Taxation of charities
Belgian Report

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I. Introduction: definitions

Since the term “Charities” as such is not clearly defined in Belgium Law, for the purpose of this national report, we will only consider the tax treatment of the so-called “(international) non-profit associations” (A(I)SBL/(I)VZW), private foundation and public-interest foundations.

According to article 1 of the law of 27 June 1921, the association sans but lucratif (ASBL)/verenigingen zonder wistoogmerk (VZW) is an association, which does not engage in industrial or commercial operations, and does not seek a material gain for its members. These two conditions are cumulative. However, Belgian legislation does not go as far as prohibiting those entities to carry any type of industrial or commercial activity and generally accept that an ASBL/VZW pursue such operations provided that it stays incidental and remain financially disinterested. The concept of “financial advantage” must be considered strictly, i.e. as the pursuit of a gain, not an economy, as a discount on the regular price of admission, in the positioning of members.

Article 46, 3° of the Law of 27 June 1921 refers to the international counterpart of the ASBL/VZW described above: the association international sans but lucratif (AISBL)/Internationale verenigingen zonder wistoogmerk (IVZW). According to the first paragraph, it

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1 Not-profit activities (charitable activities) could be pursued in Belgium by other legal entities such as la société à finalité sociale/vennootschap met sociaal oogmerk, les régies communales autonomes/Autonoom Gemeentebedrijf et les intercommunales/. Although all those entities share common characteristics with ASBL/VZW and foundations (in particular considering the tax regime), they do not seem to fall under the English concept of “charity.”

2 Loi du 27 juin 1921 accordant la personnalité civile aux associations sans but lucratif et aux établissements d'utilité publique/Wet van 27 juni 1921 waarbij aan de verenigingen zonder winstgevend doel en aan de instellingen van openbaar nut rechtspersoonlijkheid wordt verleend) was approved to grant legal personality to non-profit associations/associations sans but lucratif (ASBL) and public utility establishments/établissements d'utilité publique (EUP), M.B. (Belgian Gazette), 1er July 1921.

is open to Belgians and foreigners, is headquartered in Belgium and is pursuing a non-profit aim with an « international public-interest » (concept borrowed from Article 1 of Convention of Strasbourg No. 124 of 24 April 1986, approved by Belgian law of 31 July 1991). Its purpose or activities may not go against Belgian laws or the public policy. Finally, obtaining a royal license is essential for the acquisition of legal personality for AISBL/IVZW.

The term foundation was not defined, recognised or protected under Belgian law, until recently. The law of 27 June 1921 (hereafter the 1921 Law) has been substantially amended by the law of 2 May 2002, which introduces important changes to the legal environment of foundations in Belgium, namely by replacing the term “public utility establishment” with the term “public-interest foundations” and by creating a new type of foundation: the private foundation.

The 1921 Law states in Article 27, that “the foundation is the result of a legal act from one or several individuals or legal entities that dedicate capital to a specific not-for-profit aim”. It may not provide a material gain for the founders or directors, nor any other person, except, in the latter case, if for instance its purpose is supporting a disabled child. Thus, a private foundation is not required to serve the general interest. It may also pursue private purposes, for instance estate planning for family help enterprises.

In fact, the Parliament's intention was primarily to create in Belgian law, an alternative to the Dutch stichting-administratiekantoor, in order to have an effective legal instrument for the management and control of a family business through the certification, even if the private foundation may be create for any other purpose.

The foundation has no members and to be valid, may be constituted in due legal form (notary deed or by will - article 27§3). According to article 27§4, foundations can be recognised as being of public interest when they pursue philosophical, religious, scientific, artistic, educational or cultural aims (strictly enumerated by the 1921 Law).

With the approval of the King, private foundations can convert into public-interest foundations (Article 44 of the 1921 Law). Then, any modification of the statutes is subject to

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the approval of the Minister of Justice (Article 29 § 2 and 30 § 2). Once the statutes are approved, they must be published in the Belgian Gazette (Moniteur Belge/Belgisch Staatblad) (Article 31.4). Private foundations are created once their statutes of incorporation are communicated to the competent court. The statutes have to be published in the Belgian Gazette (Article 31.4).

