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EATLP

TAXATION ON CHARITIES – NATIONAL REPORT HUNGARY

I. General questions

1. Are there special (preferential) tax rules for not for profit activities in general? Are these given in statutory law or have they been created by case law?

Yes, there are such special (preferential) tax rules for not for profit activities, which are incorporated in statutory laws. The Act CLVI. 6. § of 1997. on Non-Profit Organizations states that on the extent and conditions under the Act LXXXI. of 1996. on Corporate Tax and Dividend Tax, the Act CXVII. of 1995. on Personal Income Taxation, the Act XCIII. of 1990. on Dues Law, and the Act C. of 1995. on Customs Law, Customs Procedure and Customs Administration non-profit organization are entitled 1. to corporation tax exemption after performed activities specified in its instrument of incorporation, 2. tax benefits in corporation taxation related to business activities, 3. reductions of local taxation, 4. duty preferences, 5. duty concessions, 6. other preferences.

According to the Act CXXVII. 7. § of 2007. on Value Added Tax: activities performed by persons and organizations, entitled by the Constitution of the Republic of Hungary or legal sources based on the authorization of the Constitution, which are connected with the exercise of official authority, if these activities are included in their instrument of constitution, are not business activities and do not result in being a taxable person.

2. Which activities are within the scope of not for profit activities benefiting from special tax rules?

According to the c) point of the Act CLVI. 26. § of 1997. non-profit activities are the followings:

1. health promotion, prevention of diseases, curative and health rehabilitative activities,
2. social activities, family support, elderly care,
3. scientific activities, research,
4. education and training, skill development, dissemination of knowledge,
5. cultural activities,
6. protection of cultural heritage,
7. protection of historic buildings and monuments,
8. nature conservation, animal protection,
9. environmental protection,
10. child and youth protection, child and youth advocacy,
11. promotion of the social equality of disadvantaged groups,
12. protection of human and civil rights,
13. activities related to the national and ethnic minorities in Hungary and Hungarians beyond the borders,
14. sports, except sports activities performed within the framework of employment and civil law commission,

15. protection of public order and traffic safety, voluntary fire fighting, rescue, disaster relief,
16. consumer protection,
17. employment of a rehabilitative nature,
18. promotion of training and employment of disadvantaged classes of the labor market - including the rental of labor - and the related services,
19. promotion of the Euro-Atlantic integration,
20. services provided for non-profit organizations only available for non-profit organizations,
21. activities related to flood prevention and water control,
22. activities related to the development, maintenance and operation of roads, bridges and tunnels open to public traffic,
23. prevention of crime and protection of victims,
24. the supply of electronic public services as a basic service.

3. Are there special forms of legal entities required for non-profit status?

Yes, according to the Act CLVI. 2. § in 1997 a non-profit company can be:

- a), a public organisation, except the insurance companies and political parties, and the employer and the employee's interest group organs
- b) Foundations,
- c) Public funds,
- d) Civil corporation, if the regulation about its establishment makes it possible
- e), national sport association
- f), non profit economical organization,
- g), the Hungarian Accreditation Committee, The Hungarian University Education and Scientific Congress, the Hungarian Rectors' Conference,
- h), European regional cooperative groups
- i) a university not organised by financed state budget
- j) social services doing public works,
- k) water associations.

. According to Act IV. 4. § in 2006, the business companies can be established for not income earning common economical activities, (non-profit economical organisation). A non-profit economical organisation can be established and managed in any form. The non-profit form of the organisation must be signed at the type of company in the firm name of the company.

A non-profit economic organisation can be developed, if the head of an organisation already in progress decides that the organisation wants to continue as a non-profit economical organisation.

Non-profit economical organisation can only deal with economic activity only in a form of additional activity, the profit resulted from the activity of the economical organisation cannot be divided between the members (shareholders), because that increases the income of the economical organisation. A Non-profit economical organisation can only be transformed into another organisation type, if it keeps its non-profit form, it can join with a non-profit economical organisation, and it can be divided into non-profit economic organisations. In most cases it functions as a limited company or as a corporation.

The non-profit company, two years after, from the 1st of July 2007, can function as a non-profit limited company, with the modification of its article of association. It can be transformed into other non-profit economical organisation, or it can be ended without successor. The non-profit company is liable to keep a record of itself at the court of registration as a non-profit economical organisation until the 30th of June 2009, or announce the end of it without a successor at the court of registration. After this registration date has passed without any action, the court of registration asks the elimination decision as a supervisor authority. Where the law names a non-profit company, until 30th of June 2009, it

can be mentioned as a non-profit company or non-profit economical organisation. , from the 1st of July 2009, only non-profit economical organisation.

