Taxation of Charities

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I. General Questions

1 Are there special (preferential) tax rules for not for profit activities in general?

1.1 Overview

There are no general provisions in Danish law applicable to non-profit activities or entities which engage in non-profit activities. In general any type of entity, (i.e. a company, an association, a religious society, a foundation or any other type of legal entity), may engage in non-profit, public benefit or charitable activities under Danish law. In Danish the term *"almennyttig"* (comparable to the German term "gemeinnützig") is used to describe non-profit or charitable activities in general. In the following, when the rules described are applicable to any type of entity, the generic term "public benefit entities" is used. Under certain conditions public benefit entities enjoy specific tax privileges.

The idea that donations made for public benefit purposes should enjoy certain tax privileges is not new in Denmark. Thus already the Royal Ordnance of September 12th 1792 contained a provision according to which donations made for *"public usage within the Realm"* were exempt from inheritance tax.[1]

Initially, an overview tax privileges available to non-profit entities in Denmark is given:

- A foundation or association may deduct from its taxable income any donations made during the fiscal year for a public benefit purpose. In addition a foundation or association may deduct an amount of up to 25 % of the year's actual donations as a provision for future donations made to further public benefit purposes (below II 3)

- A person who makes a donation to a public-benefit entity, may deduct the donation from his taxable income (below 9)

- Donations made by an estate are exempt form inheritance tax, if the donation is made to a foundation or association, which uses the donation to further a public benefit purpose (below IV)

1.2 Introduction to Foundations in Danish Law

While non-profit activities in general may be carried out by any type of entity, the most important legal vehicle for non-profit activities in Denmark is the foundation. This is not due to restrictions in civil law, but rather because of the various tax privileges available to them. It is necessary to give a brief introduction to Danish law applicable to foundations.

Foundations (in Danish referred to as *"fonde"* or *"Stiftelser",* comparable to German *Stiftungen*) have existed in Denmark since the 15th century. There is no codified definition of the term "foundation" in Danish law. A foundation is generally defined as a separate legal entity, endowed

[1] The provision was formulated in the following way (in Danish): *"Herfra undtages alene: .. b) Midler og Formue, der gives til offentligt Brug i de Kgl. Riger og Lande."*

by one or more founders by deed or will, with the objective of pursuing one or more specific purposes (whether public benefit or not), established around funds which shall be permanently separated from the founders, and controlled by a board which shall remain independent of the founders.[2] This definition is applicable in Danish civil law as well as in tax law.[3]

Foundations originally existed in Danish law without a codified legal base. Thus the civil law rules applicable to foundations were originally not based on an Act of Parliament or otherwise codified.[4] A Danish foundation may be set up by a founder without any approbation from the state. Historically a practice developed, whereby some founders did in fact apply for state approbation for the statutes of the foundation. By obtaining such State approbation, the founders sought to ensure the recognition of the foundation for legal purposes. Originally the aforementioned state approbation was instrumental in order to ensure that the foundation would enjoy tax privileges.[5]

In 1978 the Danish Government set up a Parliamentary Committee to investigate the need for specific civil law legislation applicable to foundations. This Committee published its report in 1982.[6] Based on the recommendations of the Committee, the Danish Parliament in 1984 adopted a legislation regarding the civil law aspects of foundations.

Before 1984 a number of Danish foundations did in fact exist, which were formed with the main purpose of operating a specific business either directly, or, in most cases, indirectly through the ownership of a controlling interest in a public limited company. The civil law legislation was consequently divided into two separate acts. Ordinary foundations, (i.e. foundations which do not have enterprise status) are subject to the Act on foundations ('LFF'),[7] while foundations, which do carry out business activities ('enterprise foundations', or in Danish 'erhvervsdrivende fonde') have status as enterprise foundations, subject to the Act on enterprise foundations (LEF).[8] These acts were in 1986 supplemented by an Act on taxation of foundations.[9]

A Danish foundation has *enterprise status* for civil law purposes if it deals in sale of goods or immaterial rights, or provides services, for which the foundation is remunerated (§ 1 (1) LEF). A foundation is also considered to be an enterprise foundation, if it is the lessor of real estate property or if it holds a controlling interest in a public or private limited company. Foundations with enterprise status have historically played an important role in the development of the Danish business community,[10] and today a number of the most important Danish groups of companies are controlled by a foundation with enterprise status.

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[2] See Søren Friis Hansen in *"Comparative Corporate Governance of non-profit Organizations"* (eds. Hopt & von Hippel), Cambridge University Press, 2010, p. 775, and analysis Lennart Lynge Andersen, "Fra stiftelse til fond" (Gjellerups forlag, 2002), p. 105-225.

[3] See for the tax law definition Liselotte Madsen in *"Lærebog om indkomstskat"* (Jurist- og Økonomforbundets Forlag, 14th ed. 2011), p. 789-791.

[4] See F.Th. Oppermann, "Den Danske Rets Bestemmelser om Stiftelser" (Kjøbenhavn 1860), p. 10-14, and A.W Scheel, *"Personretten"* (København, 1876), p. 552-553.

[5] See F.Th. Oppermann, "Den danske Rets Bestemmelser om Stiftelser", Kjøbenhavn, 1860, p. 150-166, J.H. Olivarius, "Stiftelser" (Gads forlag, Copenhagen, 1910), p. 13-15, and *Erik M. Goldschmidt*, 'Nogle bemærkninger om bestående stiftelser og ikke-konfirmerede legater', Ugeskrift for retsvæsen 1950B, p. 128-136.

[6] See "Betænkning om Fonde", Betænkning nr. 970 (1982).

[7] Originally Act No. 300 of June 6th 1984, now consolidated Act No. .698 of August 6th 1992. Danish legislation is available at: www.retsinfo.dk .

[8] Originally Act No. 286 of June 6th 1984 now consolidated Act No. 560 of May 19th 2010.

[9] Originally Act. No.145 of March 19th 1986 now consolidated Act No. 1248 of November 2nd 2010. Below this Act is described as the "Foundation Tax Act", or "FTA".

[10] See Hans Christian Johansen & Anders Monrad Møller, *"Fonde som fundament for dansk industri"*, Syddansk Universitetsforlag 2005, p. 23-54.

A foundation may change its status as an ordinary foundation to status as an enterprise foundation and vice versa. For tax purposes the status of the foundation is irrelevant. Many of the existing Danish foundations have a "combined purpose". Thus a foundation may be formed with the purpose of operating a specific business, originally owned by the founders, while at the same time the statutes of the foundation put the board under an obligation to use the income generated from the business to make donations for one or more public benefit purposes.

2. Which activities are within the scope of not for profit activities?

The term "almennyttig" (comparable to "public benefit") is used in a number of provisions in Danish tax legislation, do describe non-profit activities, e.g. Sections 3 A (2) and 4 (1) of the FTA, and in Section 8 A and 12 in Tax Assessment Act (TAA). There is, however no codified definition of the term in Danish law.[11] A generic definition of the term "public benefit" may be deducted from Section 8 A (1) in the TAA). This definition is generally applied in Danish tax law.[12]

There are three categories of purposes that are considered to fall under the category of "public benefit" under LL Section 8 A. Firstly, an entity is considered to have a public benefit purpose, if the assets of the entity are used to further the interests of persons or groups of persons in economic need, if the beneficiaries are defined objectively in the statutes or bylaws of the entity.

