

I

1. The most applicable title of the Income Tax Law (Income Tax Act), 1535/1992) II, chapter 3, in regard to the statute of income taxation, involves an entirely or partly tax-free organisation (Income Tax Act §§20-23). Income Tax Act §20 concerns entirely tax-free organisations. These include a group of public corporations, for example, the Bank of Finland and the Social Insurance Institution of Finland. Income Tax Act §21 concerns partly tax-free organisations, which are entirely free of state tax. These include state and municipalities.

Income Tax Act §21a concerns the tax liability of universities. They are subject to tax on their business income and in part from income derived from real estate.

Income Tax Act §§22-23 concern non-profit organisations.

Value Added Tax (1501/1993, VAT) Law §4 concerns non-profit organisations, VAT §5 religious communities, §5a universities and §6 public corporations.

The laws concerning income tax and value added tax (1535/1992, 1501/1993) are the applicable statutes governing taxation in Finland.

Since the concept of non-profit and the questions of taxation related to it are in general specifically regulated, the decisions of legal praxis are highly significant. Consequently, decisions are handed down by the Supreme Administrative Court. In the following we concentrate primarily on questions of taxation concerning non-profit organisations.

2. The primary definition of non-profit appears in Income Tax Act §22 subsection 1. This definition has remained unchanged for a long period of time and states that an organisation is non-profit, if
 - 1) it works solely and directly for the public good in the material, intellectual, moral or social sense
 - 2) its activity does not focus only on limited groups of people.

- 3) it does not through its activities generate financial benefit such as a dividend, profit-sharing or an unreasonably larger salary or other compensation for the people involved in it.

The term non-profit consists of two parts. On the one hand, it must involve public activity which must also be useful. Thus by nature it cannot be private activity. Non-profit activity can thus be very diverse.

In accordance with the example register in Income Tax Act §22 subsection 2, those activities which are in the non-profit sector are clearly defined. According to this register, a non-profit organisation can, for example, be a youth or sports club and a duly registered political party.

If an organisation is not considered to be non-profit, its income is subject to tax which is then applied according to the organisation tax base.

3.

Tax treatment of non-profit organisations can only concern organisations. Non-profit organisations are mainly foundations and non-profit associations, but can also be joint-stock corporations and cooperative associations.

4.

There are no special provisions of international taxation concerning non-profit organisations. The international tax liability is nevertheless defined in internal law in such a way that domestic organisations are commonly subject to tax and foreign organisations only in a limited way. No domestic requirements for the non-profit organisations have been set, which indicates that a foreign organisation can also be regarded as non-profit.

II

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A non-profit organisation is subject to tax on its business income (Income Tax Act §23.1). Income from real estate is chiefly derived from rents. The business income category most applicable to this income status concerns taxation of organisations and value added tax.

Business income primarily means that certain revenues are not specifically excluded from the concept of business income. The following are not considered business income of non-profit organisations (Income Tax Act §23.3):

1)

Income from activities arranged to finance the organisation, such as lotteries, jumble sales, sport competitions, dance and other entertainments, collection of various items and other comparable activities. This also includes income from services, sales and other similar activities in the above-mentioned instances.

2)

Income from subscriptions to member journals and other publications which immediately benefit the activity of the organisation.

3)

Income from assets collected from the sale of bereavement cards, tags, cards, pennants or other similar commodities.

4)

Income from the sale of care-related and crafts products, those with teaching-related purposes produced in hospitals, mental institutions, penal- or work houses, nursing homes, institutions for the disabled or in other similar institutions.

5)

Income from organised bingo games.

It is therefore essential, that the purpose of these activities is to finance the operations of the organisation, not to engage in independent business separate from it.

The most difficult problem concerning the taxation of non-profit organisations has been whether the income not subject to Income Tax Act §23.3 is taxable business income or tax-free private income.

Based on extensive legal praxis we can state that in regard to the evaluation of the concept of business income there are various factors which have proved relevant to assessing the matter. These have included the following questions: has the activity been carried out for purposes of profits and does this activity occur in a competitive situation? Recurrence, stability and the risks of the activities have also been deemed significant.

Although income from such activity was considered taxable, according to the law concerning the tax relief of non-profit organisations the income from its application can be viewed partly or totally as tax-free (Law and Regulation of Tax Relief for Certain Non-profit Organisations 680/1976 and 1230/1994). According to §2 of the law such tax relief can be provided when it is considered justified for the organisation's activity in respect to its benefit to society. In considering tax relief we must bear in mind the extent to which the assets and income of the organisation are used in non-profit activities related to society. It must be further ascertained whether the tax relief provided to the business activity of the organisation is injurious to others in the same business in a manner that is significant. Tax relief cannot include value added tax or real estate tax.