According to some regulations, on non-profit company, we mean non-profit company and legal entity non-profit company until the 30th of June 2009, and from the 1st of July 2009, only legal entity non-profit company.

II. Income tax

1. What are the material conditions for special tax status? (nature of the activities, size of the business activities, purpose of the business activities, time-span within which business income must be spent , remuneration or benefits of the members or employees of the association etc.). Are there different conditions between special treatment of the activities and special treatment for contributions to the activities?

Schedule No. 6 to Act LXXXI of 1996 contains the Preferential Activities Carried Out by Foundations, Public Foundations, Social Organizations, Public Bodies, Housing Co-operatives and Public Service Companies:

A) Preferential Activities Carried Out by Foundations, Public Foundations, Social Organizations and Public Bodies

For the purposes of this Act, the following shall not qualify as entrepreneurial activity from among the economic activities of foundations, public foundations, social organizations and public bodies aimed at or resulting in the acquisition of income or property, as defined in Subsection (1) of Section 1:

1. the public service activity or, if not qualifying as a public service organization or primary public service organization, the activity entailed by the objective named in the deed of foundation or statutes, including in both cases any support, allowance or membership fee received in connection with such activity;
2. the consideration of or revenues from the sale of intangible assets, tangible assets or inventories serving solely the public service activity or, if not qualifying as a public service organization or primary public service organization, the activity entailed by the purpose of the foundation, public foundation, social organization or public body;
3. that portion of the interest received from a credit institution or the issuer of a security, on placing or investing available liquid assets in deposits or securities, and of the yield of securities issued by the state, which is represented by the revenues from the public service activity or, if not qualifying as a public service organization or primary public service organization, from the activity entailed by the purpose of the foundation, public foundation, social organization or public body, in the total revenues, whereby revenues shall be accounted for without such interest or yield in either cases.

2. What are the formal conditions for special tax treatment? (official permission from administration, finance, culture, sports, social affairs, central, regional, local, formalities for obtaining permission, duration, renewal)

ACT LXXXI OF 1996 ON CORPORATE TAX AND DIVIDEND TAX
Section 5.

(7) Funds, public foundations, social organizations, civil corporations and non-profit companies may apply the provisions on non-profit organizations and priority non-profit organizations for the first time in the tax year when registered as such organization. Taxpayers may not apply the provisions on non-profit organizations and priority non-profit organizations during the tax year when being canceled from the register of non-profit organizations, with the exception of issuing verifications until the day of cancellation. Priority non-profit organizations, if transformed to the category of non-profit organizations during the tax year, may apply the provisions on non-profit organizations for the entire tax year, with the exception of issuing verifications until the day of transition.

Section 16.

(3) It must be reported to the national tax authorities:

m) that the taxpayer was registered as non-profit or priority non-profit organization.

For further information see the 2. question of Part I. General questions.

III. VAT

1. What are the material conditions of special VAT status (non-profit activities as non-economic activities outside the scope of VAT, scope of exemptions under art. 132 VAT directive in national law)?

Act CXXVII. 85. § of 2007 on value added tax defines that the following transactions shall be exempt:

- a) the supply of public postal services;
- b) hospital and medical care and closely related activities undertaken by public service bodies or, under social conditions comparable with those applicable to public service bodies, by hospitals, centers for medical treatment or diagnosis and other duly recognized establishments of a similar nature;
- c) the provision of medical care and closely related activities in the exercise of the medical and paramedical professions in their professional capacity;
- d) the supply of human organs, blood (including sensitive blood fractions as laid down in specific other legislation) and milk, and the supply of services in connection with donation of the aforementioned and human organs;
- e) the supply of services by dental technicians in their professional capacity and the supply of dental prostheses by dentists and dental technicians;
- f) the supply of services – other than catering, if the consideration payable is to be provided separately – and of goods closely linked to welfare and social security work, by public service bodies, acting as such;
- g) the supply of services and of goods closely linked to the protection of children and young persons by public service bodies, acting as such;
- h) the supply of services – other than catering, if the consideration payable is to be provided separately – and of goods closely linked to nursery care by public service bodies, acting as such;
- i) the provision of children's or young people's education, kindergarten, school or university education – other than catering, if the consideration payable is to be provided separately –, vocational training or retraining and other education services specified in Subsection (2), including the supply of services – other than catering, if the consideration payable is to be provided separately – and of goods closely related thereto, by public service bodies, and by public education institutions, institutions of higher learning and other bodies providing