Secondly, any purpose that is generally accepted by the population as public benefit or charitable is qualified as public benefit under TAA Section 8 A.

Thirdly, Religious societies or entities of a religious nature may be considered as public benefit under Section 8 A.

It has been deemed impossible to prepare a closed list of public benefit purposes.[13] Consequently so a concrete assessment must be made in each individual case.[14] Entities with a political purpose cannot be considered as public benefit.[15] Similarly, an entity which has the purpose to generate a profit for its members or to further the interests of profit entities in general cannot be considered as public benefit.

The obligation to further a public benefit purpose must be enshrined in the statutes or by-laws of the entity in such a way that the board of the entity is obliged to use the assets of the entity to further that purpose. There is no requirement however, that the statutes or bylaws of the entity in question define a specific public benefit purpose. In the case reported as *Ugeskrift for Retvæsen*

[11] See Margrethe Nørgaard, "*Nationalrapport Danmark"*, in Skattefria institutioner, Nordiska skattevitenskapeliga forskningsrådets skrifterie 34 (1996), p. 9-34, and Erik Werlauff*, 'Skatterettens almennyttebegreb'*, in Festskrift til Ole Bjørn (Eds. Susanne Pedersen, Søren Friis Hansen & Nis Jul Clausen), Jurist- og Økonomforbundets Forlag 2004, p. 489-508.

[12] See e.g. Margrethe Nørgaard, in Skattefria institutioner, Nordiska skattevitenskapeliga forskningsrådets skrifterie 34 (1996), p. 11.

[13] See "Betænkning om Fonde", Betænkning nr. 970 (1982), p. 171-172.

[14] See the decision by the Tax Council, reported as SKM2011.350.SR. The statutes of the foundation in question did not contain a concrete description of the activities which were to be undertaken by the foundation, it was not possible for the Tax Council to decide, whether the foundation could be approved as having a public benefit purpose for tax purposes. The decision seems to be contrary to the decision by the Supreme Court in the case UfR 1999.213H.

[15] See Mette Klingsten & Henrik Peytz, *"Ligningsloven med kommentarer"* (Jurist- og Økonomforbundets Forlag, 2000), p. 297.

1999.215H, the Supreme Court accepted that a foundation, whose purpose was defined by the founder as furthering "charitable, humane, artistic, scientific, or similar purposes, including the education of young people", was considered to be public benefit for the purposes of exemption for inheritance tax.

Furthermore the statutes or bylaws must prescribe that in case of liquidation of the entity, all surplus assets must be transferred to another public benefit entity.

In order to qualify as public benefit, the potential beneficiaries of the purpose cannot be limited geographically or otherwise to a group of less than 40.000 persons.[16]

It follows from TAA Section 8 A that donations made to an entity the assets of which are used to further one or more public benefit purposes, may be deducted from the donor's taxable income. In order for an entity to be recognized as a public benefit entity under LL Section 8 A, the entity must be approved as a public benefit entity, either by the Danish Ministry for Taxation, or in another EU- or EEA-state (TAA Section 8 A, paragraph 2). Every year the Danish Ministry for Taxation disclose a list of public benefit entities approved under LL Section 8 A. In order for a public benefit entity to be included on the list for a calendar year, the board of entity must apply no later than October 1st the previous calendar year (TAA Section 8 A, paragraph 3).

For the purpose of TAA Section 8 A, the total number of donors of the entity within EU- or EEA-states must exceed 100 on average over a 3 year period, and the yearly gross income or net assets of the entity must exceed 150.000 DKK, if the donor shall have the right to deduct his donation.[17]

With regards to deductions under TAA Section 12 (permanent obligations of a donor to transfer assets to a public benefit entity), the definition of a public benefit purpose is narrower. In order to qualify as public benefit under LL Section 12 (3), an entity must be obliged to use its assets to further humanitarian purposes, scientific research, or protection of the environment, including protection of endangered species.[18]

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

Non-profit activities may, according to Danish law, in general be carried out by natural persons or any type of entity, company, association or foundation.

According to the Danish 1930- and 1973- Companies Acts, a public (or private) limited company could not be formed with a non-profit purpose.[19] However, this restriction was lifted with the adoption of the Foundations Acts of 1984. According to the Danish 2009 Companies Act, a public or private limited company may be formed to further any legal purpose, whether public benefit or not.[20] Thus the statutes of a Danish public or private limited company may include a provision that the some or even all of the dividends must be distributed to beneficiaries other than the shareholders. Regardless of the purpose of the company, the General Meeting of a Danish public or private limited company may decide to make donations for non-profit purposes (Section 195 of the 2009-Companies Act). With regards to minor donations made to further a public benefit

[16] Ministerial Order No. 837 of August 6th 2008, § 1, litra 1).
[17] Ministerial Order No. 837 of August 6th 2008, § 1, litra 2) snd 3).
[18] Ministerial Order No. 837 of august 6th 2008, § 4.
[19] See eg. H.b. Krenchel, *"Håndbog i dansk aktieret"* (g.e.C. Gads Forlag, 2nd edition, 1954), p. 3-4.
[20] Cf. Søren Friis Hansen & Jens Valdemar Krenchel, *"Dansk selskabsret 2, Kapitalselskaber",* Thomson Reuters, 3rd editon 2011, p. 49-50.

purpose, the management of the company has the competence. A limited company may deduct donations made to a public benefit entity from its taxable income (TAA Section 8 A), but cannot take advantage of the tax privileges available to foundations according to the DFA.

For the purpose of TAA Section 8 A, foundation must in order to qualify as a public benefit entity must be either subject to one of the Danish acts on Foundations (LFF, or LEF), or managed by a board, composed of at least one member, which is independent of the founders.[21] In order for an association to qualify as public benefit, the board cannot have the right to elect its own members, the number of paying members within the EU must exceed 300, and the association cannot be a associated with another association that is already qualified as public benefit under Section 8 A.[22]

4. Are there special rules for non-resident or international non-profit entities?

The term "public benefit" in Danish tax law is generally not limited to activities that are located within Denmark or beneficiaries that are resident in Denmark.[23]

Before 2008, only entities resident in Denmark could be approved as public benefit within the framework of TAA Section 8 A. Following the decision by European Court of Justice in the Stauffer-case[24], Section 8 A was amended in 2008.[25] Now any entity, regardless of its residence, which meet the criteria to be approved as public benefit may apply to be included on the list of public benefit entities under TAA Section 8 A.

