EATLP annual congress in Rotterdam: Taxation of charities

Thematic report:

Deduction of gifts and contributions and other tax incentives in the PIT and CIT for non-profit entities or activities

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**I. Preliminary remarks**

By way of introduction, it can be stated that all countries involved in this project offer a variety of, more or less, favourable options to the donor or contributor in the tax treatment of gifts and contributions. Moreover, the examined national tax systems are similar in that gifts and contributions, even those offered to non-profit entities, are regarded as *personal/private expenditure* and their deductibility is therefore seen as a kind of privilege. As a result, the legal character of the deduction is normally described as “special expenditure”.

From a constitutional point of view, there is no need to grant, for example, a tax relief or a tax deduction because gifts and contributions for non-profit entities are not affected by the principle of ability to pay. The question of how and to what extent gifts and contributions for non-profit entities or activities should be tax deductible must be answered with regard to the prevailing *political and socio-cultural ideas* in each state or society. It is evident that the prevailing ideas differ and therefore the treatment of gifts and contributions and other tax incentives in the PIT and CIT for non-profit entities or activities also differ.

Having said that, it is possible to ascertain both a number of common instruments and some very special approaches found in the national tax systems examined as part of this project.

**II. Limited deductibility**

The deductibility of gifts and contributions by the donor or contributor is limited in all national tax systems included in this examination. Several approaches to the limitation of deductibility can be found.

1. Limits in the scope of activities

Some countries, e.g., Austria, Portugal and Norway, only allow for the tax deduction of donations and contributions for certain categories of non-profit entities. The Austrian Income Tax Act therefore declares the deductibility of donations made to universities, research centres, the national library and museums. In Denmark, the funds can only be allocated to humanitarian purposes, research, protection of the environment or to a religious society and, to some extent, to associations working for social, educational, national and cultural purposes. In Finland, a special rule exists for the purpose of promoting science or art at a university, a polytechnic or a university fund receiving public funding in the EEA. In Norway, non-profit organisations only qualify as recipients of tax-deductible donations when working with underprivileged groups or organisations promoting theatre, sports, etc. for children and youth, environmental organisations and religious and ideological organisations. Organisations promoting cultural or health (preventive) activities among the normal adult population do not qualify.
2. Limits in amount or value

In many national tax systems, the amount of deductible donations is limited. The limit may refer to the amount of the gift or contribution or to their value. Besides this, mere technical questions have to be considered because of their influence on the tax value of the gift or contribution. It is therefore important to distinguish between the instrument of deduction on one hand and the instrument of tax relief on the other hand.

a) Limits referring to the amount of the gift or contribution

On the whole, donations are only deductible if the donated amount does not exceed a certain threshold. For example, in Austria, Italy, Spain and the Netherlands, a threshold of 10% of the donor’s annual gross income, or in Germany and Switzerland, one of 20% is implemented. In Turkey, there is a general threshold of 5% of the taxable income of the donor in the relevant taxable period which is increased to 10% for areas of development priority. No threshold is applied to donations for special purposes in Turkey such as the construction, maintenance and operation of schools, health centres, student hostels, child day-care centres, rest homes for the elderly, nursing centres and so forth, as well as the restoration of historic monuments, the construction of libraries and museums and buildings for theatre and film. In Portugal, there is a general cap on the deduction of 0.8% of the turnover for corporate taxpayers. In contrast, an individual taxpayer in Portugal is not granted a deduction in the tax base but a tax credit. The creditable amount is limited to 25% of the value donated up to a maximum of 15% of the tax assessed. In Russia, there are certain limits in regard to the tax on income of individuals.

