Society Organizations, Are individuals VAT taxpayers?, Center for legal research and analysis – Skopje, 2018 <https://cpia.mk/wp-content/uploads/2021/10/NOVELTIES-IN-THE-IMPLEMENTATION-OF-THE-LAW-ON-VALUE-ADDED-TAX-AND-THEIR-IMPACT-ON-THE-WORK-OF-CIVIL-SOCIETY-ORGANIZATIONS-1.pdf>.



requirements<sup>56</sup>, VAT on the co-financing on EU-funded projects<sup>57</sup>, VAT on donations from domestic donors when intermediary entities are involved as facilitators for the donors and the end recipients, etc. A VAT refund scheme (on the input VAT) could reduce the financial burden in particularly of small CSOs. Simplifying the procedure for VAT exemptions within the LDSPA could be streamlined by utilizing the already well-established e-invoicing process for foreign-funded projects.

### ***Tax treatment of philanthropic giving***

In North Macedonia, the Law on Donations and Sponsorships in the Public Activities (LDSPA) provides tax benefits for individual and corporate donors when they donate to a wide array of public benefit activities to a broader group of recipients, including all types of CSOs. The tax benefits apply to monetary as well as material and in-kind donations. Individual donors receive tax credit on their donations i.e., they can deduct up to 20% of their annual tax or to a maximum of 24.000 MKD (approx. 390 EUR). Corporate donors receive tax debit on their donations and sponsorships with a threshold of 5% of the total annual turnover for donations and 3% for sponsorships. The tax benefits can be applied to the full amount of the donations with no minimum or maximum donation level. The LDSPA does not provide additional benefits for CSOs with PBO status. It prescribes a comprehensive administrative procedure unlike any comparative EU practice with requirements for an ex-ante contract between the donor and the recipient, a certificate for the received donation issued by the recipient to the donors, a formal document from the Ministry of Justice confirming that the particular donation is connected to a public interest activity (applied to each individual donation) and other supporting documents as needed<sup>58</sup>. This procedure was waived in May 2020 under COVID-19 measures when the recipient is a public institution and the donation is for the purposes of mitigating the COVID-19 pandemic, which is by default treated as public benefit<sup>59</sup>. However, donations to CSOs did not enjoy such a simplified administrative procedure. Furthermore, the donor and the recipient are required to submit a report to the Public Revenue Office consisting of information on the level of donation, the recipient, and the end beneficiary, as well as the accompanying supporting documentation.

The LDSPA also provides tax incentives on the VAT for the donated goods and services as well as on the purchases made with donations from individual and corporate donors if they have obtained the document for confirmation of public interest from the Ministry of Justice and if they undergo a separate administrative procedure prescribed within the bylaws. Furthermore, SMS donations through dedicated phone numbers for humanitarian purposes are exempt from VAT within the VAT law.

The LDSPA also provides exemption from the inheritance/transfer tax on donated gifts and property and CSOs can be exempt from the property tax for five years from the year of donation of the property.

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<sup>56</sup> Ibid.

<sup>57</sup> Strategy of the Government of Republic of North Macedonia for cooperation with and development of civil society with Action plan 2022-2024  
<https://www.nvosorabotka.gov.mk/sites/default/files/Strategija%20usvoena%2028%2012%202021.pdf>.

<sup>58</sup> For more comprehensive information on the procedure please refer to the Guidebook on the implementation of the Law on donations and sponsorships in the public activities available in Macedonian and Albanian language at <http://donirajpametno.mk/publikacii/>.

<sup>59</sup> Decree with legal force on the implementation of the Law on donations and sponsorships in public activities during the state of emergency, "Official Gazette of the Republic of Northern Macedonia" No. 103/2020 and 140/2020.



In addition to the LDSPA, the Law on profit tax provides additional tax benefits to corporate donors who donate to national sports federations and sports clubs. In this case, the tax benefit is a tax credit, i.e., the corporate donors can receive a deduction from their profit tax of up to 50% depending on the type of sports and recipient. These types of incentives for particular areas of public interest have not been noted in the available reports on the EU comparative practice.

In the context of North Macedonia, the tax incentives on donations should also aim at encouraging local donors to donate to a broader spectrum of CSOs. Options to stimulate the long-term commitment of the donors could also be considered, as well as complying with the ECJ ruling on cross-border philanthropy. As the fundraising and philanthropy fields are in the early stages of development, the tax relief of the various tools for giving and fundraising should be strengthened and regulated clearly to facilitate straightforward implementation and alleviate any confusion. Additional analysis could assess the implementation of the LDSPA and the additional tax benefits on the donations in sports, as well as their effects and impact on the donors, recipients, and the public benefit.

The administrative procedures for tax benefits and reporting for the CSOs and the donors should be significantly simplified as the existing analysis indicates that North Macedonia has one of the most bureaucratic administrations of tax incentives on donations. There are comprehensive good practices from EU countries that can be consulted when revising the existing legislation. The changes introduced for COVID-19-related donations to public institutions can guide further revisions of the procedure for all types of donations and sponsorships to CSOs.

As a final remark, it is of utmost importance that further steps in reviewing and revising the tax treatment of CSOs in North Macedonia include active involvement of the CSOs and their donors. In the process, all key stakeholders need to be properly informed about EU comparative practice and sensitised on the key aspects about the fiscal framework for CSOs.

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