If a foundation that for tax purposes is considered to resident outside Denmark has e PE located in Denmark, that PE is for tax purposes treated as a PE of a foreign public limited company when applying Danish tax law (SEL Section 2, and Section 8, paragraph 1). The effect of this rule is that a foundation, which for tax purposes is considered to be resident outside Denmark, cannot benefit from the tax privileges available to Danish foundations according to the DTA. Following the Stauffer- and Persche[26] judgements of the European Court of Justice, there can be no doubt that Article 49 TFEU and Article 63 TFEU preclude such differential tax treatment of foundations which are resident in an EU- or EEA Member State.[27]

5. Tax treatment of income of entities with charitable purposes

Includes answers to questions 3, 4, 5 and 7 of questionnaire section I, general questions

5.1 Introduction to tax treatment of charitable entities

The tax treatment of income from purely non-profit activities depends on the form of the legal entity which constitutes the frame of the charitable activity. As a rule, foundations and associations covered by the Danish Foundation Taxation Act (abbreviated FTA henceforth) sec. 1 (1) (1, 2 and 4) have to base their income statement on the same provisions that apply to corporations pursuant

[21] Ministerial Order nb. 837 of August 6th 2008, § 3.
[22] Miniserial Order nb. 837 of August 6th 2008, § 2.
[23] See Mette Klingsten & Henrik Peytz, *"Ligningsloven med kommentarer"* (Jurist- og Økonomforbundets Forlag, 2000), p. 297.
[24] Case C-386/04, Judgement of the Grand Chamber of the ECJ, September 14th 2006.
[25] Parliamentary Act nb. 335 of May 7th 2008, section 10.
[26] Case C-318/07, Persche, Judgement of the Grand Chamber of the ECJ, January 29th 2009.
[27] See Søren Friis Hansen, "EU-rettens betydning for udenlandske samvirker og institutioner, der er begrænset skattepligtige til Danmark", Skattepolitisk Oversigt 2006, p. 399-411

to FTA sec. 3 (1).[28] As a consequence, the general provisions in the Danish Corporation Taxation Act (abbreviated CTA henceforth) and the general principles of Danish income taxation[29] are applicable due to the reference in CTA sec. 8 to these principles.

As regards foundations with public benefit purposes this as a main rule means taxation corresponding to other foundations including foundations with enterprise status. Foundations with public benefit purposes do, however, enjoy tax privileges in the form of deduction 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 at least to defer taxation to ensuing income years.

It is important to notice that the FTA only covers associations of a labour market related nature and associations with for instance public benefit purposes are instead tax liable according to CTA sec. 1 (1) (6). The tax treatment pursuant to this provision will be elaborated further below parallel with the examination of foundation taxation.

Foundations with public benefit purposes may thus be covered by the FTA, but this is not the case for associations with public benefit purposes, as FTA sec. 1 (1) (1-3) only include labour market associations.[30]

5.2 Foundations covered by the FTA

As is the case for corporations, the tax statement of foundations with public benefit purposes covered by FTA includes profit from business related activities as well as from purely non-profit activities. Profit from business activities is assessed according to standard tax principles which among other things mean that operating costs are deductible pursuant to the Danish State Tax Act sec. 6 (a). Due to the special basic deduction amounting to DKK 25,000 yearly, which is only deductible when assessing income from business activities, it is necessary to separate the assessment of business related income from the assessment of non-profit income, cf. FTA sec. 3 (2). This income statement related separation is, however, based on the same principles that apply to the corresponding separation of the income statement of associations with public benefit purposes covered by CTA sec. 1 (1) (6) according to CTA sec. 1(4).

Business income must derive from a business operated directly by the foundation and ownership of shares will not normally by itself be regarded as business operation unless trade with shares is a business purpose in itself or related closely to a business operation.

5.3 Associations covered by the CTA sec. 1 (1) (6)

As a main rule, only income derived from business operation and gains or losses from trade with assets connected to business activities is taxable. All other income is exempt from taxation. A business operation is considered to exist for tax purposes if an association runs a business in an organized manner for profit purposes carrying the risk for possible losses from the business. Income from rental and operation of real estate is considered business activity in this respect. [31] An association's part in a business' profit is also considered as business income, cf. CTA 1 (4). The nature of the activity is eo ipso decisive when determining whether income from that activity

[28] The income statement of labour market associations' covered by FTA sec. 3 (1) is based on special regulation. This regulation will not be mentioned further as labour market associations are not considered to be charitable entities.
[29] For instance according to the Danish State Tax Act or the Danish Tax Assessment Act.
[30] As a rule, the delimitation of these labour market associations corresponds to the labour market entities to which union dues are deductable pursuant to the TAA sec. 13. The FTA does not cover labour market associations with assets of a value less that DKK 250,000.
[31] This is not always the case according to Danish tax law.

constitutes business income whereas the spending purposes of the profits does not play a role, cf. TfS 1991, 395 H. Furthermore, entrance fees, income from advertisements, advertising income and income from lotteries and other games are considered taxable business income, unless the income is derived from turnover with the association's members.
It is very important to notice, that any income derived from trade with the association's members is not considered business income why such income is exempt from taxation, cf. CTA sec. 1 (5). The trade must, however, have a natural connection with the purpose of the association.

5.4 Business income from directly owned corporations – foundations and associations covered by FTA and CTA
Pursuant to CTA sec. 3 (4), income earned by a corporation – including private or public limited companies – is allocated to the foundation or association which holds the predominant majority of shares of the corporation in mention. Ownership of at least 75 per cent of the corporation's share capital is required for this provision to apply and this minimum 75 per cent share ownership has to last the entire income year. Furthermore, it is a condition for the application of this allocation provision that the foundation or association has in fact public benefit purposes, but the entity does not have to exclusively charitable, cf. TfS 2007, 358 LSR. Indirect ownership is not included; cf. TfS 2000, 753 LR. The purpose of this provision is to ensure, that it is possible for the charitable foundation or association to deduct donations or provisions made for charitable purposes thus eliminating income taxation of the corporations income.

This provision also applies to associations with public benefit purposes covered by CTA sec. 1 (1) (6).

5.5 Interest – foundations covered by FTA
Charitable foundations and associations are – like corporations in general – tax liable of income in the form for interest and can also deduct interest expenses. Foundations and association may grant interest free loans or loans with an interest rate below the market rate, but such transaction may be subject to transfer pricing regulation pursuant to the TTA sec. 2.

5.6 Interest – associations covered by CTA
Income in the form of interest is not taxable for the associations with public benefit purposes covered by CTA sec. 1 (1) (6), unless the interest is directly connected to a business activity.

5.7 Dividend on shares – foundations covered by FTA
As regards foundations covered by the FTA including foundations with public benefit purposes, the taxation of dividend on shares is based on the provisions for corporations, pursuant FTA sec. 10 which refers to CTA sec. 13 (1) (2). As a consequence, foundations are exempt from taxation of dividend which is derived from subsidiary companies or group-related companies as defined in the Danish Act on Capital Gains on Shares sec. 4 A (subsidiaries) and 4 B (group companies).

In this respect, an ownership of at least 10 per cent of the share capital of a company results in the company being regarded as a subsidiary, cf. the Danish Act on Capital Gains on Shares sec. 4 A (1). Moreover, the subsidiary company has to be either fully tax liable to Denmark or the taxation of dividend from the (foreign) company has to be exempt or reduced pursuant to the EC Parent-Subsidiary Directive[32] or pursuant to a DTC with the state in which the company has its registered office.

Shares of a company is considered group company shares, if the foundation and the company are group related according to CTA sec. 31 C and the company may be included in group taxation.

[32] Council Directive 90/435/EC.