This threshold is sometimes combined with a fixed maximum amount or a lump sum. This is true, e.g., for Denmark; deductibility of continuous and one-sided payments to charitable associations is limited to DKK 14,500/15,000 annually and is furthermore capped at 15% of the donor’s income as far as contributions to humanitarian purposes, protection of the environment or a religious society are concerned. In contrast, the deduction of unlimited donations for research purposes and to cultural institutions is allowed. Italy states a maximum amount of 70,000 euros a year. Norwegian tax law limits the deduction to a maximum amount of NKO 12,000 (approx. 1,600 euros). In addition, there are special provisions which allow for deductions for contributions to scientific research and occupational training. In this sphere, there is no maximum nominal limit to the contribution. However, if the contribution exceeds NOK 10,000, it may not amount to more than 10% of net income excluding the contribution. In Sweden, the tax reduction may amount to a maximum to SEK 1,500 if the donation(s) amount to SEK 6,000 or more because individuals are allowed to claim a tax reduction of 25% of the value of the donation.
Some national tax systems state a **minimum amount** as well. This is quite reasonable because of matters of efficiency and, with respect to the intention, offer a telling incentive. That is true for **Switzerland** (100 CHF per fiscal year) and **Denmark**, for instance; donations to each cultural institution have to exceed DKK 500 annually in order to obtain deductibility. In **Greece**, a minimum of 100 euros is required to obtain a tax relief. No deduction is possible in the **Netherlands** for donations below 1% of the gross income, or € 60. In **Sweden**, the value of the year’s donation(s) must be at least SEK 2,000 and can be no less than SEK 200 on each occasion a donation is made. And in **Finland**, natural persons have been allowed to deduct at least 850 euros from their net income and at the most 250,000 euros in monetary donations for the purpose of promoting science or art at a university, a polytechnic or a university fund receiving public funding in the EEA.

**b) Limits concerning the tax value**

In addition, there may be a limitation in the tax value of the deduction. This limitation can be set by valuating the donated assets. This is important in cases of gifts and contributions in kind. Otherwise, a limitation is possible by way of special deduction rates.

**aa) Limits referring to the value of the gift or contribution**

Most countries recognize gifts and contributions in cash as well as in kind. **Sweden** is an exception to this rule; only monetary donations entitle the donor to a tax reduction. Most countries establish rules for measuring the value. The general rule in Spain is, for those cases in which the donor is obliged to carry out commercial bookkeeping (companies and individual entrepreneurs), that the tax base will be the **book value** of the donated good at the moment of the donation. This can be regarded as a general rule in many countries. In **France**, the amount of the deduction is equal to 66% of the value of the gifts, with a limit of this value set at 20% of the taxable income of a natural person.

**bb) Limiting the tax value by special deduction rates**

In **Norway**, for example, the deduction for contributions may be claimed against general income that is taxable at 28%, rendering the maximum tax value of the deduction at NOK 3,360 (approx. 450 euros). In **France**, the deduction rate is 75% (this deduction was capped at € 513 in 2011) for gifts made to non-profit entities providing free meals or free care to the homeless or contributing towards housing them. The deduction is equal to 60% of the gifts donated, with a cap set at 5% of the turnover of the legal entity. In **Spain**, individual taxpayers may deduct 25% of the donated amount or value from tax due. The deduction may not exceed 10% of the total tax base of the taxpayer. Corporations may deduct 35% of the base of deduction from tax due as far as the base of deduction does not exceed 10% of the total
tax base. Amounts in excess can be carried forward by corporations only. In Sweden, individuals are also allowed to claim a tax reduction of 25% of the value of the donation as of the income year 2012. The tax reduction may amount to a maximum to SEK 1,500 if the donation(s) amount to SEK 6,000 or more.

c) **Deduction of the donated amount versus tax relief**

Most countries provide a (limited) deduction of the donated amount against the tax base. Some countries, such as Greece, grant a tax relief instead of a deduction. In Greece, a tax relief of 20% of cash donations and sponsorships provided by individuals to cultural legal entities has recently been established, which cannot in any case exceed the rate of ten percent (10%) of total income. The same is true for some religious and medical bodies as well as for some research centres. In contrast, a **deduction** is granted for legal entities; the regular maximum limit of 10% of total net income or of the profits resulting from balance sheets has been proscribed. Exceeding sums are only deductible if cultural objects are concerned. Moreover, a quantitative restriction on the deductibility of donations is provided in that the total amount of deductible donations cannot exceed the amount of resulting net profit before deducting these amounts from gross income of the relevant accounting reference period. In Portugal, corporations are entitled to a deduction while individual taxpayers are granted a tax credit. In Poland, three institutions regarding donations are provided: the first offers the possibility to deduct tax due; the second allows the amount to be deducted from the tax base; the third enables the treatment of some expenses as deductible costs.

3. **Time limits for deduction of gifts and contributions**

The limits in amount often refer to yearly payments; so they imply a time limit of sorts. However, of greater importance is the occurrence of limited exceptional national provisions. Extraordinary political or social projects may provide for atypical deductibility in order to encourage donations. For example, in Finland, natural persons have been allowed to deduct at least 850 euros and a maximum of 250,000 euros in monetary donations from their net income for the purpose of promoting science or art at a university, a polytechnic or a university fund receiving public funding in the EEA from 1.1.2009 to 31.12.2011.