II. Income Tax

A. Tax on legal entities
In Belgium, there is no specific income tax treatment for charities. It is rather a preferential system applicable by default to all legal entities that do not fit the criteria for being subjected to Belgian corporate tax. This preferential treatment, called tax on legal entities is not specific to the charities as it applies to any legal persons not subject to corporate income tax.

A(I)SBL/(I)VZW and foundations are generally not subject to corporate tax but to the tax on legal entities. Exclusion from corporate tax is applicable if the entity has a non-profit status (which implies a non-distribution constraint), and does not carry out profit-making operations. If this last condition is not met, the exemption is still granted if the entity performs activities that include only incidentally industrial or commercial operations or which do not involve the use of industrial or commercial methods (Art. 182 of the Belgian Income Tax Code - ITC). Several examples are to be found in the case-law of A(I)SBL/(I)VZW which have been considered as not fulfilling these criteria and have therefore been subject to corporate income tax (while continuing to be treated under civil as not for profit organisations)⁵.

Exclusion from corporate tax is also applicable to ASBL/VZW operating in the so-called privileged sectors as defined by the Code (Art. 181 ITC), i.e. providing social benefits, helping families or elderly people, securing professional interests or working in the field of

⁵ See for example Trib. First instance, Mons 7 May 2003, (Rest home): an ASBL/VZW that manages a rest home is subject to corporate tax when it provides an immediate material gain to its director, giving him a very high interest for the sums he has lent or when it pays a rent for a real estate which is not affected to non-profit aim; Liege Court of Appeal, 2 November 2005, (Tavern run by a sport club): the court of appeal decided that the association, which has the burden of proof that it is not subject to corporation tax, does not establish that any profits were assigned to carry its disinterested purpose. This principle, already mentioned in parliamentary work, was set out by the judgment of the Court of Cassation on 3 October 2006; and Cass., 20 April 2005, (Horse racing): the Supreme Court stated in favor of the principle of quantitative interpretation of the word "incidentally" used by the legislature. Thus, when operations are sustainable and routine, and constitute the main activity, they can no longer be regarded as incidental, even if the profit is allocated to the disinterested purpose.
exhibitions, or providing education. There is no obligation to pursue a public benefit purpose to be granted the legal entities regime.

The exclusion from CIT is not subject to any prior formal agreement by the tax authorities. The tax administration, however, may challenge the income tax status of the association.

Foreign entities, which have a permanent presence in Belgium also benefit from the exclusion provided by Art. 182 of the ITC, but cannot be exempted on the sole basis of Art. 181 (organisations operating in the field of the privileged sectors mentioned above). This restriction could be in conflict with the Treaty of Rome.

Charities which do not have their residence for tax purpose in Belgium are subject to the non-resident income tax on their Belgian income. Depending on the taxpayer’s characteristics, the income tax for non resident may be similar to the corporate income tax, for legal entity which carry out profit-making operations, or to the tax on resident legal entities. In this regard, it is necessary to refer to articles 227, 3 (taxpayers), 230.5 ° (exempted income), 234 (taxable income), 235, 3 (determination of taxable income) and 247 (tax rate) of the ITC.

According articles 181 and 182 - ITC interpreted in the light of the Law of 27 June 1921, ASBL/VZW and foundations should not provide to its directors, staff or founders with any direct material gain. Moreover, any distribution of surpluses or assets is forbidden. However, remuneration of directors or employees is not explicitly forbidden in civil nor in tax law. In this case, the remuneration should never be set as a function of the foundations’ income, but only as a function of their work.