Basically, group taxation requires that the foundation has decisive influence on the financial and operational decisions of the (subsidiary) company. If the foundation directly or indirectly controls more than half of the voting rights in a (subsidiary) company decisive influence is present unless it clearly can be documented that such control does not in fact constitute decisive influence, cf. CTA sec. 31 C (3).[33]

In order to avoid circumvention of the ownership/decisive influence requirements, the Danish provisions on capital gains on and dividends from shares of subsidiary companies and group companies includes a special and complex anti-avoidance provision on so called intermediary or inserted holding companies, cf. Danish Act on Capital Gains on Shares sec. 4 A (3) and 4 B (2). In short, the effect of this anti-avoidance provision is that shares owned by a parent company – the so called intermediary or inserted holding company – are regarded as owned directly by the parent company's direct or indirect share owners. This is the case for any intermediary holding companies that own at least 10 per cent of the share capital of a subsidiary company if a number or preconditions are met including:

- that the intermediary holding company is a non-business operating holding company
- that the intermediary holding company does not own all the shares of the subsidiary or owns all the shares of a subsidiary which is not fully tax liable to Denmark and subject to exemption of reduced taxation pursuant to the EC Parent-Subsidiary Directive or a DTC with the state in which the subsidiary is registered
- that the shares of the intermediary holding company are unlisted
- that more than half the shares of the intermediary holding company is owned directly or indirectly by fully or limited tax liable companies, foundations or persons who would not be able to receive tax exempt dividend by direct ownership in the subsidiary company.

Foundations' and associations' dividend from share ownership in other companies than subsidiary and group-related companies – designated portfolio shares in Danish tax law discourse – is included fully in the tax statement.

These provisions also apply fully to foundations with public benefit purposes.

5.8 Dividend on shares – associations covered by CTA
In general, dividend paid to associations covered by CTA sec. 1 (1) (6) is exempt from taxation as the dividend is not directly related to a business activity run by the association. Dividend on shares that would be regarded as shares held in the course of the association's business related trade with shares is, however, regarded as business income.

5.9 Capital gains – foundations covered by FTA
Foundations are tax liable of capital gains to the same extent as corporations, cf. FTA sec. 3 (1). Capital gains on real estate are therefore taxed pursuant to the Danish Act on Taxation on Capital Gains from Real Estate unless the foundation is considered to be operating business related to trade with real estate. In this case capital gains in real estate are taxed pursuant to the Danish State Tax Act sec. 5.

[33] Even though the foundation does not control at least half of the voting rights in a company, group relation between the foundation and the company may be applied pursuant to CTA sec. 31 C (4) i.e. on the basis of disposition over more than half the voting rights through an agreement with other investors.

Capital gains on shares are taxed according to the Danish Act on Capital Gains on Shares which results in the following principles being applied to foundations including foundations with public benefit purposes:

- Shares held in the course of the foundation's business: Gains and losses are taxed based on the yearly increase or decrease of the value of these shares, cf. to the Danish Act on Capital Gains on Shares sec. 23. Dividend is included fully in the tax statement.
- Shares in subsidiary companies covered by to the Danish Act on Capital Gains on Shares sec. 4 A (mentioned above): Gains or losses are exempt from taxation pursuant to the Danish Act on Capital Gains on Shares sec. 8 unless the shares are held in the course of the foundations business, cf. the Danish Act on Capital Gains on Shares sec. 17. Dividends are exempt from taxation.
- Shares in group-related companies covered by the Danish Act on Capital Gains on Shares sec. 4 B (mentioned above): Gains or losses are exempt from taxation pursuant to the Danish Act on Capital Gains on Shares sec. 8 unless the shares are held in the course of the foundations business, cf. the Danish Act on Capital Gains on Shares sec. 17. Dividends are exempt from taxation.
- Portfolio shares (as mentioned above): Foundations gains or losses on portfolio shares are included in the tax statement, cf. the Danish Act on Capital Gains on Shares sec. 9. Gains and losses are as a rule taxed or deductible based on the yearly increase or decrease of the value of these shares, cf. the Danish Act on Capital Gains on Shares sec. 23 (5). It is under certain conditions possible for the foundation to choose taxation of all portfolio shares based on a realization principle according to which each trade is taxed at the time of trade, cf. FTA sec. 3 (3).[34] The foundation's possibility to choose the realizations principle for portfolio shares is conditioned by the foundation donating all tax liable income before deduction pursuant to FTA sec. 4 and 5 (donations and provisions for public benefit purposes), income exempt from taxation due the basic special deduction amounting to DKK 25,000 each year, cf. FTA sec. 3 (2) and tax exempt dividend according to FTA sec. 10. This is stipulated in FTA sec. 3 (3). If a foundation makes provisions for charitable purposes according to FTA sec. 4 (4, 8 or 9), or consolidates its capital pursuant to FTA sec. 5 (1-2), such provisions and consolidations are considered as donations for charitable purposes when assessing whether the foundation has met the donation requirement when striving to choose the realization principle for taxation of capital gains on shares. Donation of former provisioned – but not consolidated – amounts are, however, not considered as charitable donations.

If the foundation is subject to the general principle of taxation of the yearly increase or decrease of the portfolio shares value and losses are deductible, cf. The Danish Act on Capital Gains on Shares sec. 9 (2). Should the foundation choose the realizations principle and meet the criteria for applying to make use of this principle, losses are only deductible in gains on other portfolio shares subject to the realization principle, cf. The Danish Act on Capital Gains on Shares sec. 9 (3). A loss may, however, be carried forward to future income years.

Foundations are also submitted to taxation of profit due to appreciation of claims and debt according to the Gains on Securities and Foreign Currency Act sec. 2. Both business operating foundations and non-profit foundations may donate gains on securities and foreign currency according to FTA sec. 9 (2). Assets corresponding to the last income years' net gains on securities

[34] Securities of some mutual investment funds are excluded from this provision.

and foreign currency which must be included in the yearly tax statement pursuant to both the Gains on Securities and Foreign Currency Act and the Act on Capital Gains on Shares can be donated to public benefit purposes thus eliminating the capital gains taxation.[35]

5.10 Capital gains – associations covered by CTA

The income statement of associations including associations with public benefit purposes only have to include capital gains from selling, handing over or relinquishing assets which are related to the associations' business activities. In this case, a gain or loss is included in full in the associations' income statement.

5.11 Gifts – foundations covered by FTA

Due to the reference to taxation according to CTA in FTA sec. 3 (1) gifts and donations are taxable according to the general principle in the Danish Tax Act sec. 4. This starting point is, however, in practice an exception for foundations because of specific taxation of gifts or donations to foundations.

The tax treatment of gifts and donations for charitable foundations are divided into the following categories:

- Gifts and donations to family foundations
- Gifts and donations to non-family foundations
- Donations to foreign foundations/trusts based in low tax states
- Gifts and donation to (labour) associations

5.11.1 Gifts and donations to family foundations

According to the Danish Foundation Act sec. 7 and the Act on Business Operating Foundations sec. 8 family foundations are characterized by rules according to which members of certain families are given preference to donations from the foundation or preference to hold certain positions except as member of the foundation's board. Family foundations with preferential treatment of members of certain families and other purposes such as a public benefit purposes are treated as family foundations for taxation purposes. This means that family foundations are not regarded as charitable foundations according to Danish tax law.

Pursuant to FTA sec. 3 (6) family foundations have to include in full gifts in the foundation's tax statement, if the gift is used for donations or if it is decided in the foundation's statute that the gift has to be donated within a set period of time. Moreover, gifts which are allocated to increase the family foundations founding capital is taxed while gifts and donations at the time of founding of a family foundation are taxed by 20 per cent.