3

Private income is tax-free (Income Tax Act §23.1). It includes subscriptions by members, dividends, interest, rent from owner-occupied flats and profits on sales. If, contrastingly, the dividends, interests, income from rent and proceeds from sales are a source of business income, then they are taxable business income. When private income accruing to non-profit organisations is tax-free, then the expenses are not proportionally tax-deductible

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The real estate income of non-profit organisations is subject to (Income Tax Act §124.3) to municipal and congregation tax. A non-profit organisation is subject to tax on the income from real estate used for purposes which are not general and non-profit. The tax rate on real estate income was raised to 8.9908% for the year 2009 and 8.9804% for the years 2010-2011 (Income Tax Act §124.2) The rates are not that high.

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In this respect, there are not any regulations.

5

Non-profit organisations have normal employer obligations. They are therefore affected by the provisions of Withholding Tax Law (1118/1996) and Withholding Tax Regulation (1124/1996).

Tax-free reimbursement of travel expenses also concerns the reimbursement received for travel expenses incurred for the good of a non-profit organisation or on its behalf where the recipient of the reimbursement is not employed by the payer or otherwise receives payment for his work that includes the travel.

Voluntary work is not separately defined in tax legislation, but the tax authorities have issued detailed guidelines. Voluntary work, where participants work directly for an organisation or foundation, that is not externally commissioned, does not lead to problems in taxation.

6

Gifts and support received by non-profit organisations are regarded as private income and are therefore tax-free.

7

In the Finnish legislation there are no special provisions specifically demanding that a specific amount of the annual income received during a certain period of time be used for non-profit purposes.

8

In this respect there are no special provisions concerning non-profit organisations. An impediment to an organisation being declared non-profit is that upon liquidation its profit is directed towards a purpose that is not non-profit.

9

According to a special temporary provision in the Income Tax Law (1.1.2009-31.12.2011) (Income Tax Act §98a), a natural person and an estate is allowed to reduce from their net income at least 850 euros and an maximum of 250 0000 euros in monetary donations for the purpose of promoting science or art at a university, a polytechnic or a university fund receiving public funding in the European Economic Area.

1

According to the primary regulation a non-profit organisation is subject to value added tax only if the income accruing from the activities it engages in is considered business income (VAT §4). Value added taxation is thus legislatively bound to income taxation.

The activity a non-profit organisation engages in must also exceed the threshold of business in accordance with VAT §1.1 subsection 1, and only then, based on VAT §4, it can be determined what activity is subject to taxation. If the activity is not considered business, VAT §4 and thus Income Tax Act §23 do not apply. A non-profit organisation is also subject to tax if it makes use of a service under the conditions regulated by VAT §25a and a real estate service under the conditions regulated by VAT §32. Other VAT regulations are also significant in regard to non-profit organisations (e.g., VAT §§3, 27, 29, 33 and 56).

As a consequence of such engagement a non-profit organisation is for the most part subject to tax only if the income accruing from its activities is considered to be the organisation's taxable business income (VAT §4) under the Income Tax Act. Consequently, all sales that are not business income in accordance with the Income Tax Act are excluded from value added tax even though the sales occurred as a business form of VAT.

The regulation of non-profit organisations under the Value Added Tax law derives from a different point of departure than the regulations of the Sixth Directive of value added taxation. In the directive the tax exemption of non-profit organisations is granted in the tax exemption regulations, whereas pursuant to VAT non-profit organisations are subject to tax only from certain income. The tax liability of this income is thus related to the provisions of the Income Tax Act. Non-profit organisations are primarily exempt from tax more extensively in VAT than in the directive. Instances may also occur when the VAT regulations are stricter than those of the directive.

The most significant problem is that the provisions of tax exemption in the directive have not been considered in VAT regarding the matters of activity and competition, which can lead to a distortion of competition. Competition-neutral status in VAT is crucial and is far more important than in the Income Tax Act.

2

The concept of non-profit is the same in the Income Tax Law (VAT §4 and ITL §22).

3

There are no special regulations.

4

There are no special regulations

III

1

Non-profit organisations are not subject to inheritance or gift taxes (Inheritance and Gift Tax Law 378/1940, §2). Non-profit organisations are thus able to receive donations and bequests without tax consequences and donate their remaining assets to another non-profit organisation when their own activity ends.

According to Real Estate Law (654/1992) §13a a municipal council can according to Income Tax Act §22 set a rate for a building and the land it stands on of a non-profit organisation lower than the general level (even 0.00 percent), if said building is mainly in general or non-profit use (e.g. a hospital or a school).

2

In practice the concept of non-profit is determined in the same manner in different laws.

3, 4, 5

Such special statutes do not exist in Finnish legislation.

IV

There are no other special exemptions in the legislation concerning non-profit organisations. For example, they are normally subject to transfer tax (Transfer Tax Law, 931/1996), and under excise tax (Excise Tax Law 182/2010) non-profit organisations are not placed in a special position. In conclusion non-profit organisations are subject to tax in the same way as others.