Directors and persons responsible for the day-to-day management are normally subject to the same income tax regime as persons performing those functions within a commercial enterprise, which aim at considering all sums and benefits received as earned income, whatever their legal qualification (Article 32 ITC). However, directors that are not remunerated for their mandate in the association are normally excluded from this regime. Moreover, this implies for example that rents exceeding 6.45 times the cadastral income received for the lease their own building to the association could be considered earned income and not income from immovable property.
The Belgian ITC does not provide for a specific regime for the reimbursement of expenses by directors and employees of the association (articles 31 and 32 ITC). However, there are special arrangements in that respect for the volunteers provided by administrative guidelines circular of 23 May 2011. The volunteers’ scheme could be applied to employees, if the activity for which they volunteer is different from those their professional activity within the association.

The tax on legal entities is not applied on global income but only on income derived from specific sources, i.e. income derived from real estate, movable income, and capital gains on specific items and other miscellaneous income. The taxes are collected by means of withholding taxes. Income from real estate is taxed through a final withholding tax, calculated on the cadastral income (i.e. the annual rental value of the immovable property) or at a flat rate of 20% depending on the place where the real estate is located. Miscellaneous income – such as income from subletting or transferring and renting of immovable property whether furnished or not, income from the renting of advertising space, or income from the renting of hunting, fishing or bird-catching rights – is also taxed through a withholding tax of 15%.

Grants and donations received by charities are not subject to tax on legal entities, but may be subject to registration or inheritance duties.

Gifts to qualifying charities (i.e. charities that are operating in specific areas and which have been recognised by royal decree) are deductible from the donor’s taxable base within certain limits. In principle, only gifts of cash can benefit from tax deduction. The only minor exception to this principle concerns some gifts of works of art to museums (not applicable to foundations.

Bodies which may receive a deductible donation can be classified into four groups. First, some bodies are specifically designated by law (Article 104, 3 a, b, c, f, g), like for example - Belgian universities and institutions assimilated to universities, including those of another State within the European Economic Area; the Royal Academies; the National Fund for scientific Research or National Museums and assimilated institutions. Second, other recognized bodies, not expressly enumerated by the Law, are those carrying out the following

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activities or pursuing the following aims: scientific research; support of specified categories of disadvantaged persons; assisting developing countries; assistance to victims of natural disasters; assistance to victims of major industrial accidents; nature conservation or environmental protection; animal protection; the preservation or protection of monuments; sustainable development. Thirdly, cultural institutions approved by the King may also be granted from deductible donations if they fulfill the terms and condition for approval provided by Article 58 of the Royal Decree of 27 August 1993. Finally, may also benefit from these donations the adapted work enterprises which, pursuant to the legislation concerning the social rehabilitation of disabled persons are created or approved by the executive or the competent body (Article 104, 3°, h).

Minimum and maximum thresholds are provided by the Code. As of 1 January 2011, in order for an individual to claim a tax deduction, their donations must amount to minimum €40 per year and per association (article 107-ITC). For individual donor, the aggregate value of the gifts cannot exceed 10% of the taxable income, with an absolute maximum of €250,000 for the tax year 2012 (article 108-ITC) and for corporate donor, the aggregate value of the gifts cannot exceed 5% of the taxable income, with an absolute maximum of €500,000 for the tax year 2012 (Articles 199 and 200 – ITC).

The tax treatment of donations to non-resident public-benefit foundations has been recently modified in order to comply with the case-law of the European Court of Justice (Persche case⁸). Before the law of 22 December 2009⁹, gifts to non resident institutions were not deductible for Belgian income tax purposes. This law has amended article 108 of the Belgian ITC in order to allow income tax deductibility for donations or gifts to so called “qualifying institutions”, whether domestic or foreign. The law now states that donations to qualifying domestic institutions or to similar institutions from another member state of the European Economic Area, which are recognised on a similar manner will be tax deductible. Non-resident receiving organisations within the EEA should be considered as comparable to a Belgian institution and should be recognized „in a similar manner” (as resident charities are recognized by Belgian authorities)” in their country of residence, in order to generate tax relief for the donor.

According to article 108 -ITC, the taxpayer who claims the deduction for a cross-border gift should keep at the disposal of the tax authorities evidence showing that the foreign institution can be considered as similar to a Belgian institution dealt with by the law and the documents showing that it has been recognized in a similar manner” in its country of residence.