It is, however, possible for at family foundation to get an approval from the authorities according to which the foundation's yearly income is divided in such a manner that different fractions of income are allocated to different purposes such as a public benefit purpose, cf. SKM 2008.916 SR. This arrangement is conditioned by the division of income being decided in the foundation's statutes.

5.11.2 Gifts and donations to non-family foundations

According to FTA sec. 3 (6) all non-family foundations – including foundations with public benefit purposes – only have to include gifts and donations in the tax statement, if the donator has decided that the gift or donation has to be allocated to donations by the foundation. Gifts and donations which are allotted to the trust funds/locked-up basic capital of the foundation are exempt from taxation; cf. for instance SKM 2007.176 SR. This not the case if it is decided in the

[35] Special provisions apply for group connected foundations and companies.

foundation's statute that the gift or donation has to be used for donations by the foundation within a specific period.

Gifts or donations to the foundation's locked-up basic capital are exempt from taxation why distribution of this capital in the form of donations has to be taxed.[36]

5.11.3 Donations to foreign foundations/trusts based in low tax states

Fully tax liable persons', corporations' or foundations' payment of donations to foundations etc. based in foreign states with low taxation of foundations are taxed by 20 a per cent rate in so far as the yearly contribution exceeds DKK 10,000, cf. FTA sec. 3 A.[37] The purpose of this provision is to reduce the incentive to allocate assets to foundations in foreign states with low taxation (compared to Danish taxation).

A foreign legal entity is required to have the same characteristics as Danish foundations to be covered by this provision which has given rise to some cases particularly regarding foreign trusts.

> SKM 2009.748 SR: The National Danish Tax Council confirmed that payments received by a foreign trust was to be regarded as inheritance from the deceased to the beneficiaries thus disregarding the trust as a legal entity according to Danish tax law. The council took into consideration that the trust's assets were to be sold as soon as possible and that the profits were to be paid to the beneficiaries. This led the council to the conclusion that the trust resembled an estate of a deceased person.
>
> SKM 2007.504 SR: The National Danish Tax Council came to the conclusion that a foreign trust constituted an independent legal entity. The trust's capital was transferred from the founder of the trust in such a way that the founder could not make use of the capital inter vivos or mortis causa (alive or by testament). Moreover, the administration of the trust was handled by a professional trust administration company which was independent of the founder. Finally, the trust's capital could under no circumstances be transferred back to the founder or the founder's spouse or children.

FTA sec. 3 A has as a necessary prerequisite that the contribution to the foreign foundation in at state with low taxation of foundations is completely separated from the contributor's assets in such a way that the contributor is no longer tax liable of income derived from the contributed capital.

The Danish tax authorities compare the taxation of foundations in the relevant foreign state with corresponding taxation of foundations in Denmark when assessing whether the foundation is based in a low tax state. As regards trusts, the taxation of the trustee is compared to Danish foundation taxation. If it is possible for the contributor to agree on the taxation rate with the relevant foreign tax authorities this will automatically lead to the state being regarded as e low-tax state in respect to this provision, cf. FTA sec. 3 A (5).

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[36] Such distributions require an approval from the Danish foundation authorities.

[37] This provision also applies to fully tax liable corporations etc., persons and estates after persons. Moreover, the provision applies to the mentioned legal and physical entities that becomes fully tax liable to Denmark and have formerly been fully tax liable to Denmark, if the said legal entity has within 5 years before becoming fully tax liable to Denmark again, made a donation to a foreign based foundation which is subject to low taxation. The provision also applies if a corporation etc. controlled by a person has made such a donation in the 5 year period.

The contributor may apply for dispensation from this provision if the donation is made to a foreign foundation with public benefit purposes in which case the burden of proof regarding the purpose rests with the contributor, cf. FTA sec. 3 A (2).[38]

The overall effect of this provision is that contributions to foundations in foreign states – including other EU-member states – from fully tax liable physical or legal entities in Denmark are taxed if the taxation of foundations in the foreign state is low compared to Danish taxation, while contributions and gifts to Danish foundations are – as a rule – tax exempt. This provision seems to infringe with TFEU art. 63 on the free movement of capital and payments see also ECJ case C-318/07, Persche.[39]

5.11.4 Gifts and donations to (labour) associations

As mentioned labour associations covered by the FTA are not considered as having public benefit purposes, but gifts and donations to these associations always have to be included in the tax statement of the association.

5.12 Gifts and donations to associations covered by CTA

Gifts and donations to associations covered by CTA are regarded as income from non-profit activity and are as such tax exempt. This is also the case as regards associations with public benefit purposes.

6 Foundations' and associations' deductions – expenses, donations, provisions and consolidation

Includes answers for questions 7, 8 and 10 of questionnaire section I, general questions

6.1 Operation expenses – foundations covered by FTA

Foundations – including foundations with public benefit purposes – and labour associations may deduct operation expenses, cf. FTA sec. 3 (1), CTA sec. (8) and the Danish State Tax Act sec. 6 (a), which means that the expense and the income generating activity of the foundations must be connected.

It is, however, necessary to separate deductible operation expenses from deductible donations pursuant to FTA sec. 4 (1) since:

- A deficit based on deductible operation expenses and/or depreciations can be carried forward to ensuing income years, cf. TAA sec. 15
- Donations with public benefit purposes entitles the foundation to make provisions for consolidation, cf. FTA sec. 5 (1)
- Donations with public benefit purposes are primarily regarded as funded by tax exempt income according to FTA sec. 6 (1), whereas operation expenses and depreciations are deducted in the yearly tax statement
- Non-charitable donations are only deductible for the foundation if the donation is taxable for the beneficiary. This is not the case if the payment is in fact a deductible operation expense

[38] The assessment of the charitable purpose of the foreign foundation is based on the same criteria that apply to the assessment of the deductibility of donations made by the foundation according to FTA sec. 4 (1).
[39] We question is, however, not fully analyzed in this connection.

- The special basic deduction of DKK 25,000 in the income statement is only relevant for non-profit income *before* taking deductible donations with public benefit purposes into account
- Deficit carried forward from earlier income years must be deducted in the income statement before deductions for donations with public benefit purposes.

Expenses that allow the foundation to pursue its purpose according to the foundation's rules are regarded as deductible operation expenses. Donations are payments that the foundations make to *carry out* the foundation's purposes as stated in the foundation's rules. The distinction is difficult to apply in practice since for instance a foundation's expenses for expanding the foundation's building may be considered an internal donation and not an operation expense, if the foundation's purpose according to its rules is to operate and maintain the building, cf. also SKM 2006.504 SR.

It should be noticed that the general principle on deductible operation expenses pursuant to the Danish State Tax Act sec. 6 (a) is extended in the sense that not only expenses in connection with profit-related business activities are deductible for the foundations.

The extended notion of operation expenses includes costs which are necessary for the foundation's or association's additional – for instance public benefit – activity. According to practice, the wording of the foundation's rules plays an important part in the distinction between (extended) operational costs or (internal) donations cf. SKM 2006.417 LSR and SKM 2006.533 SR.