4. **Limits regarding the status of the donor or contributor**

In Denmark, for example, foundations with public benefit purposes enjoy tax privileges in the form of deductions for donations or provisions made for public benefit purposes. These special privileges often allow foundations with public benefit purposes to effectively eliminate income taxation or to at least defer taxation to ensuing income years. In Portugal, the specific amount that can be deducted varies with respect to the nature of the donor. A corpora-
tion is entitled to deduct an even disproportional amount, e.g., 140% of the amount if the
donation is attributed to social purposes, 130% if attributed in the framework of pluri-annual
contracts and 120% if attributed to cultural, environmental, sports or educational purposes. In
contrast, an individual taxpayer is not granted a deduction in the tax base but a tax credit.
The creditable amount is limited to 25% of the value donated up to a maximum of 15% of the
tax assessed. A disproportional tax credit of 130% of the donated value is available for indi-
vidual taxpayers when the donations are received by churches and religious entities. Dutch
tax law also contains different rules depending on the status of the donor. Normally, gifts from individuals which consist of up to 10% of the gross income are deductible. No dedu-
tion is possible for donations below 1% of the gross income or € 60. An exception to the rule
allows full deduction without a threshold for periodic gifts paid during at least a five-year pe-
riod and for gifts to cultural entities which can be taken into account for 125%. Corporate
taxpayers may deduct gifts of up to a maximum of 50% of the profit with a maximum of €
100,000. From 2012 to 2016, gifts to cultural entities can be taken into account for 150%.
However, the maximum additional deduction is € 5,000. In addition, expenditures with a
business reason are fully deductible. Entrepreneurs in Germany are allowed to opt for a de-
duction of maximum 0.4% of the total sum of their turnover and salaries while individuals are
entitled to deduct gifts and contributions of up to a maximum of 20% of their total income.

5. Special preconditions regarding the status of the non-profit entity

Some countries establish certain requirements regarding the status of the non-profit entity
receiving the gifts or contributions. These requirements may concern the overall size of the
entity, organisational aspects or the location of the entity.

a) Size of the non-profit entity

In Denmark, for example, the funds of the association with public benefit purposes, etc.,
must benefit a group of persons who are not geographically or in any other way limited to a
population size of less than 40,000. The number of membership-paying members in the
EU/EEA must exceed 300. The number of donors in the EU/EEA must, on average, exceed
100 per year for a three-year period and the yearly gross income or capital must exceed DKK
150,000.

b) Organisation of the non-profit entity

Moreover, in Denmark, the board of the association cannot be self-supplementary and
the association is not allowed to be a member of an approved main association unless the
applicant association is a nationwide organisation. In France, a so called “disinterested
management” is required. A disinterested management implies that the managers, legal or factual, do not derive a benefit, directly or indirectly, from the results of the entity.

c) Location of the non-profit entity and place of its activities

Following the ECJ decisions of Stauffer and Persche, most European member states amended their rules concerning foreign non-profit entities. For example, French tax law now gives the right to income tax deduction for gifts made to an entity established in the EU (or a state of EEA having concluded a tax treaty with France which includes a clause of administrative cooperation, i.e., Norway and Iceland) when this entity has similar aims and legal characteristics as a French entity which is regarded as non-profit. According to the tax authorities, this implies at least that they are of general interest (according to the French definition). No further detail has been given as to the place in which the activities are carried out. Therefore, it may well be the case that the French tax authorities intend to uphold a requirement which states that at least a part of these activities must be carried out in France or for the benefit of French residents. If the taxpayer makes a donation to a foreign corporation, he is expected – at least in Germany – to cooperate more extensively with the fiscal administration in order to prove the nature of tax-privileged purposes of the recipient.

6. Formal requirements

Deductibility also requires, in many countries, that payments are due and carried out and that the receiving association with public benefit purposes checks and follows up on missing payments. In Portugal, for example, all entities receiving donations are accordingly obliged to issue a receipt for each donation. A special form is often required which allows the identification of the donor. In Greece, the donation, if it exceeds 300 euros per year, must be deposited in a special account belonging to the legal entity which must have been opened in the Public Deposits and Loans Fund, or in a bank, specifically for that purpose. The relevant receipt is required which must contain certain information: the details of the donor or sponsor and of the recipient; the amount of donation or sponsorship in figures and in writing; the date of deposit; the signature of the donor or sponsor. For legal entities, the threshold is 290 euros. In Poland, a taxpayer will not pay the donation himself; it will be made by the tax authorities in reference to the tax return. In the tax return, a taxpayer may choose whether he wants to make a donation or not. He has to indicate in the tax return the amount of the donation transferred, the amount of the deduction made and data allowing for identification of the beneficiary. In Sweden, a recognised recipient of donations has to submit a tax return to the Swedish Tax Agency if a donation amounts to more than SEK 200 at the same time a donation is made, if the name of the donor is known. The tax return must provide details as to the total amount received in donations during the year.
**III. License of disproportional deduction**

Some countries provide special rules granting disproportional deductibility to give an extraordinary incentive in situations that are deemed particularly worthy of support.