**B. Accumulation of income: the compensatory tax for inheritance tax**

The compensatory tax for inheritance tax is levied annually on the total assets which non-profit making companies own in Belgium.

As we already mentioned, the Law of 27 June 1921 gave the ASBL/VZW and foundations the opportunity to acquire a legal personality. Thus, by the fact that they have as legal person perpetual succession, these entities will indefinitely escape taxes on the transfer of property, as gift duties and succession duties. There is the reason why the Belgian legislator in 1921 created an annual tax for the capital for charitable organizations in order to compensate the economical loss of gifts and succession duties: the compensatory tax for inheritance tax (Articles 147 to 160 of the inheritance tax code). The tax rate is 0.17%. Although death duties have been transferred to the Regions, the federal authority is currently still competent to fix the main elements of this compensatory tax.

It applies to ASBL/VZW and foundations, except public-interest foundations, provided that they have sufficient assets (Article 148bis of the Inheritance Tax Code: the amount of their total taxable assets determined in accordance with Article 150 has a value greater than 25,000 euros). However, certain entities are exempt because of their activity (see article 149 of the Inheritance Tax Code).

**III. VAT**

According to articles 4 to 8 bis of Belgian VAT Code, a taxable person is anyone who, in the performance of an economic activity, carries out, in a regular and independent manner, whether on a principal or accessory basis, with or without profit motive, the supply of goods or services referred to in the VAT Code irrespective of the place where that activity is carried on (Art. 4).

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Therefore, since the intention of making a profit is not a determining factor to fall into the scope of VAT liability, Charities may fall into the VAT scope, as far as they perform economic activities.

In most of cases, A(i)SBL and foundations, even from public-interest, will be considered as an hybrid taxable person. A hybrid taxable person engages in taxable operations covered by the code of VAT, but some of which are subject to the tax and others are exempt without a right of deduction.

Exemptions are provided by article 44§2 of the Belgian VAT Code (in accordance with articles 132 and 133 of the EU VAT Directive). Several of them could apply to not-for profit organizations because the exemption are based mainly on cultural and social considerations.

These are mainly:

- services provided by hospitals and similar establishments (art. 44§2, 1°)
- services related to social work, social security or protection of children and young people, where provided by public bodies or other registered social establishments (e.g. care of the elderly, childcare, care of the disabled, home help, health insurance funds, etc see Art. 44§2, 2°.
- services provided by certain sports establishments Art. 44§2, 3°.
- services provided by recognised educational institutions Art 44§2, 4°
- services provided by certain other social and cultural institutions, such as libraries, theatres, cinemas (under certain conditions) Art 44§2, 6°, 7° and 8°.
- supplies of goods and services closely linked thereto, to their members in their common interest in return for a subscription fixed in accordance with their rules by non-profit-making organisations with aims of a political, trade-union, religious, patriotic, philosophical, philanthropic or civic nature, provided that this exemption is not likely to cause distortion of competition; Article 44§2, 11°
- supplies of goods and services, by organisations whose activities are exempt and in connection with fund-raising events organised exclusively for their own benefit, provided that exemption is not likely to cause distortion of competition article 44§2, 12°

Most of these exemptions follow the wording of the EU VAT Directive, and are interpreted and applied according the ECJ case-law. The most direct consequence of being granted an exemption for particular goods and services is the limitation (and sometimes the exclusion) of
the right to deduct in put VAT, in proportion to the turnover of transactions subject to VAT in relation to total turnover (pro rata system). The prorata system may be disadvantageous when the charity acquires goods of services, intended to be used solely for taxable activities normally subject to VAT. In this case, the charity may ask for a deduction on the basis of the effective use made of the goods and services and deduct the entire VAT paid.

**IV. Inheritance, estate and gift taxes**

As far as registration duties and succession duties are concerned, substantial normative competences have been transferred from the federal level to the Regions.