6.2 Operation expenses – associations covered by CTA

Associations covered by CTA sec. 1 (1) (6) may deduct operation expenses to the extent that these costs are related to income from business activity, cf. CTA sec. 9 (1). Costs related to non-profit related income are not deductible and expenses related partly to the association's business income and partly to the association's non-profit activities are partly deductible. As trade with members of the association is regarded as a non-profit activity costs in connection with this trade are not deductible.[40]

6.3 Donations with public benefit purposes – foundations covered by FTA

Foundations are entitled to deduct for assessment purposes certain donations with public benefit purposes pursuant to FTA sec. 4 (1). Deductions for such donations are included in the tax assessment *after* subtracting the special basic deduction amounting to DKK 25,000 in for instance income from interests and dividend. The purpose of allowing foundations to deduct donations public benefit purposes is to ensure that foundations may carry out the charitable purpose and interests of the foundation as set up in foundation's statutes. Donations may be made either in cash or by donation other assets and donations can be either internal or external.

The tax related definition of a purpose public benefit purposes is in accordance with guidelines for administration of other provisions in Danish tax legislation such as TAA sec. 8 A and 12 (deduction for gifts/donation for foundations and associations public benefit purposes etc.), the Danish Estate and Gift Taxation Act sec. 3 (2) (exemption from inheritance tax to charitable foundations etc.) and CTA sec. 3 (2) (charitable associations' deduction for donations to charitable purposes). The definition of charitable purposes is treated above in 1.1, 2 and 3.

In addition to the requirement for a donation to meet the criteria defining it as charitable, the public benefit purpose has to be stated expressly in the foundation's or association's bylaws.

[40] As mentioned above, such income is exempt from taxation because the income is not considered business related income.

According the Tax Assessment Guidelines[41] it is usually without importance in connection with the tax authorities' assessment of a purpose as public benefit purposes or non-charitable whether the public benefit purposes take place in Denmark or abroad. It is, however, normally a condition that the administration of the capital is situated in Denmark. If the administration of capital for public benefit purposes is placed outside Denmark, this will normally lead to the conclusion that the purpose of the foreign foundation is not for public benefit purposes. If the foreign foundation is acknowledged by the authorities in a foreign state as having public benefit purposes it may be without relevance for the assessment of the foundation's purpose as charitable that the administration of the capital is not situated in Denmark. In spite of the reservation concerning charitable foreign foundations acknowledged by the authorities in a foreign state the statement in the Danish Tax Assessment Guide seems very difficult to combine with EU-regulation on the free movement of capital and payment.

6.4 Donations for public benefit purposes – associations covered by CTA
Associations are also entitled to deduct donations in accordance with the association's bylaws if such donations are for public benefit purposes, cf. CTA sec. 3 (2). If an association generates income from both business related activities and non-profit activities, the non-profit income is regarded as donated first. The consequence of this provision is that the association may only deduct donations for public benefit purposes in the tax statement concerning business related income if the charitable donations exceed non-profit income in the relevant income year.

6.5 Other donations – foundations covered by FTA
Foundations are also entitled to deduct donations according to other non-charitable purposes if this purpose is expressly stated in the foundation's statutes, cf. FTA sec. 4 (2). This right to deduction of other donations is, however, conditioned by the donation being taxable at the beneficiary. The foundation is not required to document that the donation is in fact taxed and the income statement of the beneficiary may effectively result in no taxation which could for instance be the case because of other provisions on deduction.

If a foundation makes a donation to another foundation and this donation is not taxed due to FTA sec 3 (6) according to which donations to foundations are as a rule exempt from taxation, the donator is still entitled to deduct the donation pursuant to FTA sec. 4 (2). This is, however, not the case if the donations are mutual.

6.6 Provisions for public benefit purposes – foundations covered by FTA
In order to ensure that foundations, unable to fund a project by a single donation, have the possibility to collect sufficient funds for such a charitable project, FTA sec. 4 (4) authorizes the foundation to make deductible provisions for public benefit purposes. It is not a precondition for the deductibility of the provision that the foundation is in fact unable to fund a project by a single donation.

The provision contains a time limit in the respect that the foundation has to donate an amount corresponding to the provision no later than 5 years after the end of year in which the provision was made, cf. FTA sec. 4 (5).[42]

[41] Section S.H.21.3. These guidelines are available at www.skat.dk and the employees at the Danish tax authorities are required to follow the guidelines unless the guidelines infringe clearly with statutory law, EU-regulation, rulings and judgments from administrative tribunals or courts.
[42] The Ministerial Order No. 900 dated 22 September 2005 on Foundation Taxation contains the accounting requirements of the provisions made pursuant to FTA sec. 4.

Provisions made for public benefit purposes, which are not donated within the 5 year time limit, are subject to additional taxation including a 5 per cent interest rate for each year since the provision was made.[43]

The tax authorities may exempt from the 5 year time limit in special circumstances but the access to exemption is in practice quite limited. Foundations are also entitled to apply for exemption from the 5 year time limit according to FTA sec. 4 (8), if the provision is made to ensure cultural purposes.[44] The foundation may for instance run a museum which may warrant a longer period than 5 years in which the provision can be used for investments for cultural purposes. This special exemption from the 5 year time limit for provisions cannot be extended to a period of more that 15 years.

6.7 Provisions for public benefit purposes – associations covered by CTA

Associations are also entitled to deduct provisions made for ensuing donations for public benefit purposes, cf. CTA sec. 3 (3). If such provisions are donated to purposes which are not considered charitable the provisions are subject to additional taxation by adding the provision and a 25 percent supplement to the association's income statement in the year of donation.

As mentioned above the 5 year time limit for donation of provisions for charitable purposes does not apply to associations.[45]

6.8 Provision for consolidation – foundations covered by FTA

FTA sec. 5 contains regulation on provisions made for consolidation of the foundation's capital. These deductible consolidation provisions are calculated on the basis of the foundation's donations to public benefit purposes during the income year in mention. An amount corresponding to 25 per cent of charitable donations made during the income year may be set aside as a consolidation provision.[46] The abovementioned provisions made for public benefit purposes pursuant to FTA sec. 4 (4) do not entitle the foundation to consolidations provisions before the charitable provision is in effect donated to such a purpose.[47]

6.9 The priority provision – foundations covered by FTA

FTA sec. 6 – known as the priority provision – has as a consequence that income which is not included in the tax statement pursuant to FTA sec. 10 (dividends) and sec. 3 (2) (special basic deduction amounting to DKK 25,000) is regarded as donated or set aside as a provision before any other sort of income. Consequently, foundations can only deduct donations and/or provisions exceeding these tax specific exempt income forms. Tax exempt capital gains, gifts and donations to the foundation are not covered by the priority provision and such income is therefore not considered donated or set aside for provision before any other sort of income. Exclusively deduction of donations and/or provision is reduced by the specific tax exempt income forms whereas operational expenses and losses that have been carried forward are not reduced.

7 Liquidation of non-profit organisations

[43] Foundations which becomes subject to taxation as associations according to CTA sec. 1 (1) (6) are no longer covered by the additional tax on provisions that have not been donated for public benefit purposes within 5 years, cf. SKM 2010.187 LSR. If a charitable association transfers to taxation pursuant to FTA, provisions made for charitable purposes have to be donated no later than 5 years after the end of the first income subject to taxation in order to avoid additional taxation, cf. FTA sec. 22.
[44] This exemption possibility is not available to foundations covered by CTA.
[45] Unless the association becomes subject to foundation taxation pursuant to FTA.
[46] Donations that are made according to the foundation's rules but which cannot be characterized as for public benefit do not entitle the foundation to make consolidation provisions.
[47] Special rules apply for foundations with royally approved rules.