- adult education, or – under international treaty – by foreign cultural institutions, acting as such, in the domestic territory, as having similar objects;
- j) the provision of services by teachers and other educators and covering kindergarten, school or university education and other education services specified in Subsection (2), including tuition given privately by teachers in connection with the aforementioned;
 - k) the supply of staff by religious or philosophical institutions registered as a legal person by the court or admitted to other registers of the authorities for the purpose of the activities referred to in Paragraphs b), f), g), h) and i) and with a view to spiritual welfare;
 - l) the supply of services, and the supply of goods 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 persons or organizations – registered by the court or admitted to other registers of the authorities – operating under bylaws or a charter document:
 - a) provided that they are financed solely by the membership contributions prescribed in tune with the bylaws, that applies to all members, other similar contributions, government subsidies and other donations, and the profit from their own activities that may be deducted from the pretax profit according to the Act on Corporate Tax and Dividend Tax, and
 - b) that, consistent with the common goal, functions as a body serving the interest of the society in general, political objectives, the interests of workers and employers, trade and professional functions, religious or philosophical, patriotic, humanitarian, charitable and heritage preservation objectives;
 - m) the supply of certain services closely linked to sport or physical education by public service bodies, acting as such,
 - a) to natural persons taking part in sport or physical education,
 - b) to other persons or organizations, ordering such services for the benefit of natural persons, excluding swimming pool and beach services, the viewing of sports events, and the lease of immovable sports facilities (part of a sports facility) for the purposes of sport and physical education;
 - n) the supply of certain cultural services relating to the arrangement and organization of exhibitions, fairs and shows of folk art or hand-crafted articles, and the supply of goods closely linked thereto, by public service bodies or persons or organizations holding a certificate of folk art and design, acting as such, meaning unique or limited edition folk art or hand-crafted articles approved and numbered by a panel of experts and produced without the use of any industrial technology;
 - o) the activities, other than those of a commercial nature, carried out by public bodies providing radio and audiovisual media services.
 - p) the supply of services by a cooperating group formed in pursuance of a common goal (hereinafter referred to as “cooperating group”) to any member of the cooperating group with a view to meeting their objective, provided that the following conditions are fulfilled:
 - a) the given member of the cooperating group is a non-taxable person, or shall be regarded as a non-taxable person in connection with services received, or
 - b) the services are supplied to the member of the cooperating group solely in the interest of his transactions under Paragraphs a)–o) or Subsection (1) of Section 86 for the supply of goods and services, in connection with which the VAT would not be wholly or partly deductible by the cooperating group member, if a taxable person, furthermore
 - c) if the consideration obtained or to be obtained by the cooperating group does not exceed the verified expenses of the cooperating group incurred in connection with such activity, and

- d) the total value of the consideration does not exceed the financial contribution the cooperating group member is required to provide to the cooperating group in the interest of achieving their common objective.

These regulations are in harmony with the article 132 of VAT directive.

2. Are there specific formal conditions for special VAT status?

According to Act CXXVII. 7. § of 2007 on value added tax, the activities of persons or organizations vested with powers in accordance with the Constitution of the Republic of Hungary, or with other legislation adopted under authorization conferred by the Constitution shall not be regarded as an economic activity, and shall not be subject to value added tax, in connection with exercising executive powers as defined in their charter document.

According to 5. § taxable person shall mean any person or organization having the capacity to perform legal acts who (that), in its own name, carries out in any place any economic activity, whatever the purpose or results of that activity.

Act IV. 4. § of 2006 about companies states that a non-profit company can engage in commercial business activities only in a complimentary manner, and profit derived from the activities of the business company cannot be divided amongst the members (shareholders), it augments the company's financial property.

Non-profit companies can be transformed into other types of organisation but must retain their non-profit nature, can be merged with other non-profit companies and can be split up into nonprofit companies.

There is a separate act about what kind of prerequisites and requirements must be met before a non-profit company can be considered as a public benefit organisation. The nature of charity/public benefit activity must be defined in the deed of association (statutes, deed of foundation). The standards of public benefit organisations are assessed - during the establishment of the organisation or afterwards - by the county/capital courthouse (henceforth: registry court) on request. The non-profit company shall indicate their public-benefit nature in the company type.

4. What are the VAT rules for cross-border services or supply of goods (cross-border services and exports of goods or intra-community supplies by VAT payers to foreign non-profit organisations, exports or intra-community supplies by domestic non-profit organisations to foreign non-profit-organisations and imports or intra-community acquisitions of services or goods by domestic non-profit organisations). A case of special interest is the choice between administrative services in-house or outsourced, which make a difference in VAT-burden and possible use of VAT-groups when services are produced in a joint venture between several non profit organisations.