The extent of regional powers concerning both duties are determined according to criteria defined in the special Communities and Regions Financing Law of 23 January 1989 (amended in 1993 and 2001 – referred hereunder as Special Financing Law).¹¹

Nowadays, in all three regions of Belgium, charities benefit from a preferential rate of donation and succession in comparison with the general system of gift and succession taxes. In this regard, each Region has set up in their own codes¹² tax regimes, which are different in the conditions for granting the preferential regime. It is therefore necessary to determine territorial criteria for the allocation of regional taxing powers to avoid situations of double (non) taxation. The Region thus, in order to avoid double taxation and to ensure the proper functioning of the system established to finance Regions, the Special Communities and Regions Financing Law contains criteria for the geographical allocation of taxing powers and revenues. These criteria are sometimes very simple, sometimes more complex (in order to avoid interregional tax planning).¹³ They generally refer either to the place where the taxable event occurs, or where the taxable person resides.

The criteria of the location of the taxable event (=source) applies for the following taxes:

- the registration tax on property transactions for consideration as well as on mortgage is due in the Region where the real estate is located. If the transaction takes place in

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¹² Each region has two codes, one for registration duties and one for succession duties. Thus, for both taxes, there are six codes within the Kingdom.

¹³ Art. 3, al 1st, 1° to 3° of Special Financing Law.
several Regions, the tax is due in the Region where the part of the estate, which has the higher cadastral income is located.

- the registration tax concerning lifetime gifts of real estate located in Belgium made by a non-resident of Belgium is due where the real estate is located.¹⁴

- The death duties for non-residents in Belgium (applicable only to real estate property) are due in the Region where the property is situated. If properties owned by the deceased are located in several Regions, the Region with the property which has the highest value (highest cadastral income) is competent.

The criteria of the residence of the taxable person applies for the following taxes:

- the registration tax levied on lifetime gifts of personal or real property given by a Belgian resident is due where the donor has his/her domicile for tax purposes at the time of the gift. If his/her address for tax purpose was registered in several places in Belgium during the five years preceding the gift, the tax is due in the place in Belgium where he or she established his/her address for tax purposes the longest time during this period.

- the inheritance tax (applicable to Belgian residents on their worldwide wealth) is due where the deceased had his domicile for tax purpose at the time of his/her death. However, if the deceased moved his or her domicile for tax purposes within Belgium during the five years preceding his death, the tax is due in the Region where he or she resided for the longest period of time during these five years.

**A. Registration duties**

As we just mentioned, Registration duties are laid down and regulated by the Code of Registration Duties (one Code by Region), which defines them as follows: «Registration duties are levied, as a rule, when a deed or written document is registered, i.e. at any formality which consists in copying, analysing or mentioning this deed or this written document by the receiver of registry fees and stamp duties in a register made for this purpose or on any other data medium determined by Royal Decree »²⁶.

Depending on the legal act subject to registration, the tax treatment may vary.

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¹⁴ Art 5, §2, 8° of Special Financing Law.
¹⁵ Art. 3, al. 1st, 4°. of the Special financing Law
¹⁶ Belgian survey.
1) Registration duties levied on the incorporation of charities (same tax regime for the three regions)

As far as charities are concerned deeds drawn up by Belgian notaries for the incorporation of a foundation\(^{17}\) or an AISBL/IVZW\(^{18}\) must be registered. The registration of the incorporation act gives rise to a general fixed duty of 25 euros\(^{19}\). Each of the appendices or amending acts will be subject to the same general fixed duty of EUR 25.

The founders of an ASBL/VZW may choose between private deeds or notarial deeds for the incorporation act or for the amending acts\(^{20}\). If they opt for the notarial deed or if they decide to register their private deed, they must pay the general fixed duty of EUR 25\(^{21}\). Each of the appendices shall be subject to the same duty of EUR 25.

2) Registration duties levied on donations

According to the articles 3, §1, 8° and 4 §1 of the Special Financing Law Belgian Regions are allowed to determine the tax base, the tax rate and the exemptions of the registration duties applicable to (registered) gifts. Before the regionalization, the national legislation already provide for a preferential tax regime for gifts to charities. As a consequence of the regional nature of registration duties, each Region has modified this specific tax regime independently from the others.

a) The Walloon Region

According to article 140,2° of the Walloon registration duties Code, there are a preferential tax rate of 7% and one specific fixed duty, which will be applied to some charities only. The 7% tax rate will be used for gifts to ASBL/VZW, AiSBL/iVZW and both types of foundations. The specific fixed duty\(^{22}\) of EUR 100 will be charged on gifts to ASBL/VZW, AiSBL/iVZW and foundations when the donator is himself one of these charities.

According the Walloon Code, in order to be granted of the preferential tax rate and the specific fixed duty, the beneficiary must fulfill several formal and material conditions

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\(^{17}\) Article 27, alinéa 3 de la Loi du 27 juin 1921 sur les associations sans but lucratif et les fondations, Wet betreffende de verenigingen zonder winstoogmerk, de internationale verenigingen zonder winstoogmerk en de stichtingen, M.B., 1 July 1921.

\(^{18}\) Article 46, alinéa 2 de la Loi du 27 juin 1921 sur les associations sans but lucratif et les fondations, Wet betreffende de verenigingen zonder winstoogmerk, de internationale verenigingen zonder winstoogmerk en de stichtingen, M.B., 1 July 1921.

\(^{19}\) Article 11 of the registration duties Code.

\(^{20}\) Article 2 alinéa 2 de la Loi du 27 juin 1921 sur les associations sans but lucratif et les fondations, Wet betreffende de verenigingen zonder winstoogmerk, de internationale verenigingen zonder winstoogmerk en de stichtingen, M.B., 1 July 1921.

\(^{21}\) Article 11 of the registration duties Code.

\(^{22}\) Article 140,3°.
simultaneously. Some of these conditions are common to all Charities\(^{23}\) and some others are specific to ASBL/VZW\(^{24}\) and to private foundations\(^{25}\).

**b) The Brussels-Capital Region**

The article 140 al. 1er of the Brussels-Capital Code lays down two preferential tax rates for charities. First, a rate of 6.6% is granted on gifts to public-interest foundation\(^{26}\), then a 7% rate is applied to donation of immovable property towards ASBL/VZW, AiSBL/iVZW and private foundations. The article 131, §2, 2\(^{\circ}\) applies a 7% tax rate to donation of movable property. As in Wallonia the specific fixed duty of EUR 100 will be charged for donations to ASBL/VZW, AiSBL/iVZW and private foundations when the donator is himself one of these charities. The grant of the 6.6% tax rate is unconditional Whereas both 7% tax rate and specific fixed duty are only granted to Belgian legal entities or similar legal entities incorporated in another European Economic Area member state and having their statutory seat, headquarters or their main establishment in the European Economic Area\(^{27}\).

**c) The Flemish Region**

The Flemish Region has the simplest tax regime with almost no conditions\(^{28}\). The article 140, 2\(^{\circ}\) of the Flemish Code lays down a 7% tax rate is applied to donation to ASBL, AiSBL and foundations and a EUR 100 specific fixed duty\(^{29}\) for donations to ASBL, AiSBL and private foundations when the donator himself is one of these charities. Both tax rates are used on Belgian legal entities or similar legal entities incorporated in another European Economic Area member state and having their statutory seat, headquarters or their main establishment in the European Economic Area\(^{30}\).

\(^{23}\) Article 140, 4\(^{\circ}\) : for instance the beneficiary must have his place of business in Belgium, in an EU Member State in which the donor effectively resides or has his place of work at the time of donation or in which he previously effectively resided or had his place of work and a philanthropic aim at the moment of the donation.

\(^{24}\) Article 140,4\(^{\circ}\).

\(^{25}\) Article 140 al.5.

\(^{26}\) Article 140, al. 1\(^{\circ}\) of the Brussels registration duties Code.

\(^{27}\) Article 140, 4\(^{\circ}\).


\(^{29}\) Article 140,4\(^{\circ}\).

\(^{30}\) Article 140, 4\(^{\circ}\).
B. Inheritance Law and Inheritance Duties

1) The Walloon Region

The article 59,2° of the Walloon inheritance tax code provide for a preferential rate of 7% applicable to legacies to ASBL/VZW, AISBL, private foundations and public public-interest foundations under three conditions:

‘a. the body or institution must have a centre of operations:

– either in Belgium;

– or in the Member State of the European Community 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;

b. the body or institution must, at the time when the process for settling the estate commences, pursue at that centre of operations, as its principal activity and for a purpose other than its own benefit, objectives of an environmental, philanthropic, philosophical, religious, scientific, artistic, pedagogical, cultural, sporting, political, trade-union, professional, humanitarian, patriotic or civic nature, or of an educational nature or involving care for persons or animals, or the provision of social assistance or social inclusion for persons;

c. the body or institution must have its seat, its place of central administration or its principal place of business within the territory of the European Union.’

In Missionswerk Werner Heukelbach case, the European Court of Justice considered the first condition of the Belgium inheritance tax provision infringing the free movement of capital and thus in breach with article 63 of the TFEU. In this case, the taxpayer, Missionswerk, was a religious association based and registered as Charity in Germany. In 2004, a Belgian (more precisely a Walloon) resident nominated Missionswerk as her residuary legatee. The Belgian tax authority levied an 80 per cent (marginal succession tax rate) rate on the legacy. Missionswerk then formally applied to have the duty reduced from 80

31 Article 60, §1.
32 ECJ, 10 February 2011, Missionswerk Werner Heukelbach v. Belgian State, C-25/10, Not yet published.
per cent to the 7 per cent to which charitable and other non-profit organisations are entitled under the Belgian Tax Code. The Belgian tax authority refused and considered that the 7 per cent applies only to Charities that are based either in Belgium or in the deceased’s country of domicile or place of work. According to the tax authority, there was insufficient evidence that the deceased had resided or worked in Germany. With this provision, the Belgian tax authority expected «a connection between the recipient of a benefit and the society of the Member State concerned»\(^{33}\) and thus limited the tax exemption to bodies that serve the interests of a particular group favoured by the government - in this case, Belgian community at large.

2) The Brussels-Capital Region

The preferential tax regime for charities of the Region of Brussels-Capital differs from those applied in each of the other two Regions.

The article 59 of the Brussel-Capital Code lays down three preferential tax rate for Charities. First, a rate of 6.6% is granted on legacies to public-interest foundation\(^{34}\), then a 25% rate is applied to legacies in favour of ASBL/VZW, AiSBL/iVZW and private foundations\(^{35}\).

However, a preferential tax rate of 12.5% will be applied to legacies to ASBL/VZW and to other no making profit legal entities, which have receive the Federal approval for donation deduction expressly referred to in Articles 104 and 110-ITC, unless they benefit from a more advantageous tax rate under a specific provision of the code of succession duties\(^{36}\).

The grant of the 6.6% tax rate is unconditional whereas both 12.5% and 25% are only granted to Belgian legal entities or similar legal entities incorporated in another European Economic Area member state and having their statutory seat, headquarters or their main establishment in the European Economic Area\(^{37}\).

3) The Flemish Region

Here again, the Flemish Region has the simplest preferential tax regime with almost no conditions for Charities.

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\(^{33}\) ECJ, Case C-25/10, February 10, 2011, Missionswerk Werner Heukelbach v. Belgian State, para.30. On this argument, see E. Traversa/ B. Vintras, The territoriality of Tax incentives within the single market, not yet published.

\(^{34}\) Article 59, 1°.

\(^{35}\) Article 59, 2°.

\(^{36}\) Article 59,3°.

\(^{37}\) Article 60 of the Region Brussels-Capital succession duties Code.
The article 59,2° of the Flemish Code lays down a 8,8% tax rate applied to legacies to ASBL, AiSBL and both types of foundations based in Belgium or similar legal entities incorporated in another European Economic Area member state and having their statutory seat, headquarter or their main establishment in the European Economic Area.\footnote{Article 60 of the Flemish succession duties Code.}