Includes answer for question 9 of questionnaire section I General questions

It is stated in FTA sec. 2 (1) that foundations and labour associations covered by the act are subject to the provisions in CTA concerning commencement and termination of tax liability which also apply for associations covered by CTA. Tax liability of foundations and association is terminated at the time of dissolution of the association or foundation, cf. CTA sec. 5.[48] Dissolution of foundations and associations results in taxation of profit based on difference between the market value of the entities' assets and liabilities pursuant to CTA sec. 5 (4) disregarding if the assets are in fact sold.

Transfer of a foundation from foundation taxation according to FTA to association taxation pursuant to CTA is also regarded as a discontinuation of the foundation leading to liquidation taxation according to CTA sec. 5. This may occur if the foundations capital decreases below DKK 250,000.

8 Taxation of remuneration or reimbursement of expenses for employees, administrators and voluntary collaborators

Includes answer for question 6 of questionnaire section I, General questions

Employees, administrators and voluntary collaborators who work for an association of foundation are as a main rule embraced by the standard income taxation regime which applies to employees in the public and private sector. Remuneration is thus tax liable and reimbursement of expenses connected to the work obligations is irrelevant to the income statement.

TAA sec. 7 M contains a specific provision on remuneration for unsalaried collaborators etc. and unsalaried board members of certain associations. The application of this provision is conditioned by the remuneration covering expenses which the recipient pays on behalf of the association. Moreover, the remuneration cannot exceed the amounts laid down by the National Danish Tax Council in Ministerial Order No. 1023 of 21 August 2007. For instance, an association may pay DKK 2,000 each year to unsalaried board members to cover phone and internet-related expenses. Alternative to remuneration the association may choose to cover expenses according to documentation.

The assignments for the association in mention have to be connected to non-profit activities to be covered by the provision. It is possible for a person to carry out both profit and non-profit related assignments for an association in which case it is decisive for the application of the provision that the activities are isolated and can be separated, cf. SKM 2008.88 LSR: The Danish National Tax Tribunal came to the conclusion that remuneration was not tax exempt pursuant to TAA sec. 7 M because it was not apparent that the assignments were separate as profit and non-profit related activities.

[48] Dissolution of foundations is regulated by the Foundation Act sec. 32-33 and the Business Foundation Act sec. 48-50.

9 Inheritance, estate and gift taxes

Includes answers for question 10, I General questions, and questions 1-5, III Inheritance, estate and gift taxes

9.1 Gifts – deductibility for donator

Danish tax legislation contains several provision which allow deduction for donations for charitable purposes. In the following will be given a survey of these different provisions:

1. TAA sec. 12: Continuous and one-sided payments to associations public benefit purposes etc.

2. TAA sec. 8 A: Donations to associations public benefit purposes etc.

3. TAA sec. 8 H: Donations to research

4. TAA sec. 8 S: Donations to cultural institutions

9.1.1 TAA sec. 12: Continuous and one-sided payments to charitable associations etc.

TAA sec. 12 allows a tax relief for continuous and one-sided payments for public benefit purposes and the tax relief is limited in three respects; the yearly deductible, the group of associations etc. to which such payments are deductible and the tax value of the deduction.[49] The tax relief pursuant to TAA sec. 12 requires a written statement in which the taxpayer obligates him- or herself to make continuous payments indefinitely or at least for a period of up to 10 years. The yearly payments may either consist of a lump sum or a percentage of the donator's income, but it is an important precondition that the obligation entails a payment of an uncertain amount. Deductibility also requires that the payments are due and carried out and the receiving association with public benefit purposes is obliged to control and follow up on missing payments including by collection of debt.

The provision covers both associations and foundations.

The group of covered associations is defined in TAA sec. 12 (3) and Ministerial Order No. 827 of 6th August 2008 according to which the following associations are entitled to receive deductible one-sided and continuous payments:

- Deductibility is conditioned by approval of the association or religious society etc. in Denmark or in another EU/EEA-state in which it is registered. The bylaws of the association etc. have to state that the purpose of the association is for public benefit. cf. TAA sec. 8 A (2). Moreover, the bylaws of the association must state the profit derived from liquidation of the association is allotted to another association with public benefit purposes. Finally, the funds can only be allocated to humanitarian purposes, research, protection of the environment or to a religious society.

[49] The scope of application of TAA sec. 12 – and sec. 8 A mentioned below – is further regulated in Ministerial Order No 827 of 6 August 2008.

- The association with public benefit purposes is obliged to notify the tax authorities about received payments.

The different public benefit purposes are developed further as:

- For the benefit of a wider group of persons who are in financial need
- Considered to be for the benefit of a wider group of persons according to general public opinion
- Being humanitarian in the sense that the association etc. works to relieve human distress. This is primarily aimed at disease-fighting associations, but organizations offering humanitarian aid are also covered
- Research
- Protection of the environment which covers associations etc. fighting pollution of air, water or earth or striving for the protection of endangered plant or animal species

Organizations working for the consideration of social, educational, sport or cultural purposes are not covered by this provision. An association etc. may be regarded as having public benefit purposes according to TAA sec. 12 if the primary part of the association's income is used for the abovementioned charitable purposes.

Religious societies must be based on the worship of a deity according to specific teachings.[50]

Moreover, a number of additional requirements have to be met according to the Ministerial Order No. 837 of 6 August 2008 sec. 1-3:

- 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 size of population less that 40,000 members
- The number of donators in the EU/EEA in average exceeds 100 per year for a three year period
- The yearly gross income or capital exceeds DKK 150,000

Organizations considered as legal entities furthermore have to meet the following requirements:

- The board of the association cannot be self supplementary
- The number of membership paying members in the EU/EEA exceeds 300
- The association is not member of an approved main association unless the applicant association is a nationwide organization

[50] The Danish Ministry of Justice is empowered to give an opinion on the assessment of a society as religious pursuant to TAA sec. 12.

Foundations are required to be covered by the Danish Foundation Act or the Business Foundations Act or have a management consisting of at least one member who is independent from the founders.

Application for acknowledgment as a charitable organization covered by TAA sec. 12 – or sec. 8 A – has to be forwarded to the Danish tax authorities and must include the following documentation:

- Signed and dated rules of the organization
- Latest accounts or if newly founded documentation of capital or yearly gross income
- Information which renders probable or documents that it will be possible to comply with the condition stipulating that the number of donors must exceed 100 on average per year over a three-year period – this does not apply to religious communities.
- Foreign charities etc. domiciled in EU/EEA member states must document that they have been approved in their home country as charitable or non-profit organisations, e.g. through a declaration of income tax exemption.[51]

Deductibility of continuous and one-sided payments to charitable associations pursuant to TAA sec. 12 is limited to DKK 15,000 annually and is furthermore capped to 15 per cent of the donator's income.[52]

9.1.2 TAA sec. 8 A: Donations to associations with public benefit purposes

This provision ensures deductibility of donations to associations with public benefit purposes within certain amount limits and preconditions be the association etc. notifying the tax authorities of yearly donations. In accordance with TAA sec. 12 mentioned above the associations have to be approved by the tax authorities in order to be able to receive deductible donations pursuant to TAA sec. 8 A.