The 13-15. §§ of VAT Act provides the supply of services. Supply of services shall mean any transaction which does not constitute a supply of goods within the meaning of this Act.

The afformentionned transaction shall also cover the following:

- a) the assignment of intangible property on a provisional or permanent basis;
- b) the obligation for the cessation of an activity in whole or in part, or to refrain from an act, or to tolerate an act or situation.

It shall not constitute a supply of services where:

- a) payment of consideration is made by the person to whom goods or services are supplied, or by a third party, to the person supplying the goods or services; or
- b) the person supplying the goods or services assigns his claim of consideration obtained in connection with the said supply to a third party; provided that payment of consideration in the case referred to in Paragraph a) is made or the purchase price in the case referred to in

Paragraph b) is paid in cash or using cash-substitute payment instrument or non-cash payment instrument.

Supply of services for consideration also means where a taxable person temporarily disposes of goods forming part of his business assets – without any compensation – for his own or his employees' private use, more generally, for purposes other than those of his business, or if transferred to others free of charge, where the VAT on such goods or on its component was wholly or partly deductible by the taxable person.

Supply of services for consideration shall also mean the supply of services carried out free of charge by a taxable person for his private use or for that of his staff or, more generally, for purposes other than those of his business, where the VAT on such services was wholly or partly deductible by the taxable person.

Supply of services for consideration shall not cover charitable donations.

Where a taxable person acting in his own name but on behalf of another person takes part in a supply of services, he shall be considered to have received and supplied those services himself.

Our VAT Act contains common rules on the supply of goods and on the supply of services.

The following transactions are considered Intra-Community Acquisition of Goods:

a) the acquisition of goods by a taxable person or a non-taxable legal person, where the supplier taxable person is not exempted in the Member State of the Community where established according to the national law of that Member State of the Community that is considered equivalent to Articles 282 –292 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax;

b) the acquisition of a new means of transport;

c) the acquisition of products subject to excise tax by a taxable person or a non-taxable legal person, where the excise tax becomes chargeable in respect of the acquisitions.

The Act contains the exceptions of these rules.

According to 24. § importation of goods shall mean the entry into the Community of goods which are not in free circulation within the meaning of Article 24 of the Treaty establishing the European Community.

The entry into the Community of goods which are in free circulation, coming from a third territory forming part of the customs territory of the Community and that is treated as a third country for the purposes of this Act, shall also be regarded as importation of goods.

IV. Inheritance, estate and gift taxes

1. Are there specific definitions or conditions of non-profit activities or – organisations, including trust arrangements with respect to inheritance, estate and gift taxes?

There are specific definitions, conditions of non-profit activities or organisations with respect to inheritance, estate and gift taxes according to the Act XCIII. of 1990. on Duties:

Section 4.

(1) If exemption applies to the subject matter of a duty (subject-oriented duty exemption), no duty need to be paid. In respect of the exemption of a person otherwise obliged to pay a duty (personal duty exemption), no duty may be claimed from the exempted party.

Section 5.

(1) The following shall be granted full personal duty exemption:

a) the State of Hungary,

- b) local governments,
- c) budgetary organs, and the Hungarian Privatization and State Holding Company,
- d) non-governmental organizations, public corporations and non-profit companies,
- e) churches, association of churches, religious institutions,
- f) foundations, including public foundations as well,
- g) water management companies,
- h) the National Health Insurance Fund and the National Pension Insurance Administration,
- i) the National Bank of Hungary,
- j) the Hungarian News Agency Company,
- k) the North Atlantic Treaty Organization, furthermore, the armed forces of the Parties to the North Atlantic Treaty and other nations participating in the Partnership for Peace, ratified by Act LXVII of 1995, which are stationed in Hungary, including the military and civilian personnel with citizenship other than Hungarian who are employed by such armed forces, in respect of duties which are related to the service obligations of such personnel.
- l) county development councils and territorial and regional development councils.
- m) non-profit and outstandingly non-profit economic companies,
- n) the institutions and organs, offices, separated bases of the European Communities and the Community itself.

(2) The organizations described in Paragraphs c)-g) and m) of Subsection (1) shall be entitled to duty exemption only if they have no corporate tax payment liability incurred for revenues from entrepreneurial activities pursued in the calendar year preceding the acquisition of property or initiation of the proceeding or, in respect of budgetary organs, have incurred no payment obligation towards the central budget for their profits.