1. Disproportional amounts from 120% – 140% in Portugal

   In Portugal, a corporation is entitled to deduct an even disproportional amount e.g. 140% of the amount if the donation is attributed to social purposes, 130% if attributed in the framework of pluri-annual contracts and 120% if attributed to cultural, environmental, sports or educational purposes. In addition, an individual taxpayer may obtain a disproportional tax credit of 130% of the donated value when the donations are received by churches and religious entities.

2. Multiplier of 125% and of 150% in the Netherlands

   From 2012 to 2016, the Netherlands introduced a temporal multiplier to help cultural public benefit entities. The Dutch personal income tax act allows taking gifts to cultural entities into account at 125%. For example, if a person gives € 1,000 to a cultural entity, he can deduct € 1,250. If he is in the top tax bracket of 52% (which is already reached with an income of over € 56,000), the tax benefit is € 650. The person only pays 35% of the gift. The maximum additional deduction is € 1,250. This means that the maximum effect of the multiplier is reached if the total amount of gifts to cultural public benefit entities is € 5,000 per year, resulting in a deduction of € 6,250. The Dutch corporate income tax act contains a multiplier of 150%.

**IV. Endeavouring for sustainability**

Some countries provide special provisions obviously aimed at the stabilization of the reliable source of income in the hand of non-profit entities. Two approaches can be deduced:

1. Promoting periodic gifts and long term subsidies

   In Denmark, a special tax relief is granted if the taxpayer obligates himself with a written statement to make continuous payments indefinitely or for a period of at least 10 years. Nevertheless, the deductibility of continuous and of one-sided payments is also limited to DKK 15,000 annually and is furthermore capped at 15% of the donor’s income. Dutch personal income tax distinguishes between periodic gifts and other gifts. Periodic gifts are gifts which the donor is, by notarial gift deed, obliged to pay annually for at least five years while he is alive. These gifts are fully deductible without a threshold and at up to 100% of the income of a certain year. If the periodic gift exceeds the income of a certain year, the remain-
der can be deducted in a following year. Other gifts are only deductible when they make up 10% or less of the gross income. In Portugal, a corporation is entitled to deduct an even disproportional amount of 130% of the donated value if attributed in the framework of pluriannual contracts.

2. Promoting trust funds and locked-up basic capital

According to the German Personal Income Tax Act, donations for the furtherance of tax privileged activities into the asset stock of a foundation are deductible, on request, by an amount of up to 1 million euros within the assessment period in which the donation takes place and within the following nine-year period. This privilege is granted in addition to the aforementioned amount. This provision seems to have had a significant impact on the development of the sector of not-for-profit foundations in Germany. In Denmark, a foundation is exempt from taxation in cases in which gifts and donations are allotted to the trust fund or to the locked-up basic capital of the foundation.

V. Indirect benefit compensating for the tax burden

Under UK tax law, gifts are grossed up by the basic rate of income tax, which means that the charity can claim, according to current rates, an extra 25% of the sum donated. The same rule applies, but at the equivalent trust rate, to money gifted by non-charitable trusts to a charity. Pursuant, the taxpayer may lower the correlative donated sum. This means that the taxpayer does not receive a tax relief or credit but an indirect benefit.

VI. Conclusions

Comparing the different national approaches concerning tax treatment of gifts and contributions of the person of the donor or contributor shows that all countries follow the idea of granting a limited tax benefit. From a technical point of view, this benefit may be designed in the shape of a deduction, a tax relief or a credit. Limitation is in line with constitutional law because gifts and contributions for non-profit entities are unaffected by the principle of ability to pay. Limiting tax benefits can therefore be used to create tax incentives in order to promote special issues that are – from a political or socio-cultural point of view – deemed particularly worthy of support. In this regard, the most popular tax incentives among the countries considered are the waiving of limits for special charitable purposes during a very special period or the granting of an exceptional disproportional deduction. A more fundamental approach is the attempt to promote periodic gifts and long term subsidies by waiving concerned deduction limits or by promoting trust funds and locked-up basic capital.