The scope of TAA sec. 8 A is, however, broader than TAA sec. 12 because TAA sec. 8 A does not delimit the charitable purpose of the included associations to humanitarian, research of environmental purposes. This means the associations working for social, educational, national and cultural purposes may be covered by TAA sec. 8 A while being excluded from TAA sec. 12.

Political, financial or profit-related purposes are, however, excluded from both provisions.

If the charitable work of the association is conducted abroad, it is considered an unavoidable condition that the administration of the funds is situated in Denmark or in the EU/EEA.

The total annual deductible donation to charitable associations covered by this provision is limited to DKK 14,500 annually.

9.1.3 TAA sec. 8 H: Donations to research

TAA sec. 8 H precludes the application of TAA sec. 8 A and allows deduction of unlimited donations for research purposes. The receiving organizations must be regarded as having public

[51] The relevant application form is available here: http://skat.dk/getFile.aspx?Id=83644
[52] The donator may also be a corporation.

benefit purposes in the accordance with the concept of charity defined in TAA sec. 8 A but exclusively in consideration of research. Organizations may submit an application for acceptance according to TAA sec. 8 H and the Danish tax authorities publish an updated list annually including organisation covered by the provision.

9.1.4 TAA sec. 8 S: Donations to cultural institutions

With effect from 1 January 2005 TAA sec. 8 S was introduced allowing deduction for firstly businesses' donations (payments) to cultural institutions which receive public subsidy and secondly persons' and businesses' donations of work of arts or cultural and nature historic objects for such institutions.

Any business operating legal entity is entitled to deduction of payments according to TAA sec. 8 S (1) including self-employed businessmen, corporations and business-operating foundations whereas the all tax subjects – profit or non-profit related – are entitled to deduction for the donation of work of arts or nature historic object pursuant to TAA sec. 8 S (2).[53]

Community of interest between the donator and the management of the receiving cultural institution precludes the donator from the scope of the provision, cf. TAA sec. 8 S (5) referring to sec. 2 (transfer pricing).

The donations have to be one-sided and any sort of reciprocity will disallow deductability.

Deduction of donations pursuant to TAA sec. 8 S is not limited, but donations to each cultural institution have to exceed DKK 500 annually to obtain deductibility for donations on excess of this amount.[54]

The cultural institution is obligated to notify the Danish tax authorities of the donation.

9.2 Inheritance – charitable institutions exempt from inheritance tax

According to the Danish Inheritance and Gift Taxation Act sec. 3 (1) (g) inheritance allotted to foundations, associations, religious societies approved according to sec. 3 (2) or TAA sec. 8 A and sec. 12 mentioned above is exempt from taxation. The Danish Inheritance and Gift Taxation Act sec. 3 (2) authorizes the Danish Tax Minister to approve entities with public benefit purposes for exemption from inheritance tax and all entities approved pursuant to the Danish Inheritance and Gift Taxation Act sec. 3 (1) (g), TAA sec. 8 A and sec. 12 appear on a list which is enclosed to the Danish Tax Assessment Guide.[55]

Inheritance to associations etc. that have not been approved according to the Danish Inheritance and Gift Taxation Act sec. 3 (2), are liable to an effective inheritance taxation of approximately 36,25 per cent.

No specific requirements for wills exist in Danish law why the usual requirements for drafting of wills apply to assets bequeathed to charitable associations etc.

Charitable associations in Denmark are not subject to wealth taxation.

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[53] This is also the case for estates after deceased persons regarded as legal entities as regards to Inheritance and Gift Taxation Act.
[54] The tax value of the deduction of the donation is approximately 33 per cent.
[55] An updated version of this list is available at http://skat.dk/SKAT.aspx?oId=103450&vId=204293#161579

10 VAT/GST or turnover taxes

1. *What are the material conditions for special VAT status*
2. *Are there specific formal conditions for special VAT status*
3. *Are there any special rules with respect to the operation of the VAT exemption*

The Danish Act on VAT ('DAV'), contains a number of VAT exemptions in Section 13, para 1.[56] Supply of services and goods connected to those by non-profit organisations to their members, in return for a subscription, if the purpose of the organisation is political, trade union, religious, patriotic, philosophical, philanthropic or civic nature (Section 13 (1) litra 4.) Similarly, Goods and services delivered by an organisation whose activities are exempt from VAT, in connection with a charitable or public benefit event (Section 13 (1), litra 17), and supply of goods and services by public benefit organisations (Section 13 (1), litra 21) are exempt from VAT.

In order to benefit from the exemption regarding supply of services and goods to the members of an association, the supply must be made in connection with the purpose of the organisation, which must fall under the scope of DAV Section 13 (1), litra 4. The scope of the provision is interpreted in the light of the case law of the European court regarding Directive 2006/112/EC, Article 132 (1), litra l.

With regard to supply of services and goods in connection with charitable events (DAV Section 13 (1), litra 17), an application must be filed with the Danish tax authorities prior to the event. A charitable event is an event taking place over a limited period of time,[57] where the entire income from the event is used for a public benefit or charitable purpose. If the organisation responsible for the event is a public benefit entity, whose purpose is covered by DAV Section 13 (1), litra 4, the organisation may elect to use the income from the event for its own purpose. If the purpose of an organisation is not covered by the rules for VAT exemption, that organisation may elect to apply the VAT exemption, if the income from the event is separated from the organosation's other assets and used for a purpose which falls under DAV Section 13 (1), litra 4.

The organisation that is responsible for the charitable event must prepare an account for each event, which shall be preserved for 5 years.[58] The accounts must show the income generated from the event. Only expenses which are directly linked with the planning or execution of the event may be deducted. The income from the event must be kept separate from the other assets of the organisation.

[56] Consolidated Act nb. 287 of March 28th 2011.
[57] See Ministerial Order nb. 663 of March 16th 2006, § 1. If the event is held on a monthly basis, it may not last more than 3 days. If the event is held on a yearly basis, it may last 14 dayrs, or 8 days if it is held at a 6-moths basis.
[58] See Communication from the ministry for Taxation, reported as SKM 2007.432.SKAT.

Fond: Foundation
Forening: Association
Aktieavancebeskatningsloven: Act on Capital Gains on Shares
Bo- og gaveafgiftsloven: Inheritance and Gift Taxation Act
Kursgevinstloven: Gains on Securities and Foreign Currency Act
Fondbeskatningsloven: Foundation Tax Act (FTA)
Selskabsskatteloven: Corporate Income Tax Act (CTA)
Statsskatteloven: State Tax Act
Ligningsloven: Tax Assessment Act (TAA)
TfS: Refers to a Danish journal on direct and indirect taxes: Tidsskrift for Skatter og Afgifter. This journal is published by Magnus Information A/S, cf. www.magnus.dk.
SKM: Refers to a numeric system used by the Danish Ministry of Taxation when publishing judgements, administrative rulings or a circular etc. The first number is the year of publication, while the second number simply identifies the order in which the document is published. The letters after the second number identify the authority which has issued the ruling or circular etc. For instance, H means the Danish Supreme Court (Højesteret), while SR means the National Danish Tax Council (Skatterådet).