So the organizations described in Paragraphs c)-g) and m) have only conditional personal duty exemption.

2. Are there any specific formal conditions for special inheritance, estate or gift tax status?

There are no specific formal conditions for special inheritance, estate or gift tax status but non-profit organization shall ask for an authenticate from the national tax authorities (NAV – National Tax and Customs Office) to get the exemption.

The Act XCIII. of 1990. on Duties:

5. § (3) In respect of the acquisition of property, organizations (foundations) shall attach a written statement concerning the fulfillment of the conditions for duty exemption defined in Subsection (2) with the notification of such acquisition for dutiable purposes or, in the case of administrative or court proceedings, at the time of commencement of the proceedings. Such statement shall stipulate that the organization (foundation) was not subject to any corporate tax payment liability on its revenues from entrepreneurial activities pursued in the calendar year preceding acquisition of the property or initiation of the proceeding, or was not obliged to effect payment to the budget for its profits in the absence of such activities.

3. Are there specific tax rules for wills, gifts, or transfer of assets to domestic or foreign non-profit activities, or –organisations including trust arrangements (exemptions, base rules, valuation rules, or tax rates)?

According to the Act XCIII. of 1990. on Duties:

Section 16. (1) The following shall be exempt from inheritance duty:

a) inheritance (legacy) bequeathed for scientific, artistic, educational, cultural, and public welfare purposes in Hungary

Section 17.

(1) The following shall be exempt from duty on gifts:

a) acquisition of gifts granted for scientific, artistic, educational, public cultural and public welfare purposes in Hungary, and the acquisition of property on the basis of pledge in the public interest (foundation), as well as acquisition of pecuniary value from public gifts serving charitable purposes;

i) gifts granted for non-profit organizations or non-profit activities.

5. Is there any annual wealth tax or other tax in replacement of the inheritance, estate or gift tax on non-profit organisations or charitable trust arrangements?

No, we do not have any annual wealth tax or other tax in replacement of the inheritance, estate or gift tax on non-profit organisations or charitable trust arrangements of taxation in Hungary.

IV. Inheritance, estate and gift taxes

4. Are there specific definitions or conditions of non-profit activities or –organisations, including trust arrangements with respect to inheritance, estate and gift taxes?

There are specific definitions, conditions of non-profit activities or organisations with respect to inheritance, estate and gift taxes according to the Act XCIII. of 1990. on Duties:

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Section 5.

(1) The following shall be granted full personal duty exemption:

a) the State of Hungary,

b) local governments,

c) budgetary organs, and the Hungarian Privatization and State Holding Company,

d) non-governmental organizations, public corporations and non-profit companies,

e) churches, association of churches, religious institutions,

f) foundations, including public foundations as well,

g) water management companies,

h) the National Health Insurance Fund and the National Pension Insurance Administration,

i) the National Bank of Hungary,

j) the Hungarian News Agency Company,

k) the North Atlantic Treaty Organization, furthermore, the armed forces of the Parties to the North Atlantic Treaty and other nations participating in the Partnership for Peace, ratified by Act LXVII of 1995, which are stationed in Hungary, including the military and civilian personnel with citizenship other than Hungarian who are employed by such armed forces, in respect of duties which are related to the service obligations of such personnel.

l) county development councils and territorial and regional development councils.

m) non-profit and outstandingly non-profit economic companies,

n) the institutions and organs, offices, separated bases of the European Communities and the Community itself.

(2) The organizations described in Paragraphs c)-g) and m) of Subsection (1) shall be entitled to duty exemption only if they have no corporate tax payment liability incurred for revenues from entrepreneurial activities pursued in the calendar year preceding the acquisition of property or initiation of the proceeding or, in respect of budgetary organs, have incurred no payment obligation towards the central budget for their profits.

So the organizations described in Paragraphs c)-g) and m) have only conditional personal duty exemption.

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6. Are there specific tax rules for wills, gifts, or transfer of assets to domestic or foreign non-profit activities, or –organisations including trust arrangements (exemptions, base rules, valuation rules, or tax rates)?

According to the Act XCIII. of 1990. on Duties:

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i) gifts granted for non-profit organizations or non-profit activities.

6. Is there any annual wealth tax or other tax in replacement of the inheritance, estate or gift tax on non-profit organisations or charitable trust arrangements?

No, we do not have any annual wealth tax or other tax in replacement of the inheritance, estate or gift tax on non-profit organisations or charitable trust arrangements of taxation in Hungary.

Miskolc, 21.